

1 CHAIRPERSON:

2 DONOVAN ANDERSON, Presiding

3

4 MEMBERS OF THE BOARD:

5 NICK ALBERTI

6 JAMES SHORT

7 MIKE SILVERSTEIN

8 RUTHANNE MILLER

9 OTHER PERSONS PRESENT

10 O'BRIEN

11 JACKIE BLUMENTHAL

12 ELIZABETH WEBBER

13 DANIEL PINA

14 MILTON J. GROSSMAN

15

16

17

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

2 [1:30 p.m.]

3 CHAIRPERSON ANDERSON: This hearing was
4 scheduled for 11:00 and no parties were here for
5 10:30, and you were here timely, and as Chair I
6 am responsible for your delay. So I just want to
7 apologize to you, that was my decision. We
8 deliberated on a matter back there and I thought
9 it was important to finish it, but I know that
10 you have more important things to do so I do
11 apologize and I'm apologizing, as Chair it's my
12 responsibility for us to be timely, but we had a
13 contentious decision back there and I decided to
14 extend it, but I do, again, want to apologize for
15 my tardiness and the board members here. Okay?

16 MS. BLUMENTHAL: Thank you.

17 CHAIRPERSON ANDERSON: The next case on
18 our agenda is there's a public hearing -- a
19 moratorium hearing -- on the Glover Park. And
20 the folks I would like to call up are Ms. Jackie
21 Bloomfield, the chair of ANC commissioner,
22 Melissa Lane, Ms. Elizabeth Weber and Ms.

1 Sheffield. Are these all the folks that we have
2 here?

3 MS. BLUMENTHAL: Yes.

4 CHAIRPERSON ANDERSON: Okay, and we have
5 a separate panel that we'll call later on. The
6 hearing that we have, it's the Glover Park
7 Moratorium Zone. We're here today pursuant to
8 D.C. Official Code 25354 to conduct a public
9 hearing and receive testimony and a written
10 request of the Advisory Neighborhood Commission
11 to extend and amend the existing Glover Park
12 Moratorium Zone which is set to expire May 3,
13 2016, pursuant to DCMR 23-308. On December 4,
14 2015, ANC 3B submitted its petition to renew and
15 modify the current moratorium. Specifically ANC
16 3B seeks two things: That the board extend the
17 existing moratorium for another five years, and
18 two, that the cap on the number of Retailers
19 Class CR licenses be removed. It is also my
20 understanding that the Glover Park Citizens
21 Association voted to support ANC 3B's
22 recommendation at its regularly scheduled meeting

1 on November 3, 2015. Finally, I understand that
2 on February 1, 2016, the ANC considered and
3 rejected a request from Rite Aid Pharmacy to
4 remove the prohibition on retailer class A
5 licenses from the moratorium. The CPCA also
6 supports.

7 I will begin this hearing by calling on
8 the witnesses who notified the agency in advance
9 regarding the desire to address the board. Each
10 witness will be granted no more than 10 minutes
11 to speak. If time permits, I will also entertain
12 comments from other interested parties who wish
13 to be heard but who did not sign up to speak
14 prior to today's hearing. I will then open the
15 hearing to questions from the board. Yes sir?
16 Please also identify yourself for the record.

17 MR. GROSSMAN: For the record, Mr.
18 Chairman, I am Milton J. Grossman and I'm at the
19 table as an attorney for GPCA and ANC 3B.

20 CHAIRPERSON ANDERSON: Okay, thank you
21 sir. How do we want to do this? Who wants to
22 speak first?

1 MS. BLUMENTHAL: I will speak first and
2 then Melissa and then Elizabeth.

3 CHAIRPERSON ANDERSON: Fine. And they
4 can -- please identify yourself for the record as
5 you speak. You can go ahead, please. Thank you.

6 MS. BLUMENTHAL: Okay. I am Jackie
7 Blumenthal, I'm the chairman of ANC 3B which
8 serves Glover Park and Cathedral Heights. As you
9 said, Mr. Chairman, you have a copy of our
10 petition to extend and amend the Glover Park
11 liquor license Moratorium and you have our formal
12 ANC resolution in which we unanimously approved
13 that proposal, and you have a subsequent
14 resolution which is dated February 11, and I
15 think you said February 1, in which the
16 commission considered and rejected a request from
17 Rite Aid Pharmacy to remove class A mutual
18 service liquor store licenses from the
19 moratorium.

20 Now, we're aware that Mr. O'Brien is here
21 representing Rite Aid to challenge that aspect of
22 our moratorium petition, and I will address our

1 community's concern about class A licenses in
2 relation to the Rite Aid request. First, I'd
3 like to testify in support of our vision for the
4 next phase of the Glover Park liquor license
5 moratorium. Our moratorium has been in place for
6 twenty years and it has done much to revitalize
7 and stabilize the small Glover Park commercial
8 district that runs for just three blocks along
9 both sides of Wisconsin Avenue. Starting in 2004
10 and every renewal period thereafter, we have been
11 gradually easing the moratorium. First, we
12 removed the DR licenses from it, then in 2008 we
13 added three CR licenses increasing the cap to 12.
14 In 2012 we removed Class D licenses and increased
15 the CR cap to 14 and now we are ready to lift the
16 CR cap altogether. Today, we have 12 active CR
17 licenses and one CR in safekeeping and one CR
18 license has been available under moratorium for
19 almost three years. That, and the fact that we
20 no longer have the glut of vacant properties are
21 the main reasons we are seeking to amend the
22 moratorium by removing CR licenses. It looks

1 like 12 or 13 restaurants might be all our
2 infrastructure can accommodate. At last count
3 43% of our store fronts are occupied by
4 establishments licensed to sell alcohol. On one
5 block is a cluster of 10 ABC licensed
6 establishments and even though I have been
7 talking about restaurant licenses, what really
8 sustains these establishments are mimosas with
9 brunch on weekends, happy hours after work and a
10 robust late night bar scene.

11 Consequently, we are still dealing with a
12 significant disruption of the peace, order and
13 quiet due to a high concentration of liquor
14 licenses in a very small area. The block with 10
15 licenses is plagued by excessive noise, sidewalk
16 smokers, pedestrian crush and vehicle and
17 pedestrian safety issues as taxi and Uber cars
18 are constantly dropping people off and picking
19 others up.

20 Directly behind this block is a dense
21 residential neighborhood of row houses and at one
22 end of it is a large condo building called The

1 Sheffield. You will hear testimony from
2 Elizabeth Webber, a resident of that building.
3 Since there is very limited parking along
4 Wisconsin Avenue, patrons of the bars park in the
5 neighborhood when they go home at 2:00 or 3:00 in
6 the morning their loud and often rowdy voices
7 reverberate along the quiet streets.

8 At the center of this block is Mason Inn,
9 a CT licensee with an entertainment endorsement
10 and, by far, our most troublesome establishment.
11 The board has received a letter from Malia Brink,
12 also signed by several of her neighbors detailing
13 the extent of that trouble. Ms. Brink does not
14 live directly behind Mason Inn but across
15 Wisconsin Avenue three long blocks away, behind a
16 five-story hotel. She and her neighbors are
17 constantly disturbed by the noise from live bands
18 at the Mason Inn, all that distance away. Mason
19 Inn is a flagrant violator of regulations and a
20 purveyor of cheap beer and mixed drinks with no
21 food. It is the example that we don't want
22 repeated by allowing more CT or CN licenses to be

1 issued in our moratorium zone.

2 We know that some of our establishments
3 struggle every quarter to make the food/drink
4 balance that is required of CR licensees.
5 Opening up the availability of tavern licenses
6 would give them options to stop serving food
7 entirely. This would not only deprive our
8 neighborhood of local dining venues, but also
9 create a potential for more disorder and
10 disruption than we already contend with as a
11 result of too much alcohol. Another reason we
12 seek to continue the moratorium on issuing tavern
13 and club licenses, is because of our two
14 grandfathered nude dancing establishments.

15 As the only neighborhood in ward 3 with
16 such entertainment, the last thing we need is
17 more nightclubs. An out-of-control nightclub
18 scene was part of what prompted the moratorium in
19 the first place. The one active nude club, Good
20 Guys, has been at Glover Park for at least 50
21 years. We have made our peace with it mostly
22 because the owners endeavor to control the

1 potential for trouble that is inherent in their
2 business model. Sometimes they fail but at least
3 they try. In fact, Good Guys often complains to
4 us how disruptive it is for them when groups of
5 inebriated young men J-walk across Wisconsin
6 Avenue late at night and come into the nude club
7 with no idea of how to behave.

8 The other nude club, formerly known as
9 JP's, was evicted from its grandfathered location
10 in July 2014 for nonpayment of rent and its
11 liquor license was seized as drug proceeds by the
12 federal authorities. I won't go into the long
13 sordid tale that reached such a predictable end,
14 but that license is still in play and that
15 building is still vacant. We have reasons to
16 fear that JP's could come back to Glover Park
17 which makes it even more imperative to keep the
18 ban on issuing new nightclub licenses in the
19 Glover Park liquor license moratorium.

20 We are asking that the moratorium be
21 extended for five years this time. At the last
22 renewal we asked for just a three-year extension

1 specifically because the neighborhood wanted more
2 restaurants but was divided about totally lifting
3 the cap. As I said, our experience since then
4 has convinced everyone that removing CR licenses
5 from the moratorium is unlikely to destabilize
6 the neighborhood. I will point out, however,
7 that we are fortunate right now to have a group
8 of responsible and responsive owners and
9 operators with the exception of Mason Inn, and
10 they are what gives us the confidence to take CR
11 licenses out of the moratorium. If I could ask
12 for the moratorium to become permanent after the
13 removal of CR licenses is approved, I would, but
14 I believe five years is the maximum extension
15 allowed and, therefore, that is what we are
16 requesting.

17 Now, about class A licenses. ANC 3B and
18 the Glover Park Citizens Association filed our
19 joint petition to amend and extend the moratorium
20 in December of last year after a duly announced
21 comment period, meetings with our various
22 constituencies and a unanimous vote in favor of

1 it at our regularly scheduled meetings. For the
2 first time ever, there was no controversy over
3 what we were proposing to do. However, the
4 request by Rite Aid to remove class A licenses
5 from the moratorium which Mr. O'Brien conveyed to
6 me in early January, immediately provoked
7 reaction. I thank the board for granting us a
8 temporary extension of the moratorium so that we
9 can address Rite Aid's request fairly and
10 publicly. We announced at ANC 3B's January 14
11 meeting that we would vote at our February
12 meeting on whether or not to lift the class A
13 restriction and opened up a comment period on
14 our website and on the neighborhood list serves.
15 You should have a copy of the e-mails we received
16 marked as Exhibit 1 which has previously been
17 given to Rite Aid's attorneys. The tally was 21
18 opposed to removing class A licenses, seven for,
19 and one neutral.

20 Rite Aid's lawyers presented their case
21 at both our January and February meetings and
22 Rite Aid's regional and local managers also spoke

1 in February. Both meetings were well attended
2 and virtually all residents in attendance were
3 opposed to opening up class A licenses. Everyone
4 had a fair chance to voice their reasoning and
5 air their opinions on the issue.

6 At our February 11 meeting, ANC 3B voted
7 unanimously to keep class A licenses in the
8 moratorium proposal we are discussing today. We
9 respect the opinions of our constituents and
10 prefer to act as they wish, but there is also a
11 thoughtful history about why class A licenses
12 remain in our moratorium. As you will see from
13 Rite Aid's exhibits, there is only a small area
14 of Glover Park's commercial district that is more
15 than 400 feet away from either of our other two
16 class A licenses. That part of Wisconsin Avenue
17 runs for about 300 feet starting almost exactly
18 at Rite Aid's location and includes the sushi
19 restaurant next door and next to that Good Guys.
20 We would never have wanted a full service liquor
21 store so close to a nude dancing club and we
22 still don't. I urge the board to respect our

1 neighborhood's well considered request to
2 continue the moratorium on issuing class A
3 licenses. I also asked the board to consider the
4 troubling paradox of Rite Aid's position. How
5 can it be that Rite Aid cannot meet the statutory
6 requirements for a class B beer and wine license
7 because it is less than 200 feet from the Whole
8 Foods grocery, but it can solve that problem by
9 applying for a class A Beer, Wine and Spirits
10 license? That makes no sense to us.

11 Our feeling is that Rite Aid feels
12 frustrated by the limitations on class B licenses
13 imposed by Section 25-333 and should ask to seek
14 counsel to modify them instead of exploiting this
15 loophole in the law. But in any case, we have
16 heard from Rite Aid's lawyer that the pharmacy
17 really wanted the class A license in the first
18 place because it wants to sell hard liquor. I
19 reviewed the list of licenses posted at the ABRA
20 website and it appears that granting Rite Aid
21 class A license would be a first for a drug store
22 in the district. Whatever concerns that might

1 raise, I expect that Rite Aid has other locations
2 in the district where it could seek a class A
3 license without overriding the democratically
4 expressed opposition of the surrounding
5 neighborhood.

6 And if I may ask one further question?
7 We understand that Rite Aid will soon become a
8 Walgreens. There already is a Walgreen's in the
9 district with a liquor license. Is it sensible
10 to grant access to a class A license now when it
11 will be in conflict with ABRA regulations in the
12 near future?

13 I appreciate this opportunity to fully
14 present the reasoning behind our moratorium
15 renewal request. We do think carefully about
16 these issues and our neighborhood expects us to
17 represent their interests as clearly as possible.
18 Thank you for your time.

19 CHAIRPERSON ANDERSON: Thank you Ms.
20 Blumenthal.

21 MS. LANE: Thank you for this opportunity
22 to testify in support of continuing the Glover

1 Park liquor moratorium. I am Melissa Lane,
2 president of the Glover Park Citizens
3 Association. I've been a homeowner in Glover
4 Park since the early 90s and I was also an ANC
5 commissioner for 3B from 2002 to 2010 and
6 involved in the renewals of the moratorium in
7 2004 and 2008.

8 Today, I speak on behalf of the Glover
9 Park Citizens Association. The GPCA is a
10 membership organization formed in 1942 with
11 commitment to continuously improving and
12 protecting our neighborhood. Currently we have
13 more than 400 members and hold eight meetings a
14 year that are well publicized and open to all.

15 GPCA was involved and fully supported the
16 original Glover Park liquor license moratorium
17 established in 1995. The purpose of this initial
18 moratorium was to try to give the neighborhood
19 leverage in dealing with significant challenges
20 resulting from noise, unruly behavior, public
21 drunkenness, unsecured trash, vandalism and
22 occasionally violent crimes. Since that time the

1 moratorium has worked to provide a balance
2 between residential and commercial Glover Park.
3 In doing so, ANC 3B, with the full support of
4 GPCA has been able to steadily ease restrictions
5 from the original moratorium to retain this
6 equilibrium.

7 At our November 3, 2015 meeting, we
8 discussed the extension of the Glover Park liquor
9 license moratorium and ANC 3B's proposal to lift
10 the cap on CR licenses but to maintain the cap on
11 CN, CT, and class A licenses. Once again, GPCA
12 members voiced their strong support for the
13 moratorium in general and its impact on keeping
14 peace, order and quiet. We felt that maintaining
15 the caps on CN, CT and class A licenses was
16 important because we already have two fully
17 operating nightclubs/taverns and a commercial
18 strip which is essentially only about three
19 blocks and our ongoing problems with one of these
20 venues because of noise, crowding and general
21 disruption. Additionally, we have a third
22 inactive nightclub license which is grandfathered

1 for nude dancing and its long-term status is
2 unknown. Following a discussion, a motion was
3 presented, duly seconded and passed unanimously
4 to support Advisory Neighborhood Commission 3B's
5 petition to the ABC board to lift the CR cap and
6 extend the moratorium by five years.

7 At our February 2, 2016 meeting, GPCA
8 considered the request of ANC 3 and
9 representatives of Rite Aid to lift the ban and
10 issuing new class A licenses for retail sales
11 from beer, wine and spirits. The new store at
12 Glover Park will sell alcohol. Rite Aid is
13 unable to get a new class B license for retail
14 sales of beer and wine because of the statutory
15 restriction that two class B license holders
16 cannot be within 200 feet.

17 GPCA members have three concerns: A) In
18 retail restaurants the neighborhood is already
19 saturated with places to buy alcohol. B) The
20 request to lift the cap on class A licenses in
21 the Glover Park Moratorium is simply a loophole
22 to get around the class B city-wide statutory

1 restrictions. C) Granting a class A license
2 would mean having a package store virtually next
3 door to one of Glover Park's two active
4 nightclubs.

5 As a result of this discussion a motion
6 was made not to support the Rite Aid request or
7 lift the Glover Park Moratorium cap on class A
8 licenses. The motion passed unanimously. To
9 summarize, GCPA is in full support of ANC 3B's
10 petition to continue the moratorium five years
11 and lift the cap on CR licenses. We feel it has
12 brought a measure of peace, order and quiet to
13 the neighborhood and a needed balance between the
14 residential and commercial areas of Grover Park.
15 Again, thank you for this opportunity to speak on
16 this issue and your consideration to extend the
17 moratorium. Thank you.

18 MS. WEBBER: Good morning, my name is
19 Elizabeth Webber and I live at 2320 Wisconsin
20 Avenue, the Sheffield Condominium and I
21 appreciate this opportunity to speak to you.
22 I've lived in Glover Park at this address since

1 1987. During that time I've been delighted to
2 see the evolution of my neighborhood into a
3 complete walkable urban village which attracts a
4 variety of residents from young families to
5 students, to professionals, singles and now
6 retirees, like me.

7 I've lived in the midst of this
8 commercial strip for almost 30 years, I've worked
9 Whole Foods which is almost across the street
10 from me for 13 of those years and I walk several
11 miles daily with an active dog. This gives me a
12 perspective on the neighborhood from about 6:00
13 a.m. until about 10:00 p.m. at night. By day
14 this is a friendly village where you know the
15 shops and the restaurants and their employees,
16 the neighbors, the ladies at the post office, and
17 the Guy Mason Park staff.

18 But, by night, something else happens --
19 what guide books call an active bar scene
20 significantly changes the character of the
21 neighborhood and levies what I call a "drunk tax"
22 on all of us who live here. This is a real cost.

1 Virtually every day there is a disheartening and
2 sometimes dangerous mess on the sidewalks on the
3 avenue. Especially on weekends and daily in the
4 summer there is a trail of beer cans and bottles,
5 broken glass, food thrown down or spilled, food
6 wrappers and pizza boxes and the occasional pool
7 of vomit along the avenue and in the surrounding
8 neighborhood. Often other damage is done.
9 Windows are broken, plantings and landscaping
10 uprooted, branches broken off our embattled
11 street trees, trash cans turned over and thrown
12 into the street and, in one recent case, set on
13 fire.

14 Some merchants are careful about cleaning
15 up the messes in front of their establishments
16 but many are not. In any case, the problem
17 walks, staggers or drives away into the rest of
18 the neighborhood and we must clean up after it.
19 Evening dog walks are made unpleasant by groups
20 of intoxicated patrons smoking outside various
21 establishments. A couple of years ago I passed
22 through such a group in front of Mason Inn and a

1 young man cocked his leg up at me and said, "I'm
2 gonna piss on your effin' dog" to the great
3 amusement of his friends. Needless to say, I now
4 avoid that part of the avenue at night.

5 I frequently carry a shopping bag with me
6 and can usually fill it with discarded beer cans
7 and bottles in the course of an hour's walk. If
8 I walk my dog in Holy Rood Cemetery, the paved
9 road frequently has cans and broken bottles on it
10 thrown over the fence by drinkers in the adjacent
11 parking lot or they are drinking in the cemetery
12 itself. I frequently find piles of beer cans or
13 liquor bottles in the gutter on the avenue or
14 adjacent streets and lawns which suggests that
15 the contents have been drunk in a parked car.
16 The debris is then dropped in the street and the
17 drinkers can then take to the road or they
18 sometimes toss it over the fence into Guy Mason
19 Park.

20 In addition to car, taxi and Uber traffic
21 the avenue's establishments also attract drunk
22 buses group bar excursions. The bus idles on the

1 street while their intoxicated passengers spread
2 out to various bars. While I'm grateful that
3 these people are not driving themselves, this
4 contributes to noise and congestion. Clearly,
5 Glover Park does not need more places to buy
6 alcohol. This is not an underserved community.
7 The moratorium has served to stabilize the
8 neighborhood but we are always in a state of
9 delicate balance. Granting this lic -- change
10 the license, I should say, would forever change
11 the character of a large commercial property
12 fronting on the avenue and it can only harm the
13 established shops, most with local ownership
14 which have demonstrated their ties to the
15 community. Please extend the moratorium as
16 requested by our ANC and the Glover Park Citizens
17 Association. Thank you.

18 CHAIRPERSON ANDERSON: Thank you. Do we
19 have any questions from any board member to the
20 panel?

21 MS. MILLER: I just would like to thank
22 you all for your testimony and my impression is

1 how Glover Park has really improved to become a
2 much more livable, walkable place and everything
3 and I think that your points are well taken and
4 it sounds like the only issue is the class A
5 license which I guess we'll the other side from
6 Mr. O'Brien. Thank you.

7 CHAIRPERSON ANDERSON: Any other
8 questions? Mr. Alberti.

9 MR. ALBERTI: I'm struggling with the
10 reasons for the continued ban on class A. I'm
11 not sure I really understood it in the first
12 place, so it's a challenge for me, I'll be honest
13 with you. Other than the fact that it might
14 locate next to --

15 UNKNOWN SPEAKER: A nude bar.

16 MR. ALBERTI: Yeah, okay yeah, adult
17 entertainment establishment -- are there other
18 reasons for -- and I'll make that a compound
19 question because I'm also wondering why class A
20 and not class B?

21 MS. BLUMENTHAL: We took class B out when
22 there was, I think, a district moratorium on

1 issuing of class B licenses and we probably would
2 not have had a major issue with Rite Aid getting
3 a class B license, so the provocation was more
4 about idea that there would be yet another place
5 in our three-block area that sells alcohol, the
6 point being that we only have this half of a
7 block that is statutorily available for a class A
8 license but not available for a class B license,
9 which struck us as bizarre and -- but what we
10 heard from our constituents and in all these
11 meetings was there is enough alcohol, there's
12 enough access to alcohol, we don't need any more
13 places or people to buy alcohol, in addition to
14 which Rite Aid would probably sell alcohol much
15 later than anybody else does there. So, there
16 would be the opportunity for people who are
17 leaving the bars to buy even more alcohol and go
18 into the graveyard and sit and drink, which we
19 already have a problem with. So, our overriding
20 concern is the excessive amount of alcohol
21 availability we have in such a small area that is
22 a residential/commercial area.

1 MR. ALBERTI: All right. You know, I'm
2 playing devil's advocate here, because I really
3 do need to understand. One of the arguments
4 you're saying is that "well, you know, the hours
5 of sales" and I don't know what the hours are,
6 but you have centered. I mean, one of the things
7 that strikes me here is that maybe this little
8 sliver where currently you could have a class A
9 and no other place because of where others are
10 located, that can change, that can change
11 tomorrow and it's partly and artifact of the fact
12 that you've centered the moratorium area on a
13 class A store. I mean that's something that
14 strikes me -- I don't know, I can't ignore that
15 fact, that the center of this moratorium is at a
16 class A store and what are the hours of that
17 class A store?

18 MS. BLUMENTHAL: I think they close at
19 10:00, is that right? 8:45.

20 MR. ALBERTI: At 8:45 all right. But
21 they could open to 12:00. I mean, legally they
22 could be open until 12:00 and that could change

1 tomorrow.

2 MS. BLUMENTHAL: And that could change
3 tomorrow.

4 MR. ALBERTI: Right, okay. Any response
5 to?

6 MS. BLUMENTHAL: About why we centered
7 the moratorium there?

8 MR. ALBERTI: Yeah.

9 MS. BLUMENTHAL: That was done in 1993.

10 MR. ALBERTI: All right.

11 MS. BLUMENTHAL: So, I think the intent
12 was to -- and also -- actually Milton did --

13 MR. GROSSMAN: Yeah, I was there.
14 Basically it's a spot that encompasses the entire
15 commercial area of Glover Park in six different
16 places and in many different --

17 MS. BLUMENTHAL: At 1200 feet, right?

18 MR. GROSSMAN: It's a big place and "oh,
19 you're next door to a restaurant" but that's the
20 same result.

21 MR. ALBERTI: Okay, thank you for that.
22 Okay, no further questions.

1 CHAIRPERSON ANDERSON: Any other
2 questions? Just one question regarding the Rite
3 Aid issue. I know you were talking about hours,
4 but if we were to grant them the permission to
5 apply for a license wouldn't -- the ANC still
6 could protest it and come up with a settlement
7 agreement with the hours, in the sense that if
8 you're saying they'll have later hours than the
9 other establishments, even if we were to grant
10 Rite Aid an opportunity, wouldn't the ANC still
11 have an opportunity to limit the hours?

12 MS. BLUMENTHAL: Yes, that is true. But
13 right now what we're doing is defending our
14 moratorium proposal which we worked out with our
15 neighbors in the most democratic way we could
16 figure out and their assessment is they don't
17 want more outlets for purchasing of alcohol so we
18 are starting from this position that we have
19 spent a long time coming to and agreeing upon,
20 and then actually reconfirming for the specific
21 Rite Aid issue, so it is now in the hands of the
22 board I guess to decide whether our petition,

1 which is the expression of the feeling of our
2 neighborhood and a follow on years of renewing
3 and lifting the moratorium, we've been moving as
4 the whole purpose of moratorium is to get you to
5 a place where you don't need a moratorium
6 anymore. I think we will always want one against
7 Class CT and CN and the Class A one sticks with
8 us just because in three blocks do we need three
9 full service liquor stores? I don't think so and
10 most of our neighbors don't think so, so we know
11 what our options are beyond this but we would
12 like to have our preference heard at least at
13 first.

14 CHAIRPERSON ANDERSON: Okay, thank you.
15 Yes, Ms. Miller.

16 MS. MILLER: I just have one follow-up
17 question now. When you got input from your area
18 was it not just residents but also businesses?

19 MS. BLUMENTHAL: Actually, we did not get
20 much interest from businesses. We don't have a
21 business association and it's very difficult to
22 solicit the information, the reaction from them,

1 so no, we did not do that.

2 MS. MILLER: Okay, thank you.

3 CHAIRPERSON ANDERSON: Any other
4 questions? All right thank you very much for
5 your testimony and then we'll have our second
6 panel. If you'll please hang around so just in
7 case the second panel has questions, maybe we
8 could ask you -- recall you and ask you some
9 questions on the presentation by the second
10 panel.

11 MR. O'BRIEN: Okay.

12 CHAIRPERSON ANDERSON: The second panel
13 is -- I think we have Mr. O'Brien, are you the
14 only one or is there -- I know that you
15 representing Rite Aid. Is there anyone else from
16 Rite Aid here?

17 MR. O'BRIEN: Yes, actually there are
18 quite a few people from Rite Aid here.

19 CHAIRPERSON ANDERSON: Do they want to
20 testify or you're the chief spokesperson?

21 MR. O'BRIEN: I'm the chief spokesperson.

22 CHAIRPERSON ANDERSON: Okay, all right.

1 MR. O'BRIEN: This is Daniel Pina, PINA,
2 who is the regional vice president for Rite Aid.
3 Rite Aid is very interested and that's why their
4 personnel are here but they need not come
5 forward.

6 CHAIRPERSON ANDERSON: Okay. Mr. O'Brien
7 please identify yourself for the record and let
8 us know what is it you're asking the board to do,
9 please?

10 MR. O'BRIEN: Yes, I'm Stephen O'Brien.

11 CHAIRPERSON ANDERSON: O'Brien, that's
12 right. Mr. O'Brien -- I'm sorry, you know I need
13 to look at my list rather than try to go by
14 memory but I do apologize.

15 MR. O'BRIEN: And I'm here this morning
16 as we've just discussed on behalf of Rite Aid. I
17 did submit remarks and exhibits.

18 CHAIRPERSON ANDERSON: Yes, I do have
19 them, yes.

20 MR. O'BRIEN: So everyone has those.
21 Rite Aid presently operates more than 4600 full-
22 service pharmacies in 31 different states. Seven

1 of those pharmacies are here in D.C. Although
2 not in my written remarks I will tell you that
3 oiver 3000 of the 4600 plus Rite Aids around the
4 country sell alcohol, many a full range of
5 spirits, wine and beer, others just wine and beer
6 based on local law. Daniel Pina is the regional
7 vice president of Rite Aid. He oversees 261
8 stores in Maryland, Virginia, West Virginia and
9 the seven Rite Aid stores that are here in the
10 District of Columbia. A total of 129 employees
11 are on the most recent payroll for the D.C. Rite
12 Aid stores, of whom 75 are D.C. residents,
13 meaning that they have D.C. withholding taken
14 from their paychecks. Our point there, of
15 course, is that Rite Aid is a significant
16 contributor to the economy of the district both
17 in sales tax revenues and employment
18 opportunities.

19 We're here this morning to ask that the
20 renewed Glover Park Moratorium no longer include
21 a prohibition on Class A licenses and the reasons
22 are as follows: In February of this year Rite

1 Aid opened a new store at 2255 Wisconsin Avenue
2 Northwest which is smack in the middle of the
3 Glover Park Moratorium Zone. I will tell you
4 that it's a beautiful store. It's a real
5 contribution to the neighborhood. It cost over
6 1.2 million dollars to get the door open. It's a
7 significant investment by Rite Aid. As the board
8 questioned the previous panel, identified Class B
9 licenses are not subject to the Glover Park
10 Moratorium. We don't know why. Class A licenses
11 are, however, but Rite Aid cannot apply for a
12 Class B license because it's within 400 feet of
13 the Whole Foods Store that's also there on
14 Wisconsin. I identified the address in a
15 footnote.

16 We are more than 400 feet from the two
17 existing class A stores in the moratorium zone,
18 but because of the moratorium we can't apply for
19 a Class A license. So, no class A, no class B,
20 that's the dilemma that we're presented with
21 here. The previous panel used the word loophole
22 a couple of times as if to suggest that Rite Aid

1 is trying to exploit a loophole. I don't know
2 what that loophole is. The law is clear, Section
3 333 of Title 25, that you can't have a B within
4 400 feet of a B or an A or 400 feet of an A.
5 There's not a loophole here. Moratoria first
6 appeared (and I know my written remarks say
7 1990s, but it was 1989) that the Georgetown
8 Moratorium was the first. I think everyone
9 agrees that the purpose of the Georgetown -- or
10 any moratorium zone, is to prevent or preclude
11 the adverse effects from an overconcentration of
12 licenses but an overconcentration of what kinds
13 of licenses? It's the kinds of license that
14 generate late noise, disruption, peace, order and
15 quiet problems. I know that the lady did not
16 testify today but I saw some written remarks -- I
17 think it was a petition by a Ms. Brink -- which
18 discussed disruption in the residential
19 neighborhood adjacent to the Glover Park
20 Moratorium Zone, from late night operations. But
21 I don't think that it was ever intended or
22 envisioned that a moratorium is needed to stop

1 disruption coming from a class A or a class B
2 store. Those kinds of adverse consequences are
3 not experienced with off-premise licensees. To
4 the extent that there is concern regarding too
5 many class As or class Bs, that's what the 400
6 foot rule takes care of and it's proven
7 effective. You don't have a liquor store every 5
8 feet in D.C. because of the 400 foot rule. Now
9 there presently are five moratoria zones in the
10 district:

11 The original Georgetown and West Dupont
12 Moratorium Zones did initially encompass some off
13 premise licensees, but as those moratorium --
14 moratoria, excuse me -- were renewed successively
15 over a period of years, those prohibitions
16 against off-premise licenses dropped by the
17 wayside. The Adams Morgan and East Dupont
18 Moratorium Zones, to our knowledge, never had a
19 prohibition against -- on all premise licensees.

20 So, we sit here today with the only
21 prohibition in the entire city, the only
22 moratorium prohibition, in the entire city

1 against class A or class B licenses is the Glover
2 Park Moratorium which, as the witnesses have made
3 clear covers a very compact area. It's not a
4 large moratorium zone. Perpetuation of this in
5 this context, in the context of what is going on
6 in Glover Park, does not serve -- perpetuation of
7 the moratorium ban on A's does not serve any
8 purpose. As a practical matter the moratorium
9 zone only encompasses Wisconsin Avenue from White
10 Haven Parkway on the south to Calvert Street on
11 the north. The boundaries are bigger but the
12 zone is [inaudible 38:28] licenses in residential
13 neighborhoods.

14 There are presently two class A licenses
15 within the zone: Pearsons to the north which is
16 at 2436 Wisconsin, and Wide World of Wines to the
17 south which is at 2201 Wisconsin. Now, at this
18 point I would invite your attention to the first
19 of the two exhibits that are attached to my
20 remarks. I want to make sure everybody has
21 these.

22 MS. MILLER: I can't find mine, if you

1 have an extra copy.

2 MR. O'BRIEN: Just one or does anybody
3 else need it?

4 MS. MILLER: Anybody else need one?

5 CHAIRPERSON ANDERSON: I read it last
6 night so I know where you're -- I know where
7 you're -- I know what you're referencing so go
8 ahead.

9 MS. MILLER: Thank you.

10 MR. O'BRIEN: Okay, the first of the two
11 exhibits is an aerial photograph which depicts
12 Pearsons and Wide World of Wines, two existing
13 class A's and draws the 400 foot circles around
14 them. As you'll see there's a gap between the
15 two circles. We measured maybe 350 feet,
16 perhaps. Now, if the board were to delete class
17 A's from the scope of the moratorium, and Rite
18 Aid subsequently was successful in obtaining a
19 license, then the complexion would change and
20 that's the second exhibit. I've drawn the Rite
21 Aid location and the 400 foot circle around that
22 and all of Wisconsin is effectively encompassed

1 by the three existing class A's. The point here
2 is deleting us from the scope of the moratorium
3 is not going to result in what I label an
4 Oklahoma land rush of applications. Assuming
5 Rite Aid were granted a license there would be no
6 room for any other A's in the moratorium zone
7 anyway because of the very effective 400 foot
8 rule.

9 The Chair asked the previous panel a
10 question which really I think is the key here. I
11 don't -- I suggest that respectfully the purpose
12 of today's hearing is not to discuss whether Rite
13 Aid should get a license. I submit that the
14 purpose of this hearing is to determine whether
15 Rite Aid should even be able to apply for a
16 license and the only impediment to that
17 application is a practical matter, useless and
18 unique to the entire city. A ban on a new class
19 A application. And the Chair was absolutely
20 right asking the question, if the board renews
21 the moratorium without the ban on A's, an
22 application will be filed and the ANC and the

1 Citizen's Association and any concerned residents
2 will have a full opportunity to chime in and
3 that's the point at which we can discuss hours of
4 operation, the product line sold, and things like
5 that. All that's before the board today is
6 whether the ban should remain in place, and I
7 think some of the remarks of the previous panel
8 conflated those two issues and they roll it into
9 one: Should Rite Aid get a license? That's not
10 what we're here arguing today. We hope to be
11 back and argue very soon. But, for those
12 reasons, we submit that the board should delete
13 class A licenses from the scope of the Glover
14 Park Moratorium. Thank you and we'll certainly
15 respond to any questions.

16 CHAIRPERSON ANDERSON: Just a quick
17 question. You're asking the board to renew the
18 moratorium but what's been asked but to exclude
19 class A from a renewal.

20 MR. O'BRIEN: All I'm -- yes, I'm not
21 asking the board to renew the moratorium, I
22 certainly don't object to it.

1 CHAIRPERSON ANDERSON: I'm just asking
2 what --

3 MR. O'BRIEN: All we want is class A
4 deleted from the moratorium. Otherwise it's not
5 our concern. I would say I think the neighbors
6 make a very compelling case for perpetuation of
7 the moratorium overall, but that's not for Rite
8 Aid to say.

9 CHAIRPERSON ANDERSON: You're saying
10 whatever decision the board makes that class A
11 should not be excluded anymore. If we agree to
12 extend the moratorium it should be that class A's
13 should not be included with it.

14 MR. O'BRIEN: Should not be included,
15 correct. That's all we're saying here today.

16 CHAIRPERSON ANDERSON: All right.
17 Questions, board members? Yes, Ms. Miller.

18 MS. MILLER: Good morning.

19 MR. O'BRIEN: Good morning.

20 MS. MILLER: So, I just wanted to ask --
21 Ms. Blumenthal said that there was only like one
22 small area where Rite Aid could locate to be

1 beyond the 400 feet of another class A distance,
2 and so, and she said that would be like next to
3 one of the nude dancing places?

4 MR. O'BRIEN: Yes, if you look at the
5 first of our two exhibits --

6 MS. MILLER: Okay.

7 MR. O'BRIEN: -- it shows a gap between
8 the 400 foot circles of the two existing A's. It
9 just so happens the Rite Aid location is there.

10 MS. MILLER: You are there. That's where
11 you are right now.

12 MR. O'BRIEN: We are there, yes. Yes.
13 But, there's another example of what I meant by
14 conflating two different issues. The proposition
15 was made that there would be concern about a
16 class A license being next to a nude dancing
17 license. My first reaction is to say, well
18 what's the problem with that? But, I'd be
19 arguing against myself because that's the type of
20 issue that should be vetted at a protest hearing,
21 where the parties can present evidence and the
22 board can make a determination whether the

1 license is appropriate or not.

2 MS. MILLER: So, the follow-up, I think
3 that I also heard that Glover Park commercial
4 district is somewhat filled in, there aren't that
5 many places that you have to go. So, for
6 instance, my question is, could you have -- could
7 Rite Aid have found a vacancy or spot that was
8 over 400 feet from the B license?

9 MR. O'BRIEN: Not going north from where
10 we are because that just gets you closer and
11 closer to Whole Foods. I do not know the answer
12 to that question off the top of my head as to
13 whether a location further south on Wisconsin
14 Avenue would have done it? I didn't even think
15 to look at that because Rite Aid is where Rite
16 Aid is.

17 MS. MILLER: But it's newly located so I
18 was just wondering whether these were factors
19 when it located into the space that it located
20 into.

21 MR. O'BRIEN: No.

22 MS. MILLER: Okay. And do you have any

1 support for your position today other than the
2 staff that you brought with you from Rite Aid? I
3 mean to have businesses or residents said 'yes, I
4 really would like to have a class A there'?

5 MR. O'BRIEN: I'm trying to think of a
6 different way to say the same thing -- that's for
7 the protest hearing where we come forward and
8 show that there's neighborhood support, there are
9 people who like this store and would like the
10 convenience of it. I submit to you that the --
11 I'll leave it at that.

12 MS. MILLER: Okay, thank you.

13 CHAIRPERSON ANDERSON: Yes, Mr. Short.

14 MR. SHORT: Good afternoon, Mr. O'Brien.

15 MR. O'BRIEN: Good afternoon.

16 MR. SHORT: The Guy Mason playground is
17 right in that same general vicinity, correct?

18 MR. O'BRIEN: Same general vicinity. If
19 you look at one of the exhibits --

20 MR. SHORT: It's on the east side of
21 Wisconsin.

22 MR. O'BRIEN: East side of Wisconsin

1 above Whole Foods. It's at the corner of Calvert
2 Street.

3 MR. SHORT: Okay, and the other 2A
4 establishments north and south of it?

5 MR. O'BRIEN: Pearson's is directly
6 across the street. Pearson's is on the west side
7 of Wisconsin and it's directly across the street
8 from Guy Mason. Pearson's has been there
9 forever.

10 MR. SHORT: Some mentioned the hours
11 earlier, what are the hours?

12 MR. O'BRIEN: At Pearson's?

13 MR. SHORT: At Pearsons.

14 MR. O'BRIEN: I believe someone said
15 8:45.

16 MR. SHORT: And to your knowledge has
17 Pearson's been a problem for the community at
18 all?

19 MR. O'BRIEN: I've never heard that it's
20 been.

21 MR. SHORT: No complaints?

22 MR. O'BRIEN: I've never heard that.

1 MR. SHORT: Okay, well thank you, that's all I
2 have.

3 CHAIRPERSON ANDERSON: Thank you, Mr.
4 Short. Any other questions by the board members?
5 All right, hearing none. Thank you. Are there
6 any other members of the community who did not
7 sign up to testify who want to have their voice
8 heard? Are there any other members of the
9 community who have not spoken and would like to
10 speak? The silence in the room is deafening.

11 I would like to thank the parties for
12 their presentation and again I would like to
13 apologize for my tardiness in starting this
14 hearing on time. I do appreciate the testimony
15 that you brought and the board will take this
16 under advisement and we will issue a decision
17 very shortly. I think that we should probably
18 deliberate and make a decision by the close of
19 business. I prefer to deliberate these things
20 while they're fresh in my mind and so I don't
21 have to remember who spoke. So, we'll try to
22 issue a decision as quickly as possible, so thank

1 you very much.

2 MR. O'BRIEN: Thank you.

3 (Whereupon, the above-entitled matter was
4 concluded.)

5