

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
 :
The Juniper Group , LLC :
t/a The Blaguard : Protest
2003 18th Street NW : Hearing
Retailer CR :
License No. 86012 :
Termination of :
Settlement Agreement :
Case No. 13-PRO-00096 :
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November 6, 2013

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

PRESENT:
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

KOFI APRAKU, Investigator, ABRA

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

(1:53 p.m.)

CHAIRPERSON MILLER: Good

afternoon. Sorry to keep you waiting. The Board has business it has to do sometimes in executive sessions, and so that ran a little late.

All right, so I am calling the case, and I know you're all here, of The Blaguard, Case Number 13-PRO-00125, located at 2003 18th Street NW, License Number 86012. And it's in ANC 1C.

So why don't we start on my right with introductions.

MS. MAKRIS: My name is Elizabeth Makris and I am one of the owners of Blaguard.

CHAIRPERSON MILLER: Okay.

MR. MAKRIS: My name is Nic Makris. I'm another one of the owners of The Blaguard and the operator of The Blaguard.

CHAIRPERSON MILLER: All right.

MR. GUTHRIE: Ted Guthrie, ANC 1C.

1 MR. HART: Brian Hart, ANC 1C,
2 also a commissioner.

3 CHAIRPERSON MILLER: Brian, what's
4 your last name?

5 MR. HART: Hart, H-A-R-T.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: Denis James,
8 representative of the Kalorama Citizens
9 Association. I'm the president.

10 CHAIRPERSON MILLER: Okay. All
11 right, let me just start by saying and then
12 asking that usually each party has one
13 representative that at least does the, you
14 know, cross examination, the arguing and
15 stuff, so I just wanted to ask with you all
16 who that person would be?

17 MS. MAKRIS: I'm going to do the
18 majority of it. I am going to testify, so
19 when I testify he's going to ask me questions.

20 CHAIRPERSON MILLER: Okay.

21 MS. MAKRIS: Otherwise I'll be
22 doing this.

1 CHAIRPERSON MILLER: Okay, that'll
2 work. And for the ANC?

3 MR. HART: For the ANC I'll be
4 doing most of it, and similarly I'll testify
5 and at that point Commissioner Guthrie will
6 likely do the questioning.

7 CHAIRPERSON MILLER: Okay. That
8 works great. All right, and then I want to
9 ask you about the witnesses just so we have an
10 idea how many witnesses to expect.

11 MS. MAKRIS: We are going to have
12 three.

13 CHAIRPERSON MILLER: Three.

14 MS. MAKRIS: So we've actually
15 listed all of them on our PIFs already.

16 CHAIRPERSON MILLER: Okay. And
17 you?

18 MR. HART: We'll have three as
19 well. It will be Commissioner Guthrie, myself
20 and Mr. James.

21 CHAIRPERSON MILLER: Okay.

22 MR. JAMES: And I will probably

1 ask questions of everyone who may be a witness
2 during the time --

3 (Off microphone discussion)

4 CHAIRPERSON MILLER: Okay.

5 MR. JAMES: We'll seek very
6 diligently to not be repetitive.

7 CHAIRPERSON MILLER: Right. Okay.
8 Right, your witness can always say I would
9 testify to the same thing, and that's just
10 fine, you know.

11 MS. MAKRIS: I have a question on
12 that. On the PIFs it sort of generally listed
13 a bunch of different types of people who may
14 testify.

15 CHAIRPERSON MILLER: Okay, let's
16 look at them.

17 MS. MAKRIS: They also were late.
18 They weren't within seven days. They weren't
19 served.

20 CHAIRPERSON MILLER: Okay, both of
21 them? For both parties?

22 (Off microphone discussion)

1 CHAIRPERSON MILLER: You got a
2 copy Friday from Ms. Jenkins?

3 MS. MAKRIS: We did. But then we
4 weren't served seven days before the hearing
5 like the PIF order form says. That's all I'm
6 noting.

7 CHAIRPERSON MILLER: Okay. So
8 you're putting that on the record. And then
9 are you claiming prejudice by any of the -- oh
10 I see, the witnesses. You want to know who
11 they are because you don't know exactly who
12 they are by the PIF.

13 MS. MAKRIS: Sure. My problem is
14 that because the PIF clearly states, list your
15 witnesses, I don't know how that could be
16 interpreted other than the name of your
17 witnesses, and so we listed ours, everyone we
18 possibly expected to call to testify.

19 That gave the opposing party the
20 ability to investigate, prepare rebuttal
21 witnesses, all of that. We were not given
22 that opportunity as a result of the other

1 parties failing to actually list their
2 witnesses.

3 CHAIRPERSON MILLER: Right.
4 That's definitely better.

5 Can you at least give them an idea
6 right now of who the witnesses are and what
7 they'll testify to?

8 MR. HART: Sure. It'll be myself,
9 Mr. Guthrie and Mr. James.

10 CHAIRPERSON MILLER: That's it.
11 Oh, all right.

12 MR. JAMES: The KCA PIF stated
13 that I would make a statement on behalf of KCA
14 --

15 CHAIRPERSON MILLER: Right.

16 MR. JAMES: -- so that was clear.

17 MR. HART: And I also stated in
18 our PIF that I would testify and that
19 Commissioners Guthrie or Simpson would
20 testify. So I don't really see any claim of
21 prejudice being valid here.

22 MR. JAMES: Neither do I. And

1 besides that there's not a code or regulation
2 requirement regarding a PIF or how much it's
3 a Board policy, and we of course attempt as
4 best we can to comply with it. But until the
5 day before they were due we were in
6 discussions with the applicant thinking that
7 there was a good chance to move towards a
8 settlement.

9 But even beyond that, you know,
10 they've had them for seven days. She really
11 had them Thursday last week, and today is, you
12 know, if you count those days that's seven
13 days.

14 MR. HART: To be clear, we
15 submitted the PIFs the same day that they
16 submitted theirs.

17 CHAIRPERSON MILLER: Okay. I
18 don't think we need a lot of argument on this
19 because they are like the principals and you
20 know the nature of the protest, and so I'm not
21 seeing surprise here that would prejudice you.

22 MS. MAKRIS: That's fine, if they

1 don't call any other --

2 CHAIRPERSON MILLER: Okay, Mr.
3 Jones?

4 MEMBER JONES: Just to be clear,
5 so you raised two issues. One about the lack
6 of specificity in the PIF in terms of the
7 names. You also raised another issue about
8 the timeliness.

9 MS. MAKRIS: Exactly.

10 MEMBER JONES: Okay, so I think
11 we've addressed the concern you raised on the
12 details on the PIF. I don't know that we've
13 addressed, as you raised it, your concern
14 regarding timeliness.

15 Have we, or are you satisfied with
16 where we are with that or do you still have a
17 concern about the timeliness of which you
18 received the PIF?

19 MS. MAKRIS: I still do have a
20 concern. I'm not sure what the remedy would
21 really be at this point, so simply for
22 practicality purposes, but I will note that we

1 can provide the time stamp submission where we
2 submitted ours on Wednesday, October 30th, and
3 we did not, no one else emailed them around
4 until Thursday, and today is now Wednesday.
5 So that's not seven days.

6 MEMBER JONES: So just to be
7 clear, you received the PIF from the
8 protestant --

9 MS. MAKRIS: On Thursday, October
10 31st.

11 MEMBER JONES: October 31st. And
12 how did you receive that? Via email?

13 MS. MAKRIS: Via email.

14 MEMBER JONES: From?

15 MS. MAKRIS: From the protestant.

16 MEMBER JONES: From the
17 protestant.

18 MS. MAKRIS: And we emailed them
19 our PIFs on Wednesday, and we copied everyone,
20 seven days in advance. That's all. I don't
21 know what really anything can be done about it
22 at this point, so I simply wanted to note it

1 on the record.

2 CHAIRPERSON MILLER: Okay, I think
3 we can move on. I don't think this is a big
4 issue. You've raised it but there doesn't
5 seem to be a big prejudice. And I see your
6 fingers, Mr. James, so --

7 MR. JAMES: I started on Thursday
8 and I got to today and that makes seven.

9 CHAIRPERSON MILLER: Okay, so I
10 think we can move on. And let me --

11 MEMBER ALBERTI: Mr. James, in
12 future reference, I as a Board member count
13 the previous Wednesday as seven days in
14 advance. I don't count today as one of the
15 days to be counted. Just for future reference
16 so you know my interpretation of that
17 requirement. I don't know how others feel,
18 but I will tell you my interpretation.

19 MR. HART: Thank you.

20 MEMBER JONES: I would concur with
21 that based on if you're going to go literally
22 with the timestamp and what-have-you,

1 depending on the time of the hearing, when you
2 actually get it is actually seven days or not
3 seven days, depending on what time the hearing
4 is.

5 So just to be safe and to be fair,
6 it would probably be best practice to make
7 sure you get it there on the Wednesday prior
8 to the date of the hearing. But that's just
9 my individual Board member's perspective. But
10 just to make sure I'm clear -- I forgot your
11 name, ma'am. I'm sorry.

12 MS. MAKRIS: Elizabeth Makris.

13 MEMBER JONES: Okay, Elizabeth.
14 You are not claiming any prejudice based on it
15 not being received on Wednesday?

16 MS. MAKRIS: We did have less time
17 to prepare rebuttal as a result. That is the
18 prejudice. Right, yes. Yes, we had less time
19 to prepare --

20 MEMBER JONES: You had less time
21 to prepare.

22 MS. MAKRIS: -- our rebuttal than

1 they did because we followed the rules and
2 they did not.

3 MEMBER JONES: Okay, so as a
4 matter of record you've noted that that's what
5 your prejudice is.

6 MS. MAKRIS: Yes.

7 MEMBER JONES: Okay, thank you.

8 MR. HART: Can we just see the
9 timestamp please?

10 CHAIRPERSON MILLER: But the
11 timing of the rules of the days, how you count
12 the days, I'm pretty sure is in our
13 regulations.

14 (Off microphone discussion)

15 CHAIRPERSON MILLER: So anyway, I
16 don't see this as a big issue though.

17 (Off the record comments)

18 MEMBER SILVERSTEIN: Excuse me.

19 MALE PARTICIPANT: Sorry.

20 CHAIRPERSON MILLER: I don't see
21 this as a big issue. I think we need to move
22 on. So I just want to tell you, I don't think

1 most of you at this table, really, know about
2 our procedures. I don't know if you've done
3 a protest before.

4 Okay, so this is how it works.
5 Each side gets a maximum of an hour and a
6 half. Mr. Jones is keeping the time, and if
7 you're ever concerned about your time you can
8 ask him. Usually that's way more than enough
9 for each side.

10 It does not include opening
11 statements or closing statements. You get up
12 to five minutes on those. It does not include
13 when your witness is being cross examined by
14 the other side. It does include when you are
15 cross examining their witness.

16 Okay, if we start with opening
17 statements, and I think the applicant goes
18 first and then the protestant, and then we
19 call our investigator who does the protest
20 report. And then each of you, starting with
21 the applicant has an opportunity to ask
22 questions of the investigator and the Board

1 does too, and actually the Board starts off
2 with the investigator, with questions.

3 And then the applicant then goes
4 with its case and presents witnesses, now have
5 a chance to cross examine. We can cross
6 examine the other side, and then protestants
7 make their case, the ABRA cross examines, and
8 then closing.

9 Okay, and then if you have any
10 questions along the way feel free to ask me.
11 Okay.

12 MR. JAMES: Thank you. I have a
13 question right off the bat.

14 CHAIRPERSON MILLER: Okay, yes.
15 Mr. James?

16 MR. JAMES: I'm uncertain, but I
17 believe that I, for Kalorama Citizens, did not
18 receive the Board's investigation of this
19 matter.

20 CHAIRPERSON MILLER: Okay.

21 MR. JAMES: But I switched from an
22 old computer to a new computer in the last two

1 weeks and I missed about five days of emails.
2 I wonder if there might be a paper copy
3 available?

4 CHAIRPERSON MILLER: Yes, I think
5 we can get you another copy. The protestants
6 have it. ANC 1C has a copy too, right? To
7 make this easier for you we'll make a copy.

8 (Off microphone discussion)

9 CHAIRPERSON MILLER: Okay, we're
10 going to get a copy for you, Mr. James. All
11 right, anything else before we start with
12 opening statements?

13 Okay, Applicant, would you like to
14 make an opening statement?

15 MS. MAKRIS: We are here today to
16 ask the Board to grant our request to
17 terminate the settlement agreements attached
18 to our license. Our request pertains to two
19 agreements. One was signed in 1995 and one
20 was signed in 2002.

21 None of the signatories of the
22 1995 agreement have come forward to protest

1 the termination so that is uncontested.

2 Actually, one of them actually wrote us a
3 letter of support and noted in the letter that
4 they do not believe that they even have an
5 agreement with The Blaguard, in their mind.

6 I only note this, it's all already
7 part of the record. I only note this to
8 ensure that any order entered in this case
9 also clearly addresses the 1995 agreement
10 moving forward. So we move forward today with
11 only the 2002 agreement contested by the two
12 parties here today.

13 We are a small business occupying
14 only 1,500 square feet on the southern end of
15 Adams Morgan. We're a neighborhood business.
16 We're frequented for the most part by our
17 actual neighbors.

18 We have an investigative history
19 that consists of only administrative issues.
20 We've never had anything violent happen in our
21 establishment or had ABRA or the police
22 investigate any incident whatsoever that

1 happened within our establishment.

2 We attempted to come to an
3 agreement with the parties seven months ago.
4 For seven months we have negotiated, had
5 numerous discussions, spent hours and hours
6 and hours talking. We've tried absolutely
7 everything to come to an agreement with the
8 parties.

9 We were met with hostility, we
10 were met with physical intimidation and
11 insults when we requested that we change this
12 agreement. Despite this, we spent hours upon
13 hours listening to them and trying to come to
14 an agreement.

15 We've been trying to fix an
16 agreement that is 11 years old and that is
17 attached to a license that has had five
18 different owners and three different
19 businesses attached to it, all with different
20 business models.

21 It's an agreement that has several
22 very nonsensical and in some cases illegal

1 provisions, but the parties would not do so
2 without requesting a pound of flesh from us.
3 Pushing for more and more restrictions for our
4 business that would make it impossible for us
5 to equally compete with our neighbors, and
6 they've forced us here today as a result.

7 We will share that we acted in
8 good faith to come to resolve this matter
9 amicably, that there are facts beyond our
10 control that necessitate the termination of
11 this agreement and that terminating the
12 agreement will not negatively impact the
13 peace, order or quiet of our neighborhood.
14 Also we submitted a letter to the Board that's
15 part of the record that I would like to
16 address. It was received by the Board on
17 April 29th. This letter was --

18 CHAIRPERSON MILLER: Can I just
19 say something? I don't want to, you know,
20 obstruct your train of thought, but what
21 you're saying now, you're not under oath.
22 It's not evidence. I just want you to know

1 that. This is just opening argument. Okay,
2 just as long as you know that anything you
3 want to get into evidence you'll have to get
4 in when you're under oath.

5 MS. MAKRIS: I understand.

6 CHAIRPERSON MILLER: Okay, go
7 ahead.

8 MEMBER SILVERSTEIN: Madam Chair?

9 CHAIRPERSON MILLER: Yes.

10 MEMBER SILVERSTEIN: The easiest
11 way to understand this is, your opening
12 statement you tell us what you're going to
13 tell us. Then in your case you tell us, and
14 in your closing statement you tell us what you
15 told us. So this is five minutes of preview
16 of what we're going to tell you. No evidence
17 is introduced now, just tell us.

18 MS. MAKRIS: Sure. Okay. And I
19 just want to address really briefly for the
20 record the letter that's in the record from
21 April 29th. It was something that was the
22 result of a misunderstanding by us when

1 talking to ABRA's administrative staff. We
2 were under the impression that we had to
3 explain which, basically make arguments for
4 which provisions of our agreement were
5 problematic in order for the Board to even
6 consider amending the agreement if they didn't
7 terminate.

8 So that was the intent of the
9 letter. I just want it to be very clear that
10 we're asking for termination, not an
11 amendment.

12 So we will prove that we spent a
13 lot of time, a lot of, lot of time trying to
14 resolve everything amicably that the
15 neighborhood has changed an enormous amount,
16 that the business has changed an enormous
17 amount since the time of the signing of this
18 agreement.

19 That the law has changed, making
20 some of these provisions impossible or
21 illegal, and finally that we do not in any way
22 impact the peace, order and quiet of our

1 neighborhood negatively now and we will not do
2 so regardless of this agreement being in
3 place.

4 CHAIRPERSON MILLER: Thank you.
5 Okay, ANC? Okay. I want to tell you -- where
6 are you going?

7 MR. HART: I'm just standing up.

8 CHAIRPERSON MILLER: Oh. Well, I
9 just want to tell you, I just want to make
10 sure that -- you can, but now the microphone
11 is further away so you'll really have to -- so
12 where you're comfortable doing that. Okay.

13 MR. HART: Okay. Thank you. I
14 would like to start just by providing a little
15 bit of context. There have been 55 CR
16 licenses that the ANC has reviewed in Adams
17 Morgan. Of those 55, up until this point, the
18 ANC has only gone to a protest hearing twice.
19 That's less than five percent. That is a very
20 small number.

21 And that is in part because the
22 ANC has worked extremely hard to work

1 cooperatively with the businesses and provide
2 agreements that are in the best interest of
3 the local businesses, and also in the interest
4 of the local community in maintaining peace,
5 order and quiet. And I can tell you, the ANC
6 feels very strongly that these agreements
7 should be in the best interests of the
8 businesses and the community.

9 The other reason why that number
10 is so low is because the business community
11 themselves has recognized the importance of
12 these settlement agreements. Leaders of the
13 BID, many of the other establishment owners in
14 Adams Morgan have expressed the importance of
15 these settlement agreements. I'm not sure
16 you're aware of this, but tonight we have our
17 moratorium vote in Adams Morgan. It's going
18 to be a pretty large affair. And one of the
19 largest arguments that all of the business
20 owners have made is that they'd prefer
21 settlement agreements to a moratorium because
22 it's a much more tailored tool, and that's the

1 words that they've used. And the moratorium
2 is a blunt instrument that doesn't tries to
3 treat them all in the same way.

4 So I just wanted to offer that
5 little bit of background showing that this is
6 a rare circumstance for us and certainly
7 nothing that we enjoy or take pleasure in at
8 all. We try to avoid the protest hearings as
9 much as we possibly can.

10 That being said, in this instance
11 the reason why we're here is because the
12 applicant has applied to terminate a
13 settlement agreement with us. So we are in
14 fact on the defensive and we are trying to
15 maintain a modest settlement agreement.

16 And throughout this process we
17 have been more than happy, more cooperative to
18 work with them just as we have the other 53
19 licensees in Adams Morgan. And I can tell you
20 it's been a very difficult process.

21 I think the ANC has devoted more
22 time and effort and resources to this

1 applicant than we have any other applicant in
2 Adams Morgan, and unfortunately we haven't
3 been able to reach an agreement up until this
4 point.

5 But if you also look at the
6 statute, 24-4(B)(d), the three prongs of which
7 we will show that they have not met, one of
8 which is that their termination of the
9 agreement will not have a negative impact on
10 peace, order and quiet.

11 And the final point I would like
12 to make is that in addition to them being the
13 ones to terminate this agreement, they have
14 not been in compliance with their food
15 requirements throughout the last eight
16 quarters.

17 We have the numbers and we'll talk
18 about those specifically, but five of the last
19 eight quarters they failed at least one test,
20 and eight of the last eight quarters they
21 failed the other food requirements test. So
22 they're operating as a de facto tavern under

1 a CR license.

2 And that's really the crux of the
3 problem in Adams Morgan is that if we had
4 licenses that were clearly restaurant and
5 clearly tavern it would make our decision
6 making, our negotiations, and regulations that
7 come from the D.C. government much more clear
8 and exercisable.

9 So on top of the procedural and
10 the posture of this and the context, they're
11 not complying with their CR license. And as
12 we said, I will take the stand, Commissioner
13 Guthrie will, and we'll probably take
14 questions from Mr. James.

15 So thank you for your
16 consideration.

17 CHAIRPERSON MILLER: Thank you.
18 Okay. Mr. James, do you have something to
19 add?

20 MR. JAMES: I do. KCA will
21 attempt to show and convince the Board that
22 the applicant did not properly comply with the

1 termination rules. That removal of the
2 existing agreement with no subsequent
3 acceptable agreement in place would lead to
4 disturbance of the peace, order and quiet of
5 the neighborhood. That's all.

6 CHAIRPERSON MILLER: Okay, thank
7 you. Okay, at this time I'm going to call our
8 investigator.

9 Do you swear to tell the truth,
10 the whole truth and nothing but the truth?

11 MR. APRAKU: I do.

12 CHAIRPERSON MILLER: All right,
13 thank you. Whenever you're ready.

14 MR. APRAKU: I'm Investigator Kofi
15 Apraku. Last name is spelled A-P-R-A-K-U. I
16 was assigned the protest investigation for a
17 CR settlement agreement termination for The
18 Juniper Group trading as The Blaguard.

19 The termination of the settlement
20 agreement is being protested by the Kalorama
21 Citizens Association represented by Mr. Denis
22 James, and the Advisory Neighborhood

1 Commission 1C represented by Commissioner
2 Brian Hart. The protest issues are listed as
3 having as the agreement termination having an
4 adverse effect on peace, order and quiet.

5 On Friday, October 11th, 2013, I
6 interviewed Mr. James regarding the protest
7 issues. Mr. James stated that The Blaguard
8 intended to start offering live music and the
9 KCA was opposed to this. Mr. James stated
10 that the prohibition on the entertainment for
11 The Blaguard was put in place to protect the
12 residents from excessive noise.

13 Mr. James stated that it also
14 appeared that The Blaguard was intending to,
15 instead of continue being a restaurant, morph
16 into a nightclub during its weekend and
17 evening hours. Mr. James stated there are not
18 many complaints against The Blaguard, however,
19 it is the establishment's settlement agreement
20 that keeps it in check.

21 On Thursday, October 17th, 2013, I
22 interviewed Mr. Hart regarding the protest

1 issues. Mr. Hart stated that with the
2 increase of violence and unruly behavior along
3 the 18th Street corridor, it's important for
4 ANC 1C to maintain settlement agreements with
5 establishments who operate there.

6 Mr. Hart stated that he was
7 concerned about The Blaguard trying to cancel
8 its settlement agreement since it had been
9 operating successfully within its confines.
10 Mr. Hart stated that the establishment's
11 settlement agreement works well with the
12 community and its removal would lead to
13 eventual problems with the residents and the
14 immediate community.

15 The Blaguard is located in a C-2-A
16 zone. There are 36 licensed ABC
17 establishments operating within 1,200 feet of
18 The Blaguard. There are no schools within 400
19 feet of The Blaguard. The Blaguard is housed
20 in an attached green building, two stories,
21 with glass windows and doors at the entrance
22 to the establishments. There are Dumpsters in

1 the alley behind it.

2 The interior of the establishment
3 comprises of two bar areas on the first and
4 second floor, with chairs on the first floor
5 and bar stools on the second floor for
6 seating. The walls are adorned with Redskins
7 football memorabilia. The second floor has a
8 fully stocked kitchen that has everyday
9 kitchen appliances in it.

10 MPD Crime Analysis Unit stated
11 that over a one-year period there were three
12 calls for service at the listed location.
13 None of these calls resulted in reports to
14 ABRA. The Blaguard was monitored on 12
15 separate occasions by ABRA personnel.

16 During the course of monitoring,
17 ABRA investigators did not observe any
18 loitering, criminal activity or excessive
19 trash around The Blaguard. There was no
20 excessive noise emanating from the
21 establishment. It was noted that vehicle and
22 pedestrian traffic were light during the

1 weekday hours, but increased dramatically
2 during the weekend nights. Thank you.

3 CHAIRPERSON MILLER: Thank you.
4 That was an excellent report. Are there
5 questions by Board members?

6 MR. APRAKU: Yes, sir?

7 CHAIRPERSON MILLER: Yes, Mr.
8 Alberti?

9 MEMBER ALBERTI: Investigator
10 Apraku, thank you for your report. Did you
11 interview the licensee with respect to,
12 because I don't see it in your report.

13 MR. APRAKU: Oh, I did. And it is
14 in the report. It is on Page 8, sir.

15 MEMBER ALBERTI: Oh, okay.

16 MR. APRAKU: Yes, and I'm sorry --

17 MEMBER ALBERTI: Okay.

18 MR. APRAKU: Yes, I think I
19 skipped that. Yes.

20 MEMBER ALBERTI: And do you want
21 to summarize what you learned from the
22 licensee?

1 MR. APRAKU: Absolutely. On
2 Thursday, October 17th, 2013, I interviewed
3 Mr. Nicolas Makris, the applicant for The
4 Blaguard. Mr. Makris stated that his
5 intention to remove the provisions from the
6 license were simply to obtain an entertainment
7 endorsement and the ability to charge cover
8 when live entertainment was present on the
9 premises.

10 Mr. Makris stated that his
11 establishment is a community oriented
12 establishment that is mostly frequented by
13 residents from the neighborhood. Mr. Makris
14 also stated that he has not received any
15 complaints regarding his application for the
16 termination of the settlement agreement, but
17 has, however, received some letters of support
18 from community members.

19 Mr. Makris stated that the
20 establishment's ability to have an
21 entertainment endorsement and the ability to
22 charge a cover should pose no real threat to

1 the immediate community or the residents.

2 That was it, sir.

3 MEMBER ALBERTI: So it appears
4 from what I'm hearing is that the emphasis
5 from Mr. Makris was the restriction on
6 entertainment.

7 MR. APRAKU: Yes.

8 MEMBER ALBERTI: And the cover
9 charge.

10 MR. APRAKU: Yes.

11 MEMBER ALBERTI: Did he speak to
12 any other restrictions that he felt were, I'll
13 say, hamstringing his business model?

14 MR. APRAKU: He spoke along the
15 lines, I think, in regards to something in
16 regards to the windows being open at certain
17 hours. But he told me that he was
18 compromising with the protestants in regards
19 to the hours.

20 MEMBER ALBERTI: In regards to the
21 windows?

22 MR. APRAKU: Yes, to the windows

1 being open during certain hours of the day.

2 MEMBER ALBERTI: Okay, I
3 understand. I see that. Is there anything
4 else?

5 MR. APRAKU: No.

6 MEMBER ALBERTI: Thank you very
7 much.

8 MR. APRAKU: Thank you.

9 CHAIRPERSON MILLER: Others?

10 I kind of want to ask you kind of
11 a general question for the area in Adams
12 Morgan. Are you familiar with any other
13 establishment that terminated its voluntary
14 agreement?

15 MR. APRAKU: No, this is the first
16 time I'm dealing with a settlement agreement
17 termination.

18 CHAIRPERSON MILLER: Okay.

19 MR. APRAKU: I'm not familiar with
20 any others.

21 CHAIRPERSON MILLER: And are you
22 familiar with any establishments that don't

1 have a settlement agreement?

2 MR. APRAKU: Yes.

3 CHAIRPERSON MILLER: And are some
4 of those, of their conduct, good without a
5 settlement agreement?

6 MR. APRAKU: Yes, some of them are
7 good.

8 CHAIRPERSON MILLER: Okay.

9 MR. APRAKU: And some of them also
10 have issues.

11 CHAIRPERSON MILLER: Okay. Mr.
12 Silverstein?

13 MEMBER SILVERSTEIN: Thank you for
14 an excellent report, Investigator Apraku.

15 MR. APRAKU: Thank you.

16 MEMBER SILVERSTEIN: The standard
17 question I always open with, any red flags
18 here? Anything that you see that we should
19 look at or be concerned with right off the
20 bat?

21 MR. APRAKU: From the monitoring
22 that I conducted during the times that I was

1 there, and I was there during times when they
2 were open and there were times when they
3 weren't open, but there wasn't any concern.

4 The main concern, normally, for my
5 purposes is normally up the block, when I'm up
6 like in the 2200 block of Adams Morgan.
7 That's where, you know, the excessive
8 loitering and et cetera, occurs.

9 There wasn't any excessive noise,
10 it's just as an increase in activity during
11 the weekends and that's about it. But nothing
12 that the establishment as far as I could tell
13 was doing that would be a red flag.

14 MEMBER SILVERSTEIN: Based on your
15 experience, relatively clean operation?

16 MR. APRAKU: As far as I could see
17 based on my experience, a clean operation.

18 MEMBER SILVERSTEIN: Would there
19 be a problem in terms of setting a precedent
20 if this settlement agreement were terminated?
21 Are there things in here that are across the
22 board based on your understanding where we

1 could inadvertently be doing something that
2 could be an issue?

3 MR. APRAKU: Well, during the
4 course of my monitoring I didn't observe any
5 excessive noise. Now if an entertainment
6 endorsement was to be granted or the
7 settlement agreement was to be terminated and
8 an entertainment endorsement be granted,
9 that's a variable that I can't really account
10 for as to now what the operations will be
11 going forward.

12 MEMBER SILVERSTEIN: Anything you
13 can tell us about the size of the
14 establishment or the acoustics of the
15 establishment that we should be concerned
16 about with an entertainment endorsement?

17 MR. APRAKU: It's a fairly small
18 establishment. Again I can't really speak to
19 the acoustics, because again there wasn't any
20 loud music for me to really judge it by as to
21 like how the installation of the building is
22 or how it would respond to loud music. I

1 wouldn't be able to say.

2 MEMBER SILVERSTEIN: Okay.

3 Anything else that you would want to add?

4 MR. APRAKU: No, sir.

5 MEMBER SILVERSTEIN: Thank you
6 very much for an excellent report.

7 CHAIRPERSON MILLER: Mr. Jones?

8 MEMBER JONES: Thank you, Madam
9 Chair. Are you aware of whether or not the
10 surrounding establishments to The Blaguard,
11 whether or not they have an SA, first of all?

12 MR. APRAKU: I'm not sure whether
13 they have an SA. I do know that the Jack Rose
14 which is next to it does have an entertainment
15 endorsement.

16 MEMBER JONES: Okay, my next
17 question was going to be are you aware of
18 whether or not the surrounding establishments
19 have an entertainment endorsement?

20 MR. APRAKU: Yes, the one next to
21 it has an entertainment endorsement, which is
22 the Jack Rose.

1 MEMBER JONES: The Jack Rose,
2 okay.

3 MR. APRAKU: Yes.

4 MEMBER JONES: And the nature of
5 the operations as you observed The Blaguard,
6 when you observed it what were the nature of
7 the types of operations, activities that were
8 going on in and out of, or in and surrounding
9 that establishment?

10 MR. APRAKU: It was fairly quiet.
11 I mean it wasn't anything excessively loud or
12 anything along that nature. I mean you can
13 hear some music coming from it, but it wasn't
14 anything excessively loud.

15 MEMBER JONES: Okay. So when you
16 say you heard music coming from it, pre-
17 recorded type of background music or --

18 MR. APRAKU: Most likely. I
19 didn't enter the establishment to see, but
20 that would be what I would assume. That it
21 was just pre-recorded music, maybe from an
22 iPod or something of that nature.

1 MEMBER JONES: Okay. And the
2 nature of the crowd there, was it a heavier
3 crowd later at night or, those are heavy times
4 for a business, from what you observed?

5 MR. APRAKU: I was working
6 normally, it gets heavy around maybe 10:00,
7 11:00. That's when a lot of people started
8 coming in. I would say 11:00 going it gets
9 heavy. I mean they did have a crowd.

10 I even believe The Blaguard had a
11 crowd on one of the nights that I was there.
12 But again it wasn't spilling out the door. It
13 was pretty contained, and the doors were
14 closed. So around maybe like 11:00, about 11
15 o'clock going.

16 MEMBER JONES: Okay, and did you
17 observe security of any type?

18 MR. APRAKU: I did observe
19 security outside The Blaguard and not at the
20 Jack Rose. There was a gentleman outside who
21 was checking IDs. That was the one time that
22 I saw him there.

1 MEMBER JONES: And you say you saw
2 a security person outside of The Blaguard one
3 time during all of your observations?

4 MR. APRAKU: Yes. I mean yes.
5 During the time, that was the one time that I
6 observed him. Again, I'm not entirely sure as
7 to whether there was, whether he was there
8 whether he was stationed inside the
9 establishment and checking IDs as people were
10 coming inside, but I observed him outside one
11 time while I was there.

12 MEMBER JONES: Okay, but it was
13 clear to you that this individual was there on
14 behalf of The Blaguard and not the some other
15 --

16 MR. APRAKU: Yes.

17 MEMBER JONES: Okay, got it. And
18 last thing, did the licensee communicate to
19 you in any way how they intended to use a
20 entertainment endorsement?

21 MR. APRAKU: He stated along the
22 lines that he would like to offer some sort of

1 live entertainment, and then on the days that
2 he would be offering that live entertainment
3 he would be able to charge a cover for people
4 who would be entering the establishment.

5 MEMBER JONES: Okay, thank you.
6 Thank you, Chair.

7 CHAIRPERSON MILLER: Okay, others?
8 I have one more question. Thanks.
9 I just want to know, are there any residences
10 nearby, behind The Blaguard or anything or no?

11 MR. APRAKU: It's on the same
12 block as a couple of other businesses, so I
13 did not observe any residence directly behind
14 it. And it's also in front of a couple of
15 other businesses. So I didn't see any
16 residence within its immediate vicinity.

17 It's right next to Tamarindo and a
18 couple of other restaurants, but I didn't
19 observe any residence behind it or in front of
20 it.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

1 MR. APRAKU: Thank you.

2 CHAIRPERSON MILLER: All right,
3 does the applicant have questions?

4 MS. MAKRIS: I do. You visited
5 The Blaguard about a dozen times, is that
6 correct?

7 MR. APRAKU: Correct.

8 MS. MAKRIS: And did you ever
9 witness what you consider The Blaguard
10 disturbing the peace, order or quiet of the
11 neighborhood?

12 MR. APRAKU: No.

13 MS. MAKRIS: Okay. And did you
14 notice whether or not The Blaguard has
15 speakers to amplify music at this time?

16 MR. APRAKU: I went inside. They
17 had some speakers that were facing the inside
18 of the establishment, yes.

19 MS. MAKRIS: So there's already
20 amplified music then.

21 MR. APRAKU: There is, yes, some
22 form of, yes, amplification. Yes, there's

1 speakers in the establishment.

2 MS. MAKRIS: And despite that you
3 said there was no excessive noise.

4 MR. APRAKU: No, no excessive
5 noise.

6 MS. MAKRIS: That's all I have.

7 CHAIRPERSON MILLER: That's all?

8 MS. MAKRIS: Yes.

9 CHAIRPERSON MILLER: Okay, ANC 1C?

10 MR. HART: Sure. Over what period
11 of time did you visit The Blaguard? You said
12 you visited them a dozen times.

13 MR. APRAKU: Yes. It is --

14 MR. HART: It's not a major point.
15 I was just curious.

16 MR. APRAKU: Oh, well, let me see,
17 if I may. It was from October 3rd to October
18 28.

19 MR. HART: Okay, and that was
20 impromptu? You don't give them advance
21 notice?

22 MR. APRAKU: No.

1 MR. HART: Okay. You mentioned
2 that a school was not within 400 feet of --

3 MR. APRAKU: Yes.

4 MR. HART: -- the establishment.
5 But you are aware that the Marie Reed school
6 is one block north across from Wyoming Avenue,
7 and the Oyster Adams school is two blocks west
8 on 19th Street?

9 MR. APRAKU: When we compiled that
10 data that data comes directly from D.C. GIS,
11 so it was just from the information that comes
12 from there. So I'm unaware of those schools.
13 I just did it according to the D.C. GIS
14 system.

15 MR. HART: Okay. And I assume
16 that you didn't listen to the noise with the
17 doors and windows open because the settlement
18 agreement requires that the doors and windows
19 be closed, right?

20 MR. APRAKU: On the days that
21 there was music their windows and doors were
22 closed.

1 MR. HART: Right.

2 MR. APRAKU: During the daytime,
3 there were opportunities during the daytime
4 where I would go there and the windows and
5 doors would be open, but there was no music
6 emanating, coming from it. So yes, I can't
7 really say.

8 MR. HART: Okay. That's all I
9 have. Thanks for your work.

10 MR. APRAKU: Thank you.

11 CHAIRPERSON MILLER: Mr. James?

12 MR. JAMES: Do you have a copy of
13 the investigative report?

14 MR. APRAKU: Yes, I do.

15 MR. JAMES: And how many times did
16 you visit the establishment?

17 MR. APRAKU: Twelve.

18 MR. JAMES: And do you know when
19 the protests were filed on this matter?

20 MR. APRAKU: I don't have the
21 exact date of when the protest was filed. It
22 was assigned to me on October 3rd, so that's

1 when I started.

2 MR. JAMES: So none of the visits
3 occurred until October 3rd.

4 MR. APRAKU: Yes, that's when I
5 was assigned the protest investigation.

6 MR. JAMES: Within your packet of
7 your report --

8 MR. APRAKU: Yes.

9 MR. JAMES: I'm not sure what page
10 number it is, but there's a protest letter
11 from the Kalorama Citizens Association dated
12 July 1st, 2013?

13 MR. APRAKU: Yes, but my -- yes.
14 Yes.

15 MR. JAMES: Okay, but you never --

16 MR. APRAKU: No.

17 MR. JAMES: -- visited the
18 establishment earlier during the time that
19 it's been protested, just within the last few
20 weeks of this, during the time of this report.

21 MR. APRAKU: Are you speaking from
22 July?

1 MR. JAMES: Yes.

2 MR. APRAKU: I wasn't assigned the
3 protest investigation at that time.

4 MR. JAMES: All right. And during
5 the time since you visited, how many of those
6 would be considered to be late at night when
7 things are hopping in Adams Morgan?

8 MR. APRAKU: I would have to go
9 through and see.

10 MS. MAKRIS: Objection. The
11 record speaks for itself. I believe that the
12 times and dates are on the report.

13 CHAIRPERSON MILLER: On the
14 report, I would tend to agree. Do you want to
15 ask a followup question on that and be
16 directed to where that is? Or else do you
17 just want to ask him --

18 MR. JAMES: I just want to make
19 the point that most of the visits were not
20 during hours that there would be any likely
21 disturbance --

22 CHAIRPERSON MILLER: Okay, so --

1 MR. JAMES: -- that would register
2 with residents. But if you want me to ask
3 more --

4 CHAIRPERSON MILLER: No, I would
5 just say --

6 MR. JAMES: -- questions that's
7 fine.

8 CHAIRPERSON MILLER: You could
9 even testify to that later. I mean it's in
10 the record.

11 MR. JAMES: I'd much rather rely
12 on the investigator.

13 CHAIRPERSON MILLER: But I mean
14 you did. He reported it, what you're saying
15 that, you know --

16 MR. JAMES: I'd like to rephrase
17 the question.

18 CHAIRPERSON MILLER: Okay.

19 MR. JAMES: Mr. Apraku, would you
20 agree that on only four occasions out of the
21 12 listed that you visited The Blaguard during
22 the later hours --

1 MR. APRAKU: I'd have to look.

2 And --

3 MR. JAMES: I'll rephrase that to
4 say five.

5 MS. MAKRIS: And once again, it's
6 half of the times.

7 MR. APRAKU: Yes. The answer is
8 yes.

9 MR. JAMES: This is basis for my
10 next question which is at any of those times
11 did you observe the windows open or the doors
12 propped open at The Blaguard?

13 MR. APRAKU: No.

14 MR. JAMES: Thank you. And my
15 next question is with regard to the maps that
16 are included in your report.

17 MR. APRAKU: Yes.

18 MR. JAMES: And I think that the
19 one that shows a 1,200 foot radius --

20 MR. APRAKU: Yes.

21 MR. JAMES: -- is the one that I
22 would like to talk about because it shows more

1 detail.

2 MR. APRAKU: Yes.

3 MR. JAMES: Are you able to tell
4 where residences are by viewing this map?

5 MR. APRAKU: The map was a D.C.
6 GIS representation of all ABC establishments
7 located within 1,200 feet of The Blaguard. It
8 doesn't show residences.

9 CHAIRPERSON MILLER: Excuse me,
10 I'm sorry. Wait. For the record, are you
11 referring to Exhibit Number 4 of the
12 investigative report?

13 MR. JAMES: I'm sorry. I couldn't
14 see the writing quite as --

15 CHAIRPERSON MILLER: The legend?

16 MR. JAMES: Yes. Exhibit Number
17 4, thank you.

18 CHAIRPERSON MILLER: Okay, just so
19 people who will be following in the record.

20 MR. JAMES: So are you aware that
21 directly across the street from The Blaguard
22 on Vernon Street NW, the 1800 block of Vernon

1 Street NW, the 1800 block of California Street
2 NW, and even on 18th Street itself, with the
3 Ashley there are residences located --

4 MS. MAKRIS: Objection. It
5 mischaracterizes the exhibit. There is not a
6 residence directly across the street from The
7 Blaguard as Mr. James is --

8 CHAIRPERSON MILLER: Okay, so
9 wait. Are you asking him about the streets,
10 if there are residents on those streets?

11 MEMBER JONES: I am.

12 CHAIRPERSON MILLER: Okay, that's
13 okay. You're not saying that this exhibit
14 shows that are you?

15 MR. HART: I think he said the
16 residential street was directly across.

17 CHAIRPERSON MILLER: Could you
18 rephrase the question?

19 Are you ready to answer? You
20 understood what he asked?

21 MR. APRAKU: Oh sure. From my
22 understanding there isn't an apartment or

1 resident directly across the street from The
2 Blaguard. I believe it's 18th & U Diner that
3 I believe is directly across the street from
4 The Blaguard.

5 MR. JAMES: Thank you for that
6 answer. So you observed the 18th & U Diner,
7 correct?

8 MR. APRAKU: Yes.

9 MR. JAMES: And did you look and
10 see beyond it?

11 MR. APRAKU: I did not. I did
12 not.

13 MR. JAMES: Just, if you look at
14 it you're not able to see beyond there and see
15 that there's residence buildings?

16 MR. APRAKU: I do not recall
17 seeing a residence building.

18 MR. JAMES: Thank you.

19 CHAIRPERSON MILLER: Okay. I
20 think that completes the questioning. Thank
21 you very much.

22 MR. APRAKU: Thank you.

1 CHAIRPERSON MILLER: And it's the
2 applicant's time to present your case.

3 MS. MAKRIS: Yes, we would like to
4 call Matt Johnson, please.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER SILVERSTEIN: Say again
7 please.

8 MS. MAKRIS: Matthew Johnson.

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

12 MR. JOHNSON: I do.

13 CHAIRPERSON MILLER: Okay, thank
14 you.

15 MS. MAKRIS: Could you please
16 state your name for the record?

17 MR. JOHNSON: Matthew Johnson.

18 MS. MAKRIS: Where do you live,
19 Mr. Johnson?

20 MR. JOHNSON: I live at 1710 U
21 Street NW.

22 MS. MAKRIS: And how far is that

1 from The Blaguard?

2 MR. JOHNSON: About a block.

3 MS. MAKRIS: Have you been to The
4 Blaguard?

5 MR. JOHNSON: Yes.

6 MS. MAKRIS: Have you ever eaten
7 there?

8 MR. JOHNSON: Yes.

9 MS. MAKRIS: Have you ever noticed
10 The Blaguard or the patrons disturbing the
11 peace, order and quiet of the neighborhood?

12 MR. JOHNSON: No, I have not.

13 MS. MAKRIS: Have you ever heard
14 noise from The Blaguard at your residence?

15 MR. JOHNSON: No.

16 MS. MAKRIS: Have you ever noticed
17 noise coming out of The Blaguard onto the
18 street?

19 MR. JOHNSON: No.

20 MS. MAKRIS: Do you think removing
21 an agreement that prohibits live music and
22 windows from being opened will have,

1 specifically at The Blaguard, will have a
2 negative impact on the peace, order and quiet
3 of your neighborhood?

4 MR. JOHNSON: No.

5 MS. MAKRIS: And why is that?

6 MR. JOHNSON: You can't really
7 hear anything coming out of The Blaguard.
8 When there's music on during later hours of
9 the evening, nothing really comes out. I
10 don't see why it would be much different.

11 MS. MAKRIS: Okay, that's all.

12 CHAIRPERSON MILLER: Okay. Does
13 the ANC have any cross? No?

14 MR. HART: No, no questions.

15 CHAIRPERSON MILLER: Okay, Mr.
16 James?

17 MR. JAMES: I have a question.
18 Okay, are you familiar with the political
19 boundaries of ANC 1C and ANC 2D, which is the
20 Dupont area?

21 MR. JOHNSON: I'm not.

22 MR. JAMES: When you think of

1 where you live do you go to Adams Morgan or
2 Dupont Circle?

3 MR. JOHNSON: I think of myself as
4 being in Adams Morgan.

5 MR. JAMES: So you're not aware
6 that the boundary line between those areas is
7 U Street?

8 MS. MAKRIS: Objection, asked and
9 answered. He already said he is not familiar
10 with the boundaries, the political boundaries.

11 CHAIRPERSON MILLER: I'm going to
12 overrule it. You can ask one more question on
13 that.

14 MR. JAMES: Where you reside, the
15 closest part of The Blaguard that would be
16 closest to your residence, is it the front or
17 the back of The Blaguard?

18 MR. JOHNSON: It would be the
19 back.

20 MR. JAMES: So that if doors and
21 windows were open it would be very unlikely
22 that it would affect you if sound were coming

1 out of The Blaguard?

2 MR. JOHNSON: It would be very
3 unlikely.

4 MR. JAMES: Thank you.

5 CHAIRPERSON MILLER: Okay. Are
6 there Board questions?

7 I just have a question of your
8 relation to The Blaguard. Are you a customer?

9 MR. JOHNSON: Yes.

10 CHAIRPERSON MILLER: Do you go
11 there frequently?

12 MR. JOHNSON: Probably at least
13 once a week, sometimes more.

14 CHAIRPERSON MILLER: And what
15 times of the day do you go, or night?

16 MR. JOHNSON: It depends.
17 Sometimes I go mid-afternoon, late afternoon,
18 and on the weekends sometimes at night.

19 CHAIRPERSON MILLER: And your
20 residence is how close to The Blaguard?

21 MR. JOHNSON: It's about a block.

22 CHAIRPERSON MILLER: A block. Do

1 you ever hear noises from The Blaguard?

2 MR. JOHNSON: No.

3 CHAIRPERSON MILLER: Okay. All
4 right, that's all my questions. Any redirect
5 questions? Any Board questions?

6 Okay, thank you very much.

7 Do you have another witness?

8 MS. MAKRIS: Yes, I'm going to
9 actually testify. Yes.

10 CHAIRPERSON MILLER: Okay, I just
11 want to swear you in. Do you swear to tell
12 the truth, the whole truth and nothing but the
13 truth?

14 MS. MAKRIS: I do.

15 CHAIRPERSON MILLER: Okay.

16 MR. MAKRIS: Please state your
17 name for the record.

18 MS. MAKRIS: Elizabeth Makris.

19 MR. MAKRIS: What is your role at
20 The Blaguard?

21 MS. MAKRIS: I'm one of the owners
22 of The Blaguard and I also do a lot of the

1 paperwork for The Blaguard. So I do things
2 like the tax compliance, any sort of the
3 behind the scenes stuff that goes on. And I
4 also have all the operations, whenever, if
5 that's needed.

6 MR. MAKRIS: How about with
7 regards to ABRA filing?

8 MS. MAKRIS: ABRA, I do most of
9 that.

10 MR. MAKRIS: Where do you live?

11 MS. MAKRIS: I live in Adams
12 Morgan. I was actually brought home from the
13 hospital to a house on Ward Street which is
14 about a block from The Blaguard. I've lived
15 there pretty much my entire life. It's where
16 I was born and raised and it's my domain, my
17 neighborhood.

18 MR. MAKRIS: Why did you choose to
19 stay in the Adams Morgan neighborhood?

20 MS. MAKRIS: You know, there
21 aren't a lot of people that did from when I
22 grew up there in the '80s and the '90s, and I

1 think Adams Morgan is one of the most diverse,
2 fascinating places. It's changed so much.
3 I've gotten to see its revitalization.

4 When I was a child it was mostly
5 boarded up buildings that were left over from
6 the riots, so it was a pretty different place.
7 It's grown. It's become a very beautiful,
8 very well developed neighborhood. It has its
9 problems, but I think every neighborhood has
10 its problems.

11 I have always sort of traveled the
12 world, and when I met people I'm from, you
13 know, Adams Morgan, Washington, D.C., U.S.A.
14 So there's not really anywhere else I would
15 want to live.

16 And when I got old enough that it
17 was time for me to purchase my own home, I
18 purchased one in Adams Morgan only about four
19 blocks away from where I lived as a kid. So
20 on my favorite street, actually, from
21 childhood. So it's my neighborhood.

22 MR. MAKRIS: Can you tell us about

1 your efforts to contact the signatories to the
2 agreement?

3 MS. MAKRIS: Sure. So I contacted
4 everyone by letter except for a letter, you
5 know, except for the Vernon House. And there
6 were two agreements in place connected to our
7 establishment.

8 I went to ABRA back in February to
9 make sure I had a copy of everything and they
10 printed out the settlement agreement for me
11 that was attached. I then found out later,
12 actually, that there was also a 1995 agreement
13 that nobody seemed to know about that was
14 attached.

15 So I actually put an affidavit in
16 with the Board, and then I spoke with Lucy
17 Barber, she's the president of the Vernon
18 House, which is, I would say it's the second
19 closest residence to us. It's across the
20 street directly behind the Duplex Diner, which
21 is over there. So that's the first set of
22 residences that you sort of hit is the Vernon

1 House when you go past the businesses across
2 the street.

3 So I spoke with her about it.
4 Actually, you can see that there's actually a
5 letter of support from the entire Vernon House
6 Condominium Association for The Blaguard. We
7 submitted it quite some time ago. It's been
8 in the record for several months.

9 I also sent Karen Sasahara, I
10 might say that wrong, who's the other signer
11 of the 1995 agreement that she never protested
12 or raised any objections. She also is a
13 signatory of the 2002 agreement as were
14 several people who lived in the Ashley, which
15 is the building that's across the street and
16 down the street from us. And none of them
17 have protested or raised any issues or
18 concerns.

19 MR. MAKRIS: Did you engage in a
20 good faith effort to reach an agreement with
21 the parties?

22 MS. MAKRIS: I did.

1 MR. MAKRIS: What was this process
2 like and how did it go?

3 MS. MAKRIS: There are a lot of
4 different people I had to contact, so I sort
5 of contacted all of them. The first time
6 there was ever really an issue that arose in
7 terms of these negotiations was on April 10th.

8 I attended the ANC public safety
9 committee meeting. We had been in
10 correspondence with the ANC about possibly
11 trying to work out some sort of arrangement
12 with them. And I believe it was Mr. Hart that
13 suggested that we go to the meeting. So we
14 went to the meeting.

15 And outside of the meeting I saw
16 Mr. James who I know to be the president of
17 the KCA. So I walked up to him, approached
18 him, introduced myself, explained that, you
19 know, we'd be interested in meeting with him
20 to discuss our agreement.

21 Mr. James started yelling at me.
22 He approached me very aggressively. He came

1 very close to me too, in an incredibly
2 physically intimidating manner. He used his
3 size and I kept having to take steps back.

4 He was yelling about notice and
5 how we hadn't noticed people, and I didn't
6 understand really what he was talking about.
7 He typically has a very nasty temper. When I
8 said I didn't know what he was talking about,
9 he told me that I should learn English or that
10 everything is written in the English language
11 and I need to learn English.

12 It was an incredibly traumatizing
13 experience for me to have to be treated that
14 way. I do not think he would have done that
15 to a man, and I think that it was very
16 uncalled for behavior.

17 What else happened? Okay, so
18 after that I tried to meet with Mr. James
19 again. I invited him to The Blaguard. I did
20 it at a time when I knew that my husband the
21 rest of our staff would be there, because I
22 was very uncomfortable talking to him. During

1 that meeting he walked around and told me how
2 he wanted me to rebuild my restaurant to
3 basically delay, to keep it up.

4 I ended the meeting. I sent
5 another filing to ABRA which I've mentioned to
6 him, because I just tried to be really
7 transparent throughout this entire process,
8 and said, you know, I sent ABRA something
9 else.

10 And I offered to give him or email
11 him a copy of what I'd sent to ABRA and he
12 said that he would get it from ABRA. And I
13 said, well, you know, I'm sure Bill Hager's
14 really busy, I don't mind sending it to you.

15 And he said something along the
16 lines of, you know, I would prefer to go to
17 ABRA because you're probably a dishonest
18 business owner like the other business owners
19 in Adams Morgan.

20 After all of that I wasn't
21 incredibly enthused about the process, and
22 that is the person who has to, who I'll have

1 to talk to to try and fix an agreement
2 associated with my business.

3 I also met with ANC commissioners.
4 They seemed really reasonable and pretty fair
5 up front. They were always really respectful
6 and really nice. They sort of seemed
7 generally open, but then, and they actually
8 talked to us a lot.

9 Mr. Hart spent a ton of time
10 talking to us. He was really, really great
11 about that. And ultimately, I just want to
12 make sure I'm really current on sort of what
13 happened. I felt like the ANC wouldn't
14 negotiate without the KCA. So they never
15 would send us something that the KCA hadn't
16 signed off on as an offer. They wouldn't go
17 through that.

18 So we were sort of forced to go
19 through this entire thing with, you know, the
20 KCA, which is really just Mr. James. I never
21 interacted with anybody else from there in
22 terms of who represents them. I know they

1 have other people that are members. The
2 entire time it just seemed like it was so
3 poisoned. It was so poisoned by that and it
4 just made it so difficult the entire time.

5 MR. MAKRIS: I'd like to introduce
6 Exhibit A to the Board and to all parties.

7 CHAIRPERSON MILLER: We have
8 somebody, but have to, what, you need to
9 identify it and the protestants need to have
10 a copy. Do they?

11 MR. MAKRIS: I have a copy here.

12 CHAIRPERSON MILLER: For them?

13 MR. MAKRIS: Yes.

14 CHAIRPERSON MILLER: And for the
15 Board?

16 MR. MAKRIS: I have lots of
17 copies.

18 CHAIRPERSON MILLER: Okay. All
19 right. Will you identify it and then --

20 MR. MAKRIS: This is an email from
21 Elizabeth to -- I'm sorry, from Mr. Hager,
22 William Hager, to Elizabeth. And it's a list

1 of all the settlement agreements that he had
2 and it's stating that the '95 agreement was
3 omitted from the file at some point, and
4 therefore that's why we didn't have
5 information on it prior to learning about it.

6 MEMBER ALBERTI: I think the
7 witness should probably --

8 MR. MAKRIS: Oh, I thought you
9 asked me to explain it.

10 MEMBER ALBERTI: So we have it
11 under oath, so why don't we go through
12 procedure --

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: -- hand it to the
15 protestants, and you approach the witness,
16 hand it to the witness.

17 CHAIRPERSON MILLER: No, that's
18 fine. That's fine. I know it gets confusing
19 when you have different people telling you
20 what to do. But yes, what I wanted you to do
21 was identify what the document was and then
22 since she's under oath she can attest to the

1 substance. Thank you.

2 MR. MAKRIS: What is this
3 document?

4 MS. MAKRIS: I don't have it. I
5 don't know.

6 (Crosstalk)

7 MR. MAKRIS: So what is this
8 document?

9 MS. MAKRIS: Okay, so this is an
10 email about, William Hager sent to me, is, so
11 they had explained why, when we came and asked
12 for all the settlement agreements associated
13 with our license in February why we didn't get
14 the 1995 agreement and why we got it a little
15 bit late in the game. And it was just
16 miscataloged by ABRA and it wasn't actually
17 attached to our license in the system.

18 MR. MAKRIS: I have Exhibit 2
19 which I will ask Elizabeth to explain.

20 CHAIRPERSON MILLER: Okay.

21 MR. MAKRIS: Should I bring them?
22 I can give you all of the exhibits if you guys

1 don't want to have to stand on --

2 CHAIRPERSON MILLER: Okay. Can
3 someone get it --

4 (Off microphone discussion)

5 MR. HART: Nic, I think you might
6 have given us different exhibits. The writing
7 on the front page is more than one item.

8 MS. MAKRIS: There's three items
9 in the same exhibit.

10 MR. HART: Oh okay.

11 CHAIRPERSON MILLER: Thank you.

12 MR. HART: Got it. You gave us
13 one copy of it.

14 MR. MAKRIS: I believe so. It's
15 fine, and they took them all. It's fine, it's
16 fine.

17 So Exhibit 2, Elizabeth, are you
18 familiar with the exhibit?

19 MS. MAKRIS: I don't have it yet,
20 I'm sorry. I'm still waiting for a copy. Am
21 I supposed to be getting a copy from him or --

22 MR. MAKRIS: I'm supposed to give

1 you a copy moving forward. So I'm sorry, but
2 maybe somebody could help her get a copy.

3 (Off the record comments)

4 MS. MAKRIS: Thank you so much.

5 Okay so --

6 MR. MAKRIS: So please explain
7 Exhibit 2.

8 MS. MAKRIS: Sure, what these are,
9 are --

10 CHAIRPERSON MILLER: Excuse me,
11 are you looking at Exhibit --

12 MS. MAKRIS: A-2.

13 CHAIR MARKS: -- Applicant's
14 Proposed Exhibit 2?

15 MS. MAKRIS: A-2. So what it is,
16 is it's a checking in response, one of three
17 response, one of two of three, and response
18 three of three from William Hager that are all
19 dated July 3rd, 2013, between the hours of
20 4:35 and 4:39 p.m.

21 What these are, are I did a FOIA
22 request, so I asked Mr. Hager, who is the

1 person who is in charge of the records for
2 ABRA, if he could send me a copy of every
3 settlement agreement that's in effect in Adams
4 Morgan.

5 And so what this is, if you notice
6 they're organized by address, and if you look
7 at the attachments you can see the address of
8 every -- we didn't print out all of the PDFs.
9 These obviously that would be absurd, but it
10 should be address of every establishment in
11 Adams Morgan that has a settlement agreement
12 in place.

13 MR. MAKRIS: Are you willing to
14 sign an agreement with the KCA?

15 MS. MAKRIS: After the way that
16 the KCA, Mr. James specifically, treated me,
17 I do not think that it is right that I should
18 have to be screamed at, be physically
19 intimidated, be insulted in order to run my
20 business.

21 I am a really a nice person. I am
22 really friendly. I have never done anything

1 but be nice to him, and I just don't think
2 that it's appropriate that whenever this
3 agreement comes up again we're going to have
4 to go back to him and ask.

5 And just the way that he acts, I
6 think, it's really wrong that people are made
7 to do this.

8 MR. MAKRIS: Are there other
9 reasons you are unwilling to sign an agreement
10 with the KCA? Take a moment if you need it.

11 MS. MAKRIS: Sure.

12 CHAIRPERSON MILLER: Sure, take as
13 long as you want. Okay. Take as long as you
14 want. Somebody went to get you a tissue, I
15 think. So yes, that's fine.

16 (Off microphone discussion)

17 MR. MAKRIS: I'll ask the question
18 again.

19 MS. MAKRIS: Sure, thank you.

20 MR. MAKRIS: Are there any other
21 reasons you are unwilling to sign an agreement
22 with the KCA?

1 MS. MAKRIS: Yes, I do not believe
2 that people should have to undergo what we've
3 had to undergo in dealing with this man. I've
4 never been treated the way that he's treated
5 me by anyone in my entire life. And I grew up
6 in Adams Morgan and I'm not exactly thin-
7 skinned.

8 MR. MAKRIS: Tell me what you know
9 about the KCA as an organization.

10 MS. MAKRIS: The problem, I think,
11 with the KCA is that Mr. James is --

12 MR. JAMES: Objection, what is the
13 relevance?

14 CHAIRPERSON MILLER: I'm sorry, do
15 you want to address what the relevance is?

16 MR. MAKRIS: Ms. Makris is a
17 member of the KCA. I think it's very
18 relevant.

19 CHAIRPERSON MILLER: Is it not
20 relevant because that's who wants to have a
21 settlement agreement with you?

22 MR. MAKRIS: Clearly, he's

1 protesting our termination agreement, yet as
2 members we've never been notified of any
3 meeting prior to our hearing or our
4 opportunity to speak as a business and at the
5 KCA meeting. However --

6 MR. JAMES: He's testifying.

7 CHAIRPERSON MILLER: I think
8 you're right. He's testifying. He's probably
9 answered to that. That gets confusing here.
10 So I'm going to overrule the objection. I
11 think it's relevant.

12 MS. MAKRIS: One of the reasons
13 I'm also not willing to sign an agreement with
14 KCA is that --

15 MEMBER SILVERSTEIN: Please speak
16 so that we can hear you.

17 MS. MAKRIS: Oh, I'm sorry. One
18 of the reasons I'm also not willing to sign an
19 agreement with the KCA is that Mr. James has
20 absolute power. He does not have to go back
21 before the KCA to have them approve his
22 agreements. He just gets to sign them. So

1 once the protest is voted for the KCA doesn't
2 even know what he does afterwards. He simply
3 is acting as this sort of person who has
4 complete and ultimate power from the KCA.

5 So it's not really an organization
6 that's, you know, agreeing to these things,
7 they're not even voting on them before they're
8 signed. He can do it. He can just go and
9 sign an agreement with someone. And I also I
10 think it's an organization that's not open to
11 the public. I have a big issue with that.

12 MR. MAKRIS: I'd like to introduce
13 Exhibits 4 through 6, and please note that
14 there is no Exhibit 3 in our --

15 CHAIRPERSON MILLER: Okay.

16 MR. MAKRIS: What are these
17 documents?

18 CHAIRPERSON MILLER: Are you going
19 to pass them?

20 MR. MAKRIS: Oh, do you guys have
21 that?

22 CHAIRPERSON MILLER: Oh, Ms.

1 Walker will. Okay.

2 MR. MAKRIS: And I believe the
3 witness does have another copy of --

4 (Off microphone discussion)

5 MR. MAKRIS: So what are these
6 documents?

7 MS. MAKRIS: So I joined the KCA
8 in 2011. I'm a really avid gardener. People
9 on my street call my house the tulip house
10 because I have like a thousand tulips. Maybe
11 not a thousand, but a lot.

12 CHAIRPERSON MILLER: What did you
13 say?

14 MS. MAKRIS: I garden a great
15 deal, and people on my street call my house
16 the tulip house because I have so many tulips.
17 And in 2011 I joined the KCA because it says
18 on their website that they have a
19 beautification committee.

20 So there was space on Columbia
21 Road where it was really not looking nice and
22 so I tried to find someone who did

1 beautification out of Morgan who maybe had,
2 you know, like a fund or something where they
3 would plant flowers. So I joined the
4 organization.

5 So what these emails are is after
6 I joined the organization in September I was
7 told that I would get put on the email list,
8 and I wasn't put on the email list. And if
9 you notice, I asked, first, September 26th,
10 2011 to be put on the email list, and then I
11 had to follow up again on April 18th, 2013
12 because he never put me on the email list.

13 I never received a single, as a
14 member I never received a single email,
15 newsletter, correspondence of any kind from
16 the KCA. I also did not receive any sort of
17 notice for anything, absolutely anything.

18 So I mean, if he does not notify
19 his members, I was a member. If he doesn't
20 notify his members of the agenda, of their
21 minutes, of what they're doing, then they're
22 not open to the public, they're open to

1 whomever he decides he wants to include in his
2 organization.

3 MR. MAKRIS: I'd like to introduce
4 Exhibit 7. What are these documents? And I
5 know you guys --

6 MS. MAKRIS: Got it. Okay, so
7 what 7 is, is these are emails. So throughout
8 this process, which my husband, you know, is
9 going to kind of describe to you a little bit
10 more, we're a neighborhood spot.

11 The vast, vast majority of our
12 customers are our neighbors and they are
13 frequent customers. They're in all the time,
14 sort of their home away from home. And we
15 talked to them throughout the process about
16 this, about what was going on, about our
17 frustrations. And they kept asking how they
18 could help.

19 So back when we were still trying
20 to work with the commissioners we said, well,
21 if you have an opinion write your commissioner
22 and let them know, like they represent you.

1 They're your elected officials, you're their
2 constituents. So a lot of them forwarded
3 their emails of these, sent to us, and so
4 that's what these are.

5 These are emails written by
6 constituents of ANC 1C to commissioners
7 showing that, or expressing their support for
8 The Blaguard and the things that we'd asked
9 for.

10 MR. MAKRIS: I have no more
11 questions.

12 CHAIRPERSON MILLER: Okay, cross
13 from the ANC?

14 MR. HART: We have no questions.

15 CHAIRPERSON MILLER: All right.
16 Cross from Mr. James?

17 MR. JAMES: Yes, I have a question
18 or two. Ms. Makris, you joined, according to
19 the emails, Exhibit A-5, the Kalorama
20 Citizens. An automatically generated email
21 was sent to you. Your request has been
22 received and we appreciate your interest in

1 Kalorama Citizens Association and we will be
2 contacting you shortly. How long was it after
3 that before you were contacted again?

4 MS. MAKRIS: I don't recall. I
5 do, maybe a week later you emailed me back and
6 sent me a meeting notice to let me know when
7 the next meeting would be, and then yes, and
8 that was it.

9 MR. JAMES: So one week later.

10 MS. MAKRIS: Yes.

11 MR. JAMES: And if you joined the
12 Kalorama Citizens Association through our
13 website and PayPal, do you agree that there is
14 information on the KCA website about when and
15 where we meet, what day?

16 MS. MAKRIS: Actually, no. Your
17 website has not been updated since 2012 at
18 this time.

19 MR. JAMES: But at the time you
20 joined in 2011, was that information present?

21 MS. MAKRIS: At the time you
22 actually sent me an email, specifically, I do

1 not remember looking at the website in 2011,
2 but you sent me an email telling me the date
3 and time of the next meeting. That is how I
4 knew.

5 MR. JAMES: But you joined through
6 the PayPal option on our website in September
7 2011.

8 MS. MAKRIS: Yes.

9 MR. JAMES: So you were on our
10 website, and yet somehow you're not aware of
11 when we meet? It's stated in numerous places.

12 MS. MAKRIS: I never said I wasn't
13 aware of where you met. I said that you never
14 included me on your email list. That you sent
15 things to your members.

16 MR. JAMES: Okay. And you are
17 aware that there's a yearly dues requirement
18 to continue your membership in the Kalorama
19 Citizens Association?

20 MS. MAKRIS: I am.

21 MR. JAMES: All right, and did you
22 renew that membership in the year 2012?

1 MS. MAKRIS: I was never noticed.

2 MR. JAMES: That's all I have.

3 CHAIRPERSON MILLER: Okay, are
4 there Board questions? Mr. Alberti?

5 MEMBER ALBERTI: Okay, good
6 afternoon, Ms. Makris. Let's ignore KCA and
7 Mr. James for a moment. You spoke a lot about
8 contacting them about your intent to terminate
9 your agreement, but I'm not clear that your
10 efforts to contact the ANC. Can you tell me
11 about those?

12 MS. MAKRIS: Sure. And it was
13 either March or April, it was back in the
14 spring I sent an email to Commissioner Mossi
15 who represents me. She's actually my
16 commissioner because I live on Lanier Place in
17 ANC 1C.

18 And then I also sent an email to
19 Wilson Reynolds who is the single member
20 district representative for where The Blaguard
21 is within ANC 1C. And I said, we would like
22 to meet with you to discuss whether or not it

1 would be possible to amend our voluntary
2 agreement with them.

3 And they forwarded those emails, I
4 presume, because I received an email back from
5 Brian Hart who is the chair of the ANC alcohol
6 and public safety committee, I think they call
7 it. And he said, you know, sure, we would be
8 happy to talk to you about it, you know, let's
9 talk.

10 So I sort of explained to him what
11 our major issues with the agreement were,
12 which were the ones that were really
13 problematic for us, and he kind of said, you
14 know, he seemed pretty open, pretty open to
15 talk about it.

16 And then we were asked to send,
17 like to type up the old agreement and then
18 send it, you know, because we just had this
19 sort of old, you know, PDF, to type it up and
20 send it and then knock out, or to change it
21 the way that like, we would, our offer
22 basically, our initial offer.

1 And then what we received back we
2 were really surprised by because it was
3 basically an entire new agreement we'd never
4 seen before, which had like just tons of stuff
5 in it. I mean it was all this stuff that
6 we've never had to do before, which we were
7 sort of taken back by because we kind of
8 thought we would be working off of what
9 already existed.

10 And it asked for something like 25
11 new requirements, I mean, if you counted all
12 the subsections and what they were asking for
13 from us. So we still, like I did express my
14 frustration with that and said I don't really
15 think that's the way this is supposed to go.
16 You know, we were expecting you to come back
17 from our, what we'd sent you.

18 But anyways, we still, even after
19 that we still kept working with them all the
20 way up until, I mean even all the way through.
21 I remember in July we still hadn't been able
22 to come to an agreement and they were about to

1 protest us, and I was so frustrated because I
2 felt like we had been working so hard and we
3 couldn't seem to reach an agreement.

4 And then, you know, they went
5 ahead and protested and then we got all the
6 way to when we were kind of going back and
7 forth trying to even negotiate as late as
8 yesterday or the day before. I mean, we've
9 tried and tried and tried and tried.

10 MEMBER ALBERTI: Okay, very good.
11 You've answered my question on that one.
12 Okay, now about the 2002 settlement agreement
13 that I'm looking at has one, two, three, four,
14 six individual sharing of common ground of
15 protest which is in here. Did you contact
16 those individuals?

17 MS. MAKRIS: Yes, every single
18 person. And I submitted the copies of the
19 letters that we sent them, and we sent a
20 letter to every single individual. A lot of
21 them were returned because the addressee no
22 longer lives here, because people have moved

1 because it's so old. But we sent a letter to
2 every single person that was on that
3 agreement, that signed the agreement.

4 MEMBER ALBERTI: And did any of
5 them respond?

6 MS. MAKRIS: No one ever, and we
7 included my email address, my cell phone
8 number and the two, you know, the Ashley where
9 all these people live, it's, you know, it's
10 down the street. So it's not that hard from
11 them to walk over to our establishment.

12 MEMBER ALBERTI: So I have more
13 questions, but that's all the questions I have
14 on your efforts to comply with that, the
15 notice of termination.

16 Okay, so we've heard from the
17 investigator that one of the issues is that
18 you'd like to vacate is, one of the
19 restrictions in your current voluntary
20 agreement that you'd like to do away with is
21 the restriction on having entertainment. Is
22 that correct?

1 MS. MAKRIS: Yes, that's correct.
2 The way that it stands right now we are not
3 allowed to have entertainment of any kind.
4 And what that actually means, at least with
5 our very rudimentary understanding of the
6 rules, is that not only can we not apply for
7 an entertainment endorsement which would then
8 go through a process anyways, but that we also
9 can't even have live music during the day,
10 which I don't think that it's before 6:00 p.m.
11 you even need to have an endorsement. I don't
12 think so. At least that's what I've always
13 been told. Is that not true? I don't know.

14 MEMBER ALBERTI: I think you do.

15 MS. MAKRIS: Okay, there you go.
16 Was I wrong in that. But so we've never had
17 one. So we know we can't have it, so we don't
18 know, obviously one of the rules. And we will
19 ask lots of questions.

20 But yes, I mean it stops us from
21 even applying. And we actually went and tried
22 to apply and they told us we couldn't because

1 it's in there.

2 MEMBER ALBERTI: So do you believe
3 that having entertainment at this
4 establishment would, what negative effects, if
5 any, do you believe that having entertainment
6 at this establishment would have on the
7 neighborhood with respect to peace, order and
8 quiet, transportation, and property values, if
9 those are the three criteria that we look at?

10 MS. MAKRIS: Sure. Well, in terms
11 of parking, like I said, I would say, and my
12 husband can see part of this, he's there every
13 day. I would say probably 90 percent of our
14 clientele are from the neighborhood. They are
15 repeat customers.

16 We're kind of like a Cheers sort
17 of place, you know, we know everybody in
18 there, and people come there multiple times a
19 week and most of them walk there. So I don't
20 think we'd have any impact on parking
21 whatsoever, and I certainly don't think when
22 you compare us with our 1,400 square feet to

1 all of the 55 licensees, I think, that we're
2 really going to make a dent in terms of all
3 that.

4 In terms of peace, order and
5 quiet, I mean one of the other issues with our
6 agreement is that we're not allowed to have
7 windows on our second floor that are
8 constructed to open in any way. And that is
9 really problematic because we can't cool the
10 space.

11 And so it creates all these heat
12 issues which my husband can of course address,
13 he's the operator. But we're really
14 respectful people. We right now have a
15 jukebox and we have speakers all over the
16 place and we play music. And we play music
17 all the time, and nobody has ever complained.

18 And we're allowed to open our
19 windows on our first floor right now. There's
20 a cutoff time until 7:30. But despite playing
21 music before 7:30, we've also still never had
22 any complaints. So I'm not sure what the

1 difference would be. I think to say oh, well,
2 you can't do it because you might have a
3 problem is sort of the cart before the horse.
4 I mean, if we've never had any problems in the
5 past.

6 And I think also it's not in our
7 best interest to make our neighbors angry
8 since they're our customers. It's kind of
9 like sort of shooting ourselves in the foot
10 since they're the ones who frequent our
11 establishment. So why would we do anything to
12 upset them?

13 MEMBER ALBERTI: So I'm trying to
14 understand what you're saying about what it
15 is, and I think what you're telling me is that
16 you don't believe that noise emanating from
17 your establishment would be at such a level to
18 cause concern for the neighbors. Is that what
19 I'm hearing you're saying?

20 MS. MAKRIS: Yes, I think that
21 there's already noise provisions that would,
22 the law, D.C. law has noise provisions that

1 prohibit us from playing noise at a certain
2 decibel, and so we wouldn't be able to do that
3 and we wouldn't because we would be breaking
4 the law. So as long as we stay within the law
5 as it's written in D.C. code, and I don't
6 think that we will have any impact.

7 MEMBER ALBERTI: So who's on
8 either side of you? What's on either side of
9 you?

10 MS. MAKRIS: So actually, next to
11 us is a vacant building. It's really small
12 though. I think it's only about six feet
13 wide. It was sort of one of those development
14 oops kind of things that happened.

15 And on the other side of that is a
16 wine store and it's called DeVino's Wine
17 Store, they sell wine and cheese. They close
18 about 10 o'clock. And then to the right of us
19 is Jack Rose, which is a --

20 MEMBER ALBERTI: Directly to the
21 right?

22 MS. MAKRIS: Directly to the

1 right. Oh no, no, no, I'm sorry.

2 MEMBER ALBERTI: Immediately to
3 the right.

4 MS. MAKRIS: I'm incorrect. I
5 apologize. Next to us there's a place called
6 Meat in a Box, which is a kabob place, and
7 it's a restaurant, and then directly next to
8 them is Jack Rose, which is a really enormous
9 restaurant.

10 MEMBER ALBERTI: So the commercial
11 establishments --

12 MS. MAKRIS: Everything is
13 commercial.

14 MEMBER ALBERTI: -- adjacent to
15 you on either side, well, we have the vacant
16 building, but then commercial establishments
17 going two doors down.

18 MS. MAKRIS: Everything on either
19 side of us is commercial establishments and El
20 Tamarindo is behind us, across the alley from
21 us.

22 MEMBER ALBERTI: Well, that's my

1 question. What's behind you?

2 MS. MAKRIS: It's El Tamarindo.

3 It's a Mexican restaurant.

4 MEMBER ALBERTI: What do you mean
5 they're behind you?

6 MS. MAKRIS: So I kind of wish I
7 had a map to show you because it's a really
8 weird layout, but there's an easement that's
9 part of it. But El Tamarindo, and Dahlak too,
10 which Dahlak is kind of beside it, El
11 Tamarindo, if you go around the corner onto U
12 Street is sort of the last restaurant on that
13 little area.

14 And the way their building is
15 built, even though they're technically, you
16 know, on the corner, like if --

17 MEMBER ALBERTI: They're on
18 Florida Avenue, is that --

19 MS. MAKRIS: Yes, they're on
20 Florida Avenue, but their building goes back
21 so far that that actually is what's behind our
22 building. And then there's this tiny little

1 easement where you can walk through in between
2 our buildings, and that's like where our trash
3 is and all that stuff.

4 MEMBER ALBERTI: Okay, and then
5 next to El Tamarindo, do you know what's next
6 to them to the left of them?

7 MS. MAKRIS: There's like a big
8 alleyway and then there's El Tamarindo and
9 then there's a big alleyway, and then I think
10 what's on that corner is like a notary service
11 or something. I'm not sure. It looks like a
12 townhouse but I think it might be a business.

13 MEMBER ALBERTI: So what's on
14 Vernon? Okay, you're on 18th Street, right?

15 MS. MAKRIS: Yes.

16 MEMBER ALBERTI: What's on Vernon
17 Street on the corner? That's El Tamarindo?

18 MS. MAKRIS: No, on Vernon Street
19 is L'Enfant Caf,. It's on the corner of
20 Vernon and 18th. It's right next to Duplex
21 Diner. So you have to kind of go a little bit
22 further down Vernon until you hit residences.

1 MEMBER ALBERTI: So is it safe to
2 say you're surrounded by commercial
3 establishments?

4 MS. MAKRIS: We're absolutely
5 surrounded by commercial establishments. The
6 only, the closest -- yes. I mean on both
7 sides and directly across the street.

8 MEMBER ALBERTI: And the reason
9 I'm asking is sound emanating through walls.
10 So sound emanating through walls, if it did,
11 would be heard in a commercial establishment.

12 MS. MAKRIS: It would be heard in
13 a commercial establishment.

14 MEMBER ALBERTI: All right. Do
15 you have any outdoor space besides, you have
16 a sidewalk caf,, is that correct?

17 MS. MAKRIS: We have a sidewalk
18 caf, that seats four people.

19 MEMBER ALBERTI: And do you have
20 any other outdoor space?

21 MS. MAKRIS: No.

22 MEMBER ALBERTI: Do you have a

1 rooftop deck?

2 MS. MAKRIS: No.

3 MEMBER ALBERTI: Okay. Okay, so
4 other than entertainment, what other issues do
5 you see as a problem in your current voluntary
6 agreement?

7 MS. MAKRIS: Just to name a few,
8 the windows never being able to open, which I
9 think my husband is probably better to explain
10 that because he deals with the air
11 conditioning and all that stuff.

12 Other issues. Oh, we're required
13 to have a trash can and set it in the middle
14 of the sidewalk, and the fire marshal told us
15 we can't do that. It sets our seating
16 capacity at 49 seats and the fire marshal just
17 told us we cannot have 49 seats, and the DCRA
18 has told us that we cannot have 49 seats and
19 is not in our Certificate of Occupancy.

20 MEMBER ALBERTI: Well, okay, so
21 your Certificate of Occupancy says 39 seats,
22 right?

1 MS. MAKRIS: It says 35.

2 MEMBER ALBERTI: Thirty five,
3 which is below what the settlement agreement
4 says.

5 MS. MAKRIS: Yes.

6 MEMBER ALBERTI: The settlement
7 agreement really isn't a restriction then with
8 that regard, correct?

9 MS. MAKRIS: No, it says that we
10 are required to have 49 seats. We are
11 required to have exactly 49 seats in our
12 establishment. That is what it says. It does
13 not say below, it says 49 seats.

14 MEMBER ALBERTI: All right, so I'm
15 not going to argue about interpretation.
16 Okay, thank you for that answer. I want to
17 see what else I need to ask there. So you
18 have 35 seats, 1,500 square feet. Do you have
19 --

20 MR. MAKRIS: We do, sir.

21 MEMBER ALBERTI: Pardon? Well,
22 wait. I'm trying to get a vision of how much

1 of this, you have a first and second floor?

2 MS. MAKRIS: Yes.

3 MEMBER ALBERTI: And that's a
4 total of 1,500 square feet with the first and
5 second floor?

6 MS. MAKRIS: Yes, that is correct.

7 MEMBER ALBERTI: Okay, and where
8 is your seating? On the first floor or the
9 second --

10 MS. MAKRIS: We have floor plan
11 that we can introduce into evidence now if
12 that would be easier for the Board. We were
13 planning on doing it later.

14 CHAIRPERSON MILLER: Sure.

15 MEMBER ALBERTI: Is that okay?

16 CHAIRPERSON MILLER: Yes, sure.

17 Why not?

18 MEMBER ALBERTI: All right. So
19 we'll go through allowing -- I'll take a break
20 and allow the applicant to introduce that.

21 MR. MAKRIS: At this time I'll
22 introduce our Exhibit A-12.

1 MEMBER ALBERTI: Okay, so A-12,
2 will you tell me what it is?

3 MS. MAKRIS: This is a floor plan
4 that was drawn by an architect, and this is
5 what DCRA has on file and this is what they
6 approved for us to get occupancy.

7 MEMBER ALBERTI: Okay. Does this
8 accurately represent what you currently have
9 in seating?

10 MS. MAKRIS: Yes.

11 MEMBER ALBERTI: Okay. You're
12 right. That's very helpful. Is there
13 anything else in your settlement agreement
14 that's -- you talked about windows, the fact
15 that windows have to be closed. You talked
16 about entertainment.

17 Is there anything else in your
18 settlement agreement that you find restrictive
19 in a way that hampers the success of your
20 business?

21 MS. MAKRIS: Yes, but is it okay
22 if I sort of defer these questions to my

1 husband because he's planning to testify?

2 He's got operator.

3 MEMBER ALBERTI: Okay.

4 MS. MAKRIS: And so he just knows
5 so much more about --

6 MEMBER ALBERTI: Okay, we'll come
7 back to that.

8 MS. MAKRIS: -- day-to-day
9 operations than I do. And I just think he's
10 so much better.

11 MEMBER ALBERTI: Fair enough. I
12 appreciate that. Fair enough. Yes.

13 CHAIRPERSON MILLER: Absolutely.

14 MEMBER ALBERTI: Sounds like it'll
15 be more efficient. So I have no further
16 questions. Thank you.

17 CHAIRPERSON MILLER: Okay, other
18 Board members? Mr. Jones?

19 MEMBER JONES: Thank you, Madam
20 Chair. And based on your most recent response
21 this may be a deferred answer, but I wanted to
22 talk to you quickly about the cooling concern

1 that you raised. And you said you need to
2 open a window in order to cool your
3 establishment. Do you not have any other
4 mechanism for cooling your establishment?

5 MS. MAKRIS: So we do have air
6 conditioning systems. We have put air
7 conditioning systems in. We have had to put
8 in far more air conditioning than is typically
9 required for the amount of square footage that
10 we have.

11 I don't know what the tonnage is.
12 My husband can tell you that. I don't know a
13 lot about air conditioning systems. I know
14 about the expenses associated with them
15 because I do the books. Because you cannot
16 open the windows on the second floor and all
17 the heat rises throughout the day, it makes it
18 just absurdly hot upstairs. I mean it's over
19 100 degrees in the afternoon.

20 And so attempting to cool it
21 without being able to let any air out is so
22 difficult, and he can testify to all the

1 different things that he's done. But I mean,
2 he's tried to tint the windows, put in really
3 expensive blinds, had to keep repairing
4 because the air conditioner keeps breaking
5 because it can't handle it. He then put in a
6 bigger air conditioning, I mean it's been such
7 an ordeal.

8 MEMBER JONES: Okay. So you have
9 explored getting a larger air conditioning
10 system and you failed to install that because
11 --

12 MS. MAKRIS: We did that and it
13 still is pretty hot.

14 MEMBER JONES: Did you get the
15 maximum? Did you get the largest one you
16 could get? I'm trying to understand. So it's
17 a cooling issue, right? So cooling issues are
18 cooling issues, so you address them with
19 different mechanisms and means.

20 MS. MAKRIS: Sure.

21 MEMBER JONES: You've identified
22 that you needed to get an air conditioning

1 unit that was bigger than the one that you had
2 and you installed it. You spec'd that out in
3 some kind of way.

4 How have you made the
5 determination that opening the windows would
6 provide you more cooling than this very large
7 cooling system that you spent money on and
8 invested in through your establishment?

9 MS. MAKRIS: Yes. Because the air
10 is trapped, you know, and that is not the only
11 reason that we have an issue with windows.
12 There's a host of other reasons as well that
13 he can address. You know, just a breeze is
14 nice, and all that. But it's very difficult
15 when you can't let heat out to essentially
16 cool efficiently, a space. So that's --

17 MEMBER JONES: All right, so let's
18 talk about the music. You said you have music
19 playing in your establishment pretty much all
20 the time through a jukebox and speakers that
21 are in play. Do you have any idea what the
22 decibel level of that music is?

1 MS. MAKRIS: I do not know, but I
2 do know that an ABRA investigator has come by
3 before and stood in front of our establishment
4 with one of those little readers and they said
5 we were all good.

6 MEMBER JONES: You're saying an
7 ABRA investigator came by and stood in front
8 of your establishment and took a sound
9 measurement?

10 MS. MAKRIS: I'm not sure it was
11 an ABRA investigator with the sound measure,
12 maybe it was DCRA. It was a regulatory agency
13 and it was someone who was walking up and down
14 18th Street testing sound, and they tested us
15 and they said we're fine.

16 MEMBER JONES: Okay, were your
17 windows closed or open?

18 MS. MAKRIS: Open.

19 MEMBER JONES: Open, okay. The
20 live music for entertainment that you plan on
21 having at your establishment, what are you
22 going to do to ensure that if you have that

1 permission to do that, what would you do to
2 ensure that you keep the decibel level at the
3 current level?

4 MS. MAKRIS: We sort of just think
5 it's good manners to close your windows when
6 you have live music especially if it's loud.
7 I mean if we had a party at our home we
8 wouldn't have, you know, our windows open
9 disturbing our neighbors. It's not really any
10 different to us.

11 So we would certainly, you know,
12 different types of music are different. If
13 it's like, you know, a solo guitarist it might
14 not be that loud. But if it was, you know,
15 for example, three guitarists and like a drum
16 or something like that it might be louder.
17 And so if, in fact, it was loud in the street
18 we would just use our common sense and close
19 our windows.

20 MEMBER JONES: I'm challenged only
21 from the standpoint of it seems to be two
22 different directions we're going. So if your

1 windows are opened for cooling purposes and
2 you're having live music, would you not have
3 live music when your windows need to be opened
4 for cooling purposes? How would you schedule
5 that?

6 MS. MAKRIS: Well, we would,
7 typically all the cooling process happens in
8 like the afternoon, afternoon, early evening.
9 So, you know, it's something we would have to
10 sort of do on a case-by-case basis depending
11 on the live music and all of that.

12 But I would anticipate that the
13 place, we would have already been able to cool
14 it down throughout the day by the time we
15 would feel a need for live music.

16 MEMBER JONES: Okay. The music
17 that you would have, have you put any
18 restrictions on what type of music you would
19 allow to be had at your establishment?

20 MS. MAKRIS: You know, we haven't
21 even gotten that far yet because we haven't
22 ever had an entertainment endorsement and

1 we're not even able to apply for one. So --

2 MEMBER JONES: So in your business
3 model as you're thinking through the process
4 of wanting to have an entertainment
5 endorsement, what is the purpose of that
6 entertainment endorsement?

7 Is it as you indicated earlier to
8 have live music or -- okay. And the live
9 music would be intended to increase, what
10 would be the intent of the music? What are
11 you trying to accomplish from a business
12 standpoint?

13 MS. MAKRIS: It would be to
14 increase our revenues.

15 MEMBER JONES: Increase your
16 revenues, all right.

17 MS. MAKRIS: It would be something
18 -- there's a lot of other places that are our
19 direct competition that offer live music.
20 Jack Rose, which is, our biggest competitors
21 are L'Enfant Caf,, Duplex Diner, Jack Rose.
22 I'd say those are probably our biggest

1 competitors because they're just the closest
2 to us, and so that's who we compete with for
3 business, and they're all allowed to have
4 entertainment.

5 And so it would allow us to
6 compete with them and to possibly increase our
7 revenues by attracting people to our
8 establishment to eat our food, to drink our
9 beer, whatever they may do, and in order to
10 compete with those other people who do the
11 same.

12 MEMBER JONES: Okay. And you're
13 operating a restaurant, correct?

14 MS. MAKRIS: Yes.

15 MEMBER JONES: Okay. So when
16 you're saying you want live music to try and
17 increase your revenues, you're talking about
18 increasing your turnover or the number of
19 people that come into your establishment,
20 correct?

21 MS. MAKRIS: Not necessarily, just
22 to bring bodies through the door who are going

1 to be looking at our menu and all that. I
2 don't know what you mean by turnover exactly.

3 MEMBER JONES: So the objective is
4 to increase the number of patrons you have in
5 your establishment.

6 MS. MAKRIS: Yes.

7 MEMBER JONES: Okay. So would
8 that increase the number of people that you
9 have in your establishment on a regular basis?

10 MS. MAKRIS: We have slow periods
11 throughout the day, where, you know, the
12 establishment is almost empty. So I mean, we
13 would probably try and as smart business
14 owners have live music when it's a time when
15 there's already not a lot of people, to try
16 and increase sales revenues during those
17 times.

18 MEMBER JONES: Okay. So let me
19 take a different direction. So you mentioned
20 earlier that your objective, your
21 establishment now caters, kind of like the
22 neighborhood establishment. I mean you just

1 have people that are locals that are in the
2 neighborhood.

3 When you have this live music and
4 you're charging a cover charge, which is one
5 of the other things that I think you mentioned
6 as an objective, it sounds like it's more than
7 just a neighborhood establishment at that
8 point. It sounds like it's more of, when
9 you're looking to bring in people from, non-
10 neighbors into the establishment, right? So
11 is that one of the objectives in this business
12 plan?

13 MS. MAKRIS: I mean, not
14 necessarily. Again, I think that's kind of a
15 question I would defer to my husband because
16 it's not something I would really be as
17 involved in.

18 But my personal sort of thinking
19 on it is that, or my understanding is well, is
20 that cover charge is, the purpose of the cover
21 charge is actually to pay for the live
22 entertainment. And a lot of bands require, or

1 that's basically how their contracts work,
2 where like they'll come and play if they
3 essentially get money that's collected at the
4 door.

5 So that's my understanding of how
6 that cover charge will be used. It would be
7 able to attract, you know, entertainers who
8 have those sorts of requirements.

9 MEMBER JONES: Okay. So I kind of
10 get that. That's a different aspect of the
11 question though. I'm basically trying to
12 understand, if you have live music would you
13 anticipate having more people at your
14 establishment? Bottom line.

15 MS. MAKRIS: Yes.

16 MEMBER JONES: Okay. So the crowd
17 that you have now isn't analogous to the crowd
18 that you anticipate having if you have live
19 music.

20 MS. MAKRIS: I don't know. I'm
21 not sure about that because I think maybe some
22 of our customers would simply come in more

1 frequently. They would come in more
2 frequently so they'd patronize our
3 establishment more frequently.

4 MEMBER JONES: Okay. Hours-wise,
5 when would you think you'd be having
6 entertainment?

7 MS. MAKRIS: We just haven't gone
8 there yet. I mean I don't know. I don't know
9 yet. It remains to be seen.

10 MEMBER JONES: All right. Thank
11 you. Okay, Madam Chair.

12 CHAIRPERSON MILLER: Okay, other
13 Board questions? Mr. Silverstein?

14 MEMBER SILVERSTEIN: Thank you Ms.
15 Makris. What businesses on your block that
16 are close to you, next door, two doors down,
17 three doors down, across the street, catty-
18 corner, are allowed to have live music or
19 allowed to have entertainment?

20 MS. MAKRIS: Absolutely all of
21 them. We have looked and --

22 MEMBER SILVERSTEIN: Who are they?

1 Can you name me three or four and where they
2 are located in direct relationship? All of
3 them doesn't answer the question.

4 MS. MAKRIS: Absolutely. Jack
5 Rose has an entertainment endorsement. They
6 are the closest ABRA establishment from us.
7 They are two doors down. Because the place in
8 between us only serves kabobs.

9 El Tamarindo often has
10 entertainment, and they are three doors, so
11 they're directly around the corner from us.
12 Duplex Diner is not prohibited from having
13 live entertainment.

14 I'm not sure if they actually have
15 an entertainment endorsement, but I did look
16 at their settlement agreement and they are the
17 only ones with one and they are not prohibited
18 from having an entertainment endorsement.

19 MEMBER SILVERSTEIN: Excuse me,
20 Mr. Hart, you're banging the --

21 MR. HART: I'm sorry.

22 MEMBER SILVERSTEIN: That's okay.

1 You're banging on it. Go ahead. Duplex
2 Diner.

3 MS. MAKRIS: Duplex Diner.
4 L'Enfant Caf,, and they have entertainment.
5 And those are the five closest to us.

6 MEMBER SILVERSTEIN: L'Enfant does
7 have it or is permitted or --

8 MS. MAKRIS: L'Enfant is
9 permitted. I don't know if they do but I know
10 they are permitted.

11 MEMBER SILVERSTEIN: Okay. What
12 businesses on your block close to you are
13 allowed to have open windows if there is no
14 ongoing entertainment?

15 MS. MAKRIS: To my knowledge all
16 of them. Because Jack Rose does not have a
17 settlement agreement at all so they can do
18 pretty much anything the law allows. Same
19 thing, L'Enfant may have their windows open.
20 I have a copy of Duplex Diner's agreement. I
21 don't remember anything being in it about
22 windows.

1 MEMBER SILVERSTEIN: Do they have
2 their windows open maybe during the day or --

3 MS. MAKRIS: Yes, they all do.
4 Jack Rose keeps its windows open. Duplex
5 Diner keeps its windows open. L'Enfant keeps
6 its windows open. El Tamarindo keeps its
7 windows open.

8 MEMBER SILVERSTEIN: Is that also
9 a matter of hygiene, smell, as well as energy?

10 MS. MAKRIS: Yes, it certainly
11 does help air out the place. It makes it more
12 attractive to customers. It just makes it a
13 nicer place to be.

14 MEMBER SILVERSTEIN: And what
15 businesses on your block are close to you, do
16 a cover charge, and are these businesses
17 local? It seems a little odd that a
18 neighborhood place would do a cover charge.

19 MS. MAKRIS: Sure. I'll say I
20 don't know. My husband might know. He's
21 there more than I am. I don't know.

22 MEMBER SILVERSTEIN: Do you know

1 if any of them are permitted to and don't have
2 it? So you don't know whether this is open
3 ground or not.

4 MS. MAKRIS: I know that none of
5 them are permitted from having a cover charge.

6 MEMBER SILVERSTEIN: You do know
7 none of them are.

8 MS. MAKRIS: I do know that none
9 of them are because none of them have
10 settlement agreements and the law allows it
11 without a settlement agreement, and they could
12 go and apply to do it.

13 So since -- yes. To my knowledge
14 they are allowed to have cover charges because
15 they don't have settlement agreements. Or
16 they would be allowed to go and apply for an
17 entertainment endorsement to be able to do so
18 if that's something that's attached.

19 MEMBER SILVERSTEIN: Okay. And no
20 further questions.

21 CHAIRPERSON MILLER: Okay.
22 Others? I just have a few follow-up questions

1 for you.

2 MS. MAKRIS: Yes.

3 CHAIRPERSON MILLER: Okay, looking
4 at the current settlement agreement, Number 2,
5 I wanted to just make sure. You said that the
6 seating capacity for the establishment
7 provided in the Certificate of Occupancy is 49
8 is what's stated in the agreement, but that
9 the actual occupancy is 30-something?

10 MS. MAKRIS: Thirty five, yes.

11 CHAIRPERSON MILLER: And where is
12 that stated?

13 MS. MAKRIS: It's on our
14 Certificate of Occupancy that's been issued by
15 DCRA, which is something that we have that
16 we'll introduce later for you guys.

17 CHAIRPERSON MILLER: Okay. And
18 then Number C makes reference to no music
19 being played on the roof. What's on your
20 roof? Do you serve --

21 MS. MAKRIS: Nothing. We don't
22 know. There's a lot of stuff in here that's

1 kind of wonky that we don't, we weren't
2 around. I was 18, I think, when this was
3 signed. I don't know.

4 CHAIRPERSON MILLER: Okay. So
5 this is like, it doesn't really matter that
6 much because it's not accurate because you
7 don't do anything, but it doesn't hurt your
8 business.

9 MS. MAKRIS: Well, I guess if we
10 ever decided to build a rooftop it would hurt
11 our business. So you want it taken out, you
12 know, because if we did have a roof, then, you
13 know, we could maybe figure something out. I
14 guess it just doesn't, I don't understand why
15 we would have something in there that doesn't
16 even apply to us.

17 CHAIRPERSON MILLER: Okay. Could
18 you do a rooftop?

19 MS. MAKRIS: We technically could,
20 yes.

21 CHAIRPERSON MILLER: Okay, so
22 architecturally it's set up so you could. But

1 you haven't in the years that you've been
2 there.

3 MS. MAKRIS: It is and we have
4 not.

5 CHAIRPERSON MILLER: Okay. And
6 you said in Number 4 that the placement of the
7 trash can is also wrong here?

8 MS. MAKRIS: Yes. The fire
9 marshal told us that we could not have a trash
10 can on the street.

11 CHAIRPERSON MILLER: So you have
12 it somewhere else in the alley, or what?

13 MS. MAKRIS: There's two. There's
14 two trash cans that are provided by the city
15 that sit there.

16 CHAIRPERSON MILLER: And where are
17 they?

18 MS. MAKRIS: They're public trash
19 cans that sit on the sidewalk.

20 CHAIRPERSON MILLER: Oh, okay, on
21 the sidewalk. What is your opinion about the
22 Provision Number 7 related to the pub crawls?

1 MS. MAKRIS: Our issue with that
2 is that we think it's really vague. It says
3 other tours, similar events, and then it
4 doesn't really say what participation means.
5 It's very strange.

6 I personally think that pub crawls
7 in general, I've seen pub crawls before happen
8 when I was younger. I even, you know, have
9 been on one before that people concerned act
10 responsibly, and whether or not they're, you
11 know, touring establishments as part of a
12 group or on their own, I don't really see what
13 the difference is there.

14 So I don't really see it's a
15 necessity, but it's not something that's
16 incredibly a big deal. We're not really dying
17 to have pub crawls. Our concern more is with
18 the language of that.

19 For example, we have people who do
20 things like progressive dinner where they go
21 and have a part of their meal at like each
22 restaurant, and we're not sure, like, if that

1 would be considered that, what other tours are
2 similar that means. It's pretty open ended.
3 It's pretty broad.

4 CHAIRPERSON MILLER: Okay. And
5 then I think this is pretty clear, but just to
6 make sure. The provisions that bother you the
7 most are the ones dealing with the live
8 entertainment and the windows being closed?

9 MS. MAKRIS: So I would say the
10 provisions, live entertainment, window, the
11 capacity provision is a really big issue for
12 us because it's a fire safety issue. The
13 trash can.

14 CHAIRPERSON MILLER: Okay.

15 MS. MAKRIS: Let's see. I can
16 just take a look real quick and make sure I'm
17 not -- yes. I mean those are the only things
18 that bother me. I mean once you look at that,
19 I mean, the rest of it's kind of just repeats
20 the law from what I see. A lot of it is like,
21 you know, you can't have your trash cans
22 overflowing. That's something that the law

1 already requires. You can't be noisy. I mean
2 the law already requires, so I guess I don't
3 really see the point. Already stated in the
4 law.

5 CHAIRPERSON MILLER: Okay. All
6 right, now I'm going to back to, there's some
7 -- followup -- starting with the applicant.

8 MR. MAKRIS: No.

9 CHAIRPERSON MILLER: Okay. Did
10 you all have any questions just based on the
11 questions that the Board has asked?

12 MR. JAMES: I actually did.

13 MR. HART: I had one too.

14 CHAIRPERSON MILLER: Okay.

15 MR. HART: We've talked about the
16 C of O and the capacity. Is there a
17 distinction between the capacity and the
18 seating in the establishment? So the number
19 of people that can be in the establishment
20 versus the number of seats.

21 MS. MAKRIS: I don't know. I
22 understand there's, I see an issue based on

1 the number of seats. And as on the fire
2 marshal, I think it only applies if you're
3 overcrowded from my understanding.

4 CHAIRPERSON MILLER: Okay, Mr.
5 James?

6 MR. JAMES: Based on that I only
7 have one question. So Ms. Makris, you're
8 familiar with your existing 2002 settlement
9 agreement?

10 MS. MAKRIS: Yes.

11 MR. JAMES: And Provision Number
12 2, Capacities, does it state that the seating
13 capacity for the establishment provided in the
14 Certificate of Occupancy is 49?

15 MS. MAKRIS: I don't know. I
16 don't have it right in front of me. I mean
17 it's in the record. I don't know.

18 MR. HART: It's on Page 2. It's
19 Provision 2.

20 MS. MAKRIS: Okay.

21 MR. HART: Exhibit 18.

22 MS. MAKRIS: Yes, it says, "The

1 seating capacity for this establishment
2 provided in the Certificate of Occupancy is
3 49." So I suppose in 2002 it was 49.

4 MR. JAMES: And does it also say
5 the total occupancy, seating and standing,
6 shall not exceed the number permitted by the
7 D.C. fire marshal and BOCA code as applicable?

8 MS. MAKRIS: Yes.

9 MR. JAMES: So I have a question
10 to ask. Why are you choosing to lower your
11 number or have 35? We haven't seen any -- why
12 are you choosing to lower the number to 35?

13 MS. MAKRIS: I didn't choose
14 anything. The old Certificate of Occupancy
15 stated that we had 2,800 square feet in our
16 building which is not correct and that, we
17 only have 1,500, and it stated that our seats
18 are 49.

19 So when we went down to get it
20 corrected so that it did not say we had 2,800
21 square feet, we were required to provide
22 architectural drawings, renderings of our

1 establishment for plans of seating capacity,
2 and DCRA then does its job to determine egress
3 and all that sort of stuff within the
4 establishment and how many people allowed.

5 MR. JAMES: Thank you. Does your
6 establishment participate in progressive
7 dinners that you've mentioned in response to
8 one of the Board --

9 MS. MAKRIS: Do we --

10 MR. JAMES: Participate in
11 progressive dinners? You mentioned it.

12 MS. MAKRIS: We have had people
13 who have expressed an interest in doing it.

14 CHAIRPERSON MILLER: I can't hear
15 you because you're facing that way.

16 MS. MAKRIS: Yes, we've had
17 customers who have expressed an interest in
18 progressive dinners. I do not know if they've
19 actually ever done one.

20 MR. JAMES: I thought that was the
21 Board's signal of some sort of --

22 CHAIRPERSON MILLER: No, no, it

1 isn't. It's somebody's cell phone, I think.

2 MR. JAMES: So earlier this year
3 I've looked at your website, and my question
4 based on that is I didn't see anything that
5 talked about anything like progressive dinners
6 or that sort of, is there something there
7 about that?

8 MS. MAKRIS: Like I said, that's
9 not something we would organize. It's
10 something that --

11 MR. JAMES: Just, can I have a yes
12 or no question, please.

13 MS. MAKRIS: I'm trying to answer
14 the question in a way that explains the
15 answer. As I stated, we have had customers
16 express interest to us in doing progressive
17 dinners. It's nothing that we have ever
18 organized or we have ever pushed. So no, we
19 don't put all of our customers' ideas on our
20 website.

21 MR. JAMES: Thank you.

22 CHAIRPERSON MILLER: I just have

1 two questions I just remembered. One is the
2 1995 agreement, where is that? I mean is that
3 in the record at all or is that something you
4 need the Board to look at?

5 MS. MAKRIS: ABRA has it. I mean
6 I can provide a copy, but it was provided to
7 me from William Hager.

8 CHAIRPERSON MILLER: Okay. Well,
9 if we have it we can get it. But you wanted
10 us to do something with that, and I just want
11 --

12 MS. MAKRIS: We just wanted it to
13 be noted that we just want it to be terminated
14 because no one's protested its termination.

15 CHAIRPERSON MILLER: Okay, and who
16 is it between? You and --

17 MS. MAKRIS: It was signed by some
18 of the members of people who live at the
19 Ashley Condominium Association, and then the
20 Vernon House Condominium Association.

21 CHAIRPERSON MILLER: With
22 different provisions than this 2002 --

1 MS. MAKRIS: Yes.

2 CHAIRPERSON MILLER: Okay. All
3 right. And then my other question is, and
4 this may be more suitable for you, but if
5 those two, in the opening statement I think
6 there was reference to your food sales as a
7 reason for not terminating this settlement
8 agreement. And I don't know which one of you
9 is better to address if there's a problem with
10 the food sales and what that means.

11 MS. MAKRIS: Sure. That's
12 something that honestly is really new. It's
13 something that was never brought up until
14 after we had already been protested. So in my
15 opinion it's something that's just sort of
16 been tacked on to be like, oh, here's a
17 problem with The Blaguard because we didn't
18 have any other problems with them.

19 And that's something that
20 obviously the fact that it's sort of a chicken
21 before the egg thing, where if they're going
22 to sit and judge whether or not we run our

1 food sales based on a number that's in our
2 agreement of chairs that doesn't actually fit
3 in our establishment, then that seems a little
4 bizarre.

5 CHAIRPERSON MILLER: So that's the
6 relation to the capacity, that your capacity
7 is really lower so your food sales should be
8 lower than they're set up right now based on
9 capacity.

10 MS. MAKRIS: Yes.

11 CHAIRPERSON MILLER: Okay. All
12 right, thank you. Now any other Board
13 questions? Okay. Mr. Jones?

14 MEMBER JONES: Well, since you
15 went down that path, when you submit your
16 report for your food sales it's based off of
17 the C of O number?

18 MS. MAKRIS: We don't know.
19 Nobody ever knows how to deal with this
20 because we have two different, it's a problem
21 that we can't get an answer on either. I
22 don't --

1 MEMBER JONES: Let me just cut to
2 the quick. When you submit your reports it's
3 based on what number, when you do your math?

4 MS. MAKRIS: I don't know. I
5 don't do the report.

6 MEMBER JONES: Okay. All right,
7 is there someone here that will be testifying
8 that is aware of that?

9 MS. MAKRIS: We have maintained
10 the position that food sales are something,
11 that the group protested as based on peace,
12 order and quiet and not food sales. And then
13 it's totally separate, so no, we did not plan
14 to testify as to all of that.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER JONES: Okay, so just to be
17 clear. I wasn't quite finished. I don't know
18 if you were --

19 CHAIRPERSON MILLER: No, no. I
20 was just responding to what she just said. I
21 know you're not finished. Go ahead.

22 MEMBER JONES: So is there someone

1 here that can address or that you plan on
2 putting on in your case that can address the
3 question specifically that I answered?

4 MS. MAKRIS: Yes, if the Board
5 thinks that that's relevant, then sure, they
6 can address it.

7 MEMBER JONES: Yes. Are you
8 currently meeting your food sales requirement
9 based on the information reports that you
10 submit?

11 MS. MAKRIS: As I said, I don't
12 know. I do not submit the, that's something
13 I don't think I should speak to because I
14 don't actually do the reports.

15 MEMBER JONES: You don't know. Do
16 you know and you're not answering, or do you
17 don't know?

18 MS. MAKRIS: No. I, off the top
19 of my head don't know the numbers. As I said,
20 I do not do the food sales reports. So I just
21 don't think that I'm well equipped to answer
22 that question because I'm not the person who

1 does the reports.

2 (Crosstalk)

3 MEMBER ALBERTI: Can I just make a
4 follow-up, because you testified earlier that
5 you do the books.

6 MS. MAKRIS: I do.

7 MEMBER ALBERTI: So do you provide
8 the numbers to the person who files the
9 report?

10 MS. MAKRIS: The only thing I
11 provide to the person who files the report are
12 the numbers from the amount that we spend on
13 food and alcohol, because that goes into the
14 reports, because that's all done offsite.

15 And then the actual sales and all
16 that is in our MICROS computers which are
17 onsite which is all computerized. So that's
18 how that, so that's just all I provide, and
19 then I don't know what --

20 MEMBER ALBERTI: Okay. And so who
21 does the reports?

22 MS. MAKRIS: My husband does them.

1 MEMBER ALBERTI: Thank you.

2 CHAIRPERSON MILLER: Okay. Any
3 follow-up on the Board's question?

4 MR. HART: Chairman Miller, could
5 I just ask for a time update on where we
6 stand?

7 CHAIRPERSON MILLER: Mr. Jones has
8 that. Sure.

9 MEMBER JONES: The licensee has 63
10 minutes remaining. The protestant has 78
11 minutes remaining.

12 MR. HART: So it's only a 25-
13 minute difference, or a 15-minute difference?

14 MEMBER SILVERSTEIN: The vast
15 majority of time that's been used has been
16 used by the Board itself in questions, and
17 that does not take from either side. That's
18 why the difference is small.

19 MR. HART: I just raise the
20 concern because we have an ANC meeting at 7:00
21 p.m. and it's a very important meeting for
22 both of us to be at.

1 CHAIRPERSON MILLER: Okay. You
2 should make that.

3 MR. HART: Okay.

4 CHAIRPERSON MILLER: All right,
5 we're finished then with this witness. Thank
6 you very much.

7 MS. MAKRIS: We have Mr. Makris is
8 going to testify.

9 CHAIRPERSON MILLER: Okay. Do you
10 swear to tell the truth, the whole truth and
11 nothing but the truth?

12 MR. MAKRIS: I do.

13 CHAIRPERSON MILLER: Thank you,
14 okay.

15 MS. MAKRIS: I'm sorry, Board's
16 indulgence. I seem to have misplaced my
17 questions.

18 CHAIRPERSON MILLER: Okay.

19 (Off the record comments)

20 MS. MAKRIS: Okay, can you state
21 your name, for the record?

22 MR. MAKRIS: My name is Nic

1 Makris.

2 MS. MAKRIS: And what do you do?

3 MR. MAKRIS: I'm the owner and
4 operator of the Blaguard.

5 MS. MAKRIS: And can you tell us a
6 little bit about the Blaguard?

7 MR. MAKRIS: We are a small family
8 run establishment. My wife and I purchased
9 the Blaguard in 2010. It was a failing
10 business. The previous owners reached out to
11 us with the interest of selling and we
12 accepted.

13 We are open seven days a week. We
14 open for lunch and brunch five days a week.
15 We open for dinner every day. So we're only
16 closed for lunch on Monday and Tuesday. And
17 outside of that, we're open every day at
18 12:00.

19 We aspire to be viewed as a
20 gastropub, which is essentially a pub that
21 serves -- pub atmosphere known for its food
22 and beer selection.

1 We have a small intimate event
2 space on the second floor, which we're able to
3 use during the cooler months of the year, for
4 the most part. And we typically use it to
5 host engagement parties, birthday parties, and
6 fundraisers.

7 I have 12 employees. The majority
8 of them live within one mile of my restaurant.
9 Our restaurant pretty much, except for two, is
10 the only employment of most of these
11 employees. So ten out of 12 people only work
12 for me.

13 So I am responsible for making
14 sure that, you know, or we collectively have
15 to make sure they pay their bills every day.

16 We serve eclectic food, eclectic
17 American food. And we do have a somewhat of
18 a revolving menu, but we typically offer
19 gourmet sandwiches, many brunch items, burgers
20 and braised short ribs is our most recent
21 special.

22 MS. MAKRIS: What are your typical

1 clientele like?

2 MR. MAKRIS: Most of our customers
3 are professionals that live within a few
4 blocks radius of our establishment. Many of
5 our customers, I would kind of put them in
6 their late 20s to mid 30s.

7 I have been able to get to know
8 some of our more senior neighborhood people
9 during my lunch shifts at the Blaguard. Many
10 of the customers of the Blaguard tell me that
11 they only visit the Blaguard and never venture
12 any further north than Jack Rose.

13 I think that speaks a little bit
14 to the character of our establishment, as well
15 as our corner of 18th street and provides a
16 bit of a distinction between the rest of the
17 neighborhood.

18 MS. MAKRIS: Has the Blaguard ever
19 won any awards?

20 MR. MAKRIS: Yes, the Washington
21 City Paper awarded us their top prize for Best
22 Neighborhood Bar, which we were nominated for

1 by we don't know who.

2 We were awarded that on our first
3 year and our second year. And our third year,
4 were nominated runner up as the Best
5 Neighborhood Bar.

6 MS. MAKRIS: Do you know how the
7 contest is decided?

8 MR. MAKRIS: It is a poll of the
9 city paper, Washington City Paper's readers.
10 And they have an opportunity to vote for their
11 favorite place to, I don't know, their
12 favorite dry cleaner, their favorite place to
13 eat sushi. I think we're all familiar with
14 the City Paper.

15 MS. MAKRIS: Okay. Where do you
16 live?

17 MR. MAKRIS: I live with my wife
18 in Adams Morgan. I've been working in Adams
19 Morgan since 2002. I've worked there through
20 college at the University of Maryland.

21 I moved in with my wife shortly
22 before purchasing the Blaguard. And so yes,

1 I live in Adams Morgan. We're rooted there,
2 we plan to raise our family there.

3 MS. MAKRIS: Why are you
4 requesting termination of your Voluntary
5 Agreement?

6 MR. MAKRIS: As far as I'm
7 concerned, I've never signed any of these
8 agreements. I recognize that the law states
9 that these do carry over with the transfer of
10 a liquor license. So you know, in good
11 spirit, in good faith I always honored the
12 agreement.

13 I was told at the time that I
14 purchased when I came to the ABRA Board that
15 I was interested in terminating or amending
16 this agreement.

17 Sadly it was about two to three
18 weeks after, actually maybe months, after the
19 prior renewal period. So I was told I would
20 have to wait until this period, this
21 opportunity.

22 I don't think we need a voluntary

1 agreement to promote a good establishment in
2 the neighborhood. I think our record proves
3 that. I feel like I've been very open
4 throughout these negotiations about the
5 feeling and the sentiment of the neighborhood
6 about us.

7 We've provided countless emails
8 that we were actually privy to. We don't know
9 if there were additional emails sent. I've
10 always, you know, encouraged people to maybe
11 ask our neighbors if they have a problem with
12 us.

13 And I've also, and many times,
14 asked if there were specific concerns, asked
15 the protesters if there were specific concerns
16 about the Blaguard and our operation so I
17 would maybe have an opportunity to reach out
18 to these people who stood in opposition.

19 And at no time was I ever informed
20 of any, any person to come forth and speak out
21 against us. And to further that, no I'll hold
22 there.

1 MS. MAKRIS: Okay. Do you think
2 that you interfere with your neighbor's peace,
3 order, and quiet?

4 MR. MAKRIS: I believe, based on
5 the testimony or conversations with my
6 neighbors, that for a fact I do not have any
7 imposition on their peace, order, and quiet.

8 MS. MAKRIS: And why do you think
9 that you wouldn't have any -- or do you
10 believe that you would have impact on peace,
11 order, and quiet should the agreement be
12 terminated?

13 MR. MAKRIS: I would say that I
14 would never attempt to disappoint the people
15 around my business by imposing on them in that
16 way.

17 So no, I would never see that to
18 become an issue because I have a great deal of
19 respect for my community as well as my
20 neighbors.

21 MS. MAKRIS: Do you currently have
22 any sort of sound amplification or music in

1 your establishment?

2 MR. MAKRIS: Yes we do. We have a
3 jukebox, we have speakers. We play them with
4 the windows open at times. I'm sure there's
5 even been times when the windows weren't
6 closed on time and we never received any calls
7 of complaints.

8 MS. MAKRIS: Do you think that
9 Adams Morgan has changed?

10 MR. MAKRIS: In my experience over
11 the last 11 years working there, yes the
12 business district has changed significantly.
13 I think the greatest evidence would be a
14 review of the ABRA's records and how many
15 licenses have changed hands and names that
16 don't exist anymore.

17 Furthermore, it's generally known
18 that Adams Morgan businesses are suffering
19 more so these days.

20 The economy's bad, the economy's
21 changed and Washington D.C. and greater
22 metropolitan area have also gone through their

1 own changes, all of which would and did add to
2 the Adams Morgan's ability to compete in the
3 restaurant and bar market.

4 (Off the record comments)

5 MR. HART: Can we get Exhibit 18
6 back, too? I think we left it up there. Yes,
7 it's in the report.

8 MR. MAKRIS: I'm sorry, man.
9 There's actually nothing up here except for
10 what I brought with me and this Exhibit 8 that
11 was just handed to me.

12 MS. MAKRIS: I'm not seeing it.
13 Are you sure I still have it and I didn't give
14 it back to you? Okay. Do you need it back,
15 like, right this second? Okay, all right,
16 what is this document I just handed you?

17 MR. MAKRIS: This was --

18 MS. MAKRIS: I'm sorry?

19 MEMBER SILVERSTEIN: What was the
20 question?

21 MS. MAKRIS: Oh, what is this
22 document I just handed you?

1 MR. MAKRIS: It's a report from
2 the D.C. Fiscal Policy Institute. It just
3 speaks to the slowdown in business in Adams
4 Morgan over the last decade.

5 CHAIRPERSON MILLER: And it's
6 identified right now with an A-8 on it,
7 correct?

8 MR. MAKRIS: That is correct.

9 MS. MAKRIS: Yes, that is correct.

10 CHAIRPERSON MILLER: Okay.

11 MS. MAKRIS: Should I just give
12 somebody the whole stack back there?

13 CHAIRPERSON MILLER: Yes.
14 Appreciate it.

15 MR. MAKRIS: Make sure you keep a
16 copy for the view posts.

17 MS. MAKRIS: Okay. Thank you so
18 much. Okay. Oh sorry, may I approach?

19 (Off the record comments)

20 MS. MAKRIS: Oh, and I just wanted
21 to note, the packet that we gave you guys, the
22 originals are on top. So I think I should

1 probably be in the initial file. I don't know
2 if that matters.

3 MR. MAKRIS: I am holding the
4 originals.

5 MS. MAKRIS: Oh.

6 MR. MAKRIS: The notary stamp is
7 present.

8 MS. MAKRIS: Do you want me to
9 give you those? Should we keep them?

10 (Off the record comments)

11 MR. MAKRIS: Okay.

12 MS. MAKRIS: Okay, okay. All
13 right.

14 CHAIRPERSON MILLER: My mic wasn't
15 on. Did you hear that? You did? My mic
16 wasn't on, but you heard that?

17 MS. MAKRIS: Just so we have them
18 in the record when we're finished, we'll give
19 them to you?

20 CHAIRPERSON MILLER: Yes.

21 MS. MAKRIS: Okay, thank you.

22 CHAIRPERSON MILLER: Okay.

1 MS. MAKRIS: What are the
2 documents I just handed you?

3 MR. MAKRIS: These are a number
4 of, well we'll start with the first one which
5 is an affidavit for the building which is
6 behind the building, which is behind the
7 businesses across the street, which was
8 earlier being referenced and questioned about.

9 It is directly across the street
10 from us. It has 14 units. This is the
11 president who wrote us an affidavit.

12 CHAIRPERSON MILLER: Okay, I don't
13 think we have that before us yet.

14 MR. MAKRIS: So that's what these
15 are. These are a number of affidavits, all of
16 residents within one block of the Blaguard.

17 CHAIRPERSON MILLER: Okay. And
18 are they numbered A9?

19 MS. MAKRIS: It's marked A9, yes
20 ma'am.

21 MR. MAKRIS: They're all under A9.

22 CHAIRPERSON MILLER: A9. Okay.

1 MS. MAKRIS: Why do you think that
2 the people who have given these affidavits are
3 relevant?

4 MR. MAKRIS: I would say that due
5 to their close proximity to our business, they
6 would be the most affected by peace, order,
7 and quiet, as we're here to, you know, defend
8 ourselves to that, the fact that we may impose
9 a problem on our neighborhood.

10 That being said, I think that
11 their testimony is very relevant.

12 MS. MAKRIS: And how did you come
13 about getting these affidavits?

14 MR. MAKRIS: I work in the
15 Blaguard roughly 75 hours a week. I know
16 nearly everyone that walks through the door.
17 Many of them I know their parents or their
18 kids.

19 They live nearby me. They share a
20 neighborhood, they share an appreciation for
21 Adams Morgan as it stands. And they have an
22 interest in the Blaguard being the best that

1 the Blaguard can be.

2 MS. MAKRIS: Is there a reason why
3 any of these people aren't here today to
4 testify?

5 MR. MAKRIS: To the best of my
6 knowledge, I would say the reason they're not
7 here is because they all have jobs because
8 it's expensive and hard to take off work,
9 especially due to a minor clerical error that
10 we thought we were expected to be here at 4:30
11 and not 1:30 today due to the original letter
12 which was sent out.

13 But it was changed at the pre-
14 settlement hearing. I don't know exactly the
15 terminology. As I said, this is the first
16 time we've gone through this process.

17 But the last time we stood before
18 you, the time was stated at 1:30 and we did
19 not catch that detail.

20 MS. MAKRIS: Why do you think your
21 VA is too restrictive?

22 MR. MAKRIS: I can't even open my

1 windows on the first floor after 7:30, which
2 you know, in the hottest days of the year when
3 windows are there to protect you from the heat
4 until the sun sets, that is.

5 And then temperature usually drops
6 to a more reasonable temperature. And that
7 usually doesn't happen until after 7:30. So
8 that's a big deal.

9 It forces me to not be in
10 compliance with DCRA's Certificate of
11 Occupancy, which was issued to us. I don't
12 know exactly when the original Certificate of
13 Occupancy was established.

14 But it had errors on it which are
15 out of my hand, or out of my control. And the
16 first time we did a measurement of our
17 building, we realized that and we took the
18 proper steps to correct it.

19 We've spent thousands and
20 thousands of dollars trying to cool the second
21 floor, unsuccessfully. And I think most of
22 those details were discussed already.

1 My kitchen is on my second floor,
2 as well. To move the kitchen to the
3 downstairs would mean I would have to move my
4 cooler to the upstairs.

5 So now we're talking about very
6 expensive changes. And not to mention that,
7 you know, it's suitable the way it is. But
8 the problem is trying to keep that second
9 floor cool.

10 Also you know, my wife has an
11 interest in planting some flowers, as we have
12 already planted flowers around our patio. We
13 would like to match those flowers with windows
14 outside our second floor window.

15 Watering those flowers would
16 require a ladder instead of just being able to
17 roll open a window and put some water on them,
18 and even close that window back up.

19 Same goes for minor repairs that
20 we would need, flags that we have posted, and
21 also there's some crown molding that needs to
22 be repaired that, again, a scaffold requires

1 a permit.

2 That costs more time, more money.
3 We're just talking about very simple repairs
4 of just a few screws. I think we've gone
5 enough into the pub crawl conversation.

6 The trash can, I think there was a
7 little confusion. We have our trash cans
8 behind our building in our alley. I think
9 that at some point, people threw trash on the
10 street and that was an issue for the
11 community, which makes perfect sense.

12 We don't have that issue, so
13 having a trash can on the sidewalk in front of
14 our business, which not only does get in the
15 way of the egress, which was pointed out to me
16 by the fire marshal, it also seems
17 unnecessary, especially due to the fact that
18 we have, you know, these public trash cans
19 available to the public right in front of our
20 establishment.

21 MS. MAKRIS: Okay. The next one
22 is marked A10 and A11. Can you please tell us

1 what these documents are?

2 MR. MAKRIS: So A10 is, if you
3 guys, give the board a moment. A10 was the
4 transferred Certificate of Occupancy to my
5 company, Juniper Group, LLC.

6 I've highlighted the relevant
7 information on 12/16/2010 which is when I
8 assumed it. The seating at 49, and the
9 occupied square footage listed at 2,800 square
10 feet.

11 You can clearly see the difference
12 between the two certificate of occupancies.

13 MS. MAKRIS: What does this have
14 to do with your Volunteer Agreement?

15 MR. MAKRIS: So I was told that
16 when we submitted the Certificate of Occupancy
17 to ABRA, that they could not amend our license
18 to reflect our actual C of O because it was in
19 direct conflict with our existing Certificate
20 of Occupancy. I'm sorry, our existing
21 Settlement Agreement.

22 MS. MAKRIS: To clarify that, you

1 went to ABRA and said here is my Certificate
2 of Occupancy.

3 MR. MAKRIS: That is correct.

4 MS. MAKRIS: And they told you
5 they cannot update your license to accurately
6 reflect your seats in your establishment
7 because of the settlement agreement? Is that
8 correct?

9 MR. MAKRIS: That is how I
10 interpreted what was said to me, yes.

11 MS. MAKRIS: Okay.

12 MR. MAKRIS: And this was done
13 roughly back in April, right around the time
14 that, you know, the renewal was coming into
15 play.

16 MS. MAKRIS: Do you know how much
17 of a path you're required to have inside of
18 your establishment for in the event there's a
19 fire?

20 MR. MAKRIS: I believe that new
21 code requires 48 inches for wheelchair access.
22 But because we're an old building, I think

1 that we're allowed 36 inches.

2 MS. MAKRIS: What was the square
3 footage on the Certificate of Occupancy that
4 was in place when you bought the Blaguard?

5 MR. MAKRIS: 2,800 square feet.

6 MS. MAKRIS: Is your building
7 2,800 square feet?

8 MR. MAKRIS: No.

9 MS. MAKRIS: Do you know how many
10 square feet it is?

11 MR. MAKRIS: 1,505.

12 MS. MAKRIS: Do you have any idea
13 why it says 2,800 square feet?

14 MR. MAKRIS: I have no idea why.

15 MS. MAKRIS: Do you know how old
16 the Certificate of Occupancy is? How many
17 times it's been renewed?

18 MR. MAKRIS: At least, I imagine,
19 once for every owner. I don't know if it's
20 ever been addressed, the original Certificate
21 of Occupancy.

22 I just, I don't have that

1 information. I only have the C of O that was
2 issued to me originally when I assumed the
3 business, which was in 2010. It could have
4 been a mistake that was made that day. I do
5 not know.

6 MS. MAKRIS: Okay. I just handed
7 the witness A13. Can you tell me what A13 is?

8 MR. MAKRIS: A13 is a picture of
9 my second floor window's view across 18th
10 street.

11 MS. MAKRIS: And this is the one
12 that you can't open?

13 MR. MAKRIS: Correct, this is the
14 one that we cannot open. Just because there's
15 a few other relevant points, if you look,
16 there's a row of one floor buildings across
17 the street.

18 And directly behind them, that is
19 the Vernon House condominium. And then
20 directly to the right, just off the edge of
21 the screen, that is the Ashley. Just to
22 clarify all the questions that you were trying

1 to determine earlier.

2 And you can also clearly see that
3 we have very comfortably fit blinds. I don't
4 think that you can notice that the windows
5 have also been tinted, but as well as you
6 cannot see my air condition that has been
7 replaced.

8 But these are the windows that we
9 would like to be able to build in a manner
10 that they, at some point some day, could be
11 opened.

12 MS. MAKRIS: You mentioned the
13 Ashley. Have you ever spoken with anyone in
14 the Ashley about what you're trying to do?

15 MR. MAKRIS: Yes. I mean aside
16 from, you know, sending the certified letters
17 which has been mentioned already, and
18 receiving no response, I did have the chance
19 to meet a young man named Jacob Hamburger who
20 lived -- Hamburg, excuse me. I'm sorry, it
21 just slid out.

22 He lived on the south most

1 apartment of The Ashley on the corner which
2 faced the Blaguard, which I would determine to
3 be the closest resident to the Blaguard.

4 And he expressed, you know, an
5 interest in support for us having live music,
6 as long as when we had the live music, we
7 planned on closing the window, which I assured
8 him I of course plan to do.

9 MS. MAKRIS: Did he submit a sworn
10 and notarized affidavit?

11 MR. MAKRIS: Yes he did. Yes he
12 did.

13 MS. MAKRIS: I'm handing the
14 witness what is labeled as A14. Can you tell
15 me what this is?

16 MR. MAKRIS: Yes. These are
17 pictures of the new public trash cans that
18 have, you know, since the streetscape took
19 place in Adams Morgan they installed these.

20 You can see the front of my
21 building and my business from these trash
22 cans. You can also see the planter with the

1 flowers in it on the second picture.

2 I think this basically makes it
3 clear that we don't need an additional trash
4 can available to the customer, while we also
5 have staff doing their very diligent job of
6 maintaining a clean storefront.

7 MS. MAKRIS: Your VA has some
8 other provisions other than the ones that you
9 covered. Do you have problems with any of
10 those?

11 MR. MAKRIS: I do not have a
12 problem with really any of them. It does seem
13 that they're a bit redundant, sometimes
14 restating the law.

15 But we haven't ever been a problem
16 and nothing would change if it were
17 terminated.

18 MS. MAKRIS: Okay. What effort
19 did you make to reach out to come to an
20 agreement?

21 MR. MAKRIS: We spent many, many
22 hours negotiating with both the KCA and the

1 ANC. At one point, we did request separate
2 mediation from ABRA, the official mediation
3 that we had in this room, that request was not
4 granted.

5 MS. MAKRIS: And what efforts did
6 you make to reach an agreement with the KCA?

7 MR. MAKRIS: We sent Denis James a
8 letter. We attended the meetings. He sat in
9 our negotiations with the ANC where his
10 opinions were always considered.

11 MS. MAKRIS: And what did Mr.
12 James protest to you based upon?

13 MR. MAKRIS: The KCA protested
14 both the termination of our agreement, as well
15 as the renewal of our license based on peace,
16 order, and quiet.

17 As I understand that we are
18 currently making, having a negative impact on
19 the peace, order, and quiet of the
20 neighborhood.

21 However, when it was stated in
22 those meetings, it was referred to as we could

1 or we would, I'm sorry, could or would lead to
2 the disturbance of peace, order, and quiet.
3 My understanding that that's not what these
4 agreements are intended for.

5 MS. MAKRIS: Did you attend the
6 KCA meeting where they protested you?

7 MR. MAKRIS: I did.

8 MS. MAKRIS: And what were your
9 impressions, if I may?

10 MR. MAKRIS: Well, in the meeting
11 where they protested our renewal, Mr. James
12 asked everyone to vote for the protest of the
13 renewal because we asked to terminate our VA.

14 That didn't make sense to me. He
15 was the only one that spoke about our
16 business. There was an opportunity for a few
17 people to ask a couple of questions.

18 But he asked his group to protest
19 us and give him a seat at the table. He
20 didn't have anything to say about our actual
21 business. He only referred to the prior
22 operations that existed in that location.

1 MS. MAKRIS: Why are you unwilling
2 to sign an agreement with the KCI?

3 MR. MAKRIS: I was witness to Mr.
4 James' rudeness to my wife where he told her
5 she should learn the English language and
6 raised his voice on the very first time we
7 ever shook his hand.

8 And he's very cavalier with this
9 process, and doesn't care about the stress or
10 financial hardship, which it does place on the
11 business and the employees.

12 It seems to be a game. It's my
13 business. I don't want to have to go back to
14 him and ask for permission to do things in the
15 future.

16 MS. MAKRIS: Okay. What about
17 ANC.

18 MR. MAKRIS: I'm sorry, I would
19 like to add one more thing, which is that I
20 have been notified by a number of my neighbors
21 that there was an attempt to slander our
22 business, and seek opposition of our business

1 by the KCA, specifically Denis James.

2 Many of those people are, in fact,
3 my customers so they came and told me that
4 this parade was taking place. We were
5 forwarded emails, which in the interest of
6 keeping those people and their privacy out of
7 this, but I do mention it officially on the
8 record that I did see these emails.

9 MS. MAKRIS: And what about the
10 ANC. Were you willing to --

11 MEMBER SILVERSTEIN: Excuse me,
12 madam chair?

13 CHAIRPERSON MILLER: What?

14 MEMBER SILVERSTEIN: I would like
15 the gentleman to repeat what he just said
16 about you received emails. You want something
17 on the record, but you're not going to produce
18 them?

19 MR. MAKRIS: I'm sorry, I did
20 receive emails from people in Adams Morgan
21 that, and specifically from The Vernon House,
22 that there was an attempt to seek out

1 opposition of my business.

2 But to protect that person, I'm
3 not going to mention their name. So if that
4 means it has to be struck, I apologize for
5 bringing it up.

6 MR. HART: Objection. Objection,
7 hearsay.

8 CHAIRPERSON MILLER: Is he just
9 saying --

10 MR. HART: Unsubstantiated.

11 CHAIRPERSON MILLER: I'm going to
12 overrule it. I just say that, you know, he's
13 talking about what he personally received.
14 There is, again, there's not a lot of weight
15 that can be given to it because we haven't
16 seen them.

17 MR. MAKRIS: I understand that.

18 CHAIRPERSON MILLER: Yes, okay.

19 MR. MAKRIS: But I personally, I
20 believe I had to swear under oath. And I did
21 read these emails.

22 MS. MAKRIS: Okay. What about the

1 ANC?

2 MR. MAKRIS: Yes. We are willing
3 to sign with the ANC. But we didn't quite get
4 that far. I mean, we got really far. We had
5 so many conversations.

6 But it seemed that the whole time
7 we were working off of a new agreement, which
8 wasn't really like amending an old agreement.
9 It was a new agreement.

10 We never once line itemed the
11 existing, except for the one offer that we
12 made in the beginning, which we did line item
13 that agreement that is in place.

14 And we were returned an agreement
15 that did not represent anything that we had
16 previously seen. And as we were told, it's a
17 template for the new agreements that they're
18 establishing in Adams Morgan.

19 The ANC is a representative body.
20 They are elected. I totally respect their
21 role in this process, and I have a great
22 amount of respect for the effort that they

1 have to put forth to take place in this
2 because I know it's a burden on them.

3 But this is my only business.
4 This is the only thing I have in my life. So
5 I'm willing to stand up for it. And the ANC
6 represents almost 40,000 residents. I mean,
7 and all of them have an opportunity to vote.

8 MS. MAKRIS: How much time do we
9 have left?

10 CHAIRPERSON MILLER: Mr. Jones?
11 (Off the record comment)

12 MR. MAKRIS: Sixteen? Sorry,
13 sixteen.

14 MALE PARTICIPANT: I see it as 30
15 minutes remaining as of 4:22.

16 MALE PARTICIPANT: And that
17 includes your time to cross examine.

18 MS. MAKRIS: Okay, that's
19 included? Okay, I'm going to move really
20 quickly then. Okay. I'm just going to
21 approach the witness. What I'm handing him is
22 actually the MPT report, just to refresh his

1 memory. It's Exhibit 13, I think, from the
2 Investigator's Report.

3 MR. MAKRIS: Okay, not our Exhibit
4 13.

5 MS. MAKRIS: No, the
6 Investigator's Exhibit. Have you ever seen
7 this?

8 MR. MAKRIS: Yes, I saw this last
9 week.

10 MS. MAKRIS: Okay. Do you
11 recognize any of these phone calls?

12 MR. MAKRIS: I only recognize one.
13 It was September 24th, a Tuesday in September
14 at 5:00 p.m., I think around yes, 1700. I
15 called the police to notify them that there
16 was a homeless man asleep on the sidewalk in
17 front of our establishment.

18 MS. MAKRIS: And then did you try
19 and investigate what the other phone call was
20 about?

21 MR. MAKRIS: I did.

22 MS. MAKRIS: The other phone call

1 on the record that, in any way address that?

2 MR. MAKRIS: Yes, I did. I did
3 call 911 dispatchers office. They said they
4 have no record of these calls. I mean,
5 clearly this is an official document. But I
6 was unable to get any more information.

7 MS. MAKRIS: Why do you think ABRA
8 should grant your petition?

9 CHAIRPERSON MILLER: Could I just
10 back up? I haven't even found this document
11 in here. So --

12 (Off the record comment)

13 CHAIRPERSON MILLER: But I also
14 want you to identify, I'm sure I can find it,
15 but --

16 MR. MAKRIS: Okay.

17 CHAIRPERSON MILLER: -- I want you
18 to identify what it is for the record. What
19 is Exhibit 13 to the Investigative Report?

20 MR. MAKRIS: It says 2003 18th
21 Street Northwest calls for service memo.
22 Metropolitan Police Department Office of

1 Research and Analytical Services.

2 So I guess this is just a list of
3 all of the times the police were called in
4 reference to anything that happened, either
5 with the establishment or on the sidewalk in
6 front of the establishment at any point over
7 the last year.

8 And it does not even necessarily
9 have anything to do with the establishment,
10 just that that's where the police were told to
11 show up. And I can tell you that one of the
12 calls I made to help me deal with the homeless
13 man that was sleeping on the sidewalk.

14 CHAIRPERSON MILLER: Okay, you
15 made that call. Okay.

16 MR. MAKRIS: And that was the 9/24
17 at 1700 disorderly.

18 CHAIRPERSON MILLER: So you sure
19 it's Exhibit 13?

20 MR. MAKRIS: What?

21 MS. MAKRIS: It's Exhibit 13, or
22 maybe 15. I can't see --

1 MR. MAKRIS: Not our Exhibit.

2 It's Investigative --

3 CHAIRPERSON MILLER: I know,
4 because I just came across 13 and it's a
5 photo.

6 MR. MAKRIS: It's hard to read it,
7 ma'am.

8 CHAIRPERSON MILLER: Okay.
9 Fifteen? No, that's the license. Okay. But
10 you're referring to the Calls for Service,
11 which is part of the report? Okay.
12 Seventeen, that's what it is.

13 MS. MAKRIS: Seventeen.

14 CHAIRPERSON MILLER: Okay.

15 MS. MAKRIS: Okay, why should ABRA
16 grant your petition?

17 MR. MAKRIS: We do not need a
18 voluntary agreement to operate responsibly.
19 We've shown we are responsible owners for
20 three years. And our operations and patrons
21 don't disturb the neighborhood.

22 We've had the opportunity to

1 disturb people for three years with our
2 sidewalk caf,, our speaker system, and we
3 haven't, I mean, to the best of our knowledge,
4 not a single complaint.

5 And at the first ANC meeting, it
6 was addressed that on record there were no
7 complaints made at that time, up to that
8 point. If something's come in after the fact,
9 I cannot speak to what they know.

10 My neighbors are my customers. It
11 is in my best interest to stay on good terms
12 with them. Without them, I would be out of
13 business, and it would have happened quickly.

14 The economy is bad, but rent
15 continues to increase. Adams Morgan is being
16 outpaced by the rest of the city. In order to
17 survive long term, we have to be able to adapt
18 and compete with other business and changing
19 business environment in the city, in the
20 neighborhood.

21 And I think the VA does stop me
22 from doing that. I feel like I've made good

1 faith efforts to negotiate on this agreement.
2 I do not think it should be necessary for me
3 to participate with the KCA with regards to a
4 new voluntary agreement.

5 This was our only reasonable
6 option, and this business is the most
7 important thing I have going on in my life, as
8 I stated. It's been six months now that I've
9 been trying to push this through, and I just
10 cannot wait any longer.

11 MS. MAKRIS: Do any of your
12 neighbors, or how does it affect your ability
13 to compete, your Voluntary Agreement?

14 MR. MAKRIS: I mean, I think we've
15 probably made that pretty clear. Should I
16 restate for the record? Okay. I mean, most
17 importantly when I've spent tens of thousands
18 of dollars trying to cool my second floor, and
19 I continue to struggle with that, I just think
20 it's so silly to not allow me to open my
21 windows and air out the building.

22 The 7:30 time, I mean, there might

1 be a dozen days in the year that it's either
2 not too hot to open the windows at 7:30 or
3 isn't already the winter and we can't open
4 them anyways.

5 The live music, we really don't
6 know what we're going to do with the live
7 music endorsement. We only thought we would
8 apply and try to see what we could figure out
9 how to use it and to sort of help build
10 business.

11 But we were met with, you know,
12 being told we are not allowed to apply due to
13 our existing voluntary agreement.

14 MS. MAKRIS: Perfect. Thank you
15 so much. Thank you, we're done.

16 CHAIRPERSON MILLER: Thank you.
17 Cross?

18 MR. HART: Yes. You were given
19 Exhibit A8?

20 MR. MAKRIS: Yes.

21 MR. HART: D.C. Fiscal Policy
22 Institute Report?

1 MR. MAKRIS: Yes.

2 MR. HART: Can you provide a
3 little bit of background about this report?

4 MR. MAKRIS: Sure. It
5 specifically speaks to the effects of the
6 moratorium in Adams Morgan. I would say that
7 the moratorium definitely has set a tone for
8 how the business environment can operate in
9 Adams Morgan.

10 It's discouraged new business from
11 coming, it has forced businesses to, you know,
12 it has basically created an atmosphere,
13 environment that allows businesses to stay in
14 business because they're hoping to sell them
15 for high dollar because the moratorium has
16 imposed a limit on the number of new
17 establishments that can open.

18 So even for myself, had the
19 Blaguard not been in the moratorium zone, I
20 wouldn't have had to give the previous owner
21 any cash. He would have gone out of business.

22 I would have come to the alcohol

1 board. I would have paid whatever the new
2 application fee is, and I would have been
3 given an opportunity to have a license for
4 just a few thousand dollars instead of
5 hundreds of thousands of dollars.

6 MR. HART: Okay, I think that's
7 all. Thank you. As a follow up question, is
8 it fair to say that the business community
9 wrote this report in support of the moratorium
10 issue?

11 MR. MAKRIS: No. I believe they
12 wrote it in opposition of --

13 MR. HART: I mean regarding the
14 moratorium? Regarding the moratorium issue.

15 MR. MAKRIS: Yes, it's fair to say
16 that, and it's also relevant to the fact that
17 there is a downward slope in business in Adams
18 Morgan. And revenue generated.

19 MR. HART: Is it also fair to say
20 that the BID endorsed this report?

21 MR. MAKRIS: I don't know that
22 information. But I think that that sounds

1 accurate. But I don't know that for sure.

2 MR. HART: Could you turn to Page
3 1 of the report?

4 MR. MAKRIS: I know Constantine is
5 a part of the BID, and he's the name that's at
6 the top of this.

7 MR. HART: Okay. And do you see
8 the last sentence of the first page? It
9 begins, "I appreciate the opportunity to do
10 this research on behalf of the AMP BID"?

11 MR. MAKRIS: Oh, yes. That is the
12 BID.

13 MR. HART: Okay. Are you a member
14 of the BID?

15 MR. MAKRIS: I am not a member of
16 the BID.

17 MR. HART: Okay. If you turn to
18 Page 3, please.

19 MR. MAKRIS: Yes.

20 MR. HART: And the bottom
21 paragraph of Exhibit 8 on Page 3, it begins,
22 "Process for ANC's and community groups to

1 review licenses and work with businesses."

2 MR. MAKRIS: Yes.

3 MR. HART: If you go to the third
4 sentence, it begins, "As needed." Does it
5 read as needed settlement agreements with
6 individual establishments can address a wide
7 array of issues such as food sales, closing
8 times, or noise.

9 These can serve an important role
10 to target specific problem areas. ANCLC and
11 community associations have been actively
12 involved in reviews, and in seeking settlement
13 agreements. Is that accurate?

14 MR. MAKRIS: Yes, I would say that
15 -- I would highlight the specific problem
16 areas portion of that quotation and say that
17 this doesn't concern the Blaguard at this
18 particular quote. But yes, it does say that
19 in the policy.

20 MR. HART: Okay. So it's fair to
21 say that this report, written on behalf of the
22 Adams Morgan BID has this line that describes

1 the value of settlement agreements?

2 MR. MAKRIS: With regards to
3 problem establishments and areas, yes.

4 MR. HART: One other question with
5 regard to the negotiations, you mentioned
6 there weren't any specific line items, and I
7 just wanted to clarify what that meant.

8 We did exchange a number of
9 redlines back and forth regarding the
10 agreement, right?

11 MR. MAKRIS: Absolutely, we did.

12 MR. HART: Okay.

13 MR. MAKRIS: But they were all
14 based off of what was a new agreement that was
15 a template that was being used in Adams
16 Morgan.

17 And at the only time there was
18 ever a redline version of the existing
19 agreement was it came from the Blaguard, and
20 in particular, my wife. And then that one was
21 tabled, per se, and the new template was
22 inserted into the conversation.

1 MR. HART: Are you saying that the
2 ANC never gave you a redline back of any
3 agreement?

4 MR. MAKRIS: No, I never said
5 that.

6 MR. HART: Okay.

7 MR. MAKRIS: I said that the
8 original agreement, which is the agreement
9 that is in place now, I never saw a redline
10 version of it, except for the redline version
11 which I submitted, which we provided for the
12 ANC and KCA.

13 MR. HART: And did the redlines
14 address different provisions throughout the
15 document, specifically?

16 MR. MAKRIS: I do apologize. I
17 did not do most of this negotiation. My wife
18 did and she was up here prior and
19 opportunities to question her, the specifics
20 would have, you know, welcome.

21 As far as I know, ANC definitely
22 did provide redline versions of agreements.

1 And it was an ongoing negotiation of
2 settlement. Did I answer your question?

3 MR. HART: Fine.

4 MR. MAKRIS: Thanks.

5 CHAIRPERSON MILLER: Okay?

6 MR. JAMES: On this D.C. Fiscal
7 Policy Institute document, I believe you just
8 answered a question to Mr. Hart that you
9 didn't think that the Blaguard would be a
10 member of the BID?

11 MR. MAKRIS: No, I did not say
12 that. We pay BID dues every year.

13 MR. JAMES: Within the BID area in
14 which businesses and landlords pay taxes?

15 MR. MAKRIS: Yes, I misinterpreted
16 that question to be am I a board member of the
17 BID, which I am not a board member of the BID.

18 MR. JAMES: But the BID area
19 extends down to where your business is?

20 MR. MAKRIS: Yes --

21 MR. JAMES: Okay, thank you.

22 MR. MAKRIS: -- the BID does clean

1 the sidewalk in front of our business --

2 MR. JAMES: Okay.

3 MR. MAKRIS: -- among other things
4 that the BID does for the Adams Morgan
5 community.

6 MR. JAMES: That's good. Good
7 answer, thank you. In this report that you
8 have said reflects the downturn in the economy
9 and the negative effects of the moratorium on
10 Adams Morgan, did you give an answer to that
11 effect?

12 MR. MAKRIS: Maybe taken out of
13 context. But we'll go ahead. I mean, I
14 guess, if you want to say, you can question me
15 for whatever you want to.

16 MR. JAMES: On that, that point,
17 can you point to any hard evidence in this
18 document that talks about any measurable thing
19 that could have to do with a business like one
20 in Adams Morgan or ABC establishments, I
21 didn't hear the question by the way, or as
22 opposed to other communities that either do or

1 do not have, you know, moratoria in place, or
2 --

3 MS. MAKRIS: Objection. Mr.
4 Makris didn't write this. I mean, the thing
5 speaks for itself. It's been entered into
6 evidence. I'm sure the Board can read it and
7 make a determination.

8 CHAIRPERSON MILLER: I think
9 that's true. If you're asking him to look in
10 the document for something, again, that's kind
11 of like the document speaks for itself.

12 MR. JAMES: Well, if you're going
13 to put in something as evidence, use it as a
14 basis to make your arguments on why you should
15 be able to seek termination based on a
16 downturn in the economy caused by the
17 moratorium, if that's a reason to terminate
18 your agreement, then this should be fair game
19 for any questions that are reasonable.

20 And I want to ask a question as to
21 whether or not there's any hard data in this
22 document.

1 CHAIRPERSON MILLER: And if he
2 knows the answer, he can answer it.
3 Otherwise, I think the document does speak for
4 itself.

5 MR. MAKRIS: You know, it's a 15,
6 18, 20, almost 20 page document. I did not
7 memorize it.

8 CHAIRPERSON MILLER: Okay.

9 MR. MAKRIS: I think that I cannot
10 answer that question.

11 CHAIRPERSON MILLER: That's fine.

12 MR. MAKRIS: I just submitted as
13 evidence for the Board to consider.

14 CHAIRPERSON MILLER: Is that it?

15 MR. JAMES: I just would like to
16 ask one further question.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: In all of the redlines
19 that you responded to, Mr. Hart that had been
20 exchanged back and forth, is it correct to say
21 that the agreements were seen as, you know,
22 that the KCA was a party to the agreement as

1 presented in the redline?

2 MS. MAKRIS: Objection.

3 MR. JAMES: Based on what?

4 CHAIRPERSON MILLER: She's going
5 to say. She's going to say, Mr. James. Go
6 ahead.

7 MS. MAKRIS: It's always been my
8 understanding that settlement agreements,
9 people are very encouraged to settle.

10 And therefore, anything that sort
11 of goes along in terms of specifics are the
12 offers back and forth, the basis for those,
13 things like that are things that are typically
14 inadmissible because it encourages people to
15 settle because if people think that simply
16 because something was conceded to or something
17 was said at some point in settlement could be
18 used against them later, that it would be
19 really problematic.

20 CHAIRPERSON MILLER: Right. But I
21 think that the reasons he's asking this kind
22 of question is because you discussed this kind

1 of settlement agreement.

2 And I was giving issue, I was
3 giving you leeway because you weren't telling
4 us if the terms that you were discussing, so
5 I let it go.

6 So because you actually raised it,
7 he can ask about it. So I'm going to overrule
8 the objection. And then you want to repeat
9 the question, and answer it however, you know,
10 you can.

11 MR. JAMES: Based upon the ANC and
12 the KCA both protesting the termination of
13 your existing settlement agreement, were not
14 the various redlines and exchanges of ideas
15 contained in the redline settlement agreement
16 inclusive of the KCA as a party?

17 MR. MAKRIS: I would respond -- I
18 say KCA was included on every email, almost
19 every email that was sent from the ANC as a
20 redlined option.

21 I cannot speak for what was sent
22 to the ANC and KCA. So if there was offers

1 made to the ANC without the KCA, that may have
2 happened. I don't know. I can't testify to
3 that.

4 CHAIRPERSON MILLER: Okay.

5 MR. JAMES: You know, I don't
6 believe that that is responsive to my
7 question. You know, any agreement, was any
8 agreement --

9 MR. MAKRIS: He was asking about
10 the agreements themselves, not the emails back
11 and forth.

12 CHAIRPERSON MILLER: Okay. I just
13 have to say that I don't know that the Board's
14 really going to be looking at that issue, I
15 mean, with respect to whether this agreement
16 should be terminated.

17 So you know, I'm just letting you
18 ask because it was --

19 MR. JAMES: Because they raised
20 it, yes sure.

21 CHAIRPERSON MILLER: -- they
22 started it. Exactly. Mr. Jones?

1 MEMBER JONES: Just a point of
2 clarification. But the licensee did spend
3 several minutes laying a foundation for how
4 the KCA has not been cooperative, they've been
5 intimidating, in fact.

6 And I'm not sure where Denis James
7 is going with this question without
8 understanding where he's going, but there's a
9 potential that he may be trying to lay a
10 foundation to help refute that claim that was
11 being raised or proposed by the licensee.

12 And I think that's more than fair
13 since it's been challenged that he and his
14 organization weren't particularly cooperative
15 throughout the process, as raised by the
16 licensee.

17 MS. MAKRIS: May I respond to
18 that?

19 MR. JAMES: I appreciate Member
20 Jones' comment, and that is part and partially
21 what I was attempting to do. And you know,
22 waited to hear an answer, and now we're off in

1 a far different direction. You know?

2 MS. MAKRIS: May I respond to
3 that? I was just going to say that the reason
4 that we brought all of it and had to do it is
5 we are required to prove that as the licensee
6 that we made a good faith effort to negotiate.

7 And that was the context of that
8 and what happened and what played out in that.
9 So that was the purpose of that.

10 MR. JAMES: No.

11 CHAIRPERSON MILLER: Okay. And do
12 you have any other question, Mr. James? Okay,
13 all right. Board questions? Mr. Silverstein?

14 MEMBER SILVERSTEIN: Thank you.
15 Mr. Makris, 25446B. I don't think you've
16 given us a cogent argument, although it's been
17 all over the place. I would like something
18 cogent.

19 MR. MAKRIS: About what?

20 MEMBER SILVERSTEIN: The need for
21 an amendment, in other words, to amend or
22 terminate the agreement, is caused by

1 circumstances beyond the control of the
2 applicant or is due to a change in the
3 neighborhood where the applicant's
4 establishment is located.

5 What specifically is your argument
6 here, sir, that there has been changes beyond
7 your control, or that there has been a change
8 in the neighborhood beyond simply the passage
9 of time?

10 MR. MAKRIS: I would say a major
11 change would be the fact that 12 years ago,
12 there were a number of people who came forth
13 in protest of this agreement, including The
14 Vernon House, which now stands in support of
15 us having no agreement, or at least a modified
16 agreement.

17 Those parties, I mean, you could
18 tell me if that's not relevant and I'll give
19 you another reason. Is that not relevant?

20 MEMBER SILVERSTEIN: Give me more.
21 Keep going.

22 MR. MAKRIS: Okay. At the time

1 that the common share was in existence, there
2 were roughly two to three vacant buildings on
3 that corner, which have now all become
4 occupied.

5 There was less interest and more
6 quiet residential community down there as it
7 still is. However, as I've understood my
8 neighborhood, those people that live in the
9 vicinity of the Blaguard and frequent the
10 Blaguard are looking for a different kind of
11 atmosphere on the street.

12 I think that it's very safe on
13 that corner. The crime statistics, which I
14 don't have so I won't reference. So I guess
15 I'm speaking to the need.

16 I would also speak to our
17 financial hardship of having to deal with this
18 agreement and our inability to operate to the
19 full extent of D.C. ABRA law as responsible
20 operators and employ people and give our
21 employees more time to work for us and more
22 opportunities to earn income for them. Do you

1 have another question?

2 MEMBER SILVERSTEIN: So are you
3 saying that that particular area, the
4 immediate area has become more residential?

5 MR. MAKRIS: Well, it actually
6 has, I would say, become more residential.
7 But I can't --

8 MEMBER SILVERSTEIN: And how would
9 that help bolster your argument. Are you
10 saying they want to have a place like yours as
11 opposed to --

12 MR. MAKRIS: I would say they
13 definitely, there's nobody here saying they
14 don't. And there's been nobody to come
15 forward and say they don't.

16 I think we have a community
17 establishment that helps improve the
18 aesthetics and the atmosphere of Adams Morgan,
19 and draws people to Adams Morgan rather than
20 discourages people from coming, as many other
21 establishments are and are accused of.

22 MEMBER SILVERSTEIN: Have there

1 been any other changes, be they changes on the
2 ground, the economy, anything between 2002 and
3 today that would give us reason to scrap this
4 or change this?

5 MR. MAKRIS: The coming of Jack
6 Rose, which was a new establishment which was
7 given an entertainment endorsement. Around
8 the corner from us, Dahlak is also operated
9 with a live music entertainment endorsement.

10 There was a streetscape which
11 severely impacted our first 12 months in
12 business. But it did bring, in the long run,
13 more pedestrians and more people to our
14 corner.

15 It was devastating for us for our
16 first, you know, four months after we took
17 over, the streetscape began and we experienced
18 serious financial hardship. But as a result
19 of it, there's a greater opportunity and a
20 greater presence of Adams Morgan, especially
21 on that corner.

22 At the time when there was issues

1 with things like loitering, the sidewalk in
2 front of our establishment was very small.
3 And we've since been granted a sidewalk caf,,
4 which speaks to a little bit more of the space
5 available to us.

6 And you know, we went through the
7 proper channels to get that and be able to use
8 that sidewalk caf,.

9 MEMBER SILVERSTEIN: No further
10 questions, Madam Chair.

11 CHAIRPERSON MILLER: Okay, others?
12 Yes, Mr. Jones?

13 MEMBER JONES: So just to make
14 sure I'm following, the changes that were
15 beyond your control in your response to Board
16 Member Silverstein's question, what changes do
17 you feel like were beyond your control, and
18 how specifically did they impact your business
19 over the time period that you've been in
20 operation?

21 MR. MAKRIS: I'm sorry, ask me one
22 more time.

1 MEMBER JONES: No problem. So in
2 your response to Board Member Silverstein's
3 question, he looked for, as he defined it,
4 something cogent, right, something specific
5 that was beyond your control that impacted
6 your business that would give us cause to want
7 to vote or act in accordance with what you're
8 asking to be done, which is to terminate the
9 SA.

10 So what specifically has happened
11 that's beyond your control, and what is that
12 impact to you? So what has happened, and how
13 has it impacted your business since the time
14 you've been in operation that's beyond your
15 control as it relates specifically to the SA?

16 MR. MAKRIS: Well, I mean,
17 specifically all of the Certificate of
18 Occupancy, that it's out of my control that
19 somebody put the wrong number of square feet
20 on the old Certificate of Occupancy which was
21 issued to our business, which is in direct
22 conflict with the existing voluntary

1 agreement. That's number one.

2 The presence of new trash cans on
3 the sidewalk, provided by the city, that do
4 not have any, there is a provision that
5 specifically states that we are supposed to
6 keep a trash can on the sidewalk for our
7 trash. Seems that the city's put one there
8 for us.

9 There is, I mean, I think those
10 are a few of the specific things --

11 MEMBER JONES: So tying that to
12 how it's impacted your business, that's the
13 part that I'm --

14 MR. MAKRIS: Well, we're not in
15 compliance with our application with you guys,
16 because it says we have 49 seats in our
17 establishment, which we don't.

18 MEMBER JONES: So how has that
19 impacted your business. So specifically, let
20 me help you out, there are reports that are
21 filed, quarterly reports. And it's based on
22 a certain number.

1 MR. MAKRIS: Oh yes.

2 MEMBER JONES: All right, has the
3 change impacted your ability to be in
4 compliance with your CR license, and if so,
5 how?

6 MR. MAKRIS: Oh, I can't speak for
7 what the food reporting was prior to me
8 getting there. I can only speak to --

9 MEMBER JONES: No, the question is
10 since you've been in operation.

11 MR. MAKRIS: Yes, definitely.

12 MEMBER JONES: How?

13 MR. MAKRIS: We can't fit enough
14 seats in to accomplish the goal that we are
15 setting out to do.

16 MEMBER JONES: I'm sorry. Are you
17 saying because of the SA, you're not able to
18 meet your food sales requirement?

19 MR. MAKRIS: I'm saying because of
20 the SA, the Board, I'm required to submit and
21 claim to sell food to seats which I cannot fit
22 in my establishment. Yes, I am saying that.

1 MEMBER JONES: Yes, you're saying
2 that the SA is impacting your ability to meet
3 your food sales requirement?

4 MR. MAKRIS: Totally.

5 MEMBER JONES: Yes?

6 MR. MAKRIS: Yes.

7 MEMBER JONES: Okay. So do you
8 know how -- are you the one who fills out the
9 forms?

10 MR. MAKRIS: I am.

11 MEMBER JONES: You are? What is
12 the number that you're using as the basis for
13 your food sales. What number of seats are you
14 using when you fill out those forms?

15 MR. MAKRIS: Forty nine seats.

16 MEMBER JONES: Forty nine seats,
17 okay. And that's what is on the old C of O,
18 the one that you submitted as Exhibit A10?

19 MR. MAKRIS: Correct.

20 MEMBER JONES: It says 49 seats?

21 MR. MAKRIS: Correct.

22 MEMBER JONES: Okay. If you were

1 using the number of seats on Exhibit A11 which
2 says 35, are you saying that you would be in
3 compliance with the food sales?

4 MR. MAKRIS: I'm pretty sure we
5 would be within one percent of compliance,
6 yes.

7 MEMBER JONES: Okay. So that is
8 an impact that is beyond your control that you
9 deem to be a item for consideration for the
10 termination of the SA, that's item one.

11 That's the first cogent thing that
12 I've heard specifically related to your
13 business operation. Is that a fair
14 characterization of my understanding what
15 you're saying?

16 MR. MAKRIS: Yes.

17 MEMBER JONES: Okay. Is there
18 anything else specifically that is beyond your
19 control that is related to the SA that has
20 impacted your business?

21 MR. MAKRIS: Well, the fact that
22 we are not allowed to open our windows

1 prevents us from allowing our business to
2 remain cool.

3 And as a result, it is hot in our
4 building. And sometimes 90 plus degrees. I
5 mean, we can't be expected to even -- at times
6 I have my kitchen and my cooks and my staff
7 working in this kind of environment.

8 And it's very, not only
9 unpleasant, but it's nearly impossible to keep
10 customers in the building.

11 MEMBER JONES: Okay, but that's
12 not a factor that's changed since 2002 or
13 since the time that you've been in operation
14 until now. That's not an environmental
15 change.

16 I mean, if you want to point to
17 global warming as now a reason why, then that
18 would be a situation that's outside of your
19 control that has now impacted that specific
20 criteria that you mentioned.

21 So I'm not understanding how your
22 response ties to a factor that's beyond your

1 control that impacts your business. Well let
2 me ask you this way, when you bought the
3 business, did you realize it had an SA tied to
4 it?

5 MR. MAKRIS: Yes.

6 MEMBER JONES: Yes. So that
7 hasn't changed?

8 MR. MAKRIS: No.

9 MEMBER JONES: So it's not a
10 factor that's outside of your control.

11 MR. MAKRIS: The presence of an
12 SA?

13 MEMBER JONES: Yes.

14 MR. MAKRIS: That is correct.

15 MEMBER JONES: So then the
16 environmental condition that you state, that's
17 not a factor that has changed since 2002
18 unless you want to help me see how that has
19 changed since the time that you've been in
20 operation or since 2002 until now.

21 MR. MAKRIS: I mean --

22 MEMBER JONES: So the issue

1 related to the windows being open or closed,
2 I'm not seeing that as a factor that is cogent
3 to the specific criteria that was raised by
4 Board Member Silverstein as to why you're here
5 today.

6 MR. MAKRIS: I'm doing my best
7 with this. It seems to me that Adams Morgan,
8 as a business district, has changed
9 significantly.

10 Crime statistics have gone up.
11 But I guess I don't think I have an answer for
12 your question.

13 MEMBER JONES: Okay.

14 MR. MAKRIS: But maybe I wasn't
15 briefed on, I mean, maybe I didn't know that
16 this was the specific that I was supposed to
17 explain, sorry to say.

18 MEMBER JONES: No. You understood
19 what basis you had to come before us today to
20 make this request.

21 MR. MAKRIS: That's correct.

22 MEMBER JONES: Okay. And that's

1 really the fundamental question. So there's
2 a basis upon which we would make an
3 assessment.

4 So what I'm trying to get from you
5 are answers to questions that will help me to
6 understand the relevance of your basis,
7 whether or not it is or isn't truly a basis
8 there.

9 So you've spoken of some things
10 you don't like about your SA. And that's all
11 fine and good, but there's a basis upon which
12 we would have the authority, if you will, to
13 grant your request.

14 So I'm trying to get from you,
15 based on, since you're the general manager
16 from what I'm taking from what you've said
17 before. So you kind of know the ins and outs
18 of your business and how these things have
19 impacted you across the board.

20 MR. MAKRIS: Yes.

21 MEMBER JONES: So from a basis
22 standpoint, the relevant factors, what things

1 have occurred.

2 For example, has there been a huge
3 demographic change that now has swept over
4 your environment in your organization, and
5 that has impacted your business in some way,
6 and how is the relief from the SA going to
7 supplant or mitigate that issue?

8 MR. MAKRIS: I guess I thought I
9 answered that. And so I'm sorry that I'm not
10 being clear in my testimony. And I don't want
11 to just keep saying, restating an issue with
12 the windows or an issue with the live music.

13 But there's been a clear
14 demographic change due to the fact that
15 there's nobody that's coming forward and has
16 a problem with our establishment.

17 I think that the age demographic
18 is shifted dramatically in Adams Morgan. I am
19 a member of one of these new residence that
20 lives there.

21 It seems that there are greater,
22 there's more competition on my corner of Adams

1 Morgan since I opened, because I was opened
2 before Jack Rose. And we're in direct
3 competition with each other for the same
4 customers on a regular basis.

5 My inability to compete with their
6 balcony, and their second floor is wide open
7 with a balcony, and I'm required to keep my
8 second floor windows closed at all hours of
9 the day.

10 And they're allowed to do this
11 with no voluntary agreement, whereas not only
12 do I have a VA in place, but my neighbor that
13 operates in a manner that I would actually
14 enjoy having the opportunity to do.

15 And I think that the business
16 would benefit greatly. And I think we
17 actually are put at a disadvantage as a result
18 of it.

19 MEMBER JONES: So, did I hear you
20 correct in saying that, you know, that you
21 feel as though the community is in favor of
22 you not having an SA?

1 MR. MAKRIS: Yes. I believe I
2 submitted substantial evidence of that.

3 MEMBER JONES: Okay. Would you
4 consider the ANC to be representative of a
5 large constituent or a large portion of that
6 community of which you speak?

7 MR. MAKRIS: I think that they are
8 representative of people in my neighborhood,
9 yes.

10 MEMBER JONES: Okay. Would you
11 recognize that they are here protesting
12 against the termination of the SA?

13 MR. MAKRIS: Yes, I do understand.

14 MEMBER JONES: Okay. So when you
15 speak of the community that is in favor, or
16 would be supportive of you not having an SA,
17 can you characterize that a little bit more
18 for me, because clearly we're here for a
19 reason.

20 MR. MAKRIS: Right. And as I
21 understood, peace, order, and quiet is
22 relative to, you know, with being, I don't

1 know, at a minimum within earshot or being
2 able to, you know, spending time on that
3 corner experiencing loud noises or noise
4 emanating or troubled customers, police, car
5 doors, you name it.

6 I mean, it's very difficult to
7 attribute any of these things specifically to
8 the Blaguard. But I have numerous times asked
9 for evidence or just tell me what the problem
10 is with the noise that we are producing now,
11 and we will curb it.

12 And at no time was I ever informed
13 that there was any problems with my
14 establishment as it sits. And the defense was
15 always used that the presence of the VA, you
16 called it the SA but it was old, so I always
17 call it a VA, is what mitigates those factors.
18 But --

19 MEMBER JONES: Not to interrupt,
20 I'm just trying to make sure, so are you
21 defining community as those individuals that
22 are in your immediate neighborhood? So within

1 a certain radius of your establishment?

2 MR. MAKRIS: Those that are
3 directly effected by my establishment's peace,
4 order, and quiet, yes I would understand it to
5 be that way.

6 Otherwise, we could have pulled
7 affidavits from my place on Linear, and they
8 could have also come and stood in support or
9 in opposition. But I don't think that those
10 are relevant parties, unless I misunderstood.

11 MEMBER JONES: Okay, thank you.
12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Silverstein?

15 MEMBER SILVERSTEIN: Let me follow
16 up very, very briefly on some questions that
17 my colleague, Mr. Jones asked.

18 Have other businesses come into
19 your immediate area, your immediate
20 neighborhood since this voluntary agreement
21 began that have been allowed to open their
22 windows? Second floor windows or windows?

1 MR. MAKRIS: Jack Rose, yes.

2 MEMBER SILVERSTEIN: Do you
3 consider that to be a change in the
4 neighborhood?

5 MR. MAKRIS: Oh, they were a huge
6 change in the neighborhood.

7 MEMBER SILVERSTEIN: Have other
8 businesses come into the immediate
9 neighborhood since 2002 and been allowed to
10 have an entertainment endorsement?

11 MR. MAKRIS: Yes. And one of them
12 is now out of business. But it was allowed to
13 operate and changed hands, and that was Bobby
14 Lew's.

15 MEMBER SILVERSTEIN: Has that been
16 a change in the neighborhood?

17 MR. MAKRIS: Yes.

18 MEMBER SILVERSTEIN: That they
19 were allowed to have entertainment endorsement
20 when --

21 MR. MAKRIS: They were allowed --

22 MEMBER SILVERSTEIN: -- your

1 license was not?

2 MR. MAKRIS: My license was not.
3 They also were a commercial restaurant.

4 MEMBER SILVERSTEIN: Are those
5 beyond your control?

6 MR. MAKRIS: Both of them beyond
7 my control.

8 MEMBER SILVERSTEIN: Did the
9 streetscape which ripped things apart and
10 created, was a business killer and job killer
11 beyond your control?

12 MR. MAKRIS: Yes. It was
13 definitely --

14 MEMBER SILVERSTEIN: How did that
15 affect you and other businesses?

16 MR. MAKRIS: We saw over a 60
17 percent drop during the time where it was
18 under construction. It was a double edged
19 sword because they started at the south end of
20 18th Street.

21 They began the construction on our
22 end, which then allowed us to be more

1 available for business sooner than northern,
2 north of 18th Street.

3 However, I mean, during that time
4 and basically the remaining 18 month period,
5 people and the whole city was generally kind
6 of discouraged from coming to Adams Morgan
7 because of the parking headaches and just the
8 hazards on the sidewalk. I mean, without a
9 doubt, it had a very adverse effect on our
10 business.

11 MEMBER SILVERSTEIN: On your basic
12 Saturday night, how did it affect your
13 business? You got a percentage number?

14 MR. MAKRIS: On our Saturday
15 nights?

16 MEMBER SILVERSTEIN: Yes, or a
17 Wednesday night. Pick any night.

18 MR. MAKRIS: At this time, or I
19 mean, we were a very, very young business. I
20 didn't pay myself until after, I worked for
21 free for the first 13 months that I ran the
22 Blaguard because I couldn't afford to because

1 I was in the process of building a failing
2 business amongst the hardships of dealing with
3 the streetscape.

4 MEMBER SILVERSTEIN: How has it
5 increased on a Saturday night since then, now
6 that it's finally over?

7 MR. MAKRIS: We've seen the most
8 improvement in our business comes Sunday
9 through Thursday. Our weekend business, our
10 increases came during the day.

11 We are at the moment experiencing
12 a downturn in our weekend foot traffic.
13 However, we are sustained by our weekday
14 business. Live music would maybe give me an
15 opportunity to promote myself and be
16 competitive with my --

17 MEMBER SILVERSTEIN: Please answer
18 the question that I asked.

19 MR. MAKRIS: Sorry.

20 MEMBER SILVERSTEIN: I'm trying to
21 figure out how much you were hurt by the
22 streetscape. And if you don't have a number

1 from before to say oh, I lost 60 percent --

2 MR. MAKRIS: Oh, we sold --

3 MEMBER SILVERSTEIN: -- because
4 you hadn't been in business long enough, maybe
5 you can give me a number for after to say oh,
6 on a Wednesday our business is up X percent.

7 MR. MAKRIS: Well when we took
8 over, we were selling less than \$6,000 a week.
9 And we were barely skinning by. And that
10 number dipped to below \$4,000 during the
11 streetscape, which was not enough to sustain
12 our business.

13 Since the streetscape's ended, we
14 have seen an increase, however not much of an
15 increase on the weekends.

16 MEMBER SILVERSTEIN: Okay, I think
17 that that's all been very helpful. So there
18 have been things, there have been changes and
19 they've been changes that were beyond your
20 control.

21 MR. MAKRIS: I'm sorry, I had so
22 much trouble getting there.

1 MEMBER SILVERSTEIN: No further
2 questions.

3 CHAIRPERSON MILLER: Okay. Mr.
4 Alberti?

5 MEMBER ALBERTI: I may be beating
6 a dead horse here, but I'm going to go for it.
7 You mentioned, well remind me when you
8 obtained this license.

9 MR. MAKRIS: We obtained it, I
10 believe it was February of 2011. I just took
11 over management until that period.

12 MEMBER ALBERTI: Okay. Okay.
13 Took over management?

14 MR. MAKRIS: I just worked for the
15 previous owner while we were dealing with all
16 of the transfer.

17 MEMBER ALBERTI: And your history
18 with this establishment goes how far back?

19 MR. MAKRIS: I only went there
20 after it was presented to me as available for
21 me to take over.

22 MEMBER ALBERTI: Okay, so it was

1 shortly before February of 2011?

2 MR. MAKRIS: Shortly before
3 October 2010.

4 MEMBER ALBERTI: Okay. And all
5 right. And I think you mentioned that Jack
6 Rose opened since that date, is that correct?

7 MR. MAKRIS: Yes, I believe it was
8 April or May of 2011.

9 MEMBER ALBERTI: Okay. And they
10 have entertainment, that's correct?

11 MR. MAKRIS: To the best of my
12 knowledge.

13 MEMBER ALBERTI: The fact that
14 they have entertainment, do you see that as
15 making them more competitive than you?

16 MR. MAKRIS: Among the other very
17 clear competitive advantages that that
18 beautiful restaurant has. Live music would be
19 one of them, yes, as well as the windows.

20 MEMBER ALBERTI: Okay. Are there
21 any other establishments that have opened
22 since your association with this license that

1 you see as your competition and who have live
2 music?

3 MR. MAKRIS: Not new businesses
4 and new liquor licenses. We're talking Adams
5 Morgan in the moratorium zone, so there is a
6 limit to the number that enter the market.
7 But Jack Rose is the only one that I know of
8 the new licensed issued.

9 MEMBER ALBERTI: Okay. I have no
10 -- well do you know any that have recently
11 started live entertainment that didn't before
12 that you believe are competitive with you?

13 MR. MAKRIS: At the moment,
14 there's only one business on Adams Morgan 18th
15 Street corner which --

16 MEMBER ALBERTI: I'm not limiting
17 it to your corner. I'm talking about Adams
18 Morgan because --

19 MR. MAKRIS: Oh, yes the direct
20 competition. We are direct competitors with
21 the Black Squirrel I would say. They're a
22 very well established neighborhood business,

1 as well as Angles and Libertine.

2 MEMBER ALBERTI: Have they
3 recently started live entertainment?

4 MR. MAKRIS: I've only seen live
5 entertainment at the Black Squirrel since I've
6 been walking past it every day for the last
7 couple years. But I didn't always walk past
8 it.

9 MEMBER ALBERTI: So you don't know
10 what it was before.

11 MR. MAKRIS: I don't know what day
12 was their first day. But I do know that I
13 receive Facebook updates and Twitter updates
14 from them advertising their ability to have a
15 band on any given night free of charge or
16 cover charge. I don't know the details of it.

17 But I just know I do receive those
18 emails and messages. And I cannot then
19 compete with that. I have to just rely on,
20 you know, the Capitols game or the Redskins
21 game.

22 MEMBER ALBERTI: All right, thank

1 you very much.

2 MR. MAKRIS: Yes, sir.

3 CHAIRPERSON MILLER: Okay. I just
4 have a few follow up questions. I probably
5 misheard. I thought at one point when you
6 were naming new establishments that had opened
7 up, in addition to Jack Rose I thought you
8 named another one, Adala or something?

9 MR. MAKRIS: Dahlak?

10 CHAIRPERSON MILLER: Dahlak.

11 MR. MAKRIS: That was there before
12 me. I just don't know how long they had
13 entertainment available.

14 CHAIRPERSON MILLER: Oh, they have
15 entertainment?

16 MR. MAKRIS: They did extend their
17 license to include hookah, which is not a
18 direction that I would like to have to take my
19 business in to try to increase our
20 profitability.

21 CHAIRPERSON MILLER: So they have
22 entertainment, though. That's your

1 competition. You don't know when it started,
2 is that it?

3 MR. MAKRIS: That is the closest
4 comparable business to ours. Yes, Jack Rose,
5 it's hard to compare ourselves to them just
6 because of their substantial size.

7 CHAIRPERSON MILLER: Okay, so when
8 people are looking for entertainment in Adams
9 Morgan or something, they're not limited to
10 your little area down at the --

11 MR. MAKRIS: Oh no, there's
12 probably at least five to 25 other
13 establishments with entertainment endorsements
14 up and down 18th Street for a three block
15 radius that's considered Adams Morgan.

16 CHAIRPERSON MILLER: Okay. So I
17 want to ask you why did you give us the
18 Exhibit 8, the Fiscal Policy Institute Study?

19 MR. MAKRIS: I gave it to you to
20 speak to the economic struggles and hardships
21 of Adams Morgan over the last ten years. I
22 did not hand it to you with an intention of

1 putting any emphasis on the moratorium.

2 Just the fact that there are
3 difficulties that we experience in achieving,
4 you know, there's been many places that have
5 lost employees, lost revenues, closed up shop
6 certain days.

7 And we would like to try to stay
8 open seven days a week, five days for lunch
9 and you know --

10 CHAIRPERSON MILLER: So this was
11 given to us at least in one other case. And
12 in my understanding is it says that there's
13 been a decline in Adams Morgan over the past
14 ten years or whatever.

15 MR. MAKRIS: Upwards of, like, 40
16 percent I believe is what it reported.

17 CHAIRPERSON MILLER: Okay. So I
18 would think that that would go to your
19 argument that there has been changes beyond
20 your control that affect your --

21 MR. MAKRIS: I'm sorry I didn't
22 make that more clear. I thought I had

1 clarified that.

2 CHAIRPERSON MILLER: Okay. So I
3 just wanted to clarify that that was, in fact,
4 the point of this being submitted, or at least
5 part of the point.

6 MR. MAKRIS: It is definitely
7 intended to do that.

8 CHAIRPERSON MILLER: Okay. And
9 then I just wanted to ask you, my
10 understanding from what you said is that you
11 got your Certificate of Occupancy updated so
12 that it's accurate now, and the capacity is
13 lower.

14 And therefore there's a relation
15 between that and the food sales. And so
16 you're being held to a higher standard to have
17 higher food sales by the Voluntary Agreement
18 or Settlement Agreement that has a higher
19 number that's not accurate. Okay, that's --

20 MR. MAKRIS: And if I may, we,
21 like I said, at least 45 percent of the year
22 our second floor has to remain closed --

1 CHAIRPERSON MILLER: Okay, but
2 just --

3 MR. MAKRIS: -- which does have
4 seating, which is directly because of this
5 agreement that's in place that we cannot open
6 it, we cannot try to cool it in that manner.
7 And therefore, those seats are basically
8 deemed useless to us.

9 CHAIRPERSON MILLER: Okay.

10 MR. MAKRIS: And so we're limited
11 to one floor, even though we do have an
12 occupancy which includes the second floor.
13 Not all the time, but often.

14 CHAIRPERSON MILLER: Okay. So can
15 I just ask you who you spoke to about this at
16 ABRA to try to change it?

17 MR. MAKRIS: I brought the new
18 Certificate of Occupancy to the front desk.
19 I submitted it and they said okay, thank you.

20 CHAIRPERSON MILLER: Oh, so was
21 that recent?

22 MR. MAKRIS: This was back in

1 April.

2 CHAIRPERSON MILLER: April, okay.

3 MR. MAKRIS: And that was
4 initially what prompted, I mean, even though
5 we had interest in addressing all of these
6 issues, we didn't know what to do.

7 As far as we could understand, the
8 two organizations, DCRA and ABRA that are
9 regulating us with regards to different things
10 were not on the same page.

11 CHAIRPERSON MILLER: Okay, so you
12 didn't get a response since April?

13 MR. MAKRIS: I never received a
14 response.

15 CHAIRPERSON MILLER: Okay. And
16 then my other question about the mediation,
17 when you tried to separate the mediation. Who
18 said you couldn't do it?

19 MR. MAKRIS: I believe that that
20 email sent to La Verne Fletcher.

21 CHAIRPERSON MILLER: La Verne
22 Fletcher? Okay, that's what I would figure,

1 but I just wanted to double check. Okay. I
2 don't have any other questions. Any questions
3 on Board questions? Do you have a question?
4 You can go first if you do.

5 MS. MAKRIS: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MS. MAKRIS: Do you know when
8 L'Enfant Caf, opened?

9 MR. MAKRIS: I believe it was
10 about nine or ten years ago.

11 MS. MAKRIS: 2002 or before 2002?

12 MR. MAKRIS: I think it was since
13 2002. As Dahlak has changed hands and their
14 operation has changed significantly. Bobby
15 Lew's changed hands and Locolat also, another
16 Belgian restaurant around the corner, less
17 than 200 feet from our front door is also a
18 new licensed issued in roughly, like, 2006.

19 CHAIRPERSON MILLER: What's the
20 name of --

21 MR. MAKRIS: At the time the
22 agreement was signed in 2002, I believe you

1 just named, and you've also --

2 MR. JAMES: Objection. I don't
3 understand what the basis of this is. This is
4 on Board's --

5 CHAIRPERSON MILLER: Well do you
6 want to respond?

7 MS. MAKRIS: Yes, sure. The Board
8 asked, I think it was Mr. Silverstein, about
9 the other establishments around the Blaguard.
10 So I'm just following up on that.

11 CHAIRPERSON MILLER: I asked as
12 well. Change in circumstances beyond their
13 control.

14 MS. MAKRIS: So I believe you
15 named Jack Rose, and then you just named
16 Dahlak, L'Enfant and Locolat. Is there any
17 other businesses that are either new or have
18 new owners or new business models that you're
19 aware of since 2002?

20 MR. MAKRIS: If I can extend
21 beyond my corner, I can name a number of
22 others, yes.

1 MS. MAKRIS: And 2002 is when the
2 agreement was signed, is that correct?

3 MR. MAKRIS: Yes, that's correct.

4 MS. MAKRIS: And within the
5 circumstances of the neighborhood as it
6 existed in 2002.

7 MR. MAKRIS: Totally.

8 MS. MAKRIS: Okay. And in 2010,
9 what was your option, other than buying a
10 business with this VA agreement attached to
11 it?

12 MR. MAKRIS: There was no option
13 available, except for opening in another
14 neighborhood, and without having to go through
15 the process of purchasing an existing.

16 MS. MAKRIS: So --

17 CHAIRPERSON MILLER: Okay. Does
18 the ANC have any questions?

19 MR. HART: No further questions.

20 CHAIRPERSON MILLER: Okay, KCA?
21 Mr. James?

22 MR. JAMES: Just to do with the

1 local businesses right around the 18th
2 corridor and U Street that have been named
3 L'Enfant, Duplex Diner, Bobby Lew's, Locolat,
4 El Tamarindo, Dahlak, and Jack Rose, have any
5 of those attempted to terminate their
6 Settlement Agreement?

7 MR. MAKRIS: I don't actually know
8 what they've tried to do this year. I know
9 that the KCA has a pending protest against
10 Jack Rose. However, the ANC voted in support
11 of --

12 MR. JAMES: My question's been
13 answered.

14 MR. MAKRIS: ANC has a standing --
15 they supported the Jack Rose to continue
16 operations without a Voluntary Agreement. And
17 I think that that actually probably speaks
18 pretty clearly to what you were looking for.

19 CHAIRPERSON MILLER: Okay.

20 MR. JAMES: I do have a further
21 question. How long did the streetscape last?

22 MR. MAKRIS: On my corner? It

1 began, like, the first dump truck parked in
2 front of our building two weeks before St.
3 Patrick's Day, which is March 16th.

4 And I believe they did not move up
5 to the second block, which is just California
6 which is just 100 feet away from our front
7 door for roughly three to four months.

8 MR. JAMES: All right. Well even
9 the whole span of time that the streets were
10 being worked on from Florida all the way to
11 Colombia, do you remember approximately how
12 long that period of time was?

13 MR. MAKRIS: I mean, no I don't
14 know exactly. I feel like I should because I
15 passed it, I walked down that street every day
16 and I had to deal with all of the construction
17 myself. I might have said 18, and I think it
18 might have been closer to ten or 12.

19 MR. JAMES: Months?

20 MR. MAKRIS: Months, correct.

21 MR. JAMES: So would you agree
22 that that's a temporary condition?

1 MR. MAKRIS: No, I would say that
2 we are still struggling in Adams Morgan to
3 bring back customers to our neighborhood
4 without question.

5 And every business owner -- but I
6 can't testify for non-business owners because
7 they don't actually know what our revenues are
8 I guess. But as a business owner, I recognize
9 it.

10 CHAIRPERSON MILLER: Okay. Thank
11 you.

12 MR. MAKRIS: Thank you guys for
13 the opportunity.

14 CHAIRPERSON MILLER: Now does that
15 complete your testimony?

16 MS. MAKRIS: Applicant will rest.

17 CHAIRPERSON MILLER: Well wait, I
18 want to ask you about whether you want to move
19 into the record the documents that you --

20 MS. MAKRIS: Oh, I'm sorry. I
21 thought we already had by introducing them.
22 Yes, we would like to move now to officially

1 move into the record all of the exhibits that
2 we had introduced thus far.

3 So that is Exhibit A1 through I
4 believe the last one was marked --

5 CHAIRPERSON MILLER: You know
6 what? They're not all here, though. I mean,
7 there's no A3. So right?

8 MS. MAKRIS: Yes. So A1, A2, A4,
9 A5, A6, A7, A8, A9, A10, A11, A12. Do you
10 have the last one? A13, A14.

11 CHAIRPERSON MILLER: Okay. And is
12 there an objection to any of these documents?

13 MR. HART: No.

14 CHAIRPERSON MILLER: All right.
15 Then these documents are admitted then as
16 Applicant's Exhibits. Okay, so we have A1
17 through 14 minus there's no A3, right?

18 MS. MAKRIS: There's no A3. We
19 accidentally misnumbered. We're very sorry.

20 CHAIRPERSON MILLER: Right. All
21 right, is the ANC ready?

22 MS. MAKRIS: May we take a brief

1 recess? I really need to go to the restroom.

2 CHAIRPERSON MILLER: Okay. Five
3 minutes? Okay.

4 (Whereupon, the foregoing matter
5 went off the record at 5:16 p.m. and went back
6 on the record at 5:26 p.m.)

7 CHAIRPERSON MILLER: Okay, we're
8 ready for the ANC's case. Their first
9 witness?

10 Do you swear to tell the truth,
11 the whole truth and nothing but the truth?

12 MR. GUTHRIE: I do.

13 CHAIRPERSON MILLER: Okay, thank
14 you.

15 MR. HART: Commissioner Guthrie,
16 could you please state your full name for the
17 record?

18 MR. GUTHRIE: Ted Guthrie,
19 G-U-T-H-R-I-E. I represent ANC 1C03.

20 MR. HART: Where do you live?

21 MR. GUTHRIE: Kalorama Road
22 between Columbia and 18th.

1 MR. HART: Okay. Do you have any,
2 have you had any experiences with the
3 Blaguard's? And if so could you please just
4 briefly describe it?

5 MR. GUTHRIE: Well I happen to be
6 walking up the hill to the neighborhood a week
7 ago Tuesday a little after 11 o'clock and I
8 was sort of surprised because as I walked by
9 their windows were all open on the first
10 floor, the door was propped open and there was
11 music that was coming out that was, in my
12 experience, wasn't the worst I ever heard on
13 18th Street but was substantial and was the
14 only noise that I could hear in that vicinity
15 of those five or six establishments that are
16 right down there.

17 Which I was sort of surprised at
18 because my understanding had been that there
19 was an agreement in place that said that
20 you're supposed to keep the windows and doors
21 closed when you've got the music on.

22 MR. HART: Thank you. What is

1 your role on the ANC?

2 MR. GUTHRIE: I am a member of the
3 ABC and Public Safety Committee and I am also
4 Secretary for the ANC.

5 MR. HART: Could you just briefly
6 explain what sort of work you do as a member
7 of the ANC and Public Safety Committee? With
8 regard to alcohol licenses.

9 MR. GUTHRIE: Well as the Board's
10 well aware there are a number of alcohol
11 license in Adams Morgan and that this has been
12 the year of the onslaught of renewals, shall
13 we say, that we dealt with on, I believe it
14 was 50 restaurant license renewals and we're
15 now in the process of dealing with the tavern
16 license renewals.

17 And in the process of that we tend
18 to sort of divide up who is going to be
19 negotiating and participating in particular
20 protests that have been filed by the ANC. And
21 I also participate in the committee where we
22 make the consideration of the initial

1 determination as to whether to suggest the
2 full ANC protest or not.

3 MR. HART: In your role, have you
4 heard from neighbors at all with regard to
5 peace, order and quiet issued with our ANC?
6 Within ANC 1C?

7 MR. GUTHRIE: I have heard
8 countless, countless times about, both before
9 and after I joined the commission about the
10 problems with peace, order and quiet in the
11 residential portions of the community as a
12 result of people who are coming into the
13 neighborhood, generally from outside the
14 neighborhood, to party.

15 Particularly on Thursday, Friday
16 and Saturday nights until 3:30 or 4 o'clock in
17 the morning. It has become and unlivable
18 environment for a number of people actually.

19 MR. HART: Does it affect parking
20 in anyway?

21 MR. GUTHRIE: Parking in Adams
22 Morgan is generally impossible after at least

1 5:30 or so. And at least part of that is
2 people coming in to use one or another venues
3 in Adams Morgan.

4 What's interesting is if they
5 manage to stay up and out until about 2:00,
6 maybe 1:30 or 2 o'clock in the morning you can
7 find on street parking again.

8 MR. HART: There are noise issues
9 on 18th Street I think we're all aware of
10 that. Are there noise issues on side streets
11 at all because of the large amount of activity
12 that goes on on 18th Street?

13 MR. GUTHRIE: Yes, living on one
14 of the side streets there are regular problems
15 with noise because people are going either
16 back to their cars or up to walk over to
17 public transportation. And there tend to be
18 large gaggles swooping through the residential
19 streets.

20 In addition, there were
21 substantial noise complaints that were voiced
22 by residents along, I believe it was Vernon

1 and California that had to do with a different
2 licensee. But it was, from the complaints
3 that I heard, these people were talking about
4 noise that was emanating from the bar below
5 them.

6 And because of the geography of
7 it, sound travels up, up is where all the
8 residential units are. Up the hill and in,
9 generally in multi-story buildings there.

10 MR. HART: When you receive this
11 large number of complaints from residents,
12 with regard to the groups of intoxicated party
13 goers, can the residents who are complaining
14 tell you which establishment those people came
15 from?

16 MR. GUTHRIE: Almost never.

17 MR. HART: Would it be really
18 possible for them to be able to tell you that?

19 MR. GUTHRIE: The only way it
20 would be possible is if they, we have some
21 neighbors on Columbia Road who have watched
22 people come out of particular establishments

1 on Columbia Road that are visible from their
2 apartments that create problems.

3 But, no, in general you have no
4 idea where it's coming from. Where they're
5 coming from off of 18th.

6 MR. HART: And the policy
7 institute document, with regard to the
8 moratorium that's been put into evidence, have
9 you received any feedback from neighbors with
10 regard to peace, order and quiet? With
11 respect to alcohol licenses, the issuances of
12 alcohol licenses in Adams Morgan?

13 MR. GUTHRIE: Yes. One of the
14 things that --

15 MS. MAKRIS: Objection, I don't
16 think we're talking about the issuance of
17 alcohol licenses here. I would --

18 CHAIRPERSON MILLER: Objection to
19 the question --

20 MR. HART: I think part of the
21 reason I made the point is because they had
22 made the point about a downturn in Adams

1 Morgan as affecting their business. And I
2 think what the downturn really shows is that
3 there's been a large effect on peace, order
4 and quiet because of the deterioration of the
5 establishments in Adams Morgan. And I was
6 trying to get to that point by asking for
7 that.

8 MS. MAKRIS: I don't follow that.
9 I mean we argued, our point was that we have
10 a downturn in revenues.

11 CHAIRPERSON MILLER: Right. Wait,
12 what point are you trying to go to?

13 MR. HART: The downturn, I mean
14 it's really turned into what has somewhat
15 termed a club zone. And --

16 CHAIRPERSON MILLER: Are you
17 saying that there's been a change in
18 circumstances that affects peace, order and
19 quiet?

20 MR. HART: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MR. HART: Is what I am saying.

1 CHAIRPERSON MILLER: All right,
2 I'll let you --

3 MR. HART: And so I think
4 terminating the settlement agreement just
5 exasperates that.

6 CHAIRPERSON MILLER: So what was
7 the question to him?

8 MR. HART: The question was
9 whether you had received any comments or
10 concerns from neighbors with respect to peace,
11 order and quiet in the neighborhood as it's
12 come up in this recent discussion in the
13 neighborhood about the moratorium?

14 MR. GUTHRIE: I've received
15 literally hundreds of emails from people who
16 are residents of the community. And when I've
17 been at different community meetings there
18 have been numbers of people who have spoken up
19 repeatedly discussing the challenges of living
20 adjacent to 18th Street and the noise and lack
21 of order that results from people who are
22 participating in entertainment down on 18th

1 coming out into the neighborhoods.

2 MR. HART: And final question at
3 this point, do think that the settlement
4 agreements in anyway help mitigate those
5 issues?

6 MR. GUTHRIE: You know, given the
7 amount of time it takes to negotiate them, I'm
8 not sure that they're worthwhile, but we
9 certainly try to use them to the extent that
10 we can to, part of it is an educational
11 process I think with the licensees. Getting
12 them to understand that the neighborhood has
13 substantial problems with peace, order and
14 quiet that are a direct result of the
15 establishments that are licensed by this
16 Board.

17 And that trying to work with them
18 in a collegial manner includes trying to bring
19 them to helping with a solution to the
20 problem. Many of the provisions that are in
21 the settlement agreements directly address
22 things like that. Like pub crawls, which have

1 historically created significant problems.

2 In the course of the newly elected
3 ANC members becoming involving in the
4 settlement process, we have also tried to
5 bring some new structure to the settlement
6 agreements where provisions are hopefully
7 going to be a little more uniform throughout
8 but that are particularly enforceable by ABRA
9 regulators if there's a violation.

10 Without settlement agreements, if
11 we simply eliminated them, I think that there
12 would be further diminution in the quality of
13 life in Adams Morgan. And it bothers me
14 considerable that a licensee can come forward
15 and say, it's been a bad economy, therefore
16 you should eliminate the voluntary agreement
17 that the license was subject to when I
18 purchased it. I just, that just doesn't make
19 sense to me.

20 MR. HART: Thank you. The
21 Applicant has talked or put into evidence a
22 fair amount of information regarding the

1 relationship between the KCA and the Blaguard.
2 We were ever a member of the KCA?

3 MR. GUTHRIE: Yes, I still am a
4 member. I was secretary, I guess until about
5 a year ago.

6 MR. HART: Could you describe your
7 organization a little bit?

8 MR. GUTHRIE: It's an organization
9 that's been in existence for something like 90
10 years.

11 CHAIRPERSON MILLER: How many?
12 What did you say?

13 MR. HART: How many years?

14 CHAIRPERSON MILLER: How many
15 years?

16 MR. GUTHRIE: 90 I believe.

17 CHAIRPERSON MILLER: 90?

18 MR. GUTHRIE: Yes, it's been
19 around a long time. And they've been involved
20 in a number of areas that, basically they
21 tried to make the neighborhood a more livable
22 place.

1 And some of the things that
2 they've been involved in involve historical
3 district designations, some involve work with
4 different little parks around the
5 neighborhood. A lot of their time and effort
6 goes into ABC issues. Partly because there
7 tends to be more of a continuity on KCA's part
8 then there has been with the ANC.

9 MR. HART: So would you say, okay,
10 I think that's helpful. Thanks.

11 Do you have any experience, with
12 respect to the Blaguard's interaction with the
13 KCA, and if so could you please share?

14 MR. GUTHRIE: Well I remember the
15 committee meeting that they came to. And I
16 remember when they came to the KCA meeting I
17 was present both times.

18 MR. HART: So why don't we start
19 with the KCA meeting, would you describe that
20 experience?

21 MR. GUTHRIE: Yes. My
22 recollection of it was that we were discussing

1 licenses and, I'm not sure whether they just
2 showed up once or twice, but the initial go
3 around had to do with whether or not to
4 protest renewal of licenses.

5 And then after that the issue came
6 up of whether or not to protest their request
7 to terminate the settlement agreement. But
8 since I recall that there was a chunk of time
9 between those two and they hadn't actually
10 filed it until after the time that we had to
11 make a determination on the protest of the
12 renewal.

13 But at any rate, you know, we had
14 our meetings as we normally do at the Kalorama
15 Rec Center and there were maybe, no more than
16 ten people present. And the three of us were
17 sitting across the front and people talked
18 about issues about particular licensees.

19 MR. HART: And what was the vote,
20 what was the outcome of that meeting? If you
21 recall.

22 MR. GUTHRIE: Well I know that we

1 did not, we as an ANC did not protest their
2 renewal of the license. We did, obviously
3 because we're here, protest their request to
4 terminate the settlement agreement.

5 MR. HART: And was the KCA or any
6 representative from the KCA, in your view,
7 disrespectful or --

8 MR. GUTHRIE: Yes, I --

9 MR. HART: -- or treated the
10 Blaguard or representatives of the Blaguard in
11 an unfair way?

12 MR. GUTHRIE: I didn't see
13 anything like that and I was sort of surprised
14 as I was hearing their testimony because it
15 did, I normally pickup vibes when someone is
16 upset and I saw none of that. And I don't
17 remember there being anything that seemed like
18 animosity at the KCA meeting either where they
19 made a presentation about who they were, what
20 they were about, the fact that they were
21 members, the fact that they've been in the
22 neighborhood forever in a day.

1 MR. HART: What's your
2 recollection of the ABC and public safety
3 committee meeting on April 10th, 2013? With
4 respect to the Blaguard and the KCA.

5 MR. GUTHRIE: I don't recall that,
6 Denis even spoke at the meeting about the
7 Blaguard. The Blaguard would have come up in
8 the list of ones that we were considering, but
9 I don't remember that anyone spoke other than
10 the Makris's about the Blaguard.

11 MR. GUTHRIE: Did you see anyone
12 from the KCA at, either the KCA or
13 representative at the KCA treat any
14 representatives of the Blaguard in a
15 disrespectful or unfair manner at that
16 meeting?

17 MR. GUTHRIE: No.

18 MR. HART: Or after the meeting?

19 MR. GUTHRIE: No. And I have to
20 say that one of the things, you being
21 chairman, do a really good job of making sure
22 that it is a safe pleasant place even though

1 there tend to be high emotions at sometimes.

2 Yes, we do our absolute best to
3 keep things --

4 MR. HART: Would you say --

5 MR. GUTHRIE: -- on a reasonable
6 basis.

7 MR. HART: Would say that is a
8 point of emphasis for the ANC?

9 MR. GUTHRIE: Yes, seems to be.

10 MR. HART: Respectful interaction,
11 mutually respect?

12 MR. GUTHRIE: Yes.

13 MR. HART: I have no further
14 questions.

15 CHAIRPERSON MILLER: Okay, cross?

16 MS. MAKRIS: Sure. How long have
17 you been a member of the KCA?

18 MR. HART: Objection, I think he's
19 stated this on direct.

20 MR. GUTHRIE: No, I think --

21 CHAIRPERSON MILLER: I didn't
22 hear.

1 MR. GUTHRIE: -- I may have been a
2 member as long as five years.

3 MR. HART: Okay.

4 MR. GUTHRIE: I think, I'm not
5 sure.

6 MS. MAKRIS: And how long have you
7 known Mr. James?

8 MR. GUTHRIE: Oh, I've probably
9 ran into him on the street before that but I
10 didn't know him that well before.

11 MS. MAKRIS: Okay. Isn't it true
12 that at the renewal vote at the KCA meeting
13 that Mr. James said that he wanted to protest
14 the Blaguard's renewal because they had voted
15 to, or because they had requested to terminate
16 their voluntary agreement?

17 MR. GUTHRIE: I think, as he was
18 explaining it to the membership, he was
19 explaining that part of the reason that he
20 thought it was important to protest, the
21 renewal included your decision to request a
22 termination of the agreement. I think he did

1 link those two in some respect, but --

2 MS. MAKRIS: And was there any
3 other reason given for protesting the renewal?

4 MR. GUTHRIE: Excuse me?

5 MS. MAKRIS: Was there any other
6 reason given for protesting the renewal?

7 MR. GUTHRIE: Not that I can
8 recall, no.

9 Oh, I seem to recall that the
10 suggestion was that the settlement agreement
11 itself was pretty old and came from several
12 incarnations back and needed some work in
13 being more appropriate to the Blaguard which
14 it affects so that they needed to be, until
15 they protest they're not a party to be able to
16 deal with the negotiations.

17 There was something along the line
18 of this particular agreement was an old one
19 and that was another reason to have a seat at
20 the table to deal with the settlement
21 agreement.

22 MS. MAKRIS: And that was another

1 reason to protest the renewal of the
2 Blaguard's liquor license?

3 MR. GUTHRIE: I don't know if that
4 was the reason, but it was discussed I
5 believe.

6 MS. MAKRIS: Were you present
7 outside of the ANC meeting on April 10th after
8 it had broken up for the conversation between
9 me and my husband and Mr. James?

10 MEMBER SILVERSTEIN: Could you
11 repeat that question, I didn't hear?

12 MS. MAKRIS: Were you present
13 outside of the ANC committee meeting on April
14 10th after the meeting had broken up, standing
15 outside of the community center, were you part
16 of the conversation between me, Mr. James and
17 my husband?

18 MR. GUTHRIE: I remember shaking
19 your hand and I remember having a brief
20 conversation, but I don't know that I was,
21 that I stuck around. I don't recall.

22 MS. MAKRIS: Thanks. Have you

1 ever received any complaints, specifically of
2 the Blaguard? Anyone in your neighborhood?

3 MR. GUTHRIE: No, I haven't.

4 MS. MAKRIS: And isn't it true
5 that you can see the, people who live in the
6 Ashley can see the Blaguard?

7 MR. GUTHRIE: I would think so. I
8 haven't actually been in any of the units in
9 the Ashley, but it, you're sort of at an angle
10 but it does front view.

11 MS. MAKRIS: Okay. And nobody
12 from the Ashley, to your knowledge, has ever
13 complained about the Blaguard?

14 MR. GUTHRIE: No.

15 MS. MAKRIS: Have you received any
16 positive feedback from your community about
17 the Blaguard?

18 MR. GUTHRIE: As I recall there
19 were, there was some testimony at the hearing,
20 I think there were some people who came in
21 support of you. And I don't think, since I
22 wasn't really part of the negotiations, I

1 didn't tend to see the other stuff that was
2 going on so the affidavits that you put in, I
3 hadn't seen or heard anything before.

4 MS. MAKRIS: How long have you
5 lived in Adams Morgan?

6 MR. GUTHRIE: 15 and a half years
7 I think.

8 CHAIRPERSON MILLER: What did you
9 say?

10 MR. GUTHRIE: Fifteen and a half
11 years.

12 CHAIRPERSON MILLER: Okay.

13 MS. MAKRIS: How does the Blaguard
14 have an impact on parking?

15 MR. GUTHRIE: How does the
16 Blaguard have an impact on parking? Well to
17 the extent that there are customers for the
18 Blaguard that are not walking in from the
19 neighborhood, generally I would expect at
20 least a portion of those people not to be
21 using public transportation, to be using a car
22 in which case they would need to park it, in

1 which case it would generally be on the
2 residential streets.

3 MS. MAKRIS: That's a lot of
4 generallys. Say specifically --

5 MR. GUTHRIE: Well like --

6 MS. MAKRIS: -- do you have any
7 knowledge whatsoever of anyone ever parking in
8 the neighborhood one time to go to the
9 Blaguard?

10 MR. GUTHRIE: Personally, no.

11 MS. MAKRIS: Yes, personally.

12 Okay.

13 MR. GUTHRIE: I also don't have
14 that experience with regard to any of the
15 establishments along 18th.

16 MS. MAKRIS: Isn't it true that at
17 the April 10th meeting when you, when we
18 attended, that the ANC voted, took up a vote
19 and actually cast a vote, whether or not to
20 protest Jack Rose after and the people came
21 from the community to the meeting to
22 specifically complain about Jack Rose's noise

1 and the ANC decided not to protest them to
2 seek a settlement agreement?

3 MR. GUTHRIE: Yes, there were
4 people who had come who had initially made
5 complaints about noise, particularly from the,
6 not that front balcony but there's an upper
7 open space that tends to shoot its noise to
8 the North, principally, and there were some
9 people who lived in that vicinity who have
10 been experiencing problems and came to
11 complain about it.

12 They had however, I believe by the
13 time of the meeting, received sufficient
14 assurances from him that the problem was being
15 dealt with in an acoustically appropriate
16 manner to reduce the noise. That was my
17 understanding.

18 MS. MAKRIS: So you're saying that
19 on October 10th the ANC did not take a vote --

20 MR. GUTHRIE: Not October 10th,
21 April 10th.

22 MR. HART: Objection, yes.

1 MS. MAKRIS: Okay, April 10th that
2 ANC did not take a vote whether or not to
3 protest Jake Rose, that it was later?

4 MR. GUTHRIE: The ANC --

5 MR. HART: Objection, I don't
6 think he said that.

7 MR. GUTHRIE: The ANC --

8 MEMBER JONES: There's an
9 objection on the table.

10 CHAIRPERSON MILLER: Oh.

11 MR. GUTHRIE: -- acts at a
12 different time than the committee.

13 CHAIRPERSON MILLER: I'm sorry,
14 okay, so you said you don't think he said that
15 but now he's --

16 MR. HART: She recharacterized his
17 testimony.

18 CHAIRPERSON MILLER: Okay, would
19 you rephrase the question?

20 MR. GUTHRIE: The meeting on the
21 10th was the committee meeting, correct?

22 MS. MAKRIS: Yes, it --

1 CHAIRPERSON MILLER: He's
2 answering it.

3 MR. GUTHRIE: I'm not very good
4 with dates.

5 MS. MAKRIS: I'm sorry, actually
6 it was actually a special meeting that was
7 called specifically with additional
8 representatives from the ANC there to be able
9 to vote on renewal.

10 MR. GUTHRIE: Because we had a
11 timing problem. Thank you for reminding me.

12 And my recollection is, to Jack
13 Rose, is that there were a number of people
14 who were speaking in favor of or against
15 protesting Jack Rose. I actually introduced
16 a motion to protest Jack Rose and it died for
17 a lack of a second I recall.

18 MS. MAKRIS: Okay, so the ANC --

19 MR. GUTHRIE: So the ANC didn't
20 actually take an action.

21 MS. MAKRIS: But you're not clear,
22 okay. So you actually asked the ANC to

1 protest and the rest of the commissioners
2 would not protest Jack Rose --

3 MR. GUTHRIE: Right, because my
4 perspective is that there are people,
5 basically his position was that he's a good
6 actor, you could trust him. And my position
7 is trust but verify, get it down on paper.
8 And that's just my personal preference is that
9 we should do it that way.

10 MS. MAKRIS: Do you know, you said
11 earlier that you think these agreements are
12 important because they're reigned in or keep
13 people in check essentially. Is that a fair
14 characterization of your testimony?

15 MR. GUTHRIE: Yes, I'd say they
16 provide some further measure of protection to
17 the neighborhood, yes.

18 MS. MAKRIS: So if in fact that is
19 the case, why has the ANC never voted to
20 protest, to seek a settlement agreement, from
21 Jake Rose, Duplex Diner or L'Enfant Caf,,
22 Blaguard's three closest neighbors?

1 MR. GUTHRIE: Since I've only been
2 on the ANC since January, I can't speak to why
3 anything happened or didn't happen before
4 then. The only ones that I'm aware of coming
5 up with an issue where the Blaguard and Jack
6 Rose.

7 MEMBER SILVERSTEIN: Madam?

8 MR. GUTHRIE: That part of Jack
9 Rose was the Jack Rose was in the
10 establishment.

11 MS. MAKRIS: Right, okay.

12 MEMBER SILVERSTEIN: Madam Chair?

13 CHAIRPERSON MILLER: Yes.

14 MEMBER SILVERSTEIN: May I inquiry
15 as to Mr. Jones, is the reason I ask, how much
16 time each side has left?

17 MEMBER JONES: The Licensee has
18 five minutes remaining, the Protestant has 50,
19 excuse me, 41 minutes remaining.

20 MEMBER SILVERSTEIN: And that's
21 for all of your cross examination, but not for
22 your close.

1 MS. MAKRIS: Okay, I will, that's
2 all the questions I have.

3 MR. HART: We have no further
4 questions for the Witness.

5 CHAIRPERSON MILLER: Okay, are you
6 also going to be testifying? I just want to
7 ask so that if we have other questions about
8 the ANC we can ask you when you testify.

9 MR. HART: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. HART: And I worked on this
12 particular, so I could probably answer them
13 better as well. That's all I'm saying.

14 CHAIRPERSON MILLER: Okay, all
15 right. Other Board questions? Mr. Alberti?

16 MEMBER ALBERTI: Commissioner
17 Guthrie, you spoke about the fact that Jack
18 Rose had some complaints lodged against them
19 because of noise emanating from the balcony
20 and you said something about the fact that
21 because of acoustic characteristics it was
22 echoing or projecting off of there.

1 MR. GUTHRIE: Yes.

2 MEMBER ALBERTI: Is that correct?

3 MR. HART: I agree.

4 MR. GUTHRIE: That was my
5 understanding. I never personally experienced
6 it but that was my understanding of what the
7 problem was.

8 MEMBER ALBERTI: Okay. Was your
9 impression that that was unexpected that those
10 acoustic characteristics?

11 MR. GUTHRIE: Yes, I don't think
12 they, because it had been, there was a
13 building that was there but it was basically
14 gutted and stuffed. And this particular open
15 air space is sort of in the middle of the
16 building and I don't think they really
17 expected that it would create the problems.

18 And it turned out that the
19 problems weren't from playing music, there
20 weren't loud speakers up there, it was just
21 the particular acoustics of, there to the
22 residents.

1 MEMBER ALBERTI: So if the
2 Blaguard was to have their windows open and
3 noise was able to escape, well okay. I'm
4 asking this because if they had the noise,
5 windows open, no one, has anyone examined the
6 acoustic characteristics of that location?

7 MR. GUTHRIE: No. You know,
8 there's a slight difference in topography
9 between Jack Rose to the building that had the
10 problem.

11 MEMBER ALBERTI: Right.

12 MR. GUTHRIE: And the Blaguard to
13 the ones that are behind the Duplex Dinner and
14 those and off to the side. I note that the
15 photo pretty accurately reflects that if there
16 is sound coming out of these upper windows, it
17 would pretty much go straight at the
18 residential property.

19 MEMBER ALBERTI: But you don't
20 really know. I mean it could potentially
21 create loud noises that you don't expect. Is
22 that correct?

1 I mean if Jack Rose, in the Jack
2 Rose case, look at me, you're puzzling so I'll
3 clarify. In the Jack Rose case no one
4 expected those acoustic characteristics to
5 amplify that noise to be a problem.

6 MR. GUTHRIE: Right.

7 MEMBER ALBERTI: You don't know
8 that that's not the case here. I mean if noise
9 is emanating from Blaguard, you haven't
10 examined it and you don't know that it might
11 be quiet or it might create loud noises. And
12 you haven't examined that, right?

13 MR. GUTHRIE: No.

14 MEMBER ALBERTI: Great, thank you.

15 CHAIRPERSON MILLER: Others? Mr.
16 Silverstein?

17 MEMBER SILVERSTEIN: You want to
18 get back to 25446? Would the termination of
19 this settlement agreement have an adverse
20 impact on the neighborhood because this is a
21 bad establishment, would it have an adverse
22 impact because of the precedent or might it

1 not have a bad adverse impact on the
2 neighborhood?

3 MR. GUTHRIE: I think that
4 terminating this agreement would have a
5 detrimental impact from a precedential
6 standpoint. If nothing else I think it would
7 suggest to other licensees that all that's
8 necessary to eliminate whatever inconvenience
9 the settlement agreements have for licensees
10 could be done by coming in and characterizing
11 the changes as being a result of changed
12 economic circumstances that are beyond their
13 control.

14 And/or for example, there's been
15 an entertainment endorsement that was allowed
16 by the Board, therefore my establishment
17 should have an entertainment endorsement
18 because otherwise I can't compete.

19 MEMBER SILVERSTEIN: Okay.

20 MR. GUTHRIE: So yes, I think it
21 would have a detrimental precedential --

22 MEMBER SILVERSTEIN: You're saying

1 it would open the floodgates? You're saying
2 it would open the floodgates?

3 MR. GUTHRIE: Seems to me it
4 would. I have a very hard time --

5 MEMBER SILVERSTEIN: If there not
6 already open.

7 MR. GUTHRIE: Right.

8 MEMBER SILVERSTEIN: Okay. Is it
9 a specific problem with this establishment or
10 what you're saying, Commissioner, and thank
11 you for your service, is that the accumulated
12 noise and the issues with dozens of licensed
13 establishments is really the thing that you
14 have to deal with here?

15 MR. GUTHRIE: It is. Historically
16 I would also say that it's my understanding
17 that several owners back were particular
18 problems in the neighborhood that lead to
19 there being a voluntary agreement and there
20 having been a protest.

21 So back to the earlier question --

22 MS. MAKRIS: Can I object to that,

1 he's really prejudicial?

2 MR. GUTHRIE: Not --

3 CHAIRPERSON MILLER: What?

4 MS. MAKRIS: It's very prejudicial
5 talking about old owners and what they did.

6 I mean we didn't, it's not us.

7 CHAIRPERSON MILLER: No.

8 MR. GUTHRIE: I didn't mean to
9 suggest that anything about --

10 (Cross talking)

11 CHAIRPERSON MILLER: Okay, sir,
12 wait.

13 MEMBER JONES: Sir, when there's
14 an objection you let the Chair rule before you
15 start answering the question.

16 (Off record comments)

17 CHAIRPERSON MILLER: Okay, I'm
18 going to overrule it. Just stay to the limit
19 extent what you were referring to.

20 MR. GUTHRIE: Yes. The location
21 currently has a potential to be a noise
22 problem for neighbors. The location, not the

1 owners.

2 I'm not suggesting that there's
3 anything wrong with these particular owners or
4 --

5 CHAIRPERSON MILLER: Okay.

6 MR. GUTHRIE: -- that they have
7 operating, expect for that, you know, I
8 happened to walk by the other day and the
9 window was open, the door was propped open
10 which my understanding is wasn't supposed to
11 happen, especially after 11 o'clock with music
12 playing. But, you know, that doesn't mean
13 they're bad actors, but not being bad actors
14 also doesn't mean that they should have the
15 voluntary agreement eliminated.

16 MEMBER SILVERSTEIN: Okay. Let's
17 look at some of the problems that Mr. Makris
18 say he's having.

19 Are there reasons why this
20 establishment should not be allowed to have
21 the second floor window, can be opened up
22 maybe when they're not doing a lot of business

1 up there, or any at all, to air out the place,
2 or allow heat to escape from the kitchen?

3 MR. GUTHRIE: It seems perfectly
4 reasonable to me. And my understanding is
5 that was perfectly acceptable in the course
6 of, I wasn't directly involved in the
7 negotiation, but my understanding is that
8 wasn't a problem.

9 MEMBER SILVERSTEIN: Okay.

10 MR. GUTHRIE: In the negotiation.

11 MEMBER SILVERSTEIN: Would you
12 have a problem with the DC trash can or an
13 Adams Morgan bid trash can in place of the one
14 mandated by the current SA?

15 MR. GUTHRIE: I believe that that
16 was something that has basically been
17 superseded by the streetscape change that
18 included the cans.

19 MEMBER SILVERSTEIN: Okay.

20 MR. GUTHRIE: I don't believe that
21 there was any suggestion on the part of the
22 ANC or KCA that that couldn't be eliminated

1 from an agreement.

2 MEMBER SILVERSTEIN: Do you
3 believe that the C of O has an incorrect
4 square footage? Is that a possibility?

5 MR. GUTHRIE: From the information
6 that I'm aware of, yes. And my understanding
7 is also that that was something that had been
8 part of the negotiation and agreed to.

9 MEMBER SILVERSTEIN: Okay, if it
10 does, should the establishment be required to
11 live by in ABRA matters what's incorrect there
12 and then have to meet a higher standard than
13 other establishments?

14 MR. GUTHRIE: What struck me about
15 that was that seemed to be one of those things
16 that maybe ABRA could handle internally based
17 on getting a new designation from another
18 district agency that's telling them, this is
19 what this space is. And the fact we have a
20 contractual agreement that's contrary to that,
21 my guess would be that the changes in the
22 rules of how many inches are required for

1 everything that may have led to the changes in
2 occupancy, would supersede any agreement we'd
3 have and we certainly would never be trying to
4 enforce that.

5 The only impact it seems to have
6 is internally for you folks on whether or not
7 their numbers are good for food.

8 MEMBER SILVERSTEIN: If there are
9 a half dozen other establishments within a
10 stone's throw of the Blaguard that have
11 entertainment endorsements, this place is
12 relatively small, might there be conditions
13 where they should be given one? And if so,
14 what would be the necessary conditions to put
15 on it to protect the neighborhood?

16 MR. GUTHRIE: My --

17 MEMBER SILVERSTEIN: If this rule
18 were to happen?

19 MR. GUTHRIE: My visceral guess,
20 as I said I wasn't part of the negotiation, my
21 guess is that because it's a small space it
22 might tend to reverberate a lot more than, I

1 don't have any idea how big Jack Rose is but
2 it's huge, but it can internal absorb sound
3 much better than some place like the Blaguard.

4 Live entertainment that's not just
5 an acoustical person strumming on a guitar,
6 could be a real problem with something that's
7 that small frankly. It seems to me.

8 MEMBER SILVERSTEIN: So what in
9 this essay do you see as the most important
10 sections to protect the neighborhood? What do
11 you see as, you know --

12 MR. GUTHRIE: I could give --

13 MEMBER SILVERSTEIN: -- if
14 somebody says there's one or two things you
15 can't give up, what are they?

16 MR. GUTHRIE: I believe that
17 probably I should defer to the person who is
18 negotiating on the particulars of this
19 agreement. I wasn't involved in that process,
20 I sort of saw things in passing. But I'm
21 really not the person to ask that.

22 MEMBER SILVERSTEIN: Okay, well I

1 thank you and again I thank you for your
2 services as the ANC Commissioner.

3 CHAIRPERSON MILLER: Okay. All
4 right, I just have two quick questions. Okay,
5 you made reference to last Tuesday they're
6 having, the Blaguard having its door propped
7 open, windows open, music, you don't know if
8 it was live, there was just music playing.

9 MR. GUTHRIE: No it wasn't, it
10 definitely wasn't live music.

11 CHAIRPERSON MILLER: Well --

12 MR. GUTHRIE: Not live music.

13 CHAIRPERSON MILLER: -- how did
14 you know?

15 MR. GUTHRIE: There's a certain
16 quality to live music you can tell.

17 CHAIRPERSON MILLER: Okay, you
18 just know.

19 MR. GUTHRIE: Yes.

20 CHAIRPERSON MILLER: Okay. So did
21 you think or do you think it was having an
22 adverse impact on the neighborhood?

1 MR. GUTHRIE: It's one of those
2 things were after 11:00 I get concerned that
3 people are trying to sleep, particularly on a
4 weeknight.

5 CHAIRPERSON MILLER: So you're
6 saying that the residents --

7 MR. GUTHRIE: It was loud enough
8 that I was surprised. I was surprised to see
9 they were open and I was surprised at the
10 level that I experienced walking by that I
11 really am not use to even though I walk the
12 streets of 18th all the time.

13 So, yes, I would say that it was
14 at least coming up to a threshold to create
15 problems for the neighbors.

16 CHAIRPERSON MILLER: Thanks. And
17 the neighbors are close enough that they would
18 have heard that?

19 MR. GUTHRIE: Yes.

20 CHAIRPERSON MILLER: Okay. And
21 did you bring this to the attention of the
22 owners at the Blaguard because you thought

1 they were violating the agreement, correct?

2 MR. GUTHRIE: I guess I'm not a
3 particularly asserted person, I don't go in
4 and tell them that they are violating rules.

5 CHAIRPERSON MILLER: Okay. Okay,
6 I just wanted to ask. All right, anything
7 else? Okay, thank you very much.

8 MR. HART: Thank you, Commissioner
9 Guthrie.

10 CHAIRPERSON MILLER: You can be
11 excused.

12 MR. GUTHRIE: Okay.

13 CHAIRPERSON MILLER: So are you
14 going to testify?

15 MR. HART: Yes.

16 CHAIRPERSON MILLER: Okay.

17 MR. HART: The ANC now calls Denis
18 James.

19 CHAIRPERSON MILLER: Oh, you're
20 calling Mr. James, okay. Good evening. Do
21 you swear to tell the truth, the whole truth,
22 nothing but the truth?

1 MR. JAMES: Yes, I do.

2 CHAIRPERSON MILLER: Okay. Have a
3 seat.

4 MR. JAMES: Denis James,
5 D-E-N-I-S, J-A-M-E-S.

6 MR. HART: Mr. James, where do you
7 live? Please give your address.

8 MR. JAMES: I live at 1819
9 Kalorama Road. It's between 18th Street on
10 one end and Columbia Road on the other.

11 MR. HART: How long have you lived
12 in Adams Morgan?

13 MR. JAMES: Since 1971, at the
14 same location.

15 MR. HART: When did you, do you
16 like living in Adams Morgan?

17 MR. JAMES: I do.

18 MR. HART: When did you get
19 involved with the KCA?

20 MR. JAMES: 1999.

21 MR. HART: And why did you get
22 involved in 1999 with the KCA?

1 MR. JAMES: I had noticed a
2 gradual deterioration in the neighborhood as
3 to the point where I couldn't even return from
4 dinner at my parents' house in Wheaton,
5 Maryland in the later hours and find a parking
6 place, even anywhere in Adams Morgan. I would
7 have to park at 24th and Kalorama, many blocks
8 from my home.

9 And it's not just, oh, I can't
10 find parking, it's I couldn't even drive on
11 18th Street because it was nothing but a huge
12 traffic jam. And the noise from all the
13 revelers and the establishment was intense.

14 So I decided to try to figure out
15 a way to protect that and asked at the KCA
16 meeting, is anybody working on this and they
17 all said, well why don't you work on it. And
18 one thing lead to another.

19 MR. HART: And what role did you
20 end up taking with the KCA?

21 MR. JAMES: For a few years I was
22 called the chair of the ABC licensing

1 committee. And then for a couple more years
2 was the executive vice-president and then was
3 final elected president in 2005 and I've been
4 the same since then.

5 MR. HART: Do you still devote a
6 lot of time to alcohol license issues as a
7 member of the KCA?

8 MR. JAMES: Yes, more than ever
9 before I would say.

10 MR. HART: And why is that?

11 MR. JAMES: Because of the vast
12 number of licenses located within Adams
13 Morgan. At least 70 on premise licensee's.

14 MR. HART: And do you hear any
15 complaints from neighbors or residents with
16 regard to peace, order and quiet in Adams
17 Morgan?

18 MR. JAMES: Quite honestly I can
19 barely walk to the supermarket without having
20 some neighbor accost me with some story about
21 being disturbed late at night by one
22 establishment or another. Or the patrons from

1 the establishments.

2 MR. HART: Have you personally
3 experienced any issues with peace, order and
4 quiet on your street?

5 MR. JAMES: Oh yes.

6 MR. HART: Could you describe
7 those?

8 MR. JAMES: Yes. The most
9 frequent thing that happens is that folks,
10 they park on our streets. So my residential
11 streets, you know, taking over a lot of the
12 street parking in the earlier part of the
13 evening and then return later.

14 Often with, you know, showing
15 signs of inebriation and a lot of loud
16 activity. Shouting, screaming sometimes
17 fights.

18 A few years ago a shooting
19 directly in front of my house where someone
20 was wounded. But the routine thing is folks
21 coming back in groups looking for their cars,
22 often not finding them where they thought they

1 left them because they parked in a different
2 block or you know, just moving through the
3 streets, leaving the neighborhood causing a
4 lot of ruckus between the hours of 3:00 and
5 4:30.

6 And also, just to answer the
7 question fully, I do hear sound in my own
8 house from some of the local establishments.

9 MR. HART: Okay. Did you have any
10 familiarity with the Blaguard in advance of
11 the renewal period beginning in the spring of
12 2013?

13 MR. JAMES: Yes.

14 MR. HART: What was your knowledge
15 of the Blaguard?

16 MR. JAMES: Well define my expert
17 clarification, do you mean the Blaguard as run
18 by the current owners or the historical?

19 MR. HART: The current owners.

20 MR. JAMES: Okay. Well I became
21 aware of the change in ownership. I don't
22 know the names of the folks who ran it before.

1 They appeared at, the direct
2 predecessors of the Makris's, they appeared at
3 an ANC meeting at some point and said, hey,
4 we're the new owners of this establishment,
5 we're going to call it the Blaguard, it's
6 going to be, you know, fish and chips sort of
7 English Pub. And that went on for a while and
8 then, you know, apparently they went away
9 after a few years and the Blaguard's, I mean
10 the Makris's bought it and became the owners
11 and ran it, you know, in a similar fashion
12 with a different menu.

13 And I became aware because I pay
14 close attention to the renewals and the
15 potential terminations that the Blaguard was
16 attempting to get an entertainment endorsement
17 but had been told by ABRA staff that they
18 couldn't due to the voluntary agreement that
19 was in place. And then so I looked completely
20 into their license in getting all the various
21 documents which revealed to me that they had
22 actually filed a motion to terminate.

1 MR. HART: Okay. Did you have any
2 knowledge of the current, I guess settlement
3 agreement, the active current settlement
4 agreement?

5 MR. JAMES: Yes, in fact I'm a
6 signatory on behalf of the Kalorama Citizens
7 Association.

8 MR. HART: Can you describe why
9 that settlement agreement was entered?

10 MR. JAMES: Yes. It goes back to
11 a different time in Adams Morgan. There, at
12 the time of the two agreements that are 2002
13 and I believe 2001, perhaps, which was, I
14 agree was superseded expect for, there are
15 some folks who are signatories on it whose
16 rights need to be considered.

17 But the name of the establishment
18 was the Common Share and it followed on to
19 Madam's Organ, which was originally located at
20 this location, and caused so much noise
21 disturbance that they moved up the street to
22 their current location.

1 So the landlord, I believe at the
2 time, put in some folks to run it and it was
3 called the Common Share and it was famous for
4 like \$2.00 longnecks and no food and jamming
5 as many people in there as they could. So it
6 was disturbing the neighborhood greatly at the
7 time under different ownership and it was well
8 known.

9 The ANC at the time protested, the
10 KCA at the time protested. We have many
11 members on those streets, Vernon Street,
12 California Street.

13 And numerous individuals were also
14 concerned and so they joined up to the
15 agreement. And we did the best we could under
16 the circumstances to address the problems at
17 the time.

18 MR. HART: Do you see any
19 continuing need for that settlement agreement
20 at present? And if so, could you please
21 explain what that need is.

22 MR. JAMES: Right. At the time

1 that the existing agreement was put in place
2 there was no entertainment endorsement
3 program. And it was determined that that
4 applicant didn't have permission to have live
5 music.

6 The live music that they were
7 having was disturbing the neighbors then so
8 there was a provision put in saying there will
9 be no live music. So I, being party to that
10 agreement and being concerned about residents
11 in the area and many KCA members, again who
12 live down there, we wanted to make sure that
13 if there were to be live music than there
14 would be the proper provisions in the
15 agreement to prevent any disturbance.

16 MR. HART: Did you participate in
17 the negotiation process with the Blaguard in
18 updating and accommodating their request to
19 have a new settlement agreement?

20 MR. JAMES: Yes.

21 MR. HART: Could you please
22 describe your participation in the negotiation

1 process?

2 MR. JAMES: Surely. I worked with
3 Commission Hart to help create the replacement
4 agreement that we would like to see put in
5 place if we weren't here today.

6 The agreement incorporates the
7 still relevant provisions from the old
8 existing agreement. And because we understood
9 that the Blaguard sought to have live
10 entertainment and to be relieved of some of
11 these archaic provisions, like the outside
12 trash can and the upstairs windows not
13 opening, we made strides to allow them to have
14 these changes but under conditions that would
15 not disturb the neighbors.

16 MR. HART: Did you participate in
17 any meetings with the Blaguard?

18 MR. JAMES: I did. Initially I
19 knew that Commissioner Hart had already met
20 privately with them for the ANC.

21 So to, A, for two purposes because
22 I never refused to meet with an applicant and

1 because I needed to comply with the provisions
2 of 25446D for the termination requests, I did
3 meet with Elizabeth Makris at the Blaguard on,
4 either a Saturday or a Sunday morning or right
5 around noon and we spent perhaps an hour
6 talking about the potential, you know, the
7 various provisions that might be in a new
8 agreement. And, you know, looking at the
9 establishment to see the physical attributes
10 of it to understand it more fully because
11 there had been changes made prior to their
12 ownership and I believe those are the
13 difference that result in a lower occupancy
14 now.

15 The kitchen on the second floor, I
16 believe, was constructed at some point prior
17 to their ownership. Maybe way back in the mid
18 2000's but I'm not absolutely sure about that.
19 And I believe that reduced the amount of
20 space.

21 That's my memory, I'm not positive
22 but that's the outcome. But anyway, that's --

1 MR. HART: Okay, to clarify, you
2 said you meet on one occasion at least with
3 Elizabeth personally?

4 MR. JAMES: Yes. We sat in a
5 booth in the front of the establishment.
6 There were other --

7 MR. HART: And --

8 MR. JAMES: -- patrons present.
9 Sidewalk Caf, was operating.

10 MR. HART: What was the date of
11 that?

12 MR. JAMES: Hmm, it was in April
13 of this year. I'm not quite sure if I have
14 that information in front of me.

15 MR. HART: Let me ask you this
16 way. Was it before or after the April 10th
17 ABC committee meeting?

18 MR. JAMES: It was after.

19 MR. HART: And you met with her
20 for how long, roughly?

21 MR. JAMES: It was an hour.

22 MR. HART: And it was just you and

1 her in the booth?

2 MR. JAMES: Yes. Her husband
3 Nicholas was present. He was tending bar and
4 running the, you know, and taking orders.

5 MR. HART: Okay.

6 MR. JAMES: From patrons.

7 MR. HART: Were there any other
8 meetings in which the ANC, Blaguard and KCA
9 were all present together?

10 MR. JAMES: Yes. In fact --

11 MR. HART: Could you please
12 describe that?

13 MR. JAMES: Yes. Between the
14 meeting that I just described at the
15 restaurant and the meeting which I will now
16 describe, there were numerous drafts sent back
17 and forth between the parties. But none of
18 them led to a breakthrough.

19 But we felt like, let's just keep
20 on working on this because we're not, we
21 didn't feel that we were that far apart. We
22 were granting a lot of things that they wanted

1 but just asking for reasonable protections to
2 stay in place.

3 So anyways, I actually was able to
4 open up the meetings place of the Kalorama
5 Citizens, the Good Will Baptist Church and we
6 meet in a back hall, that they call the
7 Fellowship Hall, and I think we spent over
8 three hours there.

9 I think it was about three and a
10 half hours, myself, Commissioner Hart, both
11 Elizabeth and Nicholas. I think that we were
12 the only folks there.

13 MR. HART: You said three hours,
14 roughly what time did the meeting start?

15 MR. JAMES: I believe it started
16 at 8:00 and ran till 11:30 p.m. at night.

17 MR. HART: Okay.

18 MR. JAMES: And we, well go ahead.

19 MR. HART: At any point in these
20 negotiations, you've described a long period
21 of time in which the KCA was a part of these
22 negotiations and meet separately with the

1 Blaguard in addition to with the ANC, was
2 there any point in which, as far as you know
3 according to your understanding, was the KCA
4 every demanded to be cut out of the agreement?
5 And if so, roughly when, approximately when do
6 you think that that happened?

7 MR. JAMES: I'm not quite sure --

8 MR. HART: Do you need me to
9 rephrase?

10 MR. JAMES: Yes, the part about
11 KCA demanded, we didn't make a demand.

12 MR. HART: Oh, did I say KCA?

13 MR. JAMES: Yes.

14 MR. HART: I apologize, I meant
15 Blaguard. At any point in the negotiations,
16 did Blaguard make a request that the KCA be
17 not included --

18 MR. JAMES: Yes.

19 MR. HART: -- on the new
20 settlement agreement?

21 MR. JAMES: Yes.

22 MR. HART: And if so, when in the

1 course of the negotiations did that happened,
2 approximately?

3 MR. JAMES: After the ANC and the
4 KCA made its first proffer to the Blaguard I
5 learned in a roundabout manner that the
6 Blaguard had responded with a redline that cut
7 the KCA out of its being a potential
8 signatory.

9 MR. HART: Do you recall if that
10 was after the group meeting where we all meet
11 at the Good Will Baptist Church?

12 MR. JAMES: No, it was well
13 before, it was months before. And I believe
14 it happened again since the meeting at Good
15 Will Baptist Church which was in October.

16 MR. HART: Was it your
17 understanding that the KCA was listed on the
18 settlement agreements that were being redlined
19 back and forth up until the point after the
20 meeting that we had?

21 MR. JAMES: Well I believe that
22 any versions that were traded from either the

1 KCA or the ANC with the Blaguard, contained
2 the KCA but that they would come back redlined
3 out.

4 MR. HART: Okay.

5 MR. JAMES: There are, quite
6 honestly there have been quite a bit of back
7 and forth.

8 MR. HART: Right.

9 MR. JAMES: And I'm not sure, you
10 know, I'm paying attention to the more recent
11 draft and that's the way I, work is.

12 MR. HART: Okay, fair enough. I
13 want to give you an opportunity to address
14 this ABC and public safety commission meeting
15 on April 10th since it's been put into issue.

16 MR. JAMES: Okay.

17 MR. HART: Sorry. Can you please
18 describe what you remember from that night?
19 There had been obviously some accusations made
20 against you and please describe what you're
21 recollection is from that night?

22 MR. JAMES: My recollection is

1 that there was a meeting. I attended it, I
2 participated in the meeting.

3 It covered numerous license
4 applications for renewal, I spoke a number of
5 times when a particular one would be brought
6 up during the meeting.

7 I honestly do not recall whether I
8 suggested that the ANC protest the Blaguard's
9 application, but it wouldn't surprise me if I
10 did. Because I already knew at that point
11 that they were seeking changes and almost
12 certainly a termination request.

13 So it was a typically community
14 meeting. There were maybe ten or 15 people in
15 the audience and the commission, as was
16 described, held a special meeting to take some
17 votes on the ABC portion but then reverted
18 just back to the ABC committee afterwards and
19 some, the additional commissioners, some of
20 them left.

21 MR. HART: Did you speak with Nic
22 and Elizabeth after the meeting?

1 MR. JAMES: I did. I don't really
2 understand the characterization that was made
3 earlier.

4 I think there was a connection
5 made so that we could meet and to discuss the
6 termination request as required by law. And
7 I think I pointed out that there was, there
8 were three settlement agreements in place from
9 the past and that they would all have to be
10 referenced in this request to terminate,
11 otherwise there would still be an old
12 agreement there.

13 And Elizabeth Makris, you know,
14 said that was not her understanding of the ABC
15 code. And I said, oh, but it's written in
16 plain English.

17 And by that I meant simply that it
18 wasn't a technical, difficult piece of
19 legislation to read. Because I was already
20 aware that Elizabeth was a lawyer. So I
21 assumed that this would be fairly
22 straightforward.

1 But she took it the wrong way and,
2 you know, I have no intent to malign any
3 knowledge, background of anything of that
4 sort. It was just one of those little
5 meetings after and ANC meeting.

6 And there were numerous people
7 standing around, you know. I don't believe
8 anybody said, oh, god what happened there.

9 No, it was just little bit of
10 disagreement perhaps, little bit of
11 misunderstanding and we parted. Actually
12 though Nicholas and I walked down, walked
13 along Columbia Road and all the way down
14 Kalorama to 18th Street where we parted
15 company.

16 And so I don't think there was
17 anything untoward because I actually walked
18 with Elizabeth's husband talking about the
19 application, maybe a few other things, I don't
20 remember. But there was no feeling like, oh,
21 god, this is uncomfortable, you know, there
22 was some sort of insult conveyed.

1 MR. HART: Thank you. One last
2 question. There was some questioning about
3 the KCA protesting the renewal license?

4 MR. JAMES: Yes.

5 MR. HART: Can you please
6 describe, did the KCA eventually protest the
7 renewal license?

8 MR. JAMES: Yes, we did.

9 MR. HART: And why did you protest
10 the renewal?

11 MR. JAMES: Because this is a
12 restaurant license and we wanted to see if the
13 Blaguard was meeting its food requirements.
14 So we had to protest, become an active new
15 protestant to qualify for being able to view
16 the quarterly reports.

17 So we did that with the knowledge
18 that there was a termination request either
19 coming or that had already been filed and that
20 there had been attempts to get an
21 entertainment endorsement that had been turned
22 down by ABRA staff because the settlement

1 agreement banded them.

2 So I'm a careful guy. And if a
3 restaurant wants to have entertainment I want
4 to know if it's meeting its food requirements
5 because they're --

6 MEMBER SILVERSTEIN: I'm sorry,
7 you want to know if --

8 MR. JAMES: I want to know if a
9 restaurant license establishment is meeting
10 its food requirements because there are
11 sections of the regulations which link those
12 two ideas or that if a restaurant is not
13 meeting its food requirement the Board may
14 take away its entertainment endorsement. That
15 is one of the punishments that it can meet
16 out.

17 So I wanted to be aware of what
18 was going on and not agree to something that
19 the establishment might not even qualify for.

20 MR. HART: Thank you. The ANC has
21 no further questions, thank you.

22 CHAIRPERSON MILLER: Okay, any

1 cross?

2 MS. MAKRIS: How much time do we
3 have left? Can I check that?

4 CHAIRPERSON MILLER: Mr. Jones?

5 MEMBER JONES: You have five
6 minutes.

7 MS. MAKRIS: And how much time
8 does the Applicant have left? Or I guess I'm
9 saying, can we check those both so we can --

10 MEMBER JONES: 24 minutes
11 remaining.

12 MS. MAKRIS: Okay.

13 CHAIRPERSON MILLER: Not that you
14 have to use it on --

15 MEMBER JONES: No, just --

16 MR. HART: We would love not to.

17 CHAIRPERSON MILLER: Okay.

18 MS. MAKRIS: Mr. James, after you
19 received the Blaguard's food report did you
20 drop your renewal protest of the Blaguard?

21 MR. JAMES: No, I did not.

22 MS. MAKRIS: Okay. And how many

1 members are in your --

2 CHAIRPERSON MILLER: I'm sorry,
3 after he what?

4 MS. MAKRIS: After he received our
5 food report --

6 CHAIRPERSON MILLER: Oh, okay.

7 MS. MAKRIS: -- did he drop his
8 renewal protest.

9 CHAIRPERSON MILLER: Thank you.

10 MS. MAKRIS: How many members are
11 in your organization?

12 MR. JAMES: We have approximately
13 230 members at this time.

14 MS. MAKRIS: How many paid their
15 dues in 2013?

16 MR. JAMES: Well 2013 isn't up
17 yet.

18 MS. MAKRIS: Or in 2012?

19 MR. JAMES: That I don't know but
20 I do know 2013 and just like I said, 229
21 members have paid their dues. Because I just
22 updated our files in the last few days.

1 MS. MAKRIS: How many members were
2 present at the time that you protested our
3 license?

4 MS. MAKRIS: I don't know exactly
5 how many members were present but there were
6 definitely 10 at least present, including
7 yourselves.

8 MS. MAKRIS: Okay. And do you
9 have a website?

10 MR. JAMES: We do.

11 CHAIRPERSON MILLER: I'm sorry,
12 can I just interrupt for a second please? For
13 the record, when you said protested you or
14 whatever, do you mean the termination, the
15 renewal, what were you talking about?

16 MS. MAKRIS: The renewal, that's
17 the one --

18 CHAIRPERSON MILLER: The renewal,
19 okay.

20 MS. MAKRIS: -- present at.

21 CHAIRPERSON MILLER: Okay, thank
22 you.

1 MS. MAKRIS: That's what we were
2 advised to. Okay, does somebody in your
3 organization take meeting minutes?

4 MR. JAMES: Yes.

5 MS. MAKRIS: How do you distribute
6 them?

7 MR. JAMES: Through our
8 newsletter.

9 MS. MAKRIS: Okay, and how do you
10 distribute your newsletter?

11 MR. JAMES: It's mailed to all
12 members.

13 MS. MAKRIS: How do you get your
14 members addresses?

15 MR. JAMES: How do we get our
16 members addresses? They offer them to us.

17 MS. MAKRIS: When they sign up on
18 your website, is that correct?

19 MR. JAMES: That is actually a
20 very weak point because through PayPal they
21 don't have to give us their street mailing
22 addresses and I often wind up then having to

1 follow-up to get their street address to be
2 able to mail the newsletter.

3 MS. MAKRIS: Have you ever mailed
4 me a newsletter?

5 MR. JAMES: I think so. I would
6 think so because you're on our paper mailing
7 list.

8 MS. MAKRIS: Um.

9 MR. JAMES: I don't know why we
10 wouldn't have.

11 MS. MAKRIS: Why did you fail to
12 add me to your email list for two years?

13 MR. JAMES: I'm sorry?

14 MS. MAKRIS: Why did you fail to
15 add me to your email list for two years?

16 MR. JAMES: I don't except that as
17 a fact.

18 MS. MAKRIS: So it's your position
19 that you have sent me emails in the past two
20 years as a KCA member?

21 MR. JAMES: I'm sure that I have.

22 MS. MAKRIS: Okay. I'll defer for

1 the Board.

2 CHAIRPERSON MILLER: Okay, any
3 Board questions? Okay, no questions.

4 MR. JAMES: No questions?

5 CHAIRPERSON MILLER: No questions.
6 Thank you very much.

7 MS. MAKRIS: Oh, actually can I
8 ask more questions, is that okay?

9 CHAIRPERSON MILLER: All right,
10 one more. He almost left the stand.

11 MS. MAKRIS: One more question,
12 I'm so sorry. Is this your constitution?

13 CHAIRPERSON MILLER: You do know
14 you need to give the ANC one?

15 MS. MAKRIS: Yes.

16 CHAIRPERSON MILLER: Okay. All
17 right, we'll just take it this hour. All
18 right.

19 MS. MAKRIS: Is that your
20 constitution?

21 MR. JAMES: It looks like it.

22 MS. MAKRIS: Okay.

1 MR. JAMES: It's a Word document
2 though and I believe that I am the keeper of
3 the official document. But I will take this
4 as provided --

5 MS. MAKRIS: What is the quorum
6 required for the ANC?

7 MR. JAMES: I don't need to look
8 at that to know that it's, of the what?

9 MS. MAKRIS: Of the ANC?

10 MR. HART: KCA.

11 MS. MAKRIS: I'm sorry, the KCA,
12 pardon me?

13 MR. JAMES: One thirtieth of the
14 members.

15 MS. MAKRIS: One thirtieth, not
16 one thirteenth?

17 MR. JAMES: One thirtieth.

18 MS. MAKRIS: Okay. That's fine,
19 we'll leave it there for now and then --

20 CHAIRPERSON MILLER: Okay.

21 MR. JAMES: Thank you.

22 CHAIRPERSON MILLER: Thank you

1 very much. Okay, yes, go right ahead.

2 MR. HART: The ANC calls

3 Commissioner Hart.

4 CHAIRPERSON MILLER: Oh, are you,

5 is anyone, okay, Mr. Guthrie you're going to

6 ask?

7 MR. GUTHRIE: Yes, I'm going to

8 ask --

9 MR. HART: Commissioner Guthrie --

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: And I may have some

12 questions from Commissioner Hart also.

13 CHAIRPERSON MILLER: I don't know,

14 you're a Protestant so, you're a Protestant so

15 I'm not sure you can ask, cross examine, oh,

16 you have questions? No, we only have one

17 person leading.

18 MR. JAMES: We're a different

19 Protestant.

20 CHAIRPERSON MILLER: You're a

21 different party, is that what you're saying?

22 You may have a direct, whose witness is this

1 though?

2 MR. GUTHRIE: It's the ANC.

3 MR. JAMES: This was in our PIF.

4 CHAIRPERSON MILLER: No, wait a
5 second. Let me just, it's late and let's --

6 MR. JAMES: We're not going to
7 make it to --

8 CHAIRPERSON MILLER: Are you the
9 ANC's Witness?

10 MR. HART: Yes.

11 MR. GUTHRIE: Yes.

12 CHAIRPERSON MILLER: Okay, so the
13 ANC asks direct questions. It's your witness.

14 MR. GUTHRIE: That's right.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: But the KCA also
17 listed Commissioner Hart in our PIF.

18 CHAIRPERSON MILLER: You're
19 calling him as a witness as well?

20 MR. JAMES: Is there some reason
21 why we can't?

22 CHAIRPERSON MILLER: Okay.

1 MR. HART: As long as it's --

2 CHAIRPERSON MILLER: No, you
3 haven't called your witnesses yet, right?

4 MR. JAMES: Right.

5 CHAIRPERSON MILLER: We're just on
6 their witnesses. All right, go ahead. Just
7 want to get what we're doing right.

8 Okay, do you swear to tell the
9 truth, the whole truth, nothing but the truth?

10 MR. HART: Yes, I do.

11 CHAIRPERSON MILLER: Okay, thank
12 you.

13 MR. GUTHRIE: Mr. Hart, you're a
14 Commissioner for ANC 1C?

15 MR. HART: Yes, Commissioner for,
16 I'm in ANC 1C01.

17 MR. GUTHRIE: And you're also
18 chair of the ABC Committee?

19 MR. HART: Yes, I am.

20 MR. GUTHRIE: And in the course of
21 your duties as both a member of ANC and as a
22 member of the committee, you became involved

1 with the Blaguard termination of settlement
2 agreement?

3 MR. HART: That's right.

4 MR. GUTHRIE: Correct?

5 MR. HART: Yes.

6 MR. GUTHRIE: Can you just give
7 the Board a brief outline of that experience?

8 MR. HART: Yes. It's probably
9 helpful for me to note that I live at 1850
10 Wyoming Avenue which is about one and a half,
11 two blocks away from the Blaguard.

12 CHAIRPERSON MILLER: Okay.

13 MR. HART: I've lived in D.C.
14 since 2004 but within Adams Morgan since 2007.
15 And I actually have personal experience with
16 the Blaguard which in some respects makes this
17 case difficult for me.

18 I have a lot of friends who go to
19 the Blaguard, I myself have been to the
20 Blaguard a number of times. I had my
21 brother's 29th birthday party at the Blaguard.

22 I know a lot of kick ball friends

1 go to the Blaguard, I've gone to the Blaguard
2 after charity events. So I have personal
3 experience with the Blaguard in addition to
4 serving as the ANC Commissioner.

5 That that being said, I view it as
6 my responsibility to be as objective as
7 possible when dealing with an establishment on
8 behalf of an elected body like the ANC.

9 MR. GUTHRIE: So as you were
10 participating in the process, there had been
11 a number of items that were testified to
12 regarding issues in the old that were, lead to
13 some dissatisfaction on the part of the
14 Applicant's.

15 Were those substantively in your
16 mind resolved, the changes from the old that
17 had been requested?

18 MS. MAKRIS: Objection, he doesn't
19 know the relevant of settlement discussions,
20 right? I mean we're asking very specifics of
21 what was agreed to between the parties during
22 settlement.

1 CHAIRPERSON MILLER: Are you
2 asking specifically or are you asking in
3 general?

4 MR. GUTHRIE: No, I'm asking
5 whether the substantive agreements that were
6 previously testified to by the Applicant had
7 been, so far as you can tell, resolved in the
8 course of your negotiations? I don't think
9 that's unreasonable to ask.

10 CHAIRPERSON MILLER: Okay --

11 MR. GUTHRIE: She said she was,
12 they were allowed to identify the particular
13 areas that they were concerned about. I'm
14 asking whether those areas were addressed in
15 the settlement negotiations.

16 MR. HART: You know, I think when
17 Nic, when he testified, made the comment that
18 we were very close to a settlement agreement.
19 And I think that's accurate.

20 I think there were, we had
21 negotiated a large number of provisions and we
22 had reached the point where we were down to a

1 couple of provisions that we were trying to
2 reach agreement on.

3 MR. GUTHRIE: Can you talk a
4 little about your, about what problems would
5 read down to the neighborhood if this
6 settlement agreement were terminated?

7 MR. HART: Yes. So as I said,
8 I've personally been to the Blaguard on a
9 number of occasions and, you know, I can say
10 from personal experience that it's a bar, it
11 can be noisy, people drink too much. And when
12 people leave on occasion they're drunk and
13 they're loud.

14 And I've been there and seen
15 people leave the place drunk and very loud.
16 And in my view that is a condition that
17 contributes to the peace, order and quiet in
18 the neighborhood and contributes to so many of
19 the concerns and complaints that we hear from
20 neighbors with respect to the quality of life
21 and living in the neighborhood.

22 I would also say that what's

1 really complicated this issue is not only that
2 they're asking to, I wonder if we could, I
3 feel like I'm --

4 (Off record comments)

5 MR. GUTHRIE: So in addition to
6 requesting to terminate a relatively modest
7 settlement agreement, there's this issue of
8 the food requirements and the fact that it is
9 a establishment that seems to be operating as
10 a tavern under a restaurant license. And
11 that's been a real issue in the neighborhood
12 in the sense that a lot of the establishments
13 that have issues are ones where people are
14 simply coming into drink alcohol and not to
15 have food.

16 From a practical perspective that
17 probably keeps them a little bit more sober.
18 But it opens up issues.

19 And on top of that they've
20 indicated that they would like an
21 entertainment endorsement. And that compounds
22 the issue of the noise, the drunkenness, not

1 meeting the food requirements and then, you
2 know, having either live music or DJ's, cover
3 charges, promoters.

4 Those sorts of things certainly
5 contribute to peace, order and quite in the
6 neighborhood and the old settlement agreement
7 keeps those things in check. I shouldn't say
8 old, I should say current settlement
9 agreement.

10 CHAIRPERSON MILLER: Yes.

11 MR. HART: Sorry.

12 MR. GUTHRIE: In the course of
13 your experience with the negotiation process,
14 when did you discover that there was a request
15 on behalf of the Applicant to not include KCA
16 as part of this process in the agreement?
17 Perspective agreement.

18 MR. HART: The short answer is,
19 within three days of this hearing. The longer
20 answer is that I was aware of the fact that
21 Blaguard was upset with the KCA generally.

22 That there wasn't a good

1 relationship between the two of them. And
2 that they were generally unhappy to be
3 negotiating with the KCA.

4 But that being said, and I
5 understood that and I was very sensitive to
6 that. And I tried to bridge that gap as best
7 I could and bring, and I think I did bring the
8 groups together successfully for negotiations.

9 But there was never a demand to
10 cut the KCA out of the agreement until a few
11 days before this hearing.

12 MR. GUTHRIE: Are you aware of the
13 status on entertainment endorsements for the
14 facilities that are immediately adjacent to or
15 across the street from the Applicant?

16 MR. HART: Yes.

17 MR. GUTHRIE: Specifically
18 L'Enfant, Duplex, Bobby Lew's, El Tamarindo,
19 Dahlak and Jack Rose?

20 MR. HART: Yes, I can address all
21 of those. I might need you to remind me of a
22 few as we go through the list.

1 The reason why we did not protest
2 Jack Rose is really three-fold. One is, they
3 didn't have an existing settlement agreement
4 in place that they were asking to terminate.

5 Number two is, and I'm not being
6 disrespectful to the Blaguard, I think Nic has
7 made this clear in his testimony, it's a very
8 different establishment then the Blaguard.

9 They have significant food sales
10 and dinning. And it's not simply and alcohol
11 establishment.

12 And so that's far less of a
13 concern. And then the third point is that as
14 we were leading up into that ABC and Public
15 Safety Committee meeting, their owner was very
16 responsive to the neighbors with respect to
17 the noise issues that had been mentioned.

18 In fact he had a contractor come
19 out and construct a sound barrier on the upper
20 floor on the upper porch to block out noise
21 for the residents in the nearby buildings.
22 Which aren't directly across but they're

1 caddy-corner. They're certainly within the
2 block.

3 And we found that to be a very
4 good faith effort by him and he paid for that
5 out of his own pocket and it was expensive.
6 And we really, I thought that that was an
7 appropriate thing to do for an owner who
8 showed that he would be so responsive and
9 helpful to the neighbors when they had
10 legitimate concerns.

11 MR. GUTHRIE: Are you aware
12 whether any of those six, other than Jack
13 Rose, have security agreement, settlement
14 agreements?

15 MR. HART: So Bobby Lew's wasn't
16 even in business when I became a commissioner.
17 So that, Bobby Lew's didn't come before us as
18 a place that we would protest.

19 L'Enfant Caf, had a settlement
20 agreement in place and did not request that
21 that settlement agreement be terminated.

22 Dahlak is the same. They had a

1 settlement agreement in place and did not
2 request that it be terminated.

3 And I think those are --

4 MR. GUTHRIE: El Tamarindo?

5 MR. HART: I --

6 MR. GUTHRIE: According to the
7 notes I got, El Tamarindo does, correct?

8 MR. HART: Yes. That's my
9 recollection as well that El Tamarindo also
10 has a settlement agreement in place. And we
11 weren't put in a position where the licensee
12 was requesting that the settlement agreement
13 be terminated.

14 MR. GUTHRIE: I have no further
15 questions.

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

18 MEMBER SILVERSTEIN: I'm going to
19 try to make this short because I think that
20 Mr. Guthrie answered a lot of the questions.

21 In terms of the essay, assuming
22 that there's going to be some changes and this

1 is just arguendo, assuming it, what do you
2 need to keep? What are your top two or three
3 things to protect the neighborhood?

4 MR. HART: I would say not
5 necessarily an order, but I would say pub
6 crawls is an important one. It speaks to the
7 character of the neighborhood, it speaks to
8 the peace, order --

9 MEMBER SILVERSTEIN: Okay, got
10 you. You can move on.

11 MR. HART: Sorry, okay. Pub
12 crawls, I would say the Applicant asked us to
13 agree to not protest their future
14 entertainment endorsement. So that is
15 something we had agreed to put into --

16 CHAIRPERSON MILLER: Wait, are you
17 getting, don't get into the substance of
18 negotiations.

19 MEMBER SILVERSTEIN: No, we're
20 talking about what you want --

21 CHAIRPERSON MILLER: Just what do
22 you want now?

1 MEMBER SILVERSTEIN: What do you
2 need to keep and why?

3 MR. HART: Okay. The pub crawls,
4 I would say hours of operation. We're not,
5 it's important to the peace, order and quiet
6 when an establishment opens, when it closes.

7 MS. MAKRIS: I have a --

8 MR. HART: But also --

9 MS. MAKRIS: -- an objection.
10 Because we don't have hours of operations in
11 our agreement. He's talking about wanting to
12 cut out, right?

13 CHAIRPERSON MILLER: Okay, but
14 we'll look at that.

15 MR. HART: I thought you were
16 asking arguendo?

17 CHAIRPERSON MILLER: What?

18 MR. HART: Sorry.

19 MS. MAKRIS: Never mind,
20 withdrawn. I clearly don't understand, so.

21 MEMBER SILVERSTEIN: Um-huh.

22 CHAIRPERSON MILLER: What was the

1 last thing --

2 MEMBER SILVERSTEIN: Our hours of
3 operation in the settlement agreement.

4 MR. HART: So let me see if I have
5 any, does anyone have a copy --

6 CHAIRPERSON MILLER: It's --

7 MR. HART: Because that would
8 actually --

9 CHAIRPERSON MILLER: It says
10 permitted by District of Columbia law,
11 basically.

12 MR. HART: Sorry?

13 CHAIRPERSON MILLER: It says, I'm
14 reading it in front of me, shall be those
15 permitted by District of Columbia law and
16 applicable Alcoholic Beverage Control
17 Regulation.

18 MR. HART: Right.

19 CHAIRPERSON MILLER: Then there's
20 a notwithstanding in the paragraph, but I
21 don't know.

22 MR. HART: Right. And I think

1 those are important because they also don't
2 proactively grant the Applicant extended
3 holiday hours and that's been a significant
4 issue in the neighborhood.

5 There's a whole range of holiday
6 hours that are potentially available to the
7 Applicant, including daylight savings time and
8 not New Year's Eve --

9 MEMBER SILVERSTEIN: Well if
10 that's not in the settlement agreement I
11 don't, that's beyond our --

12 MR. HART: Right, and we are not
13 proactively granting them that like these
14 hours requirement because they would need that
15 extension, that allowance to have those longer
16 hours for a holiday. And this agreement binds
17 them to the earlier hours.

18 I would say the capacity, well you
19 asked for one more, so I would say the noise,
20 music and dancing provision. And I think that
21 speaks to the fact that the character of the
22 establishment and if it were to have an

1 entertainment endorsement, it would be a far
2 different place.

3 MEMBER SILVERSTEIN: Do you see
4 any way, if one were to be granted, what
5 protections would you need? Are you worried
6 more about, and here's what I'm getting at.

7 MR. HART: Sure.

8 MEMBER SILVERSTEIN: About sound
9 mitigation or are you worried more about the
10 operation of the establishment and what it
11 would become or both of those equal?

12 MR. HART: I think sound
13 mitigation is a concern. Particularly given
14 that there are residences right across the
15 street which have experienced these issues.

16 Not with the current owners,
17 because the settlement agreement is in place
18 and it requires them to keep their front doors
19 and windows closed, but before that was in
20 place, noise was a significant issue.

21 And then I think it goes to the
22 point that I made before about, if it's only

1 a place that serves alcohol, you're really
2 increasing the number of tipsy or drunk people
3 in the neighborhood on a given night. If
4 you're bringing in promoters, you're bringing
5 in cover charges and you're bringing people in
6 from out of the area who are just going to be
7 there to party.

8 MEMBER SILVERSTEIN: Okay. No
9 further questions.

10 CHAIRPERSON MILLER: Okay, I've
11 got a few. So is your ANC opposed to the
12 termination of any settlement agreement?

13 MR. HART: No.

14 CHAIRPERSON MILLER: So have you
15 not protested a termination of a settlement
16 agreement?

17 MR. HART: To be honest, very few
18 have come before us. As I said before, we
19 examined 55 licensees and we've only had to go
20 to three protest hearings.

21 And I don't have the exact number
22 in my mind, but a small number have requested

1 their settlement agreement be terminated. And
2 then within that number a much smaller group
3 are the ones we haven't been able to reach an
4 agreement with.

5 CHAIRPERSON MILLER: Okay. How
6 does this settlement agreement address the
7 problem of people coming out of their
8 establishment drunk at night, which you said
9 is going on now?

10 MR. HART: Um-huh.

11 CHAIRPERSON MILLER: So if it's
12 going on now, I mean is there something in the
13 settlement agreement that's actually checking
14 it like it would be worse if there wasn't that
15 provision or something?

16 MR. HART: Yes, I think so. I
17 think the noise, music and dancing provision
18 addresses that because it doesn't allow for an
19 entertainment endorsement which would draw far
20 more patrons into the establishment who would
21 then drink and be noisy and go into the
22 neighborhood.

1 CHAIRPERSON MILLER: So do you
2 have any concerns about anti-competitiveness
3 or something if, and I don't know this of the
4 establishments, but if Jack Rose can have
5 people come and listen to music there but the
6 Blaguard's can't?

7 MR. HART: I think that that's a
8 good question. I think that is always a
9 concern of the commission that we're not
10 treating businesses unfairly or putting them
11 at a disadvantage.

12 And for the reasons I said before,
13 I think the Jack Rose is a different type of
14 place and doesn't necessarily compete with the
15 Blaguard. I think that they offer very
16 different things to customers.

17 So I would argue that it would not
18 have anti-competitive effects on the Blaguard.

19 CHAIRPERSON MILLER: Do you think
20 that there are others though in Adams Morgan
21 that are allowed to have entertainment that
22 are similar situated?

1 MR. HART: I think the answer to
2 that is yes, but I think the reason for that
3 is because those entertainment endorsements
4 were granted either before the current
5 commission has been in place or without the
6 ANC really having an opportunity to weigh in.

7 My understanding is that these
8 entertainment endorsements have, on multiple
9 occasions, been approved without the ANC
10 having an opportunity to weigh in. And also
11 that restaurants for a period of time were
12 able to convert into tavern licenses.

13 And you had at least ten licensees
14 convert from a restaurant to a tavern. And in
15 those instances I think those operations are,
16 you know, operating more along the lines of a
17 establishment that provides entertainment,
18 nightclub atmosphere.

19 CHAIRPERSON MILLER: Can you
20 address this food sales requirement issue that
21 the Applicant says that the reason there may
22 be an issue there is because of the incorrect

1 number related to the certificate of
2 occupancy, not that, and I'm characterizing,
3 but not that they're really being a tavern,
4 but they don't have that number of seats
5 that's actually reflected in the settlement
6 agreement?

7 MR. HART: Um.

8 CHAIRPERSON MILLER: Because you
9 said that one of your concerns is that you
10 think they're, this morphing into a tavern
11 issue.

12 MR. HART: Right.

13 CHAIRPERSON MILLER: Yes.

14 MR. HART: I would have to see the
15 exact numbers and the percentages. But my
16 understanding is that they have failed their
17 food requirements over a large number of
18 quarters and it hasn't been close.

19 Now if I see the actually document
20 I can give you the specific percentages. But
21 my understanding is it's been significant gap.
22 And one that wouldn't be explained by the

1 difference between 35 and 38 occupants.

2 CHAIRPERSON MILLER: Okay, so
3 basically you're concerned about that is that
4 you think there really is a real gap, not just
5 based on the seating? Okay.

6 MR. HART: I think so.

7 CHAIRPERSON MILLER: Is it your
8 opinion that in general you wouldn't want to
9 see anymore entertainment endorsements in
10 Adams Morgan because it's already in general
11 to crowded and it adds more people and noise
12 or are you really looking at the Blaguard here
13 specifically?

14 It's kind of getting late, I mean
15 because on the one hand I see what you're
16 talking about why you think it's more of a pub
17 then a restaurant, okay, so that's one reason.
18 But is the other reason is that, I thought I
19 heard you say that there's so many in Adams
20 Morgan?

21 MR. HART: I would agree with
22 that. I think there's a high concentration of

1 entertainment endorsements currently and some
2 people refer to it as a club zone.

3 And I think without a doubt there
4 is a high concentration of those and we have
5 plenty. And I think what the neighborhood
6 probably needs more of are restaurants and/or
7 small bars where they're serving food and
8 alcohol.

9 CHAIRPERSON MILLER: Okay, just
10 have a couple more. So there's this issue
11 about the Applicant not wanting to have a
12 settlement agreement with KCA. And there's
13 KCA on the settlement agreement and then
14 there's the ANC.

15 Is there less protection to the
16 public with respect to peace, order and quiet
17 if the Applicant has had a settlement
18 agreement with the ANC? Or can you address
19 that question in general?

20 MR. HART: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MR. HART: The answer is yes.

1 CHAIRPERSON MILLER: Yes, there
2 would be less?

3 MR. HART: There would be less
4 protection.

5 CHAIRPERSON MILLER: Okay, and why
6 is that?

7 MR. HART: For practical reasons.
8 For example ANC commissioners, as you know,
9 are volunteers and I took a vacation day to be
10 here. And it's just not always easy to be
11 there for the mediation, the roll call, the
12 protest hearing when you have to deal with 54
13 different establishments in a very short
14 period of time.

15 And if you miss one of those
16 meetings, as you know, you lose standing and
17 you're no longer able to maintain your
18 position in the case. So that's from a
19 practical standpoint.

20 I think the KCA also has a lot of
21 expertise, they've been working at this for a
22 long time. And to be perfectly honest, the

1 KCA devotes a tremendous amount of time and
2 effort to learning about the licensees,
3 learning about the investigative reports and
4 providing information to the ANC that we can
5 take it or leave it, but in certain situations
6 it's helpful information.

7 And the KCA represents a
8 significant portion of the neighborhood as
9 well. And they make their voices heard to us,
10 sometimes through the KCA.

11 CHAIRPERSON MILLER: Okay, and my
12 last question is, has the Blaguard been a good
13 neighbor?

14 MR. HART: I would say yes. And
15 this goes back to my first point which was
16 that I like the Blaguard, I have a lot of
17 friends who like the Blaguard. I think it's
18 a good place, it's good for the neighborhood.

19 I just disagree with the fact that
20 we should be terminating the settlement
21 agreement. I think that is important and I
22 think it's part of the reason why things have

1 maintained in a good fashion.

2 And with good conscious as an ANC
3 commissioner, I can't listen to countless
4 complaints from neighbors with regard to
5 peace, order and quiet all over Adams Morgan
6 and then simply cancel an existing settlement
7 agreement that is modest, and in my view
8 serving a legitimate purpose.

9 CHAIRPERSON MILLER: Okay, I'm
10 going to do one more question. The pub
11 crawls, because that affects the whole area,
12 so you're afraid of the affect that if they're
13 not required to do a pub crawl than eventually
14 pub crawls may come back because they'll be
15 enough establishments that aren't restricted
16 from pub crawls?

17 MR. HART: We've been pretty
18 emphatic about including the pub crawls
19 provision in the different settlement
20 agreements.

21 CHAIRPERSON MILLER: Right.

22 MR. HART: That's been a really

1 key provision because it's something that we
2 don't want to see get out of control.

3 CHAIRPERSON MILLER: Right.

4 MR. HART: So my hope is that
5 because of all the work we've put into these
6 settlement agreements, we will in fact not
7 have a lot of pub crawls in the neighborhood.

8 And we've tried to tweak that
9 language in updating settlement agreements to
10 be more specific in order to help the
11 applicants abide by the provisions.

12 CHAIRPERSON MILLER: Okay, great,
13 thank you. No other Board questions? Mr.
14 Jones, do you have a question? Yes.

15 MEMBER JONES: Just real quick.
16 So in terms of your, I don't want to say
17 desire, you're here representing the ANC?

18 MR. HART: Yes.

19 MEMBER JONES: Okay. From that
20 perspective or that standpoint, the
21 elimination, if you will, of the SA as it
22 applies to the operation, the Blaguard, do you

1 feel as though it's, I'll call it, as you
2 described it, it's good neighbor type of
3 behavior that you have experienced with it or
4 from it up to this point, do you feel like
5 that would be a risk that they would not be
6 that good neighbor going forward when they are
7 no longer bound by the SA?

8 MR. HART: Yes, I do.

9 MEMBER JONES: Okay. And then in
10 conjunction with that, do you feel as though
11 they are good neighbors because in part at
12 least of the limitations and restrictions that
13 are, they bound by with their current SA?

14 MR. HART: Yes, I do.
15 Particularly when you factor in that they're
16 applying for an entertainment endorsement.

17 MEMBER JONES: Understood, thank
18 you. Thank you, Madam Chair.

19 CHAIRPERSON MILLER: Okay. Any
20 questions based on Board questions?

21 MR. JAMES: Well KCA has questions
22 regardless of Board questions.

1 CHAIRPERSON MILLER: No, wait a
2 minute, I know you do but we're staying, right
3 now because he's the ANC Witness.

4 MR. JAMES: Oh, okay.

5 CHAIRPERSON MILLER: Let's finish
6 with that process and then we'll go to --

7 MR. JAMES: Thank you.

8 CHAIRPERSON MILLER: Okay. I
9 know, it's a little confusing.

10 MR. JAMES: It linked over to
11 that.

12 CHAIRPERSON MILLER: All right, so
13 the questions on Board questions right now to
14 round off this --

15 MEMBER JONES: She has no time.

16 MS. MAKRIS: We were never given
17 the opportunity to cross --

18 CHAIRPERSON MILLER: She doesn't,
19 what?

20 MS. MAKRIS: We never cross
21 examined, so can we just ask questions based
22 on his testimony?

1 MEMBER JONES: They have zero
2 minutes.

3 CHAIRPERSON MILLER: She has zero
4 minutes?

5 MS. MAKRIS: Oh, we have zero, so
6 we're out of minutes?

7 MEMBER JONES: Yes, you're out of
8 minutes.

9 CHAIRPERSON MILLER: Okay.

10 MR. GUTHRIE: We have no
11 questions.

12 CHAIRPERSON MILLER: No, you're
13 the, oh, you don't have any follow-up
14 questions, okay. Did you have any questions
15 based on the Board questions?

16 MR. JAMES: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: Commissioner Hart,
19 would you be disappointed if this Board only
20 provided a continuation of just two or three
21 of the provisions that are in the extant
22 agreement?

1 MR. HART: Yes, I would.

2 MR. JAMES: Can you explain why?

3 MR. HART: Because I think that
4 the current essay serves a purpose. Two or
5 three provisions isn't a settlement agreement.
6 It's an order with a couple of provisions that
7 provide restrictions.

8 It's a far different vehicle for
9 enforcement. And in my view, you know, I
10 think it would, undermined might be a strong
11 word, but I think it would really hurt the
12 ANC's incentives and efforts in the future to
13 provide settlement agreements for neighbors.

14 MR. JAMES: If the extant
15 agreement were terminated, do you agree that
16 this would allow the Blaguard to apply for an
17 entertainment endorsement?

18 MR. HART: That's my
19 understanding, yes.

20 MR. JAMES: And upon that
21 application coming forward, do you think it's
22 likely that the ANC would protest that to seek

1 conditional terms for neighborhood protection?

2 MR. HART: I think we would like
3 to but as I've explained before, the ANC does
4 not always have any opportunity to protest
5 entertainment endorsements. So there's no
6 guarantee that we would in fact be able to
7 protest it.

8 MR. JAMES: You're concerned
9 perhaps that the Board might not consider it
10 as substantial change and not therefore
11 placard it?

12 MR. HART: Correct.

13 CHAIRPERSON MILLER: That's a
14 pretty leading question. Go ahead.

15 MR. JAMES: Are you then
16 concerned?

17 MR. HART: I am concerned that
18 based on the processes of ABRA, that we may
19 not have an opportunity to protest an
20 entertainment endorsement in the future.

21 MR. JAMES: Do you consider the
22 trash and recycling provisions in the types of

1 agreements that we have and in this agreement,
2 do you think those are important to the
3 neighborhood?

4 MR. HART: Well I'm from Vermont,
5 so I am all for recycling and protecting the
6 environment. So I think that they're a good
7 thing to encourage that kind of behavior.

8 Do I think they're as important as
9 the entertainment provision, the pub crawl
10 provision, probably not. But I still think
11 they're worth including.

12 MR. JAMES: And in this particular
13 agreement, are you familiar with Item 6, item
14 specific to an establishment, A, Applicant
15 agrees to requiring a bartender who has
16 completed four months of employment to attend
17 and successfully complete the TIPS training
18 program?

19 MR. HART: I'm familiar with it
20 now that you've mentioned it to me.

21 MR. JAMES: And based, I refer
22 back now to the Board questions that brought

1 out testimony from you that you have
2 experienced tipsy folks leaving the Blaguard
3 late at night. And do you believe that this
4 kind of training could help remedy that sort
5 of behavior?

6 MR. HART: Yes, I think that kind
7 of training, I mean a lot of the
8 establishments in Adams Morgan engage in
9 training and have security plans in place.
10 And I think those are useful tools to help the
11 establishments abide by D.C. law in the
12 settlement agreements.

13 MR. JAMES: Very good. And I have
14 a further question, I'd like to give --

15 CHAIRPERSON MILLER: Okay, where
16 are we now? It sounds like you're going
17 beyond the Board questions. Are you going
18 into you want him to be your witness now, as
19 KCA's witness?

20 MR. JAMES: Well I can make KCA's
21 case. I promise you I'm going to make it very
22 short.

1 CHAIRPERSON MILLER: Okay.

2 MR. JAMES: But that might require
3 Mr. Hart going back to the stand.

4 CHAIRPERSON MILLER: He's here on
5 the stand.

6 MR. JAMES: I can't hear?

7 CHAIRPERSON MILLER: He's here.

8 MR. HART: I'm on the stand.

9 CHAIRPERSON MILLER: He doesn't
10 have to go back and forth.

11 MR. JAMES: Okay.

12 CHAIRPERSON MILLER: It's just I
13 want to kind of figure out where we are in the
14 process. Is this now you're calling your
15 witness?

16 MR. JAMES: Yes, that's what this
17 will be.

18 CHAIRPERSON MILLER: Okay, and
19 he's your only witness or are you also
20 testifying?

21 MR. JAMES: I am going to make a
22 statement, yes.

1 CHAIRPERSON MILLER: Okay, all
2 right.

3 MR. JAMES: But I'll do it in a
4 very integrated fashion. I think I've got it
5 down for that.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: But it's just this one
8 item that I wish to bring out and this would
9 involve bringing, putting forward one of our
10 exhibits which is Numbered 6. There's others
11 that will be coming forth but this is this
12 one.

13 CHAIRPERSON MILLER: Oh, god. So
14 --

15 MR. JAMES: So I'm going to have
16 the Board's staff --

17 CHAIRPERSON MILLER: What?

18 MR. JAMES: Is this okay?

19 CHAIRPERSON MILLER: What's wrong?

20 (Off record comments)

21 MR. HART: You're introducing the
22 exhibit.

1 MR. JAMES: Pardon me?

2 MR. JAMES: He said you have eight
3 minutes.

4 MR. JAMES: Eight minutes.

5 MEMBER JONES: The Protestants
6 have eight minutes remaining for the Licensee.

7 MR. JAMES: Okay, I'll pass on
8 this and, because I have only eight minutes to
9 make a statement, right? And to introduce any
10 evidence that KCA --

11 CHAIRPERSON MILLER: We're not
12 counting right now, right?

13 MEMBER JONES: No.

14 CHAIRPERSON MILLER: So it will
15 take eight, you have eight minutes. If you
16 have documents that you need to --

17 MR. JAMES: I would rather skip
18 this question --

19 CHAIRPERSON MILLER: Okay.

20 MR. JAMES: -- move to closing,
21 well --

22 CHAIRPERSON MILLER: Closing

1 doesn't count.

2 MR. JAMES: Yes, sorry.

3 MR. HART: Closing doesn't count.

4 MR. JAMES: Sorry. Okay, so now
5 KCA is presenting its case.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: And I'm not going to
8 ask Commissioner Hart a question.

9 CHAIRPERSON MILLER: Oh, you're
10 not asking him any questions?

11 MR. JAMES: No, I'll just be the
12 only witness and make a statement.

13 CHAIRPERSON MILLER: Okay.

14 MR. JAMES: In so doing I will
15 hand all of the documents --

16 CHAIRPERSON MILLER: Okay. So Mr.
17 Hart can be excused.

18 MEMBER SILVERSTEIN: Thank you for
19 your service, Commissioner.

20 CHAIRPERSON MILLER: Thank you.

21 MR. HART: You're welcome.

22 CHAIRPERSON MILLER: Do you need

1 to go to your ANC meeting?

2 MR. HART: We do, but we told them
3 we were going to be late.

4 CHAIRPERSON MILLER: Okay. It's
5 up to you because you're finished with your,
6 oh, no you're doing your closing, right?

7 MR. HART: Yes.

8 CHAIRPERSON MILLER: Okay. Well
9 we have eight minutes left at most I guess.
10 No, the Board's questions a little more maybe.
11 Not too much I don't think. Okay.

12 MR. JAMES: Sorry, I thought I
13 divvied these up into separate piles
14 previously.

15 CHAIRPERSON MILLER: While he's
16 looking for that I just noticed, I know it is
17 late, but somebody passed up to us the
18 Kalorama Citizens Association constitution.
19 Who did that?

20 MS. MAKRIS: We did.

21 CHAIRPERSON MILLER: Did you all,
22 was that an exhibit you wanted to move into

1 evidence or not?

2 MS. MAKRIS: Please.

3 CHAIRPERSON MILLER: So are there
4 any objections to that?

5 MR. JAMES: No.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: It's in the Board's
8 records.

9 CHAIRPERSON MILLER: So this is
10 A15, is that correct?

11 MS. MAKRIS: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MS. MAKRIS: And I also gave you
14 the originals of A9, but you have it for the
15 record. It's a notarized affidavits.

16 CHAIRPERSON MILLER: The originals
17 for the affidavit, right. Do you have copies,
18 do you need copies back?

19 MS. MAKRIS: No, we have --

20 MEMBER JONES: Mr. James, you're
21 time is running.

22 CHAIRPERSON MILLER: It is? Oh.

1 (Off record comments)

2 MR. JAMES: So I will run through
3 these quickly. KCA Exhibit Number 1 is the
4 Blaguard's request to terminate.

5 I would like to draw the Board's
6 attention to the fact that it contains undated
7 and unsigned letters with no proof that there
8 was any actually receipts of the documents
9 that are --

10 CHAIRPERSON MILLER: Wait a
11 second. I need to put you under oath first.

12 MR. JAMES: Well I was previously
13 under oath, does that count?

14 CHAIRPERSON MILLER: What?

15 MR. JAMES: I was previously put
16 under oath.

17 CHAIRPERSON MILLER: Oh, yes, you
18 were. Okay, that's fine.

19 MR. JAMES: So do you want me to
20 sit here?

21 CHAIRPERSON MILLER: Only if you
22 need to --

1 MR. JAMES: Yes, I think it might
2 be --

3 CHAIRPERSON MILLER: I forgot you
4 were already under oath.

5 MR. JAMES: -- space, thank you.
6 Okay, so the Blaguard is required by 25446D to
7 prove that it has contacted all of the
8 parties. And it does not offer proof that it
9 did so in its filing with letters that are
10 unsigned and undated and no proof, such as
11 returned receipt requested, mailing, you know,
12 or anything.

13 Even an email from one of the
14 persons who they claim that they've reached.
15 So that is one point in which the Blaguard did
16 not satisfy the termination requests,
17 termination demands of the law.

18 There is a third older settlement
19 agreement from 1995 which is when one asks for
20 the agreements to deal with this
21 establishment. One is given that one by the
22 records manager of ABRA.

1 So I think there must be a
2 determination that it is a relevant agreement
3 for that purpose. And they did not apply to
4 terminate that agreement.

5 And by the way, under, so Exhibit
6 Number 5 is an email from Jonathan Berman
7 telling the Blaguard that their application
8 was imperfect and that an additional two weeks
9 had to be granted to get in an application
10 that the Board could approve for placarding to
11 terminate.

12 But this extended this beyond the
13 legal requirement of April 1st. That's when
14 everybody had to get all of their documents
15 for renewal this year into ABRA.

16 ABRA sent out a letter, the
17 renewal letter telling all the applicants when
18 to do anything. In fact I don't have it with
19 me, but that letter contained two-fold pages
20 of how one goes about terminating a settlement
21 agreement out of the eight pages of that
22 document.

1 So on the second go around to
2 perfect their agreement, well this time the
3 letters are signed to the individuals who are
4 party, but they're not dated. And there's no
5 proof, for instance, of returned receipt
6 requested or certified mail that they were
7 ever received by the various parties to the
8 older agreements.

9 So in that matter Blaguard again
10 failed to meet the requirements of 25446D.

11 (Off mic comment)

12 MR. JAMES: Yes.

13 CHAIRPERSON MILLER: You're
14 referring to the 1995 agreement?

15 MR. JAMES: Yes.

16 MS. MAKRIS: We object because Mr.
17 James is out of standing because he did not
18 sign the 1995 agreement so he can't challenge
19 our request to terminate an agreement he isn't
20 a signatory to.

21 MR. JAMES: I'm not challenging
22 that. I'm saying that they didn't attempt to

1 reach those persons in a timely fashion as
2 required under the code.

3 MS. MAKRIS: What would be the
4 purpose of admitting that if not a challenge
5 to our request?

6 CHAIRPERSON MILLER: All right, I
7 understand what you're saying that he wasn't
8 a signatory to the understanding, but I also
9 want to ask you then. Is there a nexus
10 between the 1995 agreement and the 2002 or are
11 they just totally separate?

12 MS. MAKRIS: We requested to
13 terminate the voluntary agreements associated
14 with our license, period. And that includes
15 all of them.

16 So I don't, and that was never
17 contested. So now Mr. James is bringing up
18 the '95 agreement --

19 MR. JAMES: It's not a question --

20 MS. MAKRIS: -- he's not a
21 signatory.

22 CHAIRPERSON MILLER: Okay.

1 MR. JAMES: It's not a question of
2 whether it was contested. The protest equals
3 the contesting of the request.

4 The request did not contain and
5 the Blaguard's did not contain a reference of
6 the 1995 agreement. It did not say anything
7 about the persons who were party to that.

8 MS. MAKRIS: Okay, I don't know
9 what the Blaguard said, I'm not even --

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: Regardless.

12 CHAIRPERSON MILLER: Okay, your
13 objection is noted and we'll see. Are you
14 saying any more about that or are we moving on
15 to something else?

16 MR. JAMES: Yes, we're going to
17 move right along.

18 CHAIRPERSON MILLER: All right.

19 MR. JAMES: KCA Exhibit Number 4
20 is actually an affidavit from Ms. Makris that
21 the KCA did meet with them. And just to show,
22 I like the idea of using their actual exhibit

1 to show that we did meet with them, we
2 complied with the law as put forward in, you
3 know, there were no comments in this
4 particular affidavit that the KCA misbehaved
5 in any way or it did anything disrespectful.

6 I'd like to move to, yes, okay,
7 I'll do this one. KCA Exhibit number 6 is an
8 email exchange that was inadvertent but I
9 believe is --

10 MS. MAKRIS: I object to this.

11 MR. JAMES: -- very revelatory.

12 MS. MAKRIS: This is something --

13 MR. JAMES: I haven't made my
14 point yet for her to even object to, so --

15 CHAIRPERSON MILLER: Okay, which
16 one are you doing now?

17 MR. JAMES: KCA Number 6. These
18 so called unpleasant circumstances that
19 occurred between the KCA and the Applicant's.

20 You know, based upon our notifying
21 them that we were going to have a meeting as
22 we're required to when we're going consider

1 their application, Nicholas replied
2 inadvertently to me when he was writing to his
3 wife and I believe that they're reply in
4 reacting to my notifying them was revelatory
5 of the kind of --

6 MS. MAKRIS: I object to this.

7 CHAIRPERSON MILLER: Let him
8 finish and then you can object. Go ahead,
9 what?

10 MR. JAMES: You know, the kind of
11 display of, you know, the representation that
12 has been put forth about the KCA's activities.
13 I believe that if the Board reads this email
14 from them, which I received inadvertently, the
15 Board can make its own mind up about what it
16 thinks about that.

17 MS. MAKRIS: I think that A, it
18 serves absolutely no purpose, B, it's
19 incredible prejudicial and C, what Mr. James
20 had omitted from this exhibit an email in
21 which I sent back to him saying, this was
22 inadvertent, we do apologize and this is in

1 response to your behavior on April 10th, it
2 very much upset my husband.

3 So he's actually intentionally
4 omitted an email that references the agreed
5 misbehavior of the KCA in putting this in.
6 And I don't understanding what purpose --

7 CHAIRPERSON MILLER: I want to
8 exclude this as well. I don't think it's
9 relevant to the issues at hand. And you're
10 here for him to cross examine you about any
11 matters so we don't need an email on it. Do
12 you have a disagreement with that?

13 MEMBER JONES: I have a concern
14 related to that.

15 CHAIRPERSON MILLER: Okay, go
16 ahead.

17 MEMBER JONES: As I stated
18 previously --

19 CHAIRPERSON MILLER: It can be
20 outvoted. Go ahead.

21 MEMBER JONES: -- I think the
22 Licensee has made several statements and put

1 on a case about the actions and activities of
2 Denis James specifically and about the KCA as
3 a whole and how they were inappropriate,
4 improper, threatening, challenging and what
5 have you. I don't not think it's
6 inappropriate for Denis James, since we didn't
7 object and didn't prevent the Licensee from
8 putting on that case and presenting that
9 information and submitting evidence related to
10 that through their testimony.

11 CHAIRPERSON MILLER: Through their
12 testimony in which they can be cross examined.
13 When we have an email --

14 MEMBER JONES: Well with all due
15 respect he's here, he can be cross examined on
16 that by that individual because he is
17 technically on the stand. He is a witness
18 right now.

19 CHAIRPERSON MILLER: So do you
20 want to use your minutes to cross examine the
21 witnesses, the Applicants on this matter?
22 Because without, I think without --

1 MR. JAMES: Maybe.

2 CHAIRPERSON MILLER: -- their
3 being crossed examined I don't think it should
4 be admitted.

5 MR. JAMES: But they spent their
6 time.

7 MEMBER JONES: No, no, no.

8 CHAIRPERSON MILLER: Because we
9 had people --

10 MR. JAMES: They spent their time.

11 MEMBER JONES: They spent their
12 time on that. He could have cross examined,
13 he chose not, he tried to ask questions before
14 --

15 CHAIRPERSON MILLER: Whose he?

16 MEMBER JONES: He, Denis James,
17 excuse me. Right, and it was challenged.

18 CHAIRPERSON MILLER: Denis James
19 could have produced this document earlier.

20 (Crosstalk)

21 MR. JAMES: He has was --

22 MEMBER JONES: It was part of the

1 case.

2 CHAIRPERSON MILLER: Okay, fine.
3 My point is, all right, we're the ones that
4 are going to be looking at this but by itself
5 I don't think it's fair, the here, for them
6 not to be able to be cross examined and for us
7 to --

8 MEMBER JONES: They're here, I
9 don't understand. He's here, he's the
10 witness. Why can't they --

11 CHAIRPERSON MILLER: I think he's
12 talking about what they said in the email.

13 MEMBER JONES: This is an email --

14 CHAIRPERSON MILLER: Right.

15 MEMBER JONES: -- that they sent
16 to him. According to what he's saying, you're
17 looking at the email, I don't have it, are you
18 telling me that that's not an emails --

19 CHAIRPERSON MILLER: You don't
20 have one?

21 MEMBER JONES: Is that not an
22 email from them to him?

1 MR. JAMES: Enough copies were
2 provided.

3 CHAIRPERSON MILLER: Yes, here you
4 go, I'm sorry. It's an email, if I understand
5 correctly, that was intended from husband to
6 wife, or whatever, and inadvertently got sent
7 to --

8 MEMBER JONES: Regardless of
9 whether it inadvertently or not --

10 CHAIRPERSON MILLER: All right,
11 Mr. James --

12 MEMBER JONES: -- the information
13 was sent. This is a real email that was sent.

14 CHAIRPERSON MILLER: But emails
15 are hearsay and we usually --

16 MEMBER JONES: We do not, not
17 exclude --

18 CHAIRPERSON MILLER: Yes.

19 MEMBER JONES: We don't exclude
20 hearsay.

21 CHAIRPERSON MILLER: No, we don't.
22 But if the person is here to be cross examined

1 than that is the better evidence. You don't
2 take in the email by itself.

3 MR. JAMES: And I would be quite
4 willing to be crossed examined but they
5 already spent their time.

6 MEMBER JONES: And he is wiling --

7 CHAIRPERSON MILLER: Not you to be
8 crossed examined. This is, if you're saying
9 --

10 MEMBER JONES: We don't even know
11 that there is something to be cross examined
12 without this document. That's what I'm not
13 understanding where you're coming from in
14 terms of --

15 CHAIRPERSON MILLER: Okay.

16 MEMBER JONES: -- you're saying
17 that they can be cross examined.

18 CHAIRPERSON MILLER: I'm saying,
19 are you entering this for what reason? For
20 what they said, correct?

21 MEMBER JONES: Is this rebuttal to
22 what they said regarding the fact that you

1 were aggressive, attacking?

2 MR. JAMES: It is rebuttal.

3 MEMBER JONES: So why is this not
4 acceptable?

5 MS. MAKRIS: How is it rebuttal to
6 do that though? I mean it's something that's
7 calling someone an idiot. I mean I don't
8 understand how that's rebuttal.

9 MEMBER JONES: I haven't had a
10 chance to evaluate it because --

11 CHAIRPERSON MILLER: Look at it.

12 MEMBER JONES: -- it hasn't been
13 accepted.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER JONES: Therefore I can't
16 tell you how it is or how it isn't. All I
17 know is that this individual is trying to put
18 on his case and it's his every right to put
19 forward evidence to refute or rebut the
20 challenges that you've put forward.

21 CHAIRPERSON MILLER: The point is
22 he wants to use their statement not his

1 statement.

2 MEMBER JONES: But it's a
3 statement that he got from them that he has an
4 email of --

5 CHAIRPERSON MILLER: An email.

6 MEMBER JONES: -- that he has.
7 It's not like he took their statement and is
8 --

9 CHAIRPERSON MILLER: Okay.

10 MEMBER JONES: -- we're speaking
11 on it as hearsay. This is written to him.

12 CHAIRPERSON MILLER: That's, it's
13 same thing, that's hearsay. An email is
14 hearsay.

15 MEMBER JONES: How is that the
16 same thing?

17 MR. JAMES: I think it's direct
18 evidence.

19 MEMBER JONES: Is there somebody
20 else in here with a law degree, because I
21 don't have one. So that doesn't make any
22 sense to me though.

1 MR. HART: I do.

2 (Cross talking)

3 MEMBER JONES: Am I the idiot?

4 MR. HART: No as far, I couldn't
5 imagine that this wouldn't be admissible.

6 MEMBER JONES: Thank you.

7 MR. HART: You're talking to me if
8 it wasn't.

9 CHAIRPERSON MILLER: Well then I
10 think that we can give them extra time to
11 rebut then, if they need to, if they want to.

12 MR. JAMES: It's not being offered
13 to prove the truth of the assertion.

14 CHAIRPERSON MILLER: It isn't?

15 MR. JAMES: It's being offered to
16 demonstrate --

17 MR. HART: His state of mind.

18 MR. JAMES: -- animus.

19 MR. HART: They're state of mind
20 that --

21 MR. JAMES: For a state of mind on
22 their part based on what they say. It's not

1 the truth of what it said that it's being
2 offered for.

3 MS. MAKRIS: I don't think --

4 MR. JAMES: Hearsay only applies
5 to statements that are offered to show the
6 proof --

7 CHAIRPERSON MILLER: Am I being
8 out voted?

9 MR. HART: I think the Board --

10 MS. MAKRIS: Shouldn't it be
11 offered to --

12 MR. HART: Excuse me.

13 MS. MAKRIS: -- rebut the truth of
14 what my statement, about Mr. James being
15 aggressive towards me and what he said, which
16 I testified to on the stand and which I was
17 cross examined to.

18 And now there's a statement that
19 doesn't even name Mr. James. It does not say
20 Mr. James this or that. It's being offered to
21 rebut the truth of my statement that he was
22 aggressive to me which I don't understand how

1 that's even possible.

2 MR. HART: He personally received
3 it. But does the Board even exclude hearsay?

4 MEMBER JONES: No.

5 CHAIRPERSON MILLER: It does --

6 MEMBER SILVERSTEIN: Oh, it can be
7 excluded.

8 CHAIRPERSON MILLER: We can
9 exclude it.

10 MEMBER SILVERSTEIN: Yes.

11 CHAIRPERSON MILLER: We can
12 exclude it.

13 MEMBER JONES: Oh, be clear on how
14 you make that statement because we always tell
15 witnesses we can --

16 MEMBER SILVERSTEIN: We can accept
17 --

18 MEMBER JONES: we always tell
19 parties that --

20 MR. HART: Okay.

21 MEMBER JONES: -- hearsay is
22 acceptable at administrative hearings.

1 CHAIRPERSON MILLER: But we always

2 --

3 MR. HART: That was my
4 understanding.

5 CHAIRPERSON MILLER: We always say
6 we give it the weight it deserves because the
7 party isn't here to be cross examined. That's
8 what we usually say.

9 (Crosstalk)

10 CHAIRPERSON MILLER: The party is
11 here to be --

12 MEMBER JONES: Always accepted.

13 CHAIRPERSON MILLER: All right.

14 MR. JAMES: Do you have all the
15 affidavits? Our --

16 (Crosstalk)

17 CHAIRPERSON MILLER: But we can,
18 no, we do accept hearsay. We do accept
19 hearsay unless it's very unreliable or usually
20 if the person is here to testify themselves,
21 which is the case. But this is not a main
22 issue to testify on, but that's, you know.

1 MS. MAKRIS: We're objecting based
2 on relevance because it doesn't list anyone,
3 it doesn't say anything, I mean as well as
4 hearsay.

5 CHAIRPERSON MILLER: They say that
6 the relevance goes to your views of Mr. James?

7 MEMBER JONES: I just don't
8 understand --

9 MS. MAKRIS: But it doesn't even
10 name Mr. James --

11 (Crosstalk)

12 CHAIRPERSON MILLER: All right, so
13 if you all want to overrule me fine, we can
14 accept it and give it the weight --

15 MEMBER JONES: I say we accept it
16 and --

17 CHAIRPERSON MILLER: -- that it
18 deserves.

19 MEMBER JONES: -- we give it the
20 weight that it deserves.

21 CHAIRPERSON MILLER: Is that what
22 you want to do?

1 MEMBER SILVERSTEIN: Yes, I say we
2 accept it, give it the weight it deserves and
3 we move on. Mr. James has three minutes
4 remaining.

5 CHAIRPERSON MILLER: Yes, exactly.
6 Okay, exactly.

7 MEMBER JONES: And just to be
8 clear, Mr. James, this back and forth
9 discussion wasn't being counted against your
10 time.

11 MR. JAMES: So finally KCA Exhibit
12 Number 7 in that, a letter written to Ruthanne
13 Miller Chair on April 10th detailing how we
14 found the Applicant's request to terminate to
15 be deficient with regard to 25446D and
16 subsequent provisions of that section. So I
17 won't read that, I won't take the time.

18 It's a letter that's been
19 presented before for a different
20 establishment, but it's right around the time
21 that --

22 MEMBER JONES: Okay.

1 MR. JAMES: -- it's written ten
2 days after the deadline when perfected
3 applications should have been accepted by
4 ABRA.

5 Not counting the fact that for
6 some reason the Board allowed ten additional
7 days with no basis in the code to allow ten
8 additional days. That's the final part.

9 CHAIRPERSON MILLER: This was
10 seven days after those ten days, is what you
11 said?

12 MR. JAMES: No, this is ten days
13 after the deadline. Well perhaps nine days,
14 depending on how you count it.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: But April 1st was when
17 all the renewal applications and payments had
18 to be in place for you to continue serving
19 alcohol on April 2nd.

20 CHAIRPERSON MILLER: Okay, so are
21 you seeking to move all of these into
22 evidence?

1 MR. JAMES: Yes.

2 CHAIRPERSON MILLER: Which is 1
3 through 7. Okay, we've already dealt with 6
4 I guess. So are there any objections?

5 MS. MAKRIS: Yes, we also object
6 to 1 and 2 because they're already part of the
7 record. They actually have ABRA receive
8 stamps on them so I don't understand why we're
9 just adding extra stuff to the record.

10 CHAIRPERSON MILLER: Okay.

11 MS. MAKRIS: Same thing with
12 Number 4, already part of ABRA record.

13 CHAIRPERSON MILLER: So why are
14 you objecting?

15 MS. MAKRIS: Because I mean it's
16 fine if you want to add it once again to the
17 ABRA record, that's, I just don't --

18 CHAIRPERSON MILLER: Okay.

19 MS. MAKRIS: -- I think it's
20 repetitive. If we want to put in ABRA's email
21 to what their decision was to deal with
22 licenses, that's fine I'm sure they sent that

1 to everyone.

2 And then I think this is another
3 thing that's already in the record, Number 7.

4 So that's also fine. What is Number 3?

5 CHAIRPERSON MILLER: Okay.

6 MS. MAKRIS: I mean I would object
7 to note on the record that they are trying to
8 put into place Blaguard's food sales and
9 neither party has any, we did not have the
10 food sales at the time of their protest of us.
11 They did not object based on our food sales
12 and so I don't think it really pertains, but
13 that's simply my --

14 CHAIRPERSON MILLER: Okay, wait a
15 minute. I'm dealing with the proposed
16 Exhibit's 1 through 7. So what you're
17 addressing, is that in there?

18 MS. MAKRIS: It's the first 3.

19 MR. JAMES: Well I didn't actually
20 speak on that.

21 MS. MAKRIS: Okay, I don't know
22 where it's from, I don't --

1 MR. JAMES: If I have any time
2 left then I will just say, the KCA views
3 compliance with the food sales for restaurants
4 to be extremely imperative as it relates to
5 peace, order and quiet. If you're not serving
6 enough food, your patrons are more likely to
7 be boisterous and drunk and noisy in the
8 neighborhood afterward.

9 And also the relationship between
10 food service and having the entertainment
11 endorsement, if you're found by the Board to
12 not be in compliance with your food sales the
13 Board can remove the entertainment. So it's
14 a direct relationship between food sales and
15 entertainment and peace, order and quiet.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER SILVERSTEIN: Times up for
18 all parties.

19 CHAIRPERSON MILLER: But they can
20 address the exhibits, that's not in the time.

21 MS. MAKRIS: I would simple
22 respond to state that, to his statement about

1 my objection that in terms of percentages and
2 all that, it's done based on 49 seats anyways.
3 So it's not even accurate.

4 CHAIRPERSON MILLER: Okay, so
5 moving on.

6 MS. MAKRIS: But the Board can
7 give it whatever weight it decides.

8 CHAIRPERSON MILLER: Okay, so that
9 goes to the merits of it. So I'm going to let
10 in, unless I get overruled, all these Exhibits
11 on grounds that most of them are public
12 records anyway, if not all of them. And the
13 food sales one was an issue in the hearing so
14 I think it's relevant enough for an exhibit to
15 come in on that. Okay?

16 So I understand that everyone is
17 out of time now which brings us to closing.
18 Which you have five minutes max. Are you
19 ready?

20 MS. MAKRIS: Do I have --

21 MEMBER SILVERSTEIN: Each side has
22 five minutes.

1 MS. MAKRIS: I thought I was
2 second?

3 MR. HART: You get five minutes.

4 MEMBER SILVERSTEIN: For closing.

5 MS. MAKRIS: Am I second?

6 CHAIRPERSON MILLER: The Applicant

7 --

8 MEMBER SILVERSTEIN: I think
9 everything that's been said, could have
10 possibly been said has already been said but
11 you have five minutes to say --

12 MS. MAKRIS: Okay, I'll --

13 CHAIRPERSON MILLER: Just to be
14 clear each side means Applicant's and
15 Protestants. So Protestant's as a group have
16 five minutes.

17 MS. MAKRIS: Throughout this
18 hearing we've shown three things. We've shown
19 a good faith effort to negotiate. I actually
20 think that that's been conceded. It's been
21 put into the record how many hours, how much
22 time I've put into this.

1 Other testimony that was offered
2 here today tried to show that we've tried to
3 be very reasonable from the beginning of this.
4 We asked for some pretty simple stuff and
5 we're presented with this very, very
6 restrictive voluntary agreement.

7 One in which that, one that none
8 of our competition has to deal with. There
9 were a lot of inconsistencies in the
10 testimony.

11 First of all Mr. Hart stated that
12 L'Enfant has a settlement agreement. If you
13 look at the exhibit, which is straight from
14 William Hager, L'Enfant's address is 2018 18th
15 Street, they do not have a settlement
16 agreement. It is not in the compilation of
17 settlement agreements from Adams Morgan.

18 MR. HART: I didn't say that.

19 MS. MAKRIS: I'm sorry, at least
20 not with the ANC. Duplex Diner does not have
21 a settlement agreement with the ANC. Jack
22 Rose does not have a settlement agreement with

1 the ANC.

2 So we have been singled out. We
3 have been given this agreement by which we
4 must abide which is incredibly restrictive.

5 It's been referred to as modest.
6 Not being able to construct your windows in a
7 way that open I would never call modest. Not
8 being allowed to even apply foreign
9 entertainment endorsement I do not believe is
10 modest.

11 At that time the parties would
12 then get to protest and get any, and try and
13 get any sort of confessions they'd like. But
14 they choose not to do that.

15 They chose instead to say, here's
16 all the extra stuff we want from you now just
17 to be able to apply for entertainment
18 endorsement. That is why one of the reasons
19 this was very unsuccessful.

20 There's been a lot of animosity in
21 this. It was very upsetting for my husband to
22 watch Mr. James behavior towards me.

1 We concede that, that there has
2 been a great deal of animosity. And
3 unfortunately we're not able to come to an
4 agreement, that's why we're here. Because
5 we've tried and tried and we couldn't agree.

6 So we have shown that we tried.
7 We have shown that, I know my husband's
8 testimony was a little bit maybe all over the
9 place.

10 By fact neighborhood conditions
11 have changed. But there has been a serious
12 economic downturn in Adams Morgan in the past
13 15 years.

14 This agreement was signed in 2002.
15 That is 11 years. There is economic data
16 showing there is significant downturn in that
17 time.

18 My husband also testified that
19 L'Enfant, Duplex Diner, Jack Rose, all of
20 these are new business that did not exist at
21 the time. These people were not competition.

22 And that has been a significant

1 change that is beyond our control that
2 necessitates us being able to do the same
3 things that they do. And that was also
4 testified.

5 Two, good faith effort. Oh,
6 peace, order and quiet, sorry. That we've
7 also shown that the Blaguard will not impact
8 the peace, order and quiet of our
9 neighborhood. We've shown that we don't.

10 There were nine people who are
11 willing to go take time out of their day to
12 write affidavits and have them notarized and
13 sworn who live within less than one block of
14 our establishment saying how great the
15 Blaguard is, how great the owners are, how it
16 creates a neighborhood, how we are a huge
17 component of the neighborhood, how responsible
18 we are, how it doesn't bother them now.

19 Nobody has been able to note a
20 single complaint ever lodged against the
21 Blaguard. Not one by anyone ever in terms of
22 noise, in terms of our operations or in terms

1 of anything we do.

2 Mr. Hart testified that he has
3 observed people leaving the Blaguard drunk.
4 Well I'm sure he's also observed people
5 leaving the Blaguard drunk, I'm sorry, leaving
6 establishments, everyone in Adams Morgan
7 drunk.

8 Anywhere there's alcohol someone
9 may drink and they may leave intoxicated.
10 This is simply the very basis of having a
11 liquor license.

12 And all of that was ignored. It
13 was ignored that all of these conditions that
14 they speak of that apply to us apply to anyone
15 else. Yet we are the only people who have
16 been fought tooth and nail to keep this
17 settlement agreement in place. It doesn't
18 even make sense.

19 So that is why. And so many of
20 these circumstances are beyond our control.
21 The economy, the new businesses, the new
22 increased competition. The new increased

1 competition on U Street. All that's in that
2 report.

3 One minute left? And so
4 ultimately I think there's been a lot of
5 inconsistent testimony, I think that we have
6 put in a lot of evidence of these three things
7 either through testimony or exhibits.

8 And ultimately the reason we are
9 here today is because we were never given a
10 reasonable alternative and because the ANC and
11 KCA simply do not want to ever have anything
12 terminated, ever. And that is why we are
13 here. So we ask that you grant our request
14 and that's all.

15 CHAIRPERSON MILLER: Thank you.

16 MS. MAKRIS: Thank you so much for
17 your time and for listening to all of this.

18 CHAIRPERSON MILLER: Thank you.

19 Okay.

20 MR. HART: Thank you, thank you
21 for your time. The fundamental point here is
22 that the Blaguard has not met their

1 obligations under this statute, under 25446.

2 They have not satisfied the three prongs.

3 I think there's still arguments
4 outstanding that they didn't make a good faith
5 effort to contact the KCA, with regard to
6 prong one.

7 With regard to prong two, that
8 they need to show that there is a need for
9 this caused by either a change of
10 circumstances in the neighborhood or something
11 beyond their control. Again, I don't think
12 that they demonstrated this point in a cogent
13 manner.

14 With regard to L'Enfant, they
15 actually do have an agreement with both the
16 ANC and the KCA.

17 With regard to Dahlak, they have
18 an agreement with the ANC only.

19 Jack Rose, as I said in my
20 testimony, is a new establishment. It did not
21 have an existing agreement.

22 It also is an establishment that

1 is a dining establishment and provides food to
2 its customers. It's a far different
3 establishment than the Blaguard.

4 And then the third point, and the
5 other point that they make to justify the
6 second prong is that this economic downturn in
7 some way shows that the settlement agreement
8 should be negated. I don't see the connection
9 there.

10 And if we were to negate
11 settlement agreements simply on the basis of
12 an economic downturn, all of the settlement
13 agreements in Adams Morgan would go away. And
14 that's not how we've operated with the other
15 55 licensees that we've worked with throughout
16 this entire eight month process.

17 And then the third point is that I
18 don't think that they've demonstrated that
19 this will not have an adverse, an adverse
20 impact on the neighborhood. I think quite to
21 the contrary it will have an adverse impact.

22 You remove this settlement

1 agreement and it takes away the requirement
2 that, the noise requirements and the fact that
3 they have to keep their windows closed, for
4 example.

5 You add to that the fact that
6 they're applying for an entertainment
7 endorsement and they will be bringing in young
8 people, partiers, live bands, DJ's, promoters,
9 cover charges, that's going to lead to an
10 adverse impact on the neighborhood.

11 And this statement that we never
12 gave them a reasonable alternative is simply
13 false. That is not true.

14 The ANC devoted a tremendous
15 amount of resources, time and patience to
16 working with the Blaguard. We exchanged
17 numerous redlines with them.

18 And in fact we agreed to all of
19 the provisions with which they've complained
20 about. The opened doors, the closed windows.
21 That was all, we agreed to all of that. The
22 trash can, those provisions we had no problem

1 with.

2 And to be perfectly honestly, we
3 would have no problem entering into an
4 agreement with them at some future date. And
5 we're happy to update the agreement and make
6 it as amendable as we possibly can for them.

7 And I think, as the evidence has
8 shown, if anyone has been rude or offensive or
9 unreasonable, it hasn't been the ANC. And
10 from everything that I saw throughout the
11 negotiation process, the KCA, while it was
12 certainly committed and passionate and
13 assertive about its positions, was never in
14 any way disrespectful in a way that they said
15 that they were going, disrespectful or said
16 that they would not enter into negotiations.
17 The KCA was more than willing to negotiate
18 throughout this entire process.

19 And I was just like to end by
20 asking that the Board keep the settlement
21 agreement in place for the peace, order and
22 quiet of the neighborhood. I think as an ANC

1 Commissioner in good conscious I have to ask
2 for that.

3 And that you would allow us to
4 eventually enter into a new settlement
5 agreement with them in the future. Thank you.

6 CHAIRPERSON MILLER: Thank you.

7 MR. JAMES: I don't know if I have
8 any time, but --

9 MEMBER JONES: You've got one
10 minute.

11 CHAIRPERSON MILLER: No, you have,
12 oh, he used four minutes? Sorry.

13 MEMBER JONES: Yes.

14 MR. JAMES: Okay, I'm glad to
15 share with the ANC.

16 CHAIRPERSON MILLER: Sorry, okay.

17 MR. JAMES: Change in the
18 neighborhood, what change? There's been a
19 moratorium in place since the year 2000.

20 The number of restaurant licenses
21 has varied only slightly because between 2004
22 and 2008 there was a time where you could get

1 a new restaurant license. So a few licenses
2 came in at that point.

3 But basically it's stuck, it's
4 been sitting around 75 on premise licenses
5 within the Adams Morgan moratorium zone for
6 that whole period of time.

7 So what changed? There was a
8 streetscape that happened that vastly improved
9 the look and the appearance of the
10 neighborhood and widening the sidewalk so that
11 business could benefit by having sidewalk
12 cafes.

13 This was not detrimental, this was
14 positive. And residents suffered throughout
15 the construction just as business did. We
16 lost parking on 18th Street for the betterment
17 of the community.

18 The population in Adams Morgan
19 hasn't changed. Between 2000 and 2010,
20 because I participated in the redistricting
21 process, I've learned that the population
22 changed by two persons. 16,435 at our last

1 sentence and it was two persons different than
2 that in 2010.

3 There have been no significant
4 changes in Adams Morgan that would affect this
5 business in any way that it would affect all
6 of them equally.

7 I would beg the Board not to
8 terminate this agreement despite the
9 unpleasantness of this hearing and, not the
10 hearing, well some of the things that were
11 said were not from the hearing, but despite
12 the obvious unpleasantness between the KCA and
13 the Applicants we would still be happy to work
14 with them beyond today to come to an
15 agreement. We gave tons of ground --

16 MEMBER SILVERSTEIN: You're done.

17 MR. JAMES: -- towards the
18 agreement. Without getting into the
19 agreement, the agreement did allow an
20 entertainment endorsement, it did allow live
21 music, it did allow windows to be open at
22 certain hours. And I think that perhaps upon

1 reflection we could resume these negotiations
2 and come up with a final product. Thank you
3 very much.

4 CHAIRPERSON MILLER: Okay, thank
5 you everyone. So I'm going to close the
6 record now, all the documents are in, and ask
7 if the parties wish to file proposed findings
8 of facts and conclusions of law or waive their
9 right to do so?

10 If you need an explanation about
11 that I can provide it. Okay. So the law
12 provides that for those parties who want it.

13 Transcripts going to be available
14 in about two weeks I think, two to three
15 weeks.

16 And then the parties could file
17 within 30 days of receipt of the transcript,
18 which reflects all the evidence that's in the
19 record and proposed findings of facts and
20 conclusions of law, are which our orders
21 basically look like.

22 But you would be proposing facts

1 that you would be asking the Board to find in
2 this case. And then based on those facts than
3 recommend conclusions of law that would be
4 looked at by the Board in their deliberations
5 and also for the attorneys drafting the order.

6 For the most part we don't get
7 those. Most part people do not do that. It
8 is, you know, it's somewhat burdensome, but it
9 is something you have a right to do if you
10 would like to avail yourselves of it. Does
11 that help?

12 MS. MAKRIS: I don't think we want
13 to, we're good --

14 CHAIRPERSON MILLER: Okay.

15 MS. MAKRIS: -- with whatever has
16 happened --

17 CHAIRPERSON MILLER: Otherwise the
18 Board looks at the record and deliberates
19 based on the record.

20 MS. MAKRIS: We trust the Board's
21 recollection, review of the record.

22 CHAIRPERSON MILLER: Okay.

1 MR. HART: We also trust the
2 Board, but we would not like to waive our
3 right to providing, it's a factual statement
4 right?

5 CHAIRPERSON MILLER: It's like a,
6 if you go online or if you've seen any of our
7 Board orders, it's almost like a proposed
8 order.

9 MR. HART: Okay.

10 CHAIRPERSON MILLER: You're
11 recommending one, two, three, four, five,
12 whatever facts that the Board should find and
13 then you're arguing based on those facts that
14 we should find that based on 446, whatever,
15 based on the appropriateness standards or
16 whatever, those kind of legal conclusion.

17 MR. HART: We might not submit
18 one, but we would not want to waive our right
19 at this time.

20 MS. MAKRIS: Upon you're further
21 explanation I think we'll not waive too and
22 then we'll have the options pending one.

1 CHAIRPERSON MILLER: Okay, so we
2 would wait, it does delay the order too, but
3 I don't know that anybody is going to gain
4 prejudice by that.

5 MS. MAKRIS: Well I mean we --

6 CHAIRPERSON MILLER: That's all
7 right.

8 MS. MAKRIS: -- we really don't
9 want a delay at all but if the other parties
10 --

11 CHAIRPERSON MILLER: Right,
12 exactly.

13 MS. MAKRIS: -- it does make a
14 difference so we would like to reserve ours as
15 well then.

16 CHAIRPERSON MILLER: Okay, so if
17 you at any time really decide that you're not
18 going to file one of these, would you let us
19 and the Applicant know?

20 MR. HART: Absolutely.

21 CHAIRPERSON MILLER: And then we
22 won't wait on the order.

1 MR. JAMES: Just for the record,
2 KCA does not waive.

3 CHAIRPERSON MILLER: Okay, and you
4 know that you would serve, I don't know if I
5 told you that you need to serve your proposed
6 findings of facts and conclusion of law filed
7 with the Board and serve it on all the
8 parities?

9 MR. JAMES: Okay.

10 CHAIRPERSON MILLER: Okay.

11 MR. HART: We'd like to confer
12 with the ABC Committee?

13 CHAIRPERSON MILLER: Okay, that's
14 fine. That's fine. Just let everybody know
15 if you make a decision that you're not going
16 to do it.

17 MR. HART: Okay.

18 CHAIRPERSON MILLER: Okay. So,
19 and then the Board will issue a decision
20 within 90 days from when that time is over,
21 when you will have had the 30 days after the
22 filing.

1 No, sorry. Transcript, then you
2 have 30 days, and then the Board will
3 deliberate on it and then 90 days from there.

4 All right, so all I have left, and
5 you don't have to hang around for this, is the
6 Board's going to vote on deliberating in
7 closed session. So if you want to listen you
8 can, but there's no more required of you all.

9 Okay, so as Chairperson of the
10 Alcoholic Beverage Control Board for the
11 District of Columbia and in accordance of
12 Section 405 of the Open Meetings Amendment Act
13 of 2010, I move that the ABC Board hold a
14 closed meeting for the purpose of seeking
15 legal advice from our counsel on Case Number
16 13-PRO-00125, the Blaguard, per Section 405B
17 of the Open Meetings Act of 2010 and
18 deliberating upon this case for the reason
19 cited in Section 405B-13 of the Open Meetings
20 Amendment Act of 2010. Is there a second?

21 MEMBER JONES: Second.

22 CHAIRPERSON MILLER: Mr. Jones has

1 seconded the motion and I'll take a roll call
2 vote now that the motions been seconded. Mr.
3 Silverstein?

4 MEMBER SILVERSTEIN: My --

5 CHAIRPERSON MILLER: You second?

6 MEMBER SILVERSTEIN: Aye.

7 CHAIRPERSON MILLER: Mr. Jones?

8 MEMBER JONES: I agree.

9 CHAIRPERSON MILLER: And Ms.

10 Miller agrees therefore the motion passes by
11 a vote of 3,0,0. I hereby give notice that
12 the ABC Board will hold a closed meeting in
13 the ABC Board conference room pursuant to the
14 Open Meetings Amendment Act of 2010 upon
15 receipt of the proposed findings of facts and
16 conclusions of law and issue an order within
17 90 days of that date. Okay, thank you.

18 (Whereupon, the hearing in the
19 above-mentioned matter was adjourned at 7:47
20 p.m.)

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