

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

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IN THE MATTER OF: :  
 :  
Amduffy, LLC :  
t/a Duffy's Irish Restaurant :  
2106 Vermont Avenue, NW : Protest  
Retailer CT : Hearing  
License No. 72539 :  
Case No. 13-PRO-00004 :  
ANC 1B :  
Substantial Change (Sidewalk :  
Caf, for Approx. 40 seats) :  
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APRIL 24, 2013

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

PRESENT  
RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
HERMAN JONES, Member

ALSO PRESENT  
KOFI APRAKU, ABRA

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

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

4:12 p.m.

CHAIRPERSON MILLER: All right.

I'm going to call Case No. 13-PRO-00004,  
Duffy's Irish Restaurant located at 2106  
Vermont Avenue, N.W., License No. 72539 in ANC  
1B.

So I see parties have come to the  
table. Could you identify yourselves for the  
record, please?

MR. PATTERSON: My name is Scott  
Patterson. I'm an abutting property owner.

CHAIRPERSON MILLER: Okay. And  
with you?

MR. TANGNEY: My name is Patrick  
Tangney. I also live at 2110 Vermont, the  
abutting property.

CHAIRPERSON MILLER: What's your  
last name?

MR. TANGNEY: Tangney.

CHAIRPERSON MILLER: Tangney?  
Okay.

1 MR. KLINE: Good afternoon.  
2 Andrew Kline on behalf of the  
3 Licensee/Applicant. To my left is Andrew  
4 "Andy" Duffy, who is the proprietor of  
5 Duffy's.

6 CHAIRPERSON MILLER: Okay. Do you  
7 all have any preliminary issues?

8 MR. KLINE: No, we do not.

9 CHAIRPERSON MILLER: Okay. I'd  
10 like to ask you then, each of you, how many  
11 witnesses you intend to call.

12 MR. KLINE: We will call three.

13 CHAIRPERSON MILLER: Three? Okay.  
14 Applicant will call three.

15 MR. PATTERSON: One.

16 CHAIRPERSON MILLER: One? I'm not  
17 sure what they're testifying to, so I want to  
18 ask though if anyone is going to be invoking  
19 the rule on witnesses which applies to  
20 witnesses other than a party. So if one  
21 witness was going to testify to the same  
22 subject as the opposing party's witness, then

1 you could invoke the rule on witnesses if you  
2 wanted them to be out of the room so they  
3 weren't influenced by the testimony that they  
4 heard, if that matters to anyone. Anybody  
5 invoking that?

6 MR. KLINE: We don't require the  
7 rule on witnesses. Thank you.

8 CHAIRPERSON MILLER: Okay. Good.  
9 Okay. Then I assume you're all familiar with  
10 the process. If you're not, let me know.

11 MR. PATTERSON: I'm not very  
12 familiar.

13 CHAIRPERSON MILLER: Okay. So  
14 basically the Applicant will go first, and  
15 they're entitled to do an opening statement  
16 about what their case will be, what they will  
17 show. Their attorney does it. It's not  
18 evidence. And then you can do -- Protestants  
19 are entitled to do an opening statement as  
20 well. You can do it then or you can wait  
21 until you put on your case.

22 Then the first witness will be the

1 Board witness, who will be the ABRA  
2 investigator who wrote the report. And each  
3 of you will have a chance to cross-examine the  
4 witness, and the Board will also.

5 And then the Applicant will put on  
6 their case. Then you'll put on your case, the  
7 Protestants. And then there will be closing  
8 arguments. And then we'll close the record.

9 Each side has an hour-and-a-half  
10 to present their case. Mr. Jones will be  
11 keeping track of the time. That does not  
12 include your opening or closing statement. It  
13 includes your witnesses. And when you're  
14 cross-examining their witness, that goes to  
15 your time. And when you're questioning your  
16 own witnesses, that's your time. That's your  
17 case.

18 I think that's basically it. If  
19 you have any questions now or later, feel free  
20 to ask.

21 Okay. All right. So we're ready  
22 for Applicant's opening statement.

1 MR. KLINE: Yes, thank you.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: Good afternoon, Mr.  
4 Chairperson, Members of the Board. We're here  
5 before you today to consider an application  
6 for outside seating for Duffy's Irish Pub. I  
7 think, Members of the Board, you're familiar  
8 with Mr. Duffy and his operation because most  
9 of you in the not too distant past concerning  
10 his voluntary agreement which was terminated  
11 and which allowed this action to proceed.

12 The request is for outside  
13 seating. Originally the request was for  
14 hours, the maximum hours until 2:00 a.m.  
15 Sunday through Thursday and then until 3:00  
16 a.m. Friday and Saturday. The evidence will  
17 show that Mr. Duffy worked with a number of  
18 community groups and residents in the area and  
19 as a result of those discussions with  
20 residents, he voluntarily amended his  
21 application to set a stopping time of midnight  
22 seven days a week for the outside seating.

1                   The evidence will further show  
2                   that this limitation on the hours is not  
3                   consistent with other establishments in the  
4                   area, and in fact is quite earlier than the  
5                   other establishments in the area that have  
6                   outside seating, be they roof decks or summer  
7                   gardens or sidewalk caf,s.

8                   The evidence will further show  
9                   that there are two residences adjacent to this  
10                  business, however, one of the residences  
11                  appears to be vacant. And you'll hear  
12                  testimony from Mr. Duffy, a long time resident  
13                  that maybe the Board heard from and -- or  
14                  heard from representatives of in a prior  
15                  hearing, seems no longer to be there. And  
16                  that the other resident, the other adjacent  
17                  property who's before you today as a  
18                  Protestant has sold his house and is moving  
19                  out.

20                  Given all of the evidence, we are  
21                  hopeful that at the conclusion of this  
22                  proceeding the Board will agree that the

1 addition of this outside seating does not  
2 render the premises inappropriate given the  
3 criteria in the statute and that the Board  
4 will approve the request for outside seating  
5 with the amended hours of midnight seven days  
6 per week. Thank you.

7 CHAIRPERSON MILLER: Thank you.  
8 Do wish to do an opening statement at this  
9 time?

10 MR. PATTERSON: Sure.

11 CHAIRPERSON MILLER: Okay. Good  
12 afternoon. Again, My name is Scott Patterson.  
13 I'm the abutting property owner at 2110  
14 Vermont Avenue. I'm not here to protest the  
15 outdoor seating in its entirety. Just  
16 concerned about noise and hours.

17 I understand that outdoor seating  
18 can be a great amenity to the neighborhood and  
19 that a lot of the neighbors support it. I  
20 have no objections to how the restaurant is  
21 currently run. I have a good rapport with Mr.  
22 Duffy. I think generally all neighbors feel

1 that the restaurant is managed very well. I'm  
2 a patron of Duffy's. It's just that we  
3 haven't been able to come to an agreement on  
4 what we find to be fair and reasonable in  
5 terms of hours and noise.

6 I've got a list of concerns that  
7 Mr. Duffy and I have talked about and he  
8 verbally reassured me won't be issue such  
9 as --

10 CHAIRPERSON MILLER: Wait. I just  
11 want to just tell you that you will have a  
12 chance to testify and put into evidence --

13 MR. PATTERSON: Okay.

14 CHAIRPERSON MILLER: -- you know,  
15 what your concerns and all that are. So  
16 sometimes, you know, when there's not an  
17 attorney and you're the same person that might  
18 testify and do an opening statement people  
19 tend to drift into witness testimony. And I  
20 just would want to caution you that, you know,  
21 this is just giving an idea of what your case  
22 will show, but not your testimony right now,

1 if that means anything.

2 MR. PATTERSON: Okay. And I'll  
3 have a chance to give my own testimony then?

4 CHAIRPERSON MILLER: Yes, you  
5 will. Yes.

6 MR. PATTERSON: Okay. Then I will  
7 try to wrap this up.

8 So I plan to present some  
9 contextual photos to show the relationship of  
10 my house and my bedroom to the plaza and then  
11 to present other establishments that I feel  
12 are in similar situations and what their hours  
13 and restrictions are as a precedent. That's  
14 all. Thank you.

15 CHAIRPERSON MILLER: Okay. Thank  
16 you. All right.

17 All right. Is our ABRA  
18 investigator here?

19 Good afternoon.

20 INVESTIGATOR APRAKU: Good  
21 afternoon.

22 CHAIRPERSON MILLER: Do you swear

1 to tell the truth, the whole truth and nothing  
2 but the truth?

3 INVESTIGATOR APRAKU: I do.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you. So if you could start off by identifying  
6 yourself and then move into your testimony.  
7 Thanks.

8 INVESTIGATOR APRAKU: Thank you.  
9 My name is Kofi Apraku. It is spelled K-O-F-  
10 I. Last name is spelled A-P-R-A-K-U. I'm an  
11 investigator with the Alcohol Beverage  
12 Regulation Administration.

13 I was assigned the protest  
14 investigation for Amduffy, LLC, trading as  
15 Duffy's Irish Restaurant. It is the intent of  
16 Duffy's Irish Restaurant to erect a sidewalk  
17 caf, directly in front of the establishment  
18 consisting of 40 seats.

19 The substantial change for Duffy's  
20 Irish Restaurant is being protested by Mr.  
21 Scott Patterson, an abutting property owner.  
22 Protest issues were stated as peace, order and

1 quiet.

2 On Wednesday, April 10th, 2013 I  
3 interviewed Mr. Andrew Duffy, owner of Duffy's  
4 Irish Restaurant. Mr. Duffy stated the  
5 following in regards to the protest issues:  
6 Mr. Duffy stated that he has been approved by  
7 DDoT for a 32-seat sidewalk caf,. Mr. Duffy  
8 stated that he had tried to address the  
9 concerns of Mr. Patterson regarding the  
10 sidewalk caf, by limiting sidewalk caf, hours  
11 to 12:00 p.m. seven days a week. However, he  
12 also stated that Mr. Scott Patterson has  
13 insisted on sales and operations being shut  
14 down by 10:00 p.m. Mr. Duffy stated that  
15 shutting down operations at 10:00 p.m. will  
16 negatively affect his business. He also added  
17 that the Protestant has also sold his home and  
18 does not live there anymore.

19 On Monday, April 15th, 2013 I  
20 contacted Mr. Patterson in regards to his  
21 Protestant issues. Mr. Patterson stated the  
22 following with regards to Duffy's Irish

1 Restaurant: Mr. Patterson stated that he was  
2 concerned about the intended hours of  
3 operation for Duffy's Irish Restaurant's  
4 sidewalk caf,. He then stated that the  
5 sidewalk caf, intends to have late hours on  
6 the weekdays and weekends and this was of  
7 concern to him. He cited the proximity of the  
8 intended sidewalk caf, to his actual house and  
9 stated that there would be increased activity  
10 right next to where he was living.

11 Mr. Patterson stated that he was  
12 concerned that there would be a lot of people  
13 outside in the wee hours of the night drinking  
14 and also making a lot of noise. Mr. Patterson  
15 stated that his concerns with noise stem from  
16 the fact that occasionally when patrons come  
17 outside of Duffy's to smoke, he can actually  
18 hear them. So he was concerned that if there  
19 was a sidewalk caf, with 40 seats that it  
20 would be excessively loud.

21 Mr. Patterson stated that he would  
22 drop the protest of Duffy's if Duffy's agreed

1 to limit their hours to 10:00 p.m. seven  
2 nights a week. Mr. Patterson also stated that  
3 he had no concerns with parking in or around  
4 the establishment.

5 Duffy's Irish Restaurant is  
6 located in the C-2-B Zone within the Arts  
7 Overlay. There are 38 licensed ABC  
8 establishments operating within 1,200 feet of  
9 Duffy's Irish Restaurant. There are also two  
10 schools located with 400 feet of Duffy's Irish  
11 Restaurant.

12 Duffy's Irish Restaurant is housed  
13 in a red brick two-story building with glass  
14 windows and steel doors at the entrance of the  
15 establishment. There are dumpsters in the  
16 alley behind Duffy's. The interior of Duffy's  
17 is clean and spacious. There's a game room  
18 located inside the establishment. The  
19 alcoholic beverages sold there range from  
20 spirits to domestic and high-end imported  
21 beers. They also have a menu of which they  
22 serve an assortment of food. Duffy's has an

1 occupancy of 123 seats.

2 Duffy's was monitored on six  
3 separate occasions by ABRA personnel from  
4 Friday, April 5th, 2013 to Saturday, April  
5 13th, 2013. During the course of monitoring  
6 ABRA investigators did not observe any  
7 excessive littering, loitering, criminal  
8 activity or trash around Duffy's. ABRA  
9 investigators did not observe any excessive  
10 noise emanating from Duffy's Irish Restaurant.  
11 ABRA investigators observed that there was  
12 also limited parking available on V Street,  
13 N.W. and Vermont Avenue, N.W.

14 The MPD Crime Analysis Unit stated  
15 that over a one-year period there were three  
16 calls for service at the listed location.  
17 Specifically, there was one for disorderly  
18 complaints, one for theft 2 for less than  
19 \$1,000, and one for found property. None of  
20 these calls resulted in reports to ABRA.

21 Thank you. That concludes our  
22 report.

1                   CHAIRPERSON MILLER: Okay. The  
2 order of questioning for the ABRA witness is  
3 the Board goes first, then the Applicant, then  
4 the Protestant, and then redirect or recross.

5                   So we're going to start with Board  
6 questions. Do Board Members have Board  
7 questions?

8                   MEMBER ALBERTI: Yes.

9                   CHAIRPERSON MILLER: Mr. Alberti?

10                  MEMBER ALBERTI: Yes,  
11 Investigator --

12                  INVESTIGATOR APRAKU: Apraku.

13                  MEMBER ALBERTI: -- Apraku. Did I  
14 pronounce that -- thank you.

15                  Exhibit 18, I'm just now trying to  
16 digest that --

17                  INVESTIGATOR APRAKU: Yes.

18                  MEMBER ALBERTI: -- in your  
19 packet. Is that a seating chart out front --

20                  INVESTIGATOR APRAKU: Yes.

21                  MEMBER ALBERTI: -- of the  
22 sidewalk area?

1 INVESTIGATOR APRAKU: Yes.

2 MEMBER ALBERTI: Okay.

3 INVESTIGATOR APRAKU: That's the  
4 blueprints, and it has the approval on it for  
5 the 32 seats.

6 MEMBER ALBERTI: Okay. Great. So  
7 that's what I thought it was. I just wanted  
8 to verify that.

9 So where's the other exhibit?  
10 Exhibit 7.

11 INVESTIGATOR APRAKU: Yes, sir?

12 MEMBER ALBERTI: So on Exhibit 7  
13 to the right of the bay window portion of  
14 Duffy's there's a -- or bay front portion of  
15 Duffy's there's a -- above it says VeraCruz.

16 INVESTIGATOR APRAKU: Yes. That  
17 is --

18 MEMBER ALBERTI: Is that an  
19 entrance to another --

20 INVESTIGATOR APRAKU: Yes, that's  
21 another -- it's a two-story building. Duffy's  
22 occupies the first floor. The second floor is

1 occupied by VeraCruz Art Gallery, which is a  
2 CX license.

3 MEMBER ALBERTI: Okay. So  
4 according to your knowledge, the proposed  
5 seating for the outdoor caf, area would be,  
6 according to this plan -- and it would be --  
7 as I'm looking at Exhibit 17, the seating  
8 would be -- there would be no seating to the  
9 left of that iron railing on the front  
10 entrance of Duffy's. Is that correct?

11 INVESTIGATOR APRAKU: To the front  
12 entrance, no.

13 MEMBER ALBERTI: Okay. And then  
14 there would be no seating to the right of that  
15 bay area that comes out from Duffy's. Is that  
16 right?

17 INVESTIGATOR APRAKU: No.

18 MEMBER ALBERTI: That's where the  
19 property line is --

20 INVESTIGATOR APRAKU: Yes.

21 MEMBER ALBERTI: -- on that  
22 diagram?

1 INVESTIGATOR APRAKU: Yes.

2 MEMBER ALBERTI: Okay. All right.

3 Thank you.

4 INVESTIGATOR APRAKU: Thank you.

5 MEMBER ALBERTI: That's all the

6 questions I have. Thank you.

7 CHAIRPERSON MILLER: Any other

8 questions? Yes, Mr. Jones?

9 MEMBER JONES: Thank you, Madam

10 Chair.

11 Just for clarification purposes,

12 the residence that is on Exhibit 8 where it

13 has the for sale sign, under contract --

14 INVESTIGATOR APRAKU: Yes.

15 MEMBER JONES: -- is there any

16 significance in having that residence in the

17 picture?

18 INVESTIGATOR APRAKU: No.

19 MEMBER JONES: No?

20 INVESTIGATOR APRAKU: Oh, that's

21 -- are you talking about Exhibit 8?

22 MEMBER JONES: I am talking about

1 Exhibit 8, yes.

2 INVESTIGATOR APRAKU: Yes. That  
3 is the Protestant's house.

4 MEMBER JONES: That's the  
5 Protestant's house?

6 INVESTIGATOR APRAKU: Yes.

7 MEMBER JONES: Okay. And I know  
8 you spoke on this briefly, but the VeraCruz  
9 building or establishment, that's just their  
10 rooftop or the second floor?

11 INVESTIGATOR APRAKU: That's the  
12 second floor.

13 MEMBER JONES: All right. Do you  
14 know the nature of that business?

15 INVESTIGATOR APRAKU: It's an art  
16 gallery. They do serve alcoholic beverages,  
17 but it's a CX license.

18 MEMBER JONES: So it's a CX  
19 license?

20 INVESTIGATOR APRAKU: Yes.

21 MEMBER JONES: Okay. As part of  
22 your investigation or part of your activities

1 related to this case, did you have opportunity  
2 to confirm or verify or look into the current  
3 ownership status of the 2110 residence?

4 INVESTIGATOR APRAKU: Yes, I did.

5 MEMBER JONES: Okay. And what  
6 were you able to find as of the date of this  
7 report?

8 INVESTIGATOR APRAKU: When I went  
9 online to check listings, I did find the  
10 house. It was listed as being under contract,  
11 as in having been sold. It was in a pending  
12 status. That was the last thing that I saw  
13 for it. And that was approximately I believe  
14 on the 13th of April.

15 MEMBER JONES: Okay. Were you  
16 able to confirm the actual owner of the  
17 establishment at the time the report was  
18 drafted? So I understand under contract just  
19 means that there's a potential for a sale.  
20 There's a contract that may or may not go  
21 through.

22 INVESTIGATOR APRAKU: Yes.

1                   MEMBER JONES: Were you able to  
2 confirm who the owner was at the time?

3                   INVESTIGATOR APRAKU: I spoke with  
4 Mr. Scott Patterson in regards to the  
5 property, and he stated that he was still the  
6 owner of the property.

7                   MEMBER JONES: Okay. But you  
8 weren't able to independently confirm that on  
9 your own?

10                  INVESTIGATOR APRAKU: No, I did  
11 not.

12                  MEMBER JONES: Okay. Also looking  
13 at Exhibit 8 I see a tree line or a bush line.

14                  INVESTIGATOR APRAKU: Okay.

15                  MEMBER JONES: Exhibit 8. There  
16 are a series of fairly manicured bushes.

17                  INVESTIGATOR APRAKU: I'm sorry, I  
18 don't have the --

19                  MEMBER JONES: You don't?

20                  INVESTIGATOR APRAKU: I don't have  
21 that exhibit in front of me.

22                  MEMBER JONES: All right. Would

1 they be able to get a copy?

2 CHAIRPERSON MILLER: He's got it.

3 MEMBER ALBERTI: Let the record  
4 show the investigator was just handed a copy  
5 of the exhibits.

6 MEMBER JONES: He was?

7 MEMBER ALBERTI: Yes.

8 MEMBER JONES: All right. Thank  
9 you. On Exhibit 8 --

10 INVESTIGATOR APRAKU: Yes?

11 MEMBER JONES: -- do you see the  
12 bushes there?

13 INVESTIGATOR APRAKU: Yes.

14 MEMBER JONES: Okay. I'm going to  
15 look at that as the property line, the divider  
16 line between Duffy's, VeraCruz and the  
17 residents at 2110. Based on your eyes, hands  
18 and feet on the ground perspective, would that  
19 be a fair assessment?

20 INVESTIGATOR APRAKU: Yes.

21 MEMBER JONES: Okay. Did you get  
22 any feedback from the Licensee as to the

1 extent of where the -- well, let me back up.  
2 Did you get any feedback from the Licensee as  
3 to the nature of the outdoor seating?

4 INVESTIGATOR APRAKU: I'm sorry,  
5 in what context?

6 MEMBER JONES: Whether it be a  
7 table with four chairs, a stool, a tabletop  
8 with only two chairs, just a series of chairs,  
9 benches, lounge sofas that are waterproof,  
10 anything.

11 INVESTIGATOR APRAKU: The  
12 understanding that I got from the owner was  
13 that it was going to be chairs. There's going  
14 to be a table with chairs around it. Also in  
15 the blueprint it has the set up for how it  
16 will be. But from what I got from the owner  
17 was that there's going to be tables with  
18 chairs around them. So my understanding was  
19 that there's going to be like a table with  
20 like four chairs around it. But I don't know  
21 the exact nature of how he's going to arrange  
22 that.

1 MEMBER JONES: Okay. All right.

2 INVESTIGATOR APRAKU: Yes.

3 MEMBER JONES: So you wouldn't be  
4 in a position to provide any feedback as to  
5 how close to that property line the tables and  
6 chairs would be set up? And it's fine if you  
7 don't.

8 INVESTIGATOR APRAKU: No, I don't.

9 MEMBER JONES: Okay. Thank you.  
10 Thank you, Madam Chair.

11 CHAIRPERSON MILLER: Okay. You're  
12 welcome. So I just want to clarify. The  
13 application is for 32 seats, is that correct,  
14 not 40 now?

15 INVESTIGATOR APRAKU: The  
16 application was for 40. He was approved by  
17 DDoT for 32.

18 CHAIRPERSON MILLER: Okay.

19 INVESTIGATOR APRAKU: Yes.

20 CHAIRPERSON MILLER: So that's  
21 what we're considering.

22 INVESTIGATOR APRAKU: Yes, his

1 application with us is for 40, but he can't  
2 have 40 anyway. He can only have 32 as of  
3 now.

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR APRAKU: Yes.

6 CHAIRPERSON MILLER: And I want to  
7 ask you about the buildings on either side.  
8 Okay. So Mr. Patterson's building right now  
9 is used as a residence, or it was. It's under  
10 contract.

11 INVESTIGATOR APRAKU: Yes.

12 CHAIRPERSON MILLER: Okay. The  
13 other building is vacant, is that right?

14 INVESTIGATOR APRAKU: I'm unaware  
15 of the nature of that. There was initially a  
16 Protestant, but his protest was dismissed. So  
17 I didn't speak with anybody in regards to that  
18 property.

19 CHAIRPERSON MILLER: Okay.

20 INVESTIGATOR APRAKU: Yes.

21 CHAIRPERSON MILLER: So under the  
22 Zoning Regulations could those buildings be

1 used for offices or retail?

2 INVESTIGATOR APRAKU: Yes.

3 CHAIRPERSON MILLER: Okay. Is it  
4 unusual in your experience that there be an  
5 establishment with an outdoor caf, in between  
6 two residences?

7 INVESTIGATOR APRAKU: In my  
8 experience I haven't seen that too many times,  
9 however, I wouldn't be able to say whether  
10 it's unusual or not. But in my experience I  
11 haven't seen that a lot.

12 CHAIRPERSON MILLER: Okay. But  
13 you've seen it?

14 INVESTIGATOR APRAKU: Yes, I've  
15 seen it.

16 CHAIRPERSON MILLER: And in your  
17 experience in this kind of a set up would it  
18 buffer the noise by having any kind of  
19 plantings, containers with plantings or  
20 anything like that?

21 INVESTIGATOR APRAKU: Yes. Yes,  
22 it definitely would. Some sort of planting

1 along where the sidewalk caf, would be would  
2 be able to at least, you know, buffer some of  
3 the noise and keep it contained.

4 CHAIRPERSON MILLER: Okay. All  
5 right. I don't have any other questions.

6 MEMBER ALBERTI: I have one quick  
7 question.

8 CHAIRPERSON MILLER: Yes, Mr.  
9 Alberti?

10 MEMBER ALBERTI: Investigator  
11 Apraku, just one quick question --

12 INVESTIGATOR APRAKU: Yes.

13 MEMBER ALBERTI: -- a follow up to  
14 the residents. 2104 is the house to the house  
15 of Duffy's?

16 INVESTIGATOR APRAKU: Yes.

17 MEMBER ALBERTI: Did you check  
18 city records to ascertain what the current  
19 allowed use is in terms of its tax category?

20 INVESTIGATOR APRAKU: No, I did  
21 not.

22 MEMBER ALBERTI: Okay. Thank you.

1 You don't know whether it's commercial or  
2 residential?

3 INVESTIGATOR APRAKU: Oh, whether  
4 the zone --

5 MEMBER ALBERTI: No, not zone.  
6 Its tax status. We always have a use. And i  
7 don't know whether --

8 INVESTIGATOR APRAKU: Oh, no, I do  
9 not.

10 MEMBER ALBERTI: You haven't  
11 ascertained whether it's currently licensed as  
12 a residential property, or taxed as a  
13 residential property or a commercial property?

14 INVESTIGATOR APRAKU: No, I did  
15 not.

16 MEMBER ALBERTI: Okay. Thank you.

17 CHAIRPERSON MILLER: Okay. Mr.  
18 Kline?

19 MR. KLINE: Yes. Good afternoon,  
20 investigator. To your knowledge, in terms of  
21 tax rates are the taxes higher for commercial  
22 or residential, if you know?

1                    INVESTIGATOR APRAKU; I don't  
2 know.

3                    MR. KLINE: Okay. Fair enough.  
4 You were asked about the anticipated layout of  
5 the outside seating by Board Member Jones.  
6 Isn't that what's reflected on Exhibit 18?

7                    INVESTIGATOR APRAKU: Yes.

8                    MR. KLINE: Okay. And to your  
9 knowledge is that the plan that was submitted  
10 to public space for approval?

11                   INVESTIGATOR APRAKU: Yes. To my  
12 knowledge, yes.

13                   MR. KLINE: All right. And to  
14 your knowledge if that was approved for the  
15 issuance of the public space permit, then that  
16 would govern what kinds of seats and what kind  
17 of tables would be there and how many seats  
18 would be there, correct?

19                   INVESTIGATOR APRAKU: To my  
20 understanding, yes.

21                   MR. KLINE: All right. And how  
22 long have you been an investigator?

1                    INVESTIGATOR APRAKU: I've been an  
2 investigator for approximately a year and four  
3 months.

4                    MR. KLINE: Okay. And in  
5 connection with becoming an investigator you  
6 underwent some sort of training, I presume?

7                    INVESTIGATOR APRAKU: Yes.

8                    MR. KLINE: All right. Are you  
9 aware of the concept of eyes on the street and  
10 safety being attributed to people being on the  
11 street? Is that a concept that's known to  
12 you?

13                   INVESTIGATOR APRAKU: I don't  
14 understand the question.

15                   MR. KLINE: Okay. There have been  
16 discussions that having people on the street  
17 as a result of licensed establishments and  
18 other activity leads to public safety. And  
19 I'm asking you; and you may not be, and that's  
20 fine --

21                   INVESTIGATOR APRAKU: Yes.

22                   MR. KLINE: -- if that's a concept

1 that you're familiar with either as part of  
2 your work as an investigator or part of your  
3 training.

4 INVESTIGATOR APRAKU: No.

5 MR. KLINE: Fair enough. Now you  
6 did testify or it's in your report; I'm not  
7 sure if you testified to it, that this is in  
8 the Arts Overlay area, correct?

9 INVESTIGATOR APRAKU: Yes.

10 MR. KLINE: And in your report you  
11 set forth certain criteria of the Arts Overlay  
12 area.

13 INVESTIGATOR APRAKU: Yes.

14 MR. KLINE: And did you obtain  
15 this information from the Zoning Regulations?

16 INVESTIGATOR APRAKU: Yes, D.C.  
17 Office of Zoning.

18 MR. KLINE: Okay. Now if you  
19 know, isn't one of the purposes of the Arts  
20 Overlay District to foster 18-hour activity  
21 and increase public safety?

22 INVESTIGATOR APRAKU: Yes.

1 MR. KLINE: All right. I note  
2 that that's not in your report. You mentioned  
3 the public safety part of it, but not the 18-  
4 hour activity. Is there a reason?

5 INVESTIGATOR APRAKU: No, there's  
6 no reason. I retrieved that information  
7 directly from the D.C. Office of Zoning, so  
8 the 18-hour I'm unsure, but I'm sure of the  
9 public safety.

10 MR. KLINE: Yes.

11 INVESTIGATOR APRAKU: I'm not sure  
12 of the 18-hour, and I'm not familiar with  
13 that.

14 MR. KLINE: Fair enough. Now in  
15 your report you have list of various  
16 establishments. I think there are 38 of them  
17 that are listed in your report.

18 INVESTIGATOR APRAKU: Yes.

19 MR. KLINE: Did you look at which  
20 of these establishments are approved for  
21 outside seating and what their hours might be?

22 INVESTIGATOR APRAKU: No, I did

1 not.

2 MR. KLINE: Okay. Are you  
3 familiar with the establishments that are on  
4 the report?

5 INVESTIGATOR APRAKU: I'm familiar  
6 with them.

7 MR. KLINE: Well, let me ask you  
8 about a few of them, if you know. And if you  
9 don't, I'll move on. With respect to American  
10 Ice Company, do you know that particular  
11 business?

12 INVESTIGATOR APRAKU: Yes, it's  
13 pretty close to Duffy's.

14 MR. KLINE: All right. In fact  
15 it's in the same square as Duffy's, isn't it?

16 INVESTIGATOR APRAKU: Yes.

17 MR. KLINE: Right around the  
18 corner?

19 INVESTIGATOR APRAKU: Yes.

20 MR. KLINE: Do they have outside  
21 seating to your knowledge?

22 INVESTIGATOR APRAKU: I don't

1 believe so. I believe they have a summer  
2 garden. I don't think it's a sidewalk caf,.

3 MR. KLINE: Okay. But it is  
4 outside, correct?

5 INVESTIGATOR APRAKU: Yes, it is  
6 outside.

7 MR. KLINE: All right. And to the  
8 extent that residents might be concerned about  
9 noise from outside seating, the effect from a  
10 summer garden would be the same as the effect  
11 from a sidewalk caf,, correct?

12 INVESTIGATOR APRAKU: Yes.

13 MR. KLINE: All right. Do you  
14 happen to know what their outside seating  
15 hours are?

16 INVESTIGATOR APRAKU: No, I do  
17 not.

18 MR. KLINE: Beg the Board's  
19 indulgence.

20 CHAIRPERSON MILLER: Okay.

21 MR. KLINE: And you testified that  
22 this is zoning C-2-B, correct?

1 INVESTIGATOR APRAKU: Yes.

2 MR. KLINE: Which does allow  
3 commercial uses?

4 INVESTIGATOR APRAKU: Yes.

5 MR. KLINE: To the extent that  
6 either of the residential buildings changed  
7 hands, or even if the existing owners wanted  
8 to convert them to commercial use such as  
9 offices as the Chair suggested --

10 INVESTIGATOR APRAKU: Yes.

11 MR. KLINE: -- that's easily  
12 doable to your knowledge, correct?

13 INVESTIGATOR APRAKU: Yes.

14 MR. KLINE: Okay. Thank you.  
15 That's all I have of the witness at this time.

16 CHAIRPERSON MILLER: Okay. Mr.  
17 Patterson?

18 MR. PATTERSON: You talked about  
19 the number of seats that have been applied for  
20 versus what DDoT has approved?

21 INVESTIGATOR APRAKU: Yes.

22 MR. PATTERSON: If and when a

1 license is granted, will that be for 40 seats  
2 or for 32 seats?

3 INVESTIGATOR APRAKU: Well, the  
4 most that they're allowed based on DDoT would  
5 be 32, so it would at least be -- I mean at  
6 most it would be 32.

7 MR. PATTERSON: Okay. You said  
8 that you had seen other outside seating caf,s  
9 between two residences?

10 INVESTIGATOR APRAKU: Yes.

11 MR. PATTERSON: Can you name an  
12 example by chance?

13 INVESTIGATOR APRAKU: Can't name  
14 an example off the top of my head.

15 MR. PATTERSON: Of any of the  
16 establishments listed in your report are you  
17 aware of any of those being between two  
18 residences?

19 INVESTIGATOR APRAKU: I'm unsure  
20 at the present moment.

21 MR. PATTERSON: Okay. I'd like to  
22 ask about the American Ice summer garden. Do

1 you recall if that's between or beside any  
2 residential houses?

3 INVESTIGATOR APRAKU: I believe  
4 there's another residence next to it, but I'm  
5 not sure if it's between two residences. I  
6 don't believe it's between. I believe it's  
7 between a car auto place and another  
8 residence.

9 MR. PATTERSON: I believe it's  
10 surrounded by walls on all sides. Did you see  
11 that when you were in the neighborhood?

12 INVESTIGATOR APRAKU: I'm not  
13 sure. I don't know.

14 MR. PATTERSON: Or a glass roof?

15 INVESTIGATOR APRAKU: That there's  
16 a glass roof?

17 MR. PATTERSON: Yes.

18 INVESTIGATOR APRAKU: I'm sorry, I  
19 don't understand the question.

20 MR. PATTERSON: I'm sorry. I  
21 didn't know if you had seen that it has walls  
22 on all sides and a glass roof over it.

1                   INVESTIGATOR APRAKU: I did see  
2                   that it has walls, but I mean -- I'm not  
3                   saying that they're abutting, but I'm saying  
4                   that it's next to a car auto place.

5                   MR. PATTERSON: No, I'm sorry.  
6                   I'm talking about the summer garden itself.

7                   INVESTIGATOR APRAKU: Oh, the  
8                   summer garden? Yes. Yes, there are walls  
9                   around it.

10                  MR. PATTERSON: Okay.

11                  INVESTIGATOR APRAKU: Yes.

12                  MR. PATTERSON: And a partial  
13                  glass roof?

14                  INVESTIGATOR APRAKU: Yes. Yes.

15                  MR. PATTERSON: All right. Thank  
16                  you.

17                  INVESTIGATOR APRAKU: Okay.

18                  CHAIRPERSON MILLER: Any other  
19                  Board questions?

20                  (No audible response.)

21                  CHAIRPERSON MILLER: I just have  
22                  one. Is it uncommon for a sidewalk caf, to be

1 next to one residence, abutting a residence?

2 INVESTIGATOR APRAKU: It's not  
3 uncommon. In my experience it's not typically  
4 what I see, but it's not uncommon. There are  
5 some that are right next to a residence.  
6 Again, I'm unsure of like ones that are  
7 abutting two properties, but I have seen, you  
8 know, establishments that have one resident  
9 right next to it.

10 CHAIRPERSON MILLER: And the ones  
11 that you may be familiar with, do they coexist  
12 all right?

13 INVESTIGATOR APRAKU: I haven't  
14 had a protest in regards to that, so I don't  
15 know specifically in regards to, you know, how  
16 their terms of -- you know, how they work  
17 together or how they coexist.

18 CHAIRPERSON MILLER: Okay. Now at  
19 this point if you have a question based on my  
20 last questions, you can do a follow up on  
21 that. Mr. Kline, do you?

22 MR. KLINE: No, I do not.

1 CHAIRPERSON MILLER: Okay. Do  
2 you?

3 MR. PATTERSON: No, thank you.

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

6 INVESTIGATOR APRAKU: Thank you.

7 CHAIRPERSON MILLER: Okay. Then  
8 we're ready for the Applicant's case.

9 MR. KLINE: Yes, thank you.

10 Preliminarily before I put any witnesses on,  
11 in an effort to streamline the Applicant's  
12 case, we're going to ask that the Board accept  
13 as evidence; it is permissible certainly in an  
14 administrative proceeding, testimony in the  
15 previous termination hearing. And we would  
16 refer to pages of the transcript which we  
17 would ask be entered into the record and the  
18 Board can have them available.

19 Specifically; and this is the  
20 hearing dated April 6th, 2011 in the matter of  
21 Amduffy, LLC, trading as Duffy's' Irish  
22 Restaurant, Retailer CT, License No. 72539,

1 Case No. 10-PRO-00185. And the pages that we  
2 would request be entered are pages 12 through  
3 23, pages 60 through 75, pages 77 through 97,  
4 and pages 100 through 103.

5 CHAIRPERSON MILLER: What was this  
6 case about?

7 MR. KLINE: This was the  
8 termination of the voluntary agreement with  
9 respect to Duffy's.

10 CHAIRPERSON MILLER: Termination?  
11 Okay.

12 MR. KLINE: And there was a police  
13 officer and three residents who testified  
14 concerning the operation of this  
15 establishment. There was even reference to  
16 the prospect, although that was not before the  
17 Board at that time -- the prospect of outside  
18 seating at the establishment.

19 CHAIRPERSON MILLER: And whose  
20 testimony is it?

21 MR. KLINE: That would be the  
22 testimony of four witnesses. The first

1 witness would be Officer Caleb Willis, and  
2 he's at pages 12 through 23. Craig Melvin is  
3 -- no, Bryan Martin Firvida is pages 60  
4 through 75. Karen Polis, pages 77 to 97. And  
5 Tucker Gallagher, pages 100 to 103.

6 CHAIRPERSON MILLER: All right.  
7 Are you aware of that transcript?

8 MR. PATTERSON: No.

9 CHAIRPERSON MILLER: So if they're  
10 not aware of the transcript, then how would  
11 they have a chance to -- they don't have a  
12 chance to cross-examine --

13 MR. KLINE: Right.

14 CHAIRPERSON MILLER: -- under  
15 those circumstances.

16 MR. KLINE: But this is an  
17 administrative hearing which is not fatal.  
18 And one of the exceptions to hearsay testimony  
19 is sworn testimony. And indeed it was sworn  
20 testimony before this body and there was an  
21 opportunity at that time for Protestants in  
22 the case to cross-examine. And it's certainly

1 one of the very clear exceptions to the  
2 hearsay rule that sworn testimony comes in,  
3 particularly in an administrative proceeding.

4 CHAIRPERSON MILLER: Okay. I'm  
5 not exactly sure of that rule, to tell you the  
6 truth.

7 MR. PATTERSON: Can I say  
8 something?

9 CHAIRPERSON MILLER: Do you want  
10 to address -- what?

11 MR. PATTERSON: Can I say  
12 something in response?

13 CHAIRPERSON MILLER: Yes, sure,  
14 because --

15 MR. PATTERSON: I just want to  
16 clarify that I wasn't one of the Protestants  
17 in that case, so --

18 CHAIRPERSON MILLER: Were you  
19 there?

20 MR. PATTERSON: -- I didn't have  
21 an opportunity to cross-examine.

22 CHAIRPERSON MILLER: Right.

1 MR. PATTERSON: And I'm not aware  
2 of what's in the report. And if there's any  
3 commentary about potential future outside  
4 seating, that wasn't what the case was at that  
5 time.

6 MR. KLINE: The Board can  
7 certainly give it whatever weight the Board  
8 feels appropriate.

9 MEMBER ALBERTI: May I make a  
10 comment before you make your ruling?

11 CHAIRPERSON MILLER: Yes. Yes, go  
12 ahead. Yes.

13 MEMBER ALBERTI: Before we make a  
14 ruling on this if we were to allow this into  
15 evidence, I would suggest in fairness to all  
16 parties rather than cherry picking the  
17 transcript that we enter the entire transcript  
18 into evidence. If we were to do it at all, we  
19 would enter the entire transcript into  
20 evidence.

21 MR. KLINE: My experience has been  
22 the Board might do that anyway even if I

1 didn't ask that it be entered into the record.

2 So I'm not going to object to that.

3 MEMBER ALBERTI: Okay. Fine. I

4 didn't think you would.

5 (Laughter.)

6 CHAIRPERSON MILLER: Others?

7 (No audible response.)

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: Go ahead and make  
10 your ruling on it.

11 CHAIRPERSON MILLER: Well, I think  
12 I would like to kind of take this under  
13 advisement for now, but seems to me that the  
14 Protestant should have an opportunity to look  
15 at this and comment on it, even if they didn't  
16 have a chance to cross-examine those  
17 witnesses.

18 And I'd also like an opportunity  
19 to look at the rule that you're referring to  
20 that talks about sworn testimony to see  
21 whether it really governs this kind of  
22 situation. I know we've done it in the past

1 where we've had hearings and both parties were  
2 at the hearings and, you know, it saved  
3 redundancy, but this seems a little bit  
4 different than that.

5 So maybe we can keep the record  
6 open, or I don't know how soon we could get a  
7 copy of that transcript to the Protestants,  
8 but I think they ought to have an opportunity  
9 to at least comment.

10 MEMBER ALBERTI: Just FYI for the  
11 Protestants, we can make that transcript  
12 available to you today. It's a simple matter  
13 to email a copy to you. So I'm just saying in  
14 terms of timing that would be made available  
15 quickly to you. Just FYI.

16 INVESTIGATOR APRAKU: But I  
17 wouldn't have an opportunity to review a 100-  
18 page document.

19 CHAIRPERSON MILLER: Well, that's  
20 what we'll have to see. I mean we don't  
21 usually leave the records open here in these  
22 cases, but this might be an instance where

1       it's appropriate.  But I don't know how  
2       extensive this testimony is.  I haven't seen  
3       it yet, so I really don't even know.  But it  
4       could be that this testimony, with your  
5       opportunity to comment, might be enough to  
6       override concerns about not having an  
7       opportunity to cross-examine, or it might not.  
8       I don't know.  But it seems to me that you  
9       should at least have the opportunity to  
10      comment and then the Board could decide, you  
11      know, whether you needed to have an  
12      opportunity to cross-examine.

13                   MR. PATTERSON:  It's all new to me  
14      and --

15                   CHAIRPERSON MILLER:  Okay.

16                   MR. PATTERSON:  -- that's your  
17      decision, but I would object to it.

18                   CHAIRPERSON MILLER:  Is this going  
19      to affect how you go forward in this hearing,  
20      because I don't think we're prepared to say  
21      okay --

22                   MR. KLINE:  Then we'll withdraw

1 that and we'll put everything on that we need  
2 to put on, if that's the Board's preference.

3 CHAIRPERSON MILLER: You'll put it  
4 on now? Well, then I think my ruling then  
5 would be do that then because I don't know  
6 what's there. They need to preserve the right  
7 to cross-examine.

8 MR. KLINE: I mean the point is  
9 that there is; and we can take a five-minute  
10 recess --

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: -- it's very clear  
13 that sworn testimony -- well, what we're  
14 talking about here is hearsay, which as this  
15 Board knows and we've talked about many, many,  
16 many times, is not really an issue to begin  
17 with in an administrative proceeding. That's  
18 number one. The Board is entitled to look at  
19 hearsay. The Board is entitled to give it  
20 whatever weight it deems appropriate.

21 However, even if the hearsay rules  
22 did apply, which they don't, one of the

1 specific exceptions to the hearsay rule, both  
2 under the Federal Rules of Evidence and under  
3 local practice and procedure, is sworn  
4 testimony. And that's exactly what we're  
5 talking about. I can recall a case in which  
6 the Board accepted sworn testimony of a  
7 criminal proceeding, for example, and you  
8 didn't have the same parties before you. It's  
9 sworn testimony that the parties were before  
10 a body; in this case it happened to be the  
11 same Board that we're before now, were put  
12 under oath and gave testimony concerning this  
13 same establishment.

14 So for both of those reasons it  
15 seems perfectly proper for this to come in.  
16 And it's really no different than my not  
17 having heard from any of their witnesses  
18 before they take the stand. I mean that's --

19 CHAIRPERSON MILLER: No, you have  
20 a chance to cross-examine them.

21 MR. KLINE: True. True. Or  
22 having read their documents that they may

1 offer.

2 CHAIRPERSON MILLER: Right.

3 MR. KLINE: I mean it's part of  
4 the nature of a hearing. I mean that's --

5 CHAIRPERSON MILLER: But usually  
6 even when documents come in that can contain  
7 hearsay or whatever the other side gets a  
8 chance to look at them and object or not  
9 object.

10 MR. KLINE: But hearsay is not an  
11 issue in an administrative proceeding. You  
12 guys have told me that over and over and over  
13 again, and I believe you now.

14 CHAIRPERSON MILLER: I mean I  
15 could be wrong, but even if it is hearsay or  
16 not an issue or whatever, usually the other  
17 side gets an chance to at least comment, if  
18 not cross-examine. So we just have this  
19 reference to a transcript that they have no  
20 knowledge of whatsoever. And you're saying,  
21 okay, maybe the Board will take it into  
22 evidence and give it whatever weight it's

1       worth. And then I'm saying, okay, well, maybe  
2       we'll do that as long as they get a chance to  
3       comment. But if you want it to be given  
4       greater weight, you might want a real witness.

5                   MR. KLINE: Well, we have  
6       witnesses who will testify certainly.

7                   CHAIRPERSON MILLER: Okay.

8                   MR. KLINE: Then what I would  
9       propose is this, is that we'll put it in.  
10      Maybe leave the record open for seven days.  
11      If the Protestants have an issue with any of  
12      the testimony, then they can comment. The  
13      only thing that we would request is an  
14      opportunity at that point to rebut, just like  
15      we would in cross-examination. But I spread  
16      that out there for the Board to --

17                   CHAIRPERSON MILLER: Right.  
18      Exactly. Okay.

19                   MR. PATTERSON: Can it be left  
20      open for longer than seven days so we have  
21      time to read and comprehend a 100-and-some-  
22      page document?

1 CHAIRPERSON MILLER: It doesn't  
2 look like a lot of pages. But anyway --

3 MR. KLINE: The entire transcript  
4 is --

5 CHAIRPERSON MILLER: No, not the  
6 -- oh, all right. The entire transcript.

7 MR. KLINE: Yes, I mean the pages  
8 that we've designated aren't a lot.

9 CHAIRPERSON MILLER: So to get the  
10 context of it --

11 MR. KLINE: The whole transcript  
12 is 200-and-some pages, however, if anyone's  
13 every read transcripts --

14 CHAIRPERSON MILLER: Transcripts,  
15 right.

16 MR. KLINE: -- it's not like  
17 reading a novel. I mean you can blow through  
18 this stuff pretty quickly.

19 MEMBER ALBERTI: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. KLINE: It's double-spaced. I  
22 mean it's --

1                   MEMBER ALBERTI: Well, just to put  
2 the Protestants' minds at ease, if you've  
3 never read a transcript, a lot of it --  
4 there's a large portion of it which is either  
5 irrelevant or not important to the context of  
6 what's being said.

7                   MR. KLINE: Don't worry, anything  
8 -- you can ignore everything that I said.

9                   (Laughter. Protestant

10                  CHAIRPERSON MILLER: Okay.

11                  MEMBER ALBERTI: Now, but there's  
12 a lot of extraneous dialogue in there in that  
13 200 pages, so it's not as onerous as you might  
14 think it is.

15                  MR. PATTERSON: I have read a  
16 transcript, so I understand that.

17                  MEMBER ALBERTI: Okay.

18                  MR. PATTERSON: But we still have  
19 to read through the entire document --

20                  CHAIRPERSON MILLER: Okay.

21                  MEMBER ALBERTI: You do.

22                  MR. PATTERSON: -- to be able to

1 find the important aspects of it.

2 CHAIRPERSON MILLER: Mr. Jones?

3 MEMBER JONES: If I may?

4 CHAIRPERSON MILLER: Yes, sure.

5 MEMBER JONES: Just out of  
6 curiosity, I understand that you're concerned  
7 about it being left open for only seven days.  
8 Would you have a counter in terms of what you  
9 would feel be more comfortable that would give  
10 you an opportunity to peruse the entire --

11 MR. PATTERSON: It's kind of new  
12 and sprung on us, so I don't know.

13 CHAIRPERSON MILLER: Let me just  
14 ask one other question then you answer this.

15 Mr. Kline, what does the testimony  
16 go to? What is the subject matter?

17 MR. KLINE: Yes.

18 CHAIRPERSON MILLER: Or what are  
19 they testifying to?

20 MR. KLINE: There are four  
21 witnesses that we're talking about.

22 CHAIRPERSON MILLER: Okay.

1 MR. KLINE: The first witness is  
2 Officer Caleb Willis.

3 CHAIRPERSON MILLER: Yes.

4 MR. KLINE: He testifies  
5 concerning both the establishment and how it's  
6 run and also the effect of eyes on the street  
7 and the presence of an establishment in the  
8 neighborhood.

9 CHAIRPERSON MILLER: Okay.

10 MR. KLINE: The other three  
11 witnesses are people that live in the  
12 neighborhood, their experiences with the  
13 establishment, why it is that they moved to  
14 the neighborhood, why they thought it was  
15 important at that point that Duffy's be  
16 granted additional opportunities at the  
17 establishment, which was to --

18 CHAIRPERSON MILLER: Okay.

19 MR. KLINE: -- request the  
20 voluntary agreement.

21 CHAIRPERSON MILLER: Okay. Thank  
22 you.

1 MR. KLINE: That's sort of a  
2 summary.

3 CHAIRPERSON MILLER: Okay. So  
4 it's not any complex legal issues?

5 MR. KLINE: No, not at all.

6 CHAIRPERSON MILLER: All right.  
7 Now will that help you to see --

8 MR. KLINE: I mean this is not --

9 CHAIRPERSON MILLER: You know, you  
10 don't get to cross-examine these witnesses,  
11 but they're your neighbors and a police  
12 officer testifying to what Mr. Kline just  
13 summarized.

14 MR. PATTERSON: I guess I'm still  
15 not clear on the relevance of this since it  
16 was not regarding outside seating. So if  
17 there's testimony by residents in favor of  
18 Duffy's the restaurant, well, I've already  
19 given my comments.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: I sort of have a  
22 question for the Chair and a suggestion. So

1 my understanding here is that if we're leaving  
2 the record open, we're only leaving the record  
3 open for the Protestants to object or not  
4 object to certain portions of that testimony,  
5 that transcript coming into the record, not to  
6 make new arguments against it, to object and  
7 tell us why they object or not object.

8 So that sort of narrows what we  
9 would expect to hear from the Protestants. I  
10 mean we're not looking for counter arguments.  
11 It's whether you object or not object to  
12 having that in the record. Because that's  
13 really the issue here.

14 And so I would recommend that we  
15 leave the record open for two weeks, for 14  
16 days. And again, what we're expecting from  
17 the Protestants is do you object to that  
18 testimony being entered or do you not?

19 CHAIRPERSON MILLER: Okay.

20 MR. PATTERSON: I object to it  
21 now --

22 MEMBER ALBERTI: I know. I know.

1 MR. PATTERSON: -- having not seen  
2 it.

3 MEMBER ALBERTI: Well, I know.  
4 And the Chair's not ruling on that right now,  
5 is what I'm saying.

6 MR. PATTERSON: Okay.

7 MR. TANGNEY: I thought the  
8 purpose of this hearing was to submit and  
9 provide evidence as to outdoor seating. So if  
10 counsel is trying to bring something in from  
11 2011, then I would say we would probably  
12 protest that or object to that.

13 CHAIRPERSON MILLER: Okay. It's  
14 like as if these witnesses were the stand and  
15 instead of their being on the stand, they're  
16 in this transcript. So kind of what Mr.  
17 Alberti was saying was your response could be  
18 this is irrelevant because it was two years  
19 ago as if you were -- you could say that this  
20 in this hearing room. Objection. It's  
21 irrelevant. This was two years ago. Or  
22 objection. This witness has no credibility

1 because, you know, she doesn't live in the  
2 area. It's kind of a very limited thing just  
3 to take in this sworn testimony but to allow  
4 you to raise what you would have raised if it  
5 were a live witness. So, do you understand  
6 that?

7 MR. PATTERSON: I do.

8 CHAIRPERSON MILLER: Okay. So  
9 what I'm going to do is then say I'm going to  
10 allow it. And as Mr. Kline was saying, we're  
11 going to give it the weight it deserves. It  
12 most likely will not get as much as weight as  
13 if you had a real live witness here. Okay?  
14 This is somebody that's not being cross-  
15 examined, but it's still sworn testimony.

16 So and you will have a chance.  
17 We'll give you two weeks from today to respond  
18 to the transcript in that limited way as to,  
19 you know, what's objectionable about the  
20 testimony, if any.

21 And then, Mr. Kline, you can have  
22 seven days if there's a reply to that.

1 MR. KLINE: Great. Thank you.

2 CHAIRPERSON MILLER: All right.  
3 That's done. We'll make sure you get your  
4 transcript today. Right? Or we'll email it  
5 to you. Our office will email it to you.

6 MEMBER ALBERTI: We can do that,  
7 if they'd like.

8 CHAIRPERSON MILLER: If they're  
9 still here today. Otherwise, it will be first  
10 thing tomorrow morning. Okay. All right.

11 MR. KLINE: All right. The other  
12 matter at this point --

13 CHAIRPERSON MILLER: Wait. I'm  
14 sorry. I'm very sorry. I just want to make  
15 sure I have this right. Applicant's Exhibit  
16 No. 1 is the sworn testimony? Or you're  
17 asking us to do administrative notice?

18 MR. KLINE: Administrative notice.

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: It's your --

21 CHAIRPERSON MILLER: And would you  
22 have an objection to that, just for the record?

1 MR. PATTERSON: Yes.

2 CHAIRPERSON MILLER: Yes? Okay.

3 All right. But then we're doing the other  
4 procedure. Okay. Thank you. Go ahead.

5 MR. KLINE: Thank you. All right.  
6 Secondly, I would request that the Board  
7 administrative notice of -- from the Zoning  
8 Regulations, Section 1900, the provisions  
9 concerning the Arts Overlay.

10 CHAIRPERSON MILLER: Take  
11 administrative notice of Section 1900?

12 MR. KLINE: Yes. 11 DCMR.

13 CHAIRPERSON MILLER: 11 DCMR 1900?  
14 Is this the Overlay?

15 MR. KLINE: General provisions,  
16 but it concerns the Uptown Arts Mixed-Use  
17 Overlay District.

18 CHAIRPERSON MILLER: So does 1900  
19 have a lot of sections in it? I just don't  
20 remember. What are we looking at in there?

21 MR. KLINE: We're looking at the  
22 purposes specifically on there, right.

1                   CHAIRPERSON MILLER: The purpose  
2 of the Overlay?

3                   MR. KLINE: Specifically 1900.2,  
4 the purposes of the Arts Overlay District.

5                   CHAIRPERSON MILLER: Thank you.

6                   MR. KLINE: The R-2-A through H.

7                   CHAIRPERSON MILLER: A through H?  
8 Okay. All right. Yes, we take judicial  
9 notice or administrative notice of  
10 regulations.

11                   MR. KLINE: All right.

12                   CHAIRPERSON MILLER: Okay.

13                   MR. KLINE: And then I would call  
14 to the stand Edward Comstock.

15                   CHAIRPERSON MILLER: Good  
16 afternoon.

17                   MR. COMSTOCK: Good afternoon.

18                   CHAIRPERSON MILLER: Do you swear  
19 to tell the truth, the whole truth, nothing  
20 but the truth?

21                   MR. COMSTOCK: I do.

22                   CHAIRPERSON MILLER: Okay. Thank

1       you.

2                   MR. KLINE:   Would you state your  
3       name for the record, please?

4                   MR. COMSTOCK:   Edward Comstock.

5                   MR. KLINE:   And where do you  
6       reside?

7                   MR. COMSTOCK:   980 Florida Avenue.

8                   MR. KLINE:   And how long have you  
9       lived there?

10                  MR. COMSTOCK:   I've lived there  
11       for 10 years.

12                  MR. KLINE:   And what is the  
13       proximity of your residence to the  
14       establishment known as Duffy's?

15                  MR. COMSTOCK:   Oh, about two  
16       blocks.

17                  MR. KLINE:   Okay.   So you're  
18       familiar with the establishment?

19                  MR. COMSTOCK:   Yes.

20                  MR. KLINE:   And have you been in  
21       the establishment?

22                  MR. COMSTOCK:   Yes.

1 MR. KLINE: And you're aware of  
2 the area for which outside seating has been  
3 requested?

4 MR. COMSTOCK: I am.

5 MR. KLINE: And are you in support  
6 of the outside seating?

7 MR. COMSTOCK: I am.

8 MR. KLINE: And why are you in  
9 support?

10 MR. COMSTOCK: Well, I mean you  
11 had mentioned earlier a version of what; I'm  
12 a scholar, what we call broken window theory,  
13 which is that neighborhoods that have broken  
14 windows tend to invite more crime and have  
15 more problems. Since businesses like Duffy's  
16 have moved into the neighborhood -- I've  
17 actually lived around here for 15 years. You  
18 know, I think a principled argument could  
19 maybe be made from one perspective that, you  
20 know, things aren't as good as they used to  
21 be, but from my perspective the neighborhood  
22 is safer, better, has a lot more to offer.

1 And I think it's these very reasons that  
2 people are continuing to move there.

3 MR. KLINE: Okay. Now obviously  
4 at this point there is no outside seating  
5 there. Do you see the addition of outside  
6 seating contributing to what you've described  
7 in terms of a positive effect of  
8 establishments?

9 MR. COMSTOCK: Do I see it  
10 contributing to a positive effect? Yes. I  
11 mean I think that to the extent that it  
12 creates a vibrant, you know, energetic --  
13 contributes to the vibrant energetic culture  
14 in our neighborhood that it absolutely does.

15 MR. KLINE: Now there's been and  
16 there will be testimony, and there's been  
17 argument, that perhaps the closing hour of the  
18 establishment will have a negative effect on  
19 the neighborhood. Is that something that  
20 you're concerned about?

21 MR. COMSTOCK: No.

22 MR. KLINE: Why not?

1 MR. COMSTOCK: I mean the  
2 neighborhood is -- I mean let's face it, it's  
3 a racket on weekends just in terms of noise.  
4 It's loud. You know, people marching back  
5 from U Street to the dorms or wherever. You  
6 know, I think that that's part of living  
7 there. One comes to accept that and, you  
8 know, deals with it different kinds of ways.  
9 I have a fan next to my bed where I sleep. It  
10 keeps it so it's not as loud.

11 MR. KLINE: And you said you've  
12 been in the establishment?

13 MR. COMSTOCK: Yes.

14 MR. KLINE: And do you have any  
15 opinions how the establishment is run in terms  
16 of whether the owner takes steps to eliminate  
17 problems that his establishment might cause to  
18 neighbors or to the community?

19 MR. COMSTOCK: Sure. I mean I  
20 think even the Protestant said Duffy's -- you  
21 know, Duffy's has always run a really tight  
22 ship. There's no question about that.

1 MR. KLINE: Thank you.

2 CHAIRPERSON MILLER: I'm sorry,  
3 there's no question about what?

4 MR. COMSTOCK: That he runs a  
5 tight ship.

6 CHAIRPERSON MILLER: Oh, okay.

7 MR. COMSTOCK: Yes.

8 MR. KLINE: Thank you. I have no  
9 further questions of the witness at this time.

10 CHAIRPERSON MILLER: Mr.  
11 Patterson?

12 MEMBER ALBERTI: No, no, no.

13 CHAIRPERSON MILLER: No, no, no,  
14 no, no.

15 (Laughter.)

16 CHAIRPERSON MILLER: You're next  
17 actually in this one. Do you have questions?  
18 Cross-examination?

19 MR. PATTERSON: Yes. You said  
20 that you hear a lot of noise from people  
21 coming and going from other bars and  
22 restaurants as they walk by your house.

1 MR. COMSTOCK: Sure.

2 MR. PATTERSON: And Andy Duffy is  
3 applying for 32 seats outside where people  
4 will be sitting for long periods. Would you  
5 want to live right next door to --

6 MR. COMSTOCK: Yes, I mean that's  
7 obviously the million dollar -- so look, I  
8 have a few different feelings. And I mean  
9 one, Darnell's is in our neighborhood. And  
10 that's -- you know, and people are asking  
11 questions, is it typical to have a place with  
12 people outdoors, you know, surrounded by  
13 residents? And Darnell's is right on the  
14 triangle where I live. That resonates through  
15 the alley. So, you know, we're accustomed to  
16 those noises, which frankly aren't that bad.

17  
18 You know, I think a few things,  
19 and with all due respect, I think that I would  
20 have -- you know, if I bought a house, that  
21 would be something I would take into  
22 consideration before buying the house. I

1 think that part of the attraction of this  
2 neighborhood for me is precisely that there is  
3 this vibrancy. And I guess I also -- you  
4 know, another answer is, you know, I think  
5 there's a reasonable argument that one might  
6 not want a ton of noise from seating, but I  
7 would lean towards supporting local businesses  
8 for all the reasons that I said.

9 MR. PATTERSON: Are you aware of  
10 any other restaurants in our neighborhood that  
11 have outdoor seating that are --

12 MR. COMSTOCK: Darnell's.

13 MR. PATTERSON: -- next to or in  
14 between two residential --

15 MR. COMSTOCK: Darnell's, right in  
16 my triangle.

17 MR. PATTERSON: Do you know about  
18 how many seats they have and what their hours  
19 are for the outdoor part?

20 MR. COMSTOCK: I have no idea. I  
21 don't know.

22 MR. PATTERSON: Would you agree

1 that it's much less than 32 seats?

2 MR. COMSTOCK: Yes.

3 CHAIRPERSON MILLER: I'm sorry,  
4 what was the question?

5 MR. PATTERSON: Would he agree  
6 that it's much less than 32 seats?

7 CHAIRPERSON MILLER: Darnell's?

8 MR. PATTERSON: At Darnell's.

9 CHAIRPERSON MILLER: Okay.

10 MR. COMSTOCK: Yes, it's less than  
11 32. Much less.

12 MR. PATTERSON: I have no other  
13 questions.

14 CHAIRPERSON MILLER: Board  
15 questions?

16 MEMBER ALBERTI: Mr. Comstock,  
17 rather than check our records -- because I  
18 don't see Darnell's on the list of  
19 establishments from the investigator, so I  
20 don't know whether it's out of the range.

21 Oh, I was just told by somebody  
22 it's Manchester Bar & Grill. Is that what

1 you're referring to?

2 MR. COMSTOCK: Yes, yes, yes,  
3 that's what it --

4 MEMBER ALBERTI: Oh, okay. Very  
5 good. So my question was is it a alcohol-  
6 licensed establishment, and the answer is yes.

7 MR. COMSTOCK: Yes, yes, yes.

8 MEMBER ALBERTI: Thank you.

9 (Laughter.)

10 MEMBER ALBERTI: Thank you.

11 CHAIRPERSON MILLER: Is that it?

12 MEMBER ALBERTI: That's it.

13 CHAIRPERSON MILLER: Mr. Jones?

14 MEMBER JONES: Thank you.

15 CHAIRPERSON MILLER: Yes.

16 MEMBER JONES: And part of what  
17 I'm hearing in your testimony, I got the  
18 impression that you're saying it's just loud.  
19 You feel like it's going to be loud no matter  
20 what on certain days or nights just because of  
21 the nature of the neighborhood you're in.

22 MR. COMSTOCK: That's right.

1                   MEMBER JONES: Is that a fair  
2                   characterization of what you --

3                   MR. COMSTOCK: I think that's a  
4                   fair characterization, yes.

5                   MEMBER JONES: Okay. And it is  
6                   your opinion based on being a resident in that  
7                   general neighborhood that you don't feel like  
8                   the addition of outdoor seating at this  
9                   establishment will significantly contribute to  
10                  the ambient noise that is already in play?

11                  MR. COMSTOCK: Certainly not to  
12                  the larger neighborhood. I mean it's  
13                  conceivable to me that living right next door  
14                  to it there may be more noise from 32 seats  
15                  out front. You know, but I think, yes, I mean  
16                  that answers the question.

17                  MEMBER JONES: Okay. So basically  
18                  to the general neighborhood, the ambient noise  
19                  in the general neighborhood, you do not feel  
20                  like it would significantly contribute?

21                  MR. COMSTOCK: There's no way it  
22                  would.

1                   MEMBER JONES: Okay. Now so help  
2 me from a perspective standpoint. I'm kind of  
3 spatially limited at times. I know you've  
4 mentioned this, but just help me with it. How  
5 far away do you live from Duffy's?

6                   MR. COMSTOCK: Well, I'm I guess  
7 -- is W the block north of Duffy's? Right?  
8 So I'm on the block north of that.

9                   MEMBER JONES: Block north of  
10 that?

11                  MR. COMSTOCK: Yes.

12                  MEMBER JONES: Okay. And how  
13 close is your residence to any ABC-licensed  
14 establishment?

15                  MR. COMSTOCK: Yes, right around  
16 the corner is the Manchester Bar that I just  
17 mentioned.

18                  MEMBER JONES: Okay.

19                  MR. COMSTOCK: Darnell's is  
20 what --

21                  MEMBER JONES: So when you say  
22 right around the corner, is that four houses

1 down and four houses further down?

2 MR. COMSTOCK: Well, the thing is  
3 it's in the alley. Well, yes, it's about four  
4 or five houses down.

5 MEMBER JONES: Okay.

6 MR. COMSTOCK: But they're really  
7 small houses there.

8 MEMBER JONES: All right.  
9 Understood.

10 MR. COMSTOCK: It's not very far.  
11 You know, it's 50 yards away.

12 MEMBER JONES: Okay. And is your  
13 residence on the back side of that  
14 establishment, or --

15 MR. COMSTOCK: It's on W Street  
16 and I'm on Florida, so it cuts like that. And  
17 then the alley is behind it. I'm sorry.  
18 That's -- what a terrible hand gesture  
19 explanation. The bar is on W Street and I'm  
20 on Florida, which cuts across it, but we share  
21 an alley.

22 MEMBER JONES: You share an alley?

1 MR. COMSTOCK: Yes.

2 MEMBER JONES: Okay. What was the  
3 name that you gave for the establishment?  
4 Manchester you gave it?

5 MR. COMSTOCK: Well, I guess  
6 that's the name that the alcohol license was  
7 taken out in, but it's called Darnell's.

8 MEMBER JONES: Darnell's?

9 MR. COMSTOCK: Yes.

10 MEMBER JONES: Okay. Cool.  
11 Darnell's. Darnell's has outdoor seating,  
12 yes?

13 MR. COMSTOCK: They do.

14 MEMBER JONES: Where is it  
15 located? Is it on the front of the  
16 establishment, the side, the top?

17 MR. COMSTOCK: It's in the alley.

18 MEMBER JONES: It's in the alley?

19 MR. COMSTOCK: So part of it is  
20 actually in the alley, which -- yes. And then  
21 part of it is out front.

22 MEMBER JONES: So they actually

1 have outdoor seating in the alley of the  
2 licensed establishment?

3 MR. COMSTOCK: Yes, it's really  
4 difficult to explain without drawing a little  
5 picture, but it is both on W Street and in the  
6 alley.

7 MEMBER JONES: And in the alley?

8 MR. COMSTOCK: Yes.

9 MEMBER JONES: Okay. So let me  
10 ask it this way: If you were in your  
11 residence and -- do you have any windows that  
12 open to the back of your property?

13 MR. COMSTOCK: I do.

14 MEMBER JONES: If you were in your  
15 residence and you opened up one of those  
16 windows, would you be able to see the outdoor  
17 seating of Darnell's?

18 MR. COMSTOCK: No.

19 MEMBER JONES: No? So you're  
20 not --

21 MR. COMSTOCK: Because there's a  
22 big building -- there's a house that juts out

1 behind my window.

2 MEMBER JONES: Got you. So  
3 there's an obstruction? If that obstruction  
4 wasn't there, would you have --

5 MR. COMSTOCK: Yes, I'd be able to  
6 see it then.

7 MEMBER JONES: Okay. So from that  
8 standpoint have you ever heard noise that you  
9 could tie to the outdoor seating at Darnell's?

10 MR. COMSTOCK: Oh, sure. Yes.

11 MEMBER JONES: You have?

12 MR. COMSTOCK: Yes.

13 MEMBER JONES: Okay. How many  
14 seats did you say approximately they have  
15 there, I mean if you would just take a guess?

16 MR. COMSTOCK: Front and back?

17 MEMBER JONES: Yes.

18 MR. COMSTOCK: Twenty.

19 MEMBER JONES: Twenty?

20 MR. COMSTOCK: Yes.

21 MEMBER JONES: Okay. And the  
22 nature of that, is it some people just being

1 very extremely rowdy, yelling and screaming,  
2 or is more just a lot of people talking,  
3 conversation level is just the aggregate of  
4 it?

5 MR. COMSTOCK: In my experience  
6 it's when the -- Darnell likes to throw  
7 parties. So when Darnell's gets -- does tend  
8 to get like -- it's random. He'll throw  
9 parties and they get kind of rowdy.

10 MEMBER JONES: All right. Okay.

11 MR. COMSTOCK: Yes.

12 MEMBER JONES: All right.

13 MR. COMSTOCK: But you know what,  
14 it's never really that bad.

15 MEMBER JONES: Never that bad? So  
16 you never have reason to complain?

17 MR. COMSTOCK: No.

18 MEMBER JONES: Okay. And do you  
19 happen to have any idea how late their hours  
20 are?

21 MR. COMSTOCK: I don't. I mean I  
22 would guess -- well I mean you know what,

1 people are -- I guess people are outside  
2 smoking all the time there, which contributes.  
3 I don't know when they stop serving beverages  
4 out back.

5 MEMBER JONES: Oh, I got you. So  
6 regardless of whether they're serving or not,  
7 there are people out there smoking and  
8 probably having conversations --

9 MR. COMSTOCK: Yes.

10 MEMBER JONES: -- while they're  
11 smoking?

12 MR. COMSTOCK: Yes, yes.

13 MEMBER JONES: At Darnell's?

14 MR. COMSTOCK: Yes.

15 MEMBER JONES: Okay. But based on  
16 what I'm hearing from you it's never gotten to  
17 the level where it's created a disturbance for  
18 you to a point where you felt like you even  
19 thought about complaining?

20 MR. COMSTOCK: I mean it's --  
21 look, it's definitely a disturbance, you know?

22 MEMBER JONES: Okay.

1                   MR. COMSTOCK: But complaining to  
2 me is -- you know, I moved into this  
3 neighborhood for a reason.

4                   MEMBER JONES: Right.

5                   MR. COMSTOCK: I enjoy it. And to  
6 me I want to support -- you know, there's a  
7 lot of businesses opening around the  
8 neighborhood that are -- you know, the Hilton  
9 Brothers own everything. And I like  
10 supporting -- and I'd have a real hard time  
11 complaining against the, you know, truly small  
12 business owners that are local and that are  
13 trying to do good things for the neighborhood.

14                   MEMBER JONES: I respect that.  
15 And you may infer that I'm going somewhere  
16 with my questions that I'm probably not.

17                   MR. COMSTOCK: No, I'm not  
18 inferring anything.

19                   MEMBER JONES: Okay. I'm just  
20 trying to get a real -- an objective sense  
21 from someone who lives in the -- I don't live  
22 there.

1 MR. COMSTOCK: Yes, yes.

2 MEMBER JONES: So I need to be  
3 able to pull from what it is you're providing  
4 me a sense of what that feels like --

5 MR. COMSTOCK: Yes.

6 MEMBER JONES: -- in your  
7 neighborhood. So Darnell's, outdoor seating,  
8 you're saying it does get a little loud and it  
9 is a disturbance at times.

10 MR. COMSTOCK: Yes.

11 MEMBER JONES: However, it's not  
12 to the point where it creates an environment  
13 that you would want to complain? And this is  
14 your perspective?

15 MR. COMSTOCK: Yes, that's right.

16 MEMBER JONES: Right? And just to  
17 make sure I'm clear, you are approximately  
18 four houses -- small houses, but approximately  
19 four houses away from this licensed  
20 establishment. If you're looking at the back  
21 of the alley, the back of both of your  
22 establishments would face which are -- look

1 into an alley?

2 MR. COMSTOCK: Yes.

3 MEMBER JONES: Share an alley?

4 MR. COMSTOCK: Yes.

5 MEMBER JONES: Okay. Thank you.

6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Okay. I was  
8 wondering if you could help me with getting a  
9 better understanding of the block that Duffy's  
10 is on.

11 MR. COMSTOCK: Yes.

12 CHAIRPERSON MILLER: So what I see  
13 in my picture is, you know, Duffy's in between  
14 two buildings, you know, that look like  
15 residences that don't have to be residences.

16 MR. COMSTOCK: Yes.

17 CHAIRPERSON MILLER: But they look  
18 like it right now. And then like what's  
19 directly across the street?

20 MR. COMSTOCK: Directly across the  
21 street is the Floridian and the 9:30.

22 CHAIRPERSON MILLER: Okay. So I

1 notice here that Duffy's hours are 10:00 to  
2 2:00 Sunday through Thursday and then until  
3 3:00 in the morning on Friday and Saturday.  
4 So I would think some of those other  
5 establishments go that late as well. Is there  
6 a lot of noise in general on that street at  
7 2:00 and 3:00 in the morning when everybody  
8 lets out?

9 MR. COMSTOCK: Yes. Yes, it's not  
10 from Duffy's. I know that's not what you're  
11 saying either. No, there's a ton of noise.  
12 I mean everybody comes back to the dorms at  
13 Howard. They start walking back up Sherman  
14 Avenue to their houses because, you know,  
15 there's not nightlife up there so that, you  
16 know, they walk down. It's very loud.

17 CHAIRPERSON MILLER: I mean  
18 honestly I'm just trying to --

19 MR. COMSTOCK: Yes.

20 CHAIRPERSON MILLER: -- assess the  
21 noise that the people on each side of Duffy's  
22 has now compared to -- or, you know, this

1 outdoor caf, closing at 12:00. So they don't  
2 have an outdoor caf, right now, but they do  
3 have, I would assume -- and i don't want to  
4 testify. I mean do you see people --  
5 obviously they come out at closing and do you  
6 know that people come out to smoke and things  
7 like that throughout the evening?

8 MR. COMSTOCK: At Duffy's right  
9 now? Sure.

10 CHAIRPERSON MILLER: Yes.

11 MR. COMSTOCK: Yes.

12 CHAIRPERSON MILLER: Okay. So  
13 it's not like it's quiet there right now?

14 MR. COMSTOCK: That's right. You  
15 know, in fact -- you know, I mean one wonders  
16 how many people that -- there's enough people  
17 out there smoking anyways. I imagine a lot of  
18 the same people that would be drawn to sitting  
19 out there at, you know, 11:00 would be the  
20 same people that are already out there smoking  
21 or whatever and -- although I don't --

22 CHAIRPERSON MILLER: Right.

1 Right. Just for curiosity though also, do you  
2 get a lot of noise from foot traffic when  
3 people have left at 2:00 in the morning or  
4 3:00 in the morning, or whatever?

5 MR. COMSTOCK: Not from -- just to  
6 be clear, not from Duffy's, because usually  
7 they're really -- they're not -- for whatever  
8 reason, they're -- I don't notice that Duffy's  
9 is usually very packed at that hour. From --  
10 it depends of course. But, no, it's all foot  
11 traffic from U Street.

12 CHAIRPERSON MILLER: From U  
13 Street?

14 MR. COMSTOCK: Yes. Oh, yes,  
15 from, you know --

16 CHAIRPERSON MILLER: Then I'm  
17 wondering, I mean --

18 MR. COMSTOCK: Because --

19 CHAIRPERSON MILLER: -- I don't  
20 even know how long this block is, but -- and  
21 I can't see the other side -- until you told  
22 me what was across the street, but I don't

1 know how many establishments have people  
2 coming and going throughout the evening on  
3 this block.

4 MR. COMSTOCK: Well, there are  
5 dozens of bars and restaurants right along U  
6 Street there, and so people come up -- I guess  
7 it's Vermont Avenue and Florida from those  
8 establishments and go back to the dorms. I  
9 think I get -- well, you know what, I've also  
10 noticed it's just as many people going up  
11 Sherman Avenue, because it's not a nightlife  
12 district up there. So they, you know, kind of  
13 come up and down and go to their houses up  
14 there.

15 CHAIRPERSON MILLER: Okay.

16 MR. COMSTOCK: And it's  
17 significant, for what it's worth.

18 CHAIRPERSON MILLER: Okay. Thank  
19 you.

20 MR. PATTERSON: Can I ask a  
21 follow-up?

22 CHAIRPERSON MILLER: Yes, but I

1 think we're going to go in order. I think  
2 Applicant goes first and then Protestant.

3 MR. KLINE: Sure. Mr. Comstock,  
4 you were talking about Darnell's and you said  
5 -- or what's been referred as Darnell's and  
6 Manchester. And you said Darnell's likes to  
7 throw parties and things tend to get a bit  
8 loud. Is that correct?

9 MR. COMSTOCK: Yes. Rowdy. Yes.

10 MR. KLINE: Is that establishment  
11 different than Duffy's in terms of the way  
12 it's operated and in terms of clientele?

13 MR. COMSTOCK: It's very -- well,  
14 I don't want to say anything bad about  
15 Darnell's because I support them, but yes, I  
16 mean Duffy is -- you know, takes security very  
17 seriously and, you know, has a doorman, and  
18 Darnell doesn't.

19 MR. KLINE: Oh, so --

20 MR. COMSTOCK: Doesn't take  
21 security very seriously. Doesn't take --  
22 doesn't have a doorman that -- I don't think.

1 MR. KLINE: What about in terms of  
2 the nature of the clientele, in terms of what  
3 people go there to do? First of all, in terms  
4 of Duffy's --

5 MR. COMSTOCK: Yes.

6 MR. KLINE: -- describe that  
7 clientele in terms of what people go there to  
8 do.

9 MR. COMSTOCK: I mean I think that  
10 -- first off, Duffy's is really mostly a  
11 pretty -- you know, it's a laid back place  
12 that people are watching the, you know, game  
13 or whatever, having dinner. Darnell's is also  
14 a laid back place except for when he has these  
15 parties, which are not, you know, terribly  
16 infrequent.

17 MR. KLINE: Is that when you  
18 experience the --

19 MR. COMSTOCK: Yes.

20 MR. KLINE: Now in terms of across  
21 the street you indicated is the Floridian and  
22 the 9:30 Club.

1 MR. COMSTOCK: Yes. Am I right?

2 Yes.

3 MR. KLINE: Isn't directly across  
4 the street -- isn't there a gas station there?

5 MR. COMSTOCK: And a gas station,  
6 yes. It's to the right, yes.

7 MR. KLINE: And do you know what  
8 the hours of the gas station are?

9 MR. COMSTOCK: They're open 24/7,  
10 I believe.

11 MR. KLINE: They're open 24/7?

12 MR. COMSTOCK: Or they're open --  
13 yes.

14 MR. KLINE: And so there's quite a  
15 bit of activity with respect to the 24-hour  
16 gas station that's directly across the street  
17 from the Protestant's --

18 MR. COMSTOCK: Always a lot of  
19 activity at that gas station. That's true.

20 MR. KLINE: So just so the Board  
21 has a setting; and I don't know that we  
22 covered it with either you or the

1 investigator, we're talking about a location  
2 that's at the intersection of Vermont and  
3 Florida Avenues, correct?

4 MR. COMSTOCK: I'm sorry, that  
5 Duffy's at the intersection of Vermont and  
6 Florida?

7 MR. KLINE: Right, very near the  
8 intersection of --

9 MR. COMSTOCK: Yes.

10 MR. KLINE: -- Vermont and  
11 Florida.

12 MR. COMSTOCK: Yes, yes.

13 MR. KLINE: Right? And you're  
14 basically a block up from there, correct?

15 MR. COMSTOCK: Yes.

16 MR. KLINE: And then across the  
17 street is a gas station?

18 MR. COMSTOCK: Yes.

19 MR. KLINE: And then further  
20 across in terms of 10th Street, or 9th Street  
21 is the 9:30 Club?

22 MR. COMSTOCK: Yes.

1 MR. KLINE: And then there's  
2 condominiums there as well?

3 MR. COMSTOCK: Yes.

4 MR. KLINE: So it's a rather busy  
5 area of the city?

6 MR. COMSTOCK: Yes, I mean over  
7 the last three years it's become very, very  
8 busy.

9 MR. KLINE: And is there another  
10 establishment that's open there by the name of  
11 Satellite?

12 MR. COMSTOCK: Yes, I forgot about  
13 Satellite.

14 MR. KLINE: You're familiar with  
15 that?

16 MR. COMSTOCK: Yes, yes.

17 MR. KLINE: And where is that in

18 MR. COMSTOCK: That's in --

19 MR. KLINE: -- relation to this  
20 establishment?

21 MR. COMSTOCK: That's also right  
22 across the street.

1 MR. KLINE: And do you know  
2 whether they have outside seating?

3 MR. COMSTOCK: Next to the 9:30  
4 Club. Yes, they do have outside seating.

5 MR. KLINE: And do you have any  
6 idea how late Satellite stays open with its  
7 outside seating?

8 MR. COMSTOCK: I don't.

9 MR. KLINE: And then also you fire  
10 engines in the neighborhood?

11 MR. COMSTOCK: Yes. And in fact  
12 my understanding is that it is -- I was just  
13 reading recently, I believe it is the most  
14 heavily trafficked area in the -- or the most  
15 busy fire station in the country. And that  
16 means that our street has to be up there with  
17 the most heavily traffic worldwide.

18 MR. KLINE: And how far is that  
19 fire station from where you live?

20 MR. COMSTOCK: That's a few blocks  
21 to the north. I'm not exactly sure what  
22 street that's on. Maybe like three blocks

1 north, yes.

2 MR. KLINE: So you hear the fire  
3 engines all hours of the day and night?

4 MR. COMSTOCK: That's way more of  
5 a problem than any other noise that we have.  
6 I mean it's loud.

7 MR. KLINE: Okay. Thank you. I  
8 don't have any further questions of the  
9 witness.

10 CHAIRPERSON MILLER: Okay. Mr.  
11 Patterson?

12 MR. PATTERSON: I'd just like to  
13 clarify your proximity to Darnell's or the  
14 Manchester Grill.

15 MR. COMSTOCK: Yes.

16 MR. PATTERSON: Because I see  
17 their address listed at 944 Florida and yours  
18 is 980 Florida.

19 MR. COMSTOCK: Yes.

20 MR. PATTERSON: And you stated  
21 that you're approximately four houses away.

22 MR. COMSTOCK: I'd say we're about

1 50 yards away. We're very close. The houses  
2 there are very small. We're close. We're  
3 packed right on each other.

4 MR. PATTERSON: Okay. Typically  
5 houses on that block are numbered every other  
6 number, so it seems like more than four.

7 MR. KLINE: Objection.

8 CHAIRPERSON MILLER: You need to  
9 ask a question. You can testify later, but  
10 you need to just be asking questions.

11 MR. PATTERSON: Okay.

12 MR. COMSTOCK: Well, there's no  
13 way there's 20 houses in between us. I can  
14 tell you that. I don't know what the  
15 numbering system is, but it's -- you know,  
16 it's six small houses maybe.

17 MR. PATTERSON: Okay. I have no  
18 more questions.

19 CHAIRPERSON MILLER: Okay. Thank  
20 you very much.

21 MEMBER ALBERTI: Well, actually  
22 can we just --

1 CHAIRPERSON MILLER: Oh, you have  
2 a question?

3 MEMBER ALBERTI: Since you're -- I  
4 just want to --

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: For the record,  
7 Exhibit -- can someone provide the witness  
8 with the exhibit? What is this? I don't even  
9 know what number. I'm trying to find out the  
10 number. Exhibit 6. And maybe if the witness  
11 could mark their residence on that exhibit,  
12 that would be helpful.

13 MR. KLINE: Just for the record  
14 we're talking about Exhibit 6 to the  
15 investigative report?

16 CHAIRPERSON MILLER: Yes, I'm  
17 sorry. Exhibit 6 to the investigator's  
18 report, yes, please.

19 CHAIRPERSON MILLER: Ms. Walker's  
20 going to bring one.

21 MEMBER ALBERTI: That would  
22 clarify some of the issues of where the

1 residence is.

2 MR. COMSTOCK: Oh, yes. So --

3 MEMBER ALBERTI: And that would be  
4 helpful. So if you just mark it there with a  
5 pencil and then we could have that as part of  
6 the Board's exhibit.

7 CHAIRPERSON MILLER: Why don't you  
8 use a substitute?

9 MEMBER ALBERTI: Yes, why don't  
10 you use a substitute? If you could just take  
11 that exhibit -- and can we provide him with a  
12 pencil or pen? Put your initials just next --  
13 mark it with an X and put your initials there.

14 MR. COMSTOCK: Where? Just go --

15 MEMBER ALBERTI: You know, mark  
16 your residence on that map. Do you see your  
17 residence on that map?

18 MR. COMSTOCK: Yes. I'm not sure  
19 which one of these little -- I mean if you  
20 look, there's -- you see these little square.  
21 I don't know if it's this one or that one.  
22 You see what I'm saying? It's one of those.

1 MEMBER ALBERTI: Okay. So if it's  
2 one of two, just mark --

3 MR. COMSTOCK: Yes, it's --

4 MEMBER ALBERTI: -- sort of  
5 between them and put your initials.

6 MR. COMSTOCK: Yes.

7 MEMBER ALBERTI: So that I have a  
8 -- you know, I mean this doesn't have to be  
9 exact --

10 MR. COMSTOCK: Sure, sure.

11 MEMBER ALBERTI: -- but I just  
12 want to know where you live approximately.

13 MR. COMSTOCK: Right.

14 MR. COMSTOCK: And so you want me  
15 to pass this?

16 MEMBER ALBERTI: Yes.

17 MR. COMSTOCK: So you want to --

18 MEMBER ALBERTI: Ms. Walker, could  
19 you --

20 MR. COMSTOCK: Darnell's is right  
21 here on the corner.

22 MEMBER ALBERTI: No, I know where

1 Darnell's is.

2 CHAIRPERSON MILLER: I have a  
3 question for you. Sorry, but -- all right.  
4 Before you take it, there's an exhibit right  
5 before that, Exhibit 5. Is that these here,  
6 or mark your residence on that one as well?

7 MR. COMSTOCK: No, it's not --  
8 that's part of --

9 CHAIRPERSON MILLER: Okay.

10 MR. COMSTOCK: Yes.

11 CHAIRPERSON MILLER: Then never  
12 mind. Okay.

13 MEMBER ALBERTI: They're just  
14 tinier squares.

15 (Laughter.)

16 CHAIRPERSON MILLER: Okay.

17 MR. COMSTOCK: You'd think I could  
18 identify my own house on a map, but it's --

19 MEMBER ALBERTI: No, I understand.  
20 You know, I'm sure you can get it down to --

21 MR. COMSTOCK: Yes.

22 MEMBER ALBERTI: There are three

1 squares and --

2 MR. COMSTOCK: It's very close.

3 (Laughter.)

4 MEMBER ALBERTI: Thank you.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: Okay. Thank you  
7 very much. That's good.

8 CHAIRPERSON MILLER: I think  
9 that's it. I wouldn't think there would be  
10 follow-up questions on that one.

11 Okay. Thank you very much.

12 MR. KLINE: Thank you. Call to  
13 the stand Brooke Fishel, please.

14 CHAIRPERSON MILLER: Good  
15 afternoon.

16 MS. FISHEL: Good afternoon.

17 CHAIRPERSON MILLER: Do you swear  
18 to tell the truth, the whole truth, nothing  
19 but the truth?

20 MS. FISHEL: I do.

21 CHAIRPERSON MILLER: Thank you.  
22 Have a seat.

1 MS. FISHEL: I hope you can you  
2 see me. I'm kind of short.

3 MR. KLINE: Good afternoon. Would  
4 you state your name for the record, please?

5 MS. FISHEL: My name is Brooke  
6 Fishel.

7 MR. KLINE: And where do you live?

8 MS. FISHEL: I live at 2120  
9 Vermont Avenue. It's called the Rhapsody  
10 Condominiums.

11 CHAIRPERSON MILLER: I'm sorry, I  
12 didn't get your name. Could you speak up a  
13 little?

14 MS. FISHEL: Brooke Fishel.

15 CHAIRPERSON MILLER: Brooke  
16 Fisher? Okay.

17 MS. FISHEL: Fishel, with an L.

18 CHAIRPERSON MILLER: Fishel?

19 MS. FISHEL: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. KLINE: All right. And you  
22 said you live at the Rhapsody Condominiums?

1 MS. FISHEL: Rhapsody  
2 Condominiums, yes.

3 MR. KLINE: And where is that in  
4 relationship to Duffy's?

5 MS. FISHEL: So you have Duffy's,  
6 but if you're looking at it, there's Duffy's  
7 Pub, there's the Protestant's house, a  
8 connector town house to them, and then our  
9 condos. So we're about two doors down from  
10 Duffy's.

11 MR. KLINE: Okay. And how large  
12 of a condominium building is that?

13 MS. FISHEL: It has about 160  
14 units.

15 MR. KLINE: And what floor are you  
16 on?

17 MS. FISHEL: One.

18 MR. KLINE: Okay.

19 MS. FISHEL: And there's a G floor  
20 below us, but we're on one.

21 MR. KLINE: So you're on the  
22 ground floor?

1 MS. FISHEL: No, we're on the  
2 first floor but there is a G level.

3 MR. KLINE: Oh, I got it. Okay.

4 MS. FISHEL: So we're not  
5 underground. We're above ground.

6 MR. KLINE: So you're one level  
7 above street level?

8 MS. FISHEL: Yes.

9 MR. KLINE: And which way does  
10 your apartment face?

11 MS. FISHEL: We face into our  
12 courtyard, which is an enclosed courtyard. So  
13 we face the back of the building. Our  
14 building is like hectagon shaped without a  
15 back.

16 MR. KLINE: Okay.

17 MS. FISHEL: So we face into our  
18 courtyard, not out into the street.

19 MR. KLINE: All right. And is  
20 that in the direction of Duffy's?

21 MS. FISHEL: There's a whole  
22 corridor. We're on the west -- we're on the

1 I guess north corridor and there's a south  
2 corridor that is between us and Duffy's.

3 MR. KLINE: Okay. And you're  
4 certainly familiar with the establishment?

5 MS. FISHEL: Oh, yes.

6 MR. KLINE: Been in the  
7 establishment?

8 MS. FISHEL: Yes.

9 MR. KLINE: And you support this  
10 request for sidewalk seating, correct?

11 MS. FISHEL: I do.

12 MR. KLINE: And why is that?

13 MS. FISHEL: For many reasons. We  
14 bought our condo about six-and-a-half years  
15 ago and that was just about six months after  
16 he opened his establishment. And when we  
17 moved there, he was really one of the only  
18 games in town. He took a chance on the  
19 neighborhood and he's done everything he  
20 needed to do. He's complied with the  
21 voluntary agreement he had with his neighbors.  
22 And ever since then the neighborhood's grown

1 and he's been such a good business neighbor to  
2 have. And he's made such an investment in our  
3 neighborhood before others took the chance,  
4 long before others took the chance, and  
5 they've gotten to have their outdoor seating  
6 and Mr. Duffy hasn't. And I think it's, you  
7 know, his time that he should be able to run  
8 his business, you know, effectively and be  
9 able to compete with the other businesses in  
10 the area that do have that right.

11 MR. KLINE: And what are some of  
12 the other businesses in the area that you're  
13 referring to that have had permission to --

14 MS. FISHEL: American Ice Company,  
15 which is -- that's actually behind our  
16 building as well. So we had to meet with them  
17 as well. I think it's another -- about their  
18 noise. We have the Satellite Room that's  
19 across the street. They have outdoor seating.  
20 Darnell's has outdoor seating. And then a lot  
21 of the places along U Street that weren't  
22 there before, which is only a block up from

1 where Duffy's is, that's allowed outdoor  
2 seating, like Ulah Bistro and those.

3 MR. KLINE: So when you say a  
4 block up, you're saying that you're a block up  
5 from U Street --

6 MS. FISHEL: Yes.

7 MR. KLINE: -- and a lot of --

8 MS. FISHEL: I meant like I'm on  
9 roughly my address is Vermont and U, or  
10 Vermont and V is the best way to kind of  
11 describe where we are, because we're the weird  
12 intersection. So U Street is just one block  
13 up from us.

14 MR. KLINE: Now the Protestants  
15 indicated, or the Protestant I should I say  
16 has indicated that he doesn't have any concern  
17 specifically with the outside seating being  
18 located in front of Duffy's, but is concerned  
19 about the hour of closing. Do you have any  
20 thoughts on that in terms of what an  
21 appropriate hour of closing might be, and how  
22 would you respond to Mr. Patterson's

1 suggestion that it should be earlier?

2 MS. FISHEL: As I understood now  
3 it's midnight I think is what you're asking  
4 for.

5 MR. KLINE: Correct.

6 MS. FISHEL: Whenever I'm out  
7 walking my dog at midnight or 1:00 in the  
8 morning, there's always people in front of  
9 Duffy's anyway, like I said, smoking, figuring  
10 out where they're going next, deciding if  
11 they're going home. So there's already  
12 activity going on out there anyway, and I  
13 actually feel safer walking my dog at midnight  
14 or 1:00 in the morning when I know there are  
15 people out there that can keep an eye on me.  
16 So, you know, that's why I don't see a problem  
17 with the midnight closing, because a lot of  
18 people are still out and active and doing a  
19 lot of things.

20 MR. KLINE: Now you live in even  
21 closer proximity to the service station --

22 MS. FISHEL: Right.

1 MR. KLINE: -- than Mr. Comstock.  
2 Can you describe to the Board what effect that  
3 establishment in your neighborhood has --

4 MS. FISHEL: It's really noisy,  
5 because not only do you have a lot of  
6 teenagers that hang out there, because they  
7 can't go to the bars or anything -- so they're  
8 making a lot of noise. Then you have cars  
9 that are parked there getting gas, blaring  
10 their music, or just sitting there waiting to  
11 meet up with people and they just blare their  
12 music out of their cars at midnight, 1:00,  
13 2:00, 3:00 in the morning. And there's a lot  
14 of loitering in that area, so it tends to be  
15 quite noisy if you're around that area,  
16 especially late at night.

17 MR. KLINE: And how late does that  
18 go on until?

19 MS. FISHEL: You know, sometimes  
20 I'll be out, again if I have to walk my dog,  
21 at 3:00 or 4:00 in the morning. You'll see a  
22 lot of loitering and people just hanging out,

1 not knowing what they're doing, but I just  
2 stay away from the gas station and go the  
3 other way.

4 MR. KLINE: All right. And do you  
5 hear noise in your residence?

6 MS. FISHEL: Yes, sometimes I can  
7 hear the American Ice Company a little bit,  
8 and most of the noise is if people are coming  
9 through the back alley behind our unit, like  
10 if they're going home or walking through the  
11 alley to get home. But that's usually people  
12 coming home from bars, not from outside  
13 seating areas or anything.

14 MR. KLINE: It's been suggested  
15 that the American Ice outside seating is  
16 covered.

17 MS. FISHEL: Yes, it's kind of  
18 like -- from what I understand -- it's been  
19 like probably two years since I go there.  
20 It's not really my kind of place. But I think  
21 they kind of have a partial glass ceiling.  
22 It's not enclosed or anything, but it's kind

1 of like a more artistic than it really is --  
2 I'm sure it helps bounce -- block some sound  
3 from coming in, but it's not by any means  
4 closed in.

5 MR. KLINE: Okay.

6 MS. FISHEL: That I remember.

7 MR. KLINE: And do you know how  
8 late they operate?

9 MS. FISHEL: I don't. I've had  
10 friends be out there until 1:00, but I don't  
11 know if that's when they end.

12 MR. KLINE: And your condo is in  
13 the same square as Duffy's, correct?

14 MS. FISHEL: Yes, and actually our  
15 condo is more affected by the noise of that  
16 restaurant, because it's more closer to our  
17 units and our building than Duffy's is.  
18 Duffy's has -- there is a buffer, where the  
19 American Ice Company just bounces up into the  
20 units.

21 MR. KLINE: And in terms of the  
22 number of units that are affected by American

1 Ice, can you approximate how many residences  
2 that would be?

3 MS. FISHEL: I bet it would be  
4 about five units, six, seven stories, so 35.

5 MR. KLINE: Thirty-five --

6 MS. FISHEL: Thirty-five --

7 MR. KLINE: -- different  
8 residences?

9 MS. FISHEL: Yes.

10 MR. KLINE: And based upon where  
11 Duffy's outside seating would be located, do  
12 you anticipate that anyone else would need to  
13 be concerned other than the two adjacent  
14 residents?

15 MS. FISHEL: No, I think there's  
16 enough buffer zone between us to be able to --  
17 I don't foresee anyone in that -- because it  
18 would just be that front corner part, because  
19 we kind of jut out. So I'd say probably more  
20 of just the people who maybe are on the first  
21 or second level where people are walking by at  
22 3:00 in the morning coming home from bars. So

1 it wouldn't be different than Andy Duffy  
2 having seating out there as just the noise  
3 that they get anyway from people walking home  
4 from the bars.

5 MR. KLINE: Let's talk for a  
6 minute about, as you said, Andy Duffy having  
7 seating out there. Do you have any particular  
8 opinion as to how that might work out and how  
9 Mr. Duffy might deal with the outside  
10 seating --

11 MS. FISHEL: Yes.

12 MR. KLINE: -- in from of his  
13 establishment based on your experiences --

14 MS. FISHEL: Sure.

15 MR. KLINE: -- with the  
16 establishment?

17 MS. FISHEL: I don't worry about  
18 the outside seating at Duffy's being either  
19 littering or too much noise or any kind of bad  
20 reaction, because Duffy, Andy Duffy is one of  
21 those owners of a restaurant who is always  
22 present. He's always at his bar. You know

1 he's there. He's on top of it. He sees  
2 what's happening. He, you know, knows people.  
3 And so he's -- and like a lot of other bars  
4 where people own it but you never see them and  
5 they just rely on their staff to be there.  
6 Andy's there and he's knows what's going on.  
7 And he will be -- he's going -- I mean he's a  
8 good neighbor and he's friends with a lot of  
9 people in our area and he's not going to want  
10 to become, you know, a nuisance to people that  
11 he also considers friends. So he's going to  
12 be on top of things, making sure that outdoor  
13 area is, you know, staying with in the  
14 compliance of --

15 MR. KLINE: Can you give the Board  
16 any specific or particular examples of action  
17 or conduct that you've observed on the part of  
18 Mr. Duffy when you've been in there that would  
19 support what you've just said in terms of how  
20 he might react to problems in the outside  
21 seating area?

22 MS. FISHEL: He's really good at

1       it.  You know, sometimes I'll be in there and  
2       -- I go there a lot to watch football and  
3       sometimes fans can get really rowdy and kind  
4       of drunk.  And he's got a really great way of  
5       just kind of going over there and appeasing  
6       the situation and just letting them know to  
7       quiet down and without getting them riled up  
8       or upset.  Like I said, they tend to respect  
9       him.  They may not realize they're not getting  
10      loud or being obnoxious.  They respect him and  
11      they listen.  Because of that respect he's  
12      able to help control some of the actions and  
13      activities in his bar.

14                   MR. KLINE:  Thank you.  I don't  
15      have any further questions of the witness at  
16      this time.

17                   CHAIRPERSON MILLER:  Okay.  Cross?

18                   MR. PATTERSON:  Okay.  Hello.

19                   MS. FISHEL:  Hi.

20                   MR. PATTERSON:  So you talked  
21      about, or we keep talking about American Ice  
22      Company.

1 MS. FISHEL: Yes.

2 MR. PATTERSON: And you commented  
3 about that glass, partial glass roof.

4 MS. FISHEL: Right.

5 MR. PATTERSON: Can you provide a  
6 description of the walls that enclose it?

7 MS. FISHEL: Yes, the walls are  
8 probably about seven feet high, six feet,  
9 seven feet high of concrete all around except  
10 for where the door is, and it goes into the  
11 restaurant.

12 MR. PATTERSON: Okay. And do you  
13 know approximately like how far your condo  
14 building is from American Ice?

15 MS. FISHEL: Our condo building,  
16 we share an alley with them. You mean my unit  
17 or my building?

18 MR. PATTERSON: Well, from the  
19 outside seating to --

20 MS. FISHEL: Oh, okay.

21 MR. PATTERSON: -- some of the  
22 residential area.

1 MS. FISHEL: I would say it's  
2 about -- I'm terrible with distances -- 50  
3 feet. Does that sound about right? I don't  
4 know. I can't -- I'm terrible at distances,  
5 so I would say the whole building is probably  
6 the length from -- including the outside  
7 seating, from that glass door to that back of  
8 that wall. That's how long it is. And I'd  
9 say probably the courtyard is from where that  
10 little lighted sign is forward. And then at  
11 the other side of the wall there's an alley,  
12 then our building, if that helps.

13 MR. PATTERSON: Do you know if  
14 American Ice has residential units, houses on  
15 either side of it?

16 MS. FISHEL: It does. Immediately  
17 to it's left there's people that live in that  
18 -- what looks like an industrial building, but  
19 they rehabbed it to be a residential. And  
20 they even have a rooftop deck. Yes, I just go  
21 to my roof sometime and look down on it. But,  
22 yes, there are people that live there. It

1 looks like it's a -- it used to be an  
2 industrial building, but it's -- folks live in  
3 there. And then obviously on the other side  
4 is an alley.

5 MR. PATTERSON: Okay. No other  
6 questions. Thank you.

7 MS. FISHEL: Okay.

8 CHAIRPERSON MILLER: Okay. Board  
9 questions?

10 (No audible response.)

11 CHAIRPERSON MILLER: I just have  
12 one or -- I'll see if I have a follow up.

13 MS. FISHEL: Okay.

14 CHAIRPERSON MILLER: But do you  
15 actually walk your dog at midnight every day?

16 MS. FISHEL: She's 15 years old,  
17 so --

18 CHAIRPERSON MILLER: Okay.

19 MS. FISHEL: -- she has to go out  
20 a lot. So if it's not me, it's my husband.

21 CHAIRPERSON MILLER: Okay. So do  
22 you walk by where Duffy's is every --

1 MS. FISHEL: Yes, there's an empty  
2 lot past the house that we're not sure if  
3 someone lives there. There's an empty lot  
4 there. So I have to walk past Duffy's to go  
5 walk my dog there. That's the closest grass.

6 CHAIRPERSON MILLER: Okay. So you  
7 actually do this frequently, right?

8 MS. FISHEL: Yes.

9 CHAIRPERSON MILLER: Okay. So at  
10 midnight is it noisy around Duffy's?

11 MS. FISHEL: IT's actually not too  
12 bad for Duffy's Pub. Usually it's -- you  
13 know, I assume it's people go there after the  
14 9:30 Club show and probably around midnight or  
15 1:00 people are starting to head home. It's  
16 not like a nightclub or anything where people  
17 tend to stay later. So usually by the time  
18 I'm walking me dog -- me dog -- I'm not Irish  
19 -- I'm walking my dog --

20 (Laughter.)

21 MS. FISHEL: -- he -- there's  
22 people in there, but it's not packed, unless

1       there's some special event.

2                   CHAIRPERSON MILLER: Well, how is  
3       it outside?

4                   MS. FISHEL: Oh, it's just like  
5       four or five people will be out there smoking  
6       and there may be a group of like eight people  
7       who are just kind of milling around trying to  
8       decide what they're going to do, if they're  
9       going to go home. So there's always people  
10      out there just usually -- or talking on their  
11      cell phone.

12                  CHAIRPERSON MILLER: Okay. Thank  
13      you. All right. Any questions based on Board  
14      questions, Mr. Kline?

15                  MR. KLINE: Yes, around midnight  
16      when you're walking your dog, you described  
17      what you observed in front of Duffy's.

18                  MS. FISHEL: Yes.

19                  MR. KLINE: What about elsewhere  
20      around those intersections where all of  
21      this --

22                  MS. FISHEL: It's really busy.

1 Like the previous witness claimed, it's around  
2 midnight, 1:00 is where you start to see the  
3 first wave of people coming home from U  
4 Street. And they walk up Vermont Avenue, like  
5 he said, to head to the dorms or head up to  
6 Sherman Avenue or Georgia Avenue. So there  
7 tends to be a lot of foot traffic right around  
8 there. And again the gas station is usually  
9 pretty packed and the Satellite Room sometimes  
10 has some people, as well as American Ice  
11 Company. So it's a lot noisier where the  
12 American Ice Company is than Duffy's.

13 MR. KLINE: And in terms of the  
14 people that are coming back from U Street, are  
15 they quietly --

16 MS. FISHEL: No.

17 MR. KLINE: -- walking back on  
18 Sherman Avenue?

19 MS. FISHEL: No, no, no. They're  
20 talking loud on their cell phones, they're  
21 giggling loud and, you know, being drunk.

22 MR. KLINE: So there's people

1 generally loud on the street around midnight?

2 MS. FISHEL: Yes.

3 MR. KLINE: And there isn't anyone  
4 to see that they quiet down, is there?

5 MS. FISHEL: No, not unless  
6 there's a police officer around.

7 MR. KLINE: And you mentioned  
8 Satellite Room --

9 MS. FISHEL: Yes.

10 MR. KLINE: -- which is basically  
11 across -- well a couple streets, given the  
12 number of streets that converge there, right?

13 MS. FISHEL: Yes, it's connected  
14 to the 9:30 Club.

15 MR. KLINE: Okay. So it's right  
16 next door to th 9:30 Club?

17 MS. FISHEL: Yes, it's --  
18 literally they share a wall.

19 MR. KLINE: All right.

20 MS. FISHEL: It's the one building  
21 in the back part of the --

22 MR. KLINE: And they have outside

1 seating, correct?

2 MS. FISHEL: They do.

3 MR. KLINE: And when you're  
4 walking your dog at midnight is there outside  
5 seating open?

6 MS. FISHEL: Theirs is -- it's  
7 hard to tell because they have a wall up. So  
8 you can't see who's in there.

9 MR. KLINE: Right.

10 MS. FISHEL: You can hear  
11 activity, but I can't tell if that's from the  
12 restaurant or the outside seating.

13 MR. KLINE: Okay. So you can hear  
14 that from the street?

15 MS. FISHEL: Yes.

16 MR. KLINE: And you can hear that  
17 from Vermont Avenue?

18 MS. FISHEL: Yes. It's not  
19 bothersomely loud, but you can tell that  
20 there's people there.

21 MR. KLINE: Okay. Great. Thank  
22 you. That's all I have.

1                   CHAIRPERSON MILLER: Okay. Did  
2 you have anymore questions based on this  
3 follow up?

4                   MR. PATTERSON: Can you describe  
5 the enclosure of outside seating at the  
6 Satellite Room?

7                   MS. FISHEL: Yes, it's the same  
8 owners as American Ice Company, so they kind  
9 of have the same thing. It's an enclosed --  
10 the walls are probably about six or seven feet  
11 tall and they have a roof, but I think it's  
12 kind of the same where it's not like a roof.  
13 There's air space between the walls and the  
14 roof. But, yes, they have that as well.

15                  MR. PATTERSON: Would you guess  
16 that the walls and the roof help to cut down  
17 on how much noise is --

18                  MS. FISHEL: I'm sure it does  
19 help. I mean it's concrete, but yes, it  
20 probably does help.

21                  MR. PATTERSON: All right. That's  
22 all. Thanks.

1 MS. FISHEL: Okay.

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

4 MR. KLINE: Thank you.

5 MR. DUFFY: Thank you.

6 MR. KLINE: Call to the stand  
7 Andrew Duffy.

8 CHAIRPERSON MILLER: Good  
9 afternoon. Do you swear to tell the truth,  
10 the whole truth, nothing but the truth?

11 MR. DUFFY: I do.

12 CHAIRPERSON MILLER: Thank you.

13 MR. KLINE: State your name for  
14 the record, please?

15 MR. DUFFY: Andrew Duffy.

16 MR. KLINE: And you're the  
17 proprietor of Duffy's?

18 MR. DUFFY: Yes, I am.

19 MR. KLINE: And how long have you  
20 been open?

21 MR. DUFFY: Seven years.

22 MR. KLINE: Describe for the Board

1 if you will the character of your  
2 establishment.

3 MR. DUFFY: It's an Irish pub.  
4 It's like a lot of Irish pubs. You know, we  
5 serve pub food and we have beer and lot of TVs  
6 around, lot of sports watching, lot of  
7 neighborhood people. Very much a neighborhood  
8 gathering place.

9 MR. KLINE: So in terms of your  
10 clientele, people don't drive there typically,  
11 do they?

12 MR. DUFFY: Most do not. You have  
13 Metro. You have people that live there  
14 already. People that are going to shows at  
15 the 9:30 Club come in usually before and after  
16 the shows.

17 MR. KLINE: So a stopping off  
18 place before and after 9:30?

19 MR. DUFFY: Yes.

20 MR. KLINE: And then a place for  
21 people to perhaps fall into on the way home  
22 or --

1                   MR. DUFFY: Yes, and a lot of --  
2                   we have -- in addition to the Rhapsody, which  
3                   is where Brooke lives, directly across to the  
4                   left of the 9:30 Club is another full big  
5                   condo building. And much of our clientele is  
6                   made up of people from the houses around and  
7                   those two condo buildings and the single-  
8                   family homes.

9                   MR. KLINE: Now you have applied  
10                  for approval of outside seating, correct?

11                  MR. DUFFY: Correct.

12                  MR. KLINE: And why is it that you  
13                  seek approval for this outside seating?

14                  MR. DUFFY: It's something that we  
15                  were prohibited from applying for previously  
16                  under our very strict voluntary agreement,  
17                  which was vacated, or terminated, whatever the  
18                  proper language is. And ever since the time  
19                  I first built out that property, that was part  
20                  of my business plan, to have a patio there.  
21                  So now seven years in I'm still not able to  
22                  have it. And this is actually the first I've

1       been able for it because of that restriction.  
2       And it's just an integral part of my business  
3       plan and I really need it to get over that  
4       hump to, you know, just generate more income.

5               MR. KLINE:   Now when you first  
6       opened your establishment in the neighborhood  
7       there were lot fewer establishments there,  
8       correct?

9               MR. DUFFY:   The only one -- I'd  
10       say the only one within 1,200 feet, but the  
11       only one in our couple blocks was the 9:30  
12       Club at the time.

13              MR. KLINE:   And can you recount  
14       for the Board what establishments have opened  
15       since then in that area?

16              MR. DUFFY:   In the immediate  
17       vicinity you had American Ice, Darnell's,  
18       Satellite.   And I'll point out on the exhibit  
19       that shows all the bars in the area, the  
20       Satellite Room is not marked on there.

21              MR. KLINE:   Yes.

22              MR. DUFFY:   It's right behind the

1 9:30 Club. Satellite Room. There's one right  
2 across the street from us that's -- or across  
3 from the 9:30 Club that's next to the gas  
4 station. That's Climax. It's called Climax.  
5 And then if you go down a block to U, you got  
6 Dodge City, Velvet Lounge, DC9. Yes, that's  
7 a block away.

8 MR. KLINE: And what of those  
9 establishments to your knowledge have outside  
10 seating?

11 MR. DUFFY: American Ice,  
12 Satellite Room, Darnell's, Dodge City, Velvet  
13 Lounge, Brixton; all those are a block down,  
14 a block over, all have roof decks. I might be  
15 missing one, but I think that's it.

16 MR. KLINE: And to your knowledge  
17 do you know how late these establishments  
18 operate their outside seating?

19 MR. DUFFY: I can't specifically  
20 say. I haven't looked up their exact hours.  
21 I'm almost positive Satellite Room is full  
22 hours, until 2:00 and 3:00. I know there's

1 people out there at 2:00 and 3:00. And the  
2 same with Satellite Room. Did I say Satellite  
3 Room?

4 MR. KLINE: That's what you just  
5 said.

6 MR. DUFFY: American Ice is what I  
7 meant to say the first one. Satellite Room,  
8 I don't know, but I know I personally have  
9 been there at 1:30 and everything's fully  
10 operational. You know, they serve food until  
11 1:00.

12 MR. KLINE: And then what about  
13 the ones down on U Street? You mentioned --

14 MR. DUFFY: Again, not  
15 specifically having looked them up, but to my  
16 knowledge they're at least open until 1:00 or  
17 2:00, if not later.

18 MR. KLINE: And Nellie's is also  
19 in the area?

20 MR. DUFFY: Nellie's is I believe  
21 full hours on the roof deck.

22 MR. KLINE: And I don't think you

1 mentioned that in your --

2 MR. DUFFY: I didn't, no. I'm  
3 sorry.

4 MR. KLINE: And that's opened  
5 since you opened as well, correct?

6 MR. DUFFY: That's correct.  
7 Nellie's opened since then. Brixton also has  
8 opened.

9 MR. KLINE: And in some ways the  
10 format of some of these establishments  
11 directly compete with what you do in your  
12 establishment?

13 MR. DUFFY: They do. And go back  
14 one second. Just a thought. Neither one of  
15 those condo buildings were there when I opened  
16 either. So those have both gone up since I  
17 opened.

18 MR. KLINE: Now with respect to  
19 the condo buildings, you have quite a bit of  
20 support from residents of those buildings,  
21 haven't you?

22 MR. DUFFY: I have . And both

1       condo boards -- I met with both condo boards  
2       in addition to many of the residents and they  
3       -- both of them supported the idea of a patio.

4               MR. KLINE: All right. So let's  
5       talk about that for a minute. You met with --  
6       which condo boards did you meet with?

7               MR. DUFFY: With the Rhapsody's  
8       and then separately with the Floridian.

9               MR. KLINE: All right. And the  
10       Rhapsody is where Ms. Fishel lives?

11              MR. DUFFY: Correct.

12              MR. KLINE: And the Floridian is  
13       directly across Florida Avenue from your  
14       establishment?

15              MR. DUFFY: Across Florida Avenue,  
16       right. Yes.

17              MR. KLINE: And what did you tell  
18       them in terms of meeting with them?

19              MR. DUFFY: I think I'm pretty  
20       well known as a good operator, so the meeting  
21       wasn't very long. They were concerned that we  
22       weren't going to be open until 2:00 and 3:00,

1 and I said we will not be open until 2:00 and  
2 3:00. They were concerned about piped-out  
3 music. I said I don't intend to have any  
4 piped-out music. And they also didn't want it  
5 to be a patio where a whole bunch of people  
6 were standing around, like standing like, you  
7 know -- so, you know, I assured them that it  
8 wasn't going to be that kind of place. It was  
9 going to be a sit-down drinking, eating patio.

10 MR. KLINE: So you presented to  
11 both condo boards?

12 MR. DUFFY: Correct.

13 MR. KLINE: All right. Did you  
14 meet with any other organizations in the  
15 neighborhood with respect to this request?

16 MR. DUFFY: The ANC and the U  
17 Street Neighborhood Association.

18 MR. KLINE: Let's talk about the  
19 ANC for a minute.

20 MR. DUFFY: Okay.

21 MR. KLINE: You appeared before  
22 the ANC?

1 MR. DUFFY: Yes.

2 MR. KLINE: ANC 1B?

3 MR. DUFFY: Yes.

4 MR. KLINE: What was their  
5 reaction to your request of approval for this  
6 outside seating?

7 MR. DUFFY: At that time we had  
8 not yet changed the -- what do you call it,  
9 the hours to -- at that time we were still  
10 applying for 2:00 and 3:00, and they actually  
11 approved unanimously until 2:00 and 3:00. And  
12 five or six of the commissioners actually  
13 stood up and gave little 30-second speeches on  
14 how good an establishment we've been.

15 Now we went to -- after the ANC  
16 meeting I believe that the Protestant spoke a  
17 little bit with my SMD, but it was after they  
18 had already voted, and had some concerns about  
19 the hours and stuff like that. And he asked  
20 me if I would voluntarily, even though I  
21 didn't have to at that point because I already  
22 had ANC approval, change the application

1 hours.

2 And then around that exact same  
3 time I met with USNA, U Street Neighborhood  
4 Association, and I decided to voluntarily to  
5 bring the hours back to 12:00 because I really  
6 had no intention of having much activity out  
7 there after 12:00 anyway. And it passed USNA.  
8 I don't remember the vote, but it wasn't  
9 close. So it passed.

10 MR. KLINE: All right. And then  
11 you talked about these other establishments  
12 that have outside seating and you mentioned  
13 that you don't intent and won't have piped-in  
14 music at any time --

15 MR. DUFFY: Correct.

16 MR. KLINE: -- of any kind,  
17 correct?

18 MR. DUFFY: Correct.

19 MR. KLINE: And do some of those  
20 establishments have piped-in music?

21 MR. DUFFY: Each one of them. I  
22 don't think there is one that does not. So

1       Satellite Room does, American Ice does, Dodge  
2       City, Velvet Lounge, Brixton.

3                   MR. KLINE: Now when you were  
4       talking about support from the two condominium  
5       buildings you were -- and it came up  
6       previously in the preliminary matter. You  
7       were previously before the Board with respect  
8       to termination of your voluntary agreement,  
9       correct?

10                   MR. DUFFY: Correct.

11                   MR. KLINE: Were there individuals  
12       that resided in those buildings that testified  
13       in support?

14                   MR. DUFFY: Yes, there were.

15                   MR. KLINE: All right. And if you  
16       can recall who testified and where do they  
17       live?

18                   MR. DUFFY: Craig Melvin testified  
19       from the Floridian. Tucker Gallagher  
20       testified from the Rhapsody.

21                   MR. KLINE: Okay. And Mr. Melvin  
22       testified that his apartment actually

1 overlooks what would be your outside seating  
2 area, correct?

3 MR. DUFFY: That's correct.

4 MR. KLINE: All right. Yet he was  
5 in support of termination of the voluntary  
6 agreement, correct?

7 MR. DUFFY: Correct.

8 MR. KLINE: And also mentioned  
9 that he was in support of outside seating if  
10 you ever got to this day?

11 MR. DUFFY: Correct.

12 MR. KLINE: All right. I'm going  
13 to show you what we've marked as Exhibit 1 and  
14 ask you if you can identify that document.

15 MR. DUFFY: Yes.

16 MR. KLINE: What is that?

17 MR. DUFFY: That's the outside  
18 caf, plan.

19 CHAIRPERSON MILLER: What's  
20 Exhibit 1? Did you give it to the Protestant?

21 MR. KLINE: I did.

22 CHAIRPERSON MILLER: Okay. Thank

1       you.

2                   MR. DUFFY:   That's the seating  
3       plan for the --

4                   MR. KLINE:   All right.  Is this  
5       what you submitted to Public Space for  
6       approval of the public space permit?

7                   MR. DUFFY:   Yes.

8                   MR. KLINE:   And does this define  
9       the seating and the tables that will be  
10      located in the area where you intend to offer  
11      seating?

12                   MR. DUFFY:   Yes.

13                   MR. KLINE:   Is it your intention  
14      to have people standing in the area?

15                   MR. DUFFY:   No.

16                   MR. KLINE:   Is it your intention  
17      to have any sort of bar service out there?

18                   MR. DUFFY:   Waitress service.  No  
19      bar, no.

20                   MR. KLINE:   You're not going to  
21      have any bar out there at all?  All right.  
22      And you've already testified you don't intend

1 to have recorded music out there?

2 MR. DUFFY: Correct.

3 MR. KLINE: So in other words, the  
4 sum and substance of what will go on out there  
5 is people will be seated, correct?

6 MR. DUFFY: Correct.

7 MR. KLINE: And will order food or  
8 drink at tables?

9 MR. DUFFY: Correct.

10 MR. KLINE: And you're requesting  
11 approval to do that until midnight?

12 MR. DUFFY: Correct.

13 MR. KLINE: Now when we were last  
14 here for the voluntary agreement termination  
15 there was opposition from your neighbor on the  
16 other side.

17 MR. DUFFY: Correct.

18 MR. KLINE: Correct?

19 MR. DUFFY: Yes.

20 MR. KLINE: That's Mrs. White?

21 MR. DUFFY: Correct.

22 MR. KLINE: To your knowledge is

1 she still residing in the property on the  
2 south side of your establishment?

3 MR. DUFFY: No, and if I could  
4 elaborate a little bit?

5 MR. KLINE: Sure, please do.

6 MR. DUFFY: The situation from  
7 what I understand is this: She is not there  
8 anymore. I have not -- I used to see her two  
9 or three times a week. She was an elderly  
10 lady. She was in her mid-eighties. I have  
11 not seen her except for when they initially  
12 tried to file this protest in here. I saw her  
13 here a couple months ago. Aside from that I  
14 have not seen her in over a year-and-a-half.  
15 So I assume that she must have moved to  
16 assisted living or something like that, but  
17 that's, you know -- but and then now her sons  
18 lives -- his primary is in South Carolina and  
19 he comes up occasionally and stays for about  
20 two, three weeks at a time. But that's every  
21 couple months or so. So it's not his primary  
22 residence. So that's how -- that's the use of

1 the -- like I mean it used to be that when she  
2 was there all the time, the lawn got cut all  
3 the time, stuff like that. Now it's cut when  
4 he comes back, you know, which is very  
5 occasionally.

6 MR. KLINE: Prior to a year-and-a-  
7 half ago, which you just referenced, you  
8 indicated that you would see her on a regular  
9 basis?

10 MR. DUFFY: I would see on a  
11 regular basis because she'd like to stand on  
12 the -- you know, by the fence and just kind of  
13 watch the goings on and whatever, talk to --  
14 she had a neighbor from across the street that  
15 used to come over. They'd meet at the fence  
16 and talk. And then towards the last six to  
17 eight months that she was there I would see  
18 her and I would also see they had a in-home --  
19 you know, what do call it, a nurse that came  
20 two or three times a week to see her and stuff  
21 like that. And so I would see both of them.  
22 And now it's been, as I said, a year-and-a-

1 half since I've seen either one of them. And  
2 just the general upkeep of the house is not  
3 what it was.

4 MR. KLINE: All right. I'm going  
5 to show you what we've marked as Exhibit 2 and  
6 ask if you can identify that.

7 MR. DUFFY: That is the front yard  
8 of Mrs. White's house.

9 MR. KLINE: And that's the --

10 MR. DUFFY: This was taken  
11 yesterday.

12 MR. KLINE: -- house immediately  
13 south --

14 MR. DUFFY: Yes.

15 MR. KLINE: -- of your premises?  
16 And that was taken yesterday you said?

17 MR. DUFFY: Correct.

18 MR. KLINE: And you took that  
19 picture?

20 MR. DUFFY: Yes.

21 MR. KLINE: All right. I would  
22 move Exhibits 1 and 2.

1                   CHAIRPERSON MILLER: Do you have  
2 any objection?

3                   MR. PATTERSON: No.

4                   CHAIRPERSON MILLER: Okay.

5                   MR. KLINE: I'm going to show you  
6 what we've marked as Exhibit 3 and ask you if  
7 you can identify that photo?

8                   MR. DUFFY: That is Duffy's  
9 obviously. You see VeraCruz on top and Mrs.  
10 White's fence is in between the view we have  
11 and my place. Scott's residence is  
12 immediately to the right of that. Across the  
13 street is the Floridian condominium. In the  
14 middle there in the distance, that's the  
15 Howard dormitories. You can see the tall  
16 building to the left going up above Duffy's.  
17 That's the Rhapsody condos where Brooke lives.  
18 But if you could see directly across the  
19 street that is next to us is the gas station  
20 and the 9:30 Club and all that stuff.

21                   MR. KLINE: All right. I'd move  
22 Exhibit 3.

1 CHAIRPERSON MILLER: Do you have  
2 any objection?

3 MR. PATTERSON: No.

4 MR. KLINE: And now I'm going to  
5 show you what we've marked as Exhibit 4 and  
6 ask you if you can identify that photo.

7 MR. DUFFY: That is the patio in  
8 front of Duffy's with VeraCruz on top, the  
9 patio area which -- what would be the patio  
10 area. And the front -- Mrs. -- the White's  
11 residence and Scott's place on the right.

12 MR. KLINE: And I'd move Exhibit  
13 4.

14 MR. PATTERSON: No objection.

15 MR. KLINE: And is that where you  
16 intend to have -- that's where you intend to  
17 have the outside seating?

18 MR. DUFFY: Yes, the outside  
19 seating would -- if you -- it's pretty well  
20 framed by that, how the window juts out there.  
21 So the railing on the right would not go past  
22 the end of the brick that forms my window, the

1 outcrop, because you couldn't really because  
2 the VeraCruz needs access. And the same on  
3 the left where you see the first metal stand.  
4 You couldn't go any further than that  
5 obviously or you couldn't go in my place.

6 MR. KLINE: Now let's for a minute  
7 about how you intend to operate the patio area  
8 in terms of seating and management. Can you  
9 tell the Board if I come to your  
10 establishment, you're approved for outside  
11 seating, how will all that work?

12 MR. DUFFY: You would have to --  
13 there would be no standing allowed. You would  
14 have to be required to sit down. I have --  
15 right now even I already have a doorman after  
16 7:00 every night, seven days a week. That  
17 doorman would take on the responsibilities of  
18 making sure that if people get excessively  
19 loud, you know, to pipe down. No outside  
20 music, as we stated.

21 MR. KLINE: And you'll have  
22 servers that will --

1                   MR. DUFFY: Servers out there that  
2 will be -- so people aren't left on their own  
3 out there just sitting there, you know. We  
4 got servers out there to make sure people stay  
5 seated, etcetera.

6                   MR. KLINE: All right. Great. I  
7 don't have any further questions of the  
8 witness at this time.

9                   CHAIRPERSON MILLER: Okay. I'm  
10 going to admit Applicant's Exhibits 1, 2, 3  
11 and 4 at this time.

12                   Do you have any cross-examination  
13 of this witness?

14                   MR. PATTERSON: Just a couple of  
15 questions.

16                   CHAIRPERSON MILLER: Okay.

17                   MR. PATTERSON: Andy, can you talk  
18 about where smokers currently stand to smoke  
19 outside and where you foresee them standing to  
20 smoke?

21                   MR. DUFFY: Okay. Well, you can  
22 see the smoking whatever you want to call it

1 right there in the picture of Exhibit 4. So  
2 that's where they currently -- just, you know,  
3 in front of the window right now is where they  
4 currently do it. And then of course you'd  
5 have -- we would allow smoking on the patio  
6 for the patrons that are seated. And then as  
7 you come out, there's a ton of space in front  
8 of the patio. If you can look at Exhibit 1.  
9 I think it's 10 to 12 feet of sidewalk space  
10 and then where you still would have egress for  
11 people to walk. And then the bike racks and  
12 stuff are there. And that's where I  
13 anticipate most of the smokers would go.

14 MR. PATTERSON: How about people  
15 that are waiting to be seated for the outdoor  
16 seating?

17 MR. DUFFY: Yes, they would have  
18 to wait inside.

19 MR. PATTERSON: They would have to  
20 wait inside?

21 MR. DUFFY: Inside, yes.

22 MR. PATTERSON: In the restaurant?

1 MR. DUFFY: Correct. Yes, or go  
2 like have a drink at the bar or whatever while  
3 you wait, that kind of thing.

4 MR. PATTERSON: Do you think there  
5 would be -- you wouldn't like prevent from  
6 waiting out on the sidewalk?

7 MR. DUFFY: I would prevent them  
8 from waiting --

9 MR. PATTERSON: Oh, you would?

10 MR. DUFFY: I would refuse to seat  
11 them if they wait out there. Explain to them  
12 that they can't wait out there and they need  
13 to wait inside.

14 MR. PATTERSON: Thanks. No other  
15 questions.

16 CHAIRPERSON MILLER: Okay. Board  
17 Members have questions?

18 MEMBER ALBERTI: Yes.

19 CHAIRPERSON MILLER: Okay. Mr.  
20 Alberti?

21 MEMBER ALBERTI: Mr. Duffy, you  
22 said you've been there seven years?

1 MR. DUFFY: Yes, sir.

2 MEMBER ALBERTI: Did you -- and I  
3 think you said something about building this  
4 out. So did you do this -- a build out from  
5 scratch, or what --

6 MR. DUFFY: Well, the building was  
7 there, but it was vacant. So it goes -- we  
8 don't have a picture showing how far it goes  
9 back unfortunately, but it does go all the way  
10 back to the alley that is shared by American  
11 Ice and the Rhapsody. And coincidentally Mrs.  
12 White's house is also back -- her back door  
13 backs -- and her back windows go to American  
14 Ice.

15 MEMBER ALBERTI: Do you know what  
16 was there prior to your --

17 MR. DUFFY: Immediately prior --

18 MEMBER ALBERTI: -- buying it?

19 MR. DUFFY: Immediately prior it  
20 was -- a guy had just knocked down some walls  
21 and some stuff and was going to put in like --  
22 from what I understand like a print shop or

1 something, but that didn't work out. He never  
2 really got that far on it. And then to my  
3 knowledge it was vacant for the three or four  
4 years -- completely vacant for the three and  
5 four years prior to me going in there. Before  
6 that, going way back, I think that it was a  
7 residence.

8 MEMBER ALBERTI: Okay.

9 MR. DUFFY: But I'm talking 10  
10 years before I got there.

11 MEMBER ALBERTI: All right. I  
12 have no further questions. Thanks.

13 CHAIRPERSON MILLER: Mr. Jones?

14 MEMBER JONES: Thank you, Madam  
15 Chair.

16 So what are the hours that you're  
17 applying for for the outdoor seating?

18 MR. DUFFY: We're currently  
19 applying to 12:00 seven days a week. We had  
20 originally applied for 3:00 and 2:00 and I  
21 voluntarily scaled it back to midnight.

22 MEMBER JONES: Twelve?

1 MR. DUFFY: Yes, sir.

2 MEMBER JONES: Okay. And the  
3 rationale for going until 12:00, what's the  
4 business case behind that?

5 MR. DUFFY: Because I mean it's  
6 just, you know, D.C., that people tend to go  
7 out very late, you know? And, you know, it's  
8 not -- it's no longer a 7:00, 8:00 dinner time  
9 now. It's a few drinks and some food at  
10 10:00, 10:30, 11:00. And let's say we got to  
11 10:00, which they're requesting, in order to  
12 get the place shut down by 10:00, I'd have to  
13 basically give last call at 9:30. I mean, I'd  
14 be losing quite a bit of business.

15 And just from my experience I know  
16 that a ton of people go out later on at 10:30,  
17 11:00 for a few drinks and stuff. Now that  
18 it's -- and I don't think you'd get any of the  
19 club-type people until after that. So I mean  
20 those people would not be exhibiting that  
21 club-type behavior out there. And we wouldn't  
22 have music out there or anything anyway. But

1 I think it's very common these days that  
2 people have a bite to eat and a couple beers  
3 before they move on to the places that are  
4 like that.

5 MEMBER JONES: Okay. And I'm  
6 sorry, I didn't probably ask the right  
7 question.

8 MR. DUFFY: Sure.

9 MEMBER JONES: So you've already  
10 voluntarily scaled back from --

11 MR. DUFFY: Why did I do that?

12 MEMBER JONES: -- full hours to  
13 12:00. And I'm just trying to get a feel for  
14 by doing that what did you sacrifice from a  
15 potential revenue standpoint, or was there a  
16 sacrifice? Was that something that was in  
17 your best interest to do anyway?

18 MR. DUFFY: I think on two  
19 different levels: I think I would certainly  
20 sacrifice revenue that I would have had, but  
21 at the same time I really tried hard to be a  
22 good neighbor. So I recognized that to

1 maintain the good will -- and it was something  
2 that several people had asked that, you know,  
3 I have it shut down by about midnight or so.  
4 And I just felt like it wasn't worth the  
5 trouble anyway to run it after -- from 12:00  
6 to 2:00, if that makes any sense.

7 MEMBER JONES: Okay.

8 MR. DUFFY: I don't want to be a  
9 bad neighbor, and so I wanted to close it  
10 early.

11 MEMBER JONES: Okay. So it wasn't  
12 purely from an -- you weren't purely  
13 altruistic in the sense of, hey, I'm just  
14 giving up this because it's for the betterment  
15 of the neighborhood and only for the  
16 betterment? That there's some rationale for  
17 you to not do it from the standpoint of not  
18 having the super late-night crowd --

19 MR. DUFFY: True.

20 MEMBER JONES: -- that may be a  
21 little bit more rowdy?

22 MR. DUFFY: Quieter.

1                   MEMBER JONES:  It's quieter?  It's  
2                   more catering to your business model that's  
3                   already in place anyway as opposed to a  
4                   different type of clientele?  Is that a fair  
5                   characterization?  I don't want to put words  
6                   in your mouth, but I'm trying --

7                   MR. DUFFY:  No, that's pretty far.  
8                   That was a big part of it, yes.

9                   MEMBER JONES:  Okay.  All right.  
10                  So in making that sacrifice, right, which  
11                  helped you stay more true to your business  
12                  model as well, is there a -- I look at things  
13                  from a dollars and cents standpoint most of  
14                  the time.  So it sounds like there's a  
15                  quantifiable dollar that you lost in the  
16                  process of going from 3:00 to 12:00.  Have you  
17                  done any type of back-of-the-envelope-type  
18                  analyses on, hey, if I were open until 3:00,  
19                  I would be able to generate \$20,000 more per  
20                  week, per month.  But if I stay true to my  
21                  business model, it makes sense for me to give  
22                  up that \$20,000 because I just want to stay

1 true to my business model.

2 MR. DUFFY: Yes, I mean it wasn't  
3 totally because of that, but yes, I definitely  
4 would have lost -- I definitely have, just  
5 from making that decision, lost a great deal  
6 of income. I do think once you get past  
7 midnight you start getting the people that are  
8 a little bit more into just the throw-down-  
9 the-beers-kind of mode rather than, you know,  
10 what we do, which is like food and beer and  
11 hanging out, chatting rather than clubbing it  
12 up or whatever. And so, yes, I think that  
13 definitely entered my mind.

14 MEMBER JONES: All right. So  
15 again, bottom line, you can't put a dollar  
16 figure on --

17 MR. DUFFY: No, not --

18 MEMBER JONES: -- how much you  
19 lost from 3:00 to 12:00? So you can't really  
20 put a dollar figure on how much you're losing  
21 -- would be losing if you went from 12:00 to  
22 10:00? You just know that for whatever reason

1 you have a sense that it wouldn't close for  
2 you from a business model standpoint?

3 MR. DUFFY: Yes, I --

4 MEMBER JONES: Going from 12:00 to  
5 10:00. I'm sorry if I misspoke.

6 MR. DUFFY: Oh, yes. I'm sorry, I  
7 didn't get the 12:00 to 10:00 part.

8 MEMBER JONES: So going from 3:00  
9 to 12:00 you can't necessarily put a firm  
10 dollar figure on what you lost --

11 MR. DUFFY: Sure.

12 MEMBER JONES: -- by going from  
13 3:00 to 12:00. So you can't -- I'm going to  
14 make the assumption; and you can correct me if  
15 I'm wrong, that you also cannot put a firm  
16 dollar figure on --

17 MR. DUFFY: Right.

18 MEMBER JONES: -- what you're  
19 losing by going from -- if you were to do so  
20 to go from 12:00 to 10:00?

21 MR. DUFFY: Not a firm number, but  
22 I mean it's -- just off the top of my head

1 with that amount of seats and stuff like that,  
2 between 2:00 and 3:00 it's got to be \$200 or  
3 \$300 a night easily from between -- I'm sorry,  
4 between 12:00 and 3:00. And I think because  
5 we would be doing a lot of food from 10:00  
6 until midnight, which I don't think you'd be  
7 doing from midnight until 3:00 -- I think that  
8 the number would be more than that, a good bit  
9 more than that from 10:00 until 12:00. I  
10 think it would -- I mean you're having people  
11 -- four people sitting around each table  
12 having meals and beer rather than, you know,  
13 just a few beers. And so you're talking if  
14 there's five, six tables out from 10:00 to  
15 2:00, even if they only sat once and they each  
16 \$120 tab, you're talking \$600 from 10:00 until  
17 12:00.

18 MEMBER JONES: From 10:00 to  
19 12:00? Okay. So that's a good a back-of-the-  
20 envelope-kind of feel. That's in line with  
21 what I'm asking. So from that standpoint you  
22 do have a sense of what it is that it would

1 cost you to make that call to go from 12:00 to  
2 10:00? So these aren't just arbitrary  
3 feelings that you have? There's some  
4 quantifiable business reasons or rationale?

5 MR. DUFFY: Yes.

6 MEMBER JONES: Dollars and  
7 cents --

8 MR. DUFFY: Yes.

9 MEMBER JONES: -- that go into,  
10 hey, if I'm going to do this, this being have  
11 an outdoor caf,, in order for it to make sense  
12 for me to do it, I really need these hours for  
13 these reasons, these reasons being revenue?

14 MR. DUFFY: Yes.

15 MEMBER JONES: Is that a fair  
16 characterization of what the thought process  
17 is that you've gone through to say why you're  
18 not as willing to go to 10:00 as you were as  
19 willing to go to 12:00?

20 MR. DUFFY: That is. I would just  
21 hesitate to say it's purely revenue, because  
22 it's not purely revenue, but that's a big part

1 of it.

2 MEMBER JONES: Okay.

3 MR. DUFFY: There's also I really  
4 am conscious of the fact that there are other  
5 residents around and I think that 2:00 and  
6 3:00 might be a little bit too much.

7 MEMBER JONES: Okay. Fair enough.  
8 Thank you.

9 Thank you, Madam Chair.

10 CHAIRPERSON MILLER: Okay. Do you  
11 still have the exhibits in front of you?

12 MR. DUFFY: Yes, ma'am.

13 CHAIRPERSON MILLER: Okay. Good.  
14 Because when you were describing what was in  
15 them, the Board didn't have them in front of  
16 us.

17 MR. DUFFY: Okay.

18 CHAIRPERSON MILLER: So I have a  
19 few questions. Exhibit No. 2.

20 MR. DUFFY: Okay.

21 CHAIRPERSON MILLER: Well, first  
22 of all, the red and white is building 2104.

1 Is that Mrs. White's residence that you were  
2 talking about?

3 MR. DUFFY: Yes.

4 CHAIRPERSON MILLER: Whether she's  
5 there or now or not --

6 MR. DUFFY: Yes.

7 CHAIRPERSON MILLER: -- that's  
8 what you were referring to? Okay. What is  
9 next to that residence to the left, that gray  
10 and white building?

11 MR. DUFFY: It is currently an  
12 abandoned building which has been abandoned  
13 for -- since well before I've been there.

14 CHAIRPERSON MILLER: Since when?

15 MR. DUFFY: Well before.

16 CHAIRPERSON MILLER: Okay.

17 MR. DUFFY: I never saw anybody in  
18 it ever.

19 CHAIRPERSON MILLER: Okay.

20 MR. DUFFY: It's boarded up.

21 CHAIRPERSON MILLER: Boarded up?

22 MR. DUFFY: We're hoping that it

1 sells soon.

2 CHAIRPERSON MILLER: It's for  
3 sale.

4 MR. DUFFY: It's quite an eyesore  
5 for the neighborhood.

6 CHAIRPERSON MILLER: Okay.

7 MR. DUFFY: One of the few  
8 eyesores left in the neighborhood.

9 CHAIRPERSON MILLER: And did you  
10 say that American Ice is behind 2104?

11 MR. DUFFY: American Ice --  
12 actually that's good to say it for -- if you  
13 look at that gap that's between Mrs. White's  
14 house and that gray building, it would be back  
15 behind those two buildings.

16 CHAIRPERSON MILLER: Well, so I  
17 see like a roof to the -- it looks like --

18 MR. DUFFY: That is not their  
19 roof. That's the roof of the building behind  
20 American Ice.

21 CHAIRPERSON MILLER: Oh, really?

22 MR. DUFFY: That's a church.

1 CHAIRPERSON MILLER: Okay.

2 MR. DUFFY: Yes.

3 CHAIRPERSON MILLER: Okay. So  
4 it's in between that --

5 MR. DUFFY: Yes.

6 CHAIRPERSON MILLER: -- and Mrs.  
7 White's? Okay. And Exhibit 3 --

8 MR. DUFFY: Yes?

9 CHAIRPERSON MILLER: -- the  
10 building in between the building on the right  
11 and the building on the left where yours is;  
12 it's red and white and beige, is that the  
13 dorms, the Howard dorms?

14 MR. DUFFY: The Howard University  
15 dorms, yes.

16 CHAIRPERSON MILLER: Okay. You've  
17 been there seven years. Is the neighborhood  
18 safer now than it was seven years ago?

19 MR. DUFFY: Much safer. I mean  
20 not to -- the whole neighborhood is safer.  
21 And I mean if you could picture it without the  
22 two condo buildings there, the Rhapsody

1 building was being built while I was being  
2 built. But before the Rhapsody building was  
3 there, that was a tire dump, one of the  
4 biggest tire dumps in the city. Okay? And  
5 across the street where the Floridian is was  
6 an open car wash and then two or three  
7 abandoned buildings. And if you're looking at  
8 -- just to give you an idea, since you were  
9 asking about the neighborhood, the street --

10 CHAIRPERSON MILLER: Yes.

11 MR. DUFFY: -- if you look at  
12 Exhibit 3 again, since you didn't have it  
13 before, you got the Floridian across the  
14 street. And then if you were to like -- if  
15 you were able to pan right, you would see the  
16 9:30 Club and Satellite Room, and then a  
17 little bit further right the gas station.

18 CHAIRPERSON MILLER: Okay.

19 MR. DUFFY: Okay? And that goes  
20 -- Vermont Avenue goes like towards us if  
21 you're -- the gas station is across Vermont.

22 CHAIRPERSON MILLER: Gas station

1 is across from what?

2 MR. DUFFY: Right. What you're  
3 looking at right there --

4 CHAIRPERSON MILLER: Yes.

5 MR. DUFFY: -- is Florida. Then  
6 you see that Vermont starts to curve where the  
7 motorcycle is parked there.

8 CHAIRPERSON MILLER: Okay. Yes.

9 MR. DUFFY: And so that's Vermont.  
10 So the gas station is across Vermont.

11 CHAIRPERSON MILLER: Okay. So can  
12 you tell me why you signed a voluntary  
13 agreement that restricted your right to --

14 MR. DUFFY: You got an hour-and-a-  
15 half? No.

16 (Laughter.)

17 MR. DUFFY: It was very --

18 CHAIRPERSON MILLER: I don't think  
19 we could do that tonight, but --

20 MR. DUFFY: I mean to be blunt,  
21 it's -- the person that was representing the  
22 Whites and the Whites, they had no interest in

1 mediation at all whatsoever. And they -- you  
2 guys have streamlined it quite a bit at this  
3 time. Back before then, the basic rule of  
4 thumb was if there was any progress at all at  
5 a mediation, then the Board would status  
6 hearing, send it back to mediation. Okay?

7           They did that to me for 12 months  
8 in a row. Okay? And I had -- it wasn't  
9 something I could walk away from because I had  
10 put over \$500,000 into the build-out of the  
11 place. And when they were -- when I had first  
12 met with them, they didn't give me any  
13 indication that they were going to go through  
14 this whole protest and all this stuff like  
15 that. They had no interest in settling for  
16 anything realistic.

17           And what ended up happening was  
18 the day of the protest hearing I was  
19 completely out of money and had borrowed every  
20 dime I could borrow from anybody and finally  
21 got to the protest hearing, which I felt quite  
22 confident to win, but I legitimately didn't

1 have enough money to pay the rent for that  
2 month, which I'd been paying this whole time.

3 And so they basically held this  
4 agreement in front of me and said, well, you  
5 can either sign this or lose all that money,  
6 which at that time that was \$500,000 plus  
7 another \$200,000 in borrowed money. And I  
8 signed one of the most inhibiting agreements  
9 you could. I had to close at 11:30 weekdays  
10 and all this stuff about no beer signs, just  
11 crazy stuff that was in there. So I basically  
12 signed it just because it was a choice between  
13 the lesser of two really bad evils.

14 CHAIRPERSON MILLER: Okay. Thank  
15 you.

16 All right. I don't have any other  
17 questions. Any follow up on the Board's  
18 questions?

19 MR. KLINE: I don't have any.  
20 Thank you.

21 CHAIRPERSON MILLER: Do you?

22 MR. PATTERSON: Yes, I do, Andy.

1       Going back to Exhibit 1, the floor plan of the  
2       outdoor seating, it labels the perimeter as  
3       freestanding railing enclosure. Can you  
4       describe what --

5                   MR. DUFFY: That's --

6                   MR. PATTERSON: -- that would be  
7       and if there's any sort of sound buffer  
8       provided by it?

9                   MR. DUFFY: There's not. There  
10       could be, but there is not in this drawing.  
11       All that is like a railing that you put away  
12       at the end of the night. DDoT generally wants  
13       something that you can -- in this day and age  
14       something that can be within -- taken down  
15       within 24 hours, if they need, if they need  
16       the space or whatever.

17                   MR. PATTERSON: So is it similar  
18       to the railing at your front door seen in  
19       Exhibit 4 --

20                   MR. DUFFY: Yes, but not --

21                   MR. PATTERSON: -- except that  
22       it's removable?

1 MR. DUFFY: Correct.

2 MR. PATTERSON: Okay. One of the  
3 Board Members was asking and trying to  
4 quantify your loss in revenue by closing an  
5 hour or two earlier. Since the record is  
6 going to be held open for 14 days, would it be  
7 possible to do some research and investigate  
8 -- I mean like through receipts to --

9 MR. DUFFY: I'm not sure.

10 MR. PATTERSON: -- actually  
11 quantify that in some way?

12 MR. DUFFY: I thought it was just  
13 on that one question.

14 CHAIRPERSON MILLER: It is. The  
15 Board doesn't usually hold open the record, so  
16 it's not --

17 MR. PATTERSON: Okay.

18 CHAIRPERSON MILLER: It has to be  
19 a special, special reason. Are you done?

20 MR. PATTERSON: All done. Thanks.

21 CHAIRPERSON MILLER: I'm sorry, I  
22 thought of one other question I wanted to ask

1 you. Our investigator responded to one of my  
2 questions about the use of plants or something  
3 like that to buffer some noise. Is that  
4 something that you're amenable to doing?

5 MR. DUFFY: Yes.

6 CHAIRPERSON MILLER: Okay. All  
7 right. That's it unless there's follow up to  
8 that.

9 MR. PATTERSON: No.

10 CHAIRPERSON MILLER: Okay. Thank  
11 you very much.

12 MR. DUFFY: Thank you.

13 MR. KLINE: Wait, I actually do  
14 have follow up.

15 CHAIRPERSON MILLER: Oh, you have  
16 follow up to that? All right.

17 MR. KLINE: Just to be clear,  
18 however, your public space permit has been  
19 approved, correct?

20 MR. DUFFY: Correct.

21 MR. KLINE: So if you are going to  
22 make changes, that is going to require you to

1 go back to the Public Space Committee, isn't  
2 it?

3 MR. DUFFY: Yes.

4 MR. KLINE: Okay. Thank you.

5 CHAIRPERSON MILLER: Wait. I'm  
6 sorry. I just want to ask about --

7 (Laughter.)

8 CHAIRPERSON MILLER: Because I  
9 don't know if you know the answer, but really  
10 I'm just wondering if you put a plant on a  
11 public space that's been approved, do you have  
12 to get that approved?

13 MR. DUFFY: I honestly don't know  
14 the answer to that.

15 CHAIRPERSON MILLER: Oh, you don't  
16 know? Okay.

17 MR. KLINE: I would proffer; and  
18 the Board can do with it what they will,  
19 having had much experience with this, that  
20 yes, in terms of anything that's in your  
21 sidewalk caf, it has to be approved. If  
22 you're putting plants or planters or fixtures,

1 that's part of the plan that's approved.

2 CHAIRPERSON MILLER: Okay. Thank  
3 you. Is that your last witness?

4 MR. KLINE: Yes, it is.

5 CHAIRPERSON MILLER: Okay.

6 MR. KLINE: And beg the Board's  
7 indulgence.

8 And with that we rest. Thank you.

9 CHAIRPERSON MILLER: What?

10 MR. KLINE: With that we do rest.  
11 Thank you.

12 CHAIRPERSON MILLER: So now is the  
13 Protestant's case. And I want to ask you all  
14 do you want to take a 5 or 10-minute break  
15 before we start that, or do you want to roll  
16 right into it?/

17 MR. PATTERSON: I'm okay with  
18 going right into it. I think it will be  
19 brief.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: That's fine.  
22 Let's go.

1 MR. PATTERSON: And I'm sorry I'm  
2 not very familiar with this process. It's all  
3 new to me, but --

4 CHAIRPERSON MILLER: Oh, you're  
5 not alone in that, so don't worry about that.

6 MR. PATTERSON: Am I permitted  
7 to --

8 CHAIRPERSON MILLER: Yes.

9 MR. PATTERSON: -- give my own  
10 testimony, or commentary?

11 CHAIRPERSON MILLER: Yes, I can  
12 swear you if you're ready to give your own  
13 testimony.

14 MR. PATTERSON: Sure.

15 CHAIRPERSON MILLER: And if you  
16 need to the table, you don't have to go over  
17 there.

18 MR. PATTERSON: And how do I  
19 present exhibits?

20 CHAIRPERSON MILLER: How do you  
21 present exhibits?

22 MR. PATTERSON: Yes, just pass

1       them around or --

2                   CHAIRPERSON MILLER:   You show them  
3       to the other side when you want to do it.  And  
4       then you just tell me what it is and say you  
5       would like it to be admitted, or you'd like to  
6       move its admission and then give us a copy so  
7       I can look at it before I rule.  When you're  
8       ready.  And somebody should identify it, which  
9       is probably you.

10                   MR. PATTERSON:   Okay.  I guess  
11       first I'll call a witness.  I'll call Patrick  
12       Tangney.

13                   CHAIRPERSON MILLER:   Okay.  So  
14       it's going to be the two -- you have two  
15       witnesses, right, yourself and --

16                   MR. PATTERSON:   Yes.

17                   CHAIRPERSON MILLER:   Okay.  All  
18       right.  So you swear to tell the truth, the  
19       whole truth, nothing but the truth?

20                   MR. TANGNEY:    I do.

21                   CHAIRPERSON MILLER:   Okay.  So you  
22       should start by identifying himself.

1 MR. TANGNEY: Hi. My name is  
2 Patrick Tangney. I live at 2110 Vermont with  
3 Scott Patterson.

4 CHAIRPERSON MILLER: Okay.

5 MR. PATTERSON: Can you give your  
6 general opinion of Andy Duffy and the  
7 establishment Duffy's Restaurant?

8 MR. TANGNEY: Yes, Andy Duffy runs  
9 a very good restaurant and bar that Scott and  
10 I frequent quite often, not just because we're  
11 Green Bay fans, but because we want to support  
12 the neighborhood and support Andy. He's  
13 always been very cordial with us across the  
14 front fence. He's commented to us several  
15 times and thanked us for improving the looks  
16 of the house and the yard.

17 And being an attorney myself, I  
18 sympathize obviously for the bad path that he  
19 had to take with the Whites. We've talked  
20 with the Whites in the past, so I know what  
21 Andy's going through. And we want him to  
22 succeed. We want the neighborhood to succeed

1 because he's a quality person and runs a  
2 quality establishment.

3 MR. PATTERSON: Earlier there  
4 seemed to be some -- there was a question  
5 about the White's residence, 2104, in terms of  
6 whether it was listed as a residence for the  
7 D.C. tax record. Do you have any knowledge of  
8 that?

9 MR. TANGNEY: I do. The use is  
10 residential. We've checked on that. We've  
11 checked on the vacant building, the gray  
12 building in Exhibit 2 or 3. It's currently on  
13 the market for sale. And from the  
14 conversations we have had with Mrs. White's  
15 son, we know it's not used for any commercial  
16 purposes. It is used for residential purposes  
17 only.

18 MR. PATTERSON: Can you speak to  
19 the general noise levels in the neighborhood  
20 and specific noise from smokers on the front  
21 patio?

22 MR. TANGNEY: Yes, I have somewhat

1 of a different perspective than the other  
2 witnesses on the noise in the neighborhood  
3 because I do live at 2110 Vermont. It is a  
4 busier intersection. I will be the first to  
5 admit that. I do not personally hear while  
6 I'm inside the house anything from the  
7 Satellite Room, 9:30 Club, the gas station or  
8 American Ice. I do hear patrons outside the  
9 window smoking.

10 And that's in my opinion the  
11 difference between continuous disturbance and  
12 a periodic disturbance. When they're out  
13 there smoking, we can hear their conversations  
14 quite clearly because they stand within I'd  
15 say four to five feet of our bay window where  
16 upstairs our bed is located and downstairs our  
17 dining room table is located.

18 I do know that from a perspective  
19 it's hard to say that the other witnesses'  
20 testimony doesn't have much weight, but I  
21 would invite them in, because I know them  
22 personally and I think it's a different story

1 when you're inside the house and actually hear  
2 the noise that is generated by just a few  
3 smokers. And obviously the concern is you  
4 multiply that by 32 patrons sitting there  
5 continuously when we're both working adults,  
6 an architect and attorney, that do need to go  
7 to bed at a decent time to get up to work at  
8 a decent time. I'm all about the 18-hour Art  
9 District, but I don't think there's any limits  
10 on when that 18 hours begins and ends.

11 MR. PATTERSON: Can you give just  
12 a more general description of the  
13 neighborhood, the larger neighborhood?  
14 There's been a lot of references to the 9:30  
15 Club and the Satellite Room, Nellie's, Brixton  
16 and other establishments which are on U Street  
17 versus Duffy's and its location. Like can you  
18 sort of describe those, compare them in terms  
19 of architectural context and business use of  
20 those areas?

21 MR. TANGNEY: I would say U Street  
22 is as four-lane street with commercial spaces

1 on both sides. I know for instance at the  
2 corner of 9th and U both the Brixton and  
3 Nellie's have rooftop outdoor seating. That's  
4 not sidewalk side outdoor seating. I know  
5 Darnell's one block north and east of us, the  
6 outdoor seating is encapsulated by a fence, as  
7 well as American Ice. Satellite Room is in  
8 my; and I'm a mechanical engineer as an  
9 undergrad, almost a sound structure where  
10 there is concrete walls on all four sides and  
11 a roof that would support weight.

12 So I would say as a comparison  
13 between Vermont where 2110 and Duffy's is  
14 currently located, it has a much more  
15 residential feeling and a lot less commercial  
16 presence than U Street.

17 MR. PATTERSON: To your knowledge  
18 are there any residences within say 100 feet  
19 of Satellite Room, 9:30 Club, Brixton?

20 MR. TANGNEY: Not of those three,  
21 no. Not of Nellie's, no. It's a unique  
22 situation.

1 MR. PATTERSON: So it's fair to  
2 say that a lot of the bars and restaurants on  
3 U Street -- there's a very different context  
4 than Duffy's?

5 MR. TANGNEY: Yes, I think that's  
6 very fair to say.

7 MR. PATTERSON: I think that's all  
8 of my questions.

9 CHAIRPERSON MILLER: Okay. Cross?

10 MR. KLINE: Good afternoon, Mr.  
11 Tangney?

12 MR. TANGNEY: Tangney, yes.

13 MR. KLINE: Tangney.

14 MR. TANGNEY: Irish.

15 MR. KLINE: First of all, I  
16 appreciate your candor with respect to Mr.  
17 Duffy's running of his operation and his  
18 operation given these cases sometimes we don't  
19 see that, and I did want to say that that is  
20 appreciated.

21 With respect to your comment  
22 concerning this is a different area than U

1 Street, this is different in terms of  
2 establishments within proximity, there is  
3 however American Ice which is right there in  
4 proximity, correct?

5 MR. TANGNEY: American Ice is on V  
6 Street approximately 120 feet on the other  
7 side of the abandoned gray building and  
8 American Foreign Car Service.

9 MR. KLINE: All right. And but  
10 it's not more than 100 feet from the Rhapsody,  
11 is it?

12 MR. TANGNEY: It depends on which  
13 way you draw your line. Are you talking about  
14 the outdoor seating to the Rhapsody or the  
15 building?

16 MR. KLINE: The outdoor seating.

17 MR. TANGNEY: I would think that  
18 your witness that described it as from that  
19 wall to that wall was probably fairly  
20 accurate.

21 MR. KLINE: All right. Maybe  
22 you're better at estimating feet than she is.

1 How far would you say that is for the record?

2 MR. TANGNEY: I would say it's at  
3 least a football field-and-a-half maybe, a  
4 football field.

5 MR. KLINE: And you're referencing  
6 from the back of this hearing room behind the  
7 Board --

8 MR. TANGNEY: Sure.

9 MR. KLINE: -- to where at the  
10 other end?

11 MR. TANGNEY: Well, I think she  
12 said past the glass doors to where the lights  
13 were pointing out.

14 MR. KLINE: What do you say in  
15 terms of the distance?

16 MR. TANGNEY: I'm going to say a  
17 football field.

18 MR. KLINE: A football field? So  
19 you're saying it's a 100 yards?

20 MR. TANGNEY: Approximately.

21 MR. KLINE: Four hundred feet?

22 MR. TANGNEY: I'd be happy to go

1 and measure if you'd like.

2 MR. KLINE: No, I'm not asking you  
3 to do that.

4 MR. TANGNEY: Okay.

5 MR. KLINE: I'm just trying to get  
6 your best --

7 MR. TANGNEY: That's my best  
8 guess, sir.

9 MR. KLINE: -- analysis today and  
10 then I'm trying to --

11 MR. TANGNEY: A football field.

12 MR. KLINE: Okay. And you  
13 understand --

14 MR. TANGNEY: I played football in  
15 high school.

16 MR. KLINE: -- that that would be  
17 300 feet, right?

18 MR. TANGNEY: Yes.

19 MR. KLINE: Plus the end zones?  
20 All right. And you acknowledge that that  
21 would be more -- isn't a city block more than  
22 300 feet to your knowledge?

1 MR. TANGNEY: Doesn't that depend?

2 I don't know what a city block --

3 MR. KLINE: Okay.

4 MR. TANGNEY: There's different  
5 sizes of city blocks.

6 MR. KLINE: In testifying that  
7 these other establishments are somehow  
8 different, it's your position that they don't  
9 affect residences, isn't that correct?

10 MR. TANGNEY: That's not what I  
11 said, no.

12 MR. KLINE: All right. So then  
13 tell us why it is that you say that it's  
14 different at these other establishments that  
15 have outside seating.

16 MR. TANGNEY: In recap the ones  
17 that have outdoor seating in the area all seem  
18 to be contained by walls and at least partial  
19 roofs or not full roofs. The ones on U  
20 Street, their outdoor seating is a rooftop  
21 deck area. So I would think that would be  
22 quite different from a sidewalk level sidewalk

1       caf, without any sound barriers or protection.

2                   MR. KLINE: All right. So you  
3       make that distinction because it's your belief  
4       that those features minimize noise that might  
5       affect residents, correct?

6                   MR. TANGNEY: Absolutely.

7                   MR. KLINE: All right. So if it's  
8       found that those features are ineffective in  
9       minimizing noise heard by residents, there  
10      really isn't any difference, is there?

11                  MR. TANGNEY: I guess I don't  
12      understand your question.

13                  MR. KLINE: All right. Well, then  
14      I'll --

15                  MR. TANGNEY: If we find out that  
16      a wall does not attenuate sound, then there's  
17      no difference? Well, that's against the laws  
18      of physics, but if that's the hypothetical  
19      you're throwing to me, then yes, there's no  
20      difference.

21                  MR. KLINE: All right. So you  
22      heard --

1 MR. TANGNEY: But I do know that  
2 walls do mitigate sound travel.

3 MR. KLINE: Mitigate sound?

4 MR. TANGNEY: Yes.

5 MR. KLINE: But don't eliminate  
6 it, correct?

7 MR. TANGNEY: Absolutely.

8 MR. KLINE: All right. And the  
9 reason that you want sound mitigation is to  
10 minimize disturbance to yourself and perhaps  
11 other residents, correct?

12 MR. TANGNEY: Correct.

13 MR. KLINE: So regardless of  
14 whether there is a partial enclosure or side  
15 walls, if those features are not effective in  
16 mitigating the noise that might be heard in  
17 residences, there really is no difference, is  
18 there?

19 CHAIRPERSON MILLER: That's asked  
20 and answered.

21 MR. TANGNEY: I thought I just  
22 answered that, but if the walls are

1       ineffective to mitigate sound at all, then  
2       there's no difference. You are correct.

3               MR. KLINE: Okay. So you heard  
4       Ms. Fishel's testimony, correct?

5               MR. TANGNEY: Yes.

6               MR. KLINE: Were you here for  
7       that?

8               MR. TANGNEY: I was, yes.

9               MR. KLINE: Okay. And you heard  
10       her testify that she indeed does hear noise  
11       from American Ice, correct?

12              MR. TANGNEY: I don't know if she  
13       said that or not.

14              MR. KLINE: You didn't hear that  
15       part of her testimony?

16              MR. TANGNEY: No, I know she said  
17       she heard when people walked into the back of  
18       their building.

19              MR. KLINE: Okay. And you didn't  
20       hear her testify that there were 35 residences  
21       in her building that might be affected by  
22       noise from American Ice?

1 MR. TANGNEY: I did hear that,  
2 yes.

3 MR. KLINE: Okay. You did hear  
4 that? Okay. All right. So in reality if  
5 that's what they're hearing in their building,  
6 they're no different than you are next door to  
7 this proposed establishment and outside  
8 seating there, right?

9 MR. TANGNEY: Sir, I can't really  
10 answer that because I've never been in their  
11 units. I've never heard American Ice patrons.  
12 All's I know is that I've been in 2110 Vermont  
13 and we've heard smokers out front as plain as  
14 day and it's difficult for the quiet enjoyment  
15 of the property with that going on. So our  
16 concern is obviously the multiplication of  
17 that.

18 MR. KLINE: Do you hear noise from  
19 Nellie's from the rooftop on Sundays?

20 MR. TANGNEY: No.

21 MR. KLINE: You don't? You've  
22 never heard any noise from Nellie's?

1 MR. TANGNEY: Not unless we're  
2 walking past it.

3 MR. KLINE: You don't hear it from  
4 your front yard?

5 MR. TANGNEY: No.

6 MR. KLINE: And you live at 2110  
7 Vermont Avenue?

8 MR. TANGNEY: I do.

9 MR. KLINE: But you're not going  
10 to live there much longer, correct?

11 MR. TANGNEY: We don't know for  
12 sure. The closing hasn't happened yet. It  
13 could fall through, so that's our concern. It  
14 would be pretty bad if we had to stay and --

15 MR. KLINE: But the house is under  
16 contract, correct?

17 MR. TANGNEY: Correct.

18 MR. KLINE: And when is it  
19 scheduled to close?

20 MR. TANGNEY: May 15th.

21 MR. KLINE: And at that point you  
22 would move from that residence, correct?

1 MR. TANGNEY: Correct.

2 MR. KLINE: The purchasers of that  
3 property are aware of this proceeding?

4 MR. TANGNEY: No, not that I'm  
5 aware of.

6 MR. KLINE: You've disclosed to  
7 the -- are you a co-owner of this property?

8 MR. TANGNEY: No.

9 MR. KLINE: You're not? Okay.  
10 Then I'll save those questions.

11 I don't have any further questions  
12 of the witness. Thank you.

13 CHAIRPERSON MILLER: Board  
14 Members?

15 MEMBER ALBERTI: Mr. Tangney, you  
16 live at the residence next door?

17 MR. TANGNEY: I do, yes.

18 MEMBER ALBERTI: Okay. What would  
19 you like to see be the license conditions for  
20 this outdoor caf,?

21 MR. TANGNEY: I would like to see  
22 that the outdoor seating would be approved

1 during the weekdays up until 10:30 and on the  
2 weekends 11:30. Personally that's what I  
3 would like to see.

4 MEMBER ALBERTI: Okay. And why  
5 10:30 rather than 12:00, and why 11:30 rather  
6 than 12:00?

7 MR. TANGNEY: Because that's when  
8 I think most working adults go to bed on the  
9 weekdays and on occasion they go to bed at  
10 that time on the weekends.

11 MEMBER ALBERTI: But you will  
12 still hear noise until 10:30, right? I mean  
13 there would still be a disturbance? And  
14 that's acceptable to you?

15 MR. TANGNEY: Until 10:30? For me  
16 personally? Yes.

17 MEMBER ALBERTI: Is there anything  
18 else?

19 MR. TANGNEY: No, just again we'd  
20 like to reiterate we want to make this work.  
21 We like Andy. We like Duffy's. We like what  
22 it's done for the neighborhood. We also have

1        tried to improve the neighborhood as well. So  
2        we understand this is just a process we have  
3        to go through.

4                    MEMBER ALBERTI: Okay. Have you  
5        met the new owners? Have you met the people  
6        with whom the owner of this property has a  
7        contract?

8                    MR. TANGNEY: No, I have not.

9                    MEMBER ALBERTI: Have you spoken  
10       to the realtor who represents them?

11                   MR. TANGNEY: Yes, I have.

12                   MEMBER ALBERTI: Has anyone told  
13       you about the prospective owners intended use  
14       of this property?

15                   MR. TANGNEY: Yes, they intended  
16       -- she intends to use it as her principal  
17       residence.

18                   MEMBER ALBERTI: Okay. Thank you.  
19       No further questions.

20                   CHAIRPERSON MILLER: Mr. Jones?

21                   MEMBER JONES: Thank you, Madam  
22       Chair.

1                   How long have you been living  
2                   there?

3                   MR. TANGNEY:   Gosh, we moved in in  
4                   March of 2011.

5                   MEMBER JONES:   March of 2011?

6                   MR. TANGNEY:   Yes.

7                   MEMBER JONES:   Okay.  And so it's  
8                   now just after March of 2013, so about two  
9                   years, a little over two years?

10                  MR. TANGNEY:   Well, Scott bought  
11                  it in October and then we renovated some and  
12                  we didn't move in until about February or  
13                  March of 2011.

14                  MEMBER JONES:   Okay.  And the  
15                  noise that you have heard from people outside  
16                  smoking, have you ever seen, heard or had any  
17                  reason to believe that the owner, the  
18                  Licensee, had taken action to address the  
19                  noise emanating from his establishment as a  
20                  result of the smokers congregating out in  
21                  front of said?

22                  MR. TANGNEY:   Sorry.  I mean not

1 really. I mean I've never seen either the  
2 doorman or Andy ask them to move them away  
3 from the window or -- I know from  
4 conversations I've had with Andy that there  
5 was a little disagreement with the upstairs  
6 VeraCruz folks about where to put the  
7 receptacle for the cigarette butts and all  
8 that, but I mean I haven't seen anything  
9 personally where smokers have been asked to  
10 move away.

11 MEMBER JONES: Okay. So I guess  
12 I'll cut to the quick. So have you  
13 communicated to -- you indicated you had a  
14 fairly decent rapport with the owner, said  
15 that you had opportunities to frequent his  
16 establishment, to be a patron of his  
17 establishment, to have conversations and  
18 dialogue with him. Have you ever had a  
19 dialogue with him about the concerns you  
20 raised related to the noise coming from the  
21 smokers?

22 MR. TANGNEY: No.

1                   MEMBER JONES: No? So is it fair  
2 to say from your assessment, from your  
3 perspective that he has been duly notified of  
4 that and has been given an opportunity to  
5 remedy that situation based on how you  
6 perceive it, based on how you experience it?

7                   MR. TANGNEY: I personally haven't  
8 addressed it with Andy.

9                   MEMBER JONES: Right, and I'm  
10 focused on you in terms of what you indicated  
11 to be what you personally experienced as a  
12 resident of the abutting property, because you  
13 also made reference to the fact that, hey,  
14 these other people that testified, they don't  
15 actually live in a house that's right next  
16 door to the establishment. So your experience  
17 is unique from that perspective, right?

18                   MR. TANGNEY: Yes.

19                   MEMBER JONES: So I want to get a  
20 feel for what your experience has created or  
21 caused you to do in communicating with the  
22 Licensee. And I'm asking because I want to

1 know if you communicated to him that this is  
2 a problem and I'm concerned about it, what can  
3 you do about it, and he did nothing. That's  
4 a different sense than, hey, I've had issues  
5 with it but I -- you know, we're kind of cool.  
6 We're buddy-buddy, so I haven't really brought  
7 it to his attention. So maybe he didn't fully  
8 appreciate it from your unique perspective and  
9 thus maybe didn't take action on it because of  
10 that.

11 MR. TANGNEY: No, I think it has  
12 been communicated.

13 MEMBER JONES: Okay.

14 MR. TANGNEY: We've had  
15 conversations, not necessarily on the smoking  
16 issue, but the noise level out in front of the  
17 house.

18 MEMBER JONES: Okay.

19 MR. TANGNEY: And that it was a  
20 concern. And we have had conversations where  
21 the hours of the outdoor seating operation  
22 were a concern for us.

1 MEMBER JONES: No, understood.

2 MR. TANGNEY: Yes.

3 MEMBER JONES: And I want to make  
4 sure I draw a clean line of delineation  
5 between the hours discussions and the  
6 opportunity to mitigate the problem, because  
7 I'll ask you this: If there was a mechanism  
8 by which the Licensee could ensure that the  
9 noise level didn't get above a certain point  
10 as it was heard inside of your residence,  
11 regardless of what hour it was, would you be  
12 amenable to that? Because what I'm hearing  
13 from you is you're concerned about the noise  
14 that you would hear in your establishment. So  
15 if he took steps to bring that noise down to  
16 a level where it wasn't a disturbance to you,  
17 however it is you define to a disturbance, in  
18 your residence; not saying he's signing up for  
19 that, I'm just asking hypothetically, would  
20 you be okay with that regardless of the hour?

21 MR. TANGNEY: I would be okay with  
22 that. I would add I'd be skeptical of how

1 that would happen, but I would be very okay  
2 and amenable to that.

3 MEMBER JONES: Okay. So your real  
4 point of contention is related to the noise  
5 that is going to be a disturbance for you in  
6 your residence as a resident of the abutting  
7 property?

8 MR. TANGNEY: Yes.

9 MEMBER JONES: Okay. So your  
10 mechanism to address that, since you do not  
11 have a clear concise knowledge of how he could  
12 mitigate that noise to the point where you  
13 would be comfortable, would be I'd like to  
14 mitigate the hours associated therewith?

15 MR. TANGNEY: Yes.

16 MEMBER JONES: Okay. Now I have a  
17 better feel for where the -- I thought that's  
18 where it was, but now I've gotten it from you.  
19 So now I appreciate it more.

20 So given that, if you do not see  
21 any other remedy as you can appreciate it from  
22 living that unique experience of being in that

1 residence of there being any remedy besides a  
2 reduction or a change or a limiting of the  
3 hours to what you indicated as your druthers  
4 when you were responding to Board Member  
5 Alberti's question?

6 MR. TANGNEY: I'm sorry. Where  
7 was the question in that?

8 (Laughter.)

9 MEMBER JONES: So you do not see  
10 any other way to be satisfied, to be content  
11 with the outdoor seating arrangement other  
12 than to have it limited based on what you  
13 provided as feedback to Board Member Alberti's  
14 question in terms of hours? So you mentioned  
15 hours, days of the week and weekends. I think  
16 they were 10:30 and 11:30.

17 MR. TANGNEY: I would say yes to  
18 that.

19 MEMBER JONES: Yes? Okay. All  
20 right. I'm going to ask -- it's probably  
21 going to sound a little facetious, but I'm  
22 going to ask it anyway. So is there a huge

1 difference in your mind between the 11:30 to  
2 12:00, that half hour on the weekend? Is that  
3 a big driver for you, that half hour, closing  
4 -- like stopping at a half hour earlier?

5 MR. TANGNEY: It's just --

6 MEMBER JONES: Is that like a  
7 difference maker for you? And this is your  
8 perspective, because I don't live there.

9 MR. TANGNEY: You know, one of the  
10 other people that testified said that we  
11 should have been aware of the property we  
12 bought. Well, we did. We walked the  
13 property.

14 MEMBER JONES: Right.

15 MR. TANGNEY: We saw the  
16 notifications, and that's why we're here  
17 today. So, yes, I would say it's a big enough  
18 deal that we're here, 11:30 to 12:30. So,  
19 yes. I mean that's I think, you know, a  
20 reasonable time to go to bed on the weekends  
21 if you're not out partying with friends.

22 MEMBER JONES: Okay. Fair enough.

1 Thank you.

2 Thank you, Madam Chair.

3 CHAIRPERSON MILLER: Okay. Is it  
4 a big deal for you if you live there and/or is  
5 it a big deal -- you said it was a big deal  
6 for you if you're living there. If you're  
7 selling it, is it a big deal for you?

8 MR. TANGNEY: It's more my  
9 conscience that would be bothered if I weren't  
10 here today to stick up at least for the new  
11 homeowner.

12 CHAIRPERSON MILLER: But did you  
13 say that you didn't tell the new prospective  
14 buyer about this.

15 MR. TANGNEY: It's not required.

16 CHAIRPERSON MILLER: But your  
17 conscience doesn't bother you about that?

18 MR. TANGNEY: Bothers me enough to  
19 be here today to testify, so yes, it does  
20 bother me.

21 CHAIRPERSON MILLER: Okay. Across  
22 the street are there any other town houses

1 like yours and Mrs. White's that abut?

2 MR. TANGNEY: There are. I think  
3 there's four that abut next to the Floridian.  
4 One I believe is used as a sales office by  
5 Urban Land for the Floridian. One I have seen  
6 a family come in and out of. And the other  
7 two don't look to be occupied at this time, to  
8 my knowledge anyway.

9 CHAIRPERSON MILLER: Have you  
10 talked to anyone who actually lives next to an  
11 outdoor caf, or summer garden?

12 MR. TANGNEY: Not directly, but  
13 indirectly. A realtor friend of mine sold a  
14 condominium unit above Eatonville and she  
15 advised her clients not to, and a year later  
16 they sold it because it was just too noisy.

17 CHAIRPERSON MILLER: Have you  
18 heard a theory that sometimes noise, like  
19 individual voices can sometimes be more  
20 disturbing that like a buzz of a conversation,  
21 of many conversations?

22 MR. TANGNEY: Yes.

1                   CHAIRPERSON MILLER: What do you  
2 think about that? Because as of now I've  
3 heard that, you know, you're disturbed by  
4 people who come out, they're smoking, they're  
5 on the cell phone and it's sporadic and it's  
6 individuals. So what do you think of that  
7 other theory that a continuous buzz of  
8 conversation may be less disturbing?

9                   MR. TANGNEY: I don't in my  
10 personal opinion think it would be less  
11 disturbing. I think it would just be  
12 multiplied and continuous. But I don't know.  
13 I've never done those sound tests.

14                   CHAIRPERSON MILLER: Okay. And  
15 have you been kept up frequently at night  
16 because of the noise next door from people  
17 coming and going or leaving or smoking, or  
18 whatever?

19                   MR. TANGNEY: No, not as of yet.

20                   CHAIRPERSON MILLER: Okay. Thank  
21 you. Any follow up on Board questions?

22                   MR. KLINE: Yes. So you said

1 11:30 to 12:30 is a difference-maker for you,  
2 I think is what you said?

3 MR. TANGNEY: On the weekends,  
4 yes.

5 MR. KLINE: On the weekends? So  
6 it were midnight on the weekends it would be  
7 fine?

8 MR. TANGNEY: No. I said no. He  
9 asked that question earlier. I said no. It  
10 would still be a difference.

11 MR. KLINE: It would still be a  
12 difference? Okay.

13 MR. TANGNEY: Thirty minutes.

14 MR. KLINE: That's all I have.  
15 Thank you.

16 CHAIRPERSON MILLER: Any redirect  
17 based on the license questions?

18 MR. PATTERSON: No.

19 CHAIRPERSON MILLER: Okay. Thank  
20 you very much.

21 MR. TANGNEY: Thank you.

22 MR. PATTERSON: So can I give my

1 own testimony?

2 CHAIRPERSON MILLER: Yes, I'll  
3 swear you in.

4 MR. PATTERSON: Do I have to --

5 CHAIRPERSON MILLER: You don't  
6 have to necessarily move if you need to be  
7 near your documents and stuff.

8 All right. So if you'll raise  
9 your right hand. Do you swear to tell the  
10 truth, the whole truth and nothing but the  
11 truth?

12 MR. PATTERSON: I do.

13 CHAIRPERSON MILLER: Okay.

14 MR. PATTERSON: I just want to --  
15 I don't want to reiterate everything we've  
16 said about how we're supportive of Duffy's.  
17 I just want to focus that my concern is noise  
18 levels. And the witness I just called said he  
19 was okay with 10:30 during the week and 11:30  
20 on weekends. I actually feel that 10:00  
21 during the week and 11:00 p.m. on weekends  
22 personally are reasonable hours.

1 I'd like to address your question  
2 of the theory a buzz of noise is less  
3 disturbing than individual conversations. And  
4 I recognize that theory and I think I don't  
5 know how true that will actually be when we're  
6 trying to enjoy the use of our home, but I do  
7 know that when you go to bed you don't really  
8 want either. And that's why I think it's  
9 perfectly fair and reasonable given the nature  
10 of the neighborhood to have some buzz up to a  
11 certain hour, but then I think it's more than  
12 reasonable to expect crowds outside of  
13 residences to depart and for the noise level  
14 to die down.

15 I also want to recognize that  
16 we're not the only people who live there.  
17 There is a residence just on the other side of  
18 me, as well as the Whites that we've already  
19 talked about.

20 Mr. Tangney referenced an earlier  
21 witness' -- I do have a picture of the other  
22 house. I'll present that in just a moment, if

1       that's okay.

2                   CHAIRPERSON MILLER:   That would be  
3       good.

4                   MR. PATTERSON:   I wanted to  
5       address a comment from a previous witness  
6       where they said we should have considered  
7       Duffy's next door or the neighborhood prior to  
8       buying the house.   And as Mr. Tangney said, we  
9       actually did consider that and I want to point  
10      out that of course when we bought the house  
11      there was no outdoor seating and there was no  
12      obvious sign that there would be outdoor  
13      seating.   Also I'd like to point out that  
14      Duffy's hours were earlier as well.   His  
15      business closed earlier than it does  
16      currently.   So we were very much aware of  
17      those types of things when we bought the  
18      house.

19                   Okay.   So I'd like to just present  
20      a contextual photo of -- it shows Duffy's  
21      Restaurant in the center, the White's  
22      residence on one side, my residence on the

1 other side, and then a third house next to  
2 mine. I indicated my best understanding of  
3 where the patio seating would be, as well as  
4 called out some other notes on the drawing.

5 CHAIRPERSON MILLER: Do you have  
6 an objection?

7 MR. KLINE: No objection.

8 CHAIRPERSON MILLER: Our  
9 attorney's going to get it from you.

10 MEMBER ALBERTI: If you have other  
11 exhibits that you intend to submit, give them  
12 to Ms. Jenkins and then if they're admitted  
13 she can give them to us. It will save her  
14 coming down numerous times.

15 MR. PATTERSON: That would be  
16 efficient.

17 MEMBER ALBERTI: All right. Thank  
18 you.

19 MR. PATTERSON: So this photo is  
20 just intended to show the proximity of the  
21 patio to the adjacent houses, which I noted on  
22 this exhibit as five feet. I see in Andy's

1 seating chart that it's seven feet.  
2 Nonetheless, it's very close and there's no  
3 sort of sound buffer wall or planting material  
4 or anything like that. And I'm just  
5 indicating that our house does have two  
6 bedrooms on the front of the house with  
7 windows both facing the front of the house, as  
8 well as facing the patio. So I think it shows  
9 how easily sound can travel.

10 So I know no other way to try to  
11 assess a reasonable closing time than to try  
12 to find other establishments that are in  
13 similar situations. So I would like to  
14 present context photos for Rustik Tavern, as  
15 well as the -- that's the license, the ABC  
16 license for Rustik Tavern, which has its  
17 voluntary agreement. And that's Exhibit 2, 3,  
18 4 and 5.

19 CHAIRPERSON MILLER: Okay. So,  
20 yes, I'll need to know which is Exhibit 2,  
21 which is Exhibit --

22 MR. PATTERSON: Sure.

1 CHAIRPERSON MILLER: They're on  
2 the --

3 MR. PATTERSON: They're marked.

4 CHAIRPERSON MILLER: They're  
5 marked? Okay. So what's Exhibit 2? I'm not  
6 seeing that? Oh, I see.

7 MEMBER ALBERTI: Well, let's see  
8 if there's any objections.

9 CHAIRPERSON MILLER: I know. I  
10 just want to know what document we're dealing  
11 with. Okay. Protestant's Exhibit 2 is a  
12 board order. Is that correct, or no?

13 MR. PATTERSON: Yes.

14 MR. KLINE: Board order with  
15 attached voluntary agreement.

16 MR. PATTERSON: I'm sorry, I  
17 didn't save myself a copy.

18 CHAIRPERSON MILLER: Oh.

19 MR. PATTERSON: I forgot I was  
20 giving one to --

21 CHAIRPERSON MILLER: Okay.

22 MR. PATTERSON: Okay. In Exhibit

1 2, if you turn to page one, two, three, four,  
2 five --

3 MEMBER ALBERTI: Well, I can't  
4 turn to page 5 until these have been accepted.

5 MR. PATTERSON: Oh, I'm sorry.

6 MR. KLINE: Yes, we would object  
7 to these exhibits on the grounds of relevance.  
8 This represents an agreement that was entered  
9 into. We don't know why this Applicant  
10 decided to enter into this agreement. This  
11 agreement is no more relevant than the  
12 agreement that Mr. Duffy entered into at some  
13 point would be in another case. The Board  
14 decides what's reasonable and what's  
15 appropriate. The fact that these parties  
16 decided to settle this case based upon certain  
17 hours is completely irrelevant to this  
18 situation in this building where we've had  
19 ample testimony concerning establishments in  
20 this particular neighborhood, not in  
21 Bloomingdale several blocks away.

22 CHAIRPERSON MILLER: What's the

1 relevance of this order that you would like us  
2 to --

3 MR. PATTERSON: Well, we've been  
4 referring to establishments in this  
5 neighborhood which do not have a similar  
6 context of being next to residential homes.  
7 And the closest restaurant I could find  
8 anywhere that was in between two residences  
9 was Rustik Tavern in Bloomingdale.

10 CHAIRPERSON MILLER: Okay.

11 MR. PATTERSON: So I wanted to  
12 show that what hours Rustik Tavern has for its  
13 outdoor seating and what it's relationship is  
14 to the adjacent homes.

15 MR. KLINE: And had that been  
16 done, had that been entered after a hearing  
17 and board order after the Board considered  
18 what was relevant and the Board made findings  
19 and said based upon this factor and that  
20 factor and so on and so forth, the Board has  
21 decided to limit the hours, then that might be  
22 relevant. But in this situation where parties

1 decided to enter into an agreement to limit  
2 the hours, how is that relevant? They might  
3 have agreed to limit the hours to 8:00. It's  
4 simply -- we don't know the motivations as to  
5 why they entered into the agreement.

6           And the fact that it's supposedly  
7 a similar context doesn't tell the whole  
8 story. In this case we have a citizens  
9 association I believe that entered into the  
10 voluntary agreement, which -- the abutting  
11 property owners and a civic association, which  
12 certainly puts more pressure on an Applicant  
13 to agree to something lesser than where  
14 there's just one Protestant, as we have in  
15 this case. So I would submit it's relevant,  
16 but obviously that's up to the Board.

17           CHAIRPERSON MILLER: I think that  
18 I would say that we can admit this and give it  
19 the weight that it deserves. I understand Mr.  
20 Kline is saying about the whole context of  
21 these agreements and what someone might agree  
22 to, but I understand also you're saying, well,

1 here's one that is -- you know, these are the  
2 hours of the one that's next to an apartment,  
3 next to a residence.

4 MR. PATTERSON: I do understand  
5 that as well. I'm just trying to establish  
6 some sort of industry standard.

7 CHAIRPERSON MILLER: Okay. You  
8 had no objection to No. 1, so No. 1 can be  
9 admitted.

10 All right. No. 3? Are you ready  
11 to do No. 3, or do you want to testify to  
12 something first?

13 MR. PATTERSON: I think 2, 3, 4  
14 and 5 all go together.

15 CHAIRPERSON MILLER: Okay. This  
16 is the picture of Rustik Tavern?

17 MR. PATTERSON: Yes.

18 CHAIRPERSON MILLER: Which you're  
19 offering as a model or something, or what?  
20 What is the relevance?

21 MR. PATTERSON: Exhibit 3 to show  
22 the context of Rustik Tavern to adjacent

1 residences.

2 CHAIRPERSON MILLER: Okay. Do you  
3 have an objection?

4 MR. KLINE: No, not to --

5 CHAIRPERSON MILLER: Okay. That's  
6 admitted. Okay?

7 MR. PATTERSON: And Exhibit 4 is  
8 also a contextual photo of Rustik Tavern in  
9 relation to an adjacent residence.

10 CHAIRPERSON MILLER: Okay. Do you  
11 have an objection?

12 MR. KLINE: I don't have an  
13 objection to the photo, but I have an  
14 objection to the legends on the photo.

15 CHAIRPERSON MILLER: Which is?

16 MR. KLINE: Unless we're going to  
17 establish what these are by -- I mean this  
18 isn't a photo. The Board and I got into this  
19 in one case. He can testify that this is a --  
20 and I haven't asked for that, that this is an  
21 accurate depiction of what he observed.

22 CHAIRPERSON MILLER: Right.

1 Right.

2 MR. KLINE: But once we start  
3 marking it up, we're talking about something  
4 completely different.

5 CHAIRPERSON MILLER: Yes, this is  
6 like your -- is this your testimony? We don't  
7 know who said these words or anything, so  
8 maybe we should -- you want to hold on this  
9 until you testify, that this is your -- any of  
10 your words?

11 MR. PATTERSON: Sure.

12 CHAIRPERSON MILLER: Then you can  
13 be cross-examined on it.

14 MR. PATTERSON: That's what I  
15 would like to do.

16 CHAIRPERSON MILLER: Okay. That's  
17 4. Is there another one, or are there just  
18 four?

19 MEMBER ALBERTI: There's just four  
20 that I know of.

21 MR. PATTERSON: There's an Exhibit  
22 No. 5, which is again another contextual photo

1 with notes.

2 CHAIRPERSON MILLER: Okay. So I  
3 assume you have the same objection, Mr. Kline?

4 MR. KLINE: Yes, I have the same  
5 objection.

6 CHAIRPERSON MILLER: Okay. So  
7 let's wait on these until you testify.

8 MR. PATTERSON: Okay. And Exhibit  
9 2 has been admitted?

10 CHAIRPERSON MILLER: Yes, the  
11 others have been admitted. No. 3?

12 MR. PATTERSON: So on page I think  
13 5 of Exhibit 2 it shows the hours of the  
14 outdoor sidewalk caf, to be closing at 10:00  
15 p.m. during the week and 11:00 p.m. on Friday  
16 and Saturday nights. And when I observed the  
17 establishment, I observed -- well, I'm sorry.  
18 Back on Exhibit 2 there's a -- on page 5  
19 there's also -- it shows the occupancy of the  
20 sidewalk caf, as 24 seated persons.

21 When I observed the establishment,  
22 I observed the limits of the outdoor seating

1 and their proximity to adjacent residences,  
2 which appears to be approximately 20 feet from  
3 the adjacent property. And there's a solid  
4 wall between the outdoor seating and the  
5 adjacent property. And at least in one of the  
6 properties there's no residential -- there  
7 doesn't appear to be residential on the first  
8 floor of the property next to the patio  
9 seating, which is seen on Exhibit 5.

10 So I don't know what other  
11 comments I want to make other than 10 p.m.  
12 during the week and 11:00 p.m. on weekends  
13 seems more than reasonable to me, and I'm  
14 presenting Rustik Tavern as a precedent for  
15 that.

16 CHAIRPERSON MILLER: Okay. Does  
17 that complete your testimony?

18 MR. PATTERSON: That completes it.

19 CHAIRPERSON MILLER: Mr. Kline?

20 MR. KLINE: Yes. Mr. Patterson,  
21 when was this Rustik Tavern voluntary  
22 agreement entered into?

1 MR. PATTERSON: October 21st,  
2 2008.

3 MR. KLINE: All right. So that's  
4 roughly four-and-a-half years ago?

5 MR. PATTERSON: Yes.

6 MR. KLINE: And the recitals  
7 indicate that this involves an application for  
8 a new license, correct?

9 MR. PATTERSON: Correct.

10 MR. KLINE: And are you aware that  
11 if there's a protest of a new license one may  
12 not open their business establishment until  
13 the protest is resolved?

14 MR. PATTERSON: I'm not aware of  
15 that.

16 MR. KLINE: Did you hear Mr.  
17 Duffy's testimony concerning the substantial  
18 financial hardship he was under in trying to  
19 get his business open and the fact that he had  
20 to enter into a voluntary agreement or lose  
21 his entire investment?

22 MR. PATTERSON: Yes, I heard that.

1                   MR. KLINE: All right. So in this  
2 situation, if that is true, what I've stated,  
3 that one cannot open their business when  
4 there's a protest until the protest is  
5 resolved, the circumstances surrounding this  
6 case are quite different, the circumstances  
7 surrounding Braci, LLC, presumably trading as  
8 Rustik Tavern, are really quite different than  
9 the circumstances that we have before the  
10 Board today, aren't they?

11                   MR. PATTERSON: Well, I don't know  
12 the circumstances.

13                   MR. KLINE: Okay. But you do know  
14 that Mr. Duffy's business is open, correct?

15                   MR. PATTERSON: Yes.

16                   MR. KLINE: And you do know that  
17 he hasn't into a voluntary agreement with you,  
18 correct?

19                   MR. PATTERSON: Correct.

20                   MR. KLINE: And you do know that  
21 failure to enter into a voluntary agreement  
22 does not inhibit his ability to continue

1 operating, correct?

2 MR. PATTERSON: Operating his  
3 current -- under his current license, correct.

4 MR. KLINE: Operating his business  
5 and paying his rent.

6 MR. PATTERSON: Right.

7 MR. KLINE: Whereas if one does  
8 not have an alcoholic beverage license and  
9 they're negotiating concerning the opening of  
10 an establishment, that's quite a bit different  
11 situation, isn't it?

12 MR. PATTERSON: (No audible  
13 response.)

14 MR. KLINE: I'll withdraw it and  
15 ask it another way. If you were going into  
16 business and you were investing money and  
17 opening an restaurant and you couldn't open  
18 until you had your ABC license, that would  
19 create some pressure on you, wouldn't it?

20 MR. PATTERSON: It probably would.  
21 I don't know that that --

22 MR. KLINE: You've answered my

1 question. I'll go onto the next one.

2 So you're saying it probably  
3 would, correct?

4 MR. PATTERSON: It's possible.

5 MR. KLINE: And in fact that would  
6 cause you to be more likely to agree with  
7 something that you might not otherwise agree  
8 to, wouldn't it?

9 MR. PATTERSON: Potentially.

10 MR. KLINE: Well, what's your  
11 hedge?

12 MR. PATTERSON: Well I would --

13 MEMBER ALBERTI: What was your  
14 question, Mr. Kline?

15 MR. PATTERSON: -- agree --

16 MEMBER ALBERTI: Wait. Wait,  
17 please. Mr. Kline, what was the question?

18 MR. KLINE: The last question  
19 was --

20 MEMBER ALBERTI: Yes, the last  
21 question.

22 MR. KLINE: -- what is your hedge?

1 MEMBER JONES: Hedge.

2 MR. KLINE: Hedge.

3 MEMBER ALBERTI: Oh, okay.

4 MR. KLINE: He said potentially  
5 and my question is --

6 MEMBER ALBERTI: Okay. Okay. I  
7 understand. Didn't hear you.

8 MR. PATTERSON: What does that  
9 mean? What do you mean by that?

10 MR. KLINE: Why do are you  
11 hesitant to say that you would be less likely  
12 to enter into an agreement if there were  
13 economic circumstances which were creating  
14 pressure on you?

15 MR. PATTERSON: I don't think I  
16 would enter into an agreement that wasn't  
17 financially feasible to me.

18 CHAIRPERSON MILLER: Can you move  
19 on?

20 MR. KLINE: Yes, I'll move on.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Now you have a

1 contract to sell this property, correct, the  
2 property that you reside in?

3 MR. PATTERSON: Correct.

4 MR. KLINE: And you have a closing  
5 date of May 15th?

6 MR. PATTERSON: Correct.

7 MR. KLINE: And when you do  
8 finalize the contract you will be moving from  
9 this home?

10 MR. PATTERSON: Correct.

11 MR. KLINE: And you haven't told  
12 the buyer about this proceeding?

13 MR. PATTERSON: I have not.

14 MR. KLINE: So the buyer is  
15 unaware that there's a pending request for a  
16 sidewalk caf,?

17 MR. PATTERSON: I have not  
18 communicated it to the buyer.

19 MR. KLINE: Okay. Fair enough.  
20 Mr. Tangney indicated that the hours that are  
21 acceptable to him would be 10:30 Monday  
22 through Thursday and 11:30 Friday and

1 Saturday. You heard that testimony, correct?

2 MR. PATTERSON: I did, yes.

3 MR. KLINE: And the hours that are  
4 acceptable to you are 10:00 Monday through  
5 Thursday and 11:00 Friday and Saturday,  
6 correct? You don't know what the hours  
7 acceptable to your buyer are, do you?

8 MR. PATTERSON: No, I don't.

9 MR. KLINE: You don't know whether  
10 the buyer might find midnight perfectly  
11 acceptable, do you?

12 MR. PATTERSON: I wouldn't know  
13 that.

14 MR. KLINE: You wouldn't know  
15 that? And in fact it's the buyer that would  
16 have ongoing concerns about the operation of  
17 the sidewalk caf,, not you, correct?

18 MR. PATTERSON: As well as other  
19 adjacent properties, and I know what times  
20 they are comfortable with.

21 MR. KLINE: Do you consider the  
22 Rhapsody and adjacent property?

1 MR. PATTERSON: Not adjacent, but  
2 I mean it's in proximity. I don't think they  
3 have as much of a concern as a property that's  
4 abutting.

5 MR. KLINE: Fair enough. But  
6 today you're the only abutting property owner  
7 before the Board, correct?

8 MR. PATTERSON: Correct.

9 MR. KLINE: And if you have your  
10 way you'll be gone within a month, correct?

11 MR. PATTERSON: That's correct.

12 MR. KLINE: I don't have any  
13 further questions.

14 CHAIRPERSON MILLER: Board  
15 Members?

16 MEMBER ALBERTI: Yes.

17 CHAIRPERSON MILLER: Mr. Alberti?

18 MEMBER ALBERTI: Mr. Patterson, do  
19 you have a signed contract with the new owner  
20 to buy your property?

21 MR. PATTERSON: I do, yes.

22 MEMBER ALBERTI: I mean is there a

1 guaranteed closing?

2 MR. PATTERSON: Nothing is a  
3 guarantee, so no.

4 MEMBER ALBERTI: Okay. So they  
5 could back out? Is that what I'm  
6 understanding?

7 MR. PATTERSON: There are  
8 circumstances which would cause it not to  
9 close.

10 MEMBER ALBERTI: Okay.

11 MR. PATTERSON: They may not get  
12 -- they could not get financing, an inspection  
13 could go wrong or --

14 MEMBER ALBERTI: Or they could  
15 back out and lose their earnest money, is that  
16 correct?

17 MR. PATTERSON: That's --

18 MEMBER ALBERTI: If I understand  
19 real estate deals correctly.

20 MR. PATTERSON: That's my  
21 understanding as well.

22 MEMBER ALBERTI: Thank you. Is

1 your realtor aware of this pending  
2 application?

3 MR. PATTERSON: I think he's aware  
4 that there is going to be outdoor seat that  
5 we're concerned about. I don't know if he's  
6 aware of these proceedings or --

7 MEMBER ALBERTI: He's aware of  
8 your concern? Is he aware that there's a  
9 potential for outdoor seating?

10 MR. PATTERSON: Yes.

11 MEMBER ALBERTI: He or she?

12 MR. PATTERSON: That's the reason  
13 that we're moving.

14 MEMBER ALBERTI: Okay.

15 MR. PATTERSON: That's one of the  
16 reasons that we're moving.

17 MEMBER ALBERTI: All right. I'm  
18 going to help you out here on Exhibits 4 and  
19 5. All right? And there's writing on them.  
20 I haven't accepted them, so I'm just going to  
21 help you out here. On Exhibit 4 where it says  
22 "property line," what do you mean by that?

1 MR. PATTERSON: That's what I  
2 assume to be the property line.

3 MEMBER ALBERTI: So that's just  
4 your assumption?

5 MR. PATTERSON: Yes, sir.

6 MEMBER ALBERTI: Okay.  
7 Approximately 20 feet between patio seating  
8 and abutting property. How do you know that's  
9 where the patio seating ends?

10 MR. PATTERSON: When I've been  
11 there that's where I've seen the patio seating  
12 stopping to allow -- you can see that there's  
13 a door and kind of a gateway in the fence. So  
14 there's a walkway there. So they keep the  
15 patio seating to one side.

16 MEMBER ALBERTI: All right. So I  
17 can take that for what it's worth. Did you  
18 measure that distance?

19 MR. PATTERSON: I paced it off.  
20 Well, I know the distance of one of the scores  
21 in the concrete, and you can see that there's  
22 at least four sections of concrete.

1                   MEMBER ALBERTI:   And you measured  
2                   those squares of concrete?

3                   MR. PATTERSON:   (No audible  
4                   response.)

5                   MEMBER ALBERTI:   This is an  
6                   approximate distance?

7                   MR. PATTERSON:   It's approximate.

8                   MEMBER ALBERTI:   All right.  It's  
9                   your approximation?  All right.  How do you  
10                  know there's no ground floor -- never mind.  
11                  How do you know that that property's  
12                  residential?  I've seen that sign that says  
13                  there's no ground floor residential and the  
14                  wall helps buffer -- but we don't -- the  
15                  affected wall is just your assumption, is that  
16                  correct?

17                  MR. PATTERSON:   Yes, sir.

18                  MEMBER ALBERTI:   And when you  
19                  saying there's no ground floor residential?  
20                  Where is that?  What's that refer to?

21                  MR. PATTERSON:   I'm trying to  
22                  indicate that there's not a window or an

1 occupiable floor immediately adjacent to that  
2 patio that I can see.

3 MEMBER ALBERTI: Okay.

4 MR. PATTERSON: Whereas in my  
5 residence there's a bedroom window.

6 MEMBER ALBERTI: I understand.  
7 All right. So now I have a context of what's  
8 your opinion and what's fact here on this  
9 photo.

10 MR. PATTERSON: And I think it's  
11 fair to say that all of the notes are my own  
12 commentary and it's my opinion.

13 MEMBER ALBERTI: All right. I  
14 just want to get that on the record what's  
15 opinion and what's fact, okay, and where it  
16 comes from.

17 Extent of patio. Where does that  
18 come from?

19 MR. PATTERSON: I'm sorry?

20 MEMBER ALBERTI: How do you  
21 determine that that's the extent of the patio  
22 there?

1 MR. PATTERSON: Because when I've  
2 been by the establishment that's -- I don't  
3 see them having any outdoor seating beyond  
4 that line.

5 MEMBER ALBERTI: Okay. And the  
6 distance is approximately 20 feet, but you  
7 didn't measure it, is that correct?

8 MR. PATTERSON: That's correct.

9 MEMBER ALBERTI: Okay. And it  
10 says retail, not residential at ground floor.  
11 How do you know that that's retail and not  
12 residential?

13 MR. PATTERSON: There's a large  
14 glass window in front and it doesn't appear to  
15 be residential inside.

16 MEMBER ALBERTI: But you didn't  
17 confirm that?

18 MR. PATTERSON: No.

19 MEMBER ALBERTI: Okay. If we're  
20 going to admit this; and I don't know if it's  
21 going to be admitted, I need to know the facts  
22 and what's -- sort out the facts from

1 conjectures.

2 MR. PATTERSON: I understand.

3 MEMBER ALBERTI: All right? Then  
4 I get the sense that you entered all these  
5 pictures and this VA about the Rustik Tavern  
6 to show -- maybe I'm wrong; just tell me, but  
7 my impression of why you did this was to show  
8 that it does exist. I mean there is a patio  
9 next to a residence in the District.

10 MR. PATTERSON: I would elaborate  
11 and say that the Applicant presented other  
12 establishments that have outdoor patio with  
13 late hours. I don't believe that those are  
14 similar to our situation, so I'm presenting  
15 this as an establishment that has earlier  
16 hours that is a similar situation.

17 MEMBER ALBERTI: So it's a  
18 precedent?

19 MR. PATTERSON: As a precedent,  
20 yes.

21 MEMBER ALBERTI: Okay. Thank you.  
22 I have no other questions. Thank you.

1 CHAIRPERSON MILLER: Questions,  
2 Mr. Jones?

3 MEMBER JONES: Thank you. Mr.  
4 Patterson, I'm just going to go with the  
5 assumption that you live there now, you may  
6 live there in the future, who knows? But  
7 right now you live there, so you have  
8 legitimate concerns. Your concern is related  
9 to the noise.

10 MR. PATTERSON: Correct.

11 MEMBER JONES: Is that a fair  
12 statement?

13 MR. PATTERSON: Yes.

14 MEMBER JONES: Okay. I'll ask you  
15 the same question or generally the same  
16 question. Is it really the noise that you're  
17 trying to get to by having the reduced hours,  
18 or if the Licensee was capable of doing some  
19 thing, some engineering wonder that kept the  
20 noise from reaching your establishment,  
21 reaching your residence, would that be  
22 acceptable?

1 MR. PATTERSON: If it reduced the  
2 -- if it eliminated the noise? Absolutely.

3 MEMBER JONES: If it reduced the  
4 noise to the point where it wasn't a nuisance  
5 for you beyond what you're experiencing  
6 currently.

7 MR. PATTERSON: Yes, that would be  
8 acceptable.

9 MEMBER JONES: That would be it?  
10 So really the root issue here is the noise  
11 that you hear in your establishment and you're  
12 concerned that you're trying to mitigate by  
13 limiting the hours is to limit or eliminate  
14 the source of that noise at a certain time so  
15 that at least you will have known peace at a  
16 certain cutoff point that you deem to be  
17 acceptable?

18 MR. PATTERSON: That's absolutely  
19 correct.

20 MEMBER JONES: Okay. And in  
21 coming to that thought, that rationale, that  
22 perspective, was there any -- well, how much

1 consideration was given to the impact that it  
2 would have on the business?

3 MR. PATTERSON: Well, I guess from  
4 my perspective I think any outdoor seating is  
5 a benefit to the business. It's increased  
6 revenue over what it's currently making  
7 currently. So I think any number of hours is  
8 helpful. So I think by throwing out 10:00  
9 p.m. during the week and 11:00 p.m. on the  
10 weekend, I think I certainly into account how  
11 that would impact the restaurant and what I  
12 thought was a fair and reasonable to both  
13 Duffy's and to myself and other residents.

14 MEMBER JONES: But specifically to  
15 yourself and your unique situation given  
16 you're the abutting property owner and you  
17 share a wall essentially with the  
18 establishment, right?

19 MR. PATTERSON: Correct.

20 MEMBER JONES: Is it fair to  
21 say --

22 MR. PATTERSON: Can I --

1 MEMBER JONES: Yes.

2 MR. PATTERSON: I'm sorry. If I  
3 were only concerned about my peace and quiet  
4 and enjoyment and not concerned about his  
5 business being successful, I would ask for no  
6 outdoor seating. So to try to answer your  
7 question, I think was certainly considering  
8 his situation by -- and feeling that I'm being  
9 reasonable and fair in saying 10:00 and 11:00.

10 MEMBER JONES: Fair enough. You  
11 actually kind of anticipated my next question.  
12 So I'm going to ask, did you arrive at this  
13 number, this time also -- was the arrival --  
14 were you able to arrive, excuse me, at 10:00  
15 as a reasonable number for you based on not  
16 only your personal sense, but also based on  
17 the sentiment that you've expressed before  
18 about the nature of your personal relationship  
19 with the owner in terms of him being a good  
20 guy, him being a good establishment, him  
21 running a good business -- were you  
22 comfortable with coming to that 10:00 number

1 and a time and the 11:00 or 11:30, whatever  
2 number it was for the weekend, taking into  
3 consideration that as well?

4 MR. PATTERSON: Yes.

5 MEMBER JONES: Okay. That being  
6 said, do you have a reason to believe that you  
7 -- if given an opportunity, that the owner  
8 would take steps to address your concern? If  
9 given the opportunity to operate beyond 10:00  
10 to operate up until 11:00 or up until 12:00,  
11 as he's requested, do you have reason to  
12 believe that he wouldn't take the necessary  
13 steps in order to work with you to find a  
14 reasonable, happy, settled medium that you  
15 both could live with? Now, I'm not saying  
16 that he could achieve it. I just want to know  
17 do you have reason to believe that he wouldn't  
18 be willing to work with you to get to that  
19 point?

20 MR. PATTERSON: I don't know what  
21 he could do, but if you're asking do I think  
22 that he's open-minded and fair and reasonable,

1 I do.

2 MEMBER JONES: Yes, that's kind of  
3 what I'm asking.

4 MR. PATTERSON: I think he's fair  
5 and reasonable and I think I'm fair and  
6 reasonable. I just think we haven't found a  
7 -- we weren't able on our own to find --

8 MEMBER JONES: Find a fair and  
9 reasonable happy medium.

10 (Laughter.)

11 MEMBER JONES: So I guess the last  
12 question here is related to the time -- and  
13 this is purely me speaking, so please don't  
14 think beyond this, but let's say there's a  
15 trial period where he said, okay, we hear you.  
16 We understand that if we were living in the  
17 same place that you're living in right now, it  
18 would be tough. So we'll go with the 10:00.  
19 But we're going to go with 10:00 as a trial  
20 period. We're going to evaluate that. And  
21 after six months we want to see you again and  
22 we want to get your feedback on the six -- is

1 the 10:00 -- is he being a good operator? Is  
2 he working well? If you came back in this  
3 hypothetical scenario, which I know is huge  
4 extrapolation, but just bear with me on this  
5 -- come back at 10:00 after that six months  
6 and you're like, man, he was a great operator.  
7 He mitigated the noise to the point where it  
8 was no worse than before he had the outdoor  
9 patio. Would you then even consider going to  
10 12:00, or are you just dead set on 10:00 no  
11 matter what?

12 MR. PATTERSON: I don't see --  
13 knowing the noise levels that are generated by  
14 two or three people out there in terms of  
15 smokers currently, I don't see how -- I don't  
16 think there's anything I could do within his  
17 power to keep noise levels down to a  
18 reasonable level when you're seating 32 people  
19 outside unless it's going to be like quiet  
20 time dinner and people aren't speaking.

21 MEMBER JONES: Right.

22 MR. PATTERSON: So I -- while I

1 want to say, you know, yes, I'd be open to a  
2 trial period, I just don't see how that  
3 hypothetical situation could ever be.

4 MEMBER JONES: So I'll paint a  
5 picture for you. So my challenge today is  
6 you've made some effort to present a case  
7 about other establishments are different from  
8 this establishment because of some of  
9 structural, the architectural differences that  
10 exist between the two. Right? So there's  
11 distance set off. There's also concrete walls  
12 that are in place. You've also made reference  
13 to other establishments that have coverings  
14 and things of that nature.

15 So and you're saying -- what I got  
16 from the case that you're presenting to some  
17 degree is that these things make a difference,  
18 that these things help to keep down the noise  
19 from these outdoor seating arrangements. And  
20 therefore because Duffy's does not, I know  
21 Duffy's is going to be a problem because of  
22 this difference. Am I characterizing

1 appropriately part of what it is that you've  
2 been presenting?

3 MR. PATTERSON: I think it's  
4 science that distance reduces noise and so do  
5 barriers such as walls.

6 MEMBER JONES: Right. So you're  
7 pointing to facts.

8 MR. PATTERSON: Yes, so that's why  
9 I think this is a different situation and why  
10 it will be a problem.

11 MEMBER JONES: So my question is  
12 you're saying you think it's impossible. I'm  
13 saying to you I don't know that it is based on  
14 the same evidence that you're presenting to me  
15 as a reason why these things are different.  
16 What if he was able to make the necessary  
17 changes to accommodate that? Not saying that  
18 he's willing to. Not saying that he's going  
19 to. But you're telling me that you don't even  
20 think it's possible. And I'm trying to figure  
21 out if it is possible, which you presented  
22 evidence to the fact that it could be

1 possible, would you consider it, or are you  
2 dead set on 10:00 regardless of what  
3 transpires?

4 MR. PATTERSON: Well, I will say  
5 when you y these other establishments that  
6 have walls and/or partial roofs, you can still  
7 hear them quite well. You know, those things  
8 reduce the noise, but it's still very loud.  
9 So I don't believe that something could be  
10 done to keep the noise levels to where they  
11 currently are. If that were somehow possible,  
12 absolutely I would be okay with that. The  
13 concern is just the noise, not anything else.

14 MEMBER JONES: Okay. Fair enough.  
15 Thank you.

16 Thank you, Madam Chair.

17 MEMBER SILVERSTEIN: You're  
18 welcome. Could you just tell me what's above  
19 Duffy's Pub? I'm looking at Applicant's  
20 Exhibit 4. There are windows up above. Are  
21 they residents or offices? Do you know?

22 MR. PATTERSON: It's actually a

1 bar called VeraCruz.

2 CHAIRPERSON MILLER: Oh, VeraCruz  
3 is up above?

4 MR. PATTERSON: Yes.

5 CHAIRPERSON MILLER: Oh, okay.  
6 Thank you. Now the pictures that you took,  
7 specifically 4 -- I can't remember, is there  
8 a 5.

9 MEMBER ALBERTI: Four and five,  
10 yes.

11 CHAIRPERSON MILLER: Four and  
12 five?

13 MEMBER ALBERTI: Here's 4 and 5.  
14 They haven't been admitted yet.

15 CHAIRPERSON MILLER: No. Thank  
16 you. You took the pictures?

17 MR. PATTERSON: I actually  
18 downloaded them from Google.

19 CHAIRPERSON MILLER: Oh, okay.  
20 And do you know what day you did it?

21 MR. PATTERSON: Actually, I'm  
22 sorry, I took the picture in Exhibit 3.

1 CHAIRPERSON MILLER: Okay.

2 MR. PATTERSON: I downloaded the  
3 picture in Exhibit 4 and Exhibit 5.

4 CHAIRPERSON MILLER: Okay. You  
5 downloaded it? Okay. Do you know what day  
6 you did it? What month? What week?

7 MR. PATTERSON: It's all been  
8 within the last four days.

9 CHAIRPERSON MILLER: Okay. And  
10 you don't know exactly what time of day  
11 they're supposed to depict, or what season, or  
12 anything like that? I mean we know it's not  
13 -- I mean we see the trees with leaves, but  
14 there are not tables and chairs out or people  
15 there, so --

16 MR. PATTERSON: The photo in  
17 Exhibit No. 3 was taken in the early evening  
18 hours.

19 CHAIRPERSON MILLER: Okay. But  
20 there are no tables and chairs set up there?

21 MR. PATTERSON: It was cool then.

22 CHAIRPERSON MILLER: Cool? Okay.

1       So I think one of the ideas or concepts that  
2       you drew our attention to are there are  
3       certain walls between the properties, between  
4       the outdoor caf, and the residents. Is that  
5       something that would mitigate your concern, or  
6       not? Is that something we should -- you want  
7       the Board to consider? We talked about  
8       plantings to buffer noise. And so I'm  
9       wondering, you know, if there's something --  
10      you know, you're bringing our attention to  
11      this wall for any reason in particular.

12                   MR. PATTERSON:  Simply because I  
13      think it helps to reduce the noise, although  
14      I don't think that it makes -- I doubt that it  
15      would make a substantial difference.

16                   CHAIRPERSON MILLER:  Okay.  So I  
17      take that to mean even if they did that, you  
18      still wouldn't them to operate outside until  
19      midnight.

20                   MR. PATTERSON:  No.

21                   CHAIRPERSON MILLER:  Okay.  But do  
22      you think that it would improve it, or not

1 really?

2 MR. PATTERSON: I think it might  
3 improve it some.

4 CHAIRPERSON MILLER: Okay. Are  
5 you moving because of the noise from Duffy's  
6 now?

7 MR. PATTERSON: Not because of the  
8 noise currently, no, but one of the reasons  
9 we're moving is the prospect of more noise.

10 CHAIRPERSON MILLER: So did you  
11 decide to move after you heard about the  
12 outdoor caf,?

13 MR. PATTERSON: Yes.

14 CHAIRPERSON MILLER: And has the  
15 value of your house gone up or down since you  
16 bought it?

17 MR. PATTERSON: It's gone up.

18 CHAIRPERSON MILLER: Okay.

19 MR. PATTERSON: We did do some  
20 renovations to the home.

21 CHAIRPERSON MILLER: And has the  
22 neighborhood changed very much since you've

1       been there?

2                       MR. PATTERSON: I would same some.  
3       There's a few more bar/restaurants in the  
4       neighborhood than there were two years ago.

5                       CHAIRPERSON MILLER: And one other  
6       thing. When I look at your Exhibit No. 3 and  
7       I compare it to the exhibits I guess I would  
8       say, okay, that were in the record, in the  
9       investigative report and presented by  
10      Applicant, it looks to me like Rustik Tavern  
11      may be in a more residential area. I see a  
12      lot of town houses on either side, thought I  
13      can't see the other side. Is it a more  
14      residential -- well, yes, I can see a few  
15      different perspectives. Is it a more  
16      residential neighborhood?

17                      MR. PATTERSON: There's certainly  
18      more single-family homes in close proximity to  
19      it, yes.

20                      CHAIRPERSON MILLER: Okay. Right.  
21      That's what I should say, because there are  
22      the big condos in your neighborhood.

1 MR. PATTERSON: And, you know,  
2 we're kind of on the fringe of a very  
3 commercial part of the neighborhood and a very  
4 residential part of the neighborhood.

5 CHAIRPERSON MILLER: Okay.

6 MR. PATTERSON: And Rustik Tavern  
7 incidently is to some degree as well because  
8 it's right off of Rhode Island Avenue, which  
9 is a very busy road, and there's another  
10 retail on both corners across from it.

11 CHAIRPERSON MILLER: So when we  
12 look at Exhibit 3, where's the retail? I mean  
13 other than that little place next door that,  
14 you know, Mr. Alberti asked about?

15 MR. PATTERSON: When you look at  
16 Exhibit 3, across the street from Rustik  
17 Tavern or to the right of where I'm standing  
18 when I take the photo, there's --

19 MR. TANGNEY: It's the one that  
20 just got the best wings. Sorry, Andy.

21 MR. KLINE: Objection.

22 CHAIRPERSON MILLER: Oh, no, no.

1 Yes, you can't coach the witness. I'm sorry.  
2 I'm just asking the witness, but thank you.  
3 It's getting late, yes.

4 MR. PATTERSON: I'm sorry, I don't  
5 recall what's there.

6 CHAIRPERSON MILLER: Okay.

7 MR. PATTERSON: Across Rhode  
8 Island there's a restaurant called Windows, I  
9 believe.

10 CHAIRPERSON MILLER: Okay. All  
11 right. Thank you very much.

12 CHAIRPERSON MILLER: Board  
13 questions? Any follow up on Board questions?

14 MR. KLINE: Yes. Mr. Patterson,  
15 the pictures that you downloaded from Google,  
16 you don't know when they were taken, do you?

17 MR. PATTERSON: No.

18 MR. KLINE: You did take one of  
19 these pictures, correct, Exhibit 3?

20 MR. PATTERSON: Correct.

21 MR. KLINE: But this was taken  
22 recently, correct?

1 MR. PATTERSON: Exhibit 3?

2 MR. KLINE: Yes.

3 MR. PATTERSON: Yes.

4 MR. KLINE: So you don't have any  
5 idea really what the conditions and  
6 circumstances were back when this voluntary  
7 agreement was entered into in 2008, do you?

8 MR. PATTERSON: I know the area  
9 and I don't think they were different at that  
10 time.

11 MR. KLINE: But you've testified  
12 concerning various businesses and have come in  
13 I believe in an effort to show that the  
14 neighborhood is more commercial. Those may or  
15 may not have existed back in 2008, correct?

16 MR. PATTERSON: The one across the  
17 street most definitely did exist. I'm not  
18 sure about the others.

19 MR. KLINE: Okay. Now VeraCruz is  
20 the establishment above Duffy's?

21 MR. PATTERSON: Correct.

22 MR. KLINE: That operates pretty

1 much as a nightclub, correct?

2 MR. PATTERSON: It's strange.  
3 They portray themselves as an art gallery, but  
4 they serve beer and alcohol. They sometimes  
5 play loud music. They sometimes throw large  
6 parties. Sometimes they have poetry reading.  
7 They have comedians. It's all over the place.

8 MR. KLINE: That's not anything  
9 that you would find above Rustik Tavern, is  
10 it?

11 MR. PATTERSON: I don't think  
12 there's an establishment like that above  
13 Rustik Tavern.

14 MR. KLINE: In fact you wouldn't  
15 find anything like that on that block, would  
16 you, where Rustik Tavern is located?

17 MR. PATTERSON: There's a bar that  
18 stays open late hours on the very next block.

19 MR. KLINE: Okay. But not on the  
20 block where Rustik Tavern is located, correct?

21 MR. PATTERSON: Correct.

22 MR. KLINE: And there's no 24-hour

1 service station across the street from Rustik  
2 Tavern, is there?

3 MR. PATTERSON: No.

4 MR. KLINE: And the number one  
5 concert facility in the world is not a block  
6 from Rustik Tavern, is it?

7 MR. PATTERSON: No.

8 MR. KLINE: So in fact the  
9 character of the neighborhood is quite  
10 different, isn't it?

11 MR. PATTERSON: I would disagree  
12 with that. I think it's similar. And I think  
13 the fact that it's between two residential  
14 houses in the same.

15 MR. KLINE: Regardless of what  
16 else might be in the neighborhood, your  
17 position if it's between two residential  
18 houses, then that makes it the same set of  
19 circumstances?

20 MR. PATTERSON: I think this is  
21 much more similar than comparing Brixton's or  
22 Nellie's which are on a very commercial part

1 of U Street.

2 MR. KLINE: Now you've indicated  
3 that one of the reasons that you're selling is  
4 because of this projected outside patio,  
5 correct?

6 MR. PATTERSON: Correct.

7 MR. KLINE: All right. And you've  
8 also indicated that the buyer, that it may not  
9 close, it seems sort of speculative as to  
10 whether it's going to close. How much is the  
11 earnest money deposit that's up?

12 MR. PATTERSON: I actually don't  
13 recall for sure, but I think it's 20,000.

14 MR. KLINE: All right. So if the  
15 buyer doesn't close and they don't have any  
16 excuse for not closing, then they stand to  
17 lose \$20,000?

18 MR. PATTERSON: Correct.

19 MR. KLINE: All right. And  
20 certainly you qualified the buyer when you  
21 accepted the offer and have an expectation  
22 that the transaction is going to close,

1 correct?

2 MR. PATTERSON: (No audible  
3 response.)

4 MR. KLINE: So the chances are  
5 better than even --

6 CHAIRPERSON MILLER: You want to  
7 ask him?

8 MEMBER ALBERTI: Yes. Mr. Kline,  
9 where are you going with this? What's the  
10 relevancy for this hearing?

11 MR. KLINE: I'm following up on  
12 your questions actually, Mr. Alberti.

13 MEMBER ALBERTI: No, I was  
14 following up on questions about his openness  
15 with the buyer. I was not going to the  
16 details of the transaction. I don't  
17 understand the relevancy of the details of the  
18 transaction to this hearing.

19 MEMBER JONES: Board Member, there  
20 were some questions that I asked that this  
21 kind of related to.

22 MEMBER ALBERTI: Okay. Fine.

1 Fine. In the interest of time I'll withdraw.

2 Please go ahead. Go ahead.

3 MR. KLINE: All right. So it's  
4 likely that this transaction is going to close  
5 and you'll be gone from this property,  
6 correct?

7 MR. PATTERSON: Correct.

8 MR. KLINE: All right. Now you  
9 said that knowing the noise is generated by  
10 two to three smokers in front of Duffy's,  
11 you're doubtful that anything could be done in  
12 response to mitigate that noise even now  
13 without the sidewalk caf,, correct?

14 MR. PATTERSON: No, my statement  
15 was when you go from 3 people to 32 people,  
16 the anticipated noise that that would  
17 generate, I don't think there's anything that  
18 could be done to mitigate that.

19 MR. KLINE: Didn't you also say  
20 knowing how much noise is generated by two to  
21 three smokers?

22 MR. PATTERSON: I said --

1 MR. KLINE: That that was a  
2 concern?

3 MR. PATTERSON: I said knowing how  
4 much is generated by two to three smokers, I  
5 don't think anything could be done to mitigate  
6 the noise of 32 people.

7 MR. KLINE: All right. But the  
8 fact of the matter is you've never approached  
9 Mr. Duffy about doing anything with respect to  
10 noise from two or three smokers, have you?

11 MR. PATTERSON: I have not asked,  
12 no.

13 MR. KLINE: So you don't really  
14 know with respect to the two to three smokers  
15 what he might be able to do that might be  
16 effective in addressing the issues you might  
17 have with respect to noise from those two to  
18 three smokers?

19 MR. PATTERSON: I'm sorry, could  
20 you ask your question again?

21 MR. KLINE: Well, my question is  
22 quite simple: We've had at least one other

1 witness testify when she's seen issues within  
2 the establishment that Mr. Duffy has reacted  
3 and he's dealt with them. You have said that  
4 you've heard noise from two to three smokers.  
5 That experience causes you to be concerned  
6 about the addition of other patrons out there.  
7 And my question to you is you don't really  
8 know what could be done with respect to  
9 mitigating the noise from two to three smokers  
10 because you've never asked for that situation  
11 to be addressed, correct?

12 MR. PATTERSON: I don't want him  
13 to mitigate the noise from two to three  
14 smokers. I'm okay with the noise from two to  
15 three smokers. I think it's something I have  
16 to accept living there. It's no different  
17 than two or three people who happen to walk by  
18 going from the bar to their house. My concern  
19 is 32 people constantly out there and the  
20 noise that that would generate. And I don't  
21 see anything that you could do to eliminate  
22 that noise short of asking everyone not to

1 have conversations while they dine and drink.

2 MR. KLINE: All right. But in  
3 terms of what you're going to hear, that's  
4 completely speculative at this point, correct?

5 MR. PATTERSON: Well, I think it's  
6 reasonable for me to know what kind of noise  
7 is generated by people eating and drinking at  
8 an outdoor patio when I go to them often.

9 MR. KLINE: Now in terms of the  
10 acceptable closing hour, I think you said that  
11 it was your opinion that any number of hours  
12 that were allowed for Mr. Duffy to operate his  
13 sidewalk caf, would be helpful in terms of  
14 generating revenue, correct?

15 MR. PATTERSON: Correct.

16 MR. KLINE: All right. But the  
17 converse is also true, isn't it? He  
18 originally applied until 2:00 and 3:00,  
19 correct?

20 MR. PATTERSON: That's my  
21 understanding.

22 MR. KLINE: All right. So any

1 hours that he cut back from 2:00 and 3:00  
2 would be helpful in mitigating your concerns  
3 about noise as well, correct?

4 MR. PATTERSON: Sure.

5 MR. KLINE: So it's really two  
6 sides of the same coin, isn't it? The issue  
7 is in your neighborhood where you live in that  
8 location what is a reasonable hour for an  
9 establishment to close its outside seating.  
10 Isn't that really what we're dealing with in  
11 this case?

12 MR. PATTERSON: An establishment  
13 between two residences.

14 MR. KLINE: All right. And would  
15 you add to that an establishment between two  
16 residences across the street from a 24-hour  
17 service station? Or is it your position that  
18 that has no bearing on what should be done at  
19 this particular location?

20 MR. PATTERSON: I think the  
21 general context of the neighborhood has some  
22 bearing, but I think the more important factor

1 here is that there is houses, there are  
2 multiple houses within 100 feet.

3 MR. KLINE: And aren't there also  
4 multiple condominium units?

5 MR. PATTERSON: Not within 100  
6 feet, but in the proximity, yes.

7 MR. KLINE: And don't those  
8 residents who desire places to go out and sit  
9 outside need to be taken into consideration as  
10 to what's an acceptable hour?

11 MR. PATTERSON: I think -- I like  
12 to go sit outside and dine as well. I  
13 question whether people need to eat dinner at  
14 -- or that people even do eat dinner at 11:00  
15 and 12:00 at night. I think at that point  
16 they're drinking.

17 MR. KLINE: So it's your position  
18 that people are not finishing dinner at 11:00  
19 and 12:00 at night?

20 MR. PATTERSON: I think most  
21 people eat dinner at 6:00, 7:00, 8:00 at  
22 night.

1 MR. KLINE: And in your  
2 neighborhood it's your position that most  
3 people eat dinner at those hours?

4 MR. PATTERSON: Yes.

5 MR. KLINE: Okay. Thank you. I  
6 don't have any further questions.

7 CHAIRPERSON MILLER: Okay. Thank  
8 you for your questioning. Do you still want  
9 to move in Exhibits 4 and 5?

10 MR. PATTERSON: I would like to.

11 CHAIRPERSON MILLER: Okay. Mr.  
12 Kline, are you still objecting to them?

13 MR. KLINE: Yes.

14 CHAIRPERSON MILLER: On the basis  
15 that?

16 MR. KLINE: On the basis of  
17 relevance, on the basis of the fact that the  
18 photos are out of time when the voluntary  
19 agreement was entered into, on the basis of  
20 the fact that it represents a voluntary  
21 agreement between two parties, one of which  
22 was --

1                   MEMBER ALBERTI: Mr. Kline, we're  
2 talking about the two photos. We've already  
3 accepted the voluntary agreement.

4                   MR. KLINE: Well, then that's my  
5 objection to the photos.

6                   CHAIRPERSON MILLER: Okay.

7                   MEMBER ALBERTI: Just trying to  
8 tighten this up.

9                   MR. KLINE: Understood.

10                   (Laughter.)

11                   CHAIRPERSON MILLER: I think --

12                   MEMBER ALBERTI: Oh, you have 5.  
13 I don't have 5 anymore.

14                   CHAIRPERSON MILLER: I don't have  
15 4.

16                   MEMBER ALBERTI: You took it from  
17 me.

18                   CHAIRPERSON MILLER: Do you have  
19 4?

20                   MEMBER ALBERTI: You lost 4, too,  
21 huh? Here you go.

22                   CHAIRPERSON MILLER: No, here, I

1 have both of them. How about that?

2 (Laughter.)

3 CHAIRPERSON MILLER: Okay. I'm  
4 going to admit them for the weight they're  
5 worth. And there are a lot of caveats here  
6 given that they were the Google pictures, we  
7 don't know when they were taken and, you know,  
8 and with the captions. You've at least  
9 explained the captions. So that means that  
10 they're in for the weight that they are worth.

11 So, okay. Anything else? Any  
12 other exhibits? Do you rest your case?

13 MR. PATTERSON: No, I'd rest.

14 CHAIRPERSON MILLER: All right.  
15 Then now we can have closing. Do you have  
16 closing? The Applicant goes first.

17 MR. KLINE: Yes. This is a funny  
18 case. It seems like I say that in almost  
19 every opening I start here. But this is a  
20 funny case because this is the first one I can  
21 remember where the difference between the  
22 parties is actually two hours during the week

1 and an hour on the weekend. That's all we're  
2 really talking about.

3 The Protestants have conceded that  
4 it's appropriate for there to be outside  
5 seating there. The only issue left to the  
6 Board at this point is what should be the  
7 appropriate closing hour and whether there  
8 should be any other conditions with respect to  
9 the operation of the patio. I think that's  
10 what we're left with.

11 The Protestants' contention is  
12 somehow because this business is located  
13 between two residences it should be treated  
14 differently than almost all of the other  
15 businesses in the neighborhood that have  
16 outside seating. The appropriate comparison  
17 is not some business over on T Street off of  
18 North Capitol Street. The appropriate  
19 comparison are the other businesses in this  
20 neighborhood with which this Applicant  
21 competes, including one in the same square,  
22 which is American Ice.

1                   Now the Board's records will  
2                   reflect, and the Board can take administrative  
3                   notice that the hours of American Ice for  
4                   outside seating are not limited. And you  
5                   heard a witness testify that, yes, she hears  
6                   noise from American Ice. She lives right  
7                   there in the same square across the alley, but  
8                   it's her position, as well as the position of  
9                   the other witness that testified on behalf of  
10                  the Applicant, as well as the other witnesses  
11                  who testified at the last hearing for which  
12                  we've submitted the transcript and asked the  
13                  Board to take notice of, that living in this  
14                  neighborhood, people live in this neighborhood  
15                  exactly for these types of amenities. They  
16                  want to be near outside seating. They want to  
17                  be near bars and restaurants. They want to  
18                  have the ability to have dinner at 10:00 at  
19                  night.

20                   And I would have to disagree  
21                   personally with Mr. Patterson's contention  
22                   that people don't eat dinner at 10:00 at night

1 in this neighborhood. I'm not going to  
2 testify, but Mr. Duffy's establishment is open  
3 and serves food until all hours and he  
4 testified concerning people coming in before  
5 they go out. They want to have something to  
6 eat. That's what his establishment is all  
7 about. Yes, there's drinking, but there's  
8 also food. There's conviviality. There are  
9 sports screens. People watch the games. It's  
10 a gathering place. And people in urban  
11 neighborhoods, as this Board has heard and  
12 agreed with many times before, need not only  
13 inside gathering places, they need outside  
14 gathering places.

15 Now in terms of an appropriate  
16 hour, I'll rely on our absent Board Member's  
17 neighborhood. They come before you all the  
18 time, Dupont Circle, and say we have  
19 guidelines in terms of outside seating. Well  
20 their guidelines are 11:00 and 12:00. That's  
21 what this Board has seen time and time again  
22 when outside seating is to be restricted. And

1 beyond that requires some very, very unusual  
2 circumstances, which we don't have present  
3 here.

4           What we have present here is a  
5 very urban growing neighborhood with a 24-hour  
6 service station across the street with all  
7 that brings, activity with students going back  
8 to their dorms at Howard University, six or  
9 seven other establishments in the neighborhood  
10 that have outside seating. And in the middle  
11 of it is Mr. Duffy and his Duffy's Irish  
12 Restaurant that's been restricted from day one  
13 in terms of operating hours, which have now  
14 thankfully been lifted, and with respect to  
15 outside seating.

16           So we come here before you today  
17 and in doing your balancing, which you must  
18 do, our position is the weight of the policy,  
19 the weight of reasonableness is on the  
20 reasonable hours that Mr. Duffy has cut his  
21 application back to and not on the side of a  
22 sole Protestant who admittedly is leaving the

1 neighborhood within a month. Thank you.

2 CHAIRPERSON MILLER: Thank you.

3 Okay.

4 MR. PATTERSON: I think it's  
5 irrelevant that I'm moving away from the home.  
6 There's going to be -- it will continue to  
7 operate as a residence. There's a resident  
8 next door to that and one on the other side.  
9 And the only reason that they're not here  
10 today is because their protest was thrown out  
11 for a technicality.

12 MR. KLINE: I hate to object to  
13 closing, but we have none of that evidence in  
14 the record at this point.

15 MEMBER ALBERTI: Right. And it  
16 just doesn't --

17 MR. KLINE: Okay.

18 MR. PATTERSON: I do agree that  
19 people live in this neighborhood because they  
20 want to live near these types of  
21 establishments, but I don't think anybody  
22 wants to live next door to one. Most of the

1 retail and restaurants are centralized along  
2 U Street and not scattered throughout the  
3 neighborhood. That's good urban planning. So  
4 I do think this is a very unique situation,  
5 unlike any of the other establishments in the  
6 neighborhood or any of the establishments in  
7 other neighborhoods.

8                   We keep referring to American Ice  
9 and their hours, but again it's not adjacent  
10 to a house and, as the Applicant's witness  
11 testified, it's surrounded by seven-foot high  
12 walls on all sides and a partial roof  
13 enclosure which helps to mitigate the noise to  
14 the neighborhood.

15                   So, you know, again as he stated,  
16 it's really just trying to strike a balance  
17 and it's just a matter of where you define a  
18 fair time to both the people who live in the  
19 neighborhood and the business owner. And I  
20 think it's reasonable that people want to go  
21 to bed at 10:00 at night during the week when  
22 they have to get up early in the morning. And

1 so I think 10:00 during the week is more than  
2 reasonable and 11:00 on weekends. That's all.  
3 Thank you.

4 CHAIRPERSON MILLER: Okay. I  
5 think you all have moved in the exhibits you  
6 want to move in, so I'm going to close the  
7 record except for Protestant's response or  
8 objections as we discussed to the April 6th,  
9 2011 transcript regarding -- I have a case 10-  
10 PRO-00185.

11 MR. KLINE: Right.

12 CHAIRPERSON MILLER: Okay. And in  
13 particular look to pages 12 through 23, 60  
14 through 75, 77 through 97, and 100 through  
15 103. As I said, the Protestants may have 14  
16 days from today to submit any objections that  
17 we talked about and then if necessary the  
18 Applicant will have seven days to respond.

19 Now one more question; and that  
20 is, do the parties wish to file proposed  
21 findings of fact and conclusions of law, or  
22 waive the right to do so? And I can explain

1       that a little bit.

2                       That means that we're going to  
3       have a transcript available of this hearing  
4       which is going to reflect all the testimony  
5       and everything that we've said here basically.  
6       And the record will then be complete with your  
7       filing and the exhibits.   So then parties  
8       could file a written brief within 30 days of  
9       that as they chose to identifying the findings  
10      of facts to support their particular cases and  
11      then drawing conclusions of law for the Board  
12      to look to when we make our decision and then  
13      write it.

14                     It's rarely invoked, but it is a  
15      right that you can if you so choose to.

16      Understood?

17                     MR. PATTERSON:   And I'll decline.

18                     MR. KLINE:     As will we.

19                     CHAIRPERSON MILLER:   Okay.   Most  
20      people do decline, but okay.   So parties have  
21      declined.   Okay.   So therefore, we will then  
22      have a written decision for you within 90 days

1 after we receive the files.

2 Okay. So that concludes this  
3 hearing. We're going to take a vote about  
4 deliberating in executive session, but you  
5 don't have to stay for that if you don't want  
6 to. You can if you do.

7 All right. Any questions?

8 MR. PATTERSON: No. Thank you.

9 MR. KLINE: No. Thank you for --

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: -- again staying late.

12 MEMBER ALBERTI: Thank you.

13 CHAIRPERSON MILLER: Okay. As the  
14 Chairperson of the Alcoholic Beverage Control  
15 Board for the District of Columbia and in  
16 accordance with Section 405 of Open Meetings  
17 Amendment Act of 2010, I move that the ABC  
18 Board hold a closed meeting for the purpose of  
19 seeking legal advice from your counsel on Case  
20 No. 13-PRO-00004, Duffy's Irish Restaurant,  
21 per Section 405(b)(4) of the Open Meetings  
22 Amendment Act of 2010 and deliberating upon

1 this case for the reasons cited in Section  
2 405(b)(13) of Open Meetings Amendment Act of  
3 2010. Do I have a second?

4 MEMBER ALBERTI: Second.

5 CHAIRPERSON MILLER: Mr. Alberti  
6 has seconded the motion. I'll now take a roll  
7 call vote on the motion now that it's been  
8 seconded. Mr. Alberti?

9 MEMBER ALBERTI: I agree.

10 CHAIRPERSON MILLER: Ms. Miller  
11 agrees. Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: Okay. It  
14 appears that the motion has passed by a vote  
15 or 3-0-0. I hereby give notice that the ABC  
16 Board will hold a closed meeting in the ABC  
17 Board conference room after receiving the  
18 pleadings from the parties and pursuant to the  
19 Open Meetings Amendment Act of 2010 and issue  
20 an order within 90 days from that last  
21 pleading.

22 Okay. So that concludes all of

1 our matters before us for April 24th except  
2 for reading and taking votes on closed meeting  
3 for our agenda and investigative reports.

4 Okay. As Chairperson of the  
5 Alcoholic Beverage Control Board for the  
6 District of Columbia and in accordance with  
7 Section 405 of the Open Meetings Amendment Act  
8 of 2010, I move that the ABC Board hold a  
9 closed meeting on May 1st, 2013 for the  
10 purpose of seeking legal advice from our  
11 counsel on the matters identified in the  
12 Board's agenda for May 1st, 24, 2013, as  
13 published in the D.C. Register on April 26th,  
14 2013. Is there a second?

15 MEMBER ALBERTI: Second.

16 CHAIRPERSON MILLER: Mr. Alberti  
17 has seconded the motion. I'll now take a roll  
18 call vote on the motion. Mr. Alberti?

19 MEMBER ALBERTI: I agree.

20 CHAIRPERSON MILLER: Ms. Miller  
21 agrees. Mrs. Jones?

22 MEMBER JONES: Mr. Jones agrees.

1 CHAIRPERSON MILLER: Isn't that  
2 what I said?

3 MEMBER ALBERTI: Yes.

4 CHAIRPERSON MILLER: Okay. Good.  
5 As it appears the motion has passed by a vote  
6 of 3-0-0, I hereby give notice that the ABC  
7 Board will hold this aforementioned closed  
8 meeting pursuant to the Open Meetings  
9 Amendment Act of 2010. Notice will also be  
10 posted on the ABC Board hearing room bulletin  
11 board, placed on the electronic calendar on  
12 ABRA's Web site and published in the D.C.  
13 Register in as timely a manner as practicable.

14 As Chairperson of the Alcoholic  
15 Beverage Control Board for the District of  
16 Columbia and in accordance with Section 405 of  
17 the Open Meetings Amendment Act of 2010, I  
18 move that the ABC Board hold a closed meeting  
19 on May 1st, 2013 for the purpose of discussing  
20 and hearing reports concerning ongoing or  
21 planned investigations of alleged criminal or  
22 civil misconduct or violations of law or

1 regulations and seeking legal advice from our  
2 counsel on the Board's investigative agenda  
3 for May 1st, 2013 as published in the D.C.  
4 Register on April 26th, 2013. Is there a  
5 second?

6 MEMBER ALBERTI: Second.

7 CHAIRPERSON MILLER: Mr. Alberti  
8 has seconded the motion. I'll now take a roll  
9 call. Mr. Alberti?

10 MEMBER ALBERTI: I agree.

11 CHAIRPERSON MILLER: Ms. Miller  
12 agrees. Mr. Jones?

13 MEMBER JONES: I agree.

14 CHAIRPERSON MILLER: It appears  
15 that the motion has passed by a 3-0-0 vote.  
16 I hereby give notice that the ABC Board will  
17 hold this aforementioned closed meeting  
18 pursuant to the Open Meetings Amendment Act of  
19 2010. Notice will also be posted on the ABC  
20 Board hearing room bulletin board, placed on  
21 the electronic calendar on ABRA's Web site and  
22 published in the D.C. Register in as timely a

1 manner as practicable.

2 And that does now conclude all  
3 business before the Board for April 24th,  
4 2013, and we're adjourned. Thank you.

5 (Whereupon, the hearing was  
6 concluded at 8:00 p.m.)

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