

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
Pennsylvania Rail, Inc. :
t/a Remington's :
639 Pennsylvania Avenue, SE : Fact Finding
Retailer CN : Hearing
License No. 9238 :
Case No. 11-CMP-00476 :
ANC 6B :
Substantial Change (Expansion):
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JUNE 20, 2012

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
- DONALD BROOKS, Member
- CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

FELICIA MARTIN, ABRA

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

9:49 a.m.

CHAIRPERSON MILLER: The next case on our calendar is 11-CMP-00476, Remington's. Okay. We're going to pass this one and come back to it.

(Whereupon, at 9:49 a.m. off the record until 9:51 a.m.)

CHAIRPERSON MILLER: Then we can go back to Remington's. Are the parties here on the Remington's case, Case No. 11-CMP-00476, License No. 9238 in ANC 6B. And this is a fact finding hearing.

And would you identify yourselves for the record when you're ready? I guess we can start with our investigator.

INVESTIGATOR MARTIN: Good morning. Investigator Felicia Martin with ABRA.

CHAIRPERSON MILLER: Okay.

MR. FONSECA: Michael Fonseca on behalf of the Licensee. With me is its

1 principal.

2 MR. BOGAEU: I'm Doug Bogaeu.

3 MR. FONSECA: Spell that.

4 MR. BOGAEU: B-O-G-A-E-U.

5 CHAIRPERSON MILLER: Okay. So
6 this is a fact finding hearing. We're here to
7 hear about what has been happening with
8 getting your Certificate of Occupancy. Did I
9 understand that correctly?

10 MR. FONSECA: That is correct.

11 INVESTIGATOR MARTIN: Yes.

12 MR. FONSECA: I don't know if the
13 investigator has anything to say.

14 INVESTIGATOR MARTIN: I do.

15 CHAIRPERSON MILLER: You do?

16 INVESTIGATOR MARTIN: I do recall
17 this case being heard sometime last year in
18 reference to everything that I documented in
19 my report, however, for some reason I think
20 this probably should be a status hearing. The
21 former -- not former, but the representative
22 who spoke on that hearing was supposed to

1 update the Board on the status of getting the
2 Certificate of Occupancy in line. So I didn't
3 believe there should be a hearing today.

4 CHAIRPERSON MILLER: Well, we're
5 gathering the facts to find out just where are
6 they with this Certificate of Occupancy --

7 INVESTIGATOR MARTIN: Okay.

8 CHAIRPERSON MILLER: -- basically
9 because we need to tie this up.

10 INVESTIGATOR MARTIN: Okay.

11 CHAIRPERSON MILLER: Apparently it
12 hasn't been obtained yet.

13 MR. FONSECA: That's correct.

14 Ma'am, if I may, this actually wasn't last
15 year. I believe the original matter came up
16 in February, 2012. And I'm going to document
17 what I consider -- and if you'll give me a
18 little while, a little time --

19 CHAIRPERSON MILLER: Mr. Fonseca,
20 let me just say one thing. Ms. Martin, you
21 don't have to stay in this hearing unless you
22 want to. I think what we're going to be

1 getting is information from them about what's
2 been happening with the stairway and their
3 Certificate of Occupancy. But if you'd like
4 to, you're welcome to.

5 INVESTIGATOR MARTIN: Yes, ma'am.

6 CHAIRPERSON MILLER: That's
7 basically going to be the focus of the
8 hearing.

9 INVESTIGATOR MARTIN: Okay. Yes,
10 ma'am. I'll stay.

11 CHAIRPERSON MILLER: Okay.

12 INVESTIGATOR MARTIN: Okay.

13 MR. FONSECA: If I may ask Ms.
14 Walker to step down here so I can give the
15 Board some documents and the Board will take
16 them each as a packet. I'd like to discuss
17 them in their order that they are, but each is
18 enough for -- there aren't six members. I
19 believe there are six copies there.

20 Just by way of a preliminary
21 matter, this is a nightmare of an attempt to
22 see if we could find the records in the

1 Department of Consumer and Regulatory Affairs.

2 I believe even Member Alberti has known that
3 the common wall was opened going back a long
4 time ago. We've confirmed this.

5 In the documents you'll begin to
6 see, because I'm going to show you a picture
7 of what's clearly documented and where we end
8 up with what I consider to be -- and I have a
9 plausible explanation, but it's not one I can
10 confirm, that the record keeping -- when DCRA
11 was getting closer to moving from Chinatown,
12 614 H to 920 -- it was 920, right, Capitol
13 Street, I believe -- they started a process of
14 transmitting millions of documents to Texas
15 for scanning and for electronic record
16 keeping. And there was a lot of lost
17 information to get to the conclusion where we
18 really are, and that we have not been able to
19 find the building permit or the Certificate of
20 Occupancy, much less the drawings which I'm
21 going to show you -- were reviewed in the
22 process. We went through to the point of even

1 dealing with the chief building inspector,
2 which normally only happens after a building
3 permit is in the system.

4 So first is a surveyor's plat that
5 shows -- and I confirmed there's a larger
6 document that shows there was a subdivision of
7 a lot so that the two addresses were merged
8 and then this plat that you see shows the
9 actual opening of the wall some 27 feet. And
10 that was recorded in the -- you know, by the
11 Surveyor's Office back in March of 1993, or it
12 was -- excuse me, it was February of '93.
13 Then in close --

14 CHAIRPERSON MILLER: I'm sorry,
15 could you just clarify? You're saying
16 February '93 the lot was subdivided?

17 MR. FONSECA: Approximately.

18 CHAIRPERSON MILLER: Okay.

19 MR. FONSECA: It may have been
20 approved in March. That's a larger document
21 that I -- I can get you the date, but frankly,
22 to be honest with you, the material this is

1 made out of and because of my lung disease,
2 frankly, as I handled it, I get very short of
3 breath and I just was not going to fool around
4 with it anymore. September of 1993 it was --
5 I'm sorry, Office of Surveyor, March 12, 1993
6 was when this was subdivided and it became
7 Square 874. And it is now lot -- and you'll
8 note it has the lot site per sub on this
9 surveyor's plat up at the top. On the first
10 line it has Square 874, lot site per new sub,
11 which is subdivision. And that's now the
12 subdivided lot.

13 MEMBER ALBERTI: Mr. Fonseca, when
14 you say subdivided, I mean, it looks like it
15 was two lots put together.

16 MR. FONSECA: That is correct.
17 When they --

18 MEMBER ALBERTI: When they say
19 subdivided --

20 MR. FONSECA: It's still called a
21 subdivision, but it's really a merger of the
22 lots --

1 MEMBER ALBERTI: I understand. So
2 if I understand --

3 MR. FONSECA: -- into a new lot
4 number.

5 MEMBER ALBERTI: Okay. Very good.

6 MR. FONSECA: That's --

7 MEMBER ALBERTI: I just wanted to
8 clear that up. Right.

9 MR. FONSECA: They still use the
10 same terminology, but that's -- you're right
11 to catch that.

12 MEMBER ALBERTI: Right.

13 MR. FONSECA: It is a little bit
14 confusing.

15 MEMBER ALBERTI: Thank you.

16 MR. FONSECA: So then we have
17 drawings, detailed drawings, again that I just
18 did not bring in to prepare -- you know, have
19 conversations with you as I unrolled them.

20 But what the next set of
21 documents, which are four pages, are the
22 initial reviews which occurred on March 17 and

1 March 18 with M. Ali being Muhammad Ali, the
2 former electrical plans reviewer and his
3 comments on the drawings. The second page
4 being Mr. Ravi Shanker, who was the mechanical
5 plumbing person who now has the permitting
6 part of the office, with his comments. And
7 then Aji Pon, who was the structure engineer
8 being the third. And then the fire reviewer
9 was Mr. Lanier, who did reviews in support.
10 So the drawings that we have copies of, which
11 are very detailed, got initial comments. And
12 all of these do indicate the job number. It
13 was a walk-through, so it doesn't have a
14 building permit number yet.

15 Then we get this disconnect that
16 makes absolutely no sense, because the last
17 document is the letter from the architect and
18 engineer; and the drawings are stamped by him
19 as the engineer and architect of record,
20 reaching out to Denzel Ford, who was the
21 deputy administrator at the time. This is
22 January 20, 1995. So here a year-and-a-half

1 later we've got -- and then also Vincent Ford,
2 who was the chief building inspector at the
3 time. And seeking a meeting inspection and
4 closing four sets of plans that were -- you
5 know, it was pursuant to their meeting. They,
6 you know, developed these set of plans.

7 And I can't connect a set of plans
8 that have a date that would be after the '93
9 set of drawings that we have a copy of. His
10 former partner, who passed away, Steven Smith,
11 you know, just was a pack rat. He kept
12 everything. That's just what's so bizarre.

13 But even here the discussion then
14 is, you know, with what we have to do now, you
15 know, we'll estimate we'll complete it in two
16 months and we're requesting a CO in an interim
17 period until construction is completed to get
18 a permit.

19 Now as a result of this, I advised
20 Mr. Bogaeu to -- and knowing Vince Ford so
21 well, let's hire Vince because he's now a
22 third party inspector and he also is an

1 expediter. And he did everything he could
2 including going to the archives. Cannot find
3 a building permit. Cannot find the stamped
4 permit drawings. And I just -- the only thing
5 I can think of to get to where you have this
6 architect of record having given them a set of
7 drawings should have been what we would call
8 supplementals to file permit drawings. That's
9 where I think the paper trail doesn't add up
10 because we can't find those permits.

11 Where does that leave us? The
12 absolute misfortune now is we need more time
13 to pay an architect to do new drawings to now
14 conform to the 2012 Building Code, which not
15 only the drawing's going to cost a lot, but
16 there's great fear and trepidation that a
17 Capitol Hill location that before would have
18 been approved under the Building Code
19 provisions back in '94-'95 is going to have a
20 much more onerous burden. We'll only find out
21 once we get the architect to do the drawings
22 and go back through Plans Review and effect

1 start all over. Get a building permit for as-
2 completed work and finish the process.

3 This is not out of the ordinary.
4 It's not extraordinary. Every single day of
5 the week, you know, people come into
6 compliance by getting a building permit for
7 work that was done without permits. But I
8 just can't believe that permits weren't
9 gathered for this. Too much went into it for
10 it not to have happened. It just makes no
11 sense.

12 CHAIRPERSON MILLER: So what's
13 your status with DCRA?

14 MR. FONSECA: Well, at this point
15 they don't acknowledge that there's a building
16 permit because they can't find it. And, you
17 know, they don't come with us to archives, but
18 you know, I delegated it to, you know, Mr.
19 Ford and he looked through everything he could
20 find on this lot and square and the adjacent
21 lot and could not come up with anything. So
22 I don't know if we could ask for a minimum of

1 another 90 days, just try to plow through this
2 and unfortunately the Licensee's going to just
3 have to go through a significant, you know,
4 financial cost to get the drawings, get the
5 building permit and then see what may actually
6 cure to come into compliance with the current
7 Building Codes.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: I was struck by
10 your comment that this being a Capitol Hill
11 building, because I live there and know a lot
12 about the neighborhood -- but that this would
13 be particularly difficult to get building
14 permits. And why are you saying that?

15 MR. FONSECA: Well, a good example
16 would be -- my recollection as to when that
17 passed -- examples such as -- everyone's
18 grandfathered for ADA, Americans With
19 Disabilities Act. So basically --

20 MEMBER ALBERTI: Right.

21 MR. FONSECA: -- and you could
22 have those type issues. And Capitol Hill,

1 like much of D.C., -- I mean, you wouldn't
2 have to do ramps or whatnot. You're
3 automatically in compliance. So here you
4 would be -- have to deal with a number of
5 things. So I'm just not sure.

6 MEMBER ALBERTI: Oh, just the fact
7 that it's an old building?

8 MR. FONSECA: Exactly.

9 MEMBER ALBERTI: Not because it's
10 in --

11 MR. FONSECA: Yes. Well, yes.

12 MEMBER ALBERTI: Not because it's
13 in the Historic District or anything? It's
14 just because it's an old building?

15 MR. FONSECA: No, because -- yes,
16 it's an older structure.

17 MEMBER ALBERTI: Okay. I just
18 wanted --

19 MR. FONSECA: I didn't even need
20 to say the neighborhood. Because it is an
21 older structure.

22 MEMBER ALBERTI: Okay. I

1 understand.

2 CHAIRPERSON MILLER: So my
3 question is though you need to do this not
4 only to comply with ABRA's regulations, but to
5 comply with DCRA's regulations and the Zoning
6 regulations, the Building Code, etcetera,
7 right?

8 MR. FONSECA: Yes.

9 CHAIRPERSON MILLER: Okay.

10 MR. FONSECA: We have to start
11 over. I mean, just as it was -- for all
12 intents and purposes and appearance it was
13 done, you know, and contemporaneous to the
14 time, because that wall was not opened up
15 without going through --

16 CHAIRPERSON MILLER: Right.

17 MR. FONSECA: -- what they had to
18 and getting the lots combined. So it just
19 makes no sense to us.

20 And Mr. Ford just can't remember
21 -- he remembers being out there. He vividly
22 remembers it, but he just -- you know, it's

1 one of those things where it's like anything
2 else, and he's the chief building inspector.
3 He's inspected millions of buildings over
4 multiple times. But he does recall -- because
5 when they went in there, they had to point out
6 certain things. And he just doesn't remember
7 this particular architect, but he said that's
8 consistent with what would normally happen.
9 They'd come back with four sets of drawings to
10 conform with what we saw at the site
11 inspection to supplement the prior drawings,
12 you know, for the work.

13 CHAIRPERSON MILLER: The prior
14 drawings, were they in '93 or earlier?

15 MR. FONSECA: Yes.

16 CHAIRPERSON MILLER: So they were
17 '93 and so there was supplement in '95?

18 MR. FONSECA: That's what I
19 believe this is because --

20 CHAIRPERSON MILLER: That's what
21 this indicates?

22 MR. FONSECA: -- it would seem to

1 me construction had occurred which resulted in
2 inspections, which then resulted in amendments
3 that were required based on the construction
4 at that point in time, which I would think
5 construction was essentially completed.

6 CHAIRPERSON MILLER: So I assume
7 you would have checked with the architect who
8 did the '93 plans, or no?

9 MR. FONSECA: He's not around.

10 CHAIRPERSON MILLER: Architect's
11 not around anymore?

12 MR. FONSECA: Yes.

13 CHAIRPERSON MILLER: Oh, okay.
14 Okay. That's unfortunate. Yes.

15 MR. FONSECA: Yes.

16 CHAIRPERSON MILLER: Yes, Mr.
17 Nophlin?

18 MEMBER NOPHLIN: Thank you, Madam
19 Chair.

20 Let me understand this: The issue
21 is no one can find the records in terms of the
22 architect's drawings and then the

1 construction?

2 MR. FONSECA: Right.

3 MEMBER NOPHLIN: It's not on
4 record?

5 MR. FONSECA: That's correct.

6 MEMBER NOPHLIN: That's the issue,
7 right?

8 MR. FONSECA: That is the issue.

9 MEMBER NOPHLIN: And the Licensee
10 is suffering because of that?

11 MR. FONSECA: What was the last
12 part? Licensing --

13 MEMBER NOPHLIN: The Licensee is
14 having a difficult time because he can't do
15 anything?

16 MR. FONSECA: Yeah. I mean yes.

17 MEMBER NOPHLIN: Do those records
18 go to the Titling Office?

19 MR. FONSECA: No. Stuff like that
20 would have been what goes to the Surveyor's
21 Office because that shows --

22 MEMBER NOPHLIN: It goes to the

1 Surveyor's Office?

2 MR. FONSECA: So those were all
3 done. Test of them would have stayed in with
4 the Building Department component of DCRA.
5 And then they send them to the archives. I
6 mean, years ago --

7 MEMBER NOPHLIN: Yes.

8 MR. FONSECA: -- it used to go out
9 to Suitland, but --

10 MEMBER NOPHLIN: That was my next
11 question.

12 MR. FONSECA: -- now it's over
13 there near the new Convention Center.

14 MEMBER NOPHLIN: Okay. That was
15 my next question, the archives.

16 MR. FONSECA: Yes, years ago,
17 because they still used the Federal Archives,
18 they were using -- everything was going out to
19 Suitland.

20 MEMBER NOPHLIN: So I know you
21 tried everything. I mean --

22 MR. FONSECA: Other than me going

1 out there, because I would have been in the
2 hospital if I went through all those
3 documents.

4 (Laughter.)

5 MR. FONSECA: No, Rick just went
6 to the Certificate of Occupancy hearing. Yes,
7 I mean, we all -- actually including myself --
8 everybody's gone and looked through what is in
9 the electronic files at DCRA as to the
10 Certificate of Occupancy. And there's a paper
11 trail of a predecessor on that side of the
12 building. They got the first restaurant use.
13 But that was a few years before. So that's
14 what made this a natural fit, because now the
15 use was there, it was established. You
16 combined the lots, you opened it up. And then
17 you just got it permitted and then get the
18 Certificate of Occupancy. It just -- the
19 records and everything just fell off the end
20 of the earth.

21 CHAIRPERSON MILLER: Yes, Mr.
22 Silverstein?

1 MEMBER SILVERSTEIN: First of all,
2 Mr. Fonseca, I understand you have pulmonary
3 fibrosis and it nearly killed -- spending any
4 time in a dusty and moldy place like that
5 absolutely would be threatening to your life.
6 There would be no question about that. I've
7 known you long enough to know what you went
8 through physically. It's like living your
9 life breathing through a straw --

10 MR. FONSECA: Yes.

11 MEMBER SILVERSTEIN: -- because of
12 the problems you have with your lungs.

13 But my question is, is there any
14 way -- considering how long this has been
15 operating and also considering the history of
16 this establishment as a long-regarded place on
17 Capitol Hill; it's been there and operating
18 literally without a lot of problems, is there
19 anyway that this could be shortcutted through
20 the Council?

21 MR. FONSECA: I think --

22 MEMBER SILVERSTEIN: Or any other

1 way?

2 MR. FONSECA: We still have to
3 come into compliance.

4 MEMBER SILVERSTEIN: Yes.

5 MR. FONSECA: Now can we, after we
6 get new drawings done that would comport to
7 the Code, then seek that kind of assistance to
8 then help it go through? Yes, but I don't
9 know that the Council would -- obviously
10 individual council members would perhaps, you
11 know, the Ward councilmember. And then, you
12 know, I'll try to meet with the director of
13 the agency and just lay out what we've done at
14 this point and what we can't find and what we
15 believe is a probability of records being lost
16 and this disconnect. And, you know, in the
17 end, then it's a matter of -- absent any kind
18 of, you know, obviously Health and Safety Code
19 issues that would have to be in compliance, I
20 hope we can get this thing through the system
21 quicker.

22 MEMBER SILVERSTEIN: How much time

1 do you need?

2 MR. FONSECA: I'm saying at least
3 just to come back and report to you I would
4 think a minimum of 90 days, because getting
5 the drawings done, then filing them, getting
6 the permit is probably going to take 60. Then
7 to go through the inspections and everything
8 else, I'd say -- I'm hopeful that in 90 days
9 maybe we could have it all done. And
10 obviously I'll just deliver a copy of the
11 Certificate of Occupancy. You don't need to
12 go through the sausage grinder of what we went
13 through. You just want to see a Certificate
14 of Occupancy that shows we now have both
15 sides, or combined one with the other.

16 MEMBER SILVERSTEIN: This Board
17 has to go by the law, but we want to be
18 helpful and --

19 MR. FONSECA: And we appreciate
20 that.

21 MEMBER SILVERSTEIN: -- we want to
22 work with you.

1 MR. FONSECA: Yes.

2 CHAIRPERSON MILLER: Oh, go ahead.

3 MEMBER NOPHLIN: I'm sorry.

4 CHAIRPERSON MILLER: No, go ahead.

5 MEMBER NOPHLIN: The information
6 you sent, the four pages that we have that you
7 sent to the Board, the last sheet, which is I
8 guess because of the age -- '93 --

9 MR. FONSECA: Right, that's the
10 kind of -- I had to copy it in color so you'd
11 see, because it really was that kind of almost
12 blueprint. In other words, I think this would
13 have been a -- back in that time we had
14 tricolor sheets that would have been copied.

15 MEMBER NOPHLIN: Yes.

16 MR. FONSECA: So, but this would
17 have been the fire reviewers comments.

18 MEMBER NOPHLIN: Right, I noticed
19 that. The thing I also noticed is that
20 there's no -- I guess it's the form number at
21 the top. I mean there's no form number.
22 Usually they do have form numbers or some kind

1 of identification.

2 MR. FONSECA: Well, here's what I
3 think; and I'm giving you my experience, which
4 is significant -- is where that job number is
5 in that box at the top right --

6 MEMBER NOPHLIN: Yes.

7 MR. FONSECA: -- normally they
8 would have put a building permit number there.

9 MEMBER NOPHLIN: Yes.

10 MR. FONSECA: This WT, and the
11 others all say, this is a walk-through. What
12 I believe happened was; and it could have very
13 well been the set of plans I have a copy of,
14 were what they went in and said everybody
15 review these, give us your comments so we can
16 then file what we'll consider now permit
17 drawings. They go through the system quicker.

18 And back then the agency did do
19 that. I mean, they -- you know, you could go
20 in and you might be there for hours; that's
21 why I think this happened over two days, and
22 get through the various disciplines. And they

1 would make comments. So they'd give you the
2 sheets and then you could narrow and get this
3 thing -- hopefully, you know, the product that
4 you finally filed for permit drawings aren't
5 going to end up having a whole lot of further
6 revisions.

7 It's on my part speculation, but I
8 think it's an educated guess based on my
9 experience with that agency. But I do have
10 history going back to the '80s with the
11 Director's Office and being a program
12 coordinator for both buildings and business
13 administration, so I know how the process
14 worked.

15 MEMBER NOPHLIN: Okay. My last
16 question then: Have you gone to Forms and
17 Records?

18 MR. FONSECA: That was part of
19 what we did with going to the archives.

20 MEMBER NOPHLIN: Oh, okay.

21 MR. FONSECA: Because none of this
22 stuff back then is still there at the agency.

1 MEMBER NOPHLIN: I see.

2 MR. FONSECA: And then that's why
3 I relied on Mr. Ford as far as with the RIs.
4 And he just couldn't find anything with -- you
5 know, if we could have found the building
6 permit and we still didn't have the drawings,
7 we would have been further along. We couldn't
8 even find the building permit.

9 MEMBER NOPHLIN: Thank you, Madam
10 Chair.

11 CHAIRPERSON MILLER: Okay.

12 MR. FONSECA: That's why I think
13 -- we're talking about boxes that contain
14 everything related to this, whether it was
15 self-contained or had others, just fallen off
16 the face of the earth. That's really what I
17 think happened.

18 CHAIRPERSON MILLER: This is an
19 old building, correct?

20 MR. FONSECA: Yes.

21 CHAIRPERSON MILLER: So is there a
22 Certificate of Occupancy at all for this

1 building?

2 MR. FONSECA: Oh, yes, yes. No,
3 we have a certificate for the other side.

4 CHAIRPERSON MILLER: Just one
5 side?

6 MR. FONSECA: And that's been
7 there since '83. That's what you have in the
8 record.

9 CHAIRPERSON MILLER: Oh, okay.

10 MR. FONSECA: That goes to '85.
11 Yes, September of '85. So the 639 is
12 currently what they have. And it was 637
13 which was the combined lot in the next door
14 space that was opened up.

15 CHAIRPERSON MILLER: Oh, okay.
16 Was that a residence or something? So it
17 didn't have a Certificate of Occupancy?

18 MR. FONSECA: No. No, it was -- I
19 think I have a copy. Those are always --
20 well, direct knowledge about always forever,
21 but at least through most of the 20th Century
22 those have been commercial businesses there.

1 And give me one moment. Yes, there's an
2 application that was approved and, yes, a
3 Certificate of Occupancy. It did issue
4 because Mr. Ford found it later on, but for a
5 place called Caf, Heartlands, which was an '89
6 approved. That was the first restaurant use.
7 So that was for 637. I've got that here also.

8 I think Mr. Ford gave me a copy of
9 the Certificate of Occupancy. That's why I
10 know that the use would not have been an
11 issue. And I beg the Court's pardon. I can't
12 seem to put my hands on that. Because we all
13 -- we could not find a copy of that
14 Certificate of Occupancy. Mr. Ford did
15 actually find a copy of this Caf, Heartlands
16 Certificate of Occupancy, so it issued. We
17 don't know long-lived that business was,
18 but --

19 CHAIRPERSON MILLER: So there was
20 a Certificate of Occupancy for use as a
21 restaurant there, right?

22 MR. FONSECA: At 637.

1 CHAIRPERSON MILLER: The same use?

2 MR. FONSECA: Pardon me?

3 CHAIRPERSON MILLER: The same use
4 that's being --

5 MR. FONSECA: Yes, as a
6 restaurant, right. And then in '93 we have
7 the merge of that lot, and it would have been
8 from that point on been leased to Remington's
9 and/or its predecessor. Steve -- yes, this
10 would have been Remington's and it wasn't
11 Equinox, right?

12 Okay. Well, that's what I'm
13 saying, this would have been in '93. So for
14 sure from '93 on this has been Remington's.
15 Because I know when that lot merged, it was
16 for this --

17 CHAIRPERSON MILLER: Okay.

18 MR. FONSECA: -- space.

19 CHAIRPERSON MILLER: So it's the
20 same use as --

21 MR. FONSECA: Oh, yes, yes, yes.

22 Yes.

1 CHAIRPERSON MILLER: -- the
2 previous --

3 MR. FONSECA: So that's what I
4 said, even when Member Alberti recalled being
5 in there back a long time ago --

6 CHAIRPERSON MILLER: Okay.

7 MR. FONSECA: -- that -- what it
8 tells me by that letter of January 1995 is the
9 work was all but completed subject to changes
10 required by the chief inspector. So for all
11 intents and purposes, at least since '95 --
12 there's been active presence and use of both
13 sides at least since 1995.

14 CHAIRPERSON MILLER: Okay. And
15 have you talked to the Zoning Administrator
16 about this?

17 MR. FONSECA: Well, I don't -- the
18 Zoning Administrator I don't believe is going
19 to be a problem, because as I said, both
20 leases have past restaurant use. We can
21 document the combined lots. So I think once
22 we go through to get the building permit, that

1 actually may be one of the easier things to
2 prove --

3 CHAIRPERSON MILLER: Right.

4 MR. FONSECA: -- because we've got
5 that.

6 CHAIRPERSON MILLER: Right.

7 MR. FONSECA: The trying to be
8 able to piggyback on prior drawings, but we
9 don't show that they were stamped as permit
10 sets, is where we have our gap.

11 MEMBER ALBERTI: This is a
12 commercial zone, so --

13 MR. FONSECA: Yes.

14 MEMBER ALBERTI: -- use a
15 restaurant I think is --

16 CHAIRPERSON MILLER: Yes.

17 MR. FONSECA: Yes.

18 MEMBER ALBERTI: -- I'm pretty
19 sure is a matter of right use there, so --

20 MR. FONSECA: Yes.

21 MEMBER ALBERTI: -- that last
22 hurdle will be --

1 MR. FONSECA: Yes. Yes, I mean,
2 if there hadn't been that prior restaurant
3 use, we'd have to go through that issue, too.
4 But at least we show it back to '89. And it
5 doesn't look like it's -- and it's clear it's
6 been as a matter of fact, even if not
7 documented, a continued use since '89, even if
8 it changed ownership. We just don't have the
9 connection between -- that's why I say I don't
10 know long Caf, Heartlands lasted, from '89
11 until clearly '93, some four years later came
12 over to the Remington's ownership.

13 CHAIRPERSON MILLER: I just want
14 to just make sure I understand the connection
15 here though. It sounds what we need is a
16 Certificate of Occupancy, right?

17 MR. FONSECA: Yes.

18 CHAIRPERSON MILLER: But what it
19 sounds like, that shouldn't be that hard to
20 get because it's been a continued use of a
21 restaurant, right?

22 MR. FONSECA: Well --

1 CHAIRPERSON MILLER: But you're
2 saying you need to get the building permit and
3 the drawings --

4 MR. FONSECA: I would say this --

5 CHAIRPERSON MILLER: -- in order
6 to get that?

7 MR. FONSECA: -- because I've done
8 this before --

9 CHAIRPERSON MILLER: Yes.

10 MR. FONSECA: -- if the wall
11 wasn't open, I could take a copy of the last
12 Certificate of Occupancy. Because it's more
13 than 10 years old, the Zoning Administrator
14 requires a zoning inspector to go out. In all
15 likelihood because it's so far back, they
16 would ask for structural to sign off on it and
17 they'd want inspectors to go out. So perhaps
18 without even drawings they could come out and
19 inspect and sign off on the Certificate of
20 Occupancy. But with that wall being open, I
21 think it's much harder.

22 Now, you're making me think about

1 this by asking that question, and perhaps as
2 Member Silverstein said, is there a way we
3 could advance this? Maybe that might be the
4 way, is that we could just plead with them
5 through these steps. But I still think the
6 inspections would be required, so perhaps we
7 could then just at that point, based on
8 whatever deficiencies there might be, then
9 just cure those and pull minor building
10 permits as opposed to what would have been
11 going back and doing the original set again.

12 Yes, that's -- you actually helped
13 me think through that part. I hadn't
14 anticipated that could be a shortcut.

15 CHAIRPERSON MILLER: Well, okay.

16 MR. FONSECA: That was helpful, to
17 be honest with you --

18 CHAIRPERSON MILLER: All right.
19 Good.

20 MR. FONSECA: -- that right there,
21 because I'm going to discuss that with Mr.
22 Ford. Because that's more my fort, to go in

1 and try to meet with Mr. LeGrant and say,
2 look, there's no reason why we can't do this.
3 Help us.

4 CHAIRPERSON MILLER: It's worth a
5 shot.

6 MR. FONSECA: Yes, it is worth a
7 shot. Thank you.

8 CHAIRPERSON MILLER: Okay. Are
9 there any other questions?

10 (No audible response.)

11 CHAIRPERSON MILLER: So what we
12 want to do is just give a deadline or
13 whatever. And we don't think -- unless Board
14 members feel differently after the hearing
15 today, I think we have a very good feel for
16 what you're going through and I don't know
17 that we another hearing on that. Like you're
18 saying, what we want to do is eventually see
19 that Certificate of Occupancy come in the
20 door. And you've indicated you think 90 days
21 is sufficient. I think we'll --

22 MR. FONSECA: I can give you a

1 written update in 90 days.

2 CHAIRPERSON MILLER: That would be
3 good. Yes, I think that would be good. And
4 a written update would be great. And what
5 we're going to say is we think by six months,
6 which would be before the end of the year,
7 December 20th, that this should absolutely be
8 resolved. And then we -- I don't think this
9 is going to happen, but we might need to kick
10 it to a show cause to the Attorney General's
11 Office if it's not resolved by then, but you
12 could always communicate if there's some
13 special circumstances. But it sounds -- it's
14 just a calendaring thing. It sounds like you
15 should be just about there within 90 days,
16 hopefully. But don't you think within six
17 months if it's going to get resolved it would
18 be resolved?

19 MR. FONSECA: I would hope so,
20 yes.

21 CHAIRPERSON MILLER: Okay.

22 INVESTIGATOR MARTIN: Excuse me,

1 Madam Chair. So within the six months either
2 the Licensee would provide a C of O for the
3 other side showing use for both sides and/or
4 the Licensee would then proceed in having a
5 new C of O or a new inspection which would
6 join both buildings. Is that my
7 understanding, that if the C of O cannot be
8 found --

9 MR. FONSECA: Yes, I don't think
10 finding at this point's probable. So a new C
11 of O is going to issue, either a new one that
12 would combine both or one for the other side,
13 and we could use both. But I think it would
14 just merge the two and we'd have a superseding
15 Certificate of Occupancy for 637-639 --

16 INVESTIGATOR MARTIN: Okay.

17 MR. FONSECA: -- Pennsylvania
18 Avenue.

19 MEMBER ALBERTI: Madam Chair?

20 CHAIRPERSON MILLER: Yes?

21 MEMBER ALBERTI: I think what
22 we're looking for in six months is that the

1 Agency, ABRA, has the appropriate documents to
2 update the license to reflect its current
3 configuration.

4 MR. FONSECA: Yes.

5 MEMBER ALBERTI: I think that's
6 what we're asking for in six months.

7 MR. FONSECA: I understand that.

8 MEMBER ALBERTI: Okay. Thank you.

9 CHAIRPERSON MILLER: And I guess
10 within 90 days either it may be in or you'll
11 just submit an update in writing? We don't
12 need to have a hearing?

13 MR. FONSECA: Yes, I would think
14 if I were to produce a document you wouldn't
15 need a written explanation --

16 CHAIRPERSON MILLER: Right.

17 MR. FONSECA: -- of how we got
18 through that process.

19 MEMBER ALBERTI: Right.

20 CHAIRPERSON MILLER: Correct.

21 Correct.

22 (Laughter.)

1 MR. FONSECA: Just want to --

2 CHAIRPERSON MILLER: Right.

3 MR. FONSECA: And ABRA pays what
4 it has to and then just move on. You've got
5 bigger fish to fry. Understood.

6 CHAIRPERSON MILLER: Okay.

7 Well --

8 MR. FONSECA: I thank you for
9 taking this much time and actually helping
10 even me work through a possible shortcut,
11 because that's always advantageous, if we can
12 do it.

13 MEMBER SILVERSTEIN: That's an
14 understatement.

15 CHAIRPERSON MILLER: Yes, right.

16 (Laughter.)

17 CHAIRPERSON MILLER: Okay.

18 MR. FONSECA: You said a mouthful.

19 CHAIRPERSON MILLER: Well, thank
20 you very much.

21 MR. FONSECA: Thank you.

22 INVESTIGATOR MARTIN: Thank you.

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CHAIRPERSON MILLER: So I think
that concludes our cases until the next fact
finding hearing, which is at 11:30 a.m. So as
it's 10:25, we'll recess until then.

(Whereupon, the hearing was
concluded at 10:25 a.m.)

| | | | | |
|----------|---|---|---|--|
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