

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Applicant15
 Opening Statement by Protestant.18
 Closing Statement by Applicant 166
 Closing Statement by Protestant. 168

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Shawn Townsend	19	44		
Richard Lynch	61	69		
Dr. Paul Collins	94	110		163

EXHIBITS	IDENTIFIED	RECEIVED
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PROTESTANT	
1 thru 1.4 - Zoning Regulations Marked for Judicial Notice	108

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

2 3:28 p.m.

3 CHAIRPERSON MILLER: All right.

4 Showtime. I'm calling Case No. 14-PRO-00095,
5 Showtime is located at 113 Rhode Island Avenue,
6 N.W., License No. 89196, in ANC-5E. This is a
7 Protest Hearing regarding a substantial change
8 application for a sidewalk cafe with six seats.

9 Would the parties come forward,
10 please? Are you here for Showtime, sir?

11 MS. SALGUERO: He is one of our
12 witnesses.

13 MEMBER SILVERSTEIN: The protestant?

14 MS. SALGUERO: The protestant. He --
15 I just saw him go into the bathroom.

16 CHAIRPERSON MILLER: All right.

17 MS. SALGUERO: So I think he -- if we
18 will wait.

19 CHAIRPERSON MILLER: Yes, okay. I
20 called The Showtime. Are you here for Showtime,
21 sir?

22 DR. COLLINS: Yes.

1 CHAIRPERSON MILLER: Okay. We're all
2 set then. Are you the protestant? Why don't we
3 start with people -- I would like everyone to
4 identify themselves for the record.

5 DR. COLLINS: I'm Dr. Paul Collins.

6 CHAIRPERSON MILLER: Okay. You are
7 the protestant in this case, correct?

8 DR. COLLINS: (No audible answer.)

9 CHAIRPERSON MILLER: Protestant,
10 you're protesting --

11 DR. COLLINS: Yes.

12 CHAIRPERSON MILLER: -- the
13 application. Is that right? Okay. And you are
14 on my right?

15 MS. SALGUERO: My name is Rosemarie
16 Salguero. I'm the legal representative for
17 Showtime. And this is Mr. Paul Vivari, the sole
18 owner of Showtime, excuse me.

19 CHAIRPERSON MILLER: Okay. And I
20 apologize that you had to wait. Sometimes cases
21 take longer than we anticipate.

22 With respect to your case, I would

1 like to ask you all about the filings of your
2 PIFs. They were late on both sides. And at the
3 status I gave specific instructions that they
4 needed to be filed within seven days. And I
5 don't believe they were. Would you like to
6 address it? We do have copies now.

7 MS. SALGUERO: Right. I read the
8 transcript for the Status Hearing.

9 CHAIRPERSON MILLER: Okay.

10 MS. SALGUERO: I believe, Madam
11 Chairwoman when you said that the PIFs would be
12 mailed to both the protestants and the applicant,
13 Mr. Vivari never received that in the mail.

14 CHAIRPERSON MILLER: Okay.

15 MS. SALGUERO: I never received any
16 emails, as far as I know. I checked my email.
17 And I believe, I'm not, you know, I can't speak--

18 CHAIRPERSON MILLER: An email.

19 MS. SALGUERO: -- for the protestant.

20 CHAIRPERSON MILLER: Okay. We have
21 been doing email. I think the office emails for
22 those kind of things.

1 MS. SALGUERO: Okay. I don't believe
2 Mr. Vivari received it via email. I'm not sure.
3 Mr. Collins --

4 CHAIRPERSON MILLER: So speaking for
5 yourselves, first.

6 MS. SALGUERO: Right, yes.

7 CHAIRPERSON MILLER: I just want to
8 know what happened. So you didn't receive it.
9 And then what? How did you come to file it when
10 you did then?

11 MS. SALGUERO: I received an email
12 from Ms. Raines, I believe, saying that we had
13 missed the deadline. As soon as I received that,
14 I contacted my client and we submitted it. And
15 that's how.

16 CHAIRPERSON MILLER: Okay. So how
17 many days in advance did you submit it?

18 MS. SALGUERO: We submitted it
19 yesterday.

20 CHAIRPERSON MILLER: Yesterday. Okay.
21 Did you serve Mr. Collins with it?

22 MS. SALGUERO: I did.

1 CHAIRPERSON MILLER: By email?

2 MS. SALGUERO: Yes.

3 CHAIRPERSON MILLER: Okay. And, Mr.
4 Collins?

5 DR. COLLINS: I am having difficulty
6 hearing.

7 CHAIRPERSON MILLER: The question was
8 at the status I gave instructions that PIFs are
9 to be filed seven days ahead of time and we
10 didn't get it.

11 MEMBER SILVERSTEIN: The Protest
12 Information Form.

13 CHAIRPERSON MILLER: The Protest
14 Information Form identifying your issues and your
15 witnesses.

16 DR. COLLINS: I sent in the
17 information on the 3rd of -- on March the 3rd. And
18 that was during the time of the snow, I believe.
19 It was -- however, last week --

20 CHAIRPERSON MILLER: Did you send it
21 by mail or --

22 DR. COLLINS: I sent it to -- I sent

1 it email.

2 CHAIRPERSON MILLER: Email.

3 DR. COLLINS: To Ms. Janea --

4 CHAIRPERSON MILLER: Janea Raines.

5 DR. COLLINS: -- Ms. Raines.

6 CHAIRPERSON MILLER: Yes.

7 DR. COLLINS: And then I was informed
8 that it had not been received. And I sent it
9 again to Ms. Jenkins.

10 CHAIRPERSON MILLER: Okay. I'm sorry,
11 what's your name again?

12 MS. SALGUERO: My name is Rosemarie
13 Salguero.

14 CHAIRPERSON MILLER: Did you send Ms.
15 Salguero --

16 DR. COLLINS: I sent it to Mr. Vivari
17 as well as to Ms. Jenkins. And when she finally
18 -- when I sent it to her, she said she didn't
19 receive the PIF form. I sent it again and she
20 said that she received it. And she sent a copy
21 to Paul Vivari.

22 CHAIRPERSON MILLER: Okay. So

1 basically, you know, we say at the status that
2 your case could be dismissed if we don't get it
3 within seven days. So based on what I'm hearing,
4 I'm not going to recommend or move that the case
5 be dismissed. I'm not going to.

6 And we got your PIFs and it looks like
7 a very limited issue. So unless there is an
8 objection by Board Members, I just wanted to make
9 sure that there was good faith on both sides.

10 And you know, we will look into what goes on here
11 and why there may have been some problem if there
12 was.

13 It looks like the issue is very
14 finite, you know, two tables, six chairs. So we
15 often provide up to 90 minutes per side, but I
16 would suggest that I would think up to 60 minutes
17 should suffice, but, you know, we can see how it
18 goes, but sometimes less is more. We don't want
19 you to stretch out a case.

20 Just tell us why, Mr. Collins, you
21 know, this would be -- impair your peace and
22 quiet that group of six chairs and two tables.

1 And then the applicant will also be addressing
2 why it doesn't.

3 All right. So that being said, we are
4 ready to go forward. If you -- you may not know
5 the order of this protest, so I'm just going to
6 tell you that.

7 So we are saying we would like to see
8 if you could wrap this up between 60 minutes each
9 side. It doesn't include your opening or
10 closing.

11 Mr. Jones, do you have something --

12 MEMBER JONES: I just want to speak it
13 clearly. So you have a right to 90 minutes,
14 that's what our construct is. We are not trying
15 to penalize you. But what we are asking you to
16 do is affirmatively agree to limiting yourselves
17 to below what you are allowed to have.

18 So affirmatively agree to limit
19 yourself to 60 minutes as opposed to what you are
20 entitled to have of 90 minutes, for the purposes
21 of expediency and because the scope of this
22 hearing is so narrow.

1 And we need you to affirmatively agree
2 to that.

3 CHAIRPERSON MILLER: I'm not really --
4 I wasn't saying that. I was suggesting that they
5 try to stick to 60 minutes. I wasn't going to
6 ask them to affirmatively agree.

7 MEMBER JONES: A change from what we
8 talked about in the back?

9 CHAIRPERSON MILLER: Not in my mind.

10 MEMBER JONES: Okay. So --

11 CHAIRPERSON MILLER: If that's what
12 the Board wants to make them affirmatively agree,
13 you know, it's just a subtle difference. Just a
14 subtle difference.

15 MEMBER JONES: Did I miss that?

16 CHAIRPERSON MILLER: Is that what you
17 want to do?

18 MEMBER SILVERSTEIN: Let me ask them.
19 If I may, Mr. Jones?

20 CHAIRPERSON MILLER: Okay.

21 MEMBER SILVERSTEIN: Would either side
22 have a problem if you were limited to 60 minutes

1 for your presentation and your cross-exam? Would
2 you have a problem limiting it to 60 minutes?

3 DR. COLLINS: 60 minutes?

4 MEMBER SILVERSTEIN: Yes.

5 DR. COLLINS: Not for me, sir.

6 MEMBER SILVERSTEIN: Okay.

7 CHAIRPERSON MILLER: Okay. There you
8 go. All right.

9 MEMBER JONES: Thank you for
10 affirmatively agreeing to that --

11 MEMBER SILVERSTEIN: Thank you.

12 MEMBER JONES: -- on the record.

13 CHAIRPERSON MILLER: So but it doesn't
14 include opening and closing remarks. Okay.
15 Opening and closing remarks are not included in
16 the 60 minutes. Mr. Jones is going to be keeping
17 track of the minutes. And your witnesses, your
18 testimony counts for your 60 minutes. And then
19 when you cross-examine the other side, that
20 counts for your 60 minutes. Any questions about
21 that? Okay. It shouldn't even take necessarily
22 60 minutes. Okay. It will probably take less

1 time than our talking about it. Okay.

2 The order of procedure for those of
3 you who may not be familiar with how this goes,
4 you have already done your introductions. We
5 have already talked about preliminary issues, the
6 number of witnesses have been identified on the
7 PIFs. Why don't you just say it for the record,
8 how many witnesses?

9 MS. SALGUERO: I have one witness,
10 Richard Lynch.

11 CHAIRPERSON MILLER: And you have one
12 witness, sir?

13 DR. COLLINS: No, just --

14 CHAIRPERSON MILLER: Yourself?

15 DR. COLLINS: -- me.

16 CHAIRPERSON MILLER: Okay. Then we do
17 what is called we will take opening statements
18 where each of you can just give a general
19 overview of what your case is, what your argument
20 is going to be. It's not required. You can do
21 it. Applicant goes first, then the protestant.
22 And then we will call our Board witness who did

1 the investigation and the report and he or she
2 will testify and the Board will ask questions and
3 you each can ask questions, based on the report.

4 Then applicant goes first and then any
5 witnesses or evidence. You can cross-examine.
6 The Board can question. Then the protestant puts
7 on your case. And the applicant has rebuttal if
8 they so choose and then it's closing.

9 And if you have any questions along
10 the way, just let me know. Okay? Any questions
11 now? Okay. So then we are ready for applicant's
12 opening statement. Oh, wait, I'm sorry, I'm
13 sorry. Let me put one other thing on the record.

14 With respect to -- just for the
15 record, our office has determined that the
16 Protest Information Forms were emailed to the
17 applicant and the protestant on December 11, 2014
18 at 10:19 a.m. That's what our records show. You
19 can check when you go home, but basically that's
20 just for the record. We are going to go beyond
21 that issue now and get into the case. Okay.

22 All right. Applicant's opening

1 statement?

2 MS. SALGUERO: Good afternoon, Members
3 of the Board. My name is Rosemarie Salguero. I
4 represent Showtime.

5 MEMBER SILVERSTEIN: Please speak up
6 and move the microphone closer to you.

7 MS. SALGUERO: Sure.

8 MEMBER SILVERSTEIN: So we can hear
9 you.

10 MS. SALGUERO: I am often told I have
11 a loud voice, so --

12 MEMBER SILVERSTEIN: Well, the
13 protestant has a hearing impairment as do I.

14 MS. SALGUERO: Okay. My name is
15 Rosemarie Salguero. I represent Showtime.
16 Showtime is a neighborhood bar. It has -- caters
17 to local neighbors, a small location. People
18 walk to the bar from their homes.

19 It has been a good neighbor and a good
20 establishment in the city since its opening. The
21 investigative report, Mr. Townsend's report
22 clearly states that the ABRA Investigator has at

1 no point heard excessive noise from the
2 establishment, has not observed any issues with
3 peace, order or quiet.

4 The resident, Mr. Richard Lynch, who
5 we will have testify would also speak to the
6 effects of Showtime in the neighborhood.

7 The previous tenant was a barbershop
8 which had had several issues with the
9 neighborhood. There were often loitering issues
10 with the previous tenant. And when Showtime
11 applied, we worked with Dr. Collins to discuss
12 these issues to make sure that that type of
13 behavior would not occur.

14 Since Showtime has been operating, as
15 we can -- we will put into the record that the
16 establishment has not had any of those types of
17 issues. There is really no -- only one noise
18 violation since the establishment has opened. No
19 police issues with the establishment.

20 It generally has respectful good
21 patrons, good tenants. The establishment has
22 been a good tenant in the neighborhood and it has

1 applied legally for a sidewalk cafe permit from
2 the Department of Transportation. When we
3 applied for a sidewalk cafe permit, it goes
4 through various departments within the District
5 of Transportation in Washington, D.C.

6 There is also public announcements.
7 The ANC gets public notice and gets to vote on
8 it. They are the representative body in the
9 neighborhood for the residents. They have no
10 objection to the sidewalk cafe permit. There is
11 also a sign that is posted out front at the
12 establishment prior to the permit being issued.

13 Showtime put up the public notice.
14 The neighborhood had notice. There were no
15 issues with it. Therefore, DDOT considered that
16 and issued the sidewalk cafe permit. They deem
17 it a valid use of public space. And at this
18 point, we are hoping that the Board will also
19 allow the establishment to have six people sit
20 outside in very small limited hours for the bar,
21 at this time. Thank you.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Collins, this is not your testimony right now.
2 If you want to say anything about your case, just
3 you can, otherwise, we will get to your case
4 after their case.

5 DR. COLLINS: Well, the proposed
6 sidewalk cafe is on my property, on my property
7 line. And this is why we are here.

8 CHAIRPERSON MILLER: Okay. Thank you.
9 All right. And we will hear more about it when
10 you present your case.

11 Now, I guess we will call our
12 Investigator. Good afternoon.

13 INVESTIGATOR TOWNSEND: Good
14 afternoon.

15 Whereupon,

16 INVESTIGATOR SHAWN TOWNSEND
17 was called as a witness by the ABRA Board, and
18 having been first duly sworn, assumed the witness
19 stand and was examined and testified as follows:

20 INVESTIGATOR TOWNSEND: Yes, I do.

21 CHAIRPERSON MILLER: Okay. Thank you.

22 DIRECT EXAMINATION

1 INVESTIGATOR TOWNSEND: I conducted a
2 -- Investigator Shawn Townsend with ABRA. I
3 conducted a protest investigation of Spo-dee-o-
4 dee t/a The Showtime which is located at 113
5 Rhode Island Avenue, N.W.

6 The establishment is located in the
7 100 Block of Rhode Island Avenue, N.W., between
8 1st Street, N.W., to the east and 2nd Street, N.W.,
9 to the west. Showtime is a small one-level brick
10 and steel establishment with one main entrance
11 located at the front of the building.

12 The interior consists of one bar and
13 seating for, approximately, 25 patrons. The
14 application for substantial change was protested
15 by the abutting property owner, Dr. Paul Collins.

16 In this area, there are a total of 15
17 licensed establishments within 1200 feet of
18 Showtime. Of the 15, four of the establishments
19 have sidewalk cafes. There are no schools within
20 400 feet of the establishment.

21 The protest issues of Dr. Collins are:

22 (1) Adverse impact on the peace, order

1 and quiet of residents in the surrounding area.

2 (2) Pedestrian safety.

3 (3) As well as adverse impact on real
4 property.

5 On March 4, 2015, I spoke to Dr.
6 Collins, the owner of the abutting property. Dr.
7 Collins stated that his primary issue was that
8 the licensee violated the settlement agreement by
9 not notifying him of the plans to expand the
10 establishment's operations to include a sidewalk
11 cafe.

12 Dr. Collins also stated that the
13 settlement agreement states that Showtime shall
14 remain a closed -- shall maintain a closed-door
15 policy, meaning that operations are to be
16 conducted on the inside of the establishment
17 only, restricting the licensee from having a
18 sidewalk cafe.

19 Dr. Collins also expressed concern
20 regarding the secondhand smoke of patrons
21 outside. As it is now, patrons urinating on his
22 property during operating hours of Showtime and

1 the sidewalk cafe impeding on the walkway -- of
2 pedestrians walking by or waiting for the bus,
3 which is located directly in front of Showtime.

4 On March 6, 2015, I spoke to Paul
5 Vivari, the owner of the establishment, who
6 stated that he has been approved and granted a
7 public space permit from DDOT for six seats and
8 two tables. Mr. Vivari stated that he would like
9 to provide his patrons with an area where they
10 can smoke cigarettes and consume alcoholic
11 beverages outside of the establishment.

12 Mr. Vivari stated that he has only
13 received one noise complaint since opening and is
14 cautious of the establishment's noise levels at
15 all times.

16 Mr. Vivari believes that a 90-day
17 notice was served to the abutting owner to
18 include Dr. Collins when he was placarded by ABRA
19 when he applied for the substantial change, which
20 would satisfy the settlement agreement.

21 Mr. Vivari stated that he does not
22 believe that the settlement agreement should

1 restrict him or does restrict him from having a
2 sidewalk cafe.

3 Mr. Vivari also mentioned that Dr.
4 Collins does not reside at the abutting property,
5 but has an interest because he owns the building.
6 And that would be 111 Rhode Island Avenue, N.W.,
7 which is right next door.

8 Showtime was monitored by ABRA
9 Investigators a total of six times from February
10 19, 2015 to March 6, 2015. Showtime was found to
11 be in violation on March 6, 2015 for operating a
12 sidewalk cafe with no sidewalk cafe endorsement.
13 The establishment was over-capacity. They have a
14 Certificate of Occupancy which states that the
15 occupant load is at capacity at 25.

16 During my inspection, myself and
17 Investigator Jason Peru observed, approximately,
18 80 patrons inside of the establishment. There
19 was also no window lettering on the establishment
20 as well.

21 During the six occasions that I did
22 monitor Showtime, I did not observe any

1 pedestrian issues or specific noise issues
2 related to Showtime. And that concludes.

3 CHAIRPERSON MILLER: Thank you. Okay.
4 Board questions? Yes, Mr. Short?

5 MEMBER SHORT: Good afternoon,
6 Investigator.

7 INVESTIGATOR TOWNSEND: Good
8 afternoon.

9 MEMBER SHORT: You stated in your
10 report on March 6th that they were operating a
11 substantial change without approval?

12 INVESTIGATOR TOWNSEND: That's
13 correct. When we -- I arrived to do a regulatory
14 inspection for the protest and upon my arrival I
15 noticed at least five to six patrons standing
16 outside. A couple were smoking cigarettes. Some
17 were standing around on the phone as well as some
18 patrons walking inside of the establishment.

19 There is red stanchion ropes and from
20 what I understand from the licensee, he had it --
21 he has it up in the area where the sidewalk cafe
22 will be if approved, but I did inform him that he

1 was operating illegally because he didn't have
2 the sidewalk cafe endorsement from ABRA yet.

3 I did not observe any alcoholic
4 beverage being consumed, just patrons smoking
5 cigarettes.

6 MEMBER SHORT: And is that -- in your
7 investigative report that is identified as the
8 No. 15, the photograph of the -- yes, I think
9 that would be No. 15.

10 INVESTIGATOR TOWNSEND: That's
11 correct.

12 MEMBER SHORT: And you were there for
13 a regular inspection and you observed the
14 stanchions and the person standing outside?

15 INVESTIGATOR TOWNSEND: Yes, sir.

16 MEMBER SHORT: And when you questioned
17 the owner about it, what was his response?

18 INVESTIGATOR TOWNSEND: He stated that
19 he thought that because he received the public
20 space permit from DDOT, he assumed that he could
21 put up the stanchion ropes and operate on that
22 public space permit by itself.

1 MEMBER SHORT: Thank you. That's all
2 I have, Madam Chair, at this time.

3 CHAIRPERSON MILLER: Okay. Others?
4 Mr. Jones?

5 MEMBER JONES: Thank you, Madam Chair.
6 Did he provide any indication as to what
7 operations meant? In terms of the outdoor space.

8 INVESTIGATOR TOWNSEND: No, he did
9 not.

10 MEMBER JONES: Okay.

11 INVESTIGATOR TOWNSEND: Not that I can
12 recall.

13 MEMBER JONES: As you saw it, did you
14 -- if I remember correctly, you indicated that
15 you didn't see anyone out occupying any patrons
16 in the marked off or closed off area. Is that
17 correct?

18 INVESTIGATOR TOWNSEND: I didn't see
19 any patrons drinking alcohol.

20 MEMBER JONES: Oh, okay. So but you
21 did see patrons --

22 INVESTIGATOR TOWNSEND: Correct.

1 MEMBER JONES: -- in that space?

2 INVESTIGATOR TOWNSEND: Yes, sir.

3 MEMBER JONES: Okay. How many
4 patrons?

5 INVESTIGATOR TOWNSEND: About five or
6 six.

7 MEMBER JONES: Five or six?

8 INVESTIGATOR TOWNSEND: Yes.

9 MEMBER JONES: All right. And what
10 were they doing in that space?

11 INVESTIGATOR TOWNSEND: A couple were
12 smoking cigarettes. I did see that. And others
13 were just standing around talking. There was a
14 couple on the phone. And that's pretty much it.

15 MEMBER JONES: Okay. And was it clear
16 to you that they were patrons of this
17 establishment?

18 INVESTIGATOR TOWNSEND: I can't
19 affirmatively say that they were patrons of the
20 establishment, but they were within the --
21 according to the licensee, the way the ropes were
22 set up was his sidewalk cafe and they were -- the

1 patrons that I saw -- the folks that I saw were
2 in the confines of the establishment.

3 I did not see any of those patrons
4 standing outside specifically go into the
5 establishment.

6 MEMBER JONES: Okay. Did the owner
7 refer to the space that was marked off as his
8 sidewalk cafe area?

9 INVESTIGATOR TOWNSEND: He did.

10 MEMBER JONES: He did?

11 INVESTIGATOR TOWNSEND: Yes.

12 MEMBER JONES: Okay. How was the --
13 I'm not sure what the layout is and I apologize,
14 I don't have the picture in front of me, but
15 there is the front of the establishment is the --
16 were the stanchions or what was used to mark off
17 the front sidewalk cafe area?

18 INVESTIGATOR TOWNSEND: The --

19 MEMBER JONES: What was used to mark
20 that off?

21 INVESTIGATOR TOWNSEND: -- stanchions.

22 MEMBER JONES: Stanchions?

1 INVESTIGATOR TOWNSEND: Yes.

2 MEMBER JONES: Okay. And were -- how
3 were the stanchions set up in such a way that you
4 have to walk through the stanchions to get to the
5 front door?

6 INVESTIGATOR TOWNSEND: The stanchion
7 is set up on the right side of the establishment.
8 Am I able to raise this picture up and show you?

9 MEMBER JONES: Okay. So this is in
10 your report?

11 INVESTIGATOR TOWNSEND: Correct.

12 MEMBER JONES: Okay.

13 INVESTIGATOR TOWNSEND: This would be
14 exhibit --

15 MEMBER JONES: This exhibit or Picture
16 15?

17 INVESTIGATOR TOWNSEND: Correct.

18 MEMBER JONES: Okay. Got it.

19 INVESTIGATOR TOWNSEND: So the
20 stanchions are set up to the right of the main
21 entrance of Showtime.

22 MEMBER JONES: Got it. Okay. And

1 when you walked up initially before you
2 approached the owner, there were five to six
3 individuals standing in this area where I'm
4 looking at on page 15, that are defined as a
5 sidewalk cafe area?

6 INVESTIGATOR TOWNSEND: Correct.

7 MEMBER JONES: Okay.

8 INVESTIGATOR TOWNSEND: So when --
9 yes.

10 MEMBER JONES: And the picture also
11 has a few individuals, by my count at least four
12 to five to maybe even six people, that are
13 standing in front of Showtime. When you took --
14 well, let me ask you this. Did you take this
15 picture?

16 INVESTIGATOR TOWNSEND: I did.

17 MEMBER JONES: Okay. Did you take
18 this picture on March 6, 2015?

19 INVESTIGATOR TOWNSEND: Yes, sir.

20 MEMBER JONES: Okay. Did you observe
21 these individuals that are represented here in
22 this picture?

1 INVESTIGATOR TOWNSEND: Yes.

2 MEMBER JONES: Okay. What were these
3 individuals doing?

4 INVESTIGATOR TOWNSEND: They weren't--
5 they were just standing around.

6 MEMBER JONES: They were just standing
7 around?

8 INVESTIGATOR TOWNSEND: They were not
9 waiting to get inside the establishment. They
10 were just standing around.

11 MEMBER JONES: Okay. So they weren't
12 standing outside waiting to get in to pay at the
13 front door or anything along those lines. Is
14 that correct?

15 INVESTIGATOR TOWNSEND: No, sir.

16 MEMBER JONES: Okay. So they were
17 just gathered out front?

18 INVESTIGATOR TOWNSEND: Yes.

19 MEMBER JONES: Is it -- it may be a
20 perspective issue, but in me looking at this
21 picture, it appears as if there is a person in a
22 brown jacket with a black hoodie on?

1 INVESTIGATOR TOWNSEND: Correct.

2 MEMBER JONES: Is that person standing
3 in front of The Showtime property area? It looks
4 like there are two doors. There is the main
5 window here and then it looks like there is a
6 sign -- the number is 113?

7 INVESTIGATOR TOWNSEND: Correct.

8 MEMBER JONES: What are the numbers
9 113 over? Are they over a front door?

10 INVESTIGATOR TOWNSEND: They are over
11 the main entrance of Showtime.

12 MEMBER JONES: They are over the main
13 entrance. Then there is a white door that is to
14 the left of that.

15 INVESTIGATOR TOWNSEND: Correct.

16 MEMBER JONES: Is that part of The
17 Showtime property by your understanding?

18 INVESTIGATOR TOWNSEND: I do not --
19 I'm not --

20 MEMBER JONES: Is that part of the
21 property by your understanding?

22 INVESTIGATOR TOWNSEND: By my

1 understanding, no, it is not.

2 MEMBER JONES: Okay. So based on your
3 perspective, independent ABRA Investigator, it
4 appears that you observed individuals that were
5 gathered out in front of -- that were
6 participants of or patrons of Showtime that
7 appear to be gathered out in an area that were
8 off of Showtime's property?

9 INVESTIGATOR TOWNSEND: Correct.

10 MEMBER JONES: Okay. Thank you for
11 that. Also, there appears to be an individual
12 that is standing to the right of the stanchion
13 area on the outside of those stanchions --

14 INVESTIGATOR TOWNSEND: Yes.

15 MEMBER JONES: -- with white-soled
16 shoes.

17 INVESTIGATOR TOWNSEND: Yes.

18 MEMBER JONES: Do you have any
19 indication as to whether or not that individual
20 was a patron or a perspective patron of Showtime?
21 If you have no knowledge, that's fine.

22 INVESTIGATOR TOWNSEND: I have no

1 knowledge.

2 MEMBER JONES: Okay. Fair enough.

3 And just to make sure I'm clear in your response,
4 at no time did the owner provide you any
5 clarification as to what his intended use of this
6 space was by his definition of sidewalk cafe or
7 his definition of operation?

8 INVESTIGATOR TOWNSEND: I'll take that
9 back. He did say, sir, that his patrons can go
10 outside and smoke. And he said he put the
11 stanchions up, so that he would not have
12 lingering patrons on abutting property.

13 MEMBER JONES: Got it. Okay. Thank
14 you for that. Thank you, Madam Chair.

15 CHAIRPERSON MILLER: Others? So I'll
16 follow-up then on your last remark. The person
17 that Mr. Jones identified standing in front of
18 111 Rhode Island Avenue, you weren't sure who it
19 was, but could that possibly be a lingering
20 patron standing in front of another residence?

21 INVESTIGATOR TOWNSEND: It could very
22 well be.

1 CHAIRPERSON MILLER: And is that
2 residence, 111, Dr. Collins' residence?

3 INVESTIGATOR TOWNSEND: Yes, ma'am.

4 CHAIRPERSON MILLER: Is there a
5 residence on the other side of Showtime, abutting
6 Showtime on the other side?

7 INVESTIGATOR TOWNSEND: From speaking
8 with the licensee, I believe that that door to
9 the left of 113 is an entrance to the residence
10 above Showtime.

11 CHAIRPERSON MILLER: Right. Okay.
12 And how about what is next to it?

13 INVESTIGATOR TOWNSEND: Next door to
14 Showtime on the left is --

15 CHAIRPERSON MILLER: Yes.

16 INVESTIGATOR TOWNSEND: -- more
17 residents. I think it is a three-story building.
18 And to the right there is, at 111 I believe it
19 is, a church on the first floor and then two
20 residents above the church.

21 CHAIRPERSON MILLER: Oh, okay. The
22 church is on the first floor, two residents

1 above. Do you know which level Dr. Collins is
2 on?

3 INVESTIGATOR TOWNSEND: I believe Dr.
4 Collins is the owner of the building.

5 CHAIRPERSON MILLER: Is the owner of
6 the building. I see. Okay. And did you happen
7 to speak with any of the residents in either 111
8 or I don't know the number on the other side of
9 Showtime?

10 INVESTIGATOR TOWNSEND: I did not.

11 CHAIRPERSON MILLER: Okay. You also
12 said that the capacity of Showtime is 25 and on
13 one of the days you visited Showtime there were
14 80 patrons inside?

15 INVESTIGATOR TOWNSEND: Yes.

16 CHAIRPERSON MILLER: And what time of
17 day was that, do you recall?

18 INVESTIGATOR TOWNSEND: This was at
19 approximately 12:20 a.m.

20 CHAIRPERSON MILLER: A.m., okay. And
21 how would you characterize it? Was it -- did it
22 appear very crowded inside?

1 INVESTIGATOR TOWNSEND: It did upon
2 entrance. That was probably one of the first
3 questions that I, you know, asked myself was are
4 they over capacity? And we immediately went,
5 myself and Investigator Peru, to the -- after we
6 introduced ourselves and, you know, identified,
7 advising the owner that we were there for an
8 inspection.

9 I looked at the Certificate of
10 Occupancy and confirmed that his capacity was 25.
11 I immediately advised him that he was -- I
12 counted at least 40 patrons, hand-counted at
13 least 40 while I was standing there and that he
14 was over-capacity.

15 He had mentioned that there was some
16 going back and forth with DCRA about adding
17 another bathroom to get more occupancy load, but
18 that never occurred. I informed him, at that
19 point, I would either have to call the Fire
20 Marshal or he had to evacuate the building. So
21 he evacuated the building and he said that he
22 would allow 25 more patrons back in to stay in

1 compliance.

2 CHAIRPERSON MILLER: Was it -- could
3 you hear noise on the outside?

4 INVESTIGATOR TOWNSEND: I did not.
5 Noise was not an issue on that night.

6 CHAIRPERSON MILLER: Okay. And what
7 is behind Showtime? I'm not sure, is there a
8 picture?

9 INVESTIGATOR TOWNSEND: You say what's
10 behind Showtime?

11 CHAIRPERSON MILLER: What's behind?
12 Like Exhibit 15 shows the front. I was wondering
13 is there something that shows the back?

14 INVESTIGATOR TOWNSEND: I'm sorry, I
15 must have not included it, but there is an alley
16 directly behind Showtime. So to the left there
17 is -- so there is 111 and if you keep walking
18 down to the left of Showtime, you come to an
19 entrance of an alley. And if you walk to the
20 back, you will get to the -- if you walk down the
21 alley, you will get to the rear of the
22 establishment.

1 CHAIRPERSON MILLER: Okay. Are there
2 residences behind Showtime?

3 INVESTIGATOR TOWNSEND: Yes. On the
4 other side of the alley, there are more
5 residents.

6 CHAIRPERSON MILLER: Okay. So is it
7 correct that none of these residents have
8 expressed any concerns one way or the other with
9 respect to this application?

10 INVESTIGATOR TOWNSEND: I have not
11 heard of any residents other than Dr. Collins.

12 CHAIRPERSON MILLER: Okay. And did
13 you have contact with the ANC on this issue?

14 INVESTIGATOR TOWNSEND: I did not.

15 CHAIRPERSON MILLER: Okay.

16 INVESTIGATOR TOWNSEND: I did not.

17 CHAIRPERSON MILLER: They are not a
18 protestant in the case.

19 INVESTIGATOR TOWNSEND: Right.

20 CHAIRPERSON MILLER: Okay. All right.
21 Any other questions from Board Members?

22 MEMBER SHORT: I just have one, Madam

1 Chair.

2 CHAIRPERSON MILLER: Okay. Mr. Short?

3 MEMBER SHORT: You mentioned the rear.

4 And we know when a business is operating, they
5 have to have an entrance and egress, front and
6 back. Is there -- would 80 people in the back,
7 if something had happened in the front, would the
8 80 people had a hard time getting out of the
9 back?

10 INVESTIGATOR TOWNSEND: In my opinion,
11 yes. The rear of the establishment is -- it's a
12 very small bar. And the rear is -- they have
13 kitchen, supplies and, you know, I think it is an
14 ice cooler, a lot of bar equipment back there.
15 And the door is a small door. It's not very
16 accessible.

17 MEMBER SHORT: So the exit in the
18 rear, you have to go through the kitchen and then
19 through the door and then to the alley?

20 INVESTIGATOR TOWNSEND: Right. Well,
21 right. It's not really the kitchen. It's just
22 an area where they keep stuff at.

1 MEMBER SHORT: Keep stuff.

2 INVESTIGATOR TOWNSEND: Correct. So
3 yes, sir, you do have to go through there. And
4 then go through the door to get to the alley.

5 MEMBER SHORT: 25 people probably
6 wouldn't have as much problem as 80 people.

7 INVESTIGATOR TOWNSEND: Correct.

8 MEMBER SHORT: That's all I have,
9 Madam Chair. Thank you.

10 CHAIRPERSON MILLER: Okay. Others?
11 Do you have one?

12 MEMBER SILVERSTEIN: Just very
13 briefly.

14 CHAIRPERSON MILLER: Yes, Mr.
15 Silverstein.

16 MEMBER SILVERSTEIN: Investigator,
17 thank you for your report. How many people were
18 in the establishment at the time of your
19 regulatory inspection on March 6th? And include
20 staff, include the people working there. What's
21 your best guess?

22 INVESTIGATOR TOWNSEND: Including

1 staff?

2 MEMBER SILVERSTEIN: Yes.

3 INVESTIGATOR TOWNSEND: I would say
4 between 80 and 85. I believe he had a staff of--
5 there was one or two males at the door, including
6 the licensee was behind the bar and I think he
7 had two bartenders as well. Myself and
8 Investigator Peru, we stood -- when he made the
9 announcement, when the licensee made the
10 announcement that he was evacuating the premises,
11 myself and Investigator Peru stood at the door
12 and physically counted 75, 76 patrons that had
13 exited the establishment.

14 MEMBER SILVERSTEIN: Okay.

15 INVESTIGATOR TOWNSEND: And if you add
16 the, you know, extra couple staff and there were
17 some folks lingering at the bar who didn't exit,
18 I'm going to say, approximately, 80.

19 MEMBER SILVERSTEIN: No further
20 questions.

21 CHAIRPERSON MILLER: Okay. Others?
22 I'm sorry, I just have two more I thought of.

1 One is with respect to the smoking issue.

2 INVESTIGATOR TOWNSEND: Yes.

3 CHAIRPERSON MILLER: In your opinion,
4 are there any other places outside to smoke, for
5 instance in the back? And if so, would they have
6 a greater adverse impact on residents than
7 smoking in the front?

8 INVESTIGATOR TOWNSEND: I think it
9 would be a greater impact on the residents if
10 they were to smoke in the rear of the
11 establishment, yes.

12 CHAIRPERSON MILLER: Because there are
13 residents, a lot of residents behind?

14 INVESTIGATOR TOWNSEND: Correct.

15 CHAIRPERSON MILLER: And are there any
16 other sidewalk cafes on this block?

17 INVESTIGATOR TOWNSEND: On this block,
18 no. There is -- across the street, there is
19 Boundary Stone Public House which has a sidewalk
20 cafe. Rustik, which is a restaurant. I'm sorry,
21 they have a tavern license. It's across the
22 street as well. They have one. Bacio Pizzeria

1 and Big Bear Cafe also have sidewalk cafes.

2 CHAIRPERSON MILLER: And they are
3 across the street?

4 INVESTIGATOR TOWNSEND: Big Bear and
5 Bacio Pizzeria, I believe, are further away from
6 the --

7 CHAIRPERSON MILLER: Oh.

8 INVESTIGATOR TOWNSEND: -- from
9 Showtime, but directly across the street is
10 Boundary Stone and Rustik.

11 CHAIRPERSON MILLER: Okay. Then my
12 other question is are there other outdoor cafes
13 that have residences next to them in this area?

14 INVESTIGATOR TOWNSEND: Boundary
15 Stone, yes, yes.

16 CHAIRPERSON MILLER: Okay.

17 INVESTIGATOR TOWNSEND: Yes. Boundary
18 Stone and Rustik to have residences next to them.

19 CHAIRPERSON MILLER: Okay.

20 INVESTIGATOR TOWNSEND: Correct.

21 CHAIRPERSON MILLER: Thank you. All
22 right. Any other Board questions? All right.

1 So now we turn to the applicant for questions.

2 CROSS-EXAMINATION

3 MS. SALGUERO: Good afternoon --

4 INVESTIGATOR TOWNSEND: Good
5 afternoon.

6 MS. SALGUERO: -- Investigator
7 Townsend. If you don't mind showing the Exhibit
8 15?

9 INVESTIGATOR TOWNSEND: Yes.

10 MS. SALGUERO: I have a copy, but it's
11 in black and white.

12 INVESTIGATOR TOWNSEND: Okay.

13 MS. SALGUERO: And it's a little bit
14 hard for me to kind of identify. If you don't
15 mind.

16 INVESTIGATOR TOWNSEND: Yes.

17 MS. SALGUERO: So you discussed the
18 resident who is right about 111 away from the
19 other patrons.

20 INVESTIGATOR TOWNSEND: Correct.

21 MS. SALGUERO: Could that have been a
22 resident walking in to the building 111?

1 INVESTIGATOR TOWNSEND: Yes, it could
2 have been.

3 MS. SALGUERO: Okay.

4 INVESTIGATOR TOWNSEND: It could have
5 been.

6 MS. SALGUERO: And everyone else is
7 clearly to the side under 113, correct, the five
8 or six? There is none near the roped off area,
9 correct?

10 INVESTIGATOR TOWNSEND: Well, there is
11 actually -- there is one person.

12 MS. SALGUERO: Maybe I just can't see
13 them.

14 INVESTIGATOR TOWNSEND: Okay. There
15 is one person inside the roped area.

16 MS. SALGUERO: Okay. And then
17 everyone else is kind of to the side. So it
18 seems that that one person is not associated with
19 Showtime.

20 INVESTIGATOR TOWNSEND: Right.

21 MS. SALGUERO: Correct? Okay. Great.
22 And the -- when you discussed the operating of

1 the sidewalk cafe, you said that there was no
2 patrons with any alcohol or no one sitting,
3 obviously, correct?

4 INVESTIGATOR TOWNSEND: Correct.

5 MS. SALGUERO: And the only issue that
6 you deem it being in operation is because he had
7 the stanchion there?

8 INVESTIGATOR TOWNSEND: Correct. Yes.

9 MS. SALGUERO: That's the only thing
10 that --

11 INVESTIGATOR TOWNSEND: He
12 specifically told me that he was operating the
13 sidewalk cafe for patrons.

14 MS. SALGUERO: Who?

15 INVESTIGATOR TOWNSEND: The licensee,
16 Mr. Vivari.

17 MS. SALGUERO: He said that he was
18 operating it or he just had the stanchions there
19 separating so that no one walked over --

20 INVESTIGATOR TOWNSEND: He --

21 MS. SALGUERO: -- into Mr. Collins'
22 space?

1 INVESTIGATOR TOWNSEND: No. He said
2 that he put the stanchions up so that his patrons
3 can go outside and smoke and not be on abutting
4 property.

5 MS. SALGUERO: Okay. And for smokers
6 generally, the D.C. Government can't tell a
7 smoker not to smoke, correct?

8 INVESTIGATOR TOWNSEND: I'm not -- I'm
9 an ABRA Investigator.

10 MS. SALGUERO: So okay. I apologize.
11 But if a patron, if an individual leaves and
12 establishment and, you know, chooses to smoke
13 outside, there is limited options that an
14 individual can do to stop them from smoking
15 outside, correct?

16 INVESTIGATOR TOWNSEND: I assume. I
17 assume so.

18 MS. SALGUERO: Were the individuals
19 creating any rowdiness, in your opinion, or
20 disruption in the neighborhood?

21 INVESTIGATOR TOWNSEND: Outside of the
22 establishment?

1 MS. SALGUERO: Outside of the
2 establishment.

3 INVESTIGATOR TOWNSEND: No.

4 MS. SALGUERO: So they weren't
5 creating too many noise issues at all?

6 INVESTIGATOR TOWNSEND: Not during my
7 visit there.

8 MS. SALGUERO: Okay. And you did say
9 that there were doormen, correct, at the
10 entrance?

11 INVESTIGATOR TOWNSEND: Yes. There
12 was a doorman.

13 MS. SALGUERO: And they were
14 monitoring the -- were they monitoring the
15 individuals outside as well?

16 INVESTIGATOR TOWNSEND: I can't
17 affirmatively say they were. The doorman that I
18 saw upon arrival was inside of the establishment
19 on the other side of the door.

20 MS. SALGUERO: Okay.

21 INVESTIGATOR TOWNSEND: He -- I did
22 see him checking IDs. I can't tell you that he

1 was monitoring the outside.

2 MS. SALGUERO: All right. And while
3 you visited, did you observe a fine? Telling,
4 kind of announcing to the patrons to be
5 neighborly and to, you know, not create any
6 noise?

7 INVESTIGATOR TOWNSEND: I did not.

8 MS. SALGUERO: You did not. Okay.
9 And you did say that the patrons were generally
10 respectful, behaving as respectful patrons,
11 individuals?

12 INVESTIGATOR TOWNSEND: Until they
13 were told to leave. I did hear some questionable
14 remarks, but other than that, no, it was fine.

15 MS. SALGUERO: All right. And you
16 said that you observed the establishment six
17 times, correct?

18 INVESTIGATOR TOWNSEND: Correct.

19 MS. SALGUERO: All right. And besides
20 the one incident where there was an evacuation,
21 every other time that you went there it seemed as
22 if everyone was respectful and it was not

1 creating any issues within the neighborhood?

2 INVESTIGATOR TOWNSEND: That's
3 correct.

4 MS. SALGUERO: Okay. Great. And also
5 in your investigative report you said that it did
6 not appear that there was any impediment to the
7 pedestrian walkway or by the establishment? I'll
8 get the exact reference if I can find it on your
9 Investigator's page 7. The effects of the
10 establishment on pedestrian safety, "At no point
11 did ABRA Investigators observe the walkway in
12 front of The Showtime being impeded."

13 INVESTIGATOR TOWNSEND: Correct.

14 MS. SALGUERO: That's correct. And
15 that was all six times, correct?

16 INVESTIGATOR TOWNSEND: Yes.

17 MS. SALGUERO: Okay. Okay. As far as
18 you know, with your experience as an ABRA
19 Investigator --

20 INVESTIGATOR TOWNSEND: Yes.

21 MS. SALGUERO: -- for establishments,
22 for sidewalk cafes, when permits are issued, they

1 are not -- that space is public space and doesn't
2 belong to any property owner, correct? It
3 doesn't belong to any property owner. It's
4 public space, correct?

5 INVESTIGATOR TOWNSEND: I'm not
6 experienced enough to answer that question.

7 MS. SALGUERO: Okay. When sidewalk
8 cafes are issued, the governing body that allows
9 sidewalk cafes to get the permits is DDOT,
10 correct?

11 INVESTIGATOR TOWNSEND: Correct.

12 MS. SALGUERO: And they review the
13 space to see if it is in a public space that can
14 be given a permit, correct?

15 INVESTIGATOR TOWNSEND: Yes. From
16 what I understand is it's a two-part process.
17 You apply with DDOT and DCR -- and DDOT issues
18 the public space permit and DCRA issues the
19 Certificate of Use for the sidewalk cafe. And in
20 this case, because the establishment is an
21 alcohol licensed establishment, there is a
22 process to apply for a substantial change with

1 ABRA for a sidewalk cafe.

2 MS. SALGUERO: But DDOT would not
3 issue a permit if it was on private space, such
4 as Dr. Collins' property? The public space
5 permit would not be issued if it was on private
6 property.

7 INVESTIGATOR TOWNSEND: I can only
8 assume that that's what they did. I can't speak
9 for DDOT, but I mean, since they issued it, I can
10 only assume that.

11 MS. SALGUERO: But if proper procedure
12 was followed, then it would be on public space,
13 correct?

14 INVESTIGATOR TOWNSEND: I believe so.

15 MS. SALGUERO: Okay. Great. Now, did
16 you see any -- was the area out front clean? Was
17 it free of debris? Did not notice any kind of
18 issue with litter?

19 INVESTIGATOR TOWNSEND: Well, in the
20 picture you can -- I mean, there was -- I did --
21 I mean, it appears that there was some trash
22 directly in front of the establishment. You

1 might not be able to see it, but there is like a
2 little white area right in front of the
3 establishment. It was some -- I don't know if it
4 was like a cup or like a grocery bag or
5 something. And then over here to the right. But
6 that's on 111's property, that's not 113,
7 Showtime's property.

8 MS. SALGUERO: Yes.

9 INVESTIGATOR TOWNSEND: But there was
10 some trash right here. But other than that, it
11 was decent.

12 MS. SALGUERO: So and during your six
13 visits, you didn't see anything?

14 INVESTIGATOR TOWNSEND: No.

15 MS. SALGUERO: Like it was unkempt or,
16 you know.

17 INVESTIGATOR TOWNSEND: No.

18 MS. SALGUERO: Okay. During your
19 other six visits, did you notice any homeless
20 individuals walking by or in that area? I know
21 there have been issues in the past with that.

22 INVESTIGATOR TOWNSEND: I am not sure

1 if they were homeless, but there were folks
2 walking by.

3 MS. SALGUERO: Okay. But no one kind
4 of loitering in that area that you would think
5 that were not patrons of Showtime?

6 INVESTIGATOR TOWNSEND: That were not
7 patrons? I can't affirmatively say that it
8 wasn't, because there are two establishments
9 across the street and, you know, it's a close
10 neighborhood, so a lot of those folks that go to
11 the restaurants and bars in that area do walk, so
12 I can't say that those --

13 MS. SALGUERO: Yes.

14 INVESTIGATOR TOWNSEND: -- folks were
15 just lingering around. They were walking. It
16 looked like they were going somewhere.

17 MS. SALGUERO: Okay. And you
18 discussed the sidewalk cafe across the street for
19 Boundary Stone. How many -- do you know how many
20 seats there were for Boundary Stone? Could you
21 hear noise from Boundary Stone?

22 INVESTIGATOR TOWNSEND: I could not.

1 I don't know how many seats there were, approved
2 for, but I could not -- on one of my visits I did
3 go across the street to Boundary Stone to see --
4 check their Certificate of Occupancy. And during
5 my visit there, it was relatively quiet for, I
6 believe, a Friday or Saturday night.

7 MS. SALGUERO: And so the six seats,
8 in your opinion, you know, having five people out
9 there, they didn't make any noise. Didn't make
10 any rowdy noise in the neighborhood, if there
11 were six -- if they were seated six seats at that
12 location, do you think they would have?

13 INVESTIGATOR TOWNSEND: I can't answer
14 that question. I mean, that's -- you're asking a
15 hypothetical and I can't really answer that
16 question. What I can tell you is that these
17 people standing outside on this night, March 6th,
18 weren't, you know, disorderly or unruly to the
19 public.

20 MS. SALGUERO: And none of the patrons
21 in the other six times that you visited seemed
22 disorderly, at any point?

1 INVESTIGATOR TOWNSEND: That's
2 correct.

3 MS. SALGUERO: I have no further
4 questions.

5 CHAIRPERSON MILLER: Okay. Dr.
6 Collins?

7 DR. COLLINS: I have a couple of
8 questions.

9 INVESTIGATOR TOWNSEND: Okay.

10 DR. COLLINS: The -- since it -- in
11 the photo you showed us, you showed us a person
12 standing outside the stanchions at 111 and we
13 surmised that he was probably going into 111. As
14 you can see also by that picture, the stanchion
15 is almost directly on -- adjacent to where he has
16 to walk in.

17 And also the front part of the
18 stanchion, there is a bus stop sign. Right
19 across the sidewalk there is a bus stop sign.

20 The question was raised as to whether
21 or not any persons that you observed any persons
22 who appeared to be obstructed from walking past

1 the stanchions. The sidewalk is 3 feet wide.

2 CHAIRPERSON MILLER: Dr. Collins, I
3 just want to say that this is the opportunity to
4 ask questions and you can testify later. I don't
5 know if you are leading up to a question.

6 DR. COLLINS: My only question was did
7 it seem plausible that two people could walk past
8 that stanchion on the sidewalk without being
9 obstructed by the bus sign?

10 INVESTIGATOR TOWNSEND: Without being
11 obstructed by the bus sign?

12 DR. COLLINS: Yes.

13 INVESTIGATOR TOWNSEND: The bus, the
14 Metro bus stop sign?

15 DR. COLLINS: Yes.

16 INVESTIGATOR TOWNSEND: Yes.

17 DR. COLLINS: They could?

18 INVESTIGATOR TOWNSEND: Yes, sir.

19 DR. COLLINS: They could walk past
20 each other?

21 INVESTIGATOR TOWNSEND: Yes, sir.

22 DR. COLLINS: With the stanchion in

1 place?

2 INVESTIGATOR TOWNSEND: I mean, that's
3 my personal opinion. I believe so. I didn't see
4 anyone having a problem walking past the
5 establishment without any problems.

6 DR. COLLINS: Okay. Thank you.

7 INVESTIGATOR TOWNSEND: Yes, sir.

8 CHAIRPERSON MILLER: Anything else?

9 Okay. Any other Board questions?

10 DR. COLLINS: I have one other
11 question.

12 CHAIRPERSON MILLER: Okay.

13 DR. COLLINS: You mentioned the fact
14 that Boundary Stone and Rustik Tavern had
15 residents, there were residents next to them.

16 INVESTIGATOR TOWNSEND: Yes, sir.

17 DR. COLLINS: Are there residents on
18 both sides of those establishments?

19 INVESTIGATOR TOWNSEND: Boundary Stone
20 has residents to the left of the establishment.
21 To the right, I believe, it's other businesses.
22 And Rustik sits on a corner. I believe on the 1st

1 Street side it's a mixture of residents and
2 businesses. And I forgot which street that is on
3 the other side of Rustik, but T Street, N.W.,
4 there is more residents going up the T Street
5 side.

6 DR. COLLINS: All right.

7 INVESTIGATOR TOWNSEND: Eastbound.

8 CHAIRPERSON MILLER: Okay. Thank you
9 very much.

10 INVESTIGATOR TOWNSEND: That's it?

11 CHAIRPERSON MILLER: I think so.

12 INVESTIGATOR TOWNSEND: Thanks.

13 (Whereupon, witness was excused.)

14 CHAIRPERSON MILLER: Okay. So now it
15 is time for the applicant to put on any
16 witnesses.

17 MS. SALGUERO: The applicant would
18 like to call Mr. Richard Lynch to the stand to
19 testify.

20 CHAIRPERSON MILLER: Okay.

21 Whereupon,

22 RICHARD LYNCH

1 was called as a witness by Counsel for the
2 Applicant, and having been first duly sworn,
3 assumed the witness stand and was examined and
4 testified as follows:

5 MR. LYNCH: Yes.

6 CHAIRPERSON MILLER: Okay. Thank you.

7 MR. LYNCH: You don't mind if I stand?

8 CHAIRPERSON MILLER: Well, if you do--

9 MR. LYNCH: I am in pain.

10 CHAIRPERSON MILLER: Oh.

11 MR. LYNCH: And once I stand up, if I
12 go to sit back down, I'm going to hurt more.

13 MEMBER RODRIGUEZ: Oh, okay.

14 CHAIRPERSON MILLER: Well, we don't
15 want you to hurt yourself.

16 MR. LYNCH: Okay.

17 CHAIRPERSON MILLER: Okay.

18 MR. LYNCH: Is it okay if I stand
19 then?

20 CHAIRPERSON MILLER: Yes, the mike is
21 like on the table, so you might have to speak a
22 little louder if you are standing.

1 MR. LYNCH: Yes, ma'am.

2 CHAIRPERSON MILLER: Okay.

3 DIRECT EXAMINATION

4 MS. SALGUERO: Thank you for coming,
5 Mr. Lynch. Now, you are a resident of the
6 neighborhood, correct?

7 MR. LYNCH: I live directly overtop.

8 MS. SALGUERO: And how long have you
9 lived there for?

10 MR. LYNCH: 18 years.

11 MS. SALGUERO: 18 years. And during
12 that time period, you have seen the neighborhood
13 change, correct?

14 MR. LYNCH: That is correct.

15 MS. SALGUERO: All right. And the
16 previous tenant to Showtime in that space was a
17 barbershop?

18 MR. LYNCH: A barbershop.

19 MS. SALGUERO: All right. And when
20 the barbershop was operating, there were issues,
21 correct?

22 MR. LYNCH: I hated it.

1 MS. SALGUERO: Can you discuss a
2 little bit about it?

3 MR. LYNCH: There is a hip-hop culture
4 to many of them youngsters out there with --

5 MEMBER SILVERSTEIN: Please speak a
6 little louder, sir.

7 MR. LYNCH: There is a hip-hop culture
8 to many of the youngsters with guns, with drugs,
9 with everything. They hung around the barbershop
10 day and night. I couldn't even rest. I have no
11 problem resting with this thing, but the
12 barbershop was hell for me. I'm sorry.

13 MS. SALGUERO: And since Showtime has
14 opened --

15 MR. LYNCH: Since the barbershop has
16 been gone, it has been very peaceful. Thank you,
17 Lord. I couldn't take the barbershop there,
18 sorry.

19 MS. SALGUERO: And at any time has
20 your quality of life been affected by --

21 MR. LYNCH: No, it is better that the
22 barbershop is not there. I don't have -- you all

1 are laughing, if you deal with that nonsense
2 every day with them youngsters, I'm sorry, man, I
3 cannot take it. I'm sorry. I'm too old for it.

4 MS. SALGUERO: And I would like to
5 show you Exhibit 15, the black and white --

6 MR. LYNCH: I need to come see it.

7 MS. SALGUERO: Right. I'll bring it
8 up. Don't worry.

9 MR. LYNCH: I don't see well. I can't
10 see, ma'am.

11 MS. SALGUERO: Now, can you identify
12 this? Is this your entryway here?

13 MR. LYNCH: No. My entryway is right
14 here.

15 MS. SALGUERO: Okay.

16 MR. LYNCH: To the left.

17 MS. SALGUERO: Okay.

18 MR. LYNCH: I have the white door.

19 MS. SALGUERO: Okay.

20 MR. LYNCH: Which is here.

21 MS. SALGUERO: Okay. That's right
22 here?

1 MR. LYNCH: That is correct.

2 CHAIRPERSON MILLER: So could --

3 MS. SALGUERO: To the left of 113?

4 MR. LYNCH: Yes.

5 CHAIRPERSON MILLER: Could you
6 identify for the record what you are looking at?

7 MS. SALGUERO: Exhibit 15.

8 CHAIRPERSON MILLER: Exhibit 15?

9 MS. SALGUERO: Exhibit 15.

10 CHAIRPERSON MILLER: Okay.

11 MS. SALGUERO: And it's really to
12 identify his entryway as to the left of 113. We
13 have identified 111 as Mr. Collins --

14 MR. LYNCH: These are my windows right
15 here.

16 MS. SALGUERO: Okay.

17 CHAIRPERSON MILLER: Can he state on
18 the record rather than just tell the -- your
19 attorney? Can you state for us what you are
20 saying where each thing is?

21 MR. LYNCH: To the left of this is
22 where my door is. This is my windows right here.

1 This is my front room right here. This door is
2 the door to Showtime. This is the main window.
3 To the right here is Mr. Collins' building.

4 CHAIRPERSON MILLER: Okay.

5 MR. LYNCH: It goes to this entrance
6 and then to this church is on this side over
7 here. But this side here is Showtime and this is
8 my door here.

9 CHAIRPERSON MILLER: Your door, is
10 your door that white door?

11 MR. LYNCH: Yes, it is.

12 CHAIRPERSON MILLER: Okay.

13 MR. LYNCH: That is my door.

14 MEMBER SHORT: What address is that?

15 MR. LYNCH: It's 113. It's still 113.

16 CHAIRPERSON MILLER: And all --

17 MEMBER SILVERSTEIN: So you live
18 directly above?

19 MR. LYNCH: Yes. I live directly
20 overtop, yes. This is my lease here. I have
21 been there since '97.

22 CHAIRPERSON MILLER: Is -- oh, go

1 ahead. We will ask our questions later.

2 MR. LYNCH: Oh, okay, I thought you
3 needed it. I'm sorry.

4 MS. SALGUERO: No, that's fine. So
5 your windows are to the left?

6 MR. LYNCH: Yes, these are my windows
7 right here.

8 MS. SALGUERO: Have you observed any
9 issues with trash or debris or anything in the
10 front area?

11 MR. LYNCH: No.

12 MS. SALGUERO: Okay. And you have
13 never been disturbed by any patrons?

14 MR. LYNCH: Not for them, only the
15 barbershop.

16 MS. SALGUERO: Right.

17 MR. LYNCH: That place was hell. I'm
18 sorry.

19 MS. SALGUERO: Okay. And okay, great.
20 Do you foresee any issues with a sidewalk cafe?
21 Would you object to a sidewalk cafe?

22 MR. LYNCH: No.

1 MS. SALGUERO: No?

2 MR. LYNCH: There are some in the
3 neighborhood.

4 MS. SALGUERO: Right.

5 MR. LYNCH: The neighborhood is
6 different than when I moved in.

7 CHAIRPERSON MILLER: Can you hear him?

8 MR. LYNCH: When I moved in the
9 neighborhood, it was real rowdy. We had a lot of
10 black gangs. It's about 80 percent white now, so
11 that stuff is gone. And with that barbershop
12 gone, that nonsense is gone. I mean, for me. I
13 can't speak for other people. I'm just saying
14 for me. With the barbershop gone, the nonsense
15 is gone. I cannot live with it. I'm kind of a
16 recluse. I stay to myself and I don't like
17 nonsense.

18 MS. SALGUERO: In your opinion, you
19 would have no issue with six seats?

20 MR. LYNCH: No, ma'am. I'm there. I
21 mean, I live there. I've been there 18 years.
22 Actually the last year I haven't even worked, so

1 I keep an eye out there, because I know you all
2 don't know, but I kickboxed for 12 years. I
3 don't take nonsense from people. The will not
4 come in front of my house and bring nonsense
5 there, because you're going to deal with me.

6 You're not going to deal with the
7 police, you're going to deal with me. You don't
8 have to worry about the police. The Secret
9 Service and the police know me personally. They
10 know who I am.

11 MS. SALGUERO: Mr. --

12 MR. LYNCH: I don't mess around. They
13 will not come in front of my place and bring
14 nonsense.

15 MS. SALGUERO: All right. You have
16 had a good experience with Showtime?

17 MR. LYNCH: Yes. I haven't had a good
18 experience with the barbershop.

19 MS. SALGUERO: Okay.

20 MR. LYNCH: And there has been three
21 of them and that has been hell.

22 MS. SALGUERO: Thank you. Ms. Collins

1 has questions.

2 MR. LYNCH: Yes, okay.

3 MEMBER RODRIGUEZ: Do we get
4 questions?

5 CHAIRPERSON MILLER: Yes, but they go
6 first.

7 CROSS-EXAMINATION

8 DR. COLLINS: Mr. Lynch?

9 MR. LYNCH: Yes, sir.

10 DR. COLLINS: I was in the block when
11 you came.

12 MR. LYNCH: Yes, sir, you was there.

13 DR. COLLINS: In 1994. I bought the
14 building in 1993. And like you say, the
15 neighborhood has changed.

16 MR. LYNCH: Yes.

17 DR. COLLINS: When I bought the
18 building it was a burned down building. And but
19 the -- in the same block, we had a barbershop, a
20 plumber and we had a hardware store.

21 MR. LYNCH: Right. When I came that
22 is correct.

1 DR. COLLINS: And we didn't have any
2 sidewalk cafes.

3 MR. LYNCH: No, we didn't.

4 DR. COLLINS: Possibly when you came
5 the entire -- the patio area in front of the
6 buildings --

7 MEMBER RODRIGUEZ: This is cross-
8 examination.

9 DR. COLLINS: -- was still unpaved.
10 It was still paved and not like the building next
11 to you where they --

12 MEMBER SILVERSTEIN: Questions?

13 DR. COLLINS: -- dug up the patio and
14 planted grass. But it did not change in
15 complexion as far as the property. The private
16 property goes from the building to the sidewalk.

17 CHAIRPERSON MILLER: Okay.

18 MR. LYNCH: I can understand that.

19 CHAIRPERSON MILLER: Dr. Collins, so
20 I was giving you a little leeway, but you are
21 going to get to testify. But are you leading to
22 a question?

1 DR. COLLINS: My question --

2 CHAIRPERSON MILLER: Okay.

3 DR. COLLINS: -- is since Showtime has
4 been there, have you been part of their
5 entertainment staff?

6 MR. LYNCH: Yes, I have been.

7 DR. COLLINS: And you have played for
8 them on several occasions?

9 MR. LYNCH: Yes, I have.

10 DR. COLLINS: And you are quite
11 satisfied with that, right?

12 MR. LYNCH: Yes.

13 MEMBER SHORT: Let's speak up.

14 DR. COLLINS: I'm talking about
15 Showtime. As part of Showtime --

16 MR. LYNCH: I have no problem.

17 DR. COLLINS: -- an employee of
18 Showtime.

19 MR. LYNCH: I wouldn't say I'm an
20 employee. I just play up there sometimes.

21 DR. COLLINS: They hire your band
22 sometimes?

1 MR. LYNCH: Yes.

2 DR. COLLINS: They hire --

3 COURT REPORTER: Could you talk a
4 little bit louder, please?

5 MR. LYNCH: I wouldn't say I'm an
6 employee. I will say they just hire my band
7 sometimes to play.

8 DR. COLLINS: They hire your band
9 sometimes.

10 MR. LYNCH: Yes.

11 DR. COLLINS: And you are part of the
12 band?

13 MR. LYNCH: Yes, I am.

14 DR. COLLINS: Okay. Thank you.

15 CHAIRPERSON MILLER: Okay. Board
16 questions? Yes, Mr. Silverstein.

17 MEMBER SILVERSTEIN: Tell me a little
18 bit about the operation of the bar. Where do the
19 -- what kind of crowd do they draw? What hours?
20 Where do they come from? Do most of them walk?
21 Is there parking problems?

22 MR. LYNCH: Normally, I guess their

1 age look like this lady's age here. Some of them
2 are older, because my band is an older band. For
3 example, the lady that plays piano, we call her
4 "Granny," she is 82 years-old. A white lady
5 playing with a black band. So we don't do
6 anything crazy. And as I said, I don't believe
7 in that kind of stuff, but I have played for him,
8 yes.

9 The operation, I can't really get into
10 it, because I don't really go to bars and stuff.
11 Even though I play at this place, I do not drink
12 no beer, wine, liquor. I don't put stuff in my
13 body. I've got enough problems.

14 The operation that I have seen, I
15 can't really speak of because it doesn't disturb
16 me. I can sleep. The noise is not bothering me.

17 MEMBER SILVERSTEIN: Early crowd, late
18 crowd?

19 MR. LYNCH: Late crowd. I'm sorry,
20 that -- not that I have seen. The only time I
21 could just tell you something is when I'm woke,
22 but as far as me seeing what has been happening,

1 no, I haven't seen any problems.

2 MEMBER SILVERSTEIN: Now, is it a late
3 crowd or a later arriving crowd or an early
4 crowd?

5 MR. LYNCH: On Sundays and we play
6 from 7:30 to 9:30 and normally when we finish at
7 9:30, the bar normally, basically, close out
8 because we are finished. Now, a few people may
9 stay for the DJ, but mostly they come to hear us
10 play and when we are finished, they are gone.

11 MEMBER SILVERSTEIN: So it's an early
12 crowd?

13 MR. LYNCH: Yes.

14 MEMBER SILVERSTEIN: Do they serve
15 food?

16 MR. LYNCH: No food.

17 MEMBER SILVERSTEIN: Have you ever
18 been awakened by --

19 MR. LYNCH: No.

20 MEMBER SILVERSTEIN: How can you tell
21 that the people outside are theirs or maybe from
22 the Chinese Dragon five doors down or Windows

1 Cafe? Is there any way to tell who is from
2 where?

3 MR. LYNCH: Yes.

4 MEMBER SILVERSTEIN: How?

5 MR. LYNCH: Mostly the club, I would
6 say, is about 90 percent white. So if you go to
7 the bar, I shouldn't say the club, it's mostly, I
8 would say, 90 percent white women like her. Very
9 few men. I see men sometimes. I'm surprised
10 it's not more with that many women there, but
11 mostly I see white women, that's what is there.
12 And I guess that's why it's not as rowdy. Don't
13 get a lot of men.

14 MEMBER SILVERSTEIN: Have you ever
15 been awakened by --

16 MR. LYNCH: No. The noise is very low
17 for me. And I sleep right over where they have
18 the speakers at. They are not loud. And I'm the
19 drummer and I don't play loud.

20 MEMBER SILVERSTEIN: Did you or did
21 anybody that you know went -- go to the ANC and
22 say this is a good place? Was there any -- do

1 you know of any neighbors who have had any
2 problems?

3 MR. LYNCH: Not that I know of. The
4 neighbors, I guess, because of Alice being 82, we
5 get a lot of neighbors come up to her and talk
6 about us being on the radio and all the times
7 they seen us on YouTube and things. Other than
8 that, no. No problems as far as any concern.
9 They just pester me about playing more, but
10 that's about it.

11 MEMBER SILVERSTEIN: No further
12 questions.

13 CHAIRPERSON MILLER: Others?

14 MEMBER SHORT: Madam Chair?

15 CHAIRPERSON MILLER: Yes, Mr. Short?

16 MR. LYNCH: Yes, sir.

17 MEMBER SHORT: What's the name of your
18 group?

19 MR. LYNCH: Granny's Ball of Odds.
20 Like an odd ball, but turn it around Ball of
21 Odds, because she is 82 years-old.

22 MEMBER SHORT: Okay.

1 MR. LYNCH: She will be 83.

2 MEMBER SHORT: How long have you been
3 playing music in Washington, D.C.?

4 MR. LYNCH: Oh, my God, you want me to
5 tell you my age now.

6 CHAIRPERSON MILLER: Yes.

7 MR. LYNCH: I'll give you a little
8 hint, my father was born February 22, 1890, that
9 will give you an idea.

10 MEMBER SHORT: Yes. Do you consider
11 yourself a jazz player or modern music? What
12 kind of music?

13 MR. LYNCH: Modern music, jazz and
14 stuff. I don't do no hip-hop, go-go or rap.
15 Them youngsters -- Chuck Brown asked me to play
16 with him in '94 when I left Wilson Pickett's band
17 and I told him no, because I don't play go-go and
18 I'm not being around them youngsters. I think
19 that is --

20 MEMBER SHORT: Are you familiar with
21 Let Them Play? A group called Let Them Play or
22 an organization?

1 MR. LYNCH: I'm not.

2 MEMBER SHORT: You're not familiar
3 with Let Them Play?

4 MR. LYNCH: I'm a recluse. I mean,
5 other than when I work or be at home, I'm removed
6 from things.

7 MEMBER SHORT: So 11 years you have
8 been in this location?

9 MR. LYNCH: No, 18 years.

10 MEMBER SHORT: 18 years?

11 MR. LYNCH: 18 years.

12 MEMBER SHORT: And you have seen a lot
13 of changes.

14 MR. LYNCH: Yes.

15 MEMBER SHORT: I'm kind of familiar
16 with T Street and Thomas Street and Ellis.

17 MR. LYNCH: Yes, Thomas is directly
18 behind me.

19 MEMBER SHORT: Yes.

20 MR. LYNCH: But the neighborhood has
21 changed though.

22 MEMBER SHORT: Oh, I'm familiar.

1 MR. LYNCH: For the better. That the
2 two barbershops that was down there, I'm sorry--

3 MEMBER SHORT: Now, we don't need to
4 go through that.

5 CHAIRPERSON MILLER: Where did they
6 go?

7 MEMBER SHORT: You have been -- you
8 were quite adamant in your testimony about those
9 barbershops. We will let them rest.

10 MR. LYNCH: Yes.

11 MEMBER SHORT: But again, you are
12 saying they are an asset to the community and
13 that you --

14 MR. LYNCH: Well, I can only --

15 MEMBER SHORT: -- consider them an
16 asset?

17 MR. LYNCH: The only thing I could
18 tell you is go on -- go Google the name and see
19 what the radio station said about us and about
20 the bar and that's the only thing I can tell you
21 and that's what the neighbors are saying. I
22 can't go by any other thing. You Google the

1 name, W-A-M-U, the Washingtonian Magazine,
2 Georgetown University. I can't think of the
3 other people that have interviewed.

4 MEMBER SHORT: Okay. Thank you very
5 much. Thank you very much. That's all I have,
6 Madam Chair. Thank you.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Rodriguez?

9 MEMBER RODRIGUEZ: Yes, sir. I used
10 to play in a band and I enjoyed it, so I imagine
11 you enjoy your work, right? My question is as
12 far as you say you were a kickboxer?

13 MR. LYNCH: Yes, sir.

14 MEMBER RODRIGUEZ: Yes. Does the club
15 have security?

16 MR. LYNCH: Yes, they do and one of
17 the guys also kickbox.

18 MEMBER RODRIGUEZ: Yes. So you --

19 MR. LYNCH: I know him.

20 MEMBER RODRIGUEZ: -- don't do any
21 security also for the club?

22 MR. LYNCH: I wanted to, but he had

1 already hired two guys that were younger.

2 MEMBER RODRIGUEZ: Okay.

3 MR. LYNCH: One of the guys is a
4 kickboxer.

5 MEMBER RODRIGUEZ: Okay. Do you have
6 a bass in your band?

7 MR. LYNCH: Yes.

8 MEMBER RODRIGUEZ: Okay. And you have
9 never heard any complaints about your bass?
10 Because a lot of people complain about the bass.

11 MR. LYNCH: Actually, you want to hear
12 the truth, I get knocks on my door and they ask
13 me to play more.

14 MEMBER RODRIGUEZ: Okay.

15 MR. LYNCH: Believe it or not.

16 MEMBER RODRIGUEZ: Okay, sir.

17 MR. LYNCH: From him and other
18 neighbors actually rang our doorbell and asked us
19 can you all please play more, because we are
20 listening to you.

21 MEMBER RODRIGUEZ: Okay.

22 MR. LYNCH: And I tell them no, we do

1 what we do.

2 MEMBER RODRIGUEZ: Okay. Sir, thank
3 you.

4 CHAIRPERSON MILLER: Others? Mr.
5 Jones?

6 MEMBER JONES: Thank you, Madam Chair.
7 Let's see, would it be appropriate, Madam Chair,
8 if I was to hand him Exhibit 15 from the
9 Investigator's report?

10 CHAIRPERSON MILLER: That's fine.

11 MEMBER JONES: All right.

12 CHAIRPERSON MILLER: Yes.

13 MEMBER JONES: Sir, looking at Exhibit
14 15 from the Investigator's report, do you see
15 those individuals assembled out in front of
16 Showtime?

17 MR. LYNCH: Yes, I do.

18 MEMBER JONES: Is that representative
19 of the typical crowd that you --

20 MR. LYNCH: No.

21 MEMBER JONES: That's not? Okay.

22 MR. LYNCH: That is not.

1 MEMBER JONES: You have never seen
2 patrons in that group or category attend or go to
3 Showtime Bar prior to you seeing a photo, that
4 photo. Is that a fair statement?

5 MR. LYNCH: You do get some blacks in
6 there, but I can guarantee you it's about 80 to
7 90 percent white.

8 MEMBER JONES: Understood. So --

9 MR. LYNCH: It's mostly white women.

10 MEMBER JONES: This crowd is not
11 representative or typical of your experience with
12 what the crowd is?

13 MR. LYNCH: No.

14 MEMBER JONES: Okay.

15 MR. LYNCH: But they do -- we do get
16 some, a few who go in there.

17 CHAIRPERSON MILLER: Right. Can you
18 speak up?

19 MR. LYNCH: I was saying when we do
20 play, they do come in because most people want to
21 hear live music.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER JONES: All right. Were you --
2 do you happen to know if you were working there
3 on the 6th of March?

4 MR. LYNCH: What day was that on?
5 Friday?

6 MEMBER JONES: Friday.

7 MR. LYNCH: No.

8 MEMBER JONES: No? Okay.

9 MR. LYNCH: We only play on Sundays.

10 MEMBER JONES: You only play on
11 Sundays?

12 MR. LYNCH: Yes, sir.

13 MEMBER JONES: All right. Do you have
14 a regular Sunday gig?

15 MR. LYNCH: Yes.

16 MEMBER JONES: Yes. Okay. So you are
17 the show on Sunday at Showtime?

18 MR. LYNCH: That is correct.

19 MEMBER JONES: All right.

20 MR. LYNCH: The old time.

21 MEMBER JONES: Got it. When the
22 barbershops were there, you noted that it was --

1 you hated it. It was just abysmal for you and
2 your existence in that location.

3 MR. LYNCH: Because them youngsters
4 bring that nonsense around.

5 MEMBER JONES: Help me characterize
6 nonsense. Does nonsense include loud talking
7 outside?

8 MR. LYNCH: Drugs.

9 MEMBER JONES: Does nonsense include
10 loud talking outside?

11 MR. LYNCH: Yes.

12 MEMBER JONES: Okay.

13 MR. LYNCH: Fighting and stuff.

14 MEMBER JONES: Fighting and stuff like
15 that?

16 MR. LYNCH: Yes.

17 MEMBER JONES: Okay. Would you --
18 what was most -- was that disturbing for you, the
19 fact that it was occurring outside or was it
20 disturbing for you the fact that it was occurring
21 inside?

22 MR. LYNCH: In the barbershop it was

1 outside and inside.

2 MEMBER JONES: It was outside/inside.

3 MR. LYNCH: It didn't even matter.

4 MEMBER JONES: It didn't matter?

5 MR. LYNCH: They just did craziness.

6 They just -- never mind, never mind, I'm not
7 going to say what they did.

8 MEMBER JONES: Okay. Were you ever
9 disturbed by the youngsters out in front of the
10 barbershop talking to each other?

11 MR. LYNCH: Yes.

12 MEMBER JONES: You were. Okay. Is it
13 probable that you will be disturbed by patrons of
14 Showtime out in front of that establishment
15 smoking cigarettes and talking to each other?

16 MR. LYNCH: I have been out there when
17 it has been crowded outside and I haven't had
18 problems. I have been outside with the barbershop
19 and it's three people, I'm sorry.

20 MEMBER JONES: What's the biggest
21 crowd that you have seen outside in front of
22 Showtime, patrons in front of Showtime?

1 MR. LYNCH: I guess after we was on
2 the radio and everybody showed up to see who
3 Granny was.

4 MEMBER JONES: Right.

5 MR. LYNCH: It's like all of D.C.
6 wanted to see this 82 year-old white lady playing
7 with this black band.

8 MEMBER JONES: Okay. How many people
9 were out front?

10 MR. LYNCH: Maybe 50.

11 MEMBER JONES: 50 were gathered out in
12 front of Showtime?

13 MR. LYNCH: Yes.

14 MEMBER JONES: Were those 50 trying to
15 get in?

16 MR. LYNCH: No.

17 MEMBER JONES: No. They were just
18 gathered out in front?

19 MR. LYNCH: Yes, they just wanted to
20 meet Granny and then leave.

21 MEMBER JONES: Okay. I'm trying to
22 figure out how to ask without speculating.

1 MR. LYNCH: Go ahead.

2 MEMBER JONES: So if you were not the
3 headliner on the night when there were 50 people
4 standing out in front of Showtime and you were in
5 your room upstairs directly above Showtime trying
6 to go to sleep, do -- would you believe that 50
7 people out front talking to each other would
8 disturb you?

9 MR. LYNCH: That particular night, no.

10 MEMBER JONES: Okay.

11 MR. LYNCH: It was very quiet.

12 MEMBER JONES: Okay. Thank you.

13 Thank you, Madam Chair.

14 CHAIRPERSON MILLER: Okay. Others?
15 Okay. I just want to confirm you play on Sunday
16 nights?

17 MR. LYNCH: Yes, ma'am.

18 CHAIRPERSON MILLER: Is it every
19 Sunday night or just --

20 MR. LYNCH: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay.

22 MR. LYNCH: From 7:30 to 9:30.

1 CHAIRPERSON MILLER: 7:30 to 9:30,
2 okay.

3 MR. LYNCH: We are out of there before
4 10:00.

5 CHAIRPERSON MILLER: What?

6 MR. LYNCH: We are out of the building
7 before 10:00.

8 CHAIRPERSON MILLER: Okay.

9 MR. LYNCH: He has an ordinance that
10 after 10:00 on Sundays that you don't do
11 anything.

12 CHAIRPERSON MILLER: Okay. There are
13 other bands that play during other days of the
14 week there? Do other bands play there during
15 other days of the week?

16 MR. LYNCH: There is a band, I think,
17 that plays on Thursday.

18 MR. VIVARI: Yes, they --

19 CHAIRPERSON MILLER: Okay. We can't--
20 just tell me what you know. And if you are not
21 sure, that's okay.

22 MR. LYNCH: They make it on Thursday.

1 CHAIRPERSON MILLER: Okay. So now, do
2 you --

3 MR. LYNCH: Never wrote it on
4 Thursday, so it's hard to remember what day they
5 are on.

6 CHAIRPERSON MILLER: Okay. There is
7 other entertainment there. And you are not
8 always there. You are sometimes in Europe?

9 MR. LYNCH: Oh, I'm at home all the
10 time, ma'am.

11 CHAIRPERSON MILLER: At home. But no
12 problem?

13 MR. LYNCH: No, ma'am, I don't have
14 problems.

15 CHAIRPERSON MILLER: Okay. And no
16 problems with people out front, even at closing
17 time or anything?

18 MR. LYNCH: As long as the homeless
19 people down the street don't come up and do
20 nothing crazy, yes.

21 CHAIRPERSON MILLER: So, okay.

22 MR. LYNCH: A block and a half away.

1 I don't know if he knows where there used to be a
2 Safeway a block and a half away. It's a grassy
3 knoll about from here down there past that door
4 about this deep and they lay there and they sleep
5 on that.

6 CHAIRPERSON MILLER: Okay. So you
7 don't have any problems, haven't had any problems
8 from the patrons of this particular place?

9 MR. LYNCH: No, I have not.

10 CHAIRPERSON MILLER: Okay. And you're
11 not concerned that you will --

12 MR. LYNCH: No.

13 CHAIRPERSON MILLER: -- with the
14 outdoor seating?

15 MR. LYNCH: Not with what I have seen
16 coming there.

17 CHAIRPERSON MILLER: Okay. All right.

18 MR. LYNCH: No offense, but the white
19 women don't cause problems. All black guys --

20 CHAIRPERSON MILLER: Wait, we didn't
21 see any white women in the picture though.

22 MR. LYNCH: It's black guys and their

1 hip-hop that cause the problems.

2 CHAIRPERSON MILLER: All right. Good.
3 Yes, anything else? Do you have?

4 MEMBER SILVERSTEIN: I just want to --

5 CHAIRPERSON MILLER: Mr. Silverstein?

6 MEMBER SILVERSTEIN: -- you seem to be
7 saying the neighbors have asked you to play more.

8 MR. LYNCH: Yes.

9 MEMBER SILVERSTEIN: So is this the
10 kind of place where the people who live close by
11 walk there, go there, people who live very close
12 by?

13 MR. LYNCH: It's a lot of people in
14 the neighborhood.

15 MEMBER SILVERSTEIN: Because it's easy
16 and safe for them to get there. It's not like
17 they have to go halfway across town or drive or
18 something.

19 MR. LYNCH: That is correct.

20 MEMBER SILVERSTEIN: It's more
21 walkable, drinkable.

22 MR. LYNCH: Yes. But they do ask us

1 to play more, but that's not on us. I mean, he's
2 the owner, but we play every Sunday.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER SILVERSTEIN: Okay. No further
5 questions.

6 CHAIRPERSON MILLER: Anything else?
7 Any questions on Board questions? Okay. Not
8 hearing any, thank you very much, sir.

9 MR. LYNCH: Thank you.

10 (Whereupon, the witness was excused.)

11 CHAIRPERSON MILLER: So feel free to
12 stand or whatever you need to do. Thanks for
13 coming down. All right. Is that it for your
14 witnesses?

15 MS. SALGUERO: That is it, at this
16 time.

17 CHAIRPERSON MILLER: Okay. Dr.
18 Collins, do you want to testify? I will need to
19 swear you in if you do and I would ask you to go
20 to the witness stand.

21 DR. COLLINS: Yes, please.

22 CHAIRPERSON MILLER: Okay.

1 DR. COLLINS: I do have some
2 information.

3 CHAIRPERSON MILLER: All right. Go to
4 the witness stand and let me swear you in first.
5 Okay. And then we will take it from there.
6 Okay.

7 Whereupon,

8 DR. PAUL L. COLLINS
9 was called as a witness for the Protestant, and
10 having been first duly sworn, assumed the witness
11 stand and was examined and testified as follows:

12 DR. COLLINS: I do.

13 CHAIRPERSON MILLER: All right. So
14 you can put in or you can offer into evidence
15 documents if you would like during this time.

16 DIRECT EXAMINATION

17 DR. COLLINS: These are exhibits.

18 CHAIRPERSON MILLER: Okay. Do --

19 DR. COLLINS: Relative to --

20 CHAIRPERSON MILLER: Wait. Our
21 counsel will come get them. Do you have copies
22 for the applicant?

1 DR. COLLINS: I --

2 CHAIRPERSON MILLER: Did you provide
3 them ahead of time?

4 MS. SALGUERO: No, you didn't give it
5 to me. You tried to, but I personally didn't
6 grab it. Yes, thank you.

7 CHAIRPERSON MILLER: Oh, we haven't
8 seen them yet. Thank you. Okay. Protestant's
9 Exhibit 1, all right, 1.1, 1.2, 3 and 4. Okay.

10 So, Dr. Collins, just procedurally,
11 did you provide a copy of this to the applicant
12 ahead of time?

13 DR. COLLINS: Yes.

14 CHAIRPERSON MILLER: Great. Okay. So
15 you are familiar with these exhibits?

16 MS. SALGUERO: No. I was just handed
17 this right now. I have not --

18 CHAIRPERSON MILLER: Oh, just right
19 now?

20 MS. SALGUERO: Just right now.

21 CHAIRPERSON MILLER: Not seven days in
22 advance?

1 MS. SALGUERO: No.

2 CHAIRPERSON MILLER: Okay.

3 MS. SALGUERO: I did not receive them.

4 CHAIRPERSON MILLER: Now, this is --
5 okay, do you want to say what this is?

6 DR. COLLINS: These are exhibits to
7 support my protest.

8 CHAIRPERSON MILLER: Okay. They look
9 like they are regulations. Are they?

10 DR. COLLINS: (No audible answer.)

11 CHAIRPERSON MILLER: Are they
12 regulations?

13 DR. COLLINS: Yes, they are.

14 CHAIRPERSON MILLER: Whose regulations
15 are they?

16 DR. COLLINS: They are D.C. Municipal
17 Regulations and Zoning Regulations.

18 CHAIRPERSON MILLER: Okay. Can you
19 identify, you know, can you go through which is
20 which? Like for instance, the first one says
21 301, General Requirements.

22 DR. COLLINS: The -- so I submitted my

1 Protest Information Form, I indicated that these
2 exhibits pertain to the voluntary agreement
3 between Dr. Collins and the applicant. And these
4 are regulations which state the -- how sidewalk
5 cafes are supposed to be regulated and support my
6 claim to prohibit the expansion of the existing
7 licensee and to adjoining space properties and
8 lots.

9 CHAIRPERSON MILLER: I guess my
10 question is glancing at this, are these DDOT
11 Regulations? Are these DCRA Regulations? What
12 are they?

13 DR. COLLINS: May I proceed --

14 CHAIRPERSON MILLER: Yes, yes.

15 DR. COLLINS: -- to introduce myself
16 or whatever. I would like to introduce myself.

17 CHAIRPERSON MILLER: Okay.

18 DR. COLLINS: I'm Dr. Paul L. Collins.
19 I am the -- I have owned the property at 111
20 Rhode Island Avenue since 1993. And it is
21 composed of two three-bedroom apartments, my
22 professional office and a nonprofit organization.

1 At the time I moved into the
2 neighborhood, my neighbors at 113 and 115 were a
3 barbershop, clothing and hardware store,
4 respectively. And up until 2012 when the current
5 business took up occupancy, there had been very
6 little as opposed to as nuisance, a nuisance
7 business on the block.

8 The idea of an additional bar on the
9 block, which is currently occupied by four
10 establishments including one liquor store, one
11 carry-out and two restaurants all of them with
12 licenses, alcoholic beverage licenses, and three
13 of them with sidewalk cafes, all within 1200 feet
14 of the proposed sidewalk cafe.

15 I am a licensed professional counselor
16 and ordained minister. I'm also president and
17 CEO of Nazarene Outpost Ministries concerned with
18 feeding the hungry, clothing the naked and
19 assisting the homeless. I also do individual
20 family counseling dealing with addiction and
21 personal problems.

22 We also conduct a weekly food

1 distribution and serve as a neighborhood food
2 pantry.

3 I met with the applicant in 2012. We
4 discussed the neighborhood concerns. And we
5 signed a voluntary agreement concerning the
6 current conduct of the proposed business. Among
7 the items considered and agreed to was that the
8 applicant would conduct his business as a closed-
9 door operation. Meaning that during the hours of
10 operation, the business would remain -- the
11 entrance would remain closed.

12 Early in the year 2014, the applicant
13 applied for and was awarded a permit to conduct a
14 sidewalk cafe. And as the abutting property
15 owner, I was never contacted nor informed, even
16 though the property line is the same as the east
17 boundary of this proposed cafe boundary line and
18 an entrance to my residence.

19 As we saw in that -- on that photo
20 just a few minutes ago, the person standing at
21 the entrance of my building is the doorway to my
22 residences. I have two three-bedroom residences,

1 one on the second and one on the third level.
2 And I currently do not manage it myself, but I
3 have a management company and the management
4 company sent me an email, which was to be read to
5 the Board, and unfortunately, I was unable to
6 print it out, but it read this way.

7 I write this with the hopes that it
8 will be read at the hearing to allow Showtime Bar
9 located at 113 Rhode Island Avenue, N.W., to
10 expand this business to cafe-style outside
11 eating. I oversee the day-to-day operations as
12 property manager of a property next door to the
13 Showtime Bar at 111 Rhode Island Avenue, N.W.

14 The property serves as a residence as
15 residential rental homes on the upper floors and
16 a church on the ground level.

17 Sadly, my experience with Showtime Bar
18 has been less than positive. The patrons of the
19 bar have blocked the entrance to apartments on
20 occasion. Management has been called numerous
21 times about cleaning up in front of the church
22 and the apartment. Patrons have gotten sick and

1 vomited at the doorway to the church and at the
2 adjoining Metro bus stop.

3 Due to the limited amount of space,
4 the indoor space, the patrons spill out into the
5 alley and block the sidewalk and ruin current
6 appeal of the block.

7 I ask that an inspection be made to
8 see that the exact location of the bar is in
9 compliance with the rules governing residential
10 homes and Metro stops. If this expansion is
11 allowed to continue to challenge to maintain the
12 peaceful enjoyment of the adjoining homes and
13 continue to grow, I remain concerned about the
14 direction that the community might be headed and
15 ask that more thought be given to those that pay
16 taxes in this community.

17 I furthermore ask that you know that
18 you -- notice -- note the effect this change will
19 have on property values, general views of the
20 community and long time residents.

21 And this is signed by my property
22 manager, Mr. Richard Jackson. Unfortunately, he

1 was unable to be with us, because he recently
2 lost his father. And he wasn't able to be here
3 today.

4 However, the thing that concerns me is
5 the fact that the regulations, the municipal
6 regulations state first that sidewalk, unenclosed
7 or sidewalk cafes shall not be any closer than 15
8 feet of a bus stop or a Metro station. And I
9 don't know how except for the fact that most of
10 these permits are given for special events or at
11 least they are noted not -- as to whether or not
12 they are going to be a permanent situation, but
13 my property line is exactly where you saw the
14 young man attempting to go into the residences
15 at 111 Rhode Island Avenue.

16 And I had mentioned in my complaint
17 about secondhand smoke and we have recently
18 learned that the City Council is trying to enact
19 legislation that will permit -- that will prevent
20 people being able to smoke marijuana on the
21 outside.

22 MS. SALGUERO: Can I object to the

1 testimony of the --

2 DR. COLLINS: But my --

3 CHAIRPERSON MILLER: Hold it. There
4 is an objection.

5 DR. COLLINS: -- primary complaint --

6 CHAIRPERSON MILLER: I'm sorry.

7 DR. COLLINS: -- is the fact that --

8 CHAIRPERSON MILLER: Wait, Dr.

9 Collins. There is an objection, so I have to
10 listen to that first.

11 MS. SALGUERO: I object to the issue
12 concerning the issuance of the public space
13 permit. That is -- that was a third party -- or
14 DDOT's review of this and it was validly issued.
15 And I believe Dr. Collins would have to speak
16 directly to DDOT as to property line issues and
17 whether the permit was validly issued and that
18 this forum is not the correct place to discuss
19 whether the permit is on his property.

20 DR. COLLINS: DCRA?

21 CHAIRPERSON MILLER: Do you want to
22 respond to her objection? I think you have

1 pretty much covered your -- the area already, but
2 she is objecting your talking about other
3 agencies permits that she is saying that that's
4 not our jurisdiction. Our jurisdiction is what
5 ABRA has to decide.

6 DR. COLLINS: The Investigator brought
7 that up.

8 CHAIRPERSON MILLER: Okay.

9 DR. COLLINS: When the Investigator
10 said that the permit -- first it's the permit.
11 Then you would have to apply to DCRA.

12 CHAIRPERSON MILLER: Okay. So you are
13 saying because the Investigator addressed it in
14 his report, you can address -- you should be able
15 to address it? Is that your argument?

16 DR. COLLINS: Yes.

17 CHAIRPERSON MILLER: Okay. All right.
18 I think that's a fine argument. Do you have much
19 more to say on that topic? I think that by the
20 time she objected, you had basically made your
21 argument.

22 DR. COLLINS: No.

1 CHAIRPERSON MILLER: No? Okay.

2 DR. COLLINS: I have no --

3 CHAIRPERSON MILLER: A little more?

4 DR. COLLINS: -- nothing else to say
5 about that.

6 CHAIRPERSON MILLER: Okay.

7 DR. COLLINS: However, on the -- my
8 objection is that he go outside of the original
9 agreement, which said that he was to maintain a
10 closed-door policy to the operation of his
11 business. And that was the crux of my complaint.

12 CHAIRPERSON MILLER: Okay.

13 DR. COLLINS: And there are a number
14 of other things which are contained in the
15 information that I passed out in my exhibits that
16 need to be addressed by the applicant on -- in
17 order to, as far as I can see, be able to pursue
18 approval of -- on his being able to sell
19 alcoholic beverages outside of his establishment,
20 which he claims that this permit gives him the
21 right to do.

22 MS. SALGUERO: Again, I would say the

1 exhibits are for -- are not ABRA Regulations.
2 These appear to be DCRA or DDOT Regulations.

3 CHAIRPERSON MILLER: Or Zoning. Can
4 you -- I wanted to -- if we are ready for this, I
5 wanted to ask you again whose regulations are
6 these?

7 DR. COLLINS: Zoning.

8 CHAIRPERSON MILLER: Okay. Are they
9 all Zoning's?

10 DR. COLLINS: Zoning and, as required,
11 it says that for a sidewalk cafe it says it must
12 have -- address certain things in the regulations
13 and the permits.

14 CHAIRPERSON MILLER: Okay.

15 DR. COLLINS: That has to do with this
16 permit here. This permit.

17 CHAIRPERSON MILLER: Okay. This is my
18 question though.

19 DR. COLLINS: Yes.

20 CHAIRPERSON MILLER: Okay. It looks
21 like Zoning, but I'm not positive. I would have
22 to go on -- we can take judicial notice of any

1 regulations, you know, District Regulations.

2 Okay. We can do that. I just want to -- since
3 they are all, you know, 301, 303, 311, it sounds
4 like the same agency. And my question is --

5 DR. COLLINS: Yes.

6 CHAIRPERSON MILLER: -- is this Zoning
7 Regulations?

8 DR. COLLINS: Yes.

9 CHAIRPERSON MILLER: Okay. Thank you.
10 All right. And do you want to offer them in? Do
11 you want us to take judicial notice of them as
12 part of the record? You want us to take notice
13 of these regulations, correct?

14 DR. COLLINS: Please.

15 CHAIRPERSON MILLER: Okay. Do you
16 have any objection to that?

17 MS. SALGUERO: Again, I object just
18 for the fact that the issue has been validly
19 issued by DDOT that goes to the consideration of
20 Zoning requirements. And since DDOT has issued
21 the permit, I would object to having these
22 considered on the record, because the issue is

1 not whether the sidewalk cafe is a valid sidewalk
2 cafe permit, that's a DDOT issue.

3 CHAIRPERSON MILLER: Okay. So your
4 objection is noted. And these are District
5 Regulations and so I would say that we can take
6 judicial notice of them and then the question is
7 to what weight we give them.

8 (Whereupon, the above-referred to
9 documents were marked as Protestant
10 Exhibit No. 1 through 1.4 for judicial
11 notice.)

12 CHAIRPERSON MILLER: Yes?

13 DR. COLLINS: My only rebuttal to her
14 objection is the fact that this permit, this
15 permit says that they must comply with the
16 provisions of Title 24 DCMR and any other
17 Chapters 2 and 3 in order to maintain this.

18 CHAIRPERSON MILLER: Okay. That's a
19 DDOT permit, correct, that you are referring to?

20 DR. COLLINS: That's a DC --

21 CHAIRPERSON MILLER: I know. D.C.
22 Department of Transportation permit?

1 DR. COLLINS: -- Municipal.

2 CHAIRPERSON MILLER: Public space
3 permit? I know. What's the -- is it an exhibit?
4 For the record, what -- are you referring to an
5 exhibit that is the permit?

6 DR. COLLINS: I don't know.

7 CHAIRPERSON MILLER: The sidewalk cafe
8 permit, is that --

9 DR. COLLINS: Yes.

10 CHAIRPERSON MILLER: -- what you are
11 referring to? Okay. I believe that is an
12 exhibit in this case, correct? Okay. So her
13 point is that you are not before DDOT to
14 challenge that permit. You are before ABRA. But
15 that's a part of our record, that permit. So we
16 are going to be looking at ABRA's Regulations for
17 the most part. Okay.

18 DR. COLLINS: All right.

19 CHAIRPERSON MILLER: So anything else
20 you want to say?

21 DR. COLLINS: I didn't get the last
22 step.

1 CHAIRPERSON MILLER: I'm just asking
2 you if there is anything else you want to say
3 before we open up for questions?

4 DR. COLLINS: No.

5 CHAIRPERSON MILLER: Okay. All right.
6 Questions?

7 MS. SALGUERO: Yes.

8 CHAIRPERSON MILLER: All right.

9 CROSS-EXAMINATION

10 MS. SALGUERO: Dr. Collins, you had
11 said that there were no issues previous with --
12 with the previous tenant at the beginning of your
13 testimony, that there had not been any issues?
14 Is that correct with the barbershop?

15 DR. COLLINS: I said I have not had
16 any issues with the Showtime.

17 MS. SALGUERO: Okay.

18 DR. COLLINS: Until your applicant,
19 Paul, applied for, without my knowledge, the
20 patio permit.

21 MS. SALGUERO: Okay.

22 DR. COLLINS: Which is directly on my

1 property.

2 MS. SALGUERO: So you did not have any
3 issues with Showtime up until this point?

4 DR. COLLINS: We signed a voluntary
5 agreement, which I expected him to live up to.

6 MS. SALGUERO: Yes. And he did to
7 this -- up until you -- this application has been
8 a good operator, in your opinion?

9 DR. COLLINS: Yes, he had.

10 MS. SALGUERO: Okay. And you have
11 discussed the settlement agreement and I'm just
12 going to read it, a section of the settlement
13 agreement, which I believe is an exhibit.

14 It's Section No. 5, "Licensee agrees
15 to abide by all ABC Regulations regarding the
16 ownership and transfer of the license, including
17 without limitation providing a 45-day legal
18 notice of any proposed transfers, substantial
19 change in operation to the ANC-5C and adjacent
20 owners."

21 There was placards, legal notice
22 placards up on the building correct, telling you

1 about the fact that there was a proposed sidewalk
2 cafe.

3 DR. COLLINS: No.

4 MS. SALGUERO: There were no placards?

5 DR. COLLINS: When I saw the placard
6 was on August the 11th. When I spoke to him about
7 what was going on and he gave me a copy of the
8 permit by email and stated to me that he was
9 sorry that he hadn't notified me that he was
10 doing this, but he followed D.C. Regulations.

11 MS. SALGUERO: Okay. And so we're
12 just talking about what the language of
13 settlement agreement is saying, any ABC
14 Regulations and/or for use of the sidewalk cafe.
15 There were placards up, correct, that told you
16 that he was proposing to serve alcohol on the
17 sidewalk cafe, correct?

18 DR. COLLINS: There was no mention of
19 sidewalk cafe.

20 MS. SALGUERO: Okay. But that's how
21 you were able to protest?

22 DR. COLLINS: Yes, I did.

1 MS. SALGUERO: Okay. So you have been
2 able to have input according to what -- the terms
3 of your settlement agreement, right? That you
4 would say that there was legal notice placed and
5 we are at this hearing --

6 DR. COLLINS: No.

7 MS. SALGUERO: No?

8 DR. COLLINS: No.

9 MS. SALGUERO: Okay.

10 DR. COLLINS: No.

11 MS. SALGUERO: You would not?

12 DR. COLLINS: You notice -- your
13 notice that you applied for this permit back
14 before the -- before April 16, 2014 and I did not
15 know anything about that.

16 MS. SALGUERO: Okay. That's the DDOT
17 permit. And as follows under DDOT also requires
18 a notice up at the front of the building, but I'm
19 just discussing what is in your ABRA settlement
20 agreement that the licensee has abided by placing
21 legal notice on the front of the building, so
22 that you could protest here today.

1 DR. COLLINS: Yes, after that, yes.

2 MS. SALGUERO: Okay. So --

3 DR. COLLINS: Which I did.

4 MS. SALGUERO: -- right. So there was
5 legal notice placed. And your -- according to
6 the language of his -- of the settlement
7 agreement for us to be here today. Okay.

8 So other than that, he has followed
9 his settlement agreement or his voluntary
10 agreement, what we have issued and what he
11 opened?

12 DR. COLLINS: According to my
13 management company, there had been discussions
14 about Showtime operations and situations which I
15 read to you from his statement.

16 MS. SALGUERO: All right. And he is
17 your employee, correct?

18 DR. COLLINS: Yes, he is.

19 MS. SALGUERO: Okay. And has he ever
20 called the police or ABRA to complain about the
21 operation?

22 DR. COLLINS: No, he talked directly

1 to the owner of the establishment.

2 MS. SALGUERO: He spoke directly to
3 the owner of the establishment?

4 DR. COLLINS: Yes.

5 MS. SALGUERO: Okay. And but you have
6 not had to call in the police at any time? He
7 has not complained about any issues with, you
8 know, rowdiness or --

9 DR. COLLINS: I have tried to be a
10 good neighbor to Showtime. And I felt that if I
11 needed to speak with Paul, I know his email
12 address.

13 MS. SALGUERO: Yes.

14 DR. COLLINS: He is in business to try
15 to make money. And I'm in business because I
16 have a building that I provide services for
17 people. I have two families that live in my
18 building. And I have professional clients.

19 MS. SALGUERO: As opposed to -- until
20 this point, there has been no issue?

21 DR. COLLINS: I didn't say that there
22 haven't been no issue. But I said if I had a

1 complaint to bring to him --

2 MS. SALGUERO: Yes.

3 DR. COLLINS: -- I thought that he
4 was --

5 MS. SALGUERO: And he has addressed
6 all those complaints?

7 DR. COLLINS: Yes.

8 MS. SALGUERO: Okay. And he tried to
9 be neighborly.

10 DR. COLLINS: Yes.

11 MS. SALGUERO: Okay. And you don't
12 think that if there are six seats, limited to six
13 seats, there is a sidewalk cafe limited to six
14 seats, that that will alleviate any issues that
15 you have as far as --

16 DR. COLLINS: If you move your
17 sidewalk cafe 5 feet off my property line, no, I
18 wouldn't have a problem with it.

19 MS. SALGUERO: You don't think that
20 that might actually help get --

21 DR. COLLINS: No. I think he needs to
22 follow the regulations.

1 MS. SALGUERO: -- seats and, you know,
2 an Investigator could go and make sure that only
3 six people are on that sidewalk cafe?

4 DR. COLLINS: You are not 15 feet from
5 that buzz saw.

6 MS. SALGUERO: Okay. I understand
7 that. But if there were only six people there,
8 as opposed to seven smoking --

9 DR. COLLINS: As opposed to 25 on the
10 inside?

11 MS. SALGUERO: -- you haven't had a
12 problem with -- I'm just asking if there were the
13 six people, if the permit is valid.

14 DR. COLLINS: It's a violation of the
15 law.

16 MS. SALGUERO: Okay. Have you tried
17 to contact DDOT?

18 DR. COLLINS: It's a violation of the
19 law.

20 CHAIRPERSON MILLER: What was the
21 question?

22 MS. SALGUERO: Have you tried to

1 contact DDOT about the public space permit? Dr.
2 Collins, have you been --

3 DR. COLLINS: I can call -- I can
4 contact the Department of Consumer and Regulatory
5 Affairs.

6 MS. SALGUERO: Have you tried that?

7 DR. COLLINS: No, I have not.

8 MS. SALGUERO: Okay. And you have not
9 tried to contact DDOT?

10 DR. COLLINS: I don't want your
11 business on my property.

12 MS. SALGUERO: Okay. Thank you.

13 CHAIRPERSON MILLER: Okay.

14 DR. COLLINS: You're welcome.

15 CHAIRPERSON MILLER: All right. Board
16 questions?

17 MEMBER JONES: Yes.

18 CHAIRPERSON MILLER: Mr. Jones?

19 MEMBER JONES: Thank you, Madam Chair.

20 Dr. Collins --

21 DR. COLLINS: Yes, sir?

22 MEMBER JONES: -- in the settlement

1 agreement, the voluntary agreement that you
2 referred to, I just want to -- if you could just
3 point me specifically to the language that you
4 believe covers the concern that you have raised
5 here today? And specifically, I'm looking for
6 the language regarding "a closed-door operation"
7 or something to that effect.

8 DR. COLLINS: Okay. That is, I
9 believe, 2(d).

10 MEMBER JONES: 2(d)?

11 DR. COLLINS: 2(d) and the fifth line.

12 MEMBER JONES: The licensee -- I'm
13 reading the last sentence there. "The licensee
14 shall generally maintain the property in
15 commercially reasonable condition and maintain a
16 closed-door policy during the hours of
17 operation." Okay. And that's the primary and/or
18 only reference to the concern that you have
19 raised related to him being in violation of the
20 voluntary agreement by even the virtue of him
21 asking for or trying to have a sidewalk cafe?

22 DR. COLLINS: Well, that's not -- that

1 wasn't the only one, but in reading the agreement
2 that we signed, we did away with I think No. --

3 MEMBER JONES: Well, I'm just looking
4 in the agreement that was submitted and signed.
5 This document that you have here before us.

6 DR. COLLINS: Right.

7 MEMBER JONES: What's the date of the
8 document? I have a document in the investigative
9 report. I just want to make sure it's the same
10 version.

11 DR. COLLINS: Right. I think it was--

12 MEMBER JONES: So it's the 6th day of
13 August 2012?

14 DR. COLLINS: Right.

15 MEMBER JONES: Okay. So this version
16 of that document, the voluntary agreement between
17 yourself and Spo-dee-o-dee, LLC?

18 DR. COLLINS: Right.

19 MEMBER JONES: Okay. And they only
20 reference to a closed-door operation or in your
21 interpretation of this language referencing not
22 being allowed to have a sidewalk cafe, is this

1 the only language that speaks to that in this
2 document?

3 DR. COLLINS: Yes.

4 MEMBER JONES: Okay. What was your
5 understanding of closed-door policy?

6 DR. COLLINS: During the time of
7 operations that his door would be closed.

8 MEMBER JONES: Okay. So if he had --
9 obviously, you -- well, I won't say it's obvious.
10 My expectation is that if he has a single main
11 ingress and egress to his establishment, you
12 would have contemplated and would have been
13 accepting of the fact that patrons would need to
14 enter and leave the establishment, so the door
15 would have to be opened and closed as patrons
16 came and went.

17 DR. COLLINS: Yes.

18 MEMBER JONES: You are okay with
19 that --

20 DR. COLLINS: Yes.

21 MEMBER JONES: -- taking place?

22 DR. COLLINS: Yes.

1 MEMBER JONES: So your contemplation
2 of closed door was just that the door would be
3 closed --

4 DR. COLLINS: Right.

5 MEMBER JONES: -- while the business
6 was in operation, unless it was being used for
7 the ingress and egress of a patron?

8 DR. COLLINS: Yes, sir.

9 MEMBER JONES: Okay. So if you have
10 six patrons outside on a sidewalk cafe, can you
11 have a door that is closed to the establishment?

12 DR. COLLINS: The door to the
13 establishment?

14 MEMBER JONES: Yes. Is the door
15 closed? Can you have six patrons outside and
16 still have the door closed to the establishment?

17 DR. COLLINS: Well, it doesn't exactly
18 say that. It says maintain a closed door policy
19 during the hours of operation.

20 MEMBER JONES: I understand. So the
21 challenge is I don't know if there is an addendum
22 to this voluntary agreement where it spells out

1 what that policy is. So subject to your
2 interpretation of what a policy is.

3 DR. COLLINS: Yes.

4 MEMBER JONES: So I'm trying to get
5 clarification from you now on the record as to --
6 not trying to define whether it is right or
7 wrong. I'm just trying to define what that
8 policy is based on your understanding of it.

9 So when I asked earlier about whether
10 or not patrons could leave, open and close that
11 door for the purposes of entering and leaving the
12 establishment, you seemed to respond in the
13 affirmative that you were okay with that taking
14 place.

15 DR. COLLINS: What opening it?

16 MEMBER JONES: Opening and closing the
17 door for the purpose of coming --

18 DR. COLLINS: People coming in and
19 going out?

20 MEMBER JONES: Right.

21 DR. COLLINS: Yes.

22 MEMBER JONES: Yes, okay.

1 DR. COLLINS: You have to be able to
2 go into an establishment and come out of an
3 establishment.

4 MEMBER JONES: Correct. It just seems
5 obvious, right?

6 DR. COLLINS: However --

7 MEMBER JONES: Okay.

8 DR. COLLINS: -- this extends the
9 business operation beyond the walls of the
10 establishment.

11 MEMBER JONES: When you say this, this
12 request to have a sidewalk cafe?

13 DR. COLLINS: Yes.

14 MEMBER JONES: Okay.

15 DR. COLLINS: This permit. This
16 permit that he has received.

17 MEMBER JONES: Understood. Right.
18 But it does not have anything to do with whether
19 or not the door is open or closed.

20 DR. COLLINS: To his business
21 establishment.

22 MEMBER JONES: To the establishment,

1 correct.

2 DR. COLLINS: Well, it's -- if --
3 under those circumstances it would seem to be a
4 violation or certainly one subject to alteration
5 of this agreement if you put now people on my
6 property as part of your business operation,
7 which is outside the closed door of your
8 establishment.

9 MEMBER JONES: Okay. So what I'm
10 hearing from you, there is a lot of
11 extrapolations that I don't necessarily follow,
12 so I'm going to try and break it down.

13 One, you do not have an issue with the
14 fact that he can have patrons inside of his
15 establishment as long as the door is left closed,
16 primarily or only open for the purpose of ingress
17 and egress of patrons inside of the establishment
18 and out of the establishment, correct?

19 DR. COLLINS: Yes.

20 MEMBER JONES: Okay.

21 DR. COLLINS: That was the original
22 agreement in 2012.

1 MEMBER JONES: So that's your
2 understanding of the agreement?

3 DR. COLLINS: Well, some --

4 MEMBER JONES: That was not exactly
5 what this agreement says. So and I wasn't party
6 to it. I can only go by what are the words on
7 the documents.

8 DR. COLLINS: Yes, sir.

9 MEMBER JONES: Okay. So a closed door
10 policy, was that ever defined?

11 DR. COLLINS: It was not questioned.

12 MEMBER JONES: That's not what I
13 asked. Was it ever defined?

14 DR. COLLINS: Closed door policy
15 during hours of business operations is -- was not
16 a definition that seemed to be important at the
17 time.

18 MEMBER JONES: So is the answer to my
19 question no, it was never defined? It is
20 assumed?

21 DR. COLLINS: Yes.

22 MEMBER JONES: Okay. So you have a

1 certain level of assumption about what this
2 means.

3 DR. COLLINS: No. My determination is
4 based on the fact is that the boundary -- his
5 proposed cafe is on my property line.

6 MEMBER JONES: Okay. So as I said,
7 you are doing extrapolation. So you are totally
8 fine with him operating six people, with six
9 people outside of his closed door as long as it
10 is not on your property. You have no issue with
11 that and you wouldn't even consider that to be a
12 violation of this agreement, would you?

13 DR. COLLINS: Yes, it would be a
14 violation to the agreement.

15 MEMBER JONES: Okay. How?

16 DR. COLLINS: Because it would not
17 only be a violation of the agreement, but it
18 would also be a violation of the Zoning
19 Regulations concerning commercial and residential
20 properties and businesses operating on the same
21 level.

22 MEMBER JONES: So that sounds like

1 it's an issue for another board, another
2 municipality, not us.

3 DR. COLLINS: Sir --

4 MEMBER JONES: Right?

5 DR. COLLINS: -- we --

6 MEMBER JONES: Assuming you are
7 correct.

8 DR. COLLINS: -- shouldn't even be
9 here, sir.

10 MEMBER JONES: Huh?

11 DR. COLLINS: We shouldn't be here.

12 MEMBER JONES: That's --

13 DR. COLLINS: If that's during --

14 MEMBER JONES: Sir, sir?

15 DR. COLLINS: Excuse me.

16 MEMBER JONES: You are going on and on
17 about other boards, other regulations, other
18 entities. If he has a valid permit, then he has
19 crossed the bar and met it as far as this Agency
20 is concerned. So I'm really trying to help you
21 focus on the issues that we have any purview over
22 right now.

1 All this other discussion, all this
2 other stuff is not relevant and it's not going to
3 be considered. I can just tell you quite
4 candidly. Okay?

5 So I'm really trying to focus on this
6 document, because this document is binding and is
7 within our purview, us being the Board.

8 So from that standpoint, you do not
9 have an issue with him -- and this is a question,
10 not a statement, although it sounds like one.

11 You do not have an issue with him operating with
12 six people outside of his closed door if he isn't
13 operating on your property or violating any other
14 D.C. Codes or Laws?

15 DR. COLLINS: No. I wouldn't have a
16 problem with that.

17 MEMBER JONES: Okay. So
18 fundamentally, would you then require that this
19 document, the voluntary agreement be updated or
20 amended if he was in compliance with all other
21 D.C. Codes and regulations and off of your
22 property?

1 DR. COLLINS: And off my property?

2 MEMBER JONES: Yes. Would you require
3 an amendment to this document if both of those
4 conditions were met?

5 DR. COLLINS: Yes.

6 MEMBER JONES: You would require an
7 amendment?

8 DR. COLLINS: Yes.

9 MEMBER JONES: Okay. What would that
10 amendment be?

11 DR. COLLINS: I haven't the faintest
12 idea. I'll have to consider it, but I certainly
13 would be -- I'm a reasonable person. I just
14 don't want his cigarette butts there. I don't
15 want his secondhand smoke. And I don't want to
16 have to put a sign up saying no smoking within 25
17 feet of my property. That would seem to me to be
18 harsh and it would make me seem like the bad guy.

19 The only thing I'm interested in is
20 the peaceful enjoyment of my property.

21 MEMBER JONES: So --

22 DR. COLLINS: If my people want to

1 come out and sit on our front patio --

2 MEMBER JONES: Yes.

3 DR. COLLINS: -- they should be able
4 to do it without having to be concerned about
5 being contaminated with secondhand smoke or, in
6 some cases, affecting their addictions.

7 MEMBER JONES: Okay. The -- you
8 mentioned earlier that the sidewalk cafe as
9 currently defined is actually on your property.
10 Is that a true statement or exaggeration of the
11 truth?

12 DR. COLLINS: It's --

13 MEMBER JONES: Is it actually on your
14 property?

15 DR. COLLINS: If you -- as you can see
16 from that -- the photo that you have, the door,
17 the entrance to my residences are -- he has a
18 security screen on his window.

19 MEMBER JONES: Yes.

20 DR. COLLINS: That security screen is
21 where my property line is.

22 MEMBER JONES: Okay. So I'm just

1 going to jump to Exhibit 15 really quickly. So
2 I'm not sure, do you have -- I'm going to show
3 this to Dr. Collins. Is that okay?

4 CHAIRPERSON MILLER: Yes.

5 MEMBER JONES: So Dr. Collins, on this
6 Exhibit 15, is it your position that those
7 stanchions are on the -- your property side of
8 the line related to how you have defined it?

9 DR. COLLINS: Yes.

10 MEMBER JONES: Okay. So thank you.
11 Got it. So if the licensee moved those
12 stanchions further, so that the entire stanchion
13 including the base of the stanchion was
14 completely on his side of the property line, you
15 would not have an issue or have an argument that
16 he is on your property any more. Is that a fair
17 statement?

18 DR. COLLINS: That's true, but --

19 MEMBER JONES: Okay.

20 DR. COLLINS: -- that would need to be
21 -- I would consider a permanent -- I would have
22 to have -- I would not have a problem with that.

1 MEMBER JONES: Okay. And if he was --
2 well, I'll just leave it at that. So that's what
3 you are saying when you mean or making the
4 statement that the sidewalk cafe is, as it is
5 currently defined, is actually on your property?

6 DR. COLLINS: Yes.

7 MEMBER JONES: Okay. The issue that
8 you raised with the activities that are taking
9 place out in front or the anticipated activities
10 that you expect to be occurring out in front of
11 Showtime in this sidewalk cafe area, what are the
12 key issues that you have with those activities?

13 So one thing I have gotten from you is
14 secondhand smoke. So you have an issue with the
15 smokers being congregate or congregating out on
16 this sidewalk cafe. Are there any other issues?

17 DR. COLLINS: His patrons are -- as I
18 read from my property manager's report, the
19 patrons vomit on our property either in the
20 corridor or in front of the church. And out at
21 the bus zone, which is directly in front of it,
22 the establishment.

1 MEMBER JONES: Okay. So anything
2 else?

3 DR. COLLINS: Well, in the
4 Investigator's report, he stated that they needed
5 additional restrooms. Maybe -- and maybe that's
6 probably one of the reasons they are using my
7 property as their urinal.

8 MEMBER JONES: Okay. So you have an
9 issue with these of the establishment urinating
10 on your property?

11 DR. COLLINS: And vomiting on the
12 property.

13 MEMBER JONES: Okay. And are these
14 things -- these things are taking place right now
15 though, right? There is no sidewalk cafe. And
16 these things are occurring right now, the
17 urination and vomiting is taking place right now?

18 DR. COLLINS: Oh, he has had this
19 sidewalk cafe since back in August.

20 MEMBER JONES: So legally, there is no
21 sidewalk cafe there.

22 DR. COLLINS: Legally.

1 MEMBER JONES: Legally. But you are
2 saying that he has been operating as if he has
3 had a legal sidewalk cafe?

4 DR. COLLINS: Yes.

5 MEMBER JONES: That's your testimony?

6 DR. COLLINS: Well, that's --

7 MEMBER JONES: That's your testimony?

8 DR. COLLINS: -- just according to his
9 understanding of this permit. If this permit
10 does not give him that right, then, yes.

11 MEMBER JONES: So have you witnessed
12 him operating the sidewalk cafe as you have
13 characterized it since August?

14 DR. COLLINS: Yes.

15 MEMBER JONES: Okay. So it's your
16 testimony that he has been operating it as a
17 sidewalk cafe?

18 DR. COLLINS: Yes.

19 MEMBER JONES: Okay. And have these
20 problems only emerged, i.e., the urination and
21 the vomiting that you spoke of, or do they have a
22 -- do they coincide with the operations of this

1 unauthorized sidewalk cafe?

2 DR. COLLINS: Oh, it has to do with --
3 this has been going on since 2012 when he opened
4 his doors.

5 MEMBER JONES: Okay. So it's a
6 standing problem regardless of whether he has a
7 sidewalk cafe or not?

8 DR. COLLINS: No, but this is the only
9 time that we have had a forum to be able to
10 explain to you my concerns about quiet enjoyment
11 of my property and the peace and quiet of the
12 neighborhood. The items that I brought to the
13 attention of the Board.

14 MEMBER JONES: Understood. But
15 problems have been in place prior to the
16 operation of the sidewalk cafe. They have been a
17 standing problem that you are testifying to as
18 you have had since they opened their doors?

19 DR. COLLINS: Yes.

20 MEMBER JONES: Yes?

21 DR. COLLINS: Yes, sir.

22 MEMBER JONES: Okay. So given that,

1 you mentioned that if you had an issue with the
2 owner, that you had his email address and if you
3 had a problem with it, you would just send him an
4 email and reach out to him. Have you done that?

5 DR. COLLINS: My property manager has.

6 MEMBER JONES: Your property manager
7 has reached out to the owner and made -- took
8 issue with urination, trash?

9 DR. COLLINS: Urination.

10 MEMBER JONES: And vomiting?

11 DR. COLLINS: And vomiting.

12 MEMBER JONES: Okay. And your
13 property manager has emails to that effect?

14 DR. COLLINS: Yes.

15 MEMBER JONES: Okay.

16 DR. COLLINS: I don't know if he has
17 email to that effect or --

18 MEMBER JONES: Well, he's your
19 property manager. You don't ask him. He's your
20 property manager, right?

21 DR. COLLINS: Yes.

22 MEMBER JONES: Okay. Your property

1 manager you are saying you know for a fact that
2 he sent emails related to these complaints to the
3 owner?

4 DR. COLLINS: I know he sent an email
5 alleging these complaints to me.

6 MEMBER JONES: Okay. But you have no
7 knowledge of whether or not your property manager
8 has reached out to the owner to give the owner an
9 opportunity to cure?

10 DR. COLLINS: He says he has.

11 MEMBER JONES: He says he has?

12 DR. COLLINS: Yes.

13 MEMBER JONES: Okay. But you don't
14 have emails to give to the Board showing that
15 that has been done?

16 DR. COLLINS: The email that I
17 received, I tried to download and I guess because
18 it has the company logo on it, it would not -- I
19 wasn't able to print it out. But Ms. Jenkins got
20 it and she forwarded a copy to Ms. Salguero.

21 MEMBER JONES: Okay. So outside of
22 the sidewalk cafe, do you have an issue with how

1 the operations are being ran or run?

2 DR. COLLINS: No, I don't have
3 anything, any dealings with that.

4 MEMBER JONES: Okay. So if there was
5 no sidewalk cafe, he would be a model neighbor?

6 DR. COLLINS: No. We agreed that he--
7 he laid out his time, his hours of operation, the
8 fact that he was going to have live
9 entertainment.

10 MEMBER JONES: Right.

11 DR. COLLINS: And all that and the
12 only thing that we asked him to do was not to
13 open for business on Sunday until 3:00, because
14 we have services.

15 MEMBER JONES: Okay. And he has been
16 abiding by that?

17 DR. COLLINS: Yes.

18 MEMBER JONES: Okay. So and you have
19 no -- did you have a reason to believe that he
20 wouldn't abide by that if he had a sidewalk cafe?

21 DR. COLLINS: If his sidewalk cafe was
22 legal?

1 MEMBER JONES: Yes, if it was legal.
2 Would you have a reason to believe that he
3 wouldn't abide by the terms of the agreement as
4 he has up until this point if he had a legal
5 sidewalk cafe?

6 DR. COLLINS: If he had a legal
7 sidewalk cafe?

8 MEMBER JONES: Yes.

9 DR. COLLINS: Well, he also agreed in
10 our agreement that he would abide by all ABC and
11 D.C. Regulations.

12 MEMBER JONES: Understood. So if he
13 had a legal sidewalk cafe, would you have any
14 reason to believe that he wouldn't abide by the
15 terms of the agreement that you have?

16 DR. COLLINS: No, I have no reason to
17 believe that he would not abide by it.

18 MEMBER JONES: Excellent. Thank you.
19 Thank you, Madam Chair.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Silverstein?

22 MEMBER SILVERSTEIN: Thank you, Dr.

1 Collins, and thank you for your commitment to the
2 lease of these. Let's talk about the people who
3 live and work in your property. You say you have
4 a couple of professional clients?

5 DR. COLLINS: Yes.

6 MEMBER SILVERSTEIN: What type of work
7 do they do and what hours do they keep?

8 DR. COLLINS: Our -- my clients are by
9 appointment only.

10 MEMBER SILVERSTEIN: That's not the
11 answer that I'm looking for. What hours do they
12 keep? Are they there at midnight? Are they --
13 do they usually work from 9:00 a.m. to 5:00? Do
14 they usually work evenings? Is there a pattern
15 to the hours they work?

16 DR. COLLINS: No.

17 MEMBER SILVERSTEIN: So they can be
18 there at any time? What kind of work do they do?

19 DR. COLLINS: What kind of work do
20 they do? One is a psychologist. Again, there is
21 military clients. I handle individual and family
22 counseling. And that's usually between 4:00 and

1 6:00. But we also have other activities in the
2 building. We have Bible study on Wednesday at
3 noon. We collect and distribute food on
4 Thursdays and Fridays. Sometimes we have food --
5 clothing distribution for the neighborhood. We
6 have a general purpose room which also serves as
7 a chapel on occasion. And we have people who do
8 research for us and help with helping people to
9 find homes.

10 At one time we were - we had -- we
11 rented to young people who were making transition
12 from homelessness to work place.

13 MEMBER SILVERSTEIN: Is there any --
14 excuse me, but I get the idea that this is
15 exactly the type of thing you are doing in your
16 field.

17 Is there any conflict between your
18 hours and theirs?

19 DR. COLLINS: No.

20 MEMBER SILVERSTEIN: As far as your --
21 you have tenants who live there?

22 DR. COLLINS: Yes.

1 MEMBER SILVERSTEIN: How many?

2 DR. COLLINS: We have two three-
3 bedroom rental residences.

4 MEMBER SILVERSTEIN: Have you
5 personally received any complaints from your
6 rental residents?

7 DR. COLLINS: My property manager says
8 that they -- he has inquired of them and their
9 complaint has been about trash in the back.

10 MEMBER SILVERSTEIN: That's it? Okay.
11 You have in this one to two block area the
12 Chinese Dragon. You have Windows. You have
13 Rustik. You have Boundary Stone. How do you
14 know that the people in front are patrons of
15 theirs versus patrons of these other places or
16 just people who are waiting for the bus, because
17 the bus stop is in front of their?

18 DR. COLLINS: Well, that's true. But
19 when they put up their cords in front of the bus
20 zone, the people then congregate on my property.

21 MEMBER SILVERSTEIN: The people
22 waiting for the bus stop?

1 DR. COLLINS: Waiting for the bus
2 where normally they would be waiting on the
3 sidewalk.

4 MEMBER SILVERSTEIN: Is the bus stop
5 less than 25 feet from your property?

6 DR. COLLINS: The bus stop is -- no.

7 MEMBER SILVERSTEIN: No.

8 DR. COLLINS: It's -- the bus stop is
9 directly on the other side of the sidewalk.

10 MEMBER SILVERSTEIN: On the other side
11 of the sidewalk?

12 DR. COLLINS: Yes.

13 MEMBER SILVERSTEIN: Well, how far is
14 it from your door?

15 DR. COLLINS: It's 6 inches from the
16 curb.

17 MEMBER SILVERSTEIN: How far is it
18 from your door to where people would wait for the
19 bus if they were -- if that building were vacant,
20 how far would it be?

21 DR. COLLINS: They would be right on
22 the doorstep.

1 MEMBER SILVERSTEIN: They would be
2 right on your doorstep?

3 DR. COLLINS: Yes, because we have
4 paved patios in front of both buildings.

5 MEMBER SILVERSTEIN: So if people
6 waiting at the bus stop with cigarettes, you
7 would have the same problem, so you are, pardon
8 me, damned if you do damned if you don't?

9 DR. COLLINS: Well, the fact that
10 people congregate and smoking is not illegal, but
11 the fact that if a certain number of people are
12 congregated just for the purpose of smoking, the
13 benefits of secondhand smoke certainly are less
14 than if it was an open field.

15 MEMBER SILVERSTEIN: Well, we know
16 that secondhand smoke is bad. I'm allergic to it
17 myself. But my question is if they weren't
18 there, would there still be that problem of
19 people literally outside your door smoking
20 because there is a bus stop that you say is that
21 close?

22 DR. COLLINS: No. They -- there is

1 about 12 feet, there is about 12 feet of my patio
2 that goes out to the sidewalk.

3 MEMBER SILVERSTEIN: Okay. And you
4 don't know whether these folks for sure who are
5 waiting there are from any of these other
6 establishments in the neighborhood?

7 DR. COLLINS: No, we don't know for
8 sure.

9 MEMBER SILVERSTEIN: Okay. No further
10 questions. Thank you very much.

11 CHAIRPERSON MILLER: Mr. Short?

12 MEMBER SHORT: Hello, Doctor, good
13 afternoon.

14 DR. COLLINS: Sir.

15 MEMBER SHORT: I'm looking at the
16 document that you provided. But first off, let
17 me say this. Apparently, Showtime isn't a bad
18 neighbor the way it is now?

19 DR. COLLINS: The barbershop before--
20 well, the barbershop is --

21 MEMBER SHORT: It's Showtime. Let's
22 not talk about the barbershop.

1 DR. COLLINS: Oh, okay.

2 MEMBER SHORT: Currently, right now,
3 other than the proposed outside area, Showtime is
4 not a problem for you and the neighborhood
5 apparently?

6 DR. COLLINS: No, it is not.

7 MEMBER SHORT: Okay. You mentioned
8 that you have tenants who live upstairs on top of
9 your --

10 DR. COLLINS: Yes.

11 MEMBER SHORT: -- establishment? And
12 it was also the testimony we have tenants that
13 live overtop of Showtime, correct?

14 DR. COLLINS: Yes.

15 MEMBER SHORT: And let me ask you
16 this. Emergencies in your area, have you ever
17 had any fires in that block?

18 DR. COLLINS: Any what?

19 MEMBER SHORT: Fires, fire
20 emergencies?

21 DR. COLLINS: Fires?

22 MEMBER SHORT: Fires, fires.

1 DR. COLLINS: Yes.

2 MEMBER SHORT: And so if people are
3 upstairs on the second floor, probably safety-
4 wise I already know the answer to this, but I
5 just want to ask you if you know the answer. The
6 Fire Department would have to put ladders up to
7 get those persons out if the fire is in Showtime
8 or in your business. The people on the second
9 floor would not be able to use the stairway to
10 come downstairs, correct?

11 DR. COLLINS: Correct.

12 MEMBER SHORT: So those ladders if
13 they go up would -- they will have to have a
14 clear surface to put them, so the firemen could
15 bring people down and do their jobs, correct?

16 DR. COLLINS: Yes.

17 MEMBER SHORT: All right. Now, the
18 document that you provided for us, and I want
19 this to go on the record and I hope Madam Chair
20 doesn't mind me reading this, under general
21 requirements Section 301.4, before I read this,
22 do you own your building?

1 DR. COLLINS: Yes, sir.

2 MEMBER SHORT: Do you know who owns
3 the Showtime building?

4 DR. COLLINS: Yes, sir.

5 MEMBER SHORT: Who owns it?

6 DR. COLLINS: Her name is Heidi.

7 MEMBER SHORT: Okay. But you -- this
8 is not the owner. He is renting the place?

9 DR. COLLINS: No, he is a tenant.

10 MEMBER SHORT: Okay. Now, I would
11 like to read this for the record. General
12 requirements, 301.4, "No applicant shall be
13 issued a Sidewalk Cafe Permit unless the
14 applicant saves harmless and indemnifies the
15 District, and its officers, agents, and employees
16 from all suits, claims, charges, and judgments to
17 which the District, its officers, agents, and
18 employees may be subject on account of the
19 issuance of a Sidewalk Cafe Permit, the operation
20 of the sidewalk cafe, or the injury to any person
21 or damage to any property, including the property
22 of the District of Columbia, and the property of

1 the applicant, where the applicant's or the
2 District's property may be damaged or destroyed
3 by the Fire Department or any other agency of the
4 District pursuant to a public emergency or fire."

5 I just want that on the record. And
6 apparently if you are not the owner of the
7 property, then you cannot sign for a sidewalk
8 cafe, according to this regulation, but I'll just
9 leave that for the Board to talk about when we go
10 inside.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER SHORT: And also I would just
13 like to say pretty much --

14 CHAIRPERSON MILLER: You all will get
15 a chance to address it. Go ahead.

16 MEMBER SHORT: -- I would like to just
17 add for the record if this business is a good
18 business and I have heard other neighbors just
19 like yourself on 111, 113, 115, everybody says
20 this is a great business as it is. So there is
21 not a problem with that.

22 DR. COLLINS: That's right.

1 MEMBER SHORT: And the only problem is
2 that we haven't got a fully executed sidewalk
3 cafe permit to have those stanchions and things
4 up outside. Is that a fair statement?

5 DR. COLLINS: That's a fair statement.

6 MEMBER SHORT: Okay. All right.
7 That's all I have, Madam Chair.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER SHORT: Thank you.

10 CHAIRPERSON MILLER: I just want to
11 say something about these regulations kind of to
12 pick up on what Mr. Jones said and add to it and
13 let you know that I have experience in Zoning. I
14 was on the Zoning Board and dealt with Zoning
15 Regulations. And these are Zoning Regulations.
16 And if you are alleging that a permit violates
17 the Zoning Regulations, that is up to the Zoning
18 Board to determine.

19 This Board is not an expert or have
20 jurisdiction over zoning. We will take notice of
21 this to get the big picture and to understand
22 what you are concerned about, but it's not within

1 our jurisdiction to say that this permit was
2 issued in error. That's not our jurisdiction.

3 Okay. But we can take judicial notice
4 of, you know, what is said here. Did you want to
5 address?

6 MS. SALGUERO: May I just address
7 Board Member Short's discussion on 301.4?

8 CHAIRPERSON MILLER: Yes.

9 MS. SALGUERO: DDOT requires that
10 every sidewalk cafe permittee have comprehensive
11 insurance coverage indemnifying the D.C.
12 Government and any property member, which Mr.
13 Vivari when he was applying for DDOT insurance
14 indemnifying the District of Columbia and it has
15 to be submitted to DDOT in order to get a permit.

16 So no applicant can have a sidewalk
17 cafe permit without having insurance protecting
18 the D.C. Government against any property damage.

19 MEMBER SHORT: That's what I
20 understood. And can I address that?

21 CHAIRPERSON MILLER: Sure. We are a
22 little bit off, but go ahead.

1 MEMBER SHORT: Okay. Thank you very
2 much. To address what you said, I just read it
3 because it said the property owner --

4 MS. SALGUERO: Yes.

5 MEMBER SHORT: -- in the regulation.
6 Also the basic fact is when DDOT gives these or
7 DCRA gives these, a lot of times they are not
8 looking at a map or they are not looking at if
9 there is residential, how many people live in the
10 buildings. Their job is just to get an
11 application completed.

12 And then the whole process including
13 ABRA and the ABC Board also chime in on the City
14 Regulations to formulate it and finalize it.

15 MS. SALGUERO: DDOT refers it out to
16 different agencies to make sure that -- you know,
17 if it is in a historical neighborhood --

18 MEMBER SHORT: That's correct.

19 MS. SALGUERO: -- it's a historical
20 neighborhood.

21 MEMBER SHORT: So if one agency
22 doesn't catch it, another one does.

1 MS. SALGUERO: Correct.

2 MEMBER SHORT: So I just wanted to
3 read that for the record. I understand how a lot
4 of my Board Members -- I'm just one Board Member.

5 MS. SALGUERO: Right. No, I
6 understand.

7 MEMBER SHORT: And having someone say
8 that they were a member of a Zoning Board, I was
9 a Member of the D.C. Fire Department and I can
10 tell you pretty much that --

11 MEMBER RODRIGUEZ: We know that.

12 MEMBER SHORT: -- trying to get a
13 ladder up to the second floor to get somebody out
14 in a fire is going to be quite difficult with
15 chairs and tables.

16 MS. SALGUERO: Right.

17 MEMBER SHORT: So that's the reason
18 why the regulations are so very, very --

19 MS. SALGUERO: I just wanted to make
20 note that --

21 MEMBER SHORT: Okay.

22 MS. SALGUERO: -- the applicant does

1 have comprehensive insurance, which was a
2 requirement he had to show that to DDOT.

3 MEMBER SHORT: Who is the property
4 owner?

5 MS. SALGUERO: The property owner is
6 Heidi --

7 MR. VIVARI: Heidi Mackey.

8 MS. SALGUERO: -- Mackey. And the
9 applicant has insurance and --

10 MEMBER SHORT: I understand what it
11 says, but it says -- it didn't say the applicant.
12 It says owner of the property. The owner of the
13 property, have they signed off on this? Yes?
14 Okay. Well, that solves the problem. They have
15 already signed off on this. So just for the
16 record, if anything else happens, I would just
17 simply like to say it was brought up today by
18 someone who knows fire, like someone knows
19 zoning.

20 CHAIRPERSON MILLER: Right. Okay.
21 Thank you.

22 MEMBER SILVERSTEIN: One final

1 question.

2 CHAIRPERSON MILLER: Oh, I have a
3 question, too, but go ahead.

4 MEMBER SILVERSTEIN: One final
5 question --

6 CHAIRPERSON MILLER: All right.

7 MEMBER SILVERSTEIN: --Dr. Collins.

8 DR. COLLINS: Yes, sir.

9 MEMBER SILVERSTEIN: And you have
10 spoken of the possible negative externalities of
11 people sitting outside your establishment. But
12 the sociologist, Jane Jacobs, spoke of eyes on
13 the street and how a city is safer when people
14 are outside and watching things, especially at a
15 bus stop.

16 Might that have some, in addition to
17 the negatives that you are talking about,
18 positives as well, as more people are out on
19 Rhode Island Avenue that Rhode Island Avenue
20 might be safer?

21 DR. COLLINS: I understand what you
22 are saying, sir. My only concern is the fact

1 that according to the regulations, it says that
2 no sidewalk cafe shall be located within 15 feet
3 of a bus stop.

4 MEMBER SILVERSTEIN: We've been there,
5 done that.

6 DR. COLLINS: Yes, sir.

7 MEMBER SILVERSTEIN: Okay.

8 DR. COLLINS: And the fact is that we
9 are -- they are in a very compact area, as you
10 can see from the picture. We are in a very
11 compact area.

12 MEMBER SILVERSTEIN: So they can't see
13 up and down the street. Is that what you are
14 saying?

15 DR. COLLINS: Well, they can walk
16 across the street. And they can participate in
17 the activities on the street, but the people who
18 are walking down Rhode Island Avenue if they are
19 going to their residences, they find themselves
20 restricted, in a constricted area. And as you
21 can see by the picture, with this -- with these
22 stanchions --

1 MEMBER SILVERSTEIN: What I see from
2 the picture, from what I see from Google Map--

3 DR. COLLINS: Right.

4 MEMBER SILVERSTEIN: -- is that two
5 doors down there is a tree and there is an
6 outcropping from a building and it is about six
7 times tighter than what you have in front of
8 their place.

9 DR. COLLINS: Right.

10 MEMBER SILVERSTEIN: That that's a
11 place where probably two people can't walk side-
12 by-side --

13 DR. COLLINS: Right.

14 MEMBER SILVERSTEIN: -- down the
15 sidewalk.

16 DR. COLLINS: Right. But and that
17 tree would be considered an obstruction just the
18 same as that bus sign is considered an
19 obstruction and in determining the area that you
20 would have a sidewalk cafe.

21 MEMBER SILVERSTEIN: Okay. Thank you,
22 sir. No further questions.

1 CHAIRPERSON MILLER: Oh, I just have
2 a couple. I thought I heard you say something
3 about overflow from -- if there is an outdoor
4 cafe at Showtime there would be an overflow to
5 your patio's table and chairs. Do you have a
6 patio, a private patio or public space in front
7 of your building?

8 DR. COLLINS: No, this is my property.

9 CHAIRPERSON MILLER: The whole --

10 DR. COLLINS: My property goes from my
11 building to the sidewalk.

12 CHAIRPERSON MILLER: Okay. That's
13 private property? It's not public space?

14 DR. COLLINS: It's the same as his.

15 CHAIRPERSON MILLER: Okay. Well, his
16 is public space.

17 DR. COLLINS: No, it isn't public
18 space.

19 CHAIRPERSON MILLER: Your's is private
20 property?

21 DR. COLLINS: That is apartment space.

22 MR. VIVARI: Both of our properties --

1 DR. COLLINS: According to --

2 CHAIRPERSON MILLER: Wait a second.

3 You're not here to testify at this second. Okay.

4 So you --

5 DR. COLLINS: According to --

6 CHAIRPERSON MILLER: -- are saying --

7 DR. COLLINS: -- the definition.

8 CHAIRPERSON MILLER: He had to get a

9 public space permit. Is your property in front
10 different from his legally, public space versus
11 private space?

12 DR. COLLINS: Well, I think we heard
13 that some times when these permits are issued,
14 they are issued not looking at --

15 CHAIRPERSON MILLER: Okay, but forget
16 that. Obviously, you don't have a commercial
17 business where you are selling things out in
18 front of your property. But if you are using
19 that space for some tables and chairs for your
20 own personal benefit?

21 DR. COLLINS: I could.

22 CHAIRPERSON MILLER: You could. You

1 don't have --

2 DR. COLLINS: Because --

3 CHAIRPERSON MILLER: -- tables. Do
4 you have tables and chairs there?

5 DR. COLLINS: -- I don't have to get
6 a permit.

7 CHAIRPERSON MILLER: But do -- I
8 thought I heard you say it interferes with your
9 use of that space or it would interfere.

10 DR. COLLINS: No. Everything that we
11 do is inside.

12 CHAIRPERSON MILLER: Okay. All right.
13 And then I wanted to ask you if you went to the
14 ANC with your concerns at all about --

15 DR. COLLINS: I didn't know that they
16 were applying for a permit.

17 CHAIRPERSON MILLER: So you didn't?

18 DR. COLLINS: And then --

19 CHAIRPERSON MILLER: Oh, about this
20 case. This case right here. You had notice on
21 the placards that they were coming for use of a
22 sidewalk cafe.

1 DR. COLLINS: No, I didn't.

2 CHAIRPERSON MILLER: Well, how are you
3 here?

4 DR. COLLINS: How did I hear?

5 CHAIRPERSON MILLER: You heard
6 somehow, you are here. You were at the status.
7 You --

8 DR. COLLINS: I saw him. I saw him
9 outside and I questioned him about it and he said
10 that the reason -- he was sorry that he hadn't
11 let me know, but he hadn't seen me.

12 CHAIRPERSON MILLER: And from whatever
13 you knew, did you contact the ANC about your
14 concerns?

15 DR. COLLINS: Contact the ANC?

16 CHAIRPERSON MILLER: Yes.

17 DR. COLLINS: He already had the
18 permit.

19 CHAIRPERSON MILLER: About this case.
20 They don't have a permit from the ABC Board.

21 DR. COLLINS: And so when I discovered
22 that they were applying for this --

1 CHAIRPERSON MILLER: Right.

2 DR. COLLINS: -- from ABRA, I filed a
3 complaint, a protest.

4 CHAIRPERSON MILLER: Right. And I
5 only want to know whether you contacted the ANC
6 with your concerns about how it was going to
7 affect the bus stop and the people and --

8 DR. COLLINS: No, because it was
9 already -- I just -- I was only able to complain
10 where I was -- where I knew what was happening.

11 CHAIRPERSON MILLER: Okay. All right.
12 Thank you. Anything else? Any other questions?

13 MS. SALGUERO: I have one more
14 question.

15 RECROSS-EXAMINATION

16 MS. SALGUERO: Concerning the email
17 that you received from your property manager, it
18 was sent yesterday, March 11th. Is that correct?

19 DR. COLLINS: This morning.

20 MS. SALGUERO: Right, right.

21 DR. COLLINS: 12:01.

22 MS. SALGUERO: This morning, this

1 morning. And that was when it was forwarded to
2 me. And to your knowledge it has never been
3 forwarded to Mr. Vivari?

4 DR. COLLINS: It was sent to you.

5 MS. SALGUERO: Well, but Martha
6 Jenkins sent it to me.

7 DR. COLLINS: When I got it, I sent it
8 to Paul.

9 MS. SALGUERO: But your company never
10 -- wrote it and sent it to you yesterday?

11 DR. COLLINS: No. He sent it --

12 MS. SALGUERO: Or this morning, excuse
13 me.

14 DR. COLLINS: -- to -- yes.

15 CHAIRPERSON MILLER: It feels like
16 yesterday.

17 MS. SALGUERO: Yes, right. Okay. And
18 I would just like to clarify that. It was only
19 sent to him and then to me this morning.

20 DR. COLLINS: Yes.

21 MS. SALGUERO: Okay. That's the only
22 question.

1 CHAIRPERSON MILLER: Okay. Thank you
2 very much. You can take a seat now. You can
3 leave the witness stand.

4 DR. COLLINS: Any more questions?

5 CHAIRPERSON MILLER: We don't have any
6 more questions.

7 MEMBER SHORT: No.

8 CHAIRPERSON MILLER: No. Thank you.

9 DR. COLLINS: Thank you.

10 MEMBER JONES: Thank you, sir.

11 CHAIRPERSON MILLER: Is there any
12 rebuttal?

13 MS. SALGUERO: No, I think at this
14 point, we're --

15 CHAIRPERSON MILLER: Okay. So and you
16 all have offered into evidence any documents you
17 want into evidence?

18 MS. SALGUERO: At this point, yes.

19 CHAIRPERSON MILLER: Okay. So we just
20 have judicial notice of the Zoning Regulations.
21 Okay. So now it is time for closing remarks,
22 which are not required, but you are welcome to do

1 it summing up your case starting with the
2 applicant.

3 MS. SALGUERO: We appreciate the Board
4 Members' time. We would just like to note that
5 the testimony from a resident who currently lives
6 directly above the Showtime establishment as well
7 as the testimony of the Investigator who visited
8 Showtime six times shows that the establishment
9 does not create a negative -- have a negative
10 impact in the neighborhood.

11 Indeed, the resident who is directly
12 above Showtime testified to the fact that it has
13 improved the neighborhood. That they are a good
14 operator, that Mr. Collins has also spoken to the
15 fact that Mr. Vivari has been a good operator
16 until the issues concerning the sidewalk cafe has
17 been brought up.

18 Mr. Vivari follows the ABRA
19 Regulations. He does not create noise in the
20 area. He has improved the property values in the
21 vicinity. Furthermore, he legally obtained a
22 sidewalk cafe permit from DDOT. He went through

1 the regulations in order to legally obtain a
2 sidewalk cafe permit on a public space permit.

3 There is a notice requirement as well
4 per DDOT, so there are avenues for Mr. Collins to
5 complain if he believes that it is not a legal
6 permit. That would be under DDOT or DCRA.

7 At this point, the operations of a
8 sidewalk cafe would not adversely affect the
9 neighborhood. Having six people in that
10 vicinity, in that space would benefit the
11 neighborhood in that ABRA would be able to
12 clearly come and regulate six seats. It would
13 not be a detriment to have this in the
14 neighborhood.

15 We understand Dr. Collins, you know,
16 is objecting to just the required -- you know,
17 the legal requirements of the permit. As far as
18 we understand it, it is not the ABRA issues as
19 much as the property issues with -- concerning
20 the public space permit. And we believe that
21 this is not a proper venue to argue those issues
22 and we would welcome him to talk to DDOT

1 directly.

2 But at this time, we believe that it
3 is a valid use of space, according to D.C.
4 Government Regulations. We hope ABRA would also
5 allow them, the applicant, to serve alcohol to
6 six people in that space. Thank you.

7 CHAIRPERSON MILLER: Thank you. Dr.
8 Collins, do you want to give any closing?

9 DR. COLLINS: No. I have no closing
10 statements, with the exception of the fact that I
11 thank you for giving me the opportunity to come
12 to represent property owners and tax payers who
13 look for quiet enjoyment of their property. And
14 the maintainers have the right to be able to own
15 property and not be subject to nuisances which
16 would be a distraction to the proper living in an
17 urban neighborhood.

18 CHAIRPERSON MILLER: Thank you. Okay.
19 Then I'm going to close the record in this case,
20 which means we have all the evidence that will be
21 considered.

22 Do the parties wish to file proposed

1 findings of facts and conclusions of law or waive
2 their right to do so? And I'll explain that if
3 anybody would like me to.

4 MS. SALGUERO: Not waive our right to.
5 We would like to.

6 CHAIRPERSON MILLER: You would like
7 to. Okay. That means that once the transcript
8 is made available to you, which is usually, I
9 think, two to three weeks, you have an
10 opportunity to go through the transcript and
11 propose findings of facts for the Board to use in
12 deciding its order, which has findings of facts
13 in it, and then conclusions of law based on those
14 facts as applied to our laws.

15 Dr. Collins, it's often when one party
16 doesn't waive, the other party doesn't waive, but
17 it's like doing a legal brief. You are
18 presenting to the Board almost like a proposed
19 order. And we have orders on the website if you
20 wanted to see what that looks like.

21 But you are not obligated to do so.
22 The Board is going to decide based on the

1 evidence in the record regardless. There is
2 nothing new can come in that is not in the record
3 for us to consider in this kind of statement.

4 Do you know if you would like to waive
5 your right or keep your options open?

6 DR. COLLINS: Thank you for the
7 opportunity.

8 CHAIRPERSON MILLER: Okay. So that
9 means we will -- if you all decide afterwards,
10 you know, you reflect on this case and then you
11 decide you don't really want to do this, let us
12 know because we are going to be waiting to
13 deliberate until we receive proposed findings of
14 facts and conclusions of law.

15 And I would say that they are the
16 exception within the rule, but it is something
17 that the law provides if you want to do it.

18 Okay. So if you decide -- if you
19 don't hear from our Agency within a few weeks,
20 about three weeks, please, call and inquire where
21 you say you didn't get the transcript, because we
22 don't want a lot of time to go by, more time, you

1 know, than is necessary. Okay. Any questions?

2 All right. So that will be due within
3 30 days of when you receive the transcript.

4 Okay. Now, all that is left then is for the
5 Board to take a vote on deliberating this in
6 closed session.

7 As Chairperson of the Alcoholic
8 Beverage Control Board for the District of
9 Columbia and in accordance with Section 405 of
10 the Open Meetings Amendment Act of 2010, I move
11 that the ABC Board hold a closed meeting for the
12 purpose of seeking legal advice from our counsel
13 on Case No. 14-PRO-00095, Showtime, per Section
14 405(b)(4) of the Open Meetings Amendment Act of
15 2010, and deliberating upon this case for the
16 reasons cited in Section 405(b)(13) of the Open
17 Meetings Amendment Act of 2010.

18 Is there a second?

19 MEMBER RODRIGUEZ: Second.

20 CHAIRPERSON MILLER: Mr. Rodriguez has
21 seconded the motion. I'll now take a roll call
22 vote on the motion before us now that it has been

1 seconded.

2 Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: Mr. Rodriguez?

5 MEMBER RODRIGUEZ: I agree.

6 CHAIRPERSON MILLER: Ms. Miller

7 agrees.

8 Mr. Short?

9 MEMBER SHORT: I agree.

10 CHAIRPERSON MILLER: Mr. Jones?

11 MEMBER JONES: I agree.

12 CHAIRPERSON MILLER: It appears that

13 the motion has passed by a 5-0-0 vote.

14 I hereby give notice that the ABC
15 Board will hold this aforementioned closed
16 meeting in the ABC Board conference room after
17 receiving the proposed findings of facts and
18 conclusions of law.

19 So that completes this case. Thank
20 you very much.

21 DR. COLLINS: Thank you.

22 MR. VIVARI: Thank you.

1 CHAIRPERSON MILLER: Have a good
2 evening.

3 (Whereupon, the Protest Hearing in the
4 above-entitled matter was concluded at 6:00 p.m.)

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