

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

MOM's Organic Market, Inc.	Fact-
t/a MOM's Organic Market	Finding
1401 New York Ave., NE	Hearing
Retailer B - ANC-5D	
License No. 94996	

(Application for New License)

October 22, 2014

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

PRESENT:

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

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

(2:53 p.m.)

CHAIRPERSON MILLER: Okay. So now for the hearing we are going to hear, it's a Fact-Finding Hearing for MOM's Organic Market which is located at 1401 New York Avenue, N.E., License No. 94996, in ANC-5D.

Hi. And would you introduce yourselves for the record, please?

MR. NASH: I'm Scott Nash, the owner of MOM's.

CHAIRPERSON MILLER: I'm sorry?

MR. NASH: Scott Nash, the owner and founder of MOM's.

CHAIRPERSON MILLER: Okay. What's your last name?

MR. NASH: Nash.

CHAIRPERSON MILLER: Nash, okay. Okay. Mr. Jones to my left is our expert on grocery store plans, so I'm pretty much going to turn it over to him, but basically I want to say that we have a copy of your plans,

1 color-coded and all that. And Mr. Jones is
2 going to lead the questioning with respect to
3 certain things that may not add up or may not
4 be clear and have that dialogue with you.

5 MEMBER JONES: Cool. Thank you,
6 Madam Chair.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER JONES: So I want to make
9 sure, first and foremost, that we are speaking
10 or talking to the same sheet of music in terms
11 of the drawings that we have. So I have a
12 document here. Excuse me, let me stand up.

13 This drawing here is a drawing
14 that we, I think, received on August 13th and
15 this looks to be reflective of your
16 application, the one that I am knowledgeable
17 of. However, this is the one that I'm going
18 to be referencing, so if there is an updated
19 one that you have that is different than the
20 numbers that I am speaking to, it may help
21 clarify any of the discrepancies that I'm
22 seeing or questions or concerns that I have

1 with how the calculations were done.

2 So just so you understand, I'm
3 referring to this document. So if you have
4 something different, feel free to raise your
5 hand and note it, but that's what I'm
6 referring to. Okay?

7 MR. NASH: Okay.

8 MEMBER JONES: All right. So as
9 you know, there are two tests.

10 First, Test 1 is overall square
11 footage that you are dedicating to the sale of
12 grocery items and we define those grocery
13 items in seven different categories. Are you
14 familiar with that test? No. Are you
15 familiar with that test?

16 MR. MACKEY: I am, yes.

17 MEMBER JONES: All right. And who
18 are you?

19 CHAIRPERSON MILLER: Yes, thank
20 you.

21 MR. MACKEY: My name is David
22 Mackey, construction manager for MOM's.

1 MEMBER JONES: David Mackey,
2 construction manager for MOM's. Okay. When
3 you get a chance at the end of this, would you
4 mind writing your name on that white sheet of
5 paper over there?

6 MR. MACKEY: I did already.

7 MEMBER JONES: Cool. Fantastic.
8 All right. So for Test 1, you either have to
9 be 50 percent of your gross area has to be
10 above or used or dedicated to the sale of
11 grocery items or you have to have dedicated
12 more than 6,000 square feet to said action as
13 well.

14 Based on my interpretation of your
15 drawings and submitted plans, I'm going to
16 assume that you are seeking to get approval
17 through the plus 6,000 square foot variant of
18 Test 1. Is that a fair assumption?

19 MR. MACKEY: Correct. And just so
20 I'm clear, that is the test where each of the
21 -- I think it was six of the seven have to be
22 5 percent or more of that 6,000 square feet?

1 MEMBER JONES: So that would
2 transition into Test 2.

3 MR. MACKEY: Okay.

4 MEMBER JONES: For the individual
5 food categories. But right now, we are
6 looking at your overall selling area that is
7 dedicated to the sale of grocery items. It
8 either has to be 50 percent of your overall
9 selling area or 6,000 square feet or more.

10 MR. MACKEY: Okay. I think that
11 we went with Test 2.

12 MEMBER JONES: Test 2?

13 MR. MACKEY: Based on --

14 MEMBER JONES: Well, sorry, sorry.
15 So there is Test 1.

16 MR. MACKEY: Yes.

17 MEMBER JONES: And you passed Test
18 1 by either having --

19 MR. MACKEY: Sure.

20 MEMBER JONES: -- 50 percent or
21 6,000. So I'm assuming, based on what you
22 submitted, that you are seeking it through the

1 6,000 or more dedicated to the selling area of
2 food, grocery items?

3 MR. MACKEY: Will you let me know
4 what Test 2 is?

5 MEMBER JONES: Yes.

6 MR. MACKEY: Just so I remember.

7 MEMBER JONES: So Test 2 is each
8 one of the food categories -- excuse me, six
9 of the seven food categories needs to be
10 greater than 5 percent of your selling area as
11 defined by Test 1.

12 So right now, we are talking about
13 Test 1 to figure out what your selling area
14 square footage is, so we know what the
15 denominator is for Test 2.

16 MR. MACKEY: Sure. Okay, yes.

17 MEMBER JONES: Okay. Got it. All
18 right. So it looks like you have a drawing
19 that has roughly 9,064 square feet as per the
20 numbers that were submitted for your sales
21 area.

22 MR. MACKEY: Correct.

1 MEMBER JONES: Okay. And then you
2 went through the process of making the
3 determination of what your exemptions were.
4 You call them exemptions, but we call them
5 non-food selling categories. All right?

6 MR. MACKEY: Yes.

7 MEMBER JONES: So your non-food
8 selling categories you came up with the number
9 of 1,463 dot, dot, dot, dot square feet for
10 that and you subtracted that from your total
11 sales space, correct?

12 MR. MACKEY: My number I have the
13 total deductions is 1,607.24 square feet.

14 MEMBER JONES: Okay. What's the
15 rev or date of that revision of the drawings?
16 Is that after August 13th?

17 MR. MACKEY: I would have to
18 double check.

19 MEMBER JONES: Okay.

20 MR. MACKEY: I don't have it on
21 here. I know that we submitted -- there have
22 been two submissions so far --

1 MEMBER JONES: Okay.

2 MR. MACKEY: -- of plans.

3 MEMBER JONES: Yes.

4 MR. MACKEY: And that would have
5 been the latest one. I don't have the date on
6 that one.

7 MEMBER JONES: Okay.

8 MR. MACKEY: I can give you these
9 if you want to see.

10 MEMBER JONES: Well, fair enough,
11 let's hold off on that for now.

12 MR. MACKEY: Sure.

13 MEMBER JONES: Right now, I just
14 want to go through the process.

15 MR. MACKEY: Okay.

16 MEMBER JONES: So from a process
17 standpoint, the process that you followed
18 appears to be in line with what we were
19 expecting you to do. So just to make sure,
20 let's go back and reset.

21 MR. MACKEY: Sure.

22 MEMBER JONES: So Test 1, you have

1 an overall selling area that that -- upon my
2 drawing it's denoted by a number of 9,064
3 square feet.

4 MR. MACKEY: Correct.

5 MEMBER JONES: But I think you
6 called it total sales space. All right.

7 MR. MACKEY: Correct.

8 MEMBER JONES: That is the same as
9 we denote as your selling area. You also have
10 exemptions which we refer to as non-food
11 categories. All right?

12 MR. MACKEY: Okay.

13 MEMBER JONES: And those
14 exemptions, for example, in your list, I
15 believe, they are bulk foods, water bottles,
16 pet food, etcetera.

17 MR. MACKEY: And so this was --
18 the plans that you were off of, I have since
19 had a call, a conference call going --

20 MEMBER JONES: Okay.

21 MR. MACKEY: -- over that bulk
22 foods was actually part of dry grocery.

1 MEMBER JONES: So you integrated
2 that into the area?

3 MR. MACKEY: So we have integrated
4 that in. So right now, the non-food
5 categories I have are customer service, water
6 bottles and reusable fixtures, household, pet
7 food, wellness, those are the five different
8 categories for that non-food.

9 MEMBER JONES: Got it. So
10 basically, you removed bulk foods from your
11 exemptions list?

12 MR. MACKEY: Correct. And I --

13 MEMBER JONES: And you integrated
14 that into one of the seven food categories?

15 MR. MACKEY: To the dry grocery/
16 baked goods.

17 MEMBER JONES: Okay. Okay.
18 Understood. So from a process standpoint, you
19 took the exemptions, which are now inclusive
20 of everything except for bulk foods and you
21 have integrated that in there, so you have
22 exemptions, and you subtracted your

1 exemptions, whatever that number is, from your
2 total sales space number to come up with what
3 your selling -- food selling area is.

4 MR. MACKEY: Correct.

5 MEMBER JONES: Okay.

6 MR. MACKEY: And I have that
7 number, it's 7,456.92 square feet.

8 MEMBER JONES: 7,400 and what?

9 MR. MACKEY: 56.92.

10 MEMBER JONES: All right. So from
11 a process standpoint you then took that number
12 that shows that you are clearly above 6,000
13 square feet, so you passed Test 1 threshold.
14 So we are comfortable with that from a process
15 standpoint.

16 MR. MACKEY: Sure.

17 MEMBER JONES: The next element is
18 Test 2. So you took that number, which is
19 your 7,456.92 square feet and that became your
20 denominator to divide into the individual
21 square footage calculations that you did for
22 each one of your food categories, seven food

1 categories, correct?

2 MR. MACKEY: Correct.

3 MEMBER JONES: All right. And
4 that's the process you used and then you made
5 the determination as to the denominator is
6 7,456 divide that into whatever your
7 calculation for that individual food category
8 was to see if it is equal to or greater than
9 5 percent?

10 MR. MACKEY: Correct. The
11 shortcut was I found 5 percent of that number,
12 which is 372.85 square feet and I just made
13 sure that whatever category it was either
14 above or below and so --

15 MEMBER JONES: Fair enough. All
16 right. Acceptable process or approach. And
17 that would be your process that you used to
18 determine whether or not you met or exceeded
19 six of the seven food categories?

20 MR. MACKEY: Correct.

21 MEMBER JONES: Got it. Okay. So
22 from a process standpoint, I think we are

1 pretty much on the same page, at least at this
2 point.

3 So then how we -- the issue now
4 becomes clarification from our standpoint of
5 being able to verify what it is that you
6 submitted to confirm that you are in
7 compliance with our requirements.

8 So the first issue or question is
9 on the drawing that we have, which is the
10 August 17th one, I don't know if it has been
11 updated, but your overall square footage. So
12 let's go back to Test 1.

13 MR. MACKEY: Okay.

14 MEMBER JONES: Your overall square
15 footage, there is a dark black outline, which
16 is a rectangle, which appears to be bordered
17 or surrounding what you are going to be
18 defining as your selling area. Is that
19 correct?

20 MR. MACKEY: Correct.

21 MEMBER JONES: All right. Where
22 on this drawing or where on the drawing is it

1 clearly defined what the exact length is of
2 the measurements for the length and width of
3 each side of that box?

4 MR. MACKEY: This was part of the
5 conference call I had.

6 MEMBER JONES: Okay.

7 MR. MACKEY: And part of the
8 second submission.

9 MEMBER JONES: So this is a second
10 submission?

11 MR. MACKEY: So yes, and that does
12 sound like it's the very first drawing, but
13 it's very clearly labeled 80 feet 9 inches,
14 112 feet 3 inches on the side. So I did
15 clarify that and make that larger.

16 MEMBER JONES: Okay. All right.

17 MR. NASH: Is the black area
18 supposed to include alcohol?

19 MR. MACKEY: Okay.

20 MEMBER JONES: So your outside
21 black area is inclusive of what your selling
22 area is going to be that is dedicated to the

1 sale of food items.

2 MR. NASH: Okay.

3 MEMBER JONES: Which could or
4 could not, depending on how you look at it,
5 but we look at it and say it should include or
6 be inclusive of everything that is going to be
7 falling into your selling area. Your selling
8 area --

9 MR. NASH: Of fresh food?

10 MEMBER JONES: -- is going to
11 include alcohol.

12 MR. NASH: Oh.

13 MR. MACKEY: You said it is going
14 to include alcohol?

15 MEMBER JONES: Correct.

16 MR. MACKEY: I was under the
17 impression that our sales area or, yes,
18 selling area was to not include the alcohol,
19 but this area that we have on here passes Test
20 1, so I can show you where that alcohol is
21 actually in the space.

22 MEMBER JONES: Okay. Where is the

1 alcohol going to be sold in the space?

2 MR. MACKEY: If you are looking at
3 the plans now, it's going to be plan -- right
4 there, it's the section of shelving. I can
5 show you.

6 MEMBER JONES: So I'm looking at
7 this set of drawings here?

8 MR. MACKEY: Yes.

9 MR. NASH: It's that last aisle
10 right next to the registers.

11 MR. MACKEY: Yes. So just to the
12 right.

13 MEMBER JONES: This side?

14 MR. MACKEY: To the right, yes,
15 there.

16 MR. NASH: Yes.

17 MR. MACKEY: And if you go down to
18 the left of that aisle --

19 MEMBER JONES: Right here?

20 MR. MACKEY: So may I approach and
21 show you or I can show you --

22 MEMBER JONES: Just show me.

1 MR. MACKEY: So again, this isn't
2 updated, but this is a refrigerated piece
3 there.

4 MEMBER JONES: This right here?

5 MR. MACKEY: Correct.

6 MEMBER JONES: So as I'm looking
7 at the drawing, I'm just doing it for the
8 record.

9 MR. MACKEY: Yes.

10 MEMBER JONES: On this drawing
11 which is the one submitted, I think, August
12 the 13th there is a dark green area which is
13 labeled as water bottles. Don't count them.

14 MR. MACKEY: Correct.

15 MEMBER JONES: All right. Is the
16 alcohol selling area to the right of that?

17 MR. MACKEY: Correct.

18 MEMBER JONES: Okay. And how far
19 to the right of that?

20 MR. MACKEY: It includes both
21 aisles to the right of that, the refrigerated
22 case.

1 MEMBER JONES: This right here?

2 MR. MACKEY: Correct.

3 MEMBER JONES: Okay. So there is
4 a larger rectangle with two dotted lines near
5 the face of that large rectangle that is a
6 refrigeration unit here?

7 MR. NASH: Correct.

8 MEMBER JONES: Okay.

9 MR. MACKEY: And then below that
10 there will be a total of 60 feet of alcohol,
11 so it will be the 4 foot floor, the 4 foot
12 sections.

13 MR. NASH: Right here.

14 MEMBER JONES: These four right
15 here?

16 MR. MACKEY: Got it.

17 MEMBER JONES: All right. So 4
18 feet each section and there is four sections
19 to the bottom of that larger rectangular
20 refrigerated unit, correct?

21 MR. MACKEY: Correct.

22 MEMBER JONES: All right. And

1 that's where the alcohol sales is going to be?

2 MR. MACKEY: And then to the right
3 of that directly across the aisle we have the
4 end cap.

5 MEMBER JONES: Yes.

6 MR. MACKEY: Which is a beer
7 display case.

8 MEMBER JONES: Yes.

9 MR. MACKEY: We have two wine
10 display cases.

11 MEMBER JONES: Yes.

12 MR. MACKEY: Which are specialty
13 wine display cases. And then below that is
14 another 60 feet, four 4 foot sections --

15 MEMBER JONES: Got it.

16 MR. MACKEY: -- of wine.

17 MEMBER JONES: Okay. I understand
18 very much. Thank you very much.

19 MEMBER JONES: So thank you very
20 much, Board Member Short.

21 So given that, for updating
22 clarity, your selling area is going to need to

1 be inclusive of the area of what you just
2 denoted as to where you are going to be
3 selling alcoholic beverages.

4 So instead of this nice rectangle
5 here, it's going to be a little bit of an L,
6 if you will. And you can make it -- as long
7 as the space is contiguous, right, we don't
8 trade these little pockets of islands, of
9 selling area. Your selling area space needs
10 to be contiguous.

11 But if you expand this rectangle,
12 i.e., your selling area to include those
13 cabinets or those shelving units where you are
14 going to be selling alcohol, then that will
15 become your new selling area and the alcohol
16 would become part of your exemption as a non-
17 food item.

18 MR. MACKEY: Okay.

19 MEMBER JONES: Right? Which move
20 -- you would deduct from your overall selling
21 area as part of your calculation. Does that
22 make sense?

1 MR. MACKEY: It does.

2 MEMBER JONES: Okay.

3 MR. NASH: The square footage got
4 bigger of selling space.

5 MEMBER JONES: Yes, it becomes
6 bigger. So obviously it helps you in the
7 sense that it just makes you more firm in your
8 passage of Test 1, but it could create a
9 different challenge in how you do your Test 2
10 because you have just increased the size of
11 your denominator potentially, depending on how
12 you lay out your items within that space.

13 MR. MACKEY: Now, is it a
14 requirement that the selling area includes
15 that alcohol if --

16 MEMBER JONES: Yes.

17 MR. MACKEY: -- oh, it does.
18 Okay.

19 MEMBER JONES: Yes. Okay?

20 MR. MACKEY: Okay.

21 MEMBER JONES: All right. So then
22 that covers the selling area question that I

1 had related to how you came to your dimensions
2 that you mentioned.

3 So then there is some items that
4 are a little bit more, what I call, down in
5 the eats probably just so I can make sure I'm
6 following and understand.

7 So how level? Is this drawing
8 drawn to scale? Is this a scaled drawing?

9 MR. MACKEY: Yes.

10 MEMBER JONES: It is? Okay.

11 MR. MACKEY: Well, excuse me, this
12 is an architectural construction drawing.

13 MEMBER JONES: Right.

14 MR. MACKEY: In the notes in the
15 architectural drawings, it says "Go off of
16 dimensions in the plan. Do not scale this
17 drawing."

18 MEMBER JONES: Ah, okay.

19 MR. MACKEY: But I have found that
20 -- I mean, yes, it does say do not scale.

21 MEMBER JONES: Okay. So because
22 my next question was going to be if this was

1 a scaled drawing, then what is the scale?
2 Because that's part of what we use to try to
3 independently verify what you are saying your
4 dimensions are, so that we can spot check
5 certain items and certain elements to confirm
6 that we are reasonably close in your estimate
7 to what we expect you to see.

8 So this is a scaled drawing.
9 However, it is not scaled based on a pre-
10 defined scaleable measure.

11 MR. MACKEY: Correct.

12 MEMBER JONES: There are
13 dimensions that are on here, so I can use
14 these dimensions and come up with a scale
15 based on the dimensions that are here. So for
16 example, when we pointed to one of your
17 rectangles, so for the sake of argument and to
18 make sure we are on the same page, can we --
19 I'm looking at a section in the diagram that
20 is within the selling area that has a yellow
21 and a dark blue segmented display case unit.

22 So the yellow takes up about 75

1 percent of that unit and the blue takes up the
2 bottom right 25 percent. Do you see the same
3 unit? That unit is labeled as dry grocery/
4 baked goods for the yellow portion and pet
5 food don't count for the blue portion, I
6 believe.

7 MR. MACKEY: Correct. The --

8 MEMBER JONES: Okay.

9 MR. MACKEY: -- nothing the plan
10 had in -- or in the plan you are referring
11 to --

12 MEMBER JONES: Yes?

13 MR. MACKEY: -- household and pet
14 food had inadvertently been mislabeled.

15 MEMBER JONES: Ah.

16 MR. MACKEY: So that is actually
17 household.

18 MEMBER JONES: Okay.

19 MR. MACKEY: And we have more
20 household than pet food.

21 MEMBER JONES: Got it.

22 MR. MACKEY: But, yes, I see that

1 aisle you are referring to.

2 MEMBER JONES: You see that aisle.
3 Okay. So just as a point of reference, there
4 is a rectangular section or segment in each
5 one of these which I'm going to assume are
6 shelving units of some sort.

7 MR. MACKEY: Correct.

8 MEMBER JONES: Those shelving
9 units, based on my estimates, I'm assuming
10 those to be roughly 4 feet in width. Is that
11 a fair estimate?

12 MR. MACKEY: That is correct, yes.

13 MEMBER JONES: Okay. And that
14 would be my unit that I'm using as a scale
15 measure to go across your entire drawing. So
16 I'm taking a piece of paper. I'm creating a
17 scale based on that unit being 4 feet and I'm
18 extrapolating that across your entire diagram.
19 Is that a fair -- are we on the same page if
20 I do that?

21 MR. MACKEY: Yes, that's fair and
22 accurate.

1 MEMBER JONES: Cool. All right.
2 So given that, and this may be -- have been
3 adjusted in the updated drawings, however, in
4 the drawing that we have that we reviewed, in
5 looking at your -- that exact same unit, there
6 is 48 feet is what is being used as the value
7 for the length on the left side and then there
8 is 24 and another 24 per unit on the right
9 side.

10 So I'm looking at the one, the
11 version of the document that you have on the
12 top that you just covered up.

13 MR. MACKEY: Okay.

14 MEMBER JONES: That's the one that
15 I was looking at.

16 MR. MACKEY: Okay.

17 MEMBER JONES: Where it had those
18 measurements on there. And I'm just trying to
19 make sure from an understanding standpoint.
20 So as I count those units, the shelving units,
21 let's look at the side of the yellow, the left
22 hand side.

1 MR. MACKEY: Okay.

2 MEMBER JONES: If I count those
3 units, I'm counting 1, 2, 3, 4, 5, 6, 7, 8, 9,
4 10, 11 on the left hand side. And my
5 understanding is that you took the end cap and
6 you counted that as a 12th unit to be counted
7 towards the left hand side as far as your
8 length dimension, which would give me 12 x 4,
9 which is that 48 number.

10 MR. MACKEY: Correct.

11 MEMBER JONES: Okay. The right
12 side of that display unit area, there are 11
13 shelving units only, because you are not
14 including the end cap. You have already
15 included the end cap on the left side, so you
16 are not including it on the right side,
17 correct?

18 MR. MACKEY: Correct, yes.

19 MEMBER JONES: On the diagram that
20 we have currently, well, the diagram that I'm
21 looking at right now, there is a measure of 24
22 feet for the blue section, which is inclusive

1 of six of those squares or rectangles and 24
2 feet for the yellow section on the right side,
3 which is inclusive of five.

4 So if each one of those units is 4
5 feet, there was a discrepancy in terms of the
6 exact calculation that was used to get to that
7 number. Now, if that -- has that been updated
8 or corrected?

9 MR. MACKEY: It has.

10 MEMBER JONES: It has.

11 MR. NASH: It has, yes.

12 MEMBER JONES: Okay.

13 MR. MACKEY: For the yellow
14 section you just referenced, it's 20 feet.

15 MEMBER JONES: Okay.

16 MR. MACKEY: In length. And that
17 blue section 24 feet.

18 MEMBER JONES: Got it. Okay.

19 Similar question. On the bottom left hand
20 side of that diagram, there is an all purple
21 rectangle. And that purple rectangle appears
22 to be labeled non-alcoholic beverages.

1 MR. MACKEY: Okay. Yes.

2 MEMBER JONES: All right. In that
3 instance we have it looks like one, two, three
4 shelving units. Are these shelving units
5 also, approximately, 4 feet?

6 MR. MACKEY: Correct, yes.

7 MEMBER JONES: Okay. And then
8 there is an end cap on that unit. And then
9 there is another three units going on the
10 right hand side of that.

11 MR. MACKEY: Yes.

12 MEMBER JONES: That's the -- we're
13 still on the same page?

14 MR. MACKEY: Yes.

15 MEMBER JONES: Okay. So given
16 that, the drawing that I have it says that
17 both the left side and the right side is 16
18 feet 10 inches in length. And if you were
19 using the same approach in terms of counting
20 the end cap to one side or not, I was not
21 clear how we got to 16 feet 10 inches when the
22 shelving units are 4 feet in length and we

1 have three on one side and an end cap. So 3
2 x 4 would be the 12 and the maximum you could
3 get with the end cap would be another 4, which
4 would be the 16.

5 So I wasn't sure how we were
6 getting the 16 feet 10 inches for both sides
7 in this instance, unless those shelving units
8 weren't 4 feet. So that's where I was trying
9 to get clarification.

10 Now, again, is that something that
11 just was corrected subsequent?

12 MR. MACKEY: It has been
13 corrected.

14 MEMBER JONES: Okay.

15 MR. MACKEY: I will say that my
16 second submission was actually two drawings
17 and those are the ones I have in front of me
18 now.

19 MEMBER JONES: Gotcha. Okay.

20 MR. MACKEY: One shows the actual
21 area of the shelving.

22 MEMBER JONES: Okay.

1 MR. MACKEY: And then the other
2 with the 3 foot --

3 MEMBER JONES: Buffer?

4 MR. MACKEY: -- buffer zone.

5 MEMBER JONES: Got it.

6 MR. MACKEY: And so that hopefully
7 clarifies a lot of questions you have.

8 MEMBER JONES: Okay.

9 MR. MACKEY: In that calculation,
10 it was actually just calculating the depth of
11 the shelf on either side, which I think is
12 where --

13 MEMBER JONES: Gotcha.

14 MR. MACKEY: -- the issue was on
15 that.

16 MEMBER JONES: All right.

17 MR. MACKEY: So that has been
18 clarified.

19 MEMBER JONES: Just to clarify--

20 MR. MACKEY: Correct.

21 MEMBER JONES: -- this is the most
22 recent submission?

1 MR. MACKEY: Yes.

2 MEMBER JONES: All right. Cool.

3 All right. So then the last thing that I had
4 was just related to making sure that you were
5 giving yourselves appropriate credit for what
6 we call the diagonals.

7 So at the end of the end cap --
8 excuse me. If you look at the diagram, so
9 that purple section we were just talking
10 about, there is a section directly above it
11 which is purple and pink, purple on the right
12 -- left side and pink on the right side.

13 At the very top of that you have
14 the end of your shelving units for both the
15 purple side and the pink side. Do you see
16 that?

17 MR. MACKEY: I do, yes.

18 MEMBER JONES: At the very top of
19 that, there is no end cap, correct?

20 MR. MACKEY: Correct.

21 MEMBER JONES: All right. It does
22 not appear as if you gave yourself credit for

1 what we -- like I said, the diagonal. So you
2 can bleed out, my phrasing, not technically.

3 MR. MACKEY: Sure.

4 MEMBER JONES: You can bleed out
5 and take 3 feet buffer above that cap or the
6 end of that shelving unit as well. Is that
7 something that you have addressed in the
8 second set of drawings?

9 MR. MACKEY: I have.

10 MEMBER JONES: Okay.

11 MR. MACKEY: And I believe there
12 were several examples of where that was in the
13 original submission.

14 MEMBER JONES: Correct.

15 MR. MACKEY: And that has all been
16 addressed --

17 MEMBER JONES: Okay. Taken credit
18 for all that?

19 MR. MACKEY: -- and taken credit
20 for that.

21 MEMBER JONES: Okay. Cool. All
22 right. I think that clears up the majority of

1 what I had. So the main thing that we just
2 need to make sure we get on the same page in
3 terms of the selling area. Get that
4 appropriately addressed, based on what we just
5 talked about today. And then I can use that
6 as the basis for determining the denominator.

7 Obviously, you can do this on your
8 own, but I will -- we will need to see that
9 and then be able to independently verify to
10 some extent what your calculations are showing
11 or being determined to be.

12 So as of the outcome of this
13 meeting today, I'm going to use the shelving
14 unit dimension of 4 feet as a basis for the
15 scale.

16 MR. MACKEY: Okay.

17 MEMBER JONES: I'm going to use
18 that scale to independently verify the
19 documentation that you submitted subsequent to
20 this meeting. Is that fair?

21 MR. MACKEY: That's, yes, fair.

22 MEMBER JONES: Okay. Cool.

1 That's all I have, Madam Chair. Does anybody
2 else have any questions?

3 CHAIRPERSON MILLER: He does.

4 MEMBER JONES: Go ahead.

5 MR. MACKEY: The best way to
6 submit these plans to make sure you have the
7 most recent one is a hard copy to you via the
8 desk here?

9 MEMBER JONES: So the best way to
10 do it is probably what you have been doing,
11 which should be desk here, attention Sean
12 Gordy.

13 MR. MACKEY: Okay.

14 MEMBER JONES: And Sean Gordy will
15 make sure the Board gets them in the
16 appropriate -- through the appropriate
17 process.

18 MR. MACKEY: Okay.

19 MEMBER JONES: So he has to go
20 through some checks and balances and checking
21 in, etcetera, but once it goes through those
22 wickets, when we will get it.

1 MR. MACKEY: Okay. Thank you.

2 MEMBER JONES: Fair enough?

3 MR. MACKEY: Fair.

4 MEMBER JONES: All right. And did
5 you have any additional questions for clarity
6 purposes? No?

7 MR. NASH: No.

8 MEMBER JONES: Okay. All right.

9 MR. MACKEY: We're all set.

10 MEMBER JONES: Thank you very
11 much. That's all I have.

12 MR. MACKEY: Thank you.

13 CHAIRPERSON MILLER: Okay. It
14 looks like you are pretty close.

15 MR. MACKEY: Yes. As far as I
16 know that the Board often reviews these on
17 Wednesdays.

18 MEMBER JONES: Yes.

19 CHAIRPERSON MILLER: Right.

20 MR. MACKEY: What's the
21 possibility that the plan could be reviewed
22 next Board meeting if they are submitted by

1 the end of this week?

2 MEMBER JONES: If they are
3 submitted by the end of this week, I will
4 defer to our Director, but we should be in a
5 position to review these plans on the
6 Wednesday. If they are submitted by the end
7 of this week, I can take -- I can commit to
8 you that I will take the time to review them
9 on that Wednesday, so that hopefully we have
10 a decision related to this or at least we will
11 have enough information to present to the
12 Board for a vote to make a decision on this on
13 that Wednesday.

14 MR. MACKEY: Okay. Thank you very
15 much.

16 MEMBER JONES: Fair enough?

17 MR. NASH: Thanks. Appreciate it.

18 MEMBER JONES: Yes.

19 MR. MACKEY: Is that it?

20 CHAIRPERSON MILLER: Okay.

21 Anything else?

22 MR. MACKEY: No.

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CHAIRPERSON MILLER: All right.

Thank you very much.

MR. MACKEY: Thank you.

(Whereupon, the Fact-Finding
Hearing in the above-entitled matter was
concluded at 3:19 p.m.)

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