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3 CHAIRPERSON:

4 DONOVAN W. ANDERSON, Presiding

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6 OTHER PERSONS PRESENT:

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8 NICK ALBERTI, BOARD MEMBER

9 RUTHANNE MILLER, BOARD MEMBER

10 JAMES SHORT, BOARD MEMBER

11 MIKE SILVERSTEIN, BOARD MEMBER

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

2 CHAIRPERSON ANDERSON: The next matter on
3 our -- we have a Show Cause Hearing, Case Number
4 15-CMP-00354 Pearl Dive Oyster Bar/Blackjack, License
5 Number 85385. Will the parties please approach.

6 MS. GEPHARDT: Hi. Chrissy Gephardt here on
7 behalf of the Office of the Attorney General.

8 CHAIRPERSON ANDERSON: Good morning.

9 MR. KLINE: Good morning Andrew Kline here
10 on behalf of the licensee.

11 CHAIRPERSON ANDERSON: Good morning.

12 MS. KER: Katherine Ker, general manager of
13 Pearl Dive Oyster Palace and Blackjack.

14 CHAIRPERSON ANDERSON: Good morning. I have
15 it in here. Are there any -- are there any preliminary
16 matters in this matter?

17 MS. GEPHARDT: Yeah. We were just -- I
18 would to ask for some more time. There's just a issue
19 we want to work out, and I'm hoping that we can have
20 like another ten minutes if that's okay with the -- with
21 The Chair.

22 CHAIRPERSON ANDERSON: Okay. We'll -- The

1 Board will be in recess. It's 11:18 until 11:30.

2 [Off the record at 11:18 a.m.]

3 [On the record at 11:27 a.m.]

4 CHAIRPERSON ANDERSON: All right. We'll now
5 recall the show cause hearing, Case Number 15-CMP-00354,
6 Pearl Dive Oyster Palace Black Jack, License Number
7 85385. Would the parties please approach.

8 MS. GEPHARDT: Chrissy Gephardt here on
9 behalf of the Office of the Attorney General.

10 CHAIRPERSON ANDERSON: Thank you.

11 MR. KLINE: Andrew Klein here on behalf of
12 the licensee.

13 MS. KER: Catherine Ker, general manager of
14 Pearl Dive Oyster Palace and Black Jack.

15 CHAIRPERSON ANDERSON: Thank you.

16 MS. GEPHARDT: And I apologize. There is a
17 legal issue being discussed that will determine this
18 case, and so it's being discussed by the powers that be.
19 And so we're going to have to delay this even further.
20 I apologize.

21 CHAIRPERSON ANDERSON: What do you mean by
22 delay?

1 MS. GEPHARDT: I mean I guess we need
2 like -- I don't know -- 15 minutes. I'm not sure.

3 MR. KLINE: I think Ms. Gephardt is waiting
4 to hear back from the client.

5 MS. GEPHARDT: Exactly.

6 CHAIRPERSON ANDERSON: Well, when you said
7 delay are you asking to continue?

8 MS. GEPHARDT: No. No. No. I see what
9 you're saying. No. No. No. Not like a severe delay.
10 It's just like --

11 CHAIRPERSON ANDERSON: All right. Well, The
12 Board will be in recess. You will let us -- I thought
13 you guys were ready. That's why -- since I saw you
14 sitting in the audience. Now, if you were outside, then
15 I would know you weren't ready. So --

16 MS. GEPHARDT: No. We're just -- we're just
17 waiting for some things.

18 CHAIRPERSON ANDERSON: All right. Well, we
19 will be in recess, and we have some other board matters
20 that we'll discuss back there. And whenever you're
21 ready, just let someone know and we'll come back out.

22 MS. GEPHARDT: Okay. Okay. Great.

1 CHAIRPERSON ANDERSON: All right. Thank
2 you.

3 [Off the record at 11:35 a.m.]

4 [On the record 11:56 a.m.]

5 CHAIRPERSON ANDERSON: All right. We're
6 back on the record for -- again for Case Number
7 15-CMP-00354, Pearl Dive Oyster Palace Blackjack,
8 License Number 85385. The parties have already
9 identified themselves. Are there any preliminary
10 matters in this case?

11 MS. GEPHARDT: Yes. There is a preliminary
12 matter. Oh, I apologize. I forget to introduce myself.
13 I'm Chrissy Gephardt.

14 CHAIRPERSON ANDERSON: No. You had -- I
15 said that -- I had --

16 MS. GEPHARDT: Oh, you did? I apologize.
17 Okay.

18 CHAIRPERSON ANDERSON: I said we're on the
19 record, the parties had already identified themselves.

20 MS. GEPHARDT: Okay. I'm sorry.

21 CHAIRPERSON ANDERSON: But you're correct
22 because you're now speaking. So you can say who you are

1 and speak then.

2 MS. GEPHARDT: So in this case we have come
3 to an Offer in Compromise, and that includes a -- for
4 Charge 1, which is the only charge in this case, we are
5 going to dismiss it. For Charge 2 the ABC sidewalk
6 endorsement will be revised to include or to approve
7 only five seats to reflect the Department of
8 Transportation license that's been given. And finally,
9 the capacity of the sidewalk cafe endorsement will be
10 limited to 30 persons.

11 CHAIRPERSON ANDERSON: And that's it? Just
12 -- no, you know, let me not -- I'm not even going to go
13 there. All right. It's my understanding there's an
14 Offer in Compromise. And let me ask just for
15 clarification what was Charge 1 please?

16 MS. GEPHARDT: What was Charge 1?

17 CHAIRPERSON ANDERSON: Yes.

18 MS. GEPHARDT: Charge 1 was increasing
19 occupancy -- you substantially changed your method of
20 operation by increasing the occupancy of the
21 establishment without Board approval.

22 CHAIRPERSON ANDERSON: Okay. Thank you.

1 All right. Mr. Klein, on behalf of your client it's my
2 understanding there's an Offer in Compromise that Charge
3 1 will be dismissed. Charge 2 I guess will be redefined
4 in the sense that -- that the -- I'm sorry, you know,
5 what --

6 MS. GEPHARDT: There is no Charge 2.

7 CHAIRPERSON ANDERSON: There is no Charge 2.
8 Okay. All right. Because you did mention Charge 2 and
9 I wrote -- all right. So the Offer in Compromise that
10 Charge 1 will be dismissed. The second issue is that
11 the seating capacity of the establishment will be five
12 seats.

13 MS. GEPHARDT: That is correct.

14 CHAIRPERSON ANDERSON: Five seats, and that
15 the total capacity of the establishment will be 30 --
16 the sidewalk cafe will be 30 participants; is that
17 correct?

18 MS. GEPHARDT: That's correct.

19 CHAIRPERSON ANDERSON: And this is the Offer
20 in Compromise? Did I misstate any of the facts?

21 MR. KLINE: No, you did not.

22 CHAIRPERSON ANDERSON: All right. And this

1 is your understanding?

2 MR. KLINE: Yes. That's our understanding.

3 And if I could just make a brief comment --

4 CHAIRPERSON ANDERSON: Yes, sir.

5 MR. KLINE: -- and provide an explanation.

6 First I want to thank Ms. Gephardt and -- and the office

7 for working with us on this. We believe this is -- this

8 case is probably controlled by 2461 Corp trading as

9 Madam's Organ versus D.C. ABC Board.

10 CHAIRPERSON ANDERSON: Hold on. Before --

11 you know, I'm new on this board and I had a hearing last

12 week regarding Madam's Organ, and I had no idea what was

13 going on. But this case made it perfectly clear what

14 Madam's Organ is. So thank you very much, Mr. Klein.

15 MR. KLINE: So -- but we do accept the

16 offer, and again we thank the office for working with

17 us. And we hope that the board will accept the offer.

18 We think it represents a reasonable resolution in this

19 matter.

20 CHAIRPERSON ANDERSON: Does your client --

21 agrees that by accepting an Offer in Compromise they're

22 giving up their right to a hearing?

1 MR. KLINE: Yes.

2 CHAIRPERSON ANDERSON: And they're giving up
3 their right to appeal this matter?

4 MR. KLINE: Yes.

5 CHAIRPERSON ANDERSON: Yes. All right.

6 MR. KLINE: They let me do it this time.

7 CHAIRPERSON ANDERSON: All right. Thank
8 you. Since we're talking about, you know, this Madam's
9 Organ appeal, it's now end up in my brain. I'm making
10 then a motion that this Offer in Compromise of
11 dismissing Charge 1, that -- the charge that the seating
12 capacity will be reduced to five seats and the standing
13 capacity will be -- total capacity will be capped at 30
14 persons be accepted. Is there a second?

15 MR. ALBERTI: Second.

16 CHAIRPERSON ANDERSON: Mr. Alberti has
17 seconded the motion. Are there discussions? Ms. --
18 Ms. Miller go ahead.

19 MS. MILLER: I have a question for either
20 attorney in that capacity raises questions of safety,
21 and there is just a number that's been presented to us
22 to accept -- to I guess affirm as a condition in this

1 OIC if we vote for it. Can one of you address how that
2 number is in accordance with public safety?

3 MR. KLINE: Sure. Based upon a couple
4 things. One is I did talk to Jeff Black, the owner this
5 morning who happens to be out of town, that's why he's
6 not here.

7 MR. SHORT: Talked with who?

8 MR. KLINE: I beg your pardon.

9 MR. SHORT: You said you talked with -- I
10 didn't understand.

11 MR. KLINE: Jeff Black who is the principal
12 of this business, he's the owner of this and four other
13 restaurants in the district -- four other restaurants in
14 the District of Columbia. And -- and we spoke about
15 this in terms of what could be accommodated, and in his
16 experience he thought 30 was a reasonable number. The
17 investigative report if you look at the pictures --
18 although I know the investigator thought that there were
19 more people than perhaps might be allowed by the
20 permit -- it doesn't seem to be overcrowded. I think
21 she said there was between 27 and 32. So I admit that
22 the number is somewhat plucked from the air, but it is

1 based upon the facts that were adduced in the report and
2 the owner's experience in terms of operating this and
3 other establishments not only in the District of
4 Columbia but also in Maryland.

5 MS. MILLER: Okay. Ms. Gephardt, do you
6 have anything else to say?

7 MS. GEPHARDT: No. I don't have anything to
8 add other than based on what the investigative report
9 and just in having, you know, experience of him, and
10 other people have viewed the area. We know that that
11 would be a reasonable amount. And yeah, I mean we -- we
12 don't have a problem with it.

13 MS. MILLER: Okay. Thank you.

14 CHAIRPERSON ANDERSON: Yes, Mr. Short.

15 MR. SHORT: I'd like to say pretty much that
16 this Board I don't think should be making numbers and
17 agreeing to numbers that DDOT, The Department of
18 Transportation says only five seats and we're going to
19 say yes, and you can put 30 people. I don't think any
20 other business in this city has this Board giving them
21 numbers. Or the only person allowed by law as I
22 understand is DDOT that can give you these numbers. So

1 how can we make an agreement that D -- and override
2 DDOT's regulations? I'd like to ask Mr. Klein that.

3 MR. KLINE: Sure. Yeah.

4 MR. SHORT: How can we do that?

5 MR. KLINE: Happy to address that.

6 Mr. Short, DDOT is certainly free to impose whatever
7 DDOT wants to impose in accordance with the regulations,
8 and I agree with you. And when we were discussing this
9 I -- I did have concern about the ABC Board's role in
10 terms of approving a number or what have you. But I
11 think the way to look at it is this and in talking to
12 your director, it was -- it was said well, we can't
13 allow 300 people in there, which I can't disagree with,
14 300 people wouldn't fit if in there. So this would be a
15 number that for ABC purposes we couldn't go over. And
16 if we went over it, it's a condition of our license.
17 You're not blessing it that that's, you know, the
18 correct number or, you know, maybe there should be some
19 lower number. No one's suggesting that this Board has
20 the expertise to say, you know, what the -- what a
21 number should be. Maybe it should be greater than that,
22 maybe it should be less than that. But the point is for

1 purposes of the ABC Board and the license we are
2 agreeing that there will not be more than 30 people
3 there. And if DDOT thinks there should be less, then
4 they're certainly free to come in and tell us a
5 different number.

6 MR. SHORT: Can I ask another question of
7 you? Can you assure this Board that 30 will be a safe
8 number --

9 MR. KLINE: I --

10 MR. SHORT: -- or can anybody assure us this
11 is a safe number?

12 MR. KLINE: I reasonably believe it is a
13 safe number.

14 MR. SHORT: Based on.

15 MR. KLINE: Based on my experience and based
16 on what I see from the photos and based on talking to
17 our client. I'm not the regulatory agency and, you
18 know --

19 MR. SHORT: I don't want to get into
20 everything, and I hope that The Chair would allow me to
21 ask a few more questions.

22 CHAIRPERSON ANDERSON: Of course, Mr. Short.

1 Please go ahead.

2 MR. SHORT: How tall is this building? How
3 many stories?

4 MR. KLINE: It's two stories or three?

5 MS. KER: This building?

6 MR. KLINE: Yeah.

7 MS. KER: Oh, our building is two stories.

8 MR. KLINE: Yeah. Two stories.

9 MR. SHORT: Does anybody live above that
10 space?

11 MS. KER: No, sir.

12 MR. KLINE: No.

13 MR. SHORT: What's above that space?

14 MR. KLINE: The first floor is the
15 restaurant. Actually the two stories is the restaurant,
16 although the primary dining area is on the first floor.
17 And then the second floor is also part of the licensed
18 premises. It trades under a name of Black Jack.
19 There's also dining up there, but there's also a larger
20 bar area up there.

21 MR. SHORT: Okay. Are there any other
22 sidewalk cafes in that block or in that area?

1 MS. KER: Yes.

2 MR. KLINE: Yes.

3 MS. KER: There's Ghibellina next door to
4 us. Le Diplomate is across the street.

5 MR. SHORT: Okay. Do you know the numbers
6 of people they allow on their --

7 MS. KER: I do not.

8 MR. SHORT: You have no idea? Are any of
9 them 30 do you know of?

10 MS. KER: I'm unaware of their capacity
11 and/or seating.

12 MR. SHORT: Okay. Well, I would say to my
13 Board Members that I would like to find out what the
14 average number is for the others. Because if this
15 number supercedes the others, then I can see a flood of
16 people coming in to see if they can have 30, why can't I
17 have 30? And this Board -- it does it for one, we must
18 do it for all. I mean we're going to be fair. I would
19 say for the sake of this -- for the sake of this
20 agreement I would be more satisfied with 15 if we just
21 have to put a number. Because I -- I would say this
22 knowing the sidewalks on 14th Street that's -- that's in

1 the P Street area, correct?

2 MS. KER: Yes.

3 MR. SHORT: Okay. And the sidewalks are
4 what width? Outside of your sidewalk cafe what is the
5 width of the space between your entrance to the sidewalk
6 cafe to 14th street, how many feet?

7 MS. KER: That would be something I would
8 have to look up. I don't know that offhand.

9 MR. SILVERSTEIN: Please speak a little
10 louder, ma'am.

11 MR. KLINE: We don't know offhand. I know
12 there's at least eight, but I don't -- I know that
13 there's at least eight because I know the practice of
14 the Public Space Committee for that area. But,
15 Mr. Short, to address what you're saying we're agreeing
16 to something that nobody else has.

17 MR. SHORT: I understand that --

18 MR. KLINE: It's a limitation. No one else
19 has a limitation.

20 MR. SHORT: You're asking for an agreement.
21 I haven't agreed to it. You're asking for an agreement,
22 correct?

1 MR. KLINE: No. But we're saying we are
2 agreeable to imposing a limitation on the number of
3 people in the cafe. Ghibellina does not have one.
4 Okay. The other cafes up and down the block, they do
5 not have limitations on the number of patrons. In an
6 effort to get this resolved we are voluntarily agreeing
7 to a limitation. So when you ask what the other people
8 are doing, you get an average. I think we get to
9 infinity because I don't know how we do the average when
10 everyone else, there is no limitation.

11 MR. SHORT: And I would say to you in the
12 sake of public safety if everybody had 30, 40, or 50,
13 you -- and especially on a Friday or Saturday night or
14 something's going on on 14th Street and you have the
15 sidewalks compromised, that is an issue that we don't
16 need. And so I will just say this I've got my point
17 across I hope in that I think that the number of 30 is
18 based on nothing other than Mr. Black's opinion, your
19 opinion. I don't hear any other opinions. DDOT has not
20 weighed in, and I don't think it would be prudent for
21 this Board to say you can have 30 just because you want
22 to have an agreement today.

1 MR. KLINE: We're happy to have no limit,
2 Mr. Short. We're happy to walk out of here with no
3 limit, which is what everyone else has. But in an
4 effort to get it resolved we've agreed to a limit.

5 MR. SHORT: Okay. Now, I don't think we're
6 going to resolve anything just giving numbers without
7 having a reason for those numbers. So I am going to be
8 opposed to 30 at this particular time and the reason
9 being public safety and that we don't know what DDOT
10 would say to 30. So at this particular time my vote
11 would be no to this OIC. That's just my personal
12 opinion.

13 MR. KLINE: Understood.

14 MR. SHORT: I want to be on the record for
15 that. Thank you.

16 CHAIRPERSON ANDERSON: Mr. Alberti.

17 MR. ALBERTI: My comments are mostly
18 directed at Direct Moosally who's in the audience.
19 Mr. Klein is -- and I do this because Mr. Klein is
20 correct. There is no limit on the adjacent
21 establishment's sidewalk cafes, limit on capacity.
22 There is limits on seats, but there's no limit on

1 capacity. And that's pretty much true throughout the
2 city except for a few anomalies. I'm urging the
3 director and this Board to work together to solve that
4 problem. I share Mr. Short's concerns that we can't set
5 a limit. We have no mechanism right now for setting a
6 limit on total capacity for sidewalk cafes. We do for
7 summer gardens. It seems only reasonable that you'd
8 want to do that for sidewalk cafes given the
9 proliferation and popularity of sidewalk cafes, the
10 safety issues surrounding large crowds, the -- the
11 effects on neighbors of large crowds at sidewalk cafes.
12 So I'm really concerned that we don't have a mechanism
13 for setting total capacity. So I thank you, Mr. Klein,
14 for pointing that out. And I think given the facts here
15 that this is the best solution that we can arrive at,
16 and I will support it.

17 CHAIRPERSON ANDERSON: Mr. Silverstein.

18 MR. SILVERSTEIN: I agree with my colleague
19 Mr. Alberti. This is not the avenue to legislate or be
20 making rules. This is the avenue to dispense with a
21 case where there's apparently no case. And I would feel
22 much more comfortable with 20, but that's not what is

1 offered. It is our job to accept or reject, and I feel
2 that this is better than nothing. And therefore I
3 accept. And I would second Mr. Alberti's comments that
4 we should look at capacity of these public space
5 facilities as part of the licensing process to ensure
6 that there is safety and to ensure also that pedestrian
7 safety is -- is as well not compromised. Thank you very
8 much.

9 CHAIRPERSON ANDERSON: Any other comments by
10 any other board member? Hearing none those in favor say
11 aye. [Chorus of ayes]. Those opposed.

12 MR. SHORT: Opposed.

13 CHAIRPERSON ANDERSON: The matter passed 4
14 to 1 with Mr. Short dissenting. Thank you. Ms. Walker
15 will give you -- we'll do a Board Order. Yeah. We'll
16 do a Board Order on this matter. Thank you very much.

17 MS. GEPHARDT: Thank you.

18 CHAIRPERSON ANDERSON: The Board is in
19 recess until 1:30.

20 [Off the record at 12:13 p.m.]

21 (Whereupon the above-entitled matter was
22 concluded.)