

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

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IN THE MATTER OF: :
 :
Tas, LLC, :
t/a Libertine :
2435 18th Street, NW :
Retailer CR : Protest
License No. 86298 : Hearing
Case No. 13-PRO-00008 :
ANC 1C :
Substantial Change (Change of:
Hours for Premise and :
Sidewalk Cafe) :
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JUNE 12, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th

Street, N.W., Washington, D.C., Ruthanne Miller, Chairperson, presiding.

PRESENT

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member

- HERMAN JONES, Member
- MIKE SILVERSTEIN, Member

ALSO PRESENT

- FELICIA MARTIN, ABRA

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

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

1:48 p.m.

CHAIRPERSON MILLER: Okay. I think I'll start. We have one more Board Member who will be joining us very momentarily, I'm sure.

Okay. This is the Case No. 13-PRO-00008, Libertine, located at 2435 18th Street, N.W., License No. 86298 in ANC 1C. And this is a protest hearing for a substantial change with respect to hours for the premises and a sidewalk cafe.

Why don't we start with the parties introducing themselves for the record?

MR. AUSLANDER: Scott Auslander, Applicant.

MR. KNOTT: Thomas Knott, managing member.

CHAIRPERSON MILLER: I didn't hear. Are you on a microphone?

MR. KNOTT: Oh, is this a microphone? Thomas Knott. That's K-N-O-T-T.

1 I'm one of the managing members with
2 Libertine.

3 CHAIRPERSON MILLER: Thomas Knott?

4 MR. KNOTT: Yes.

5 CHAIRPERSON MILLER: And you're
6 what?

7 MR. KNOTT: One of the managing
8 members with Libertine.

9 CHAIRPERSON MILLER: Okay.
10 Managing member?

11 MR. KNOTT: Yes.

12 CHAIRPERSON MILLER: Okay. Mr. --
13 what do you -- what's your name?

14 MR. AUSLANDER: Auslander, yes.

15 CHAIRPERSON MILLER: Auslander?
16 And you're the owner?

17 MR. AUSLANDER: Yes, I'm also one
18 of the managing members.

19 CHAIRPERSON MILLER: Okay. And
20 over here?

21 MR. SIMPSON: I'm William Simpson.
22 I'm the Chair of Advisory Neighborhood

1 Commission 1C.

2 CHAIRPERSON MILLER: Okay.

3 MR. JAMES: Denis James, President
4 of Kalorama Citizens Association.

5 CHAIRPERSON MILLER: Okay. That's
6 it. All right. I know that Reed-Cooke
7 Neighborhood Association was a part, but they
8 didn't file a PIF, so I gather they're not
9 participating today. All right. So they're
10 no longer a party in this case.

11 I believe that's the consensus of
12 the Board. Correct?

13 MEMBER ALBERTI: Correct.

14 CHAIRPERSON MILLER: All right. So
15 we don't need to do a big motion.

16 All right. Let's do some
17 preliminary issues. With respect to
18 witnesses, can I hear how many witnesses each
19 side might be having and whether or not anyone
20 is going to want to invoke the rule on
21 witnesses? And I can explain what that is if
22 anybody needs me to.

1 MR. KNOTT: We'll have two
2 witnesses to call.

3 CHAIRPERSON MILLER: Two
4 witnesses? Okay.

5 MR. KNOTT: Mr. Auslander and our
6 executive chef.

7 CHAIRPERSON MILLER: Okay. Right.
8 All right?

9 MR. SIMPSON: And I will testify
10 for ANC 1C.

11 CHAIRPERSON MILLER: Okay.

12 MR. JAMES: And I will do the same
13 for the Kalorama Citizens Association.

14 CHAIRPERSON MILLER: Okay. So
15 there's no need for the rule on witnesses. As
16 far as I can see no one is invoking that.
17 Correct? It would only affect the chef as far
18 as I can tell because the rest of you are
19 parties.

20 MR. SIMPSON: I'm not sure what it
21 is, but --

22 CHAIRPERSON MILLER: Okay. So if

1 you would believe that someone is going to
2 testify and that another witness' testimony
3 might be influenced by the testimony that that
4 person heard, then you can ask that the second
5 witness be kept out of the hearing room until
6 they testify.

7 MR. SIMPSON: No need.

8 CHAIRPERSON MILLER: Okay. I also
9 would want to make a comment about an issue
10 that I saw on the PIFs, on somebody's PIF.
11 Kalorama Citizens Association. Okay. It goes
12 to talking about whether or not a suitable
13 settlement agreement is in place. And I saw
14 this issue again with the ANC about the
15 Applicant's refusal to enter into settlement
16 agreements.

17 Okay. In our view that's really
18 not a relevant subject for a protest hearing.
19 The protest hearing is for a purpose that's
20 actually similar to a settlement agreement,
21 that applicants are not required to enter into
22 settlement agreements, but that, you know,

1 residents and neighbors, protestants, whatever
2 you call them, are entitled to bring to the
3 Board's attention or the Licensee's attention
4 or to resolve in some ways issues under the
5 appropriate standards which go to peace, order
6 and quiet.

7 So it would be appropriate to have
8 testimony about conditions you might want the
9 Board to place on the Licensee that deal with
10 peace, order and quiet, but it's not really
11 appropriate to go into whether the Applicant
12 was cooperative in entering a settlement
13 agreement or, you know, why there should be a
14 settlement agreement. They're basically two
15 separate avenues. And I think that the
16 protest hearing is to provide the opportunity
17 for those who might be impacted by the
18 establishment's business to bring to the
19 Board's attention and make sure that there are
20 protections for those issues that they may
21 have put in the settlement agreement such as
22 trash or noise or any of those issues.

1 But what I'm saying is that your
2 case really should go to the substance of the
3 issues that impact, you know, with respect to
4 the appropriateness standards, not whether or
5 not there's a settlement agreement or why
6 settlement agreements are better or things
7 like that, or not better, or whatever. But I
8 just say a lot of that and I just -- what I
9 want to avoid is a lot of testimony that's not
10 really going to be relevant which would waste
11 everybody's time. So then we could focus on
12 the issues that are most concerning.

13 Yes?

14 MR. KNOTT: Just as a point of
15 information --

16 CHAIRPERSON MILLER: Yes.

17 MR. JAMES: -- the KCA filed an
18 amended PIF earlier in the day.

19 CHAIRPERSON MILLER: Oh.

20 MR. JAMES: Ms. Jenkins was on
21 that. So we changed that part.

22 CHAIRPERSON MILLER: Oh, okay. I

1 haven't seen that.

2 MR. JAMES: Nevertheless, it was
3 there on the original one and I understand
4 what you're saying.

5 CHAIRPERSON MILLER: Okay. Good.
6 So that you'll focus on the issues that really
7 will matter in the Board's decision making.
8 Okay.

9 MR. JAMES: Everybody was copied.
10 All the parties were copied.

11 CHAIRPERSON MILLER: Okay. And
12 you don't want to say anything other -- you
13 know, why you think that it should be or
14 anything that? You appreciate this point?

15 MR. JAMES: No, I just wanted to
16 indicate that they had --

17 CHAIRPERSON MILLER: Changed it?

18 MR. JAMES: -- I think remedied
19 your concern.

20 CHAIRPERSON MILLER: Okay. Good.
21 All right. That's the only preliminary remark
22 I wanted to say.

1 So are you familiar with what the
2 order of procedure would be now?

3 MR. KNOTT: (No audible response.)

4 CHAIRPERSON MILLER: Okay. So
5 that's what I'm going to do next.

6 MR. KNOTT: This is my first
7 hearing, so --

8 CHAIRPERSON MILLER: Okay. So
9 each side starting with the Applicant has an
10 opportunity to make an opening statement. And
11 then the first witness that will be called
12 will be the Government's witness, someone from
13 ABRA who did the reports on this case. And
14 each will you will have a chance to ask
15 questions of that witness. And the Board will
16 have questions as well.

17 Then the Licensees will go forward
18 with their witness. And the same thing. They
19 have a chance to cross-examine. The Board has
20 a chance to ask questions and you have a
21 chance to do redirect and stuff. So you'll
22 each have your witnesses.

1 And then any documents you want to
2 put into evidence. You could just alert the
3 Board, me or whatever, that you want to
4 identify a document, you want it to be in
5 evidence. And each side will have a chance to
6 object if they have some kind of procedural
7 objection. Then there will be a closing. And
8 that's basically how it will go. And if you
9 have any questions along the way, just feel
10 free to ask.

11 MR. KNOTT: Okay. Well, peace and
12 order, maintaining order, I just want to let
13 everybody know --

14 MEMBER SILVERSTEIN: Could you
15 speak up?

16 MR. KNOTT: Can you hear me
17 through this? Yes. The peace and order
18 concerns, I just want to say that Toledo
19 Lounge's last day of operation was August 5th,
20 2012. We have not been open since then for a
21 number of reasons. But obviously the place
22 has been quiet. I did --

1 CHAIRPERSON MILLER: Well, let me
2 just --

3 MR. KNOTT: I did notice -- I did
4 notice in Felicia's investigative report a
5 number of calls to that address.

6 CHAIRPERSON MILLER: All right.
7 Let me just stop you here, because it sounds
8 like you're testifying and --

9 MR. KNOTT: No, I'm not
10 testifying.

11 CHAIRPERSON MILLER: -- I haven't
12 sworn you in yet.

13 MR. KNOTT: Okay.

14 CHAIRPERSON MILLER: So --

15 MR. KNOTT: We'll get to it. Go
16 ahead.

17 CHAIRPERSON MILLER: Yes, so
18 you're going to testify, so then you can --

19 MR. KNOTT: No, I'm not going to
20 testify.

21 CHAIRPERSON MILLER: -- testify to
22 all that.

1 MR. KNOTT: Go ahead. That's
2 fine.

3 MR. AUSLANDER: I think the
4 opening remark would be -- basically would be
5 --

6 CHAIRPERSON MILLER: Oh, I'm
7 sorry. Is that your opening remarks?

8 MR. AUSLANDER: No, that was his
9 -- yes.

10 CHAIRPERSON MILLER: I didn't
11 realize what you were doing.

12 MR. KNOTT: Yes, I mean I was
13 just --

14 CHAIRPERSON MILLER: Okay. I'm
15 sorry.

16 MR. KNOTT: You said to start with
17 opening remarks.

18 CHAIRPERSON MILLER: Oh, let me
19 just say opening remarks, what that means
20 normally, in general it's like this is what
21 we're -- the case we're going to make, like
22 we're going to show that it's not going to

1 affect the peace, order and quiet, you know,
2 with such and such witnesses. Instead of
3 saying --

4 MR. KNOTT: Oh, okay.

5 CHAIRPERSON MILLER: -- the
6 substance of that. And it's not a requirement
7 either.

8 MR. AUSLANDER: What we're
9 generally here to talk about is making our
10 license whole. It's a very old license that
11 had some odd quirks to it, a patio that had to
12 close at 10:00, hours that didn't allow for
13 daytime hours, including on this little small
14 patio area out front, as well as some odd
15 hours late at night. So what we've asked for
16 in our substantial change is basically the
17 opportunity to make the license sort of
18 normalized to match licenses at our other
19 establishments, as well as the ability to open
20 for lunch, potentially breakfast, which would
21 match the concept we're putting into this
22 location as well.

1 We've met with the parties a few
2 times. Obviously, you know, there not many
3 businesses in the neighborhood and we are
4 members of that local community. And I think
5 that your opening comments in regards to the
6 settlement agreement is why we're here today,
7 our refusal to enter into -- "refusal" is
8 probably the wrong word, but we're just not
9 interested in entering into a settlement
10 agreement because the issues at hand as we've
11 been told multiple times by the Applicants,
12 there are none. The primary issue at hand is
13 our lack of a settlement agreement. I would
14 assume that much of their case is based on the
15 fact that they have a lot of settlement
16 agreements in the neighborhood.

17 We haven't been open. We've been
18 closed for business. We've never had an issue
19 at this location. We haven't had the most --
20 we've operated it for I believe eight, nine
21 months at the most, and there were never any
22 issues. As far as we know, to the best of our

1 knowledge, there were never any issues with
2 the prior business that was there for almost
3 20 years. The primary issue to be resolved
4 today is our lack of a voluntary agreement,
5 settlement agreement.

6 CHAIRPERSON MILLER: Okay. I
7 forgot to say something, and you're fine. We
8 also have some time parameters. And so
9 opening and closing statements are five
10 minutes each.

11 MR. AUSLANDER: Okay.

12 CHAIRPERSON MILLER: And you're
13 done. You're fine. You're fine.

14 (Laughter.)

15 CHAIRPERSON MILLER: And I didn't
16 tell you ahead of time. And each side will
17 have -- the proponent will have an hour-and-a-
18 half. You usually don't need all that time
19 necessarily. And the same with the opponents,
20 together and hour-and-a-half. And your cross
21 counts against you and when you're asking the
22 questions. And Mr. Jones is going to be

1 keeping time. Do you have any questions on
2 that?

3 (No audible response.)

4 CHAIRPERSON MILLER: Okay.
5 Protestants have any openings?

6 MR. SIMPSON: I'll respond briefly
7 to your comments, Ms. Miller, and also the
8 Applicant's comments. And I will do my utmost
9 now and also during the course of the
10 proceedings to respect the guidance you gave.

11 The issues of course are
12 interwoven, I guess. The Applicant referenced
13 this concept of normalizing their license.
14 Well, there is no normal license on 18th
15 Street. There are plenty of different
16 operators with plenty of different business
17 models that are subject to plenty of different
18 hours of operation.

19 With respect to peace, order and
20 quiet, I'll be happy to agree that there have
21 been no issues while the business has been
22 shuttered. Of course there aren't. The

1 reason we have a substantial change placarding
2 process is so that we can try to get ahead of
3 issues that might arise if a substantial
4 change is granted. By definition it can't
5 have caused problems yet because it hasn't
6 been granted yet. And that has been the ANC's
7 bull all around.

8 We of course in Adams Morgan have
9 historically approached new establishments and
10 newly-opening establishments and substantial
11 changes to establishments with -- by seeking
12 settlement agreements. They provide some
13 baseline comforts against those prospective
14 future risks. It has been incredibly
15 disappointing that the Applicants have not
16 agreed to even discuss that with us, but we
17 will -- in the course of these proceedings I
18 will try to translate some of the typical
19 constraints that establishments in Adams
20 Morgan do agree to into topics that the Board
21 could potentially take up as orders.

22 I think I will stop there. Thank

1 you.

2 CHAIRPERSON MILLER: Okay.

3 MR. JAMES: For Kalorama Citizens
4 I will convince the Board that a request would
5 lead to disturbance of the peace, order and
6 quiet in the community and we will also
7 suggest some conditions would allay that
8 concern.

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 Okay. So is our Government
12 witness here?

13 Good afternoon.

14 INVESTIGATOR MARTIN: Good
15 afternoon.

16 CHAIRPERSON MILLER: Do you swear
17 to tell the truth, the whole truth, nothing
18 but the truth?

19 INVESTIGATOR MARTIN: Yes, ma'am.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. So when you're ready, if you want to
22 introduce yourself for the record and then

1 provide your testimony.

2 INVESTIGATOR MARTIN: Sure. Good
3 afternoon, everyone. My name is Felicia
4 Martin. I am the author of this protest
5 report and I am an investigator here at ABRA.

6 Today I'm going to talk about
7 Libertine, which is located in Ward 1. The
8 address on record is 2535 18th Street, North
9 by West.

10 I monitored the establishment
11 approximately seven times between May 21st,
12 2013 and 5/29/2013. This application at the
13 time of my investigation was a renewal
14 application and at the time it was being
15 protested by Reed-Cooke Neighborhood
16 Association, also known as RCNA; that's R
17 Robert, C Charlie, N Nora, A like Adam; the
18 Kalorama Citizens Association, also known as
19 KCA, K like kitty, C like Charlie, A like
20 Adam; and also the Advisory Neighborhood
21 Commission 1C, also known as ANC 1C, A Adam,
22 N Nora, C Charlie, 1, C like Charlie.

1 I reached out on Saturday, May
2 24th and spoke with Denis James, who is a
3 representative of KCA. Mr. James related to
4 me that his concern or that Kalorama Citizens
5 Association's concern was loud music would
6 emanate from the establishment and loud
7 patrons would be on the sidewalk cafe. And
8 Mr. James stated that he wanted some assurance
9 from the Licensee that music will be contained
10 within the establishment and that no music
11 will be played on the sidewalk cafe.

12 Also on Saturday, May 24th of this
13 year I reached out to Mr. Ernest Spriggs who
14 represented RCNA. And Mr. Spriggs' basic
15 concern was that the Licensee has no
16 relationship with the community, and that's
17 something that they would like to see bridged,
18 that there's some sort of communication and
19 understanding between both parties.

20 I also tried to reach out to Mr.
21 Simpson who was listed as the representative
22 for ANC 1C. And as of Wednesday, June 5th of

1 this year, I was unable to get in contact with
2 Mr. Simpson in time to submit this report.

3 What I found as far as the
4 establishment is that it's in a brick building
5 and the building consists of two floors.
6 Above the establishment is a psychic reader
7 business. And Libertine will be occupying on
8 the first level, which is also known as the
9 street level. It's narrow inside. To the
10 right when you walk in you see the bar and
11 there are also some seating area. To the left
12 there are seats. To the rear there's seating
13 and tables as well. Downstairs the bathrooms
14 are located.

15 And I also had an opportunity to
16 speak with the owner, who is Ms. Amy Bowman.
17 Quick indulgence, please.

18 on May 25th I telephonically spoke
19 with Ms. Bowman, and Ms. Bowman stated that
20 she was speaking on behalf of the
21 incorporation. She stated that she's not new
22 to the business, that she has approximately

1 six years of experience and the other owners
2 have approximately eight years in the
3 industry.

4 Ms. Bowman went on to say that she
5 can understand the concerns of the community,
6 however, she's not new at the business in that
7 she's very much aware that many of the
8 establishments in the neighborhood who portray
9 themselves as restaurants actually morph into
10 some sort of nightclub. And she and her co-
11 owners are very serious about being a
12 restaurant, so serious that they have brought
13 on a culinary chef who would accentuate their
14 French style of cooking that they will be
15 providing.

16 She stated that, you know, from
17 time to time they would like to have
18 entertainment. She's very much aware that the
19 patio would not accommodate any type of a
20 band. She stated that but from time to time
21 they would like to have a DJ that would
22 provide entertainment for parties such as that

1 and as well as some sort of songwriters will
2 come in every now and again and offer some
3 entertainment. And at this time they have no
4 plans to have any type of karaoke.

5 She also went on to show me the
6 kitchen. And in your handouts there you will
7 see that there are some photographs of the
8 kitchen. It's set up like a kitchen and it
9 has your traditional items, that it's
10 definitely not a fly-by-night where you just
11 have a broiler oven and a microwave. It was
12 very consistent with her representation of how
13 the establishment will move forward. She was
14 also very happy about an award that her other
15 restaurant had won. She said that she and Mr.
16 Knott are owners of the Black Squirrel and her
17 other partner is the owner of Ventnor Sports
18 Cafe. And Black Squirrel was acknowledged in
19 the Washington Post in 2012 as having one of
20 the best places to have a burger.

21 So I had an opportunity also to
22 take photos, so please feel free to take a

1 look at that.

2 As I looked at the area and also
3 with the help of an ABRA employee I was able
4 to document the number of establishments that
5 are within Adams Morgan that's within 1,200
6 feet of Libertine. And it's self-explanatory
7 here. There are approximately 71
8 establishments. There are ABC establishments
9 that are sitting on each side of Libertine,
10 and both establishments are restaurants. And
11 there's outdoor seating for those
12 establishments as well.

13 The current operating hours for
14 Libertine: Monday through Friday, as you can
15 see -- correction, Monday through Thursday is
16 5:00 p.m. to 1:30 a.m. and on Fridays and
17 Saturdays -- correction, Monday through Friday
18 is 5:00 p.m. to 1:30 and on Fridays they'll
19 close at 3:00 in the morning. Currently on
20 Saturday they're opening at 10:00 a.m. and
21 closing at 3:00. As far as the outside
22 seating, the sidewalk cafe, the current

1 operating hours are Monday through Saturday
2 5:00 p.m. until 2:00 a.m. and on Monday
3 through Thursday they'll be closing at 1:30.

4 And what the establishment would
5 like to do is change those operating hours and
6 take advantage of the foot traffic that comes
7 through Adams Morgan. So they would like to
8 open the inside as well as the cafe, the
9 sidewalk cafe as early as 8:00 in the morning.
10 That would be Sunday through Thursday. And on
11 Friday and Saturday they would like to close
12 at 2:00 in the morning, which is consistent
13 with a lot of the establishments that are
14 already in operation in Adams Morgan.

15 The establishment has no on-site
16 parking. Within the same block there's
17 Colonial Parking, which is open to the public
18 with approximately 262 spaces.

19 Lastly, a records check -- scratch
20 that. A records was conducted with the
21 Metropolitan Police Department regarding any
22 type of activity for the establishment. And

1 as you can see, that records check went back
2 from May 20th of 2012 up until May 29th, 2013.
3 And there were calls for service, however,
4 none of those calls generated any ABRA action.

5 There is a bus line that runs
6 through Adams Morgan with approximately five
7 separate lines that run through there. The
8 place is flooded with public transportation as
9 far as -- taxis and limos are also bringing
10 patrons in and out of Adams Morgan.

11 The only concern I had at the time
12 of my talk with Ms. Bowman is when I did -- I
13 did a visit to the establishment on May 29th
14 and saw that the documents for the Certificate
15 of Occupancy was in the former establishment's
16 name of Toledo Lounge and there was no
17 Certificate of Use authorizing outside
18 seating. So Ms. Bowman did advise me that
19 they had did some renovations to the
20 establishment and a lot of the documents were
21 removed from the premise to accommodate the
22 workers. And so she would get back with me

1 with those documents.

2 So approximately two days later
3 she did submit documents for the Certificate
4 of Use, as well as the Certificate of
5 Occupancy in the current incorporation's name
6 and the current establishment's name. And my
7 report had already been submitted, so I
8 thought it would be best to hand Ms. Bowman
9 and company explain the Certificate of Use,
10 which was -- it is valid. That I can say.

11 And that's the end of my
12 presentation.

13 CHAIRPERSON MILLER: Thank you
14 very much.

15 INVESTIGATOR MARTIN: You're
16 welcome.

17 CHAIRPERSON MILLER: Are there
18 Board questions?

19 MEMBER ALBERTI: Yes, I have some,
20 but --

21 CHAIRPERSON MILLER: Want me to
22 start?

1 MEMBER ALBERTI: Yes, please do.

2 CHAIRPERSON MILLER: Okay. Now, I
3 understand that this establishment is closed
4 right now. Is that correct?

5 INVESTIGATOR MARTIN: Yes.

6 CHAIRPERSON MILLER: Okay. So did
7 you happen to visit the establishment when it
8 was opened, or only closed?

9 INVESTIGATOR MARTIN: The time
10 that I actually physically visited the
11 establishment, I believe it was May 29th --
12 and I met Ms. Bowman there inside the
13 establishment. And my observations, the seven
14 observations I conducted, the establishment
15 wasn't open at all.

16 CHAIRPERSON MILLER: Okay. And I
17 want to make sure that understood you
18 correctly to say that the requested hours for
19 both the premises and the sidewalk cafe are
20 consistent with hours of other restaurants in
21 the neighborhood? Did you say that?

22 INVESTIGATOR MARTIN: Yes.

1 CHAIRPERSON MILLER: Okay. And is
2 there anything different about the location of
3 this establishment? For instance, that it's
4 got a residence next door or something like
5 that.

6 INVESTIGATOR MARTIN: I didn't
7 notice any residences next door to them.
8 There are two ABC establishments on each side
9 of them.

10 CHAIRPERSON MILLER: Okay. And do
11 you know if -- do those have sidewalk cafes?

12 INVESTIGATOR MARTIN: They do.

13 CHAIRPERSON MILLER: And do you
14 know the hours of those two establishments?

15 INVESTIGATOR MARTIN: No, I don't
16 know the operating hours of those two
17 establishments.

18 CHAIRPERSON MILLER: Okay. Do you
19 know the names of those two?

20 INVESTIGATOR MARTIN: Yes, it's
21 Meze, M-E-Z-E, and Jyoti Indian Cuisine.

22 CHAIRPERSON MILLER: Okay. What's

1 the second thing you said after Meze?

2 INVESTIGATOR MARTIN: The thing
3 it's I'm not pronouncing it correctly --

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR MARTIN: -- but it's
6 Jyoti.

7 CHAIRPERSON MILLER: Oh, Jyoti?
8 Okay.

9 INVESTIGATOR MARTIN: Yes. And
10 then Indian Cuisine.

11 CHAIRPERSON MILLER: And how does
12 the size of this establishment compare with
13 the two on either side?

14 INVESTIGATOR MARTIN: I did not
15 enter the other two establishments during the
16 investigation, but I have been in both of
17 those establishments, and they're basically
18 the same length. And both establishments on
19 each side -- sidewalk cafes are in line with
20 Libertine, so it's all pretty uniform.

21 CHAIRPERSON MILLER: Okay. All
22 right. Thank you.

1 Yes, Mr. Alberti?

2 MEMBER ALBERTI: Hi.

3 INVESTIGATOR MARTIN: Good
4 afternoon.

5 MEMBER ALBERTI: I just want to
6 follow up on a few extra questions that Ms.
7 Miller asked.

8 Now I see from the pictures it
9 looks like the sidewalk cafe for Libertine is
10 approximately the same size as the one for
11 Meze and Jyoti. Is that correct?

12 INVESTIGATOR MARTIN: Yes.

13 MEMBER ALBERTI: Do you know how
14 many seats they're applying for on that
15 sidewalk cafe for Libertine?

16 INVESTIGATOR MARTIN: No.

17 MEMBER ALBERTI: Pardon?

18 INVESTIGATOR MARTIN: No.

19 MEMBER ALBERTI: No? Okay. Just
20 so I know, the pictures that are in -- well,
21 I'll skip that.

22 On the 22, 23 and 2400 block of

1 18th Street, by my count, from your list there
2 are about 20 or more establishments that have
3 outdoor cafes, sidewalk cafes.

4 INVESTIGATOR MARTIN: Okay.

5 MEMBER ALBERTI: Does that sound
6 about right?

7 INVESTIGATOR MARTIN: Yes, sir.

8 MEMBER ALBERTI: Okay. Do you
9 know what the hours are for any of those
10 establishments?

11 INVESTIGATOR MARTIN: I don't know
12 the exact operating hours for all --

13 MEMBER ALBERTI: Well, for the
14 sidewalk cafes --

15 INVESTIGATOR MARTIN: For the --
16 no, I don't know the exact --

17 MEMBER ALBERTI: -- for any of
18 those establishments.

19 INVESTIGATOR MARTIN: I don't know
20 the exact hours. What I can say, that there
21 -- I've monitored Adams Morgan many time.
22 Adams Morgan is a special attention location

1 for night time operations and I've seen
2 operations for the sidewalk cafe up to 2:00
3 and 3:00, 3:00 on the evenings for Madam's
4 Organ, Central, Grand Central. I've seen
5 operations up until midnight for Heaven and
6 Hell, Columbia Station.

7 MEMBER ALBERTI: Okay.

8 INVESTIGATOR MARTIN: And that's
9 about it for right now.

10 MEMBER ALBERTI: Okay. And I'm
11 just trying to get an idea. Madam's Organ is
12 -- it's on that same -- Madam's Organ here on
13 my list doesn't have a sidewalk cafe, so --

14 INVESTIGATOR MARTIN: I'm sorry,
15 summer garden.

16 MEMBER ALBERTI: Yes. Well, I'm
17 just talking about sidewalk cafes.

18 INVESTIGATOR MARTIN: Oh, okay.

19 MEMBER ALBERTI: So you were
20 comparing apples and oranges. What was the
21 other one you mentioned? Grand Central?

22 INVESTIGATOR MARTIN: Grand

1 Central.

2 MEMBER ALBERTI: I'm trying to see
3 where that's located. Do you know where
4 that's located, Don? I'm trying to see how
5 far Grand Central is from -- oh, that's -- so
6 Grand Central is just a few doors down from
7 this establishment, is that correct?

8 INVESTIGATOR MARTIN: Correct.

9 MEMBER ALBERTI: It's at 2447 and
10 this establishment is at 2435. And they have
11 -- Grand Central, you believe has a -- it's
12 operating hours to 2:00 or 3:00 for their
13 sidewalk cafe?

14 INVESTIGATOR MARTIN: Yes.

15 MEMBER ALBERTI: Okay. I have no
16 further questions. Okay. Actually, you were
17 inside the establishment?

18 INVESTIGATOR MARTIN: Yes.

19 MEMBER ALBERTI: Were there --
20 could you tell or not whether any renovations
21 had been made to that in the last year?

22 INVESTIGATOR MARTIN: Oh, yes. I

1 was inside Toledo Lounge twice since I've been
2 employed here at ABRA since 2007, and I
3 thought it was kind of ratty. The carpet was
4 mangy and dirty. The establishment was dirty.
5 But I see that the Licensees have gone through
6 some serious upgrades. It's very bright.
7 It's attractive. Gone is the dirty carpet.

8 MEMBER ALBERTI: Have they done
9 anything like move walls, change the
10 configuration of walls, put in new bars,
11 change configurations of seating? I mean what
12 you seem to be explaining to me was cosmetic
13 changes. New carpet, new paint, you know,
14 brighten the place, new light fixtures. But
15 was there anything more than that --

16 INVESTIGATOR MARTIN: Well, it --

17 MEMBER ALBERTI: -- that you could
18 discern?

19 INVESTIGATOR MARTIN: Yes, it
20 appears that they did a substantial amount of
21 cleaning. They took time in the decor by
22 adding some odds and ends and nice antique

1 odds and ends, some pretty flat screen TVs.

2 The bar is clean. It's --

3 MEMBER ALBERTI: Is it a new bar
4 or the same old bar, or about the same size as
5 the old one?

6 INVESTIGATOR MARTIN: It's about
7 the same size of the old bar. And I'm not
8 sure if it's the same bar. It could be the
9 same bar, just really clean and --

10 MEMBER ALBERTI: But it didn't
11 strike you as being substantially larger or
12 substantially smaller?

13 INVESTIGATOR MARTIN: No.

14 MEMBER ALBERTI: Okay. Did you
15 notice if they changed the walls in any way to
16 create new space or --

17 INVESTIGATOR MARTIN: No.

18 MEMBER ALBERTI: -- reconfigures
19 space?

20 INVESTIGATOR MARTIN: That, I
21 don't believe so.

22 MEMBER ALBERTI: Okay. All right.

1 Thank you for your testimony, investigator.

2 INVESTIGATOR MARTIN: You're
3 welcome.

4 CHAIRPERSON MILLER: Okay.
5 Others?

6 MEMBER BROOKS: Yes, I have a
7 question.

8 CHAIRPERSON MILLER: Mr. Brooks?

9 MEMBER BROOKS: Couple of them.
10 Investigator, did you observe a fully
11 equipped kitchen when you were there?

12 INVESTIGATOR MARTIN: Yes, sir.

13 MEMBER BROOKS: Okay. Was it new
14 equipment?

15 INVESTIGATOR MARTIN: Yes, there
16 was some new equipment. Refrigerator, fryers,
17 counter top, stainless steel counter top,
18 coolers. Yes.

19 MEMBER BROOKS: Okay. And did you
20 see the proposed menu?

21 INVESTIGATOR MARTIN: Yes, and I
22 did include it as one of the exhibits.

1 MEMBER BROOKS: Yes, I see it
2 here. Okay.

3 INVESTIGATOR MARTIN: Yes.

4 MEMBER BROOKS: So any observation
5 on that? How would you evaluate that --

6 INVESTIGATOR MARTIN: That --

7 MEMBER BROOKS: -- far as the
8 menus you have seen in the past in other
9 establishments?

10 INVESTIGATOR MARTIN: That it is
11 legitimately expressed to me and stated so,
12 but to me that it's going be a true
13 restaurant.

14 MEMBER BROOKS: Okay. And I'm
15 looking at pictures. Did you take these
16 pictures?

17 INVESTIGATOR MARTIN: I did.

18 MEMBER BROOKS: You did? And I'm
19 looking at the bar and I see the bar is to the
20 right as you come in. Is that your
21 recollection?

22 INVESTIGATOR MARTIN: Yes, sir.

1 MEMBER BROOKS: Okay. Because it
2 looks like it's a new bar to me, but I'm not
3 sure. Okay. All right. Thank you, Madam
4 Chair.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Jones?

7 MEMBER JONES: Thank you, Madam
8 Chair. Investigator Martin, are you familiar
9 with what's directly behind the establishment?

10 INVESTIGATOR MARTIN: In the --

11 MEMBER JONES: In the rear.

12 INVESTIGATOR MARTIN: The rear
13 alley?

14 MEMBER JONES: Yes.

15 INVESTIGATOR MARTIN: Yes, I did
16 go to the rear of the establishment with Ms.
17 Bowman.

18 MEMBER JONES: Are there any
19 residences behind on the other side of that
20 alley? To your knowledge or recollection
21 during the process of your investigation, did
22 you make that determination?

1 INVESTIGATOR MARTIN: You know, I
2 can't say because the area I was in directly
3 behind, it had a very high fence. I'm not
4 sure what was beyond it.

5 MEMBER JONES: Okay. The nature
6 of the operations at Jyoti, you said you've
7 been inside of that establishment, the Indian
8 cuisine restaurant? You said you've been
9 inside of that establishment?

10 INVESTIGATOR MARTIN: Yes, a time
11 ago. Yes.

12 MEMBER JONES: Okay. Do you
13 happen to remember the layout; i.e., the table
14 layout of the patron seating layout, I guess,
15 if you will, in the Indian cuisine
16 restaurant --

17 INVESTIGATOR MARTIN: I just --

18 MEMBER JONES: -- or
19 establishment?

20 INVESTIGATOR MARTIN: I remember
21 it being pretty consistent with Libertine as
22 far as the layout when you walk in with tables

1 soon after you get through the door. That I
2 can recall.

3 MEMBER JONES: Okay. So does the
4 Jyoti establishment have a bar?

5 INVESTIGATOR MARTIN: That I don't
6 know.

7 MEMBER JONES: Okay. So when you
8 say "similar," you just mean that it has
9 tables as opposed to a big dance floor?

10 INVESTIGATOR MARTIN: Correct.

11 MEMBER JONES: Okay. Same
12 question for the mojito bar next door on the
13 other side, the left side if you're facing the
14 establishment Libertine. There's a Meze?

15 INVESTIGATOR MARTIN: Yes.

16 MEMBER JONES: What's the layout
17 of that establishment? Does it have a bar?
18 Do you remember? Have you been in it? Let me
19 ask that first.

20 INVESTIGATOR MARTIN: Yes, I've
21 been in the establishment, but it was some
22 time ago and I recall it being pretty much the

1 same layout. I don't recall a dance floor
2 there either.

3 MEMBER JONES: Okay. Do you think
4 there's a bar? Do you recall there being a
5 bar?

6 INVESTIGATOR MARTIN: Yes.

7 MEMBER JONES: Okay. Is that bar
8 the same size roughly as the one that's
9 expected to be in operation at the Libertine
10 establishment?

11 INVESTIGATOR MARTIN: I believe it
12 is, yes.

13 MEMBER JONES: Okay. The Meze
14 establishment, to your recollection is that
15 primarily a restaurant or is it primarily a
16 bar?

17 INVESTIGATOR MARTIN: Restaurant.
18 During my observations, including these
19 observations and my experience in Adams
20 Morgan, Meze and the Indian cuisine, they
21 don't have any outside entertainment.

22 MEMBER JONES: Yes.

1 INVESTIGATOR MARTIN: No loud
2 music and their sidewalk cafes are shut down
3 pretty early. I've been there as early as
4 11:30 and it wasn't in operation.

5 MEMBER JONES: Oh, got you. Okay.
6 So you've been there as early as 11:30 --

7 INVESTIGATOR MARTIN: P.M.

8 MEMBER JONES: -- and it was not
9 in operation?

10 INVESTIGATOR MARTIN: Correct.

11 MEMBER JONES: Got it. Okay.
12 Have you ever known the Jyoti Indian Cuisine
13 or the mojito bar establishment to have any
14 live bands?

15 INVESTIGATOR MARTIN: No.

16 MEMBER JONES: No? Okay. Do you
17 have any information on the nature of the --
18 just speaking about Libertine, to your
19 knowledge, they only have the ability or only
20 plan on using the ground floor level for their
21 operations, correct?

22 INVESTIGATOR MARTIN: Correct.

1 MEMBER JONES: Okay. The kitchen
2 that you noticed as being renovated, you
3 mentioned some new items that were in there.

4 INVESTIGATOR MARTIN: Yes.

5 MEMBER JONES: In your experience
6 with the establishment in its previous life,
7 did it also have the same size kitchen, same
8 size kitchen area, or did this Libertine
9 ownership -- did they expand the kitchen in
10 any way?

11 INVESTIGATOR MARTIN: That I
12 cannot answer because my previous visit to the
13 former establishment didn't require me to go
14 to the kitchen area.

15 MEMBER JONES: Okay. So you don't
16 have any basis of knowing what the kitchen
17 looked like before?

18 INVESTIGATOR MARTIN: No, sir.

19 MEMBER JONES: So the components
20 that you're saying are new, they just appeared
21 new to you, but you can't definitively state
22 that you knew them to be new as opposed to

1 what was there before, correct?

2 INVESTIGATOR MARTIN: No, Ms.

3 Bowman advised me that they were new. Did she
4 show me the documents that came with it? No,
5 but they did appear --

6 MEMBER JONES: I'm just I guess
7 looking at it you don't have a basis to know
8 that they are new based on your own
9 observations? You're relying on what you've
10 been told to make the statement that they're
11 new --

12 INVESTIGATOR MARTIN: No.

13 MEMBER JONES: -- as opposed to
14 what was there before?

15 INVESTIGATOR MARTIN: I'm relying
16 on Ms. Bowman's statement as well as my own
17 experience in getting new items. The items in
18 the kitchen weren't battered, no broken
19 handles. The rubber was new. It wasn't --
20 you know, for the refrigerant. It wasn't
21 yellowish or stained or worn. It looks like
22 -- it looks new.

1 MEMBER JONES: Okay. I guess you
2 did not see the kitchen before?

3 INVESTIGATOR MARTIN: Correct.

4 MEMBER JONES: Okay. Got it.
5 That's all. Thank you.

6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Okay. Other
8 Board questions?

9 (No audible response.)

10 CHAIRPERSON MILLER: Okay. Let's
11 turn to the Applicant then. Do you have any
12 questions of Ms. Martin?

13 MR. AUSLANDER: No.

14 CHAIRPERSON MILLER: Okay. Does
15 the ANC or KCA?

16 MR. JAMES: I have some questions.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: With regard to some of
19 the points that the Board Members were asking
20 about as to the hours for the Grand Central
21 sidewalk cafe, are you aware that there's a
22 voluntary agreement in place that limits the

1 hours to 11:00 and 12:00, 11:00 Sunday through
2 Thursday and 12:00 Friday and Saturday?

3 INVESTIGATOR MARTIN: Yes.

4 MR. JAMES: So that's one point.

5 In relation to a question from Mr. Jones,
6 despite the fact that there was some sort of
7 a barrier behind the establishment when you
8 were in the alley and you took a photo of
9 Libertine's trash facilities and so forth,
10 could you tell that the buildings across the
11 area were residential buildings? Some of them
12 are -- I guess I'm not supposed to make
13 declarative statements.

14 CHAIRPERSON MILLER: Right.

15 INVESTIGATOR MARTIN: I couldn't
16 tell -- well, I don't recall, should I say, if
17 there were residences directly behind
18 Libertine. I do recall seeing some residences
19 as you go down the alley leading out of Adams
20 Morgan.

21 MR. JAMES: Thank you. There was
22 a question as to whether you were aware of

1 neighboring establishments having live bands.

2 Are you aware that Meze has an entertainment
3 endorsement that allows it to have live bands?

4 INVESTIGATOR MARTIN: No.

5 MR. JAMES: And are you aware that
6 Jyoti, the Indian place -- I'm not sure of the
7 pronunciation. People say Yo-tee. Others say
8 something else. J-Y-O-T-I does not have an
9 entertainment endorsement?

10 INVESTIGATOR MARTIN: No.

11 CHAIRPERSON MILLER: I'm sorry,
12 does not have what?

13 MR. JAMES: Does not have an
14 entertainment endorsement.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: That's all that I
17 have. Oh, actually I do have a couple of
18 other points. On the photo that shows most of
19 the ground floor, the first floor where the
20 bar and restaurant tables are for Libertine,
21 where was that photo taken from?

22 INVESTIGATOR MARTIN: The

1 mezzanine. The upper level.

2 MR. JAMES: So there's a mezzanine
3 there?

4 INVESTIGATOR MARTIN: Yes.

5 MR. JAMES: Do you happen to know
6 how many people might be seated at the
7 mezzanine?

8 INVESTIGATOR MARTIN: I would say
9 approximately 12, 12 seats.

10 MR. JAMES: And I couldn't
11 remember your statement whether you visited
12 Toledo Lounge prior to its renovation.

13 INVESTIGATOR MARTIN: Yes, I did.

14 MR. JAMES: And did you recall
15 whether the bar was on the other side of the
16 establishment?

17 INVESTIGATOR MARTIN: My
18 recollection is that the bar is in the same
19 location as the current Licensee.

20 MR. JAMES: There was one other
21 question that I think there may be an answer
22 in your report. Does your report contain

1 information as to how many persons can be
2 seated at the sidewalk cafe?

3 INVESTIGATOR MARTIN: No, as
4 previously stated, Ms. Bowman provided me with
5 the Certificate of Use for the outside seating
6 that was in the former establishment's name.
7 So I didn't use that as a basis for
8 authorization for outside seating.

9 MR. JAMES: All right. But are
10 you familiar with the Certificate of Use for
11 the sidewalk cafe which was included in your
12 report? It's towards the back of your report.
13 It's a prior one, but it's dated 4/1/2010.

14 Could I show this to the
15 investigator?

16 CHAIRPERSON MILLER: Yes. Is
17 there any objection?

18 (No audible response.)

19 CHAIRPERSON MILLER: Yes, go
20 ahead. You also should show it to the
21 Applicant though, too.

22 MR. JAMES: I don't have multiple

1 copies, but --

2 CHAIRPERSON MILLER: Okay.

3 MR. JAMES: -- it's the
4 investigative report that I believe
5 everyone --

6 MR. AUSLANDER: I have a copy.

7 CHAIRPERSON MILLER: Oh, okay.
8 That's what it is? All right.

9 MR. JAMES: A page from it.

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: So that page that I
12 just handed you, which is the Certificate of
13 Use for the sidewalk cafe --

14 INVESTIGATOR MARTIN: Yes, sir.

15 MR. JAMES: -- does it say how
16 many patrons are allowed to be seated?

17 INVESTIGATOR MARTIN: It does.

18 MR. JAMES: And that number is?

19 INVESTIGATOR MARTIN: Ten.

20 MR. JAMES: Yes. Thank you. And
21 I appreciate you bringing that out for the
22 Board.

1 INVESTIGATOR MARTIN: Okay.

2 MR. JAMES: Because it was a
3 question that was not answered before. So
4 those are all the questions I have.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Do you have any questions?

7 MR. SIMPSON: I've got just a
8 couple.

9 CHAIRPERSON MILLER: Okay.

10 MR. SIMPSON: First, Ms. Martin,
11 let me apologize to you that I did not get
12 back to you before you had submitted your
13 report. I got your voicemail and email
14 messages during a particularly busy time at
15 work and by the time I'd called you back,
16 you'd already submitted the report. So,
17 apologies again.

18 A couple of questions. You
19 testified that the hours of operation that the
20 Applicant has applied for are consistent with
21 other hours in the neighborhood. Are you
22 aware that Jyoti, the restaurant next door,

1 closes Monday through Thursday at 10:30 p.m.
2 and Friday and Saturday at midnight?

3 INVESTIGATOR MARTIN: I'm not
4 aware, but I had a pretty good idea that they
5 closed early based on my observations.

6 MR. SIMPSON: And then there's
7 another establishment just down the block, La
8 Fourchette. Were you aware that they close at
9 Monday through Thursday 10:30 p.m., Friday and
10 Saturday at 11:00?

11 INVESTIGATOR MARTIN: Yes.

12 MR. SIMPSON: Thank you. One
13 other item you had mentioned. You testified
14 that Adams Morgan is a special attention
15 location for night time operations.

16 INVESTIGATOR MARTIN: Yes.

17 MR. SIMPSON: Can you describe
18 what the reasons are for that?

19 INVESTIGATOR MARTIN: Well, the
20 Metropolitan Police Department, also known
21 MPD, 3rd District had on occasion -- would
22 call us out consistently on the weekends.

1 Management thought it was best instead of
2 waiting on that call to actually have us
3 already positioned in the area for our typical
4 spots that we have trouble.

5 MR. SIMPSON: So Adams Morgan you
6 would characterize as a spot where ABRA
7 typically has trouble?

8 INVESTIGATOR MARTIN: I want to
9 say there is one spot in particular in my
10 opinion, not anyone else's, but in my opinion
11 has been troublesome for our enforcement
12 division.

13 MR. SIMPSON: Thank you. I think
14 that's all I've got.

15 INVESTIGATOR MARTIN: Okay.

16 CHAIRPERSON MILLER: Thank you.
17 All right. Are there any Board questions?

18 (No audible response.)

19 CHAIRPERSON MILLER: All right.
20 Thank you, Ms. Martin.

21 INVESTIGATOR MARTIN: Thank you.

22 CHAIRPERSON MILLER: Okay. So now

1 I'll turn to the Applicant/Licensee for your
2 witnesses. It's your -- put on your case.

3 MR. KNOTT: Okay. I'll call up
4 our executive chef.

5 CHAIRPERSON MILLER: Okay.

6 MR. KNOTT: This is Brent Sick.

7 CHAIRPERSON MILLER: I'm going to
8 swear you in. Do you swear to tell the truth,
9 the whole truth, nothing but the truth?

10 MR. SICK: I do.

11 CHAIRPERSON MILLER: All right.
12 Thank you. Have a seat.

13 MR. KNOTT: Okay. This is Brent
14 Sick. He's our newly appointed chef at
15 Libertine and the Black Squirrel restaurant in
16 Adams Morgan.

17 CHAIRPERSON MILLER: Okay. You
18 want him to testify though, not you.

19 MR. KNOTT: Yes, I know, but I
20 just wanted to introduce him.

21 CHAIRPERSON MILLER: Okay. So ask
22 him to identify himself for the record.

1 MR. KNOTT: Okay.

2 MR. SICK: Well, I'm Brent Sick.
3 I'm the executive chef.

4 MEMBER SILVERSTEIN: I'm sorry,
5 your name is?

6 MR. SICK: Brent Sick, S-I-C-K.
7 The new chef for Libertine and the Black
8 Squirrel.

9 MR. AUSLANDER: Brent, can you
10 tell me a little bit about your experience in
11 the restaurant business?

12 MR. SICK: Sure. Professionally
13 as a licensed chef, I started in 2005. I
14 graduated from Pennsylvania Culinary Institute
15 in Pittsburgh. I joined High Hotels as a
16 corporate management trainee. Moved to
17 Orlando. Ran two of the outlets there for
18 about two years. Had an opportunity to open
19 one of my own locations, Edgewater Drive in
20 Orlando. I actually left there to work with
21 Levy Restaurants. Levy Restaurants is a
22 Limited Arts Corporation for Downtown Disney

1 and sports and entertainment venues based out
2 of Chicago. I was the executive chef for
3 Fulton's Crabhouse, Downtown Disney, and
4 Wolfgang Puck's. And since then moved up to
5 Rockville with Timpano's Italian Chophouse,
6 Tavistock Restaurants. And more recently,
7 right here.

8 MR. AUSLANDER: Brett, how would
9 you describe the size of the kitchen at
10 Libertine in relation to the size of the
11 restaurant area?

12 MR. SICK: From my perspective
13 it's a blessing, because it's actually about
14 a third of the entire location. It's pretty
15 well rounded for a chef. A lot of new
16 equipment, a lot of really cool ingredients,
17 a lot of functioning equipment, which is rare
18 to have in a kitchen that size. But pretty
19 standard. New. A lot of good equipment.

20 MR. AUSLANDER: How do you know
21 that equipment is new?

22 MR. SICK: Well, it still has the

1 wrapping on it, and that's a good indicator.
2 Other than that, you know, it's professional
3 grade equipment, stuff that I've seen in
4 larger kitchen operations like in Downtown
5 Disney where you're feeding 2,000 people a
6 day.

7 MR. AUSLANDER: Tell me a little
8 bit about the type of cuisine that we've asked
9 you to -- and the menu we've asked you to
10 prepare for Libertine.

11 MR. SICK: Sure. Libertine is a
12 little different. It's a little eclectic.
13 It's almost like a Creole, Southern, French.
14 Really nice, hardy, rustic food. We have
15 really cool ingredients. We have to bring
16 pretty much all over the country. We showcase
17 a lot of protein-driven plates. We have a lot
18 of different, you know, local places from
19 Rappanhannock River that we're featuring and
20 showcasing, but really it's a really cool
21 French type of bistro feel to it. So it has
22 a really nice eclectic feel in the

1 neighborhood to kind of counteract a lot of
2 our neighbors' competition.

3 MR. AUSLANDER: And lastly, can
4 you just give more specific idea? Last week
5 was one of your first weeks here with you and
6 you ran a special on one of the other
7 restaurants.

8 MR. SICK: Sure.

9 MR. AUSLANDER: What was the
10 special?

11 MR. SICK: I did a crispy quail.
12 It's actually a quail quarter. It's tempura
13 dipped. Has a little bit of rice flour,
14 potato starch, a really nice fluffy gluten-
15 free option. It's actually dredged in a
16 little bit of spicy buffalo sauce with sambal
17 and orange juice and some scallions. It was
18 just served as an appetizer, but it sold
19 pretty good. A nice little change than your
20 normal chicken wing.

21 MR. AUSLANDER: That's all I have.
22 Thank you.

1 CHAIRPERSON MILLER: Okay. Thank
2 you. Does the ANC have any questions?

3 MR. SIMPSON: Yes, a few. So you
4 indicated you had completed culinary school in
5 2005, is that right?

6 MR. SICK: Yes.

7 MR. SIMPSON: And I didn't catch
8 the full biography from that, but it sounded
9 like you've worked at maybe six or seven
10 different establishments --

11 MR. SICK: Yes.

12 MR. SIMPSON: -- since then. Is
13 that right?

14 MR. SICK: Yes.

15 MR. SIMPSON: So is it fair to say
16 that in the restaurant industry chefs do sort
17 of come and go and change jobs pretty
18 frequently?

19 MR. SICK: Two to five years is a
20 good pop, you know, and I think more so for
21 larger corporations. You know, once you work
22 up to the executive chef, like area manager

1 type of deal, you'll stay there until your
2 grandkids retire.

3 MR. SIMPSON: For a larger
4 operation?

5 MR. SICK: Yes, for a long time.
6 But, you know, the average chef will change
7 his career up to eight times after -- not the
8 career field.

9 MR. SIMPSON: Right.

10 MR. SICK: The location.

11 MR. SIMPSON: The particular
12 location. And you said that you work as an
13 executive chef at the Black Squirrel as well?

14 MR. SICK: Yes.

15 MR. SIMPSON: Which is owned by
16 the same folks. So I guess it's fair to say
17 as well that the previous chef there is no
18 longer working?

19 MR. SICK: No.

20 MR. SIMPSON: Thank you. That's
21 all.

22 MR. JAMES: May I?

1 CHAIRPERSON MILLER: Yes, sir.

2 MR. JAMES: Thank you. Do you
3 know the hours that you will be working at
4 Libertine?

5 MR. SICK: For the kitchen, or
6 entire operation?

7 MR. JAMES: Let me withdraw that
8 question. If you're the executive chef, does
9 that mean that there will cooks who will --

10 MR. SICK: Sure.

11 MR. JAMES: -- do your designs or
12 your menu items when you're not present?

13 MR. SICK: Sure.

14 MR. JAMES: So you might be
15 working at Black Squirrel and someone is
16 actually preparing the food at Libertine?
17 That's a possibility?

18 MR. SICK: Yes.

19 MR. JAMES: Will you be sometimes
20 preparing the food at Libertine?

21 MR. SICK: Yes.

22 MR. JAMES: Okay. And if you are

1 preparing the food at Libertine, then someone
2 else might be acting as a cook at the Black
3 Squirrel?

4 MR. SICK: Yes.

5 MR. JAMES: So do you happen to
6 know if the plans are to provide food -- well,
7 let me take that back and start over. What
8 hour of the night will the kitchen continue to
9 function?

10 MR. SICK: On average I would say
11 around 11:00. I mean the restaurant industry
12 is a little crazy like that. We close at
13 11:00 and, you know, 25 people come in at
14 10:58. You know, they sit the people. You
15 get their food. Give them the menus. And we
16 ended up staying late to accommodate them.
17 But that's about average just --

18 MR. JAMES: If the kitchen were to
19 close at 11:00, would you expect the whole
20 establishment's operation to cease at a
21 certain hour?

22 MR. SICK: Eventually after they

1 finish their meals and stuff. Meals and
2 drinks.

3 MR. JAMES: Right. You're aware
4 that the owners of Libertine are seeking to
5 have the legal maximum hours of operation?

6 MR. SICK: Yes.

7 MR. JAMES: So are you aware that
8 there's a provision in the D.C. Code that
9 requires a restaurant's kitchen to remain
10 open --

11 MR. SICK: Yes.

12 MR. JAMES: -- willing to serve
13 food until two hours before that final closure
14 hour?

15 MR. SICK: (No audible response.)

16 MR. JAMES: Okay. I see that
17 there's a -- in the investigator's report
18 there's a working menu --

19 MR. SICK: Yes.

20 MR. JAMES: -- one you probably
21 put together for the restaurant.

22 MR. SICK: Yes.

1 MR. JAMES: Previous files which I
2 received from ABRA had a different menu for I
3 guess a predecessor menu, but it was included
4 -- I believe it's from May 2012. It was in an
5 application file, and it featured eight
6 different types of grilled cheese sandwich.
7 That's out the window now, is that right?

8 MR. SICK: Yes, I couldn't answer
9 on that. I've only been working here for --

10 CHAIRPERSON MILLER: Can you speak
11 up?

12 MR. JAMES: All right. I just
13 wanted to see what -- make sure that the thing
14 that was in the investigator's --

15 MR. SICK: Yes.

16 MR. JAMES: -- is a more recent --

17 MR. SICK: Exactly.

18 MR. JAMES: -- meaningful menu.

19 MR. SICK: Yes.

20 CHAIRPERSON MILLER: What did you
21 say about the grilled cheese sandwich? We
22 didn't hear.

1 MR. JAMES: Well, something that
2 was in an ABRA file that went along with an
3 application, you know, had like eight
4 different types of grilled sandwich. It's in
5 the investigative report.

6 CHAIRPERSON MILLER: Right.

7 MR. JAMES: So, I mean that
8 doesn't sound very serious.

9 CHAIRPERSON MILLER: And what was
10 your response?

11 MR. SICK: I would never put eight
12 grilled cheeses on.

13 (Laughter.)

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: That's all that I
16 have.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Board questions?

19 MEMBER ALBERTI: Yes.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Alberti?

22 MEMBER ALBERTI: I'm sorry, your

1 name again, sir?

2 MR. SICK: Brent, B-R-E-N-T, Sick,
3 S-I-C-K.

4 MEMBER ALBERTI: S-I-C-K? Mr.
5 Sick, well, first of all, I'm a vegetarian so
6 I was like disappointed I can't even get a
7 grilled cheese at your restaurant. But that's
8 neither here or there.

9 All right. So we're really here
10 to talk about expansion of hours is one thing.
11 And we're talking about expansion of hours
12 until 8:00 a.m. in the morning. So as the
13 person who's in charge of the kitchen and
14 would be I assume cooking it, or at least be
15 in charge of what's being cooked at that hour,
16 tell me what you believe the plans are.

17 MR. SICK: For operating those
18 hours?

19 MEMBER ALBERTI: For those --
20 service of food in those early morning hours.

21 MR. SICK: Well, that's how the --

22 MEMBER ALBERTI: What's the

1 concept there?

2 MR. SICK: The menu was engineered
3 to accommodate that. A lot of the prep
4 processes and items that were actually made
5 are available, like ready to eat. I mean
6 typically you have to fry stuff, like soft-
7 shell crab and oysters and stuff like that,
8 but a lot of this stuff is a lot of prep
9 process, where that's where I come into part,
10 but the actual application and engineering and
11 plating up the dishes are extremely simple.
12 So, you know, once a trained individual does
13 that, it's really quick and fresh.

14 Other than that, the time
15 management is basically --

16 MEMBER ALBERTI: Well, wait, wait.
17 I don't think you understand my question. I
18 walk in at 8:30. I'm an omnivore. What can
19 I expect to be able to order? I mean what's
20 the concept for food service at that hour in
21 terms of what you're going to be offering
22 customers?

1 MR. SICK: Well, 8:00 a.m. would
2 typically be a brunch of a lunch dish, you
3 know, if you're hungry for lunch at that time.

4 MEMBER ALBERTI: I mean you're
5 asking for those hours. Is there a plan to be
6 open seven days a week at those hours? I mean
7 hopefully as the cook this has been discussed
8 with you. And if you don't know, just tell
9 me. I'll ask the owners, if I have a chance.

10 MR. SICK: Yes. I mean we plan on
11 opening --

12 MEMBER ALBERTI: Brunch? What
13 sort of brunch items?

14 MR. SICK: I don't have a menu for
15 that yet. I mean I can give you exactly what
16 I'll put on it, but --

17 MEMBER ALBERTI: Okay.

18 MR. SICK: -- you know, we don't
19 have anything to give you in front of you.

20 MEMBER ALBERTI: And the reason
21 I'm asking, I'm a little dumbfounded here as
22 to -- I mean I may have misinformation, but I

1 was informed that the owner was hoping to open
2 soon. So, but that may be just totally
3 hearsay and I may be absolutely wrong. But
4 based on that, I would have expected more of
5 a refined concept as to what you were doing.

6 And you've already spoken I think
7 to the late-night hours. You're really
8 expecting the food service to slow down and
9 really end -- according to what I'm hearing
10 from when you were asked by Mr. James, really
11 not to extend until closing hours. Is that
12 correct?

13 MR. SICK: (No audible response.)

14 CHAIRPERSON MILLER: You probably
15 need to put that on the record --

16 MEMBER ALBERTI: You need to
17 either say yes or no.

18 CHAIRPERSON MILLER: -- so the
19 transcriber --

20 MR. SICK: I did say yes.

21 MEMBER ALBERTI: All right. So
22 you would then -- and according to your

1 testimony, what I heard earlier, you have an
2 expectation that it would probably end a full
3 two hours before closing time? I'm not asking
4 you less than two hours. I'm saying a full
5 two hours.

6 MR. SICK: I --

7 MEMBER ALBERTI: I'm not trying to
8 get you into breaking the law.

9 MR. SICK: I expect it to die down
10 around, you know, two hours before closing.
11 It would definitely die down at that time.
12 Typically every restaurant's done that, but
13 you know, it can get busy at any second, you
14 know?

15 MEMBER ALBERTI: Sure.

16 MR. SICK: That's the nature of
17 the beast for this --

18 MEMBER ALBERTI: But you must have
19 some concept of when you're going to run that
20 kitchen. I mean you're not going to be
21 keeping it open just for that odd evening
22 where you get a bunch of customers in at 1:30.

1 So what are the plans?

2 MR. SICK: Well, I have to make my
3 owners money, you know, so I'm going to stay
4 open if people want to eat. You know, I can
5 run --

6 MEMBER ALBERTI: You're going to
7 staff that kitchen even if typically you get
8 one customer in the last two hours every night
9 of the week? You're telling me you're
10 planning on staffing that kitchen every night
11 of the week until closing? Is that what
12 you're trying to tell me?

13 MR. SICK: There will be a cook
14 there. A cook, dishwasher, prep. They'll all
15 be there.

16 MEMBER ALBERTI: Until closing
17 time every night? You're telling me now that
18 your kitchen will be open every night until
19 closing time? Is that what I'm hearing you
20 tell me? I'm not trying to pin you down. I'm
21 just trying to get, you know, your close to
22 opening.

1 MR. SICK: There's --

2 MEMBER ALBERTI: My assumption is
3 that you would like to open soon. And so I'm
4 expecting to have a better read from you as to
5 what your plans are. And to say you're going
6 to close two hours before closing time is okay
7 with me. I don't care. But I just want to
8 know.

9 MR. SICK: There -- we will close
10 two hours before closing time. I mean there
11 will be food available until closing.

12 MEMBER ALBERTI: What kind of
13 food?

14 MR. SICK: Snacks. Bar snacks.
15 Different things like that.

16 MEMBER ALBERTI: All right. But
17 will the kitchen be preparing food, like from
18 this menu that I see here, assuming that that
19 was the menu?

20 MR. SICK: All the way until
21 closing, no.

22 MEMBER ALBERTI: Okay.

1 MR. SICK: But up to two hours,
2 yes.

3 MEMBER ALBERTI: Okay. I'm not
4 trying to pin you down into something you
5 don't want to say, but I'd really like to know
6 what your plans are.

7 Okay. I don't have any further
8 questions. That's all right now. Thank you.

9 CHAIRPERSON MILLER: Yes, Mr.
10 Jones?

11 MEMBER JONES: Thank you, Madam
12 Chair. So I'm just going to start off more
13 basic, more fundamental, because I'm fairly
14 ignorant when it comes to these things. So
15 what is your job function?

16 MR. SICK: Executive chef.

17 MEMBER JONES: Executive chef?
18 What is that? What like what do you consider
19 to be your defined role as the executive chef
20 of two establishments in the District of
21 Columbia?

22 MR. SICK: Executive chef job

1 duty-wise?

2 MEMBER JONES: Yes.

3 MR. SICK: In charge of ordering,
4 staffing, prepping, recipe structure,
5 management in the kitchen, cooking in the
6 kitchen, on-hands working, like working
7 stations and stuff like that back and forth
8 and more. So a chef is a teacher/trainer as
9 a culinary aspect. But as a management
10 aspect, it manages numbers, P&Ls, lines, I
11 mean, costs, all types of stuff. You know,
12 say quail jumps up to \$37 a pound next month,
13 which could happen for any type of reason, you
14 know, it would be my job to find a replacement
15 and/or, you know, work different ways out to
16 keep the cost down, for example. And that's
17 pretty much it.

18 MEMBER JONES: Okay.

19 MR. SICK: That will keep your
20 hands --

21 MEMBER JONES: That's fine. And
22 so, you've enlightened me. So I now hear a

1 different context of what I thought your job
2 was prior to you explaining it. So your
3 responsible as like a -- you're a cost center
4 as well manager for the kitchen.

5 As you understand it, as it's been
6 given to you or conveyed to you by the
7 ownership of the establishment, what authority
8 do you have to run the kitchen in terms of
9 hours and in terms of menu items?

10 MR. SICK: Menu items, authority
11 is basically up to me. I mean as far as like
12 menu development or something like that, that
13 would be where my expertise would come in.

14 For hours-wise in management, you
15 know, I think it kind of touches on your
16 question a little, too, is as a salaried
17 individual or something like that, if you need
18 to be open until 11:00 everyday or 10:30 or
19 12:00, you need to stay open to that time.

20 A lot of times you don't have a
21 luxury of staffing an hourly person in that
22 job, so that would be where I come in as a

1 manager chef to work those hours. So hours-
2 wise and set-up, that's kind of where my
3 management comes in under the ownership.

4 MEMBER JONES: Okay. So what I'm
5 trying to grasp and get a handle on is your
6 operations that I see is you're running the
7 kitchen almost as a business, right?

8 MR. SICK: Yes.

9 MEMBER JONES: Right. So from
10 that standpoint you need to have a handle on
11 how much staff you need to bring in and how
12 much your staff is going to cost you.

13 MR. SICK: Sure.

14 MEMBER JONES: And part of that
15 equation is how long does your staff need to
16 work. So how are you projecting your costs
17 going forward so that you can ensure that your
18 operating this aspect of the business in a
19 way, as you put it, that will make your
20 employers money?

21 What I'm not seeing, the hole that
22 I'm having problems filling is from what you

1 stated so far I don't feel like you have a
2 good grasp of the cost of your employees
3 because you don't know exactly how long
4 they're going to be working. So maybe I just
5 misunderstood what you said, or maybe the
6 question that you were answering wasn't the
7 one that I'm now trying to ask.

8 So from this perspective, and you
9 being able to manage your costs, what is your
10 expectation for operating the kitchen on a
11 seven-day-a-week basis? Do you plan on being
12 open and manning the kitchen fully staffed?
13 If not, up to what point? Break it down for
14 me in a way that somebody like me who's
15 ignorant can understand it.

16 MR. SICK: Well, typically when
17 you open a new establishment, one that's been
18 closed or building one, typically you want to
19 staff -- you will over-staff, you know, and
20 then you manage your way backwards from that.
21 Because, you know, the opening days are very
22 crucial for everything. You want all the food

1 to go out right and everything at one time.
2 You want to be staffed prepared in the front
3 of the house as well as the back of the house.
4 You know, enough servers, enough people to
5 take in the flow. So you actually over-staff
6 in the beginning and cut back from that.

7 Typically if you had an operation
8 that was already running, you divide the hours
9 of operation and sales and see what your labor
10 costs comes out. And in your P&L it would be
11 like at 7 percent, 11 percent, 13 percent for
12 back of the house, for you know, food sales.
13 So you have X amount of dollars to spend for
14 labor. And that's where you bring in your
15 help you're paying, see how many people you
16 can have to operate. That's where my role
17 would come in, is for back-of-the-house labor.

18 MEMBER JONES: Okay. So what you
19 just gave me now is a very good theoretical
20 answer. Now I need you to take that and
21 translate it into the practical application of
22 that theory to Libertine. So what you just

1 described, you should have done that already,
2 because you want to open soon, based on what
3 you've stated already. So give me that
4 detail, apply that theory to how you're going
5 to operate Libertine from day one.

6 MR. SICK: I can't give an actual.
7 I can only give a theoretical with what I have
8 and what we need to open. An actual answer to
9 that would be a week after we open or a month
10 after we open and to revisit the actual -- or
11 the theoretical to fill in actual numbers.

12 MEMBER JONES: But what's your
13 projection going in? So if I said today you
14 can open, right, how are you going to apply
15 that theory? What will be the answer to that
16 question?

17 MR. SICK: My answer would be the
18 schedule and the two employees that are going
19 to help me in the kitchen.

20 MEMBER JONES: Okay. So what's
21 the schedule? What's the desired schedule?
22 What's your projected schedule? And how do

1 you know that you only need two employees?

2 MR. SICK: You need a weekly
3 schedule or biweekly, or what do you mean?

4 MEMBER JONES: Any schedule you --
5 anything you can give me is more than what you
6 have given so far, so --

7 MR. SICK: Sure.

8 MEMBER JONES: -- I'll take
9 anything right now.

10 MR. SICK: Two dishwashers, one
11 part time and one full time.

12 MEMBER JONES: For how long?
13 What's full time? In terms of what's the
14 hours that you have to have these two
15 dishwashers? I mean are they starting at
16 8:00? They start at 10:00? What time do they
17 clock in? What time do they clock out? What
18 are your hours of -- that's what I'm not --
19 maybe I'm not -- and I'm trying to be patient
20 because maybe I'm feeling like I'm not asking
21 the right question.

22 MR. SICK: Yes, I -- the only

1 reason, you know, I'm remiss in answering is
2 we're not open yet.

3 MEMBER JONES: But you're planning
4 to open. And you've also asked for extended
5 hours. Right? So you know what your request
6 is. So if your request is granted as you've
7 asked it, I would expect that you would have
8 a feel, if nothing else, for what that
9 schedule should look like from an operations
10 standpoint. You're the P&L guy for the
11 kitchen. You need to know what your costs are
12 going to be. For you to know your costs, you
13 need to know your duration.

14 MR. SICK: Yes.

15 MEMBER JONES: Time is money. So
16 that's the problem -- that's the thing I'm
17 struggling with. If that's your role, and
18 that's what you're held out to be, then I
19 would expect you to be able to answer that
20 question, to be perfectly frank.

21 MR. SICK: Yes.

22 MEMBER JONES: And I'm not seeing

1 that you're able to answer that question
2 because you're saying, well, we're not open,
3 and I'm having a problem closing the two, if
4 you understand where I'm coming from.

5 MR. SICK: I see --

6 MEMBER JONES: And I don't
7 understand the restaurant business, so maybe
8 this is how it is, but it doesn't make sense
9 to me.

10 MR. SICK: I see exactly where
11 you're coming from. The ideal schedule: Two
12 dish, a prep, three line cooks, one --
13 including me. So I'm an on-hands manager.

14 Now, as far as actual numbers, I
15 mean we can't really visit that until we
16 actually put numbers on the books. And then
17 you do an actual P&L. Right now we're all
18 just based on theoreticals of expectations,
19 but there are no actuals. So in --

20 MEMBER JONES: What are your
21 expectations?

22 MR. SICK: -- in my world, like a

1 theoretical food cost would be I have every
2 item lined up on an Excel sheet with the price
3 and then the amount sold and then I get X
4 amount of dollars. And then I should take my
5 total purchases and divide it by that. That
6 would give me a theoretical food cost.

7 Now, when I do an inventory,
8 that's where my actual food cost comes from.
9 So those numbers match up pretty closely. I'm
10 using food costs as an example because labor
11 just is straight labor. You know, it's sales
12 and labor. But without actual sales, you
13 can't make an actual labor cost.

14 MEMBER JONES: Okay. So when you
15 come up with a menu, right, there are certain
16 cost items associated with those menu items.
17 Right? You may serve lobster, you may not
18 because, like you said, the market rate for
19 that is just too high and I can't demand that
20 kind of price for a patron, whatever reason.
21 The market demand isn't where I need it to be
22 for me to meet my profit threshold, your P&L.

1 Right? You do your calculations, figure out
2 what's going to make your employer money.

3 You came up with the menu. What
4 would be the cost of operating a restaurant
5 over the hours that you plan to operate that
6 restaurant over of sustaining that menu? You
7 provided us a menu, correct?

8 MR. SICK: Yes.

9 MEMBER JONES: Okay. That you
10 engineered it, that designed, correct? Is
11 that a fair statement?

12 MR. SICK: Yes.

13 MEMBER JONES: Okay. What would
14 be the cost of maintaining that menu? If you
15 were granted permission to open tomorrow, you
16 gave us a menu, help me understand what the
17 cost of operating that menu would be.

18 MR. SICK: Operating that menu
19 would have to be around 30 covers a day.
20 Thirty covers at least to operate that menu.

21 MEMBER JONES: To operate that
22 menu to break even?

1 MR. SICK: For a dinner service.

2 For a dinner service.

3 MEMBER JONES: Is that your break-
4 even point?

5 MR. SICK: (No audible response.)

6 MEMBER JONES: Okay. Thirty
7 covers a day? Okay. Thank you.

8 Thank you, Madam Chair.

9 CHAIRPERSON MILLER: Okay.

10 Others?

11 (No audible response.)

12 CHAIRPERSON MILLER: I just want
13 to follow up on a brunch menu question. How
14 long does it take you to put together a brunch
15 menu?

16 MR. SICK: I have one in the works
17 already and it's pretty simple.

18 CHAIRPERSON MILLER: Okay.

19 MR. SICK: Pretty simple a task.
20 I can have one to you.

21 CHAIRPERSON MILLER: Okay. Just
22 for the record, do you want to just put on the

1 record a few of the items that you have on a
2 brunch menu?

3 MR. SICK: Sure. Benedicts.
4 There's a benedicts section for Crab Eggs
5 Benedict, you know, different types. Eggs
6 Sardou. A lot of poached items. Basically
7 like a bistro breakfast, which is, you know,
8 eggs, sausage, toast, the whole nine yards.

9 CHAIRPERSON MILLER: Can you
10 characterize at all the price range of your
11 menus?

12 MR. SICK: It's 8 to about 12 --
13 \$13 I think is the highest --

14 CHAIRPERSON MILLER: For brunch?

15 MR. SICK: -- price point on our
16 brunch.

17 CHAIRPERSON MILLER: And for
18 dinner?

19 MR. SICK: The dinner menu is tops
20 around \$18.

21 CHAIRPERSON MILLER: Okay. Are
22 you catering to any type of crowd in general,

1 clientele in general?

2 MR. SICK: Yes, we'd like to have
3 a really nice, you know, sophisticated
4 knowledgeable clientele about food, you know,
5 and about drink.

6 CHAIRPERSON MILLER: Okay. That's
7 it. Is there any redirect? Any questions
8 just on the Board questions? Do you have any
9 follow-up questions based on the Board
10 questions only? Not new territory.

11 MR. JAMES: Because you're
12 employed -- you know, we have -- the sense is
13 that you'll be employed at both the Black
14 Squirrel and Libertine. And if it should be
15 that Libertine doesn't hit the 30 covers per
16 day or other necessary levels of food sales,
17 is there -- what is the likely result of that
18 at Libertine after some period of time to see
19 if it can be a success? What would likely be
20 the outcome?

21 MR. SICK: How was the question
22 again? I'm sorry.

1 CHAIRPERSON MILLER: I didn't
2 understand the question, to tell you the
3 truth.

4 MR. JAMES: Okay. Well, let me
5 see if I can rephrase it. If Libertine isn't
6 able to do the necessary numbers to sustain
7 this menu, or a menu of similar quality and
8 materials --

9 MR. SICK: Sure.

10 MR. JAMES: -- what's plan B?
11 What's the fall-back position?

12 MR. SICK: Well, there's a lot of
13 plan Bs. Mostly our job is to make that not
14 happen. I mean you promote specials,
15 different things, fun nights and kind of
16 create an ambience inside of that so that
17 doesn't happen. You know, I think I'd cross
18 that bridge when I come to it. The plan B
19 would be to revamp or revise or even
20 restructure. Keep it in the concept, but
21 maybe different price points or a different
22 type of venue.

1 MR. JAMES: And you're brand new
2 to both operations, is that correct?

3 MR. SICK: Yes.

4 MR. JAMES: Okay. Because I
5 wasn't quite sure. It sounded as if you might
6 have been at Black Squirrel and now you're
7 going to do both. But it's you're brand new
8 to both?

9 MR. SICK: Yes.

10 MR. JAMES: Okay.

11 MR. SIMPSON: One quick question.
12 And just to clarify, by "brand new," I believe
13 you said you were hired three days ago?

14 MEMBER SILVERSTEIN: Please speak
15 up.

16 MR. SIMPSON: I believe you said
17 you were hired three days ago. Is that right?

18 MR. SICK: Yes.

19 CHAIRPERSON MILLER: Okay. Is
20 there any redirect? Otherwise, we're finished
21 with this witness.

22 (No audible response.)

1 CHAIRPERSON MILLER: Okay. Thank
2 you very much.

3 Are you going to be testifying?

4 MR. AUSLANDER: I'm going to
5 testify.

6 CHAIRPERSON MILLER: Okay. Do you
7 mind going to the stand?

8 MR. AUSLANDER: I do not.

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

12 MR. AUSLANDER: I do.

13 CHAIRPERSON MILLER: Okay. I know
14 you've already identified yourself for the
15 record, but it would be good to do it again?

16 MR. AUSLANDER: Scott Auslander,
17 Applicant in this matter.

18 CHAIRPERSON MILLER: Okay.

19 MR. AUSLANDER: I'd like to speak
20 a little bit, if I may, about the hours and
21 what we're here today to talk about, which is
22 basically the lunch hours, daytime hours, and

1 that half hour, 1:30 to 2:00 a.m., I believe
2 Thursday through -- or Monday through
3 Thursday, as well as some of the patio hours.

4 I can speak a little bit more
5 about the concept as well. The concept is
6 traditional sort of, eh, not so traditional
7 French bistro, French brasserie, which I have
8 a fair amount of experience at. I did spend
9 a few years working at Brasserie Le Halles,
10 which used to be down on Pennsylvania Avenue,
11 which is a very traditional French brasserie,
12 stayed open very late, kitchen open late.

13 So that's sort of what we're here
14 to talk about. Opening for lunch, the ability
15 to open for lunch in Adams Morgan, and this
16 half-hour period. The half-hour period, yes,
17 we're asking for extended hours. Most of the
18 extended hours are during the day. Currently
19 at this time we're not able to open for lunch.
20 Yes, we are moving toward opening. We are
21 finalizing all the details of what it takes to
22 do an opening. We've been working around the

1 clock, so many of the details of the -- the
2 detail-oriented of the concept might not be
3 accomplished at this time, but we're moving
4 fast and furious, as quickly as we can.

5 Should I have him ask me questions
6 or --

7 CHAIRPERSON MILLER: It's totally
8 up to you all.

9 MR. AUSLANDER: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. KNOTT: Mr. Simpson mentioned
12 La Fourchette and Jyoti, two places that shut
13 down earlier, you know, shut down maybe at
14 11:00 on the weekends.

15 MR. AUSLANDER: Yes, our next door
16 neighbor is Jyoti. It's an Indian restaurant
17 on one side. On the other side is Meze. Meze
18 also has a very similar patio front sidewalk
19 area to ours. And their front sidewalk area
20 is open until 2:00 and 3:00 a.m.,
21 respectively, Monday through Friday and on the
22 weekends.

1 We have a nice working
2 relationship with the owner of Meze and I
3 think it would be nice if we could match the
4 hours for them. It allows us and him to deal
5 with any loitering or any of the typical Adams
6 Morgan problems you hear about all the time.
7 Actually policing the sidewalks, having patios
8 on the sidewalks I believe creates more order
9 as opposed to less peace, order and quiet. It
10 actually can promote peace, order and quiet
11 because now I have an outdoor space that I
12 have employees on, I have customers on and I
13 just don't have a free-for-all.

14 When I walk by my patio now; and
15 obviously we're not open, there's a lot of
16 people on my patio, more than the 12 to 14
17 people we're licensed for, I'll tell you that,
18 on a late Friday or Saturday night, or even a
19 Thursday night. And actually granting the
20 patio hours would keep less people on the
21 patio many evenings.

22 I'm an on-site operator. I'm

1 there until 2:00, 3:00 in the morning every
2 night. I mean I've been in this business
3 since I was 13 and I'm now 36. I went to
4 college for restaurant and food service at
5 Syracuse. So this is what I do for a living
6 and not -- and I spend a lot of time in Adams
7 Morgan.

8 MR. KNOTT: About the hours, and I
9 think -- what about Monday night, like, you
10 know, very bad weather?

11 MR. AUSLANDER: Yes, one of the
12 things -- in reference to the hours, and we're
13 here to talk about the hours, we have --
14 Monday night's a good example. At Ventnor
15 down the street, kitchen remained open until
16 11:00 p.m. We closed at 11:30. I had about
17 10 customers. I don't know if any of you were
18 outside, but it was monsoon conditions. I had
19 about 10 customers all night long. And we
20 kept the establishment open until the required
21 hour. Employees were on site in the kitchen
22 ready to go. You could have walked in.

1 That's the way we run our establishments.

2 In addition, we met with the
3 Protestants, I guess, a few times in this
4 matter. The Protestants have told us that
5 they don't have any issues with our
6 establishment. The primary issue here in this
7 case is the lack of a voluntary agreement. I
8 would --

9 CHAIRPERSON MILLER: Who said --

10 MEMBER ALBERTI: Sir, yes, could
11 you be careful of the microphone?

12 MR. AUSLANDER: I would say that
13 the actual primary issue -- and we've been
14 told by the Protestants in this case they
15 don't have any standing issues with our
16 establishment. The issue at hand here is that
17 this particular license does not have a
18 settlement agreement attached to it.

19 CHAIRPERSON MILLER: Okay.

20 MR. KNOTT: What about all these
21 police calls?

22 MR. AUSLANDER: Yes, you can see

1 in the investigator's report there were a
2 number of police calls -- since I don't have
3 it in front of me -- but I think since --
4 started in September 2012. We were not
5 operational in any of that time. I'm not
6 really aware of any of those. It's very
7 possible it could be for the psychic reading
8 upstairs, but we're not -- I wasn't open. So
9 there's many police calls to that address, but
10 for all I know it was on the sidewalk, because
11 we weren't here.

12 MR. KNOTT: What does happen at
13 some of those patios that do shut down early,
14 like at La Fourchette?

15 MR. AUSLANDER: Yes, I mean if you
16 have a patio like at Jyoti next door and it
17 shuts down at 11:00 -- and then our patio does
18 stay open later and it's licensed at this time
19 to stay open later. Jyoti's patio on a Friday
20 or Saturday night fills up with people, fills
21 up with, you know, loiterers who can carry on
22 and drink and do whatever they're going to do.

1 And I really do believe that this allowing the
2 patios to stay open does create a -- it
3 creates order and quiet on the outside areas.

4 So to interpret that the hours of
5 La Fourchette and Jyoti are the norm for that
6 neighborhood -- and I can tell you as we
7 operate three establishments in that
8 neighborhood,. Those two establishments that
9 were selected, La Fourchette and Jyoti, are
10 not the norm for the neighborhood. If
11 anything they would be the extreme exception.

12 MR. KNOTT: Regarding residents in
13 the alleyway behind, what is behind Libertine?

14 MR. AUSLANDER: Yes, one of the
15 topics that was brought up was our proximity
16 to residential areas. The way this building
17 happens to be configured is sort of odd. You
18 go downstairs to where our bathroom area is
19 and then there's a very long back area which
20 is indoors until you get to the alley. So the
21 actual operation area, as well as where our
22 kitchen is, where our employees are working,

1 is actually quite far from a residential area
2 due to the way the building is configured.

3 MR. KNOTT: I don't have any other
4 questions.

5 CHAIRPERSON MILLER: Okay. Do the
6 ANC or KCA have any questions?

7 MR. JAMES: How close are
8 residences across the alley behind Libertine?

9 MR. AUSLANDER: At this time
10 across the alley there are no residences as
11 it's a building under construction. Across
12 the alley from Libertine, the new condo
13 building; I assume it's condo or apartments,
14 would be I assume fairly close. I don't
15 really know because I don't -- the building is
16 not completed at this time. But that --

17 MR. JAMES: Thank you. How big a
18 building is that?

19 MR. AUSLANDER: I mean I have no
20 idea.

21 MR. JAMES: It is a row house?

22 MR. AUSLANDER: No, it's not a row

1 house. It's a building I would say of medium
2 size.

3 MR. JAMES: Okay. So on either
4 side of it is it true that there are existing
5 buildings, there are residential buildings?

6 MR. AUSLANDER: I would assume
7 that it is a residential building and it's
8 near the old City Paper building. Is the City
9 Paper building back up there? Which I think
10 they're going to put a hotel there at some
11 point. There is residential. It's under
12 construction at this time. For all I know, we
13 back up to a parking area, if there's parking.

14 MR. JAMES: I'd like to rephrase.
15 Are you aware that there are a series of three
16 and four-story apartment buildings and row
17 houses --

18 MR. AUSLANDER: Nearby? Yes, and
19 they are --

20 MR. JAMES: -- directly behind
21 Libertine and Black Squirrel and so forth?

22 MR. AUSLANDER: Well, we're here

1 to talk about Libertine. So directly behind
2 Libertine there is residential areas. But
3 again, I would reiterate it's very -- because
4 of the configuration of our building, it's
5 awkwardly far from where our customers would
6 be and where our employees would be.

7 MR. JAMES: Are you aware that
8 there are residents of Adams Morgan that live
9 over some of the establishments nearby?

10 MR. AUSLANDER: Yes, we are -- at
11 Ventnor, which is another establishment I own,
12 I do have residential tenants. My landlord
13 has a residential tenant above the space. At
14 this particular location there is psychic
15 reading above the space.

16 MR. JAMES: And next door at the
17 Indian restaurant which we all have a
18 different pronunciation for, Jyoti, are there
19 residents above that?

20 MR. AUSLANDER: I believe there
21 may be, yes.

22 MR. JAMES: And next to that is?

1 MR. AUSLANDER: Meze. Meze is --

2 MR. JAMES: No, going the other
3 direction towards La Fourchette.

4 MR. AUSLANDER: It's the old
5 abandoned Lautrec.

6 MR. JAMES: Is there any use in
7 that building at all?

8 MR. AUSLANDER: I don't know. Do
9 people live above there? You would know
10 better than I.

11 MR. JAMES: So you don't know?

12 MR. AUSLANDER: I mean it's
13 possible there's a tenant in the old abandoned
14 Lautrec building.

15 MR. JAMES: How about La
16 Fourchette, which is what --

17 MR. AUSLANDER: Yes, Pierre and
18 Jackie live above La Fourchette. That is
19 correct.

20 MR. JAMES: And across the street
21 from this row of establishments that you've
22 been mentioning sort of, are there are

1 residences at all that you're aware of?

2 MR. AUSLANDER: There's the fancy
3 condos above the old Slaviya space, whatever
4 -- it's abandoned now. It's vacant rather.
5 There are fancy condos.

6 MR. JAMES: Okay.

7 MR. AUSLANDER: A few, yes.

8 MR. JAMES: And then is it true
9 that across the street from again this series
10 of restaurants which we've been mentioning
11 there's a string one-story of one-story
12 buildings?

13 MR. AUSLANDER: String of one-
14 story buildings?

15 MR. JAMES: For instance that
16 house Bistro 18 and B&K Newsstand and so
17 forth.

18 MR. AUSLANDER: Yes, there are
19 some businesses -- there's a whole strip of
20 businesses on the other side of the street.

21 MR. JAMES: And then but beyond
22 those are --

1 MR. AUSLANDER: Beyond those
2 businesses there's houses and apartments and
3 there's people who live in the community of
4 Adams Morgan. That is correct.

5 MR. JAMES: And is it true they're
6 just separated from the back of those other
7 businesses just by an alley?

8 MR. AUSLANDER: Okay. So let me
9 see if I can explain this point. So you've
10 got buildings, like residential on the west
11 side of 18th Street. There's buildings,
12 commercial buildings. And then behind that
13 there's a small alley. And then behind that
14 there's Columbia Road, which has a nice
15 combination of businesses. There are some
16 residential above the old Design Within Reach,
17 if you're familiar with Adams Morgan. And
18 then on the other side of that there's --

19 MR. JAMES: Thank you. That's
20 good.

21 MR. AUSLANDER: Okay.

22 MR. JAMES: As to your statement

1 about the hours of operation for Jyoti and La
2 Fourchette being the extreme exception --

3 MR. AUSLANDER: That's correct.

4 MR. JAMES: -- are you aware of
5 the hours that Bardia's New Orleans Cafe
6 keeps?

7 CHAIRPERSON MILLER: I'm sorry,
8 could you repeat the question?

9 MR. AUSLANDER: Yes, I am.
10 Bardia, he has --

11 CHAIRPERSON MILLER: I'm sorry, I
12 didn't hear the question.

13 MR. JAMES: I asked if Mr.
14 Auslander was aware of the hours that Bardia's
15 New Orleans Cafe keeps.

16 CHAIRPERSON MILLER: Okay.

17 MR. AUSLANDER: Absolutely.
18 Bardia does close early as well and so that's
19 -- you know, that's three establishments. And
20 I still feel comfortable reiterating that
21 having, two, three, four, five, six
22 establishments in a group of what I believe is

1 to be almost 60 ABC licenses is still quite an
2 exception as opposed to the norm.

3 MR. JAMES: Are you aware of the
4 closing times for all 60 establishments?

5 MR. AUSLANDER: I feel that as
6 somebody who's owned an ABC establishment, two
7 ABC establishments in Adams Morgan for about
8 eight years now, eight years in August, I can
9 be somewhat of an authority on -- an authority
10 but not an exact expert on the general Adams
11 Morgan culture, or hours of operation, or
12 whatever you want to call it.

13 MR. JAMES: Thank you. And if
14 we're talking about the operations of the
15 inside spaces for restaurants, you know, their
16 main operation inside the building, how about
17 on the sidewalk cafes? Is there a similar --

18 MR. AUSLANDER: The sidewalk
19 cafes, I --

20 MR. JAMES: I didn't finish my
21 question.

22 MR. AUSLANDER: I'm sorry.

1 MR. JAMES: Is there a similar
2 likeness of hours of operation for the
3 numerous sidewalk cafes on 18th Street between
4 Columbia Road and Kalorama, for instance?

5 MR. AUSLANDER: You know, I think
6 that the sidewalk cafes, the hours on the
7 sidewalk cafes vary much more than the
8 interior hours, and I would be the first to
9 tell you that.

10 MR. JAMES: Okay.

11 MR. AUSLANDER: One of the nice
12 things about Libertine, one of the things that
13 -- we do have nice somewhat later hours. And
14 as somebody who works in the neighborhood, one
15 of the reasons we purchased this establishment
16 was it was sort of a favorite for neighborhood
17 people to sit outside in the summer late at
18 night. It's where me and a lot of my
19 employees and coworkers used to go and sit
20 outside late.

21 I live in a condo around the
22 corner from here. I don't have outdoor space.

1 So the idea that there was some outdoor space
2 in Adams Morgan where you could sit late at
3 night was really wonderful because when I get
4 off work on a beautiful night like tonight, I
5 have to go home and I don't have a balcony.
6 I don't have outdoor space.

7 So these establishments that have
8 outdoor space and are able to be open a little
9 later, they really can provide the community
10 and some of the people in the community with
11 that third place. You know, people can't
12 afford to live in a place with a back yard and
13 that kind of thing.

14 MR. JAMES: Thank you for that.

15 MR. AUSLANDER: No, thank you.

16 MR. JAMES: As to the lateness of
17 hour of some of the sidewalk cafes' operations
18 -- and you described in your testimony that
19 some of the spaces, if they're closed earlier
20 or they're unused for other reasons -- that
21 people who are -- people congregate in them
22 and perhaps illegal activity goes on or

1 hanging out that is not beneficial. Is that
2 correct?

3 MR. AUSLANDER: Yes, sir.

4 MR. JAMES: And are you also
5 familiar with whether or not there's drug
6 activity or prostitution that is going on
7 nearby some of these establishments?

8 MR. AUSLANDER: Listen, I can't
9 speak to exactly what goes on in these areas
10 about drug use and prostitution. I can tell
11 you that there's a lot of things in Adams
12 Morgan that I'm not thrilled with. I own two
13 businesses there. I'm investing in the
14 neighborhood. And I hope it gets better. And
15 I actually think that allowing us to police a
16 portion of the sidewalk on a lot of nights;
17 and the fact that I even have to use the word
18 "police" is not ideal, is beneficial to the
19 community.

20 MR. JAMES: And as the evening
21 progresses and it gets into the wee hours of
22 the a.m., do the sorts of conditions that I

1 asked in my previous question tend to be more
2 extreme?

3 MR. AUSLANDER: Conditions get
4 worse, I mean mostly two nights a week, on
5 Friday and Saturday night. And I can tell you
6 as a business operator and somebody who stays
7 until God knows what hour on Friday and
8 Saturday nights, I don't like it. You know,
9 we shut the sports bar early and I'm sure the
10 ABRA investigators will tell they don't like
11 to work in Adams Morgan at 3:00 in the
12 morning. But I also think that allowing the
13 businesses to assist and project themselves
14 out onto the patio can only be a good thing.

15 MR. JAMES: And I think this will
16 be my final question. Are you aware that
17 there's a multi-agency approach to dealing
18 with the problems of Adams Morgan called
19 Operation Adams Morgan?

20 MR. AUSLANDER: Absolutely, and we
21 were -- me and my group here were intimately
22 involved in helping project Operation Adams

1 Morgan. And one of the first meetings of
2 Operation Adams Morgan took place in one of
3 our restaurants. We attended quite a few of
4 them. And we couldn't be happier about it.
5 The increased ABRA enforcement, the increased
6 police enforcement, all that kind of stuff is
7 the kind of stuff we really support and that
8 we support in all three of our businesses.

9 MR. JAMES: Thank you.

10 CHAIRPERSON MILLER: Okay. Board
11 questions? Okay. Mr. Silverstein?

12 MEMBER SILVERSTEIN: No, go ahead.

13 MEMBER ALBERTI: No, Mr.
14 Silverstein, please. Please, Mr. Silverstein,
15 go ahead.

16 MEMBER SILVERSTEIN: Thank you.
17 Mr. Auslander, what is the --

18 CHAIRPERSON MILLER: I thought you
19 already -- excuse me. I thought the ANC
20 already asked questions. Did you not?

21 MR. SIMPSON: No, we haven't.

22 CHAIRPERSON MILLER: I'm sorry.

1 Okay. As long as they're not redundant.

2 MR. SIMPSON: Will you be the only
3 one testifying for Libertine?

4 MR. AUSLANDER: That is correct.

5 MR. SIMPSON: Okay. So I'll ask
6 you this: Isn't it true that Libertine did
7 not actually intend to apply for later hours
8 on the sidewalk cafe?

9 MR. AUSLANDER: I did not fill out
10 the application for the sidewalk cafe. There
11 was discussion. Our -- that is not -- that's
12 being -- we definitely intended for later
13 hours some days of the week, yes. I mean
14 Sunday, for example, our patio ours are 5:00
15 p.m. I believe; and obviously I don't have the
16 hours in front of me, until 10:00 p.m. Well,
17 a restaurant that has a patio that closes at
18 10:00 p.m., we might as well not seat the
19 patio, especially in Adams Morgan where people
20 do tend to -- I think tend to eat later and go
21 out a little later than in the downtown areas.

22 MR. SIMPSON: Let me clarify the

1 question then, sir. With the exception of
2 Sunday, isn't it the case that you guys are
3 not actually intending to seek later hours for
4 your sidewalk cafe?

5 MEMBER ALBERTI: What's the
6 relevancy of this?

7 CHAIRPERSON MILLER: Yes, I
8 haven't been interjecting on anyone, but it's
9 true --

10 MEMBER ALBERTI: But I mean it's
11 wasting your time.

12 CHAIRPERSON MILLER: Okay. So
13 Board Member Alberti is -- yes, it is a very
14 narrow issue. And this is what happens to us
15 sometimes. Like what is the relevance of that
16 question to the impact of the change of hours
17 on peace, order and quiet?

18 MR. SIMPSON: We've been told that
19 they didn't actually intend to fill out a
20 request for later hours on their sidewalk cafe
21 with the exception of Sunday. So if that's
22 the case, we can establish that and we'd be

1 very happy to have that taken right off the
2 table as a matter for the Board's
3 deliberation.

4 CHAIRPERSON MILLER: Okay. And my
5 understanding is the application is what's
6 before us --

7 MEMBER ALBERTI: Mr. Sick, do you
8 have a copy of the protest report?

9 CHAIRPERSON MILLER: He's not Mr.
10 Sick.

11 MEMBER ALBERTI: I'm sorry.

12 MR. AUSLANDER: So I do have a
13 copy of that.

14 MEMBER ALBERTI: Mr. Simpson, you
15 have a copy of that?

16 MR. SIMPSON: I've also got a --

17 MEMBER ALBERTI: And on page 8 is
18 an outline of the request. It's disappointing
19 that you come in here and not know the topic
20 which we are discussing. I don't want your
21 time to be wasted, my time to be wasted, the
22 Licensee's time to be wasted. It is on page

1 8 what the proposed hours are that we are
2 considering today.

3 Now I've heard testimony that goes
4 way beyond the proposed request, but it has
5 some relevancy. I would like you to focus on
6 what's here.

7 MR. SIMPSON: That's exactly my
8 intention. In other words, if that report is
9 not actually accurate, if that's not actually
10 what they're seeking, I would think that would
11 matter to you as you're making your decision.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER ALBERTI: It would. It
14 would.

15 CHAIRPERSON MILLER: Are you
16 seeing a clarification of a change of hours
17 request?

18 MR. SIMPSON: I don't know the
19 procedural way to get that information out
20 there, but it's my understanding that it was
21 not originally their objective to seek --

22 CHAIRPERSON MILLER: Okay. It

1 doesn't matter. Okay. What we're saying is
2 it doesn't matter what their original
3 objection was or whatever. What matters is
4 what is the request before us and what's the
5 impact on peace, order and quiet of that
6 request?

7 MR. SIMPSON: So for example, I
8 have an email that suggests that they filled
9 out the form wrong, period.

10 MEMBER ALBERTI: The Board acts on
11 what they give us. If they give us a license
12 application, we act on that. Now, if the
13 consequences are negative to the Licensee,
14 it's their fault. All right? If that brought
15 us to a protest when it didn't need to, that's
16 on them because they filled out the
17 application. If they make a
18 misrepresentation, then we concern ourselves.
19 I don't see any misrepresentation.

20 As far as I know, and I'll double-
21 check, but I will ask our licensing staff, is
22 that what the application says? Is what's in

1 this report -- and I'm assuming right now that
2 ABRA's done its done and has done its job
3 correctly, that the request is accurately
4 reflected in here. If you didn't believe it
5 was accurately reflected in here, you should
6 have asked at the beginning of the hearing are
7 these documents correct? I mean that would
8 have been the proper time to ask is what's
9 presented here in this report correct as a
10 procedural matter.

11 MR. SIMPSON: And I apologize. I
12 don't have a great deal of experience with
13 these proceedings. I don't know what the best
14 time is to bring out any particular piece of
15 information.

16 MEMBER ALBERTI: But you're asking
17 what his intent was. I don't care what his
18 intent was. All I care is what's before us.
19 So you could ask him did you apply for those
20 hours? You can ask him that.

21 MR. SIMPSON: We've seen the
22 application form. It's clear what they've put

1 down in pen and ink.

2 CHAIRPERSON MILLER: I don't
3 think --

4 MEMBER ALBERTI: Then you don't
5 need to ask. Then you don't need to ask.
6 That's what they applied for. We don't care
7 what his intent was. I don't care what he
8 originally told you. I don't care what he
9 told you two months ago. All I care is about
10 what he applied for. You saw what he applied
11 for. You protested on the basis of what he
12 applied for.

13 MR. SIMPSON: I apologize. I
14 thought that intent would have mattered to
15 you, but I guess I was mistaken.

16 MEMBER ALBERTI: Okay.

17 CHAIRPERSON MILLER: Do you have
18 any other questions?

19 MR. SIMPSON: No.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Silverstein has stepped out, so -- well, let
22 me just do this for the record. I'm looking

1 at current hours and proposed hours in the
2 ABRA report on pages 8 through 9. Does that
3 represent accurately what we're considering
4 here?

5 MR. AUSLANDER: Yes, it does.

6 CHAIRPERSON MILLER: Okay. Let me
7 ask you this also then: Your understanding,
8 and we're going to hear from the Protestants
9 -- it's your understanding that there are
10 changes to the hours of operations that allow
11 you to operate earlier. For instance, many
12 days you start at 5:00, but this would allow
13 you to start at 8:00 in the morning. And from
14 what I heard you say, that you don't believe
15 that there's any objection to that change of
16 hours.

17 MR. AUSLANDER: We met with the --

18 CHAIRPERSON MILLER: But we'll
19 hear from them.

20 MR. AUSLANDER: Yes, we met with
21 the Protestants on this issue, as well as
22 other issues, quite a few times over the past

1 however long in regards to these matters, and
2 the Protestants have made it clear, very clear
3 that the proposed earlier hours were not an
4 issue. And I believe that they even stated,
5 at least one of the groups stated that in
6 their PIF that the earlier hours were a non-
7 issue for them and that the later hours may or
8 may not be the problem.

9 Again, I reiterate that this
10 business had been open for almost 20 years
11 with no issues. We have operated it for about
12 nine months with no issues. And I would also
13 reiterate that the Protestants agreed with us
14 that they had no issues with the business.
15 The issues were with the lack of settlement
16 agreement.

17 CHAIRPERSON MILLER: Okay. So but
18 you operated at different hours?

19 MR. AUSLANDER: (No audible
20 response.)

21 CHAIRPERSON MILLER: Well, you're
22 asking for a change in hours. You want to

1 operate --

2 MR. AUSLANDER: Yes, we're asking
3 for the ability to open for lunch, brunch if
4 you will, as well as --

5 CHAIRPERSON MILLER: Right.

6 MR. AUSLANDER: -- that extra half
7 hour.

8 CHAIRPERSON MILLER: So but it's
9 my understanding that our focus should
10 probably be on the change of hours that are
11 later in the evening.

12 MR. AUSLANDER: I would tend to
13 agree with that.

14 CHAIRPERSON MILLER: Okay. And
15 when you say you had no issues, that means
16 that you've had no residents complaining about
17 noise or --

18 MR. AUSLANDER: That's correct.

19 CHAIRPERSON MILLER: -- noise at
20 the hours such as they're allowed now, which
21 is on Sundays 1:30 a.m.?

22 MR. AUSLANDER: Far as I know,

1 this was -- one of the reasons we purchased
2 this particular business was that it was one
3 of the more beloved old establishments in the
4 neighborhood.

5 CHAIRPERSON MILLER: Okay. What
6 are the other establishments you own in Adams
7 Morgan?

8 MR. AUSLANDER: I own Ventnor's
9 Sports Cafe.

10 CHAIRPERSON MILLER: Oh, okay.

11 MR. AUSLANDER: And my partners
12 own the Black Squirrel.

13 CHAIRPERSON MILLER: Okay. And
14 you're not changing as far as on the sidewalk
15 cafe the number of people allowed to be seated
16 on the sidewalk cafe?

17 MR. AUSLANDER: You know, I don't
18 know the exact numbers of the amount of people
19 that are able to be seated. I mean it's a
20 small space we're talking about. I mean, you
21 know, depending on the size of your car, it's
22 not going to fit in the space. I think those

1 Smart cars would fit on our patio, but a full-
2 sized sedan is not going to fit on this patio,
3 to give you an idea of the space we're
4 discussing today.

5 CHAIRPERSON MILLER: Okay. So for
6 many of the nights, the week nights, it looks
7 like Monday through Thursday the change is
8 only for a half an hour, from 1:30 a.m. to
9 2:00.

10 MR. AUSLANDER: That is correct.

11 CHAIRPERSON MILLER: Okay. And
12 then Sunday is 10:00 to 2:00. That's a bigger
13 change.

14 MR. AUSLANDER: Yes.

15 CHAIRPERSON MILLER: And when
16 you're talking about -- did you say -- I'm not
17 sure now. Does Meze stay open the later
18 hours?

19 MR. AUSLANDER: Meze does stay
20 open -- they have -- I believe they have full
21 operating hours directly next door to us.
22 They offer Turkish dining and food very late

1 at night. And, you know, we'd sort of like to
2 mirror that.

3 CHAIRPERSON MILLER: Have you
4 operated in Washington for a long time?
5 You've been in the restaurant business for a
6 long time?

7 MR. AUSLANDER: I have managed
8 Brasserie Le Halles down on Pennsylvania
9 Avenue, which is no longer there. I managed
10 Shula's Steakhouse, which was at the old
11 Wyndham Hotel on New Hampshire Avenue. I
12 managed Corduroy before it moved into its new
13 establishment.

14 CHAIRPERSON MILLER: So --

15 MR. AUSLANDER: I mean these are
16 all fine dining restaurants.

17 CHAIRPERSON MILLER: I just want
18 to ask, is there something about this French
19 concept that carries to the later hours?

20 MR. AUSLANDER: Well,
21 traditionally a French bistro/French brasserie
22 is going to serve food late.

1 CHAIRPERSON MILLER: That's what I
2 wanted to know. Is there something about that
3 bistro concept?

4 MR. AUSLANDER: Yes, I mean they
5 serve -- it serves lunch. It's a lunch --
6 it's a bistro. We have to be able to be open
7 for lunch, you know, and the ability to serve
8 food late. I mean, if you go down to --
9 Bistro Francais serves food until 4:00 in the
10 morning. Brasserie Le Halles served food
11 late. Bistrot du Coin serves food late. I
12 mean these are the French brasseries in town.

13 CHAIRPERSON MILLER: I'm sorry,
14 I'm just pulling from my own experience and
15 there was a Pierre du Cochon I think in
16 Georgetown, which is out of business now, but
17 I think it might have even been 24 hours. I'm
18 not sure. And so I was just wondering if that
19 goes with the concept --

20 MR. AUSLANDER: Part of the
21 concept.

22 CHAIRPERSON MILLER: -- this late

1 hours. Okay. All right. I don't have any
2 other questions. Mr. Alberti? Thank you.

3 MEMBER ALBERTI: Mr. Auslander,
4 I'm going to focus on sidewalk cafe. All
5 right? Okay. When's the last time, are you
6 aware, that a sidewalk cafe was operated for
7 this license? And you may not have owned the
8 license at the time, but --

9 MR. AUSLANDER: I mean we had a
10 sidewalk cafe when we operated it. I mean
11 there is a sidewalk cafe license.

12 MEMBER ALBERTI: I understand.
13 When was the last time it was in operation?

14 MR. AUSLANDER: Nine months ago?

15 MEMBER ALBERTI: Okay. And was it
16 operating until its full hours then?

17 MR. AUSLANDER: It was operating
18 until the hours -- you know, we had to close
19 a little early on Sunday through Thursday. We
20 had to close a little early. I mean, yes, it
21 was --

22 MEMBER ALBERTI: I just want to

1 know.

2 MR. AUSLANDER: Oh, sorry.

3 (Laughter.)

4 MEMBER ALBERTI: I'm not being
5 sneaky here.

6 MR. AUSLANDER: All right.

7 MEMBER ALBERTI: All right. I
8 just want to start with some facts in case we
9 hear about -- and I will probably look in the
10 records as to --

11 MR. AUSLANDER: To be --

12 MEMBER ALBERTI: -- what reports
13 we have about any ABRA enforcement at that --

14 MR. AUSLANDER: As far as I know,
15 the sidewalk cafe with the current hours had
16 been in operation in this location for -- I
17 mean I think they were open for 17 years. We
18 were open for nine months. And nobody ever
19 complained before.

20 MEMBER ALBERTI: Okay. So I'm
21 just trying to get some facts out.

22 MR. AUSLANDER: Yes, sir.

1 MEMBER ALBERTI: Don't read
2 anything into my questions, please. Do you
3 know of any other sidewalk cafes on 18th
4 Street in the 2200, 2300, 2400 blocks --
5 sidewalk cafes that are open until 2:00 or
6 later?

7 MR. AUSLANDER: Well, directly
8 next door at Meze. Our next door neighbor is
9 open until 2:00 and 3:00, respectively.

10 MEMBER ALBERTI: Currently as --

11 MR. AUSLANDER: I mean I'm not --
12 I'm mean I --

13 MEMBER ALBERTI: Routinely?

14 MR. AUSLANDER: Routinely. That
15 is correct.

16 MEMBER ALBERTI: Okay. All right.
17 I mean I was just handed their licensed hours,
18 which is 1:30.

19 MR. AUSLANDER: 1:30 seven days a
20 week.

21 MEMBER ALBERTI: 1:30 through
22 Thursday. On Friday and Saturdays until 2:30.

1 So it is your testimony that they currently
2 utilize those hours?

3 MR. AUSLANDER: It's very
4 possible. I mean we're talking -- you know,
5 when you get into the half-hour range. And by
6 the time it gets to --

7 MEMBER ALBERTI: I'm not quibbling
8 about that. Just in general are you --

9 MR. AUSLANDER: Yes, absolutely.
10 Yes, sir. They use those --

11 MEMBER ALBERTI: Are they
12 currently operating late-night hours? I
13 don't --

14 MR. AUSLANDER: Yes, sir.

15 MEMBER ALBERTI: I'm not talking
16 about pinning you down to the last half hour.

17 MR. AUSLANDER: I got you.

18 MEMBER ALBERTI: All right?

19 MR. AUSLANDER: Yes, they use
20 those hours.

21 MEMBER ALBERTI: All right. So
22 there is an operation going on. It's not

1 closing down at 11:00 or 12:00. It's going
2 late.

3 MR. AUSLANDER: No, they stay open
4 late and serve food late every night.
5 Absolutely.

6 MEMBER ALBERTI: Well, let's stay
7 on the sidewalk cafe. So one of our requests
8 is the entertainment on the sidewalk cafe. Is
9 that correct?

10 MR. AUSLANDER: Yes, I don't think
11 you --

12 MEMBER ALBERTI: And my records my
13 be wrong, so I'm asking here.

14 MR. AUSLANDER: No.

15 MEMBER ALBERTI: What I have in
16 here on page 9 of the report, which you may
17 nor may not have there -- it says proposed
18 sidewalk cafe entertainment hours will be
19 Sunday through Thursday 6:00 to 1:00 a.m. and
20 Friday and Saturday 6:00 to 2:00 a.m. So are
21 you requesting entertainment for the sidewalk
22 cafe?

1 MR. AUSLANDER: We have an
2 entertainment endorsement at this location.

3 MEMBER ALBERTI: Yes.

4 MR. AUSLANDER: Yes. whether or
5 not we can request sidewalk entertainment, I
6 have no idea. Again, we're talking about a
7 very small space. So if you're talking about,
8 you know, a magician doing magic tricks, maybe
9 we can have that out there, but I mean you're
10 not going to have any kind of entertainment in
11 a space this small.

12 MEMBER ALBERTI: Is it your desire
13 to have entertainment out there?

14 MR. AUSLANDER: I didn't even know
15 that until I saw it in the report, to be
16 honest with you.

17 MEMBER ALBERTI: Yes or no? Yes
18 or no? Tell me. Is it your --

19 MR. AUSLANDER: Would it be our
20 intention to have entertainment out on the
21 patio?

22 MEMBER ALBERTI: -- intent to have

1 entertainment out there?

2 MR. AUSLANDER: No, it would not
3 be our intention.

4 MEMBER ALBERTI: Okay. Great.
5 Makes like easier then.

6 MR. AUSLANDER: That's what I'm
7 here for.

8 (Laughter.)

9 MEMBER ALBERTI: All right. And
10 let's see, do you have an entertainment
11 endorsement inside currently?

12 MR. AUSLANDER: Inside the
13 Libertine?

14 MEMBER ALBERTI: Yes.

15 MR. AUSLANDER: Yes.

16 MEMBER ALBERTI: Until what hours?

17 MR. AUSLANDER: I don't have the
18 report in front of me. Fairly reasonable
19 hours, until I believe 1:00 a.m., sort of.

20 MEMBER ALBERTI: Was your part of
21 your request to extend those hours?

22 MR. AUSLANDER: No.

1 MEMBER ALBERTI: And again I'm
2 trying to --

3 MR. AUSLANDER: No, we're here
4 today to discuss a half hour Sunday through
5 Thursday, daytime hours and the odd hours --

6 MEMBER ALBERTI: And we're not
7 here to discuss the entertainment hours?

8 MR. AUSLANDER: Far as I know.

9 MEMBER ALBERTI: Great. that
10 makes my life easier. All right.

11 Oh, you know, the investigator
12 talking about renovations inside, and you
13 know, she wasn't quite sure what was going on.
14 So what sorts of things have you done inside?

15 MR. AUSLANDER: We've done a lot.
16 It was -- I mean the old Toledo --

17 MEMBER ALBERTI: Other than
18 cosmetic, because I expect everybody to do
19 cosmetic. Clean things up, new carpeting and
20 paint.

21 MR. AUSLANDER: I mean other than
22 cosmetic --

1 MEMBER ALBERTI: Put new booths in
2 sometimes.

3 MR. AUSLANDER: New furniture.

4 MEMBER ALBERTI: Did you
5 reconfigure booths? Did you change walls?

6 MR. AUSLANDER: Well, we
7 reconfigured the bar area a little bit. There
8 was -- I mean it was a dump. I mean the
9 investigator wasn't kidding.

10 (Laughter.)

11 MR. AUSLANDER: I mean it was a
12 dump. You know, it's one of these places
13 where, you know, my partners went to
14 Pennsylvania, reclaimed all kinds of stuff
15 from an old burned out church. And, you know,
16 we didn't have a carpenter. We have a
17 craftsman who puts it all together. And, you
18 know, really it's all old antiques. I mean
19 it's a special kind of space.

20 MEMBER ALBERTI: Did you change
21 the inside in anyway that would change the
22 occupancy capacity? Number of seats that you

1 could have, number of patrons you could have?

2 MR. AUSLANDER: I mean maybe. I
3 mean it's a small -- we're talking about a
4 1,200 square foot space.

5 MEMBER ALBERTI: Right.

6 MR. AUSLANDER: So I mean did we
7 reconfigure the inside? Yes, absolutely.
8 Could that change the occupancy from, you
9 know --

10 MEMBER ALBERTI: But did it?

11 MR. AUSLANDER: I don't know
12 technically. I don't know would be my answer.

13 MEMBER ALBERTI: Well, did DCRA
14 change your occupancy on your C of O?

15 MR. AUSLANDER: I don't have an
16 answer to that.

17 MEMBER ALBERTI: Okay. I don't
18 have any further questions. Thank you.

19 MR. AUSLANDER: Thank you.

20 CHAIRPERSON MILLER: Mr.
21 Silverstein?

22 MEMBER SILVERSTEIN: No.

1 CHAIRPERSON MILLER: Mr. Jones?

2 MEMBER JONES: Thank you, Madam
3 Chair.

4 so what's your role in this
5 establishment?

6 MR. AUSLANDER: I'm one of the
7 owners?

8 MEMBER JONES: One of the owners?

9 MR. AUSLANDER: Yes, sir.

10 MEMBER JONES: What's your
11 organizational structure?

12 MR. AUSLANDER: My organizational
13 structure?

14 MEMBER JONES: Yes.

15 MR. AUSLANDER: Well, there's
16 three of us. We are all on site. I tend to
17 be the person there later at night. I tend to
18 be there until closing more than I'd like to
19 admit. And I'm a little bit more --

20 MEMBER JONES: You mean you will
21 be? That's the plan. because it's not open
22 now, correct?

1 MR. AUSLANDER: That is -- well --

2 MEMBER JONES: I'm just -- you're
3 saying you're there more.

4 MR. AUSLANDER: Yes.

5 MEMBER JONES: You're there late a
6 night. I mean how can you be when it's not
7 open? So I'm just trying to keep it --

8 MR. AUSLANDER: Well, because our
9 other businesses happen to be -- when they say
10 the old saying stone's throw. In this case
11 it's literal. Twenty-four-thirty-five is
12 Toledo Lounge, twenty-four-oh-seven is Black
13 Squirrel, and twenty-four-eleven is Ventnor.
14 So when I'm at Ventnor, I am at -- I mean I'm
15 right there. You know, if somebody's on the
16 patio at Toledo Lounge and I go hey, they're
17 going to hear me. I tend to be there later at
18 night and my expertise would be in day-to-day
19 operations of an establishment like this.

20 MEMBER JONES: Okay. So is the
21 nature of your relationship with the partners
22 that you alluded to the same across all of the

1 three other establishments you mentioned?

2 MR. AUSLANDER: No. No, I solely
3 own Ventnor Sports Cafe and they own the Black
4 Squirrel.

5 MEMBER JONES: Okay. So --

6 MR. AUSLANDER: The organization
7 isn't quite as --

8 MEMBER JONES: -- you have nothing
9 to with Black Squirrel?

10 MR. AUSLANDER: That is correct.

11 MEMBER JONES: And you have
12 nothing to do with anything but Ventnor Sports
13 and this Libertine?

14 MR. AUSLANDER: That is correct.

15 MEMBER JONES: Okay. So when you
16 were testifying earlier you mentioned that you
17 had two other establishments that you owned in
18 D.C. Is your other establishment someplace
19 else other than Adams Morgan?

20 MR. AUSLANDER: It's called
21 Libertine. I own Libertine and then Ventnor.

22 MEMBER JONES: Okay. So your

1 experience has -- Libertine is not open?

2 MR. AUSLANDER: That is correct.

3 MEMBER JONES: Right. So the only
4 operating experience that you have currently
5 is Ventnor?

6 MR. AUSLANDER: I've operated at
7 over 15 establishments in the Washington, D.C.
8 area.

9 MEMBER JONES: Understood.
10 Current operating experience, current
11 operations experience right now --

12 MR. AUSLANDER: Libertine was
13 operational as another restaurant under our
14 ownership.

15 MEMBER JONES: I mean so --

16 MR. AUSLANDER: But you're right,
17 one.

18 MEMBER JONES: So I'm just saying
19 current.

20 MR. AUSLANDER: That is correct.
21 One.

22 MEMBER JONES: All right. Right

1 now it's Ventnor Sports?

2 MR. AUSLANDER: That is correct.

3 MEMBER JONES: Okay. So you're
4 going to then split yourself between Ventnor
5 Sports and Libertine and handle the late-night
6 operations for both of the establishments?

7 MR. AUSLANDER: Yes.

8 MEMBER JONES: Okay. And this is
9 really the easy part of the question, so I'm
10 struggling --

11 MR. AUSLANDER: I'm sorry.

12 MEMBER JONES: -- with it just a
13 little bit. So your organizational structure
14 with Libertine --

15 MR. AUSLANDER: Yes.

16 MEMBER JONES: -- right, is -- are
17 you equal owners, one third, one third, one
18 third?

19 MR. AUSLANDER: You got it.

20 MEMBER JONES: Okay. So who makes
21 the final decision on operations, hours?

22 MR. AUSLANDER: Like anything else

1 in life. It's a discussion. I mean it's a
2 discussion and we come to a resolution as a
3 group.

4 MEMBER JONES: I'm sorry, just to
5 make sure I'm clear, you said it's like
6 everything or anything else in life, right?

7 MR. AUSLANDER: Well --

8 MEMBER JONES: So it also just
9 kind of depends on how you're organized. So
10 I'm really not trying to make this any harder
11 than it should be. So I'm just trying to
12 figure out who calls the final shots? So if
13 you're the only one there at night --

14 MR. AUSLANDER: Then I call the
15 final shot.

16 MEMBER JONES: Thank you. Okay.
17 So when you're not there who will be making
18 the calls when you're not there? Like who's
19 making the final decisions? Who's in charge?
20 Who's the head honcho? Who does he report to,
21 he being the head chef, or executive chef,
22 excuse me?

1 MR. AUSLANDER: Well, the chef
2 would report to us as a group. I mean we're
3 on site at these restaurants that are in Adams
4 Morgan. So he would report to us. And there
5 will be a front-of-the-house manager to take
6 care of the issues like you're talking about
7 when I'm not on site.

8 MEMBER JONES: Okay. So let me
9 ask it this way: Are you saying that one of
10 the three of you will be on site at all times
11 the establishment is open and operating?

12 MR. AUSLANDER: I am saying that
13 one of us or our manager who's designated to
14 make the decisions you're asking about will be
15 on site at all times.

16 MEMBER JONES: Okay. And who's
17 the manager?

18 MR. AUSLANDER: She was here
19 earlier and she had left.

20 MEMBER JONES: She left? So you
21 have four people?

22 MR. AUSLANDER: Right, she's

1 currently employed, not with me, but with my
2 partners at the Black Squirrel.

3 MEMBER JONES: Okay. So you're
4 pulling resources from other establishments to
5 operate here? Will she maintain her
6 employment status at the Black Squirrel?

7 MR. AUSLANDER: Her employment
8 status would change. What we're doing is not
9 pulling or splitting, but I would say growing.

10 MEMBER JONES: So you're taking
11 the same person --

12 MR. AUSLANDER: And moving her to
13 a new establishment.

14 MEMBER JONES: Huh?

15 MR. AUSLANDER: We're moving her
16 to a new establishment.

17 MEMBER JONES: So she won't be at
18 the Black Squirrel anymore?

19 MR. AUSLANDER: That's correct.

20 MEMBER JONES: Okay. So she'll be
21 full time at Libertine?

22 MR. AUSLANDER: And somebody else

1 will be taking over her responsibilities at
2 Black Squirrel.

3 MEMBER JONES: Okay. Got it. So
4 she'll be the person that's in charge of the
5 establishment when none of the three of you
6 are there?

7 MR. AUSLANDER: That is correct.

8 MEMBER JONES: She has the
9 authority to make decisions?

10 MR. AUSLANDER: Sure.

11 MEMBER JONES: Okay. All right.
12 And what's her experience?

13 MR. AUSLANDER: She has
14 significant restaurant experience and we've
15 been -- she's been working for us at the Black
16 Squirrel for quite a time now. And we've been
17 training her and she's been working with us,
18 sort of dedicated to this project for about a
19 year now, maybe longer.

20 MEMBER JONES: Okay. Is she still
21 currently working at Black Squirrel?

22 MR. AUSLANDER: That transition is

1 going on right now as we move toward opening.

2 MEMBER JONES: So yes she is still
3 working at Black Squirrel?

4 MR. AUSLANDER: Yes.

5 MEMBER JONES: Okay. I guess
6 you've named two. You have a manager --

7 MR. AUSLANDER: That's correct.

8 MEMBER JONES: And you have an
9 executive chef --

10 MR. AUSLANDER: Right.

11 MEMBER JONES: -- right now? And
12 the executive chef was hired three days ago
13 according to his testimony. Is that correct?

14 MR. AUSLANDER: No, I mean he was
15 hired I would say two weeks ago when we met
16 with him.

17 MEMBER JONES: How do you
18 reconcile the discrepancy between when he
19 believes he was hired and when you say he was
20 hired?

21 MR. AUSLANDER: The day he started
22 full time with us. He started full-time work

1 this week.

2 MEMBER JONES: Started
3 full-time --

4 MR. AUSLANDER: Work.

5 MEMBER JONES: -- work? So what
6 was he doing prior to this week?

7 MR. AUSLANDER: Prior to this week
8 we interviewed him twice. We had food
9 tastings. What we -- let me start over. We
10 interviewed him and we came back to let's
11 taste the food. Then he came back again to
12 let us taste the food again. And then we
13 hired him. So that process took some time.

14 MEMBER JONES: So those
15 preliminary steps I don't count that as a
16 hiring element, do you?

17 MR. AUSLANDER: Yes.

18 MEMBER JONES: The food tasting?
19 So you hired him? That's when you hired him?

20 MR. AUSLANDER: That's right.

21 MEMBER JONES: Okay. So you hired
22 him after the interview and you had the two

1 food tastings. He was an employee at that
2 point, before the two food tastings?

3 MR. AUSLANDER: I mean he goes on
4 the payroll his first day, if that --

5 MEMBER JONES: When was his first
6 day?

7 MR. AUSLANDER: His first day was
8 either Sunday or Monday. His first day was
9 very recent, yes.

10 MEMBER JONES: So --

11 MR. AUSLANDER: I'm sorry, I --

12 MEMBER JONES: When did he start?
13 He said he started working for you two to
14 three days ago. You're saying he started
15 working for you two weeks ago.

16 MR. AUSLANDER: He started working
17 for us three days ago.

18 MEMBER JONES: Okay. And you're
19 hopeful to open when?

20 MR. AUSLANDER: You know, I've
21 upgraded it. I told you the same thing I told
22 my mother last night. I've upgraded from soon

1 to very soon.

2 (Laughter.)

3 MEMBER JONES: And the inventory
4 that you need in order to -- so he started
5 working for you three days ago approximately.
6 He came with a menu, designed a menu. And you
7 have in your mind right now the process to
8 inventory or get stock to be able to provide
9 food very soon?

10 MR. AUSLANDER: Yes, we're
11 stocking. We're talking. We're coming up
12 with a menu. You know, the fun part, if you
13 will. You know, we're stocking the shelves.
14 We're making new menu items. We're discussing
15 what we like, what we -- you know, we like
16 what you might like. I mean, that's the part
17 of the process.

18 MEMBER JONES: When will that be
19 done? When will it be finalized?

20 MR. AUSLANDER: Right before we
21 open.

22 MEMBER JONES: Okay. You have a

1 very large bar.

2 MR. AUSLANDER: That is correct.

3 MEMBER JONES: So I'll just --
4 given the nature of your responses, I'll be
5 more direct. Your bar seems to dominate your
6 useable space. Would you concede or agree?
7 And if not, tell me what your perspective is,
8 that it's approximately 50 percent of your
9 useable patron space. And I'm just basing
10 that off of the pictures that I see. So
11 I'll --

12 MR. AUSLANDER: I believe that,
13 yes, it's a large bar. It's a large bar.
14 It's a very pretty bar. And part of the
15 reason --

16 MEMBER SILVERSTEIN: Very what?

17 MR. AUSLANDER: Pretty.

18 MEMBER SILVERSTEIN: Oh.

19 MR. AUSLANDER: So part of the
20 reason it was -- the size was based on some of
21 the furnishings that we found. We also
22 believe that the age group that we're looking

1 for, you know, that 30-somethings age group,
2 likes to eat at a bar. A lot of the
3 restaurants down here on 14th Street, you
4 know, when I walk into Masa 14, they got one
5 monster bar in there. Or Ben's next door or
6 -- and I think that people in my age range
7 don't mind eating at a bar the way maybe a
8 prior generation -- I think they eat
9 differently, graze differently and definitely
10 -- you know, it's an attractive centerpiece to
11 the space.

12 MEMBER JONES: So you would agree
13 that the bar --

14 MR. AUSLANDER: Is large.

15 MEMBER JONES: -- is large? Would
16 you agree that it dominates your useable
17 space, or is 50 percent a large portion of
18 your space? Your bar.

19 MR. AUSLANDER: No, the mezzanine
20 is probably -- the mezzanine itself --
21 actually if you took the mezzanine and moved
22 it to the space, the mezzanine is probably 50

1 percent of the space.

2 MEMBER JONES: Okay. How many --

3 MR. AUSLANDER: So it's probably
4 less than 50 percent of the space.

5 MEMBER JONES: How many seats, how
6 many non-bar seats do you have?

7 MR. AUSLANDER: I'm counting in my
8 head.

9 MEMBER JONES: That's all right.
10 I'm counting on the picture, so that's fair.

11 MR. AUSLANDER: Yes, I mean I
12 don't have the pictures. Twelve -- about
13 twenty-five upstairs. Thirty -- I don't know,
14 thirty-something, forty seats. I mean it's a
15 small space.

16 CHAIRPERSON MILLER: Mr. Jones,
17 can I ask you a question because I'm --

18 MEMBER JONES: Certainly.

19 CHAIRPERSON MILLER: -- having
20 trouble following your line as to how it might
21 relate to change of hours.

22 MEMBER JONES: You're questioning

1 me questioning?

2 CHAIRPERSON MILLER: I'm asking if
3 you can help me see where you're going with
4 the -- yes.

5 MEMBER JONES: Sure. So if this
6 place operates more like a bar, which I would
7 be reluctant to I guess go into great detail
8 here because you're asking me to show my
9 perspective, but that's fine -- if this place
10 operates more like a bar and it has later
11 hours, I'd be more concerned about it with
12 those later hours than if it operates more
13 like a restaurant. So the fact the bar seems
14 to dominate the features of the establishment
15 and they remodeled and kept the bar in place
16 would seem to imply that their business model
17 needs to have this bar in order for it to
18 succeed, or least that's what they have in
19 their mind going forward. So if I have a bar
20 that is catering to people that are drinking
21 as opposed to seats that are catering to
22 people that are eating, I have a different

1 feel about the later hours. So that's kind of
2 where I was going.

3 CHAIRPERSON MILLER: No, I think
4 that's important to hear because I -- so that
5 the --

6 MEMBER JONES: Maybe after --

7 CHAIRPERSON MILLER: No, so the
8 Applicant can respond to that, because I think
9 what I heard him responding before was, well
10 -- and given, you know, a chance that, well,
11 no, this is for eating. It's not for drinking
12 or -- so how we would we, you know --

13 MR. AUSLANDER: Yes, I think that
14 he -- I get that there is a large bar and I
15 understand your concerns. And I can remedy
16 them saying that serving food is a big part of
17 what we do and that's why we brought Brent
18 along. We take the service of food and the
19 restaurant part of it very seriously. And I
20 know you say there's a large bar that
21 dominates this space. And what I'm saying to
22 you is I think that's what customers my age,

1 36, customers your age want. And those are
2 probably the customers that are in our target
3 market.

4 MEMBER JONES: How many non-bar
5 seats do you have?

6 MR. AUSLANDER: Again, it's all
7 right there in the photos. Thirty-something.

8 MEMBER JONES: So you're the owner
9 -- one of the three owners?

10 MR. AUSLANDER: That is correct,
11 sir.

12 MEMBER JONES: Right? My
13 expectation is that you have a fairly good
14 command of how you're going to make money at
15 this establishment.

16 MR. AUSLANDER: That is correct,
17 sir.

18 MEMBER JONES: Selling food,
19 right?

20 MR. AUSLANDER: Selling food and
21 beverage.

22 MEMBER JONES: So you asked for

1 the extended hours.

2 MR. AUSLANDER: Yes.

3 MEMBER JONES: Right? And you're
4 saying you want to open for breakfast as well
5 as lunch, or just lunch, because you're
6 starting at 8:00 a.m.?

7 MR. AUSLANDER: Primarily lunch,
8 yes. We want the opportunity to be open at
9 8:00 a.m., yes.

10 MEMBER JONES: So when do you plan
11 on actually operating? So you just want this
12 as a window. When do you plan on actually
13 operating?

14 MR. AUSLANDER: Currently -- you
15 know, currently -- and one of the things I
16 think you've gotten to and I think you spoke
17 to one of -- my chef about was this is a
18 process that evolves. And you open the
19 business and you have to be able to evolve and
20 change to the nature of the customers. Yes,
21 we --

22 MEMBER JONES: Right now what is

1 your projected operating hours if you open
2 tomorrow? Very soon, as you told your mother,
3 right?

4 MR. AUSLANDER: Yes.

5 MEMBER JONES: When would you be
6 serving food right now, projected?

7 MR. AUSLANDER: At this time we
8 would be serving food on holidays and selected
9 days starting at 10:00 a.m. probably and then
10 Saturday and Sunday probably a little bit
11 earlier, about 9:00 a.m. until the Board's
12 made up their decision on what time we can
13 close.

14 MEMBER JONES: So selected days.
15 Can you define what a selected day is?

16 MR. AUSLANDER: Memorial Day.
17 Holidays.

18 MEMBER JONES: Holidays?

19 MR. AUSLANDER: Fridays in the
20 summer time when we believe that having the
21 patio would be advantageous. I mean, you
22 know, days when we think you could do a little

1 business by opening during the day. You know,
2 days when people are off or you want the
3 opportunity -- a good example would be -- and
4 this was a long time ago, but I remember the
5 day of that earthquake. Well, my staff at
6 Ventnor ran in to get the place open because
7 they knew everybody was leaving work. We'd
8 like to have that same opportunity at this
9 place. And at this time I can't project when
10 that earthquake day will be.

11 MEMBER JONES: So you wouldn't be
12 primarily serving lunch -- excuse me, you
13 wouldn't be serving lunch the majority of the
14 time? You have selected days which are
15 holidays that you've noted. You mentioned
16 Saturdays and Sundays.

17 MR. AUSLANDER: Saturdays and
18 Sundays definitely, yes.

19 MEMBER JONES: Okay. So Saturdays
20 and Sundays is guaranteed two days out of the
21 week?

22 MR. AUSLANDER: Absolutely.

1 MEMBER JONES: All right. And
2 then selected holidays?

3 MR. AUSLANDER: Selected holidays,
4 special occasions.

5 MEMBER JONES: So the federal
6 holiday schedule, it's like 10 days.

7 MR. AUSLANDER: Right, and we'd
8 like to try to evolve into a place that can
9 open for lunch, you know? I mean it's a tough
10 neighborhood to open for lunch in. There
11 aren't a lot of establishments open for lunch.
12 There's no buildings like this. There's no
13 office space up there. So it makes it very
14 difficult to be worthwhile to be open, you
15 know, at 11:00 a.m. everyday.

16 MEMBER JONES: So from a
17 restaurant standpoint that's your primary
18 premise, right, that you're putting forth here
19 today that you plan on operating as a
20 restaurant? Correct?

21 MR. AUSLANDER: That is correct.

22 MEMBER JONES: Okay. What would

1 be the financial impact to you of not having
2 the extended hours given your desire to
3 operate on selected days for lunch; and that's
4 the reason why you said you want the earlier
5 hours, as well as Saturday and Sunday?

6 MR. AUSLANDER: Well --

7 MEMBER JONES: If you didn't get
8 those extended hours --

9 MR. AUSLANDER: Well, the daytime
10 hours are crucial.

11 MEMBER JONES: -- how much money
12 would not be making?

13 MR. AUSLANDER: I mean the
14 ability --

15 MEMBER JONES: Quantify that for
16 me.

17 MR. AUSLANDER: I mean I can't --

18 MEMBER JONES: What would be the
19 financial impact?

20 MR. AUSLANDER: Significant. I
21 mean I can't give you -- since we haven't
22 opened this new business --

1 MEMBER JONES: Would you be able
2 to open if you didn't get the extended hours?
3 Would you be able to make this operation work
4 if you didn't get the extended hours?

5 MR. AUSLANDER: Without the
6 daytime hours on the patio and Saturday and
7 Sunday and -- it sure as heck wouldn't be as
8 easy.

9 MEMBER JONES: So would you be
10 able to operate at all? Would it be a --

11 MR. AUSLANDER: Yes --

12 MEMBER JONES: -- business
13 worthwhile --

14 MR. AUSLANDER: At this point
15 where we are --

16 MEMBER JONES: -- would it be a
17 business venture worthwhile engaging in?

18 MR. AUSLANDER: I hope so. I mean
19 I'm sorry I understand you're asking for a
20 more exact dollar amount, but at this time
21 since the business isn't open, it's hard for
22 me to quantify it. I can tell you that these

1 hours would make a significant impact on my
2 business, or else I wouldn't be here today.

3 MEMBER JONES: Okay. I'm done.

4 CHAIRPERSON MILLER: Others?

5 MEMBER ALBERTI: I have just sort
6 of administrative questions, if I may?

7 MEMBER JONES: Sure.

8 MEMBER ALBERTI: Mr. Auslander,
9 these are purely administrative --

10 MR. AUSLANDER: Sure.

11 MEMBER ALBERTI: -- because there
12 seems to be some confusion. The report --
13 and, you know, I base a lot of my knowledge on
14 the report, and I have to say it, so -- but I
15 did do due diligence and went back to the
16 application here. And the application that
17 you submitted for the sidewalk cafe was
18 proposed hours of operation and sales and
19 service was 2:00 a.m. Sunday through Thursday
20 and until 3:00 a.m. Friday and Saturday. And
21 that is on the public notice that was sent
22 out.

1 So I need to know -- it's 8:00
2 a.m. and -- opening at 8:00 a.m. to the later
3 hours for everyday of the week. So I need to
4 know are you here representing that you really
5 only want -- you are only requesting until
6 2:00 a.m. on Friday and Saturdays, or are you
7 requesting 3:00 a.m.?

8 MR. AUSLANDER: 2:00 a.m. Sunday
9 through Thursday and 3:00 a.m. on Fridays and
10 Saturdays.

11 MEMBER ALBERTI: Okay.

12 CHAIRPERSON MILLER: For the
13 sidewalk cafe?

14 MR. AUSLANDER: That is correct.

15 CHAIRPERSON MILLER: Because that
16 is not in the report.

17 MR. AUSLANDER: I don't have --

18 MEMBER ALBERTI: Okay. The
19 report's wrong. Okay. So I just wanted to
20 make --

21 MR. AUSLANDER: I mean I'm happy
22 with whatever --

1 MEMBER ALBERTI: No, no. Look,
2 look.

3 MR. AUSLANDER: I'm sorry.

4 MEMBER ALBERTI: Absolutely
5 administrative. I just want to know --

6 MR. AUSLANDER: I'm happy with --

7 MEMBER ALBERTI: -- that
8 everybody's on the same page.

9 MR. AUSLANDER: I don't have that
10 in front of me.

11 MEMBER ALBERTI: I need to be on
12 the same page as what's here administratively
13 and everybody does. So that's what the
14 request was, right? And you can amend it now,
15 if you want.

16 MR. AUSLANDER: I mean the request
17 is what we are presented with and what we're
18 here to talk about. I mean --

19 MEMBER ALBERTI: Okay.

20 MR. AUSLANDER: -- I can't speak
21 to making changes right now without -- I
22 don't --

1 MEMBER ALBERTI: And I'm not
2 asking you to. I just want to make sure,
3 because the Board has been asking questions I
4 think under the premise that it's a half-hour
5 change on -- or whatever it was, 2:00 on the
6 weekends. And we're really talking 3:00. So
7 I just want to make sure that I have that on
8 the record that that's what we're talking
9 about. And that's your understanding, too,
10 which is okay.

11 MR. AUSLANDER: Yes, 3:00 on
12 Friday and Saturday.

13 MEMBER ALBERTI: Right, on Friday
14 and Saturday.

15 MR. AUSLANDER: Yes. I had that
16 down here, yes.

17 CHAIRPERSON MILLER: So excuse me,
18 but when I look at this report then, it's
19 currently 2:00 on Friday and Saturday. Is
20 that right? That's what's in the report for
21 sidewalk cafe. So it's 2:00 to 3:00? The
22 request is from 2:00 to 3:00?

1 MR. AUSLANDER: I guess I'm not
2 understanding. Is there a discrepancy in your
3 material?

4 MEMBER ALBERTI: Yes. The
5 material that I have, that everyone has on
6 page 8 lists 3:00.

7 CHAIRPERSON MILLER: Okay. I want
8 to make sure that for the record and for
9 everybody here --

10 MEMBER ALBERTI: It's on page 9.

11 CHAIRPERSON MILLER: -- are we
12 only talking about Friday and Saturday
13 sidewalk cafe, that there's a discrepancy
14 between --

15 MEMBER ALBERTI: Right.

16 CHAIRPERSON MILLER: -- and the
17 application?

18 MEMBER ALBERTI: Right.

19 CHAIRPERSON MILLER: Yes? Okay.

20 MEMBER ALBERTI: Right.

21 CHAIRPERSON MILLER: And that
22 discrepancy is that the report says 2:00 and

1 the application says 3:00 for Friday and
2 Saturday.

3 MEMBER ALBERTI: Right. Okay.

4 CHAIRPERSON MILLER: Did you want
5 to take a look at that?

6 MR. AUSLANDER: I'm turning as
7 fast as --

8 CHAIRPERSON MILLER: Okay.

9 MR. AUSLANDER: Current
10 operations.

11 MEMBER ALBERTI: Look on page 9,
12 because that's the proposed.

13 MR. AUSLANDER: Page 9. So what
14 you're saying is this is not what's on the
15 application?

16 MEMBER ALBERTI: Right. And I
17 just need to make sure, because there have
18 been -- I have made statements here on the
19 record that aren't correct and I just want to
20 correct all of that. It's purely
21 administrative. We can move on.

22 MR. AUSLANDER: Yes, I would

1 assume the application to be correct then.

2 MEMBER ALBERTI: Your application
3 is correct?

4 MR. AUSLANDER: Yes.

5 MEMBER ALBERTI: You filled it
6 out.

7 MR. AUSLANDER: Yes, the
8 application would be correct. We'd be asking
9 for --

10 MEMBER ALBERTI: And this --

11 MR. AUSLANDER: -- that extra hour
12 on Friday and Saturday.

13 MEMBER ALBERTI: -- document is
14 incorrect?

15 MR. AUSLANDER: Yes.

16 MEMBER ALBERTI: And I just wanted
17 to make sure if anyone's -- if the Protestants
18 were working off of this document --

19 MR. AUSLANDER: We were trying to
20 get -- yes, we wanted the hours to match.

21 MEMBER ALBERTI: Got you. I
22 understand. No problem. Wanted to make sure

1 we were on the same page. Is everybody
2 following me?

3 MR. AUSLANDER: Yes, I mean --

4 CHAIRPERSON MILLER: Mr. Alberti,
5 since you --

6 MR. JAMES: We were working off
7 that document.

8 MEMBER ALBERTI: Okay. Great.
9 Just wanted to make sure. I'd hate to have
10 confusion --

11 CHAIRPERSON MILLER: You were
12 working off the application?

13 MEMBER ALBERTI: I was confused.

14 MR. JAMES: Yes.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: I was confused,
17 so that's not good.

18 CHAIRPERSON MILLER: Any other
19 questions?

20 (No audible response.)

21 CHAIRPERSON MILLER: So the half-
22 an-hour difference that we were talking about

1 is for Monday through Thursday, from 1:30 to
2 2:00.

3 MR. AUSLANDER: Sunday through
4 Thursday.

5 CHAIRPERSON MILLER: Sunday. Is
6 only happen at --

7 MR. AUSLANDER: Sunday to
8 Thursday.

9 CHAIRPERSON MILLER: Sunday you've
10 gone from 10:00 from 2:00.

11 MR. AUSLANDER: Oh, I'm sorry.
12 Yes.

13 CHAIRPERSON MILLER: That's four
14 hours.

15 MR. AUSLANDER: I'm sorry.

16 CHAIRPERSON MILLER: Okay.

17 MR. AUSLANDER: You know, that's
18 part of the reason we're here today is because
19 the current hours for this establishment are
20 all over -- there's no uniformity. And we'd
21 like to provide some uniformity so it would
22 create --

1 CHAIRPERSON MILLER: Okay.

2 MR. AUSLANDER: -- less confusion
3 for us and our staff, as well as our
4 customers.

5 CHAIRPERSON MILLER: Right. Okay.
6 All right. Is that the end of Board
7 questions?

8 (No audible response.)

9 CHAIRPERSON MILLER: Do you have
10 any questions?

11 (No audible response.)

12 CHAIRPERSON MILLER: Okay. Do the
13 Protestants have any questions based on Board
14 questions? But I would say it should go to
15 the hours and the impact on peace, order and
16 quiet.

17 MR. JAMES: We're having a bit of
18 a comprehension problem as to the flow of
19 permissions. For instance, if this request
20 which had a hearing date of April 1st for a
21 roll call --

22 CHAIRPERSON MILLER: I'm sorry,

1 you dropped your voice. April 1st?

2 MR. JAMES: I'm sorry.

3 CHAIRPERSON MILLER: Yes.

4 MR. JAMES: It was posted on
5 February 1st, 2013, petition date March 18th.
6 We also have a protest on the renewal of this,
7 which would be heard in August. And some of
8 the discussion has delved into some of the
9 things that we would be covering there.

10 CHAIRPERSON MILLER: Yes.

11 MR. JAMES: So we don't want to be
12 overly repetitive to the Board. We also don't
13 -- we want to respect what the purpose of this
14 hearing is, but at the same time we're
15 wondering; at least I'm wondering, if there
16 had been no protest would these conditions
17 have been incorporated into the Licensee's
18 renewal for 2013? Because they were
19 approximately concurrent. Information had to
20 be filed by April 1st.

21 CHAIRPERSON MILLER: I don't
22 understand. What conditions are you referring

1 to?

2 MR. JAMES: The additional
3 permissions that they're seeking in this
4 substantial change which were --

5 CHAIRPERSON MILLER: Would their
6 later hours be incorporated?

7 MEMBER ALBERTI: Mr. James, I
8 think one of your problems; that it's just
9 dawned on me, is that it's going to be
10 difficult for you going into a protest because
11 that -- because when is that protest
12 scheduled?

13 MR. JAMES: I don't have it in
14 front of me.

15 MEMBER ALBERTI: Approximately.

16 MR. JAMES: I think it's August
17 10th I think or 7th or something. Whatever.
18 It's a Wednesday in August.

19 MEMBER ALBERTI: It's a Wednesday
20 in August? Which is about eight weeks away?
21 About eight weeks away. And I'm saying this
22 for the benefit of my fellow Board Members.

1 It's possible that we don't have a decision in
2 this case when you go into that protest.

3 MR. JAMES: We did ask to combine
4 these cases, but that was rejected.

5 CHAIRPERSON MILLER: Yes.

6 MEMBER ALBERTI: And it seems to
7 me that there's a potential conflict there.

8 MR. JAMES: But also --

9 MEMBER ALBERTI: I'm just putting
10 that out there.

11 MR. JAMES: Yes. But you could --
12 the Board could --

13 MEMBER ALBERTI: I'm not asking
14 you for solutions.

15 CHAIRPERSON MILLER: Yes.

16 MEMBER ALBERTI: I'm just pointing
17 that out --

18 MR. JAMES: The Board doesn't have
19 wait --

20 MEMBER ALBERTI: -- as one of the
21 difficulties we're presenting for the Licensee
22 here.

1 CHAIRPERSON MILLER: So I'm not
2 sure what the question is. It seems like we
3 have a simple issue here about evaluating
4 change in hours, whether there's an adverse
5 impact on peace, order and quiet. So --

6 MR. JAMES: From a community
7 point of view it's not quite that simple,
8 because if just seconds before their renewal
9 issue comes out to the public by notice there
10 were some additional permissions that no one
11 had experienced and they hadn't operated as,
12 you know, would we have protested that? Part
13 of the reason that the renewal was protested;
14 and I won't go into any discussion about it,
15 was that there was entertainment endorsement
16 added without public notice. So that's one of
17 our big concerns. So you see, because they're
18 one -- they're right on the heels of each
19 other within the ABRA process, it makes it
20 kind of hard to know like -- I'm just
21 wondering will; they be allowed to operate
22 these requested hours?

1 MEMBER ALBERTI: Well, Mr. James,
2 as far as to entertainment endorsement, you
3 were I believe notified of the entertainment
4 hours on the placard for the renewal. Am I
5 correct.

6 MR. JAMES: Yes, and we --

7 CHAIRPERSON MILLER: Okay. So you
8 had notice of that and you had due opportunity
9 to structure your decision on protest based on
10 those entertainment hours.

11 MR. SIMPSON: And we protested
12 that.

13 MEMBER ALBERTI: Pardon?

14 MR. SIMPSON: And we --

15 MEMBER ALBERTI: And you
16 protested. So end of story. So I don't know
17 what the issue is there in terms of the
18 timing. You had notice that those were the
19 intended entertainment hours and you made your
20 decision based on that knowledge. There's
21 nothing being withheld from you.

22 MR. SIMPSON: Maybe a

1 clarification question for guidance for us.
2 So at the end of this proceeding you've asked
3 us to try to focus on specific, you know,
4 limitations we might want you to impose in
5 connection with this substantial change
6 request. If there are things that are, for
7 example, more related to the entertainment
8 then, do you want us to wait until August to
9 bring those things up?

10 MEMBER ALBERTI: (No audible
11 response.)

12 MR. SIMPSON: Okay. So --

13 MEMBER ALBERTI: I mean and just
14 part of the reason I was so particular on
15 focusing on what the issue is here, seems to
16 me that we're talking about extended hours for
17 the interior and we're talking about extended
18 hours for the outdoor cafe. End of story.
19 That's all the issues that are within the
20 preview of the discussion for today. So
21 that's --

22 CHAIRPERSON MILLER: All right.

1 Some --

2 MEMBER ALBERTI: -- and I wanted
3 to make sure that was clear.

4 MR. JAMES: We hear you, but it
5 makes us --

6 MEMBER ALBERTI: I empathize with
7 you.

8 MR. JAMES: -- do double duty and,
9 you know, discuss many of the same things.

10 MEMBER ALBERTI: Mr. James, I have
11 a role also as an ANC commissioner and so I
12 empathize with the difficulties that you're
13 facing.

14 CHAIRPERSON MILLER: Well, I still
15 say that if you can compartmentalize -- if
16 there are certain things -- like for instance,
17 if you're objecting to the later hours, you
18 can kind of focus on what it is that happens
19 during those later hours, you know? And
20 that's the subject, you know? It might not be
21 trash, you know? Trash might be related to
22 renewal. But it might be noise when people

1 are trying to go to sleep. I mean I don't
2 know. But that's the way I see the difference
3 between the hearings. And whatever you put in
4 the record today, what is it about these
5 hours?

6 MR. SIMPSON: I'll wait until I
7 testify --

8 CHAIRPERSON MILLER: Okay.

9 MR. SIMPSON: -- but I'll offer
10 it --

11 CHAIRPERSON MILLER: All right.
12 Well, we've kind of gotten off subject a
13 little bit, but --

14 MR. JAMES: Thank you. I'm sorry
15 that we had a diversion, but I think you might
16 help us --

17 CHAIRPERSON MILLER: If that helps
18 you focus here, good. Yes. All right. Did
19 you have any follow-up questions based on
20 Board questions?

21 MR. SIMPSON: (No audible
22 response.)

1 CHAIRPERSON MILLER: Okay. Did
2 you, Mr. James, primarily, you know, related
3 to the hours?

4 MR. JAMES: I'm sorry, I got a
5 little distracted by the --

6 CHAIRPERSON MILLER: All right.
7 The Board Members had a lot of questions, but
8 I think that the follow up may be -- you have
9 a right to ask questions based on Board
10 questions. But I would still suggest that
11 they be focused on the change of hours and the
12 impacts related thereto.

13 MR. JAMES: Yes, I think I have
14 one question.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: Will Libertine make
17 food, cooked food, not, you know, just bar
18 snacks like popcorn and peanuts and that sort
19 of thing -- will it make some sort of menu
20 items prepared by a cook or a chef available
21 throughout all of its hours to both the
22 interior and sidewalk cafe patrons?

1 MR. AUSLANDER: Food will be
2 available very late at night, yes.

3 MR. JAMES: That's not an answer
4 to my question. Will it be available if you
5 get there --

6 MR. AUSLANDER: Until 1:59 a.m.
7 On Monday night, honestly, probably at 1:59
8 I'd tell you no. But we will make food
9 available until very late at night, as we do
10 in our other establishments. We have
11 something available very late at night. And
12 especially with this concept where the late-
13 night food is part of the concept.

14 MR. JAMES: Thank you.

15 CHAIRPERSON MILLER: Okay. Thank
16 you very much. That complete your case? I
17 mean do you have any documents or anything you
18 wanted to offer into evidence? What do you
19 have that you would have like to present?

20 MR. AUSLANDER: Just documents.

21 CHAIRPERSON MILLER: No, we have
22 to decide whether we will admit them into

1 evidence.

2 MR. AUSLANDER: Oh.

3 CHAIRPERSON MILLER: So you have
4 to tell us what they are and give one to the
5 -- each to the opposing --

6 MR. AUSLANDER: Everything that
7 was in the PIF. Management resumes, samples
8 of food menus, customer reviews of our other
9 establishments.

10 CHAIRPERSON MILLER: You need to
11 give each of them a copy --

12 MR. AUSLANDER: Sure.

13 CHAIRPERSON MILLER: -- that they
14 can look at and see if they have any
15 objections that they want to raise to the
16 Board, and I should have a copy.

17 MR. JAMES: The Kalorama Citizens
18 has no objection to --

19 CHAIRPERSON MILLER: No objection?

20 MR. JAMES: Nor does the ANC.

21 CHAIRPERSON MILLER: Okay.

22 MR. JAMES: You can use the folder

1 later on.

2 CHAIRPERSON MILLER: Okay. All
3 right. The documents are admitted as
4 Licensee's Exhibit 1. Okay. That's it?
5 Okay. All right. Who's going first?

6 Okay. We have admitted the folder
7 of documents presented by the Licensee as
8 Licensee's Exhibit No. 1, which contains a
9 variety of documents primarily describing --
10 going to what's going to be at this
11 restaurant, I believe. Okay.

12 All right. Who's going next?

13 MR. JAMES: I will for the
14 Kalorama Citizens. Denis James.

15 CHAIRPERSON MILLER: Okay. You're
16 going to testify?

17 MR. JAMES: Yes.

18 CHAIRPERSON MILLER: Do you want
19 to go over there? All right. Do you swear to
20 tell the truth, the whole truth, nothing but
21 the truth?

22 MR. JAMES: I do.

1 CHAIRPERSON MILLER: Okay. Have a
2 seat. So --

3 MR. JAMES: I have a --

4 CHAIRPERSON MILLER: -- why don't
5 you identify yourself again there as the
6 witness? Okay.

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

10 MEMBER ALBERTI: Please speak up.
11 I'm sorry?

12 MR. JAMES: I'm a 43-year resident
13 of Adams Morgan, living in the same house on
14 Kalorama Road, very proximate to many of the
15 establishments, you know, that are always this
16 topic of conversation in Adams Morgan.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: I have a written
19 statement that I wish to put --

20 CHAIRPERSON MILLER: Okay.

21 MR. JAMES: -- bring in. So do I
22 need to give a copy of that to the -- and I

1 have copies for the Board.

2 CHAIRPERSON MILLER: (No audible
3 response.)

4 MR. JAMES: No? Okay.

5 CHAIRPERSON MILLER: No.

6 MR. JAMES: Even though it has
7 some additional information --

8 CHAIRPERSON MILLER: Oh, if it has
9 additional information, okay. If it's just
10 testimony, we always listen to -- I said if it
11 were just testimony, we listen to testimony,
12 so they don't have to read it. But if you
13 have additional documents that go with it --

14 MR. JAMES: But I do wish the
15 Board to have this.

16 CHAIRPERSON MILLER: Okay. We'll
17 follow along then. Okay. Is there anything
18 there you're going to make reference to though
19 that the Licensee needs to see?

20 MR. JAMES: Yes.

21 CHAIRPERSON MILLER: Okay. Then
22 they should have a copy. Thank you.

1 MR. JAMES: Okay. The Kalorama
2 Citizens Association closely monitors crime in
3 Adams Morgan. Much of it happens in the late
4 hours of ABC operations, midnight to 3:00 a.m.
5 and later after ABC establishments close. And
6 I note that that's 2:00 a.m. Sunday through
7 Thursday. Please see the attached MPD report
8 from March through May 2013 showing that both
9 violent and overall crime is up, not down, in
10 PSA 303, which is almost exclusively Adams
11 Morgan. Actually it is. Just it does not
12 include one little portion of Adams Morgan.
13 Otherwise, it's all -- PSA 303 has nothing in
14 it but parts of Adams Morgan.

15 Much of the crime occurs on 18th
16 Street in the wee hours. Patrons of sidewalk
17 cafes/summer gardens on the street are exposed
18 and vulnerable to street crime. In other
19 cases, patrons at these cafes in the later
20 hours can be a source of noise disturbance to
21 nearby residents.

22 And I might as well bring it -- so

1 there's the immediate MPD report from their
2 Web site, the single page, but then there's
3 another. I asked for the last five years for
4 this address, calls for service, and that
5 included some 251 reports. And I'm not going
6 to try to tell you that they're because of
7 this establishment, but I'm going to tell you
8 that they're the kinds of incidents that we
9 see up and down the street all the time. And
10 it creates an environment of, you know, much
11 disruption, much hubbub, much noise, a lot of
12 acting out, a lot of crazy behavior.

13 And this stapled copy, the calls
14 for service are just on the first page and
15 then I think there's six or seven 251s that
16 occurred in front of this building, but again
17 I'm not saying they're associated with the
18 establishment, but they kind of illustrate the
19 kind of crazy things that go on and why, you
20 know, exposing more people, you know, innocent
21 patrons who just want to have a good time to
22 circumstances that are sometimes dangerous,

1 you know, is not necessarily always a good
2 thing. So in 18 of 39 calls for service from
3 June 1st, 2008 to June 10th, 2013 are in the
4 12:00 midnight to 4:00 a.m. time range.

5 And now we'll go back to my
6 written narrative. Years ago the Kalorama
7 Citizens passed a resolution recommending that
8 the Public Space Committee not grant hours for
9 sidewalk cafes in Adams Morgan later than
10 11:00 p.m. Sunday through Thursday and 12:00
11 midnight Friday and Saturday due to the
12 potential for the type of disturbance
13 mentioned in the first paragraph.

14 Many establishments on 18th Street
15 either already do or will soon end operations
16 either inside or at the sidewalk cafe/summer
17 garden, or both, earlier than the legal limit.
18 These include -- and then all these pieces of
19 information that I list for each one are only
20 to do with a sidewalk cafe or a summer garden.

21 CHAIRPERSON MILLER: Okay.

22 MR. JAMES: So I do want to put

1 this on the record. Tryst is going to get a
2 sidewalk cafe soon. The application process
3 is underway and they've agreed to close it at
4 1:00 a.m. Sunday through Thursday and 2:00
5 a.m. Friday and Saturday. The Diner, the same
6 hours will apply there. Grand Central, the
7 voluntary agreement limits their -- requires
8 that they close the sidewalk cafe at 11:00
9 p.m. Sunday through Thursday, 12:00 midnight
10 Friday and Saturday. Mellow Mushroom, 11:00
11 p.m. Sunday through Thursday, 1:00 a.m. Friday
12 and Saturday. Meskerem Ethiopian Restaurant,
13 12:00 midnight Monday through Thursday, 1:00
14 a.m. Friday, Saturday, Sunday. Bardia's New
15 Orleans Cafe, a future sidewalk cafe coming.
16 He's going to close it at midnight seven days
17 a week. Little Fountain/Angles has a very
18 small current sidewalk cafe which they close
19 at 12:00 midnight seven days a week. La
20 Fourchette, sidewalk cafe closure 10:00 p.m.
21 Sunday through Thursday, 11:00 p.m. Friday and
22 Saturday. Black Squirrel, sidewalk

1 cafe/summer garden closure 12:00 midnight
2 Sunday through Thursday, 1:00 a.m. Friday and
3 Saturday. Ventnor Sports Cafe, there's a rear
4 summer garden that closes at 12:00 midnight
5 Sunday through Thursday, 1:00 a.m. Friday and
6 Saturday. Wok and Roll, which is at the
7 corner of 18th and Belmont, sidewalk cafe
8 closes at 11:00 p.m. Sunday through Thursday,
9 12:00 midnight Friday and Saturday.

10 I wont' read the rest. You get
11 the idea. But all those establishments have
12 less than full hours. Almost all of them are
13 within the stretch of 18th Street between
14 Columbia Road at the north and Kalorama at the
15 south.

16 This is not an exhaustive list,
17 but it should be clear to the Board that what
18 has been found appropriate over many years to
19 the protestant settlement process is that less
20 than the full possible hours for sidewalk
21 cafes is a widely accepted fact up and down
22 18th Street.

1 For Libertine the KCA has no
2 objection to the approval of any earlier
3 hours. It's the later hours when patrons
4 either inside or at sidewalk cafes have had
5 more alcohol and at closing when they depart
6 the neighborhood that residents are disturbed
7 by their activities. For proof of this
8 statement the KCA asks that the Board take
9 notice of the Adams Morgan moratorium final
10 rulemaking of 2008 which found that there was
11 disturbance of the peace, order and quiet for
12 the residents in the later hours.

13 The Board also needs to know that
14 the Applicants did not bargain in good faith.
15 Though we met with them at ABRA mediation and
16 presented a draft settlement agreement, the
17 Applicants refused to discuss any provision of
18 the draft. ANC 1C, RCNA, the Reed-Cooke
19 Neighborhood Association, and KCA met with the
20 Applicants again outside of the ABC Board
21 process and the result was the same. Not one
22 provision of the draft was every discussed.

1 Based on this statement, the KCA
2 requests that the Board find the request of
3 Tas, trading as Libertine, to be inappropriate
4 and to deny their request for later hours.
5 That's the end of my statement.

6 CHAIRPERSON MILLER: Okay. Thank
7 you. Let's start with the Licensee. Do you
8 have questions for Mr. James?

9 MR. AUSLANDER: Yes, I do. At the
10 membership meeting that -- where you guys
11 discussed this you had -- took a vote?

12 MR. JAMES: Yes, we did.

13 MR. AUSLANDER: What was the vote?

14 MR. JAMES: I don't recall, but it
15 was a majority in favor of protesting.

16 MR. AUSLANDER: Approximately how
17 many people were in attendance?

18 MR. JAMES: There was a quorum of
19 the KCA, which is one-third of the board
20 membership. It was --

21 MR. AUSLANDER: Nine people?
22 Fifty people?

1 MR. JAMES: No, I believe that
2 there was approximately 20 people total in
3 attendance, and they're not necessarily all
4 KCA members.

5 MR. AUSLANDER: Did anybody
6 express any problems with this establishment?

7 MR. JAMES: That's not a
8 requirement, but no, there were not individual
9 statements of concern.

10 MR. AUSLANDER: Has anybody ever
11 brought up at one of your meetings a problem
12 with 2435 18th Street?

13 MR. JAMES: Other than the
14 resolution that I wrote which the group
15 approved by voice -- by a show of hands, no.

16 MR. AUSLANDER: Okay. Has anybody
17 ever expressed a problem with any of our other
18 establishments in Adams Morgan?

19 MR. JAMES: Yes.

20 MEMBER ALBERTI: Wait, can I ask
21 for clarity in that? I don't understand the
22 question. Your question was, "Has anyone

1 expressed a problem with any of our other
2 establishments." "Other" is unclear to me.
3 I don't know what you mean by "our other
4 establishments." So if you could clear that
5 up for the record, it would be helpful.

6 MR. AUSLANDER: What I'm trying to
7 establish is this particular location has
8 never been --

9 MEMBER ALBERTI: No, no, no. What
10 do you mean by "out other establishments?"
11 Can you give me names?

12 MR. AUSLANDER: Ventnor and Black
13 Squirrel.

14 MEMBER ALBERTI: Okay. Thank you.

15 MR. AUSLANDER: Is it possible
16 that some of these would have been prevented
17 if there would have been patrons and we would
18 have been controlling the patio at some of
19 these times?

20 MR. JAMES: I have no idea. I
21 have no expertise.

22 MEMBER JONES: Point of

1 clarification. You say "some of these." Can
2 you --

3 MR. AUSLANDER: The --

4 MEMBER JONES: -- testify what the
5 "these" are?

6 MR. AUSLANDER: I'm pointing out
7 the -- Mr. James presented us with many calls
8 of service at 24 --

9 MEMBER JONES: Calls for service?
10 Okay.

11 MR. AUSLANDER: -- 35 18th Street,
12 many of which were after legal closing.

13 MEMBER JONES: Sure. Sure. I
14 just wanted to know what the "these" -- so
15 "these" are the calls of service. You can ask
16 the same question. I didn't know what you
17 were talking about. Your pronoun was not
18 specific.

19 MR. AUSLANDER: Okay.

20 CHAIRPERSON MILLER: Did you get
21 an answer? Sometimes it gets confusing when
22 -- did Mr. James answer your question?

1 MR. AUSLANDER: Do you think
2 having a sidewalk cafe could have prevented
3 some of these calls for service? Is it
4 possible?

5 MR. JAMES: I have no expertise.

6 MR. AUSLANDER: Okay.

7 MR. JAMES: I mean any police
8 matters -- I mean I learn about reports and I
9 read them and I see what goes on. I see from
10 my own experience in the neighborhood the
11 kinds of things that go on.

12 MR. AUSLANDER: As somebody who
13 lives in the community have you ever been out
14 on 18th Street past 1:30 and maybe enjoyed a
15 late patio?

16 MR. JAMES: Yes, from time to time
17 I have done that.

18 MR. AUSLANDER: Okay. Thank you.

19 CHAIRPERSON MILLER: Do you have
20 any questions?

21 (No audible response.)

22 CHAIRPERSON MILLER: Okay. Board

1 questions? Mr. Alberti?

2 MEMBER ALBERTI: Hello, Mr. James.
3 You gave us a list of several -- in your
4 testimony you listed several -- I can't really
5 look at -- the other documents aren't in
6 evidence yet, so I won't reference them. And
7 if you would like me to reference them, then
8 you should enter them into evidence, but --

9 MR. JAMES: I'm having trouble
10 hearing you, sir.

11 MEMBER ALBERTI: Do you want to --
12 I'll ask you this time. Do you want to -- I
13 don't really -- I can't really reference the
14 other documents. I can only reference
15 testimony right now because I don't -- these
16 other documents aren't in evidence, so I can't
17 really make remarks on the other documents.
18 Do you intend to put them into evidence?

19 MR. SIMPSON: My MPD thing that I
20 submitted?

21 MEMBER ALBERTI: Yes, do you
22 intend to put those into evidence?

1 MR. JAMES: Yes, I would like to.

2 MEMBER ALBERTI: Maybe we should
3 take care of that now, Ms. Miller.

4 CHAIRPERSON MILLER: That would be
5 fine. If you would like to, yes, use them in
6 a --

7 MEMBER ALBERTI: I'm not sure if I
8 would, but it may -- in case I need to --

9 CHAIRPERSON MILLER: All right.

10 MEMBER ALBERTI: -- it would be
11 helpful.

12 CHAIRPERSON MILLER: Well, what we
13 have is a calls for service document with
14 attached case summary reports. Are there any
15 objections by the parties to moving this
16 document into evidence?

17 MR. AUSLANDER: I would object on
18 the basis that 80 percent of the document does
19 not apply to our possession of 2435 18th
20 Street.

21 CHAIRPERSON MILLER: What
22 document? The first page has the address 2435

1 18th Street.

2 MR. AUSLANDER: Right, and --

3 CHAIRPERSON MILLER: Okay.

4 MR. AUSLANDER: -- we haven't been
5 in possession of this particular establishment
6 that long and a lot of these dates -- I mean
7 it goes back to 2008.

8 MR. JAMES: May I speak?

9 CHAIRPERSON MILLER: Yes, go
10 ahead.

11 MR. JAMES: The point -- and I
12 said as I described the document was that I
13 don't say that any of these things have
14 anything to do with the operation of the
15 establishment. They have to do with the
16 conditions on the street. And you would
17 probably get a similar list of calls for
18 service and the 251 reports for every address
19 on 18th Street between Kalorama and Columbia
20 Roads. So we're trying to give you a sense of
21 the conditions, and the conditions are not
22 always friendly to patrons at a sidewalk cafe

1 in the later hours. That was my only point.

2 CHAIRPERSON MILLER: Okay. I
3 would move to admit this document, calls for
4 service, and your arguments go to the weight
5 that we will give them. And I understand that
6 your point is to conditions dating back to
7 2008. Okay. So that is KCA's Exhibit No. 1.

8 Is there another document or not?
9 Is that it?

10 MR. JAMES: There's a single page
11 of --

12 CHAIRPERSON MILLER: A single
13 page?

14 MR. JAMES: Yes.

15 CHAIRPERSON MILLER: What is that?

16 MR. JAMES: That's from the
17 Metropolitan Police Department Web site. It
18 was -- we had 3rd District Commander Jacob
19 Kishter at our May meeting and that was a page
20 that was pulled off the Web site for us to
21 discuss with him the current crime in Adams
22 Morgan. And it happens to show that crime is

1 up.

2 And it's just another -- I think
3 it ties in with my testimony about the first
4 paragraph of what I wrote, that you know,
5 there's continuing crime in Adams Morgan. A
6 lot of it's centered on 18th Street and the
7 conditions of 18th Street with a lot of folks
8 out there late a night. And a lot of them
9 become victims of crime because -- I'm getting
10 into testifying about something. I don't know
11 if that's -- but you know, folks who have been
12 drinking often either live in the neighborhood
13 or they're going back to their cars and they
14 become victims of crime because they're
15 inebriated and they're easy targets.

16 CHAIRPERSON MILLER: Okay. Three-
17 oh-three is the Adams Morgan area, is that it?

18 MR. JAMES: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MR. JAMES: It is almost all of
21 Adams Morgan. Just one little corner near
22 16th and U has been removed in recent years.

1 CHAIRPERSON MILLER: Okay. Any
2 objection?

3 MR. AUSLANDER: (No audible
4 response.)

5 CHAIRPERSON MILLER: Okay. So
6 this is admitted as KCA Exhibit No. 2.

7 All right. Mr. Alberti, did you
8 want to ask some questions on --

9 MEMBER ALBERTI: Okay. Yes, Mr.
10 James, you gave us a list of establishments,
11 and I'm looking only at the ones with summer
12 gardens, because I mean it's -- sidewalk
13 cafes, because I think for me that it's easier
14 to compare those to what we're talking about
15 than -- I don't think it's a fair comparison
16 to compare what we're discussing here with a
17 summer garden.

18 MR. JAMES: If I might, can I ask
19 for a point of clarification?

20 MEMBER ALBERTI: No.

21 MR. JAMES: Okay.

22 MEMBER ALBERTI: I'm just telling

1 you what I think is fair. Point of
2 clarification on your list?

3 MR. JAMES: That some summer
4 gardens are also mixed in with the sidewalk
5 cafe space on 18th Street. There is maybe a
6 little bit of private space and then there's
7 public space. That's all.

8 MEMBER ALBERTI: Okay.

9 MR. JAMES: So sometimes they're a
10 combination of the two, and it's all
11 administered by the DDoT Public Space
12 Committee.

13 MEMBER ALBERTI: And so is that
14 all -- are those what's included in your list?
15 When we're talking about summer garden here,
16 we're not talking about rooftop or rear --

17 MR. JAMES: The only one; and I
18 included it, that has a rear is -- and there
19 -- it's listed is Ventnor Sports Cafe.

20 MEMBER ALBERTI: Okay. So thank
21 you for that. So you understood where I was
22 going with that? Okay. So there are many

1 other establishments that have sidewalk cafes
2 along 18th Street, is that correct?

3 MR. JAMES: There are numerous
4 others, yes.

5 MEMBER ALBERTI: All right. Do
6 any of them have hours until 2:00 to 3:00 in
7 the morning?

8 MR. JAMES: Yes.

9 MEMBER ALBERTI: Do any of them
10 have sidewalk cafe until 3:00 in the morning
11 on weekends?

12 MR. JAMES: May I mention names so
13 that I can sort of --

14 MEMBER ALBERTI: Yes.

15 MR. JAMES: Okay.

16 MEMBER ALBERTI: Yes, go ahead.

17 MR. JAMES: To my understanding
18 that's the case with Madam's Organ, Meze. I
19 don't know about Jyoti, the Indian restaurant.
20 I don't know about Carriage House, which was
21 once called Tom-Tom. There are very others
22 that aren't either on this list or that exist.

1 You know, there's a few further down that I
2 just don't have enough information to have
3 even included them on the list. Like there's
4 one called The Blaguard which recently got a
5 small sidewalk cafe. But it's --

6 MEMBER ALBERTI: What about
7 Bourbon?

8 MR. JAMES: Bourbon has --
9 actually has a public space permit, but they
10 don't use it for seating. They put a
11 decorative barrel, like a whiskey barrel or
12 something like that.

13 MEMBER ALBERTI: But they don't
14 serve out there?

15 MR. JAMES: But they do have a
16 rear summer garden, but I didn't include --

17 MEMBER ALBERTI: Okay.

18 MR. JAMES: -- that information.
19 Columbia Station has a sidewalk cafe and I --
20 well --

21 MEMBER ALBERTI: What about
22 Muzette?

1 MR. JAMES: Pardon me?

2 MEMBER ALBERTI: Muzette?

3 MR. JAMES: Muzette does not have
4 any outside space. Columbia Station may very
5 well have permission to --

6 MEMBER ALBERTI: I'm just going
7 off the list that I have.

8 MR. JAMES: Yes.

9 MEMBER ALBERTI: As I've admitted
10 this information is not always correct.

11 MR. JAMES: Yes. This is -- by
12 the way, I gathered this information almost
13 exclusively from board orders of the voluntary
14 agreements that the Kalorama Citizens is party
15 to or from the recent renewal placarding by
16 ABRA.

17 MEMBER ALBERTI: Okay. Well, so
18 listed two, Madam's Organ and Meze. Madam's
19 Organ, the sidewalk cafe, how large is it?

20 MR. JAMES: That's one that's a
21 combination of summer garden and sidewalk
22 cafe, I believe.

1 MEMBER ALBERTI: Okay. Just let
2 me -- so the area that's outside that we're
3 referencing for Madam's Organ, is it all in
4 front facing --

5 MR. JAMES: It's all in front of
6 the --

7 MEMBER ALBERTI: All in front
8 facing 18th Street?

9 MR. JAMES: Yes.

10 MEMBER ALBERTI: Okay. So that
11 outdoor space --

12 MR. JAMES: Yes.

13 MEMBER ALBERTI: -- how large is
14 it?

15 MR. JAMES: In feet, I'd have to
16 guess. I know that it seats 14 people told.
17 There's 14 capacity allowed there. I'm not
18 trying to confuse the issue, but I believe
19 some of it is summer garden and some public
20 space sidewalk cafe.

21 MEMBER ALBERTI: All right. And
22 I'm talking about outdoor space there.

1 MR. JAMES: And it's probably, you
2 know, something like 16 or 18 feet wide and --

3 MEMBER ALBERTI: So it's about
4 14 --

5 MR. JAMES: -- 12 feet deep, or
6 something.

7 MEMBER ALBERTI: It's a capacity
8 of 14 seats, or approximately?

9 MR. JAMES: Yes, I believe that's
10 the --

11 MEMBER ALBERTI: You know how long
12 it's been open?

13 MR. JAMES: They recently added
14 the sidewalk cafe part for four seats, but
15 prior to that there had been space that we --
16 I think we learned that it's a summer garden,
17 but we're not absolutely sure. I'm sorry to
18 be so equivocating, but the permissions were
19 not easy to discern.

20 MEMBER ALBERTI: Sure.

21 MR. JAMES: But for many, many
22 years they had some outside space.

1 MEMBER ALBERTI: And they're open
2 until what hours?

3 MR. JAMES: Until the full legal
4 limit of 2:00 and 3:00.

5 MEMBER ALBERTI: So 2:00 on
6 weekdays and 3:00? Have there been any
7 problems associated with that summer garden?

8 MR. JAMES: I would say that there
9 have been. They've resulted in the KCA
10 protesting at Madam's Organ's license because
11 of noise emanating from the establishment and
12 the way that it's run with an outside
13 loudspeaker and a window that they leave open.
14 But, you know --

15 MEMBER ALBERTI: But do those
16 complaints specifically relate to the outdoor
17 space?

18 MR. JAMES: I believe they do,
19 because I think that the operator leaves it
20 open to attract patrons to his outside space,
21 so he can have like a concert on the sidewalk.

22 MEMBER ALBERTI: Okay.

1 MR. JAMES: His band plays
2 directly inside the front wall. But anyway,
3 I mean, well --

4 MEMBER ALBERTI: The band plays
5 directly inside the front wall, but how is
6 that related to the outdoor -- to the effects
7 that the outdoor space may have on peace,
8 order and quiet?

9 MR. JAMES: Well, it's an easy
10 one. If you have a band playing inside a room
11 and you have an outside speaker and the window
12 is left open, the music emanates outward; and
13 it's amplified music on top of that, that is
14 projected out into the community where, you
15 know, it's --

16 MEMBER ALBERTI: Okay. So --

17 MR. JAMES: I don't have a --

18 MEMBER ALBERTI: So if there
19 wasn't -- so if they didn't have speakers
20 outside, amplified music -- sound emanating
21 outside from the interior speakers out there,
22 all right, would it be a problem --

1 MR. JAMES: No, I think that would
2 be --

3 MEMBER ALBERTI: -- at that late
4 hour?

5 MR. JAMES: For that -- I would
6 walk by and I would say that's not a problem.
7 If the window were kept closed and the outside
8 speakers we're not broadcasting music from
9 inside.

10 MEMBER ALBERTI: We're getting
11 someplace. What about Meze, any problems
12 there?

13 MR. JAMES: No, Meze is a very
14 well-behaved establishment. We have a
15 voluntary agreement with them and, you know,
16 I'm sure the Board is aware that they're
17 seeking to either amend or terminate it, and
18 one of the issues is this --

19 MEMBER ALBERTI: Okay. So --

20 MR. JAMES: -- sound on the
21 sidewalk cafe.

22 MEMBER ALBERTI: Okay. So if this

1 Licensee said to you hypothetically I'm going
2 to agree with you -- with the KCA not to have
3 amplified sound on the outdoor cafe, would
4 that alleviate your concerns about their
5 request to extend their license hours by a
6 half hour during the week and one hour on
7 weekends?

8 MR. JAMES: It would be helpful.
9 If I might note that the investigator's report
10 said that they hadn't done any soundproofing
11 and there's nothing that says that they're
12 willing to keep the doors and windows closed
13 to the front of the establishment.

14 MEMBER ALBERTI: Okay. So if all
15 of that was done would it alleviate your
16 concerns? So if they kept all doors and
17 windows so the people on the patio couldn't
18 share in the music from the inside is what I'm
19 hearing you -- assuming you're saying and they
20 had no amplified sound out there.

21 MR. JAMES: Yes, that would --

22 MEMBER ALBERTI: That would

1 alleviate your concerns?

2 MR. JAMES: Yes, that's the sort
3 of the agreement that the Kalorama Citizens
4 Association has made repeatedly over the
5 years, not always maximum hours, because you
6 know, that's another point of negotiation for
7 an application. You know, it's --

8 MEMBER ALBERTI: Well, I mean
9 let's -- I'm going to be quite honest with
10 you. We're really talking here about an
11 establishment that already has their license.
12 Let's forget about what's coming down the pike
13 and about another protest. But right now
14 today we're talking about an establishment
15 that's licensed until 1:30 during the week and
16 2:00 on weekends for that outdoor space. All
17 right?

18 So I got to know what that extra
19 hour is going to be doing or how that extra
20 hour is going to impact peace, order and
21 quiet, because that's really the issue here.
22 And just so that you know where I'm coming

1 from. And what I'm hearing you say, look, you
2 know, for that extra hour or whenever it is if
3 there's no amplified sound out there and
4 they're not projecting any sound onto that
5 outdoor cafe, that would alleviate our
6 concerns about the extension of hours.

7 MR. JAMES: I don't quite look it
8 as that simplistic.

9 MEMBER ALBERTI: We know you
10 don't.

11 MR. JAMES: I look at it as their
12 operation, you know, for -- because an
13 entertainment endorsement was added -- I mean
14 I have to look at it holistically because I
15 know what has been placarded. So, you know,
16 I don't want to come back here in August if I
17 don't have to. I'd much rather have resolved
18 all these matters or tried. We've certainly
19 tried. But, you know, I would say that that
20 would -- those conditions would have to
21 pertain to, you know, the bulk of the hours
22 for the sidewalk cafe at night, you know?

1 There would be some point --

2 MEMBER ALBERTI: I understand.

3 MR. JAMES: -- which we could come
4 to agreement or that I would say, yes, that's
5 definitely effective from a certain hour onto
6 the end, maybe 10:00 p.m. or something like
7 that.

8 MEMBER ALBERTI: I know. I'm
9 being a little -- I'm not -- right. I
10 understand what you're saying, Mr. James.

11 MR. JAMES: I appreciate the
12 opportunity to --

13 MEMBER ALBERTI: Thank you. This
14 has been very helpful. Thank you.

15 CHAIRPERSON MILLER: Others?

16 (No audible response.)

17 CHAIRPERSON MILLER: No other
18 questions?

19 (No audible response.)

20 CHAIRPERSON MILLER: No, I'd like
21 to ask a question. You're objecting to the
22 later hours. I just want to just make sure

1 for the record. Sunday it's changing from
2 10:00 to 2:00 a.m., Monday through Thursday
3 1:30 to 2:00, Friday, Saturday 2:00 to 3:00.
4 That's the sidewalk cafe. And then from my
5 review of inside, Monday through Thursday 1:30
6 to 2:00. So I want to just clarify. Are you
7 objecting to all of those or just some of
8 those? Are you objecting to just sidewalk
9 cafe or --

10 MR. JAMES: No, we're objecting to
11 the later hours of operation inside and out.

12 CHAIRPERSON MILLER: Okay. And as
13 is? It's not like, oh, Sunday 11:00 would be
14 fine or -- it's just as --

15 MR. JAMES: Well, our protest is
16 based upon objecting to all the later hours in
17 an establishment that already has lots of late
18 hours.

19 CHAIRPERSON MILLER: I'm sorry,
20 all the later hours what?

21 MR. SIMPSON: All the later hours
22 in a substantial change to an establishment

1 that already has lots of late hours, you know?
2 And we get -- we -- over the many years, you
3 know, we've seen so many of these types of --
4 this is a restaurant license. It's not a
5 tavern. There's no nightclub licenses in
6 Adams Morgan. So then when we see this sort
7 of thing, it's often a signal that, you know,
8 there's a massive change or, you know, a major
9 change of nature of operation coming to this
10 establishment. And sometimes it really means,
11 you know, we're going to become a morphed
12 nightclub, you know?

13 But I'm not suggesting that's the
14 case here, but it makes or antenna go up when,
15 you know, a place that is claiming that it's
16 going to be doing major food and good food,
17 that sort of thing, but we got to have that
18 entertainment endorsement, got to have those
19 later hours. But by the way, we probably
20 won't be serving food at those later hours, or
21 not significant food, you know? Just that's
22 when, you know, we have our problems in these

1 later hours.

2 CHAIRPERSON MILLER: Okay. Well,
3 all right. So let me hear from you -- this is
4 about peace, order and quiet and the impact of
5 the change on that. What I heard you say
6 earlier was a concern that patrons could
7 become victims because of the increase in
8 crime in the Adams Morgan area.

9 MR. JAMES: I don't disagree with
10 that.

11 CHAIRPERSON MILLER: You don't
12 disagree with that?

13 MR. JAMES: No, I mean --

14 CHAIRPERSON MILLER: No, you kind
15 of said that, but is that really -- is that
16 the sidewalk cafes' impact on peace, order and
17 quiet?

18 MR. JAMES: It could be. Folks
19 who are sitting at a sidewalk cafe until 2:00
20 or 3:00 a.m. could be inebriated. They could
21 have just been drinking and not eating at all,
22 or a combination of both, and still -- you

1 know, it's late. They're tired. They're
2 under the influence of alcohol. There are
3 many folks who come to our neighborhood to
4 prey on those who are easy victims.

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: The police talk about
7 this every time they come before the
8 community.

9 CHAIRPERSON MILLER: Oh, they're
10 like an attractive nuisance?

11 MR. JAMES: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. JAMES: And they can be either
14 residents of the neighborhood or they can be
15 folks, like I mentioned, walking back to their
16 cars, which can often be parked very, very far
17 away from the establishment.

18 CHAIRPERSON MILLER: Can you
19 address the Licensee's argument that having a
20 cafe in a public space is safer than having
21 loiterers in that space?

22 MR. JAMES: There's no anti-

1 loitering law in the District of Columbia. I
2 think that the argument has some weight in the
3 hours that, you know, one would expect to be
4 dining out at a sidewalk cafe, you know? I'm
5 not trying to make value judgments about
6 people's lifestyles, but I think reasonable
7 times for dining might be anywhere from 5:00
8 p.m. to 11:00, or you know, even like maybe
9 after a theater or something like that you
10 come back, midnight, you know?

11 But after that, there's certainly
12 an element of folks that come to Adams Morgan
13 to take advantage of the situation there. I
14 mean there's -- when you take into
15 consideration the fact that we have over 7,000
16 seats of ABC occupancy in the neighborhood and
17 it's a very densely populated neighborhood --
18 we've got -- you know, it's very urban. The
19 street grid there isn't all just, you know,
20 square. There are lots of little curvy alleys
21 and nooks and places for people to hide and
22 linger in.

1 CHAIRPERSON MILLER: Let me ask
2 you this then, because I understand your
3 general concern. Are there any conditions
4 though that could be included in the order or
5 even a settlement agreement; you know, we're
6 saying this is the alternative to that, that
7 would address that concern? Or it's just, no,
8 just the earlier --

9 MR. JAMES: Well, to either not
10 grant the additional late hours or -- you
11 know, one thing that -- this is -- well, it's
12 -- because you mentioned settlement
13 agreements, am I free to talk about settlement
14 agreements?

15 CHAIRPERSON MILLER: Just a little
16 bit. I just meant that conditions could be in
17 either place. That was my point.

18 MR. JAMES: Right. Well, noise is
19 one of the things that we care about most in
20 our settlement agreements and we've refined
21 that to a high degree, that -- and this Board
22 has many times approved language that

1 basically says sound from the establishment
2 will not intrude into residences. It doesn't
3 say in R Zones, in C Zones. It means somebody
4 living nearby in their home should not hear
5 your noise.

6 CHAIRPERSON MILLER: Right.

7 MR. JAMES: And something along
8 those lines would be very helpful. And I
9 don't believe that the Applicants want to
10 disturb people in their homes. I think that
11 sometimes that happens as a byproduct of
12 running a business. Something that plagued
13 Adams Morgan and we dealt with it in
14 settlement agreements many times was pub
15 crawls, and we have -- I believe every
16 voluntary agreement that's in force right
17 now --

18 CHAIRPERSON MILLER: But that
19 wouldn't relate to this issue.

20 MR. JAMES: Pardon me?

21 CHAIRPERSON MILLER: That wouldn't
22 relate to this issue, would it? They don't go

1 at 1:30 at night or --

2 MR. JAMES: Pub crawls go --
3 generally they go until closing. They're
4 chosen -- like they go ridiculous hours, like
5 starting around noon until closing on weekend
6 days. But we haven't had them for many years,
7 and we're very glad that the Board has seen to
8 approve that language many, many times.

9 CHAIRPERSON MILLER: Okay. So
10 that would be a condition that would address
11 some of your concern about peace, order and
12 quiet, is pub crawls couldn't be allowed that
13 late at night?

14 MR. JAMES: No, we would hope to
15 have sort of an equal footing. If the Board
16 would consider that prohibition, it would be
17 similar to the language that you would find in
18 our other voluntary settlement agreements,
19 just that the establishment won't participate
20 in such events.

21 CHAIRPERSON MILLER: Okay. But we
22 are trying to -- I mean this hearing is about

1 the change in hours, so --

2 MR. JAMES: Right.

3 CHAIRPERSON MILLER: -- I'm trying
4 to look at, you know, if there was --

5 MR. JAMES: But a bunch of pub
6 crawlers on the sidewalk cafe late at night
7 could be a rowdy bunch.

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: The noise. Sound
10 prevention conditions within the
11 establishment. I mean if they wanted to have
12 music -- their application talks about
13 different types of I'm assuming bands or
14 singer/songwriters. If they were to have that
15 and not have to keep their front doors closed,
16 that would be, you know, a disturbance of the
17 peace, order and quiet in our opinion.

18 CHAIRPERSON MILLER: Okay.

19 Anybody else? Mr. Jones?

20 MEMBER JONES: Thank you, Madam
21 Chair.

22 Are you familiar with the Black

1 Squirrel establishment?

2 MR. JAMES: The which?

3 MEMBER JONES: The Squirrel --

4 MR. JAMES: The Black Squirrel,
5 yes.

6 MEMBER JONES: -- Black Squirrel
7 establishment?

8 MR. JAMES: Yes.

9 MEMBER JONES: Do you have any
10 concern of how it's being operated currently?

11 MR. JAMES: Nothing of
12 significance --

13 MEMBER JONES: Okay.

14 MR. JAMES: -- that's worth
15 talking about. You know, we do hope that all
16 restaurants in Adams Morgan meet their food
17 requirements.

18 CHAIRPERSON MILLER: They what?

19 MR. JAMES: That they meet their
20 statutory food requirements.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER JONES: You said you hope

1 that?

2 MR. JAMES: We hope that. We hope
3 that the Board would pay attention and enforce
4 that whenever possible.

5 (Laughter.)

6 MEMBER JONES: Okay. But that's
7 not necessarily an issue with -- to me, what
8 I heard, it's not necessarily an issue with
9 Black Squirrel. It's an issue with whether or
10 not ABRA and the Board are doing its due
11 diligence to make sure they're adhering to the
12 regulations. So outside of that it doesn't
13 sound like there's any major issue that you
14 have with how the Black Squirrel is being
15 operated.

16 MR. JAMES: I would agree with
17 that.

18 MEMBER JONES: Okay. Ventnor
19 Sports, I think that's the name of the
20 establishment, do you have any issues with how
21 that's operated?

22 MR. JAMES: I've been a customer

1 of there many times. They do a decent menu of
2 pub food. And I just think it's worth
3 mentioning that in an effort to help the
4 establishment with its food numbers the
5 Kalorama Citizens and ANC 1C agreed to the
6 addition of a rear patio which resulted in
7 their having a protest hearing about the noise
8 from that patio in front of this Board. But
9 conditions were, you know, put in place and
10 I'm assuming that they're being adhered to
11 because I haven't heard anything further about
12 that. But that took place in 2010. And again
13 we wish them well on their food and I hope
14 that after all this is over I can be a
15 customer there again and watch my Baltimore
16 Orioles. Oh, and the Nationals.

17 MEMBER JONES: So I'm going to
18 take that as a no that you don't --

19 (Laughter.)

20 MEMBER JONES: -- seem to have any
21 major concern with how Ventnor Sports, the
22 establishment is being operated?

1 MR. JAMES: No.

2 MEMBER JONES: Currently. Do you
3 have SA or settlement agreements in place with
4 both of those establishments?

5 MR. JAMES: Yes, we do.

6 MEMBER JONES: KCA?

7 MR. JAMES: Yes.

8 MEMBER JONES: Okay.

9 MR. JAMES: They're joint
10 agreements with the ANC. And in the case of
11 the Black Squirrel also with the Reed-Cooke
12 Neighborhood Association.

13 MEMBER JONES: Okay. Outside of
14 the governance associated with the SA do you
15 have any reason to believe that the nature of
16 how the two -- or the ownership group of
17 Libertine -- do you have any concerns or
18 reason to believe that they would operate
19 Libertine in a way that is significantly
20 different than the other two establishments?

21 MR. JAMES: There's such a, you
22 know, resistance to having an agreement or to

1 even, quite very honestly, you know, to
2 negotiate an agreement, to take up the points
3 and discuss them is something that I've never
4 run into the 13 years I've been doing this
5 work for the Kalorama Citizens Association.
6 So it does make me wonder, you know, what is
7 their intention?

8 I mean one of the things that you
9 see is licensees like to maximize the value of
10 the license by not having any conditions
11 attached to it. So, you know, full hours,
12 entertainment and no conditions. Well, that's
13 fine for them, but about the community? You
14 know, it's something that they really do care
15 about. So I appreciate the question.

16 MEMBER JONES: Okay. And the
17 reason why I ask is because I typically -- and
18 I'm naive. I'm new, young, don't know a whole
19 lot about stuff. But most places -- I mean
20 most -- human nature, you don't typically
21 deviate that far from what you've found
22 success in in the past, you know? And if you

1 have a bad apple, they're probably going to be
2 a bad apple going forward. If you have a good
3 operator, they're probably going to be a good
4 operator going forward.

5 So based on the nature of how
6 these individuals, this ownership group has
7 been known to operate, my feel; and it's
8 purely just a feel as an individual Board
9 Member, is that I wouldn't anticipate that
10 they'd deviate much from where they have found
11 success in the past. Doesn't mean that they
12 won't. And I understand what you're
13 indicating is they're adamant vehement
14 reluctance to even talk to you about regarding
15 the KCA's desire to enter into an SA with
16 them. I could understand how that would set
17 off some levels of concern for you.

18 But putting that aside, if it's
19 possible for you to do so in answering this
20 question --

21 MR. JAMES: Right.

22 MEMBER JONES: -- if it's

1 possible, and I understand if it can't be
2 done; and you can say that as well, but do you
3 really have any feeling that they intend to
4 operate in a manner significantly different
5 from what you know them to have done in their
6 current -- or to be doing, I should say, in
7 their current operations?

8 MR. JAMES: I think it's somewhere
9 in the middle. I'd hate to be --

10 MEMBER JONES: Okay.

11 MR. JAMES: -- equivocating. If I
12 could just -- because of -- if it weren't for
13 the desire to have the entertainment
14 endorsement and no -- you know, no conditions
15 -- that gives me pause. But I take your point
16 and I do -- you know, every -- all the
17 testimony we've heard today about their food
18 interests and the way they're going to run the
19 place -- you know, they've spent a lot of
20 money and effort and care in the renovations;
21 I haven't seen them in person, but I've heard
22 them described and I've seen the photographs,

1 I mean that matters. That makes -- that helps
2 set the tone for an establishment. If it's
3 like a junk place, it will get treated that
4 way by patrons.

5 MEMBER JONES: Right.

6 MR. JAMES: But if it looks good,
7 there's more chance it will be respected.

8 MEMBER JONES: Okay.

9 MR. JAMES: It's not an easy
10 question.

11 MEMBER JONES: No, and I --

12 MR. JAMES: I hope you appreciate
13 the hat, you know? But, you know, that's
14 something I will hope for.

15 MEMBER JONES: Understood. And
16 just one last thing: I know that you touched
17 on it a bit with Board Member Alberti's
18 questions, but I just want to make sure I'm
19 clear on it. If there was one thing or one or
20 two top things that you would want to have to
21 see in place for you to feel comfortable with
22 this Licensee operating this establishment,

1 what would that or those things be as it
2 relates to the specific narrow focus of this
3 hearing?

4 MR. JAMES: Noise protections I
5 think are the thing that I care about the
6 most, with a close second being less
7 additional late hours, because those are the
8 times when we're trying to go to sleep as
9 residents, and operation of drinking
10 establishments that late often lead to noisy
11 outbursts.

12 MEMBER JONES: Okay. So if there
13 were some elements that said no amplified
14 music outside and no patrons outside after a
15 certain hour, those are the types of things
16 that you're referring to, or am I missing the
17 mark?

18 MR. JAMES: No, I think those
19 are --

20 MEMBER JONES: I'm not saying that
21 those specific -- are the specific items --

22 MR. JAMES: Right, those are

1 possibilities.

2 MEMBER JONES: -- but they're in
3 the family, in the --

4 MR. JAMES: Correct.

5 MEMBER JONES: Okay.

6 MR. JAMES: Those are
7 possibilities. Generally speaking if we're in
8 a situation in Adams Morgan where we are
9 likely to come to an agreement, we -- it's
10 many, many agreements that there would be no
11 outside loudspeakers or sound amplification
12 devices of any kind.

13 MEMBER JONES: Okay. And I'm sure
14 you've thought about this a bit. Given what
15 I know of you, I would ask what would be your
16 going-in proposal? And I'm not asking -- and
17 I'm trying to be careful how I ask, because I
18 don't want to know about your negotiations, if
19 there were any, or any intimacies of the
20 discussions you've had regarding your SA
21 attempts, but from the standpoint of what
22 would make you -- what would you be

1 comfortable with in an agreement if -- or what
2 would you be -- forget the agreement. What
3 would you be comfortable with from an
4 operations standpoint? Do you have a
5 proposal? Do you have a thought? Hours up to
6 this point. No music after this hour. I'm
7 not saying that I would agree with that. I
8 just want to understand where you're coming
9 from.

10 MR. JAMES: Well, you know, they
11 do have close to the maximum hours already and
12 just that felt -- the Kalorama Citizens felt
13 that adding more was a dangerous signal, or
14 you know, a signal of possible disturbance for
15 us. I don't mean dangerous like, you know,
16 violence and that sort of thing. I just mean
17 a signal that it's something to watch out for
18 for residents.

19 I would say that if we had
20 adequate noise protections throughout the
21 operation -- we've many times agreed to later
22 hours if we felt confident enough that the

1 noise protections were good.

2 MEMBER JONES: Okay. Fair enough.

3 MR. JAMES: That's really what it
4 boils down to. We don't want to be disturbed
5 in our homes. You know, that's a lot of it.
6 But we do -- you know, the externalities that
7 we always talk about here, you know, crime and
8 that sort of thing.

9 MEMBER JONES: Thank you.
10 Completely understood. Appreciate your
11 response.

12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Others?

14 (No audible response.)

15 CHAIRPERSON MILLER: Are you
16 disturbed in your homes from patrons eating at
17 a sidewalk cafe at this location?

18 MR. JAMES: Me personally?

19 CHAIRPERSON MILLER: No, is your
20 organization aware that noise from this
21 particular sidewalk cafe is heard in
22 residential places? I'm not aware of where

1 the nearest residences are per se right now.

2 MR. JAMES: I was trying to bring
3 that out when I was asked -- questioning Mr.
4 Auslander. There's some -- I'm not sure how
5 many, I think three or four very high-priced
6 condos directly across the street and there's
7 a smattering of people on the same side as his
8 establishment live above their restaurants, or
9 maybe a few apartments. But beyond -- like if
10 it were a noisy establishment, the sound could
11 easily be heard in the backs of four medium-
12 sized apartment buildings that are on Columbia
13 Road. You know, I'm not saying that I expect
14 that from these operators, but understanding,
15 you know, it could be.

16 CHAIRPERSON MILLER: But you're
17 not talking about the normal sounds from
18 patrons, are you? Are you talking about music
19 or amplified sound?

20 MR. JAMES: Oh, I'm sorry. You
21 just said sounds of patrons. You qualified
22 it. I'm sorry.

1 CHAIRPERSON MILLER: Yes, like for
2 instance, this is about, you know, can a cafe
3 stay open later, like instead of 1:30, stay
4 open until 2:00? And I think the Board cares
5 a lot about residents who might be trying to
6 go to sleep hearing noise late a night. What
7 I haven't heard in this hearing is that there
8 are residents that are being disturbed by the
9 fact that --

10 MR. JAMES: Right.

11 CHAIRPERSON MILLER: -- patrons
12 are the sidewalk cafes say at 1:30.

13 MR. JAMES: Well, of course
14 there's the problem that these are new owners
15 who operated for a brief time and then have
16 been closed for a similar amount of time.

17 If I might give an example, I live
18 close to a sidewalk cafe that's on my corner
19 of Kalorama and 18th, and it's all hard
20 surfaces and it's got -- even though it's got
21 a roof on it, and they have some pull-down
22 plastic-kind of windows, the sound

1 reverberates and it echoes back and forth.

2 And if I have my window open, I can hear.

3 CHAIRPERSON MILLER: Right.

4 MR. JAMES: Simple as that. And
5 sometimes even with the windows closed. I
6 have old windows.

7 CHAIRPERSON MILLER: So we're
8 talking about this one though.

9 MR. JAMES: Yes, we're talking
10 about this one. I'm not saying --

11 CHAIRPERSON MILLER: And Meze is
12 next door, too.

13 MR. JAMES: I just imagine --
14 because we're -- we try to be as
15 representative as possible of our members, so
16 if we have members who live nearby, we just
17 sort of project what, you know, we hope for
18 everyone, that there be protections against
19 that kind of thing.

20 CHAIRPERSON MILLER: Okay.
21 Anything else?

22 (No audible response.)

1 CHAIRPERSON MILLER: All right.

2 Thank you very much.

3 MR. JAMES: Thank you.

4 CHAIRPERSON MILLER: You'll get a
5 chance to respond probably in -- okay, in
6 closing or -- okay. Does the ANC have
7 testimony?

8 MR. SIMPSON: (No audible
9 response.)

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

13 MR. SIMPSON: I do.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. You want to start with identifying
16 yourself for the record?

17 MR. SIMPSON: I'm William Simpson.
18 I'm the Chair of Advisory Neighborhood
19 Commission 1C.

20 CHAIRPERSON MILLER: Okay.

21 MR. SIMPSON: Thank you for the
22 opportunity to speak today. I'll keep this to

1 just a few minutes.

2 MEMBER SILVERSTEIN: Speak up, Mr.
3 Simpson.

4 MR. SIMPSON: Sorry. Will do.
5 One of the critical questions we've been faced
6 with in the hearing today is what is the norm
7 for Adams Morgan? What's normal? When we
8 were talking about hours that some of the
9 establishments are open until, we pointed to
10 a number of establishments that close either
11 at the times that this current license closes,
12 or even at earlier hours. The Applicant tried
13 to characterize that as abnormal, but really
14 there are overlapping norms on 18th Street.

15 And on behalf of the Advisory
16 Neighborhood Commission, I would assert that
17 there's a good norm that's highlighted by some
18 of the establishments we've pointed to, and
19 then there's a very bad norm. And that is
20 what the ANC is trying to avoid here and
21 trying to avoid with a history, a longstanding
22 history of trying to work with licensees to

1 create a better environment on 18th Street and
2 in Adams Morgan.

3 This very Board, as I think most
4 of us in the room are aware, has itself
5 characterized what the bad norm of Adams
6 Morgan is. In the Board's ruling on the Adams
7 Morgan moratorium you described Adams Morgan
8 as having significant problems with peace,
9 order and quiet, particularly with respect to
10 criminal activity, noise, litter, disorderly
11 conduct, crowd control and vehicular and
12 pedestrian safety, as well as parking problems
13 that continue to exist in Adams Morgan during
14 late evening hours.

15 And these are abstractions. The
16 late-night conditions in Adams Morgan
17 intimately and adversely impact the lives of
18 many, many people in our community. At one of
19 the spectrum is the routine annoyance of being
20 awoken from sleep most weekends as drunken
21 idiots yell or sing or kick over garbage cans
22 as they make their way home from 18th Street.

1 At the other end of the spectrum our community
2 is a target for criminals who know that they
3 can count on Adams Morgan establishments to
4 get patrons drunk, making them easy prey as
5 they walk home, or worse, as they walk back to
6 vehicles.

7 I have personally been awakened by
8 an witness the tail end of attacks from my own
9 bedroom window. I have friends and neighbors
10 who've been assaulted, including at gunpoint.
11 And I've had to testify before a grand jury.

12 These are not isolated incidents
13 or experiences that are unique to me. My
14 constituents tell me about many similar events
15 and each month officers from police service
16 area 303 come to our ANC's ABC and Public
17 Safety Committee to report on crime over the
18 past 30 days. Each month without fail the
19 reports consists primarily of robberies and
20 assaults that take place on our streets
21 immediately after 2:00 a.m. on the weekdays
22 and after 3:00 a.m. on the weekends. Just a

1 week ago Adams Morgan had another late-night
2 murder as criminals tried to rob a taxi driver
3 on Ontario Road just around the corner from my
4 house.

5 Notwithstanding these conditions,
6 residents of Adams Morgan have very few tools
7 available to try to manage the situation.
8 Because there are so many establishments, it's
9 not usually possible to be able to say that
10 any particular problem was caused by any
11 particular establishment. Rather, the
12 problems arise as an aggregate effect from the
13 actions of many different operators.

14 In that context, ANC 1C has
15 adopted the longstanding practice of seeking
16 to obtain a common set of assurances from as
17 many establishments as possible. The
18 objective is to clarify the basic standards of
19 good operation that the community expects from
20 every Adams Morgan establishment. In over the
21 course of a decade ANC 1C has successfully
22 done so with most Adams Morgan establishments

1 as evidenced by the list we submitted with
2 your Protest Information Form.

3 In that context I am particularly
4 disappointed with the Applicant's approach to
5 this substantial change request. They have
6 characterized themselves as positive
7 contributors to the Adams Morgan business
8 environment, but their refusal to even discuss
9 operational terms with ANC 1C undermines a
10 decade or more of efforts by the community to
11 establishment baseline standards of good
12 operator behavior.

13 Having already obtained an
14 entertainment endorsement without placarding
15 and therefore without community input, it
16 should be obvious why the community is
17 concerned about the potential risks of
18 Libertine's upcoming operations. We have
19 repeatedly seen establishments begin
20 operations as restaurants with chefs and good
21 menus only to transition towards operations
22 resembling taverns or clubs in relatively

1 short periods of time.

2 The chef who testified today seems
3 perfectly nice, but it was clear he's just
4 been hired and that he hasn't stayed on most
5 of his jobs for probably longer than a year.
6 In discussions with the Applicants themselves,
7 they specifically mention the possibility that
8 some of the items on their nice menu could
9 drop off pretty quickly because they
10 themselves are doubtful about whether they can
11 market them to the public.

12 Ultimately it is the Applicant's
13 choice whether or not they enter into a
14 settlement agreement with ANC 1C, but it then
15 becomes the Board's choice of whether or not
16 you grant them the privilege of having
17 extended hours. And on behalf of ANC 1C I
18 would ask that you say not to the Applicants,
19 or at least require that they subject those
20 later hours to some of the same requirements
21 that some of the other Adams Morgan
22 establishments have in place. Thank you.

1 CHAIRPERSON MILLER: Thank you.

2 Any questions?

3 MR. AUSLANDER: No, I'm okay.

4 CHAIRPERSON MILLER: Okay. Board
5 questions? Mr. Silverstein?

6 MEMBER SILVERSTEIN: Thank you,
7 Mr. Simpson, for your service of ANC
8 commissioner, and we have three present or
9 former ones here and we know that you do this
10 work as a service to the community.

11 You speak of a baseline standard
12 in Adams Morgan. Is there one or is it just
13 that different places have different closing
14 times inside and out?

15 MR. SIMPSON: There are certainly
16 different closing times inside and out. One
17 of the things that gives us comfort as we look
18 at establishments that seek later hours is
19 that again for the majority, the super
20 majority of establishments they're willing to
21 enter into settlement agreements with us that
22 put conditions about how those operations are

1 going to occur through those later hours.
2 Here the Applicants are not willing to do that
3 and that raises the level of concern.

4 MEMBER SILVERSTEIN: Now if one
5 doesn't, then we have to look at -- beyond
6 giving the ANC great weight, is the track
7 record of an establishment, if they have one.
8 Did they have a track record during the time
9 they were open?

10 MR. SIMPSON: They were open, my
11 understanding is for less than a year when
12 they were running the Toledo Lounge operation,
13 so I don't know that there's enough there to
14 gauge off one way or the other. We're looking
15 more from the prospective perspective.

16 MEMBER SILVERSTEIN: So that's a
17 blank slate somewhat?

18 MR. SIMPSON: It's a blind spot,
19 yes.

20 MEMBER SILVERSTEIN: Do the other
21 establishments with which they have a
22 relationship have a track record?

1 MR. SIMPSON: They do. And my
2 understanding; again I don't know the intimate
3 history of the operations of the Black
4 Squirrel and of Ventnor, is that, similar to
5 what Mr. James testified, that there aren't
6 significant concerns that I have heard about
7 those establishments. I have seen some
8 indication that perhaps compliance with food
9 numbers may be right on the cusp. That
10 worries me in the context of them now
11 expanding their operations to a new
12 establishment and taking on significant
13 additional responsibilities, you know, whether
14 that will harm the operations of the other
15 establishments as well.

16 MEMBER SILVERSTEIN: This is the
17 question I'm struggling with. Why would they
18 harm a neighborhood where they already have a
19 major financial and business presence? Why
20 would they open one establishment that would
21 possibly create an atmosphere that would harm
22 other establishments which have apparently

1 quiet and reasonably good relations?

2 MR. JAMES: And this goes to the
3 question of the aggregate impact. I could
4 bring every single operator in Adams Morgan
5 into this room and say are you one of the good
6 operators in Adams Morgan or one of the bad
7 operators, and to a person they'd tell you
8 that they're one of the good operators. None
9 of them are trying to create a problem. It's
10 an aggregate effect. When you bring that much
11 activity together in one place and put that
12 much alcohol into people, you can't avoid the
13 problem.

14 MEMBER SILVERSTEIN: And we also
15 have -- as you say, they all come here and
16 promise it's going to be a great steakhouse
17 and they're going to do fine quality steaks.
18 And we've heard it all. But we've also heard
19 that from people who don't have roots sunk in
20 the neighborhood, And that's something that's
21 very positive, I think we all agree, with some
22 of the establishments that are associated with

1 the Licensee, the Applicant here.

2 So that all said; and I think
3 we've made some progress, there have been some
4 excellent questions here, what's your bottom
5 line if they're approved? What are the
6 conditions that we need?

7 MR. SIMPSON: I agreed with much
8 of the discussion that just happened back and
9 forth on that question with Mr. James. I
10 think the principal issues are to assure that
11 there aren't going to be amplified sound
12 devices out on the sidewalk cafe. I think as
13 well it should be, you know, specified, to the
14 extent that entertainment is taking place
15 indoors, doors and windows should be closed.
16 Establishments often say to us they want their
17 sidewalk cafe patrons to enjoy those internal
18 sounds, but then you have that flow out
19 further to disturb others in the community.

20 MEMBER SILVERSTEIN: If the
21 patrons enjoy them, then the residents may not
22 enjoy them as well.

1 MR. SIMPSON: I understand. All
2 right.

3 MEMBER SILVERSTEIN: Go right
4 ahead. I'm sorry.

5 MR. SIMPSON: So that would be
6 another item. There are a couple of issues
7 that it's hard to parse out, and I'll look to
8 your guidance on this. It's hard to parse out
9 whether the emphasis on them should be now or
10 when we come back to you in August, but the
11 pub crawl scenario was another one.

12 MEMBER SILVERSTEIN: Sure.

13 MR. SIMPSON: You know, that would
14 be a condition again we have sought on every
15 license in Adams Morgan, and that could have
16 a real impact in an outdoor cafe late at
17 night. It could even have an impact indoors
18 as those people then egg each other on to get
19 further and further drunk and go out into the
20 streets very late a night, again increasing
21 that target for crime and other disturbances
22 in the residential neighborhood.

1 MEMBER SILVERSTEIN: Okay. Thank
2 you very much. We're almost getting into four
3 hours in this thing, but I think we've managed
4 to narrow down a lot of the things that we
5 came in here not really very well versed on.
6 Again, thank you for your service,
7 commissioner, Mr. Chairman.

8 CHAIRPERSON MILLER: Others?

9 (No audible response.)

10 CHAIRPERSON MILLER: All right. I
11 just have a few to follow up. I think this is
12 related to a question I asked earlier.

13 So, you know, we're having a
14 hearing. Evidence is being put in the record
15 to support conditions possibly that the Board
16 could impose to alleviate any adverse impacts.
17 So my question to you is with respect to --
18 and I don't know that I can even envision this
19 restaurant that specifically, but if there
20 were some windows that they couldn't open
21 because the music, whatever, if they even had
22 music in there, but say they do -- music might

1 be heard by residents. So my question is are
2 there really residences in the area that would
3 hear music if the Board were to contemplate
4 that kind of condition?

5 MR. SIMPSON: There are. Again,
6 as has been testified, there are residents
7 immediately across the street.

8 CHAIRPERSON MILLER: Okay.

9 MR. SIMPSON: There are residences
10 just above some of the adjacent
11 establishments.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. And then my other question goes to the
14 aggregate issue with respect to crime, and I
15 can see certainly why the ANC would be looking
16 out for its residents in that respect.

17 So I guess my question is, well,
18 is the later hour that we're considering
19 related to more crime or a greater likelihood
20 that the patrons would be victims of crime?
21 I mean what if the -- is that more true at
22 2:00 than 1:30? I know that's kind of --

1 that's what I'm asking.

2 MR. SIMPSON: Those are difficult
3 questions to answer. One of the interesting
4 arguments that was made by establishments when
5 the District Council was considering removing
6 all hour restrictions --

7 CHAIRPERSON MILLER: Yes.

8 MR. SIMPSON: -- on licenses was
9 that the natural differentiation in times that
10 people would exit establishments would
11 function as a buffer reducing the impact. So
12 to -- I don't know that I buy that perspective
13 fully, but to the extent that different
14 establishments in Adams Morgan do close at
15 different times, that is probably helpful to
16 sending people home at different times.

17 The greater concern though again
18 comes from the perspective of -- you know, you
19 mentioned these operators have a history in
20 Adams Morgan that's a relatively good one, and
21 in both of those establishments they have
22 settlement agreements with the ANC and with

1 the Kalorama Citizens Association. I'd like
2 to think that impacts the fact that they're
3 good operators and that they have a good
4 history.

5 The fact that they've been so
6 unwilling to even discuss the content of a
7 settlement agreement. The fact that they went
8 and sought an entertainment endorsement.
9 Those things --

10 CHAIRPERSON MILLER: Okay.

11 MR. SIMPSON: -- all raised red
12 flags and make you wonder about --

13 CHAIRPERSON MILLER: Well, I have
14 one other question, and I think this is my
15 last question. What about the eyes on the
16 street argument, that that creates actually a
17 safer situation say for instance for people
18 who are walking by?

19 MR. JAMES: I accept that up to a
20 point. At just this past ANC meeting we
21 approved two sidewalk cafes for Tryst and The
22 Diner. We approved a stipulated license for

1 another establishment. I generally like the
2 idea of having sidewalk cafes along with
3 people sitting out there, but I do think --
4 I'm not sure that that argument plays all the
5 way up until final closing hours, especially
6 with respect to an establishment that's
7 basically saying to the ANC we don't care what
8 you've done with the entire rest of the
9 community. We don't want to have any
10 relationship with you on that.

11 CHAIRPERSON MILLER: Okay. I hear
12 you're, you know, upset that they're not
13 settling with you, but I want to just separate
14 that, you know, to be responsible as a Board
15 when we're looking at -- you know, is there
16 something different about 3:00 that you really
17 don't like on a Friday and Saturday that the
18 Board should hear, or is it just, you know,
19 later is worse in a certain way?

20 MR. SIMPSON: In Adams Morgan
21 every additional bit of later is probably
22 worse. I mean that's --

1 CHAIRPERSON MILLER: Every
2 additional what?

3 MR. SIMPSON: Every additional bit
4 of later is probably worse.

5 CHAIRPERSON MILLER: But there's
6 point you said where eyes on the street is
7 good, so then it's like is there a place where
8 that's --

9 MR. SIMPSON: We as an ANC, in our
10 ABC and Public Safety Committee, we've
11 actually launched a policy discussion about
12 what would make sense, to try to come up with
13 a policy. We have not reached a conclusion on
14 that yet. It has been an obscenely busy first
15 six months for this term, but we do expect to
16 continue that discussion.

17 CHAIRPERSON MILLER: Okay.

18 MR. SIMPSON: So I can't give you
19 an ANC position on it.

20 CHAIRPERSON MILLER: Okay. Right.
21 Exactly.

22 Okay. Anybody else?

1 (No audible response.)

2 CHAIRPERSON MILLER: Do you have
3 any questions based on Board questions?

4 MR. AUSLANDER: No.

5 CHAIRPERSON MILLER: Okay. So
6 thank you very much then. You probably have
7 time -- Mr. Jones has left momentarily
8 probably, but I assume you have time for
9 rebuttal, and I don't know if you have any
10 rebuttal based on -- that you want to respond
11 to.

12 MR. AUSLANDER: We can do closing
13 whenever you're ready.

14 CHAIRPERSON MILLER: Okay. Then
15 let's go there. You're first for closing.

16 MR. AUSLANDER: You know, this is
17 a high-end place we're --

18 CHAIRPERSON MILLER: But I just --
19 oh, okay.

20 MR. AUSLANDER: -- a high-end
21 concept we're trying to bring to the
22 neighborhood, and the issue here, you know, is

1 about a very small time frame, about us trying
2 to bring our license in line with other
3 establishments And this is -- you know, the
4 issue at hand here is that we won't sign this
5 settlement agreement, not -- you know,
6 admittedly there's no issues with the
7 business. There's no issues really with our
8 other business. They consider us good
9 operators. They should be welcoming us to the
10 neighborhood and we just -- we simply don't
11 want to sign onto their conditions.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. Closing? Do you all have any closing?

14 MR. JAMES: I guess just very,
15 very brief. Number one, I would like to thank
16 the Board for its patience and its willingness
17 to really delve down into the -- it is very
18 narrow and, you know, it's -- we appreciate it
19 because it becomes an important issue within
20 the neighborhood and it will affect the future
21 as well.

22 So we think we have presented

1 enough concern and testimony and facts on the
2 ground about what is the most predominant sort
3 of operating hours for sidewalk cafes and on
4 that part of 18th Street to give the Board
5 plenty of ability and recognition of the
6 concerns in the neighborhood to not grant
7 later hours to -- as requested. And we are
8 absolutely again happy with them having
9 earlier hours and we hope they will be
10 successful in those earlier hours. That's
11 all.

12 CHAIRPERSON MILLER: Okay. Thank
13 you.

14 MR. SIMPSON: I've said enough.

15 CHAIRPERSON MILLER: All right.

16 (Laughter.)

17 CHAIRPERSON MILLER: Thank you.

18 Okay. That was very helpful.

19 All right. So I don't believe
20 there are any other documents that anybody
21 wants to put into evidence, into the record.
22 Okay. Then I'm going to close the record now

1 and -- okay. So just checking to see if rules
2 allow for you all to file proposed findings of
3 fact and conclusions of law if you want to do
4 so. If you don't understand the question,
5 I'll explain it further. Yes?

6 MR. JAMES: May I? I have
7 question about the closing of the record.

8 CHAIRPERSON MILLER: Yes.

9 MR. JAMES: There seemed to be
10 incomplete information about -- in ABRA's
11 files about the sidewalk cafe that has been
12 given ABC approval. The one document that was
13 in the investigator's report didn't talk about
14 the hours that were granted by the Public
15 Space Committee when the approval was
16 originally coming. It just talked about the
17 number of persons that were allowed, the
18 Certificate of Use.

19 So I was wondering if ABRA had in
20 its files an application from the DDoT Public
21 Space Committee that said these are the hours
22 that we grant permission for, and then ABRA

1 back in 1991 said we approve those. You know,
2 we ran a license for those. Because in that
3 case, you know, there would have to -- there
4 would still be another stop at the Public
5 Space Committee to get a grant and go with the
6 additional hours.

7 That's why the document question
8 -- I was just wondering if that would -- I
9 asked Mr. Hager for that document earlier in
10 the day, if it was in the files, and I've been
11 checking and I haven't had a response. But it
12 does seem to be a kind of controlling
13 question. If the permission for the sidewalk
14 cafe was only the current hours, you know,
15 then they might get your approval, but they
16 still have to get the Public Space Committee's
17 approval. I just don't know the answer to
18 what was originally granted.

19 CHAIRPERSON MILLER: Okay. So,
20 you know --

21 MEMBER ALBERTI: Can I ask a
22 question?

1 CHAIRPERSON MILLER: -- it's the
2 end of the day and I'm not sure like what --

3 MEMBER ALBERTI: Well, can I ask
4 just a couple of questions?

5 CHAIRPERSON MILLER: Yes. All
6 right. I just want say what I'm not clear
7 about then is they have current hours. Based
8 on what?

9 MEMBER ALBERTI: Well --

10 CHAIRPERSON MILLER: Then what
11 he's saying. Yes?

12 MEMBER ALBERTI: Just let me
13 ask --

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: So, Mr. James --
16 Mr. Auslander --

17 CHAIRPERSON MILLER: Go ahead.

18 MEMBER ALBERTI: -- do you
19 currently have DDoT, I don't know what they
20 call it, permission for public space?

21 MR. AUSLANDER: Of course. Yes.

22 MEMBER ALBERTI: All right. And

1 that's on file --

2 MR. AUSLANDER: I believe there's
3 been permission for 17-plus years.

4 MEMBER ALBERTI: Okay. And that
5 hasn't changed? And it stipulates the number
6 of seats?

7 MR. AUSLANDER: Yes, sir.

8 MEMBER ALBERTI: Mr. James, I will
9 ask that we clear this up. It's my -- I'll at
10 least tell you my understanding. My
11 understanding is is that -- and this comes
12 from my experience as an ANC commissioner, but
13 it's not always -- my experience has not
14 always proved to be accurate. But DDoT
15 doesn't really issue hours in their public
16 space licensing. They issue -- you can use
17 this space and you can have this occupancy.
18 And maybe back in 1991 things were different,
19 but I think today they don't delve into
20 stipulating hours. I will have our staff look
21 into that. And certainly we can take
22 administrative note of public licenses as we

1 consider this case. Okay?

2 MR. SIMPSON: May I ask a
3 question?

4 MEMBER SILVERSTEIN: Sure.

5 MR. JAMES: Ms. Miller, you had
6 mentioned findings of fact, conclusions of
7 law. Do we have the right to propose to the
8 Board in writing potential text for --

9 MEMBER SILVERSTEIN: Please speak
10 up. Do you have the right?

11 MR. JAMES: I'm sorry. Do we have
12 the right to propose to the Board text for
13 possible --

14 CHAIRPERSON MILLER: For
15 conditions?

16 MR. JAMES: -- conditions?

17 MEMBER SILVERSTEIN: You've
18 already done that.

19 CHAIRPERSON MILLER: Yes, in these
20 proposed findings of facts and conclusions of
21 law would be a proposed --

22 MR. JAMES: Obviously you don't

1 have to accept them, but do we have --

2 CHAIRPERSON MILLER: Yes.

3 MR. SIMPSON: -- the right to
4 submit them?

5 CHAIRPERSON MILLER: Well, the
6 other side would have an opportunity to
7 obviously respond.

8 MR. SIMPSON: Mr. Silverstein
9 doesn't seem to like it.

10 MEMBER ALBERTI: The other side
11 would have an opportunity to submit findings
12 of fact and conclusions of law --

13 CHAIRPERSON MILLER: Too. Right.

14 MEMBER ALBERTI: -- also.

15 MEMBER SILVERSTEIN: This is
16 essentially a legal brief that you would give
17 according to -- it would be one of these
18 things where, you know, so-and-so said such-
19 and-such and according to Title 25, Section
20 blah, blah, blah the law says this, the law
21 says that. This is essentially what our legal
22 staff does. You could file one. You have the

1 right to file your own, but it is seldom used.

2 CHAIRPERSON MILLER: I think what
3 you're saying is what you -- you may not want
4 to do that, but you may want to file proposed
5 conditions. Is that what you're saying?

6 MR. SIMPSON: That was the
7 question. I wasn't sure if those were the
8 same thing or -- but it sounds like -- I'm not
9 sure.

10 CHAIRPERSON MILLER: Okay. Well,
11 first of all, yes, let me just ask you and
12 make sure you're on a similar page, that you
13 don't want to file full proposed findings of
14 fact and conclusions of law based on --

15 MR. AUSLANDER: No.

16 CHAIRPERSON MILLER: Okay. Most
17 people don't. I've never seen it done,
18 especially I've never seen it done in a
19 protest. So then Mr. Simpson is asking about
20 just wanting to file proposed conditions as
21 part of that right to file proposed findings
22 and conclusions of law. Is that correct?

1 MR. SIMPSON: (No audible
2 response.)

3 CHAIRPERSON MILLER: Okay. So we
4 were conferring and thought that that could be
5 within the allowance of that regulation. So
6 that would mean just -- but if that's all
7 you're doing to do, normally we wait -- you
8 have 30 days to -- usually -- is it 30 days?
9 Well, is that 30 days after the transcript?

10 MEMBER ALBERTI: Thirty days from
11 the receipt of the transcript.

12 CHAIRPERSON MILLER: Right, which
13 usually takes at least two weeks. But if that
14 is all you're going to do, then I wouldn't
15 think that you should take that amount of time
16 because that would mainly be a delay for this
17 case based -- because you don't need to the
18 transcript really for that.

19 MR. SIMPSON: I file it very, very
20 quickly.

21 CHAIRPERSON MILLER: Okay. So
22 within seven days could you do that? Ten

1 days?

2 MEMBER ALBERTI: Let's just stay
3 within the --

4 CHAIRPERSON MILLER: Stay within
5 the 30 days?

6 MEMBER ALBERTI: -- guidelines.
7 And there isn't a delay if the parties --

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: -- tell us at
10 some point that they have no intention of
11 filing anything further. And then we can move
12 forward. As long as they let us know, then
13 we'll move forward. And it's definitely his
14 advantage to get a --

15 MR. SIMPSON: I prefer not to
16 accept a limit tighter than the regulations,
17 but I can promise you that we can be prompt.

18 CHAIRPERSON MILLER: I would think
19 you would have to perhaps run it by the ANC
20 Committee.

21 MR. SIMPSON: No.

22 CHAIRPERSON MILLER: No?

1 MR. SIMPSON: We --

2 MEMBER ALBERTI: You sure would.

3 CHAIRPERSON MILLER: Proposed
4 conditions?

5 MEMBER ALBERTI: Well, no, he's
6 delegated --

7 CHAIRPERSON MILLER: Okay.

8 MEMBER ALBERTI: -- by the ANC to
9 represent them, so it's up to them how they
10 want to handle it.

11 CHAIRPERSON MILLER: Okay. Let me
12 say this then: You know, we're going with
13 this rule, but I would think that the
14 Applicant would actually have time to respond
15 to a proposed condition.

16 MEMBER ALBERTI: Look, here's my
17 proposal:

18 CHAIRPERSON MILLER: Yes.

19 MEMBER ALBERTI: That we stay
20 within our current guidelines. We have
21 guidelines for proposed findings of fact and
22 conclusions of law. At least one of the

1 parties wants to present something that maybe
2 is not what we usually get as proposed
3 findings of fact and conclusions of law, but
4 we can accept whatever they present to us.

5 I think we should stay within the
6 current guidelines, which is 30 days from the
7 date on which the transcript is made
8 available. All right? And then both parties
9 have that. If at some point in that time the
10 parties are willing to say to the Board --
11 notify the Board as to like, look, we've
12 either filed it or we're not going to file
13 anything, then the Board can move forward to
14 make its decision. Otherwise, the Board waits
15 to make its final decision upon getting those
16 things.

17 CHAIRPERSON MILLER: Well, let
18 me --

19 MEMBER ALBERTI: How quickly we
20 move really would be up -- you know, once we
21 get it from the Protestants, that it. We
22 could move forward if the Licensee says, well,

1 I'm not filing anything. So at that point the
2 Licensee would be governing how quickly we
3 would consider this matter.

4 CHAIRPERSON MILLER: I think this
5 is somewhat of a hybrid though, because I
6 think sometimes we leave the record -- rarely
7 -- every once in a while we leave the record
8 open for additional filings or information.
9 And that's what this sounds like more than a
10 proposed findings of fact and conclusions of
11 law, because they're not really finding --
12 they're not looking at the evidence in the
13 record to draw a conclusion and make a legal
14 argument.

15 MEMBER ALBERTI: They may not be
16 making legal arguments, but they're definitely
17 offering a conclusion.

18 (Laughter.)

19 CHAIRPERSON MILLER: It's not
20 really a conclusion of law. It's really a --
21 so I don't know. I would just want to throw
22 this out, that it might be more appropriate to

1 leave the record open for proposed conditions
2 and the Licensee would have a chance to
3 respond to it. Do you have a problem with
4 that?

5 MEMBER SILVERSTEIN: Does the
6 Licensee have any --

7 MR. AUSLANDER: I think I don't --
8 I can't speak. I'm not a -- I don't know --
9 really to be honest with you, I don't really
10 know what we're talking about.

11 CHAIRPERSON MILLER: Okay.

12 MR. AUSLANDER: I mean they want
13 to submit some more -- they want to submit
14 their recommendations to the Board. Then I
15 would submit that the Board's had five hours
16 to hear testimony and all about this and it
17 can make a ruling and a decision. I mean from
18 our end we'd love to get a ruling on the
19 daytime hours --

20 CHAIRPERSON MILLER: Yes.

21 MR. AUSLANDER: -- as quickly as
22 possible.

1 CHAIRPERSON MILLER: Yes.

2 MR. AUSLANDER: This is crucial
3 stuff. And the Protestants have acquiesced on
4 those hours. But in terms of them making --
5 you know, taking portions --

6 CHAIRPERSON MILLER: Yes.

7 MR. AUSLANDER: -- at this point
8 I'm happy with the decision you make.

9 CHAIRPERSON MILLER: Okay. I hear
10 what you're saying, too. And I -- you know,
11 and it is late. But I kind of -- it is
12 possible that, you know, they did make
13 recommendations as to what kind of conditions
14 they would like to the Board to consider.
15 Maybe we have enough and we don't need that
16 proposed condition. It may just complicate
17 things too much.

18 MEMBER ALBERTI: Well, I'm not
19 going to tell them they can't submit proposed
20 findings --

21 CHAIRPERSON MILLER: It's not
22 proposed findings.

1 MEMBER ALBERTI: Well, I'm not
2 going to -- look --

3 CHAIRPERSON MILLER: Yes.

4 MEMBER ALBERTI: -- we can't tell
5 them they can't --

6 CHAIRPERSON MILLER: Okay.

7 MEMBER ALBERTI: -- submit
8 proposed findings and conclusions of law.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER ALBERTI: And I can't tell
11 them how to write it. So I can't take that
12 privilege away from them.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER ALBERTI: At this point
15 it's up to them. It's their choice. Now once
16 we get whatever they submit to us, we can
17 throw it in the trash if we don't think it's
18 relevant. If we say, oh, this --

19 CHAIRPERSON MILLER: Right.

20 MEMBER ALBERTI: -- really doesn't
21 fit what we think is proposed findings of fact
22 and conclusions of law and it doesn't have the

1 substance that we need, we can throw it in the
2 trash. But I can't take that privilege from
3 them.

4 CHAIRPERSON MILLER: Okay. All
5 right. That's good. Point well taken.

6 MEMBER SILVERSTEIN: I agree with
7 my colleague, but I'm also -- I agree
8 completely with my colleague. I just don't
9 want to be gamed here.

10 CHAIRPERSON MILLER: Yes. Okay.
11 As in delayed unnecessarily?

12 MEMBER ALBERTI: You know, I --

13 MEMBER ALBERTI: And that's --

14 CHAIRPERSON MILLER: Okay. That's
15 in the rules, yes.

16 MEMBER ALBERTI: Mr. Silverstein,
17 if I thought there really was an attempt to
18 game us, I would be warning the ANC of that.

19 MEMBER SILVERSTEIN: Right. So --

20 MEMBER ALBERTI: They may be --

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: -- misdirected

1 here. I can't judge that until I see what
2 they tell us, but I don't believe that there's
3 any attempt here to game us.

4 MEMBER SILVERSTEIN: Right. Okay.
5 And I hope we're all on the same page then.
6 This is not an unnecessary delay. On the
7 other hand, you know, that it not be used to
8 hard the Licensee. But on the other hand,
9 that you have your rights and that it not be
10 being used procedurally to delay this any
11 longer than it has to.

12 MR. SIMPSON: We will move very
13 promptly.

14 MEMBER SILVERSTEIN: Thank you,
15 Mr. Chairman.

16 CHAIRPERSON MILLER: All right.
17 Okay. All right. We're going to go strictly
18 by the rules, which is usually the safest
19 thing to do.

20 (Laughter.)

21 CHAIRPERSON MILLER: So, okay. So
22 he rule is 23 DCMR 1717.2.

1 MR. SIMPSON: Can I get that
2 again? Sorry.

3 CHAIRPERSON MILLER: Seventeen
4 seventeen point two of the regulations of 23
5 DCMR. It says, "The Board shall afford
6 parties an opportunity to file proposed
7 findings of fact and conclusions of law within
8 30 calendar days after the conclusion of the
9 hearing." And then it goes into if you need
10 more time because of a transcript not being
11 available. But it would have to be tied to
12 needing that transcript.

13 So you all can look it up further,
14 but that's where it is in the regulations.
15 You don't have to file anything. Okay?
16 There's no requirement. And when it's done to
17 the extreme, it would be like an attorney
18 going through the transcript and asking the
19 Board to make these findings of fact and then
20 make legal arguments. And so there's no
21 requirement to do that. And so but this is
22 a --

1 MR. SIMPSON: If we decide not
2 to --

3 CHAIRPERSON MILLER: Let us know.

4 MR. SIMPSON: -- file anything, we
5 will let you know as promptly as possible.

6 MEMBER ALBERTI: And if you do --

7 CHAIRPERSON MILLER: And serve the
8 other side as well if you do a filing.

9 MR. SIMPSON: Yes, absolutely.

10 CHAIRPERSON MILLER: Okay.

11 Anything else on this?

12 (No audible response.)

13 CHAIRPERSON MILLER: All right.

14 So that is it then. The Board will consider
15 this in a closed session. And we're going to
16 read our instructions regarding that and take
17 a vote on that. And we'll issue an order
18 within 90 days after we get this proposed --
19 oh, no, 60 -- no 90 I think in this case.
20 Anyway, after we get the proposed findings, if
21 we do, or you will alert us that the clock can
22 start ticking again. Okay. No other

1 questions, right?

2 (No audible response.)

3 CHAIRPERSON MILLER: Okay. Well,
4 thank you very much. If you have any
5 questions, feel free to contact Martha
6 Jenkins, our general counsel.

7 MEMBER ALBERTI: Thank you,
8 everyone. That's it, yes. We just have to do
9 a formal closing, but we're done. Thank you.

10 CHAIRPERSON MILLER: As
11 Chairperson of the Alcoholic Beverage Control
12 Board for the District of Columbia and in
13 accordance with the Open Meetings Amendment
14 Act of 2010, I move that the ABC Board hold a
15 closed meeting for the purpose of seeking
16 legal advice from our counsel on Case No. 13-
17 PRO-00008, Libertine, per Section 405(b)(4) of
18 the Open Meetings Amendment Act of 2010 and
19 deliberating upon this case for the reasons
20 cited in Section 405(b)(13) of the Open
21 Meetings Amendment Act of 2010. Is there a
22 second?

1 MEMBER BROOKS: Second.

2 CHAIRPERSON MILLER: I'll now call
3 a roll call vote on the motion now that it's
4 been seconded. Mr. Brooks?

5 MEMBER BROOKS: I agree.

6 CHAIRPERSON MILLER: Mr. Alberti?

7 MEMBER ALBERTI: I agree.

8 CHAIRPERSON MILLER: Ms. Miller
9 agrees. Mr. Silverstein?

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON MILLER: Mr. Jones?

12 MEMBER JONES: I agree.

13 CHAIRPERSON MILLER: The vote is
14 then 5-0-0. Motion is passed. I hereby give
15 notice that the ABC Board will hold a closed
16 meeting in the ABC Board conference room upon
17 receipt of the proposed findings of fact and
18 conclusions of law, or communication that no
19 such filings will be coming pursuant to the
20 Open Meetings Amendment Act of 2010 and issue
21 an order within 90 days.

22 Okay. That concludes our

1 afternoon hearings. And we will return
2 shortly for the Board's agenda.

3 (Whereupon, the hearing was
4 concluded at 5:50 p.m.)

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