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

2:12 p.m.

CHAIRPERSON MILLER: All right. So that completes the fact finding hearings and we're ready for our protest hearing, if the parties are here. Case No. 13-PRO-00034, Libertine located at 2435 18th Street, N.W., License No. 86298 in ANC 1C.

So come forward; have a seat on your respective sides.

All right. When you're ready if you would identify yourselves for the record?

MS. BOWMAN: Amy Bowman, Libertine.

MR. AUSLANDER: Scott Auslander, Libertine.

MR. SIMPSON: William Simpson, Advisory Neighborhood Commission 1C.

CHAIRPERSON MILLER: Okay.

MR. JAMES: Denis James, president of the Kalorama Citizens Association.

CHAIRPERSON MILLER: All right.

1 Great. I'm just going to make some  
2 preliminary remarks and then we can discuss  
3 how we're going to proceed.

4 This is a renewal case. You've  
5 been here before for the substantial change.  
6 We're very well aware of that and there's a  
7 record on that. The protest by Kalorama  
8 Citizens Association. They'll be represented  
9 by Denis James. And ANC 1C is represented by  
10 Commissioner William Simpson.

11 As I mentioned, we're aware that  
12 in addition to the Applicant filing this  
13 renewal application the Licensee has also  
14 filed a substantial change application in  
15 which the Licensee sought a change of hours  
16 for operations and sales both inside the  
17 establishment and also for the sidewalk caf,.  
18 And the Board has already held a hearing on  
19 that substantial change application on June  
20 12th. Correct? I'm not sure. Anyway, we  
21 heard that hearing already and the decision is  
22 pending.

1                   And I bring that up because in the  
2                   event that there are some issues that may be  
3                   relevant to this case as well, namely peace,  
4                   order and quiet, we want to let you know that  
5                   you can refer to the past record in the other  
6                   case. We're going to take administrative  
7                   notice of that so that you don't have to. And  
8                   it would be preferable if you don't repeat,  
9                   you know, testimony on the same thing, to the  
10                  extent that that's identifiable. We want to  
11                  let you know that we will consider that.

12                  Okay. And I wanted to bring that  
13                  up so that you can think about using, you  
14                  know, the time you have in this hearing for  
15                  new, you know, without repeating things. If  
16                  you could just point to somebody's testimony  
17                  in the record beforehand, then you can argue  
18                  from that as well.

19                  So I do notice that you all  
20                  submitted PIFs, which I found very helpful and  
21                  particularly in this case where you have  
22                  identified -- at least the Protestants have

1 identified conditions they would like  
2 considered in the order. And I think that  
3 does help the Board focus. And I think it  
4 helps focus this hearing.

5 So the issue about settlement, you  
6 know, if you want to make a statement for the  
7 record, you can. But like I said before, it's  
8 not really at issue, that the Licensee is not  
9 forced to enter into a settlement agreement  
10 and the Board would not arrive at that  
11 conclusion based on this hearing, you know?  
12 And but, you know, if you want to make a  
13 statement about how they're a positive thing  
14 or whatever, that's fine.

15 But basically what I said the last  
16 time and then basically you responded this  
17 time is that you get conditions in your  
18 settlement agreement or you can get them in a  
19 Board order. And if you're here in this case  
20 and you want to get them in a Board order  
21 because you can't get them in a settlement  
22 agreement, that is what the evidence and the

1 argument would be for. So just wanted to let  
2 you know those things.

3 You have any questions about  
4 proceeding?

5 (No audible response.)

6 CHAIRPERSON MILLER: Okay. Good.  
7 All right. Basically though each side gets an  
8 hour-and-a-half. And if you all have been  
9 through this before, we don't need to go  
10 through that. If you don't have any  
11 questions, good, we can just move right in.

12 Okay. So let's hear from our  
13 Government witness. Let me swear you in. Do  
14 you swear to tell the truth, the whole truth  
15 and nothing but the truth, so help you?

16 INVESTIGATOR MARTIN: I affirm.

17 CHAIRPERSON MILLER: Okay. Thank  
18 you. Now I would also say to you that we have  
19 read your report and we've read your report in  
20 the previous case, and I think that they're  
21 some what similar. It's the, you know, same  
22 place, lot of the same issues.

1                   So if you want to highlight --  
2                   whatever you're comfortable doing is fine, but  
3                   I just want to let you know that is in the  
4                   record, we've read it. It's in the record  
5                   basically twice.

6                   MEMBER JONES: Madam Chair, just a  
7                   point of order. I'm not sure if it was  
8                   intentional or not, but are they not -- no  
9                   opening statements?

10                  CHAIRPERSON MILLER: Opening  
11                  statements? I'm sorry.

12                  MEMBER JONES: Yes.

13                  CHAIRPERSON MILLER: I am sorry.  
14                  Let me go back. Did you all want to make  
15                  opening statements?

16                  MR. AUSLANDER: I have -- I  
17                  mean --

18                  CHAIRPERSON MILLER: Do you want  
19                  to?

20                  MR. AUSLANDER: Sure.

21                  CHAIRPERSON MILLER: It's  
22                  optional.

1 MR. AUSLANDER: Why not? We're  
2 here.

3 CHAIRPERSON MILLER: Are you going  
4 to make an opening statement as well?

5 MR. SIMPSON: Thirty seconds.

6 CHAIRPERSON MILLER: All right.  
7 Good. Let me just -- I think they have the --

8 MR. AUSLANDER: They go first?

9 CHAIRPERSON MILLER: I think they  
10 go first and then you go. Okay.

11 MR. SIMPSON: No, I will just very  
12 briefly say that I strongly share the Chair's  
13 comments that essentially much of what needs  
14 to be said was said last time as well, so we  
15 will try to avoid repeating things and hope  
16 that this particular proceeding is much  
17 shorter than the last time around.

18 The issues remain the same.  
19 Fundamentally the community is trying to  
20 address the significant concentration of  
21 alcohol licenses that we have on 18th Street.  
22 And accordingly, we try to set minimum

1 standards of good behavior for all the  
2 establishments on 18th Street. Most of the  
3 establishments -- it's taken some time, but  
4 most of the establishments have ultimately  
5 over the course of a decade agreed with the  
6 neighborhood to adopt these rules.

7 We're disappointed that the  
8 current Applicant has refused to have those  
9 substantive discussions with us and  
10 accordingly we've followed the Board's advice  
11 and proposed some specific proposed orders  
12 with respect to the license and we hope you'll  
13 take those under consideration. Thank you.

14 CHAIRPERSON MILLER: Okay.

15 MR. AUSLANDER: Yes, we are again  
16 here for the same reason. We haven't signed  
17 the settlement agreement. I could see from  
18 the PIF they're to a certain extent asking the  
19 Board to impose typical conditions that they  
20 put into a settlement agreement. And, you  
21 know, we're here for the exact same reason  
22 once again.

1 I look at the conditions that  
2 they've put in that are in their settlement  
3 agreements. I know, because I have one at one  
4 of my other restaurants. And we're here to  
5 discuss them item-by-item. These are items  
6 that the District government has procedures in  
7 place to address that don't need to be  
8 addressed in a neighborhood agreement.

9 We're still on the sidewalk hours,  
10 our patio hours. They've been nice enough to  
11 include a graph of the hours, but I see on the  
12 graph there are quite a few of our neighbors  
13 have full operating hours on those patios.

14 In addition, he included in his  
15 PIF a nice list of the places that have  
16 settlement agreements in the Adams Morgan  
17 area, but he didn't include the 25 to 30  
18 percent of the alcohol establishments that  
19 don't have settlement agreements in the  
20 neighborhood. So that's it. And I concur  
21 that hopefully this will be shorter than the  
22 last time.

1 CHAIRPERSON MILLER: I hope so.  
2 No, the more focused it is the shorter it will  
3 be probably. But also I just want to get an  
4 idea of witnesses, now that we've kind of  
5 stepped back before we start with the  
6 Government witness, that you all intend to  
7 present. Are there witnesses?

8 MR. SIMPSON: Just myself.

9 CHAIRPERSON MILLER: Okay.

10 MR. JAMES: Just myself.

11 CHAIRPERSON MILLER: Okay.

12 MR. AUSLANDER: I think I'll speak  
13 about since we've been open.

14 CHAIRPERSON MILLER: Okay.

15 MR. AUSLANDER: Since the last  
16 time we spoke.

17 MS. BOWMAN: And I don't care to  
18 speak.

19 CHAIRPERSON MILLER: Okay. So no  
20 one else is going to be --

21 MR. AUSLANDER: Just the three of  
22 us.

1 MS. BOWMAN: I don't think we both  
2 need to talk about the same place, do you?

3 (Laughter.)

4 CHAIRPERSON MILLER: I won't  
5 comment.

6 MS. BOWMAN: I think we're on the  
7 same page.

8 CHAIRPERSON MILLER: Okay.

9 MS. BOWMAN: Okay.

10 CHAIRPERSON MILLER: All right. I  
11 guess we are ready then now to go to the  
12 Government witness.

13 INVESTIGATOR MARTIN: Yes, good  
14 afternoon, everyone. My name is Felicia  
15 Martin. I'm an ABRA investigator and I've  
16 been an ABRA investigator since --

17 CHAIRPERSON MILLER: Ms. Martin,  
18 can you speak up --

19 INVESTIGATOR MARTIN: You cannot  
20 hear me?

21 CHAIRPERSON MILLER: -- or get  
22 closer to the mic?

1 INVESTIGATOR MARTIN: Okay.

2 CHAIRPERSON MILLER: Okay.

3 INVESTIGATOR MARTIN: We're here  
4 today to speak about Libertine, which is  
5 located at 2435 18th Street, North by West,  
6 here in Washington, D.C. The establishment is  
7 a two-story brick building which operates out  
8 of the first level. The establishment is  
9 located in Ward 1. There's no parking on  
10 site.

11 ABRA investigators monitored the  
12 establishment from May 21st, 2013 until July  
13 the 20th, 2013. During the monitoring of the  
14 establishment the establishment was open from  
15 July 3rd, 2013 of the monitoring until the  
16 present date. No noise was heard emanating  
17 from within the establishment. No  
18 overcrowding or over-serving was observed  
19 either.

20 On July 18th a request was put  
21 into the Metropolitan Police Crime Analysis  
22 Division to determine whether or not if

1 Libertine had any violations that required or  
2 incidents that required ABRA's attention.

3 There were seven calls placed for service for  
4 that particular address, however, none of the  
5 calls required an ABRA intervention.

6 There are approximately 71 ABC  
7 establishments that are along the corridor  
8 where the establishment is located. There are  
9 no schools within 400 feet of the  
10 establishment. As I stated, there are 71 ABC  
11 establishments. Approximately 43 of the  
12 establishments have either sidewalk caf,s or  
13 either summer gardens, or both.

14 Parking is available for the  
15 patrons where they can use Colonial Parking,  
16 which is located in the same block, which  
17 consists of 262 spaces. There was no  
18 loitering observed inside or outside the  
19 establishment. The waste will be picked up by  
20 DH1 and the collection will occur twice a  
21 week.

22 The proposed hours of operation

1 are listed in the report. For time purposes  
2 I won't state each date. And that will  
3 conclude my observations of the establishment  
4 during the renewal period.

5 CHAIRPERSON MILLER: Thank you.

6 Are there Board questions?

7 (No audible response.)

8 CHAIRPERSON MILLER: I have a  
9 question.

10 INVESTIGATOR MARTIN: Yes, ma'am.

11 CHAIRPERSON MILLER: And that is  
12 did you have a chance to look at the  
13 Protestant's PIF, and in particular where they  
14 are seeking nine conditions?

15 INVESTIGATOR MARTIN: No.

16 CHAIRPERSON MILLER: You didn't  
17 see that?

18 INVESTIGATOR MARTIN: No.

19 CHAIRPERSON MILLER: Okay. Other  
20 questions?

21 (No audible response.)

22 CHAIRPERSON MILLER: Okay. Let me

1 go to Protestants. Do you have any for the  
2 Board witness?

3 MR. SIMPSON: Just to confirm.  
4 These observations were made beginning July  
5 13th, is that right?

6 INVESTIGATOR MARTIN: For the  
7 renewal it actually began July 3rd for the  
8 renewal period.

9 MR. SIMPSON: July 3rd?

10 INVESTIGATOR MARTIN: Yes.

11 MR. SIMPSON: So about three or  
12 four weeks worth of observations?

13 INVESTIGATOR MARTIN: Yes.

14 MR. JAMES: Is it okay for me to  
15 go for the Protestant's side?

16 CHAIRPERSON MILLER: Yes. Oh,  
17 you're a different group. Yes, okay.

18 MR. JAMES: Thank you. You  
19 mentioned that trash and recycling will be  
20 removed twice per week.

21 INVESTIGATOR MARTIN: Yes.

22 MR. JAMES: Are you familiar with

1 other establishments, how frequently they  
2 remove their trash and recycling?

3 INVESTIGATOR MARTIN: No, sir.

4 MR. JAMES: None of the other  
5 establishments on that side of 18th Street?  
6 Has it ever come to your attention, the  
7 frequency?

8 INVESTIGATOR MARTIN: No, sir.

9 MR. JAMES: No? Thank you.

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: Nothing else. That's  
12 all I have.

13 CHAIRPERSON MILLER: Does the  
14 Licensee have any questions?

15 MR. AUSLANDER: How does it look?

16 INVESTIGATOR MARTIN: The  
17 establishment looks great.

18 MR. AUSLANDER: Did you see people  
19 eating?

20 INVESTIGATOR MARTIN: Yes.

21 MR. AUSLANDER: How did the food  
22 look?

1                   INVESTIGATOR MARTIN: Food looks  
2 great. Appetizing.

3                   (Laughter.)

4                   CHAIRPERSON MILLER: Is that it?

5                   MR. AUSLANDER: That's it.

6                   MEMBER ALBERTI: Ms. Miller,  
7 before we continue, just a point of order, in  
8 these proceedings the burden of proof is on  
9 the --

10                  CHAIRPERSON MILLER: I'm sorry.

11                  MEMBER ALBERTI: -- Licensee. And  
12 so --

13                  CHAIRPERSON MILLER: Yes, I let  
14 them go first.

15                  MEMBER ALBERTI: -- you know, we  
16 really have been going out of order. The  
17 Licensee should be --

18                  CHAIRPERSON MILLER: I just went  
19 out of order.

20                  MEMBER ALBERTI: -- doing their  
21 opening statement first.

22                  CHAIRPERSON MILLER: You're

1 absolutely right.

2 MEMBER ALBERTI: There really  
3 should be no question -- okay.

4 CHAIRPERSON MILLER: You're  
5 absolutely right.

6 MEMBER ALBERTI: Just so that we  
7 have that cleared up. Thank you.

8 CHAIRPERSON MILLER: You're  
9 absolutely right.

10 MEMBER ALBERTI: Just a matter of  
11 formality --

12 CHAIRPERSON MILLER: We're going  
13 to --

14 MEMBER ALBERTI: -- but it's  
15 important that we follow the proper  
16 procedures.

17 CHAIRPERSON MILLER: Absolutely  
18 right. Okay.

19 MEMBER ALBERTI: And the point is  
20 is that the burden of proof is on the Licensee  
21 in these matters. So everybody understands  
22 that.

1 CHAIRPERSON MILLER: Yes, Mr.  
2 Silverstein?

3 MEMBER SILVERSTEIN: Based on Mr.  
4 Auslander's question.

5 CHAIRPERSON MILLER: Yes.

6 MEMBER SILVERSTEIN: Talk to us a  
7 little more, Ms. Martin, about the operation  
8 of the place currently. Are there any red  
9 flags? Is there anything that you notice or  
10 you see that perhaps you would point us to as  
11 areas of concern or areas of possible concern  
12 based on your experience as an ABRA  
13 investigator?

14 INVESTIGATOR MARTIN: No, no  
15 concerns of issues with Libertine.

16 MEMBER SILVERSTEIN: No concerns  
17 of peace, order, quiet?

18 INVESTIGATOR MARTIN: No, sir.

19 MEMBER SILVERSTEIN: Very good.  
20 No further questions.

21 CHAIRPERSON MILLER: Okay. Are  
22 there -- well, let me go to the Applicant

1 first, as Mr. Alberti has pointed out. You  
2 have an opportunity to ask a question based on  
3 the Board's question. Do you have a question  
4 based on that?

5 MR. AUSLANDER: No.

6 CHAIRPERSON MILLER: No? Okay.

7 Do you, Mr. Simpson or Mr. James, based on the  
8 Board's question?

9 MR. JAMES: Yes, I wouldn't mind  
10 taking a crack.

11 So during the time that you  
12 observed Libertine since they've opened were  
13 they -- did you see any entertaining taking  
14 place that they've applied for, like live  
15 music of any kind?

16 INVESTIGATOR MARTIN: No.

17 MR. JAMES: Based upon your  
18 observations were they keeping the doors and  
19 windows at the front of the establishment  
20 closed, particularly in the later hours?

21 INVESTIGATOR MARTIN: The door was  
22 closed, however, the door that leads to the

1 sidewalk caf, was open. I could hear no music  
2 spilling out from the establishment.

3 MR. JAMES: Okay. Thank you.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you very much.

6 INVESTIGATOR MARTIN: Thank you.

7 CHAIRPERSON MILLER: Okay. Moving  
8 along here. Now we're ready for the  
9 Applicant's case. Do you have any witness or  
10 anything you want to put on with respect to  
11 the peace, order and quiet issue related to  
12 your renewal? You want to testify yourself?

13 MR. AUSLANDER: Yes.

14 CHAIRPERSON MILLER: Okay. I need  
15 to put you under oath.

16 MR. AUSLANDER: On my way.

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

20 MR. AUSLANDER: I do.

21 CHAIRPERSON MILLER: Okay.

22 MR. AUSLANDER: Well, I think I'd

1 like to, you know, again --

2 MEMBER SILVERSTEIN: Will you  
3 identify yourself first, please?

4 MR. AUSLANDER: I'm sorry?

5 MEMBER SILVERSTEIN: If you could  
6 please identify yourself for the record.

7 MR. AUSLANDER: Scott Auslander,  
8 Libertine. I wanted to take this time to talk  
9 about their PIF and their request for  
10 conditions. But again, I'm very familiar with  
11 the voluntary agreement. I have one at the  
12 Ventnor Sports Caf,. My partners have one at  
13 their restaurant. And I'm familiar with the  
14 types of things that are in it. I've  
15 obviously seen the one that had been suggested  
16 here.

17 And when I look at the PIF that  
18 was presented by the Protestants, what I'm  
19 seeing is a voluntary agreement. I'm seeing  
20 that they're asking the Board to impose pretty  
21 much the exact conditions that they would  
22 request in the voluntary agreement here today.

1 I go through one-by-one. I see  
2 they talk about interior occupancy. And they  
3 even state that it's controlled by the  
4 District's Public Space Committee. That there  
5 is an organization. Cover charge prohibited.  
6 Bar crawls, pub crawls, all similar stuff.

7 Sidewalk caf, hours that we were  
8 just here to discuss a few weeks ago. The  
9 sidewalk caf, hours, you can see in the  
10 Protestant's PIF, they've included the hours  
11 for many of the places on the block that have  
12 full operating hours, including our next-door  
13 neighbors at Meze. There's even some of the  
14 non-alcohol establishments that go much later,  
15 4:00 and 5:00 a.m. I also see that some of  
16 the newer sidewalk caf,s also have late hours  
17 than the ones that have been -- you know, ever  
18 since the streetscape design in Adams Morgan.

19 In addition, you know, they talk  
20 about egress and they talk about the doors and  
21 windows being open. This is a full-service  
22 restaurant. I would call this a high-end

1 establishment. Yes, sometimes we have a nice  
2 little patio area in front and we like the  
3 openness of the space. And that was part of  
4 the reason we selected this location. It's  
5 got big open front windows. And on a nice  
6 summer day you can sit at the bar, sit at a  
7 table right inside that area and have a sense  
8 of the outside.

9 Noise. I mean this is -- we --  
10 we're playing loud jazz, big band kind of  
11 music here. There's no rock and roll in this  
12 establishment. It's a French restaurant.

13 You know, and in terms of trash,  
14 this is a small place to have the trash  
15 removed every day would be sort of crazy. I  
16 mean I'm a single man. I live in an  
17 apartment. I don't take my trash out every  
18 day. It takes me a couple days before I fill  
19 the can.

20 In addition to the settlement  
21 agreements I would also state that, you know,  
22 the impression that every single establishment

1 in Adams Morgan has one just isn't true. I  
2 made a quick list here today and I'm finding  
3 25 percent of -- you know, I've got a list  
4 here. It looks like 10, 12 places that don't  
5 have settlement agreements out of the 20 or 30  
6 -- out of the 40, I'm sorry, on his list.  
7 That's a decent percentage.

8 And I'm happy to answer any other  
9 questions in regards to -- we've been open now  
10 a month. As the investigator stated, we  
11 literally I believe opened on July 3rd. So  
12 there were there from day 1. And I'd be happy  
13 to talk about anything that we didn't talk  
14 about last time.

15 CHAIRPERSON MILLER: Okay. Do you  
16 have questions? Questions?

17 MR. JAMES: Oh, yes. With regard  
18 to the list of establishments that have  
19 voluntary agreements, are you aware of how  
20 many of those have entertainment endorsements?

21 MR. AUSLANDER: I have no idea.  
22 It's not here on your form. I know some of

1       them do. I mean I'm looking at the list  
2       quickly and I'm pretty familiar with the  
3       neighborhood. I mean I'll be nine years at  
4       Ventnor in three days, so I'm pretty familiar.  
5       And I mean just a quick look, I would say  
6       probably 25 percent, if not more.

7                   MR. JAMES: Okay. And you  
8       mentioned how frequently the Protestants  
9       suggest that you have trash picked up, and I  
10      think you said daily.

11                   MR. AUSLANDER: It says here five  
12      days a week.

13                   MR. JAMES: Okay. How many days  
14      are there in a week?

15                   MR. AUSLANDER: I think there are  
16      seven.

17                   MR. JAMES: Okay. So the  
18      Protestants are not suggesting daily pickup,  
19      is that correct?

20                   MR. AUSLANDER: Yes, I don't think  
21      we're here to discuss the amount of days in a  
22      week. I mean you're correct, yes. They're

1 asking for five days.

2 MR. JAMES: And about the proposal  
3 that we made in our PIF to the Board for an  
4 order, you think this list of items is  
5 comparable in reality to the kind of  
6 settlement agreements that are generally in  
7 place in Adams Morgan and similar to the ones  
8 that are in place for Black Squirrel and  
9 Ventnor?

10 MR. AUSLANDER: I actually think  
11 that this is an outline, almost an exact  
12 outline for the types of settlement agreements  
13 I've seen, and that it seems to me that we're  
14 asking the Board to impose that settlement  
15 agreement on your behalf because we couldn't  
16 agree to one.

17 MR. JAMES: Would you agree that  
18 most of the agreements in place are far more  
19 detailed than --

20 MR. AUSLANDER: Absolutely.

21 MR. JAMES: -- three or four  
22 pages --

1 MR. AUSLANDER: Absolutely.

2 MR. JAMES: -- of conditions?

3 MR. AUSLANDER: Absolutely.

4 MR. JAMES: Thank you. Turning to  
5 the listing of the sidewalk caf,s --

6 MR. AUSLANDER: Sure.

7 MR. JAMES: -- I just went through  
8 the listing and I find -- would you agree that  
9 there are nine that have complete full hours,  
10 which would be 2:00 a.m. and 3:00 a.m.  
11 closures up and down the list?

12 MR. AUSLANDER: Well, they got --

13 MEMBER ALBERTI: Mr. James, where  
14 are you going with this and what's the  
15 relevance, because we're not here to talk --

16 MR. JAMES: Well, this is --

17 MEMBER ALBERTI: Just one -- we're  
18 not here to talk about extended hours. We're  
19 here to talk about his current hours. We're  
20 here only to consider his renewal with the  
21 current hours. And so I'm afraid that you're  
22 going off in a direction that may not be

1 relevant to this hearing. We've already had  
2 the hearing on extended hours.

3 CHAIRPERSON MILLER: Where are you  
4 going with it, Mr. James? Maybe --

5 MR. JAMES: Well, no, just that --

6 CHAIRPERSON MILLER: Yes.

7 MR. JAMES: -- there was a  
8 statement that their hours are much like many  
9 others, but the fact is most of the  
10 establishments have lesser hours than the  
11 full. And I just wanted to get -- you know,  
12 this list in the Board's -- well, yes, we --

13 MEMBER ALBERTI: Mr. James, I  
14 guess what struck me in that  
15 statement was this establishment, if I  
16 remember correctly, doesn't have -- when you  
17 say full hours, you mean full legal hours? Is  
18 that what --

19 MR. JAMES: My statement is --

20 MEMBER ALBERTI: I'm trying to  
21 understand your question.

22 MR. JAMES: -- 2:00 a.m. and 3:00

1 a.m.

2 MEMBER ALBERTI: 2:00 a.m. This  
3 Licensee currently doesn't have that. So to  
4 talk about the fact that the other places  
5 don't have full hours or do have full hours --

6 MR. JAMES: I take your point and  
7 I agree with you.

8 MEMBER ALBERTI: -- is  
9 misdirected. Is unclear. So I'm just trying  
10 to figure out where -- that we stay on -- I  
11 want to make sure we stay on track for this  
12 hearing.

13 MR. JAMES: Okay. I withdraw that  
14 question. I don't think I have any further  
15 questions.

16 CHAIRPERSON MILLER: Yes, Mr.  
17 Simpson?

18 MR. SIMPSON: Just a few  
19 questions. Does Libertine intend to charge  
20 cover charges?

21 MR. AUSLANDER: You know, I would  
22 say the answer would be no, but you never

1 know. You never know. You know, there could  
2 be an event -- you know --

3 MS. BOWMAN: A wine event or  
4 something.

5 CHAIRPERSON MILLER: No, you can't  
6 coach. Sorry.

7 MS. BOWMAN: Okay. Sorry. I want  
8 to though.

9 CHAIRPERSON MILLER: You can't.

10 MR. AUSLANDER: Yes, you could  
11 have an event where -- who knows? I have, you  
12 know, the Pope in the back room and to meet  
13 the Pope I want to charge a \$5 cover charge.

14 (Laughter.)

15 MR. AUSLANDER: Or, you know, I  
16 could have an event where I want to sell  
17 tickets and that could be misconstrued. I  
18 know at the sports bar I have that in my  
19 voluntary agreement. And once in a blue moon  
20 there is a boxing match that I don't show  
21 because I'm not allowed to charge a cover  
22 charge. And that would come once every two

1 years. So when that date comes up, I know  
2 that it's in my voluntary agreement that I  
3 don't charge a cover and therefore I don't  
4 show the boxing event. But would that alter  
5 my business at Ventnor to be able to charge a  
6 cover charge? No, but, you know, you never  
7 know. And I can't anticipate the future.  
8 What I don't want to do is lock myself into  
9 something I can't change.

10 MR. SIMPSON: To follow up to  
11 that, does Ventnor have an entertainment  
12 endorsement?

13 MR. AUSLANDER: No, we don't.

14 CHAIRPERSON MILLER: I'm sorry,  
15 what was the question?

16 MR. SIMPSON: Does Ventnor, that  
17 he was referring to, have an entertainment  
18 endorsement?

19 CHAIRPERSON MILLER: Oh.

20 MR. SIMPSON: They do not. Do you  
21 intend to have Libertine participate in bar  
22 crawls, pub crawls or similar events?

1 MR. AUSLANDER: I can't tell you  
2 what types of events I may be interested in  
3 doing three years from now, and that's why we  
4 are not interested in signing the settlement  
5 agreement with these types of conditions.  
6 Because the answer you're looking for is I  
7 have no idea, because I don't know what -- I  
8 need the flexibility to take the business  
9 where it might need to go. Operating a  
10 business in Adams Morgan with handcuffs on can  
11 be very difficult. And allowing myself as  
12 many options as I need to make the business  
13 successful is important.

14 MR. SIMPSON: And you indicated  
15 that the type of entertainment you expect to  
16 have would be jazz or big band music?

17 MR. AUSLANDER: No, I did not.

18 MR. SIMPSON: What was --

19 MR. AUSLANDER: I said that was  
20 the type of music we're playing on the radio.

21 MR. SIMPSON: Oh, okay.

22 CHAIRPERSON MILLER: You're

1 playing with what?

2 MR. AUSLANDER: On the radio.

3 CHAIRPERSON MILLER: Oh, okay.

4 MR. AUSLANDER: Yes, we use a  
5 radio there for -- the music that's  
6 currently coming is coming from the radio.

7 CHAIRPERSON MILLER: Okay.

8 MR. AUSLANDER: So what I was  
9 trying to express was that the type of music  
10 would be a more mature type of music that we  
11 are playing at this time.

12 MEMBER ALBERTI: Excuse me, I'm a  
13 little confused here, because I want to make  
14 sure that we're relevant. I'm looking at your  
15 records, and maybe I'm wrong, so I want to  
16 clear this up. Do you have an entertainment  
17 endorsement?

18 MR. AUSLANDER: No.

19 MEMBER ALBERTI: Do you have a --

20 MR. AUSLANDER: Yes, we do have an  
21 entertainment endorsement. I'm sorry.

22 MEMBER ALBERTI: You have an

1 entertainment endorsement?

2 CHAIRPERSON MILLER: They do.

3 MR. AUSLANDER: We do.

4 MEMBER ALBERTI: Okay. I'm  
5 looking at it. I don't see it.

6 MR. AUSLANDER: I apologize.

7 MEMBER ALBERTI: And just for my  
8 edification. And you have a cover charge  
9 endorsement?

10 MR. AUSLANDER: At this time? Can  
11 we?

12 MEMBER ALBERTI: Do you?

13 MR. AUSLANDER: No.

14 MEMBER ALBERTI: Okay. I'm only  
15 concerned about what's currently -- again,  
16 we're only concerned about the current  
17 license. So, okay.

18 MR. JAMES: If I might mention --

19 CHAIRPERSON MILLER: No.

20 MR. JAMES: -- the entertainment  
21 endorsement was granted by the Board. I'm  
22 looking now at the file to see if --

1                   MEMBER ALBERTI: Oh, that was  
2 granted earlier this year, if I remember  
3 correctly. I remember that. I'm sorry.  
4 That's why I don't remember because it was --

5                   MR. JAMES: It didn't --

6                   MEMBER ALBERTI: It was recent  
7 endorsement. Thank you.

8                   MR. JAMES: They only sought  
9 entertainment. They didn't check any other  
10 boxes. Dancing.

11                  MEMBER ALBERTI: Right, right. So  
12 no cover charge.

13                  MR. JAMES: Cover charge.

14                  MEMBER ALBERTI: Right. I got  
15 you. All right. Thank you. We can move on.  
16 Just so everybody knows what we're talking  
17 about for today's renewal.

18                  MR. SIMPSON: I think those are  
19 all of my questions for now.

20                  CHAIRPERSON MILLER: Okay. Are  
21 there Board questions?

22                  MEMBER ALBERTI: Yes.

1 CHAIRPERSON MILLER: Go ahead.

2 MEMBER ALBERTI: Mr. Auslander,  
3 you have --

4 CHAIRPERSON MILLER: I'm sorry. I  
5 haven't been so good on process today. If you  
6 want to ask a question, I believe you possibly  
7 could.

8 MS. BOWMAN: Have we had --

9 MEMBER ALBERTI: No.

10 CHAIRPERSON MILLER: Do Board  
11 Members have objection to that?

12 MEMBER ALBERTI: Well, wait.  
13 Wait, wait, wait.

14 CHAIRPERSON MILLER: She's like --  
15 they're like the attorney/witness.  
16 Attorney/witness.

17 MEMBER ALBERTI: Well, then she  
18 should have asked the questions. She should  
19 have asked the questions.

20 MEMBER JONES: No, she didn't  
21 establish herself as the person to be the  
22 spokesperson.

1 CHAIRPERSON MILLER: We know she's  
2 not an attorney. Okay.

3 MS. BOWMAN: I'm not an attorney.

4 MEMBER JONES: Right. And she's  
5 not an attorney.

6 CHAIRPERSON MILLER: I know.

7 MEMBER JONES: So he had an  
8 opportunity, so she's --

9 MEMBER ALBERTI: And it should  
10 have been done before the Protestant went to  
11 questions.

12 CHAIRPERSON MILLER: I told you,  
13 process today.

14 MEMBER ALBERTI: All right.

15 CHAIRPERSON MILLER: Okay. Fine.

16 MEMBER ALBERTI: All right.

17 CHAIRPERSON MILLER: Sorry.

18 MEMBER ALBERTI: All right. Mr.  
19 Auslander, so you actually did address some of  
20 the things I guess in bringing up the PIF, so  
21 let's talk about this. All right. How many  
22 people in your --

1 MR. AUSLANDER: C of O?

2 MEMBER ALBERTI: What's your C of  
3 -- yes, how many seats?

4 MR. AUSLANDER: We have about 30  
5 seats, give or take. You know, with the  
6 little patio out front --

7 MEMBER ALBERTI: Okay.

8 MR. AUSLANDER: -- may get a few  
9 more.

10 MEMBER ALBERTI: All right.

11 MR. AUSLANDER: Depending on  
12 how --

13 MEMBER ALBERTI: Okay. During the  
14 week how many seatings do you have?

15 MR. AUSLANDER: Typically we get  
16 one seating. Sometimes we will get two. You  
17 know, that neighborhood is difficult. You  
18 know, there's not a lot of businesses down  
19 there.

20 MEMBER ALBERTI: Yes.

21 MR. AUSLANDER: So a lot of times  
22 your first customer, you know, such as

1 yourselves, you know, you're at work, you go  
2 home, up to the Adams Morgan neighborhood, you  
3 change out of your suit and tie, then you come  
4 out. So by the time you get out to dinner,  
5 it's 7:00, 7:30.

6 MEMBER ALBERTI: Right.

7 MR. AUSLANDER: But, you know, the  
8 dinner business so far has been steady. We  
9 still have the same chef that you guys met  
10 weeks ago and his food is very good.

11 MEMBER ALBERTI: And on weekends?

12 MR. AUSLANDER: You know, weekends  
13 can be -- hopefully we get the second seating.  
14 But again, you know, it does tend to be a  
15 later neighborhood, even for dinner. You  
16 don't get that 6:30 dinner. You get, you  
17 know, 7:30, 8:00 dinner. We're taking  
18 reservations. So it's been a good start.

19 MEMBER ALBERTI: Okay. And so  
20 where is your trash stored?

21 MR. AUSLANDER: The trash is all  
22 the way out back in the alley. I mean, you

1 know --

2 MEMBER ALBERTI: Behind the --

3 MR. AUSLANDER: -- metal dumpster  
4 receptacle.

5 MEMBER ALBERTI: In an alley  
6 behind the establishment?

7 MR. AUSLANDER: Right, next to  
8 every other dumpster for multiple restaurants.

9 MEMBER ALBERTI: Okay.

10 MR. AUSLANDER: May other  
11 restaurants.

12 MEMBER ALBERTI: I was going to  
13 say, is it -- I was going to ask, this is like  
14 a typical -- no, but I'm going to let you  
15 describe the size of the dumpster.

16 MR. AUSLANDER: This dumpster I  
17 would say is larger than necessary for a  
18 restaurant of this size. The trash fits  
19 comfortably inside the metal green dumpster.

20 MEMBER ALBERTI: How many days  
21 would you estimate --

22 MR. AUSLANDER: I actually

1 think --

2 MEMBER ALBERTI: -- of trash would  
3 it hold?

4 MR. AUSLANDER: I believe that  
5 it's three days a week, not the two days a  
6 week the investigator said. I could be wrong,  
7 but I'm pretty sure it's three days a week.

8 MEMBER ALBERTI: The question is  
9 how many days trash do you estimate that it  
10 would hold?

11 MR. AUSLANDER: Oh, I think that  
12 this -- it could hold a week's worth of trash,  
13 because we got recycling bins as well. I  
14 believe there's three recycling bins as well.  
15 Which these recycling bins are the larger of  
16 the flip-top single roll recycling bins.

17 MEMBER ALBERTI: How often do you  
18 fill those up?

19 MR. AUSLANDER: We don't fill  
20 those up that often because at this  
21 establishment we don't serve a lot of bottles  
22 and cans. It's mostly wine bottles. We don't

1 do a lot of bottled beer, which tends to fill  
2 the dumpster.

3 MEMBER ALBERTI: How often do you  
4 fill them up?

5 MR. AUSLANDER: I think we have  
6 yet to fill one up prior to it being picked  
7 up.

8 MEMBER ALBERTI: And your trash  
9 dumpster?

10 MR. AUSLANDER: It has not --  
11 never been filled up.

12 MEMBER ALBERTI: Never been filled  
13 up? Okay. The other subject you mentioned  
14 was noise. And I heard the same words: Big  
15 band. Jazz. Could be loud. I mean you have  
16 an entertainment endorsement. So what would  
17 lead me to believe that there isn't the  
18 potential for noise? You've described your  
19 establishment -- and I'll tell you when I'm  
20 done -- so I'm going to be rambling. You  
21 describe your establishment as having open  
22 windows in the front. All right? So there's

1 really no sound barrier many times when the  
2 weather is nice.

3           So if you have an entertainment  
4 endorsement, what kind of assurances can you  
5 give us that you're not going to generate  
6 noise that's going to contribute to the  
7 general noise level on the street, I mean just  
8 excessively to the general noise level and  
9 fracas that sometimes we see -- fracas is a  
10 bad word -- you know, the activity we see on  
11 the street?

12           MR. AUSLANDER: We're not looking  
13 for that fracas to come inside. That's the  
14 insurance. I mean if you go online and check  
15 out the establishment, we're being listed as  
16 a French restaurant. You know, we're serving  
17 -- our number one seller right now is truffled  
18 mussels. We're selling a fair amount of quail  
19 here. That's one of our more popular  
20 appetizers. We're not looking for a ruckus to  
21 come inside.

22           MEMBER ALBERTI: Well, let me put

1       it another way: What assurance do I have that  
2       if I'm walking down the street in Adams Morgan  
3       at 1:00 in the morning that I'm going to be  
4       able to have a -- standing outside your patio  
5       I'm going to be able to have a conversation  
6       with somebody without shouting because the  
7       music coming from your establishment is --

8                   MR. AUSLANDER: I need my  
9       customers.

10                  MEMBER ALBERTI: -- overwhelming  
11       my conversation?

12                  MR. AUSLANDER: Well, I think the  
13       answer to that is I need my customers to be  
14       able to have those same conversations while  
15       they're having dinner. I mean nobody wants to  
16       have a dinner at the -- you know, nobody has  
17       a mussels and quail while listening, you know,  
18       five rows back at the Rolling Stones. The  
19       music is coming from a stereo. You know,  
20       we're trying to run a high-quality, high-end  
21       establishment, but, you know, creating a nice  
22       open atmosphere to the street does add to the

1 neighborhood. It adds to the feelings, the  
2 vibe, and that's why people come out. You  
3 know, this is not a loud ruckus establishment.

4 MEMBER ALBERTI: I hear you, but  
5 you know, I'm sort of playing devil's  
6 advocate. I'm putting myself in the place  
7 of --

8 MR. AUSLANDER: Sure. And I think  
9 part of your --

10 MEMBER ALBERTI: If I was, you  
11 know, a Protestant concerned about this, I  
12 mean one of my concerns would be that I don't  
13 really expect people to be dining at 1:30 in  
14 the evening, but I might expect you to have  
15 entertainment going at 1:30 in the evening.  
16 And so --

17 MR. AUSLANDER: I think that, you  
18 know, if there was a problem, somebody would  
19 have come to us. Hopefully a neighbor would  
20 come to us. Again, we're here for a renewal,  
21 as you pointed out. And we've been open for  
22 a month. And as your investigator has told

1       you, there's no issues of peace, order and  
2       quiet. It's been a month now. I know the  
3       Protestants have been by, walked by, have  
4       gotten a chance to take a look and nobody's  
5       come to us with any comments or concerns about  
6       the way we're running the establishment as it  
7       relates the neighborhood.

8                   MEMBER ALBERTI: Now you have  
9       neighbors on either side of you who are  
10      businesses?

11                   MR. AUSLANDER: That is correct.

12                   MEMBER ALBERTI: To the left of  
13      you is who?

14                   MR. AUSLANDER: Well, to the left  
15      is Jyoti. It's an Indian restaurant.

16                   MEMBER ALBERTI: Well, as I'm  
17      facing you.

18                   MR. AUSLANDER: Then to the left  
19      would be Meze.

20                   MEMBER ALBERTI: Meze?

21                   MR. AUSLANDER: Who is open late.  
22      They've got 2:00, 3:00 a.m., I believe,

1 operating hours on their patio. And again,  
2 you know, it's a serve food late, much as we  
3 do.

4 MEMBER ALBERTI: So what's your  
5 relationship with them? And this is where I'm  
6 going --

7 MR. AUSLANDER: We have a good --  
8 we have a great relationship.

9 MEMBER ALBERTI: Where I'm going  
10 with this is have you had any problem with  
11 their noise disrupting your establishment?

12 MR. AUSLANDER: Never.

13 MEMBER ALBERTI: Okay. Would you  
14 reciprocate?

15 MR. AUSLANDER: Absolutely. We  
16 have a --

17 MEMBER ALBERTI: And on the other  
18 side of you who's there?

19 MR. AUSLANDER: We have one side  
20 is Meze, the other side is Jyoti.

21 MEMBER ALBERTI: Okay.

22 MR. AUSLANDER: Is I believe how

1 you say it.

2 MEMBER ALBERTI: Do they have an  
3 outdoor caf,?

4 MR. AUSLANDER: They do. They have  
5 a nice size outdoor caf,. Very similar, if  
6 not the same size as ours.

7 MEMBER ALBERTI: Okay. Is there  
8 anything else you want to say on the noise  
9 issues that I've just brought up?

10 MR. AUSLANDER: No. You know,  
11 noise issues -- we're here for a renewal. The  
12 establishment, although it had been closed for  
13 a year, as far as I -- or a little less than  
14 a year. As far as I know we operated it for  
15 about nine months. As far as I know there's  
16 never been any noise issues with this  
17 establishment until now. Now we've been open  
18 a month and I haven't heard a peep about noise  
19 from any of my neighbors, anything like that.  
20 Even the investigator says that she didn't  
21 hear any noise. So leads me to believe I  
22 don't think noise is an issue in this

1 location.

2 MEMBER ALBERTI: Okay. I have no  
3 further questions. Thank you.

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

6 MEMBER JONES: Thank you, Madam  
7 Chair. While we're talking about noise, let's  
8 just talk about the noise. So Investigator  
9 Martin indicated that she heard the big band  
10 music, as you referred to it --

11 MR. AUSLANDER: I --

12 MEMBER JONES: -- through your  
13 door when she testified.

14 MR. AUSLANDER: I believe she  
15 indicated she didn't hear anything.

16 MEMBER JONES: Okay. You make  
17 reference to how you're operating the  
18 establishment now. You make reference to what  
19 your pitch is now, what your gimmick is right  
20 now. The concern that I have, to be perfectly  
21 candid, is you're talking about the here and  
22 now, but you're also preaching about how you

1 want to be flexible so that you could morph  
2 and change your business in the future as  
3 needs dictate.

4 So what assurances do we have that  
5 you will not morph into a loud rowdy  
6 establishment that plays whatever band you  
7 referred to as being the rowdy band where you  
8 don't eat quail and you don't eat mussels and  
9 whatever? And at what point when mussels and  
10 quail turn out to be not as profitable as you  
11 would like and you morph into a burger joint?  
12 Like what assurances do we have that you're  
13 not going to change in such a fashion that  
14 will not be a negative contributor to the  
15 neighborhood in terms of noise with your  
16 entertainment endorsement that you currently  
17 have?

18 MR. AUSLANDER: Well, I think the  
19 assurances come from the operators themselves.  
20 I mean we operate the businesses at 2435 18th  
21 Street, 2427 18th Street, 2411 18th Street.  
22 We have a high interest in this 100-yard space

1 on 18th Street. We don't run loud schlocky  
2 establishment. So the idea that we would --  
3 plus we've taken this establishment from a  
4 dive to a high-end establishment.

5 Your assurances would come from,  
6 you know, the operators themselves just simply  
7 don't run those kinds of places. And we are  
8 invested heavily in the neighborhood. And,  
9 you know, hopefully if there ever is a problem  
10 with noise or whatever goes on, hopefully the  
11 neighborhood will call those to our attention.  
12 You know, in terms of renewal we haven't had  
13 a problem. It's almost -- you know, so I  
14 don't know really what to say to that.

15 MEMBER JONES: Okay. So you've  
16 been open for a month?

17 MR. AUSLANDER: That's correct.

18 MEMBER JONES: Correct? So to say  
19 you haven't had a problem, we don't have a  
20 long history to pull from. You only have a  
21 month.

22 MR. AUSLANDER: Well, in terms of

1 noise --

2 MEMBER ALBERTI: In terms of  
3 Libertine.

4 MR. AUSLANDER: That is correct,  
5 sir.

6 MEMBER JONES: Right. Okay.

7 MR. AUSLANDER: But in terms of  
8 noise and noise emanation from the  
9 establishment, this establishment had been  
10 operating frankly as much lower-end  
11 establishment for almost 20 years in this  
12 location.

13 MEMBER JONES: Under your  
14 ownership?

15 MR. AUSLANDER: No, we had it  
16 for --

17 MEMBER JONES: Okay. We're not  
18 talking about that.

19 MR. AUSLANDER: Okay.

20 MEMBER JONES: I'm asking about  
21 you and your ownership, your current model.

22 MR. AUSLANDER: We operated it for

1 nine months --

2 MEMBER JONES: Okay.

3 MR. AUSLANDER: -- approximately  
4 with no issues.

5 MEMBER JONES: Okay. And when was  
6 that?

7 MR. AUSLANDER: Nine months  
8 earlier than July, so we shut down about this  
9 time last year. We shut down at the end of  
10 the summer last year.

11 MEMBER JONES: So you operated it  
12 as a lower-end establishment for nine months.  
13 Then it was shut down.

14 MR. AUSLANDER: It was just a much  
15 different establishment. It wasn't quite as  
16 nice.

17 MEMBER JONES: Well, what kind of  
18 establishment was it?

19 MR. AUSLANDER: You know, it was  
20 probably --

21 MEMBER JONES: Okay. Never mind.  
22 So the noise that you had emanating from the

1 establishment, you said you had a radio  
2 playing at your establishment?

3 MR. AUSLANDER: That's correct.

4 MEMBER JONES: Did you ever have  
5 the doors open at your establishment?

6 MR. AUSLANDER: Yes.

7 MEMBER JONES: You did? Were you  
8 able to hear the radio outside of your  
9 establishment when you had the doors open?

10 MR. AUSLANDER: No.

11 MEMBER JONES: No? Okay. How do  
12 you know that?

13 MR. AUSLANDER: Because I know  
14 spend many an evening standing on the sidewalk  
15 outside my establishment.

16 MEMBER JONES: Okay. So is there  
17 any entertainment that is provided for the  
18 outdoor patrons?

19 MR. AUSLANDER: Not at this time,  
20 no.

21 MEMBER JONES: Not at this time?  
22 Do you plan to have any entertainment for the

1 outdoor establishment?

2 MR. AUSLANDER: On the outside,  
3 no.

4 MEMBER JONES: No? You said not  
5 at this time?

6 MR. AUSLANDER: No --

7 MEMBER JONES: Or did you say no?

8 MR. AUSLANDER: -- I don't plan on  
9 having any entertainment outside.

10 MEMBER JONES: You don't plan to  
11 have any entertainment outside?

12 MR. AUSLANDER: Right.

13 MEMBER JONES: Okay. But there  
14 are no assurances that you have that you would  
15 be able to put in place right now as you're  
16 comfortable with stating that you wouldn't  
17 have a live band or that type of entertainment  
18 going on at your establishment given your  
19 ability to want to be flexible?

20 MR. AUSLANDER: We have an  
21 entertainment endorsement and, you know, if we  
22 wanted to have a singer/songwriter-night-kind

1 of deal or something like that, we wanted to  
2 have the flexibility to do that.

3 MEMBER JONES: So in those  
4 instances when you have that entertainer  
5 there, where you want that flexibility, what  
6 would you be doing to ensure that noise  
7 wouldn't be emanating from your establishment  
8 in a fashion that would be disruptive to the  
9 neighborhood?

10 MR. AUSLANDER: If it was  
11 disruptive to anybody, we would address the  
12 noise issue.

13 MEMBER JONES: So right now we  
14 don't do it?

15 MR. AUSLANDER: That's correct.

16 MEMBER JONES: You don't have that  
17 entertainment there?

18 MR. AUSLANDER: Right.

19 MEMBER JONES: What I'm asking you  
20 is --

21 MR. AUSLANDER: If we have --

22 MEMBER JONES: -- what steps are

1       you willing to take, are you prepared to take,  
2       are you thinking about taking to ensure that  
3       it doesn't become a disruption even the first  
4       time that you'd do it? Have you thought about  
5       that at all, or are you just saying I won't  
6       change anything until someone complains?

7                   MR. AUSLANDER: We've been open a  
8       month, so I haven't thought about  
9       entertainment at all, let alone the noise that  
10      would emanate from said entertainment. You  
11      know, the most we've talked about  
12      entertainment is maybe someday we'll have  
13      entertainment. Okay. Good. You know? But  
14      we haven't gotten to the details of, you know,  
15      where would we put the singer/songwriter in  
16      the space? You know, how much noise would it  
17      create? That's more detailed than we've  
18      gotten to at this juncture.

19                   MEMBER JONES: Okay. So it's fair  
20      to say that you haven't given any  
21      consideration to what the impact of said live  
22      entertainment would be from a noise emanation

1       standpoint from your establishment because you  
2       haven't given that much thought based on --

3                   MR. AUSLANDER:  It hasn't been  
4       needed yet, correct.  We haven't given it much  
5       thought.

6                   MEMBER JONES:  Okay.  In terms of  
7       the trash, you indicated that you -- what's  
8       your current contract for trash?

9                   MR. AUSLANDER:  I believe it's  
10      three days a week.

11                  MEMBER JONES:  Who manages your  
12      establishment?

13                  MR. AUSLANDER:  Well, the only  
14      reason I said I believe is because your  
15      investigator said twice a week.  I did set up  
16      the trash originally, and it was three days a  
17      week.

18                  MEMBER JONES:  What is your  
19      contract for trash?

20                  MR. AUSLANDER:  I haven't reviewed  
21      the trash contract in quite some time.

22                  MEMBER JONES:  Who's responsible

1 for running or managing your establishment?

2 MR. AUSLANDER: I am.

3 MEMBER JONES: You are? So you  
4 would be the person that would have expert  
5 knowledge of your contractual arrangements?

6 MR. AUSLANDER: That is correct.  
7 You know, like I told your fellow Board  
8 Member, you know, when your trash is getting  
9 full -- you know, if it's never full and it's  
10 always empty every time I throw a bag in  
11 there, then whether it's two days or three  
12 days a week never becomes an issue. If all of  
13 a sudden I went back there on Friday and threw  
14 a bag in the garbage and it was full, I'd say,  
15 you know, are they coming to pick it up? But  
16 the amount of garbage in your cylinder hasn't  
17 been an issue yet to really make a difference  
18 whether it's two days a week or three days a  
19 week.

20 MEMBER JONES: Okay. So as it  
21 stands right now you don't know what your  
22 contract says for trash pickup?

1 MR. AUSLANDER: That is correct.  
2 I mean, like I said, we don't do bottled  
3 beers. We don't do, you know, cloth -- you  
4 know, we have cloth napkins. This is just not  
5 a place that's generating a lot of garbage.

6 MEMBER JONES: Okay. And why  
7 isn't it a place that generates a lot of  
8 garbage? Is it just strictly because --

9 MR. AUSLANDER: I think, you know,  
10 it's part of the nature of the establishment.

11 MEMBER JONES: What does that  
12 mean?

13 MR. AUSLANDER: What does that  
14 mean? We're not using a lot of paper  
15 products. Like I said, we don't sell bottled  
16 and canned beer. You know, we sell high-end  
17 craft cocktails, mostly like artisan  
18 cocktails. All the food is fresh. The nature  
19 of the -- the food is small and delicate. It  
20 doesn't -- just the nature of the operation  
21 doesn't seem to be generating a lot of  
22 garbage.

1                   MEMBER JONES: You have 30-plus  
2                   seats?

3                   MR. AUSLANDER: That's correct.

4                   MEMBER JONES: And I think you  
5                   indicated -- what's your turnover?

6                   MR. AUSLANDER: Well, I mean --

7                   MEMBER JONES: You've been open  
8                   for a month. So what's your historical  
9                   turnover and what's your projected turnover?

10                  MR. AUSLANDER: Well, I'm not sure  
11                  what you mean by turnover.

12                  MEMBER JONES: Seats. How many  
13                  times do you want to rotate a seat in order to  
14                  be profitable?

15                  MR. AUSLANDER: As much as  
16                  possible.

17                  MEMBER JONES: Exactly. So right  
18                  now you're saying you've been open for a  
19                  month. And you're saying right now you  
20                  haven't had an issue with trash. Right? But  
21                  if you get to the point where you're as  
22                  popular as you hope to be, your turnover is

1 probably going to be a little bit higher than  
2 it is right now. You probably hope so. You'd  
3 probably hope to generate more trash, because  
4 if you're generating more trash, you're  
5 probably generating more revenue.

6 So I think what Board Member  
7 Alberti's question was alluding to, which mine  
8 is right now, is you're telling me right now  
9 to base what your current level of trash is on  
10 your current operations, but I want to  
11 understand what your math is. What's your  
12 metric for measuring your trash?

13 MR. AUSLANDER: If the trash  
14 became a problemo --

15 MEMBER JONES: Yes.

16 MR. AUSLANDER: -- at any time and  
17 I was getting -- you know, the gentleman who's  
18 in my alley -- I mean that guy's in the alley  
19 once a week taking photos, putting tickets.  
20 I've gotten them before, I'll be honest with  
21 you, at the other place. I've gotten a trash  
22 ticket before for not recycling. And if any

1 of that was an issue, I'd get another day a  
2 week. I'd go four days a week. If this place  
3 is so busy I got to go seven days a week,  
4 hallelujah, that's the best problem I've ever  
5 heard. But right now it's not an issue. And  
6 we're here to talk about the renewal of our  
7 liquor license.

8 MEMBER JONES: And part of the  
9 elements of the renewal of your liquor license  
10 are what? What are the elements that we would  
11 be discussing?

12 MR. AUSLANDER: Well, my  
13 understanding is --

14 MEMBER JONES: Peace, order and  
15 quiet?

16 MR. AUSLANDER: -- you renew based  
17 on, you know, our track record and our history  
18 and what's going on with this particular  
19 establishment and how it's impacted the  
20 neighborhood. I mean the neighborhood's here  
21 to talk about how this particular  
22 establishment in this location has adversely

1       impacted them. You know, and what I'm saying  
2       is it hasn't adversely impacted anyone.

3                   MEMBER JONES: Cool. Would that  
4       be in part because it's only been open for a  
5       month, as you've indicated?

6                   MR. AUSLANDER: No, I actually do  
7       believe that the past track record of this  
8       being an ABC establishment for close to 20  
9       years, whether or not it's under my ownership  
10      or not, is a valid point.

11                  MEMBER JONES: Okay. So you also  
12      mention that the reason why you -- we would  
13      have to trust in the fact of the ownership to  
14      know that you wouldn't morph into something  
15      that we would consider to be a negative  
16      contributor to the neighborhood in terms of  
17      peace, order and quiet. Noise.

18                  MR. AUSLANDER: Right.

19                  MEMBER JONES: And you mentioned  
20      there were three -- I guess these were  
21      addresses you gave me. There were numbers --

22                  MR. AUSLANDER: Right.

1                   MEMBER JONES:  -- that you gave  
2                   me.  What were the names of those  
3                   establishments and do those establishments  
4                   currently have SAs?

5                   MR. AUSLANDER:  I'm sorry, do they  
6                   currently have?

7                   MEMBER JONES:  SAs.

8                   MEMBER ALBERTI:  Settlement  
9                   agreements.

10                  MR. AUSLANDER:  Oh, settlement  
11                  agreements?  Oh.  The Black Squirrel is my  
12                  partner's establishment, and that's at 2435.  
13                  So that would be in the middle of the 2411 and  
14                  the -- oh, the 2435 is this, Libertine.  And  
15                  I believe they're at 2427, which is in the  
16                  middle between my restaurant Ventnor, which is  
17                  at 2411.  And, yes, we do have a settlement  
18                  agreement at Ventnor and I believe they have  
19                  one at the Black Squirrel.  I'm not as  
20                  familiar with that one as I'm not the owner at  
21                  that location.

22                  And, yes, I do think that there is

1 an element that the Board would need to  
2 understand that we're not going to trash our  
3 block. I mean I've been at Ventnor for nine  
4 years now. I've never really heard concerns  
5 from the neighborhood. I frankly spent the  
6 last week -- we closed for a few days to do  
7 improvements. I'm improving the business. We  
8 repainted. You know, investing in that  
9 neighborhood, not to mention the investment we  
10 put in in Libertine.

11 MEMBER JONES: Okay. So but I  
12 guess getting back to the root of my question,  
13 you indicated that for us to rely on the  
14 nature of the owners and the nature of the  
15 businesses that they currently operate in this  
16 neighborhood as a basis for knowing that the  
17 nature of the operations at Libertine won't  
18 morph into something that is detrimental to  
19 peace, order and quiet for the neighborhood.

20 MR. AUSLANDER: Yes.

21 MEMBER JONES: But those  
22 establishments that you referenced are also

1 governed or impacted by an SA.

2 MR. AUSLANDER: You know --

3 MEMBER JONES: Is that a fair  
4 statement?

5 MR. AUSLANDER: Sure.

6 MEMBER JONES: Okay. Thank you.

7 MR. AUSLANDER: You know, I look  
8 at the list of places with settlement  
9 agreements. I see good operators. I see bad  
10 operators. I'm in that neighborhood pretty  
11 much every day; I did take Thanksgiving Day  
12 off last year. for the last 10 years. There's  
13 plenty of places -- when I look at this list  
14 of operating hours, settlement agreements, I  
15 see people who follow them, I see people who  
16 don't. A good operator is going to be a good  
17 operator and a bad apple's going to be a bad  
18 apple.

19 MEMBER JONES: Thank you. Thank  
20 you, Madam Chair.

21 CHAIRPERSON MILLER: Other Board  
22 Members?

1                   MEMBER ALBERTI: Go ahead. I have  
2 just one more question, but go ahead. You can  
3 go ahead.

4                   CHAIRPERSON MILLER: Okay. So  
5 you've been operating an other restaurant for  
6 at least nine years, is that right?

7                   MR. AUSLANDER: Nine years this  
8 week. Or last week. Right around -- yes.

9                   CHAIRPERSON MILLER: Okay. So did  
10 you deal with noise issues at all in that  
11 restaurant?

12                   MR. AUSLANDER: About, I don't  
13 know, five, six years ago I opened a small  
14 back veranda-kind of deal, so I did deal with  
15 some noise issues at that time. But ever  
16 since, you know, then I really haven't heard  
17 anything.

18                   CHAIRPERSON MILLER: I'm just  
19 curious how you resolved them. Were they  
20 resolved because there was a settlement  
21 agreement or were they resolved because of  
22 certain actions that you took or --

1 MR. AUSLANDER: Yes, when I  
2 purchased the restaurant 10 years ago we had  
3 a -- or nine years ago, whatever it was, we  
4 had a settlement agreement already in place.  
5 And I'm still, as you say, governed by said  
6 settlement agreement, which includes a lot of  
7 caveats that apply more to a Chinese  
8 restaurant, which was there before me, than to  
9 my place. You know, it talks about delivery.  
10 It talks about some other stuff that's really  
11 specific to a Chinese restaurant and it  
12 doesn't apply to my place.

13 CHAIRPERSON MILLER: I was just  
14 kind of asking because I know Mr. Jones was  
15 saying, well, you -- he's asking you about  
16 noise issues and you're saying, well, you  
17 haven't thought about them because you've just  
18 been open a month and there haven't been any.  
19 But my questions really went to, well, you've  
20 been in the business for nine years, so this  
21 is not a foreign concept to you that somebody  
22 might complain about music playing out your

1 window or something.

2 MR. AUSLANDER: We run small  
3 establishments. These are 1,500 square-foot  
4 establishments. These are not 20,000 square  
5 feet, you know, with a DJ coming in. These  
6 are small literally neighborhood  
7 restaurant/bars. I mean 1,500 square feet,  
8 you know, there's plenty of residences that  
9 could have house parties that get more people  
10 inside, you know? These are small places.

11 We tend to be in the middle of  
12 18th Street. You know, Ventnor for instance  
13 was -- I butt up against a building and a lot  
14 of those people are my customers.

15 CHAIRPERSON MILLER: Where is  
16 Libertine with respect to residences?

17 MR. AUSLANDER: I mean 18th Street  
18 is funny. There are people who live, you  
19 know, right above the establishments. Not  
20 necessarily Libertine. Libertine there's a  
21 business upstairs. But are there people that  
22 live on 18th Street? Yes, sure. You know, I

1 think if you move to 18th Street and you  
2 choose to live above a restaurant, part of  
3 what you want is the fun of living above a  
4 restaurant. I know when I was younger I lived  
5 in Philadelphia next to a Brazilian restaurant  
6 right around the time of the Macarena craze.  
7 It got a little hectic.

8 But the bulk of the residences,  
9 frankly, are actually pretty far from  
10 Libertine. The front entrance of Libertine,  
11 you know, to what I would call the  
12 neighborhood up on Belmont Street or over on  
13 Kalorama is actually quite a distance, I mean  
14 I think if I stood outside Libertine and  
15 shouted, you'd only hear me faintly on Belmont  
16 Street.

17 CHAIRPERSON MILLER: Okay. So I  
18 want to look at the conditions attached to  
19 this to the extent they haven't been addressed  
20 already.

21 The first one talks about interior  
22 occupancy not exceeding 60 persons. Do you

1 have a Certificate of Occupancy for --

2 MR. AUSLANDER: Of course.

3 CHAIRPERSON MILLER: Yes.

4 MR. AUSLANDER: I believe that  
5 information is on the Certificate of Occupancy  
6 and it's governed by the District Public Space  
7 Committee and so forth.

8 CHAIRPERSON MILLER: Right. So do  
9 you know what it is?

10 MR. AUSLANDER: I really don't.

11 CHAIRPERSON MILLER: But you have  
12 to comply with that, correct?

13 MR. AUSLANDER: Of course.

14 CHAIRPERSON MILLER: Okay. You  
15 already addressed cover charges. And I think  
16 you addressed bar crawls, those kind of  
17 events, meaning that you just didn't want to  
18 limit yourself, not that you're planning on  
19 joining them per se?

20 MR. AUSLANDER: You don't want to  
21 limit yourself. I mean we have three places  
22 within 100 yards. Wouldn't it be fun to have

1 a little event where you go from place to  
2 place to place? But we can't do that because  
3 our three -- two out of our three can't  
4 participate in said event. I mean I don't  
5 know that that type of event on a Saturday  
6 afternoon would be so disruptive to anybody.  
7 Again, we don't have to hamstring ourselves.

8 CHAIRPERSON MILLER: Okay. I'm  
9 going to skip the caf, hours not being  
10 extended, because that was the subject of the  
11 other hearing.

12 Five, doors and windows remaining  
13 closed at all times when music is being played  
14 or a sound amplification device is being used.  
15 Okay. So let me ask you, I think I heard you  
16 say that you have a radio you play now.  
17 That's your music. And then since you don't  
18 have this kind of settlement agreement  
19 provision, do you -- currently it's summer.  
20 Do you have the windows open now and play  
21 music?

22 MR. AUSLANDER: Yes, we do. But

1 as your investigator stated, she didn't hear  
2 anything.

3 CHAIRPERSON MILLER: Okay. You  
4 haven't had any complaints from anyone?

5 MR. AUSLANDER: No, ma'am.

6 CHAIRPERSON MILLER: And do you  
7 play it at all hours, or what?

8 MR. AUSLANDER: I mean when we  
9 close we tend to turn it off.

10 CHAIRPERSON MILLER: Okay.

11 MR. AUSLANDER: Yes, I mean it's  
12 on, you know, as late -- obviously we don't  
13 have super late hours here. We close a little  
14 earlier.

15 CHAIRPERSON MILLER: Do you play  
16 it so that your customers on the patio or  
17 sidewalk caf, can hear it?

18 MR. AUSLANDER: Well, because if I  
19 played it that loud, then it would be  
20 disruptive to people that are inside.

21 CHAIRPERSON MILLER: Right. Okay.

22 MR. AUSLANDER: You know, this is

1 a high-end establishment looking for an older  
2 crowd. I need people to be able to have  
3 conversations. This is not the kind of place  
4 where I need people blasting music at one  
5 another.

6 CHAIRPERSON MILLER: Okay. So  
7 that's what's controlling the level of your  
8 sound, so that your customers who are enjoying  
9 dinner don't have it so noisy that they have  
10 to yell above the music?

11 MR. AUSLANDER: Yes, I mean,  
12 right, we're having dinner.

13 CHAIRPERSON MILLER: Okay. Do you  
14 play music on your sidewalk caf,?

15 MR. AUSLANDER: No.

16 CHAIRPERSON MILLER: Do you intend  
17 to?

18 MR. AUSLANDER: No.

19 CHAIRPERSON MILLER: But I assume  
20 you -- well, I shouldn't assume, but basically  
21 that you would prefer not to be restricted  
22 from doing that even though you have no intent

1 to do it. Is that right?

2 MR. AUSLANDER: You know, let's  
3 say we wanted to do a -- it's a French  
4 restaurant, so let's say we want to do a  
5 Beaujolais Nouveau party. I can't anticipate  
6 what we may or may not want to do. Would it  
7 be a regular thing? I don't believe so.  
8 Would we address the issue if a neighbor said,  
9 hey, it's a little loud over here? Yes, of  
10 course we would. That's part of being in that  
11 particular neighborhood.

12 CHAIRPERSON MILLER: Right. Okay.

13 MR. AUSLANDER: I think we'd  
14 probably would run a tape player. It's hard  
15 to even find one.

16 (Laughter.)

17 CHAIRPERSON MILLER: Okay. No. 7,  
18 that noise levels be managed such that noise  
19 from the establishment will not be audible in  
20 nearby residences. I was kind of asking you  
21 about that. Are there any nearby residences  
22 that would hear your radio or the music that

1 you'd be playing from inside the restaurant?

2 MR. AUSLANDER: No.

3 CHAIRPERSON MILLER: No? Okay.

4 Do you have an issue with loitering in front of  
5 your establishment?

6 MR. AUSLANDER: Do I?

7 CHAIRPERSON MILLER: Yes.

8 MR. AUSLANDER: I think everybody  
9 in Adams Morgan does.

10 CHAIRPERSON MILLER: Okay.

11 MR. AUSLANDER: But those aren't  
12 my customers. And we -- do for the sake of my  
13 business and all of the businesses, sometimes  
14 I feel like I'm -- we're patrolling that 100-  
15 space of 18th Street, keeping, you know, the  
16 loitering in front of all three establishments  
17 clear. You know, patrons, same deal. I mean  
18 employees at the end of the night. I mean  
19 we're talking about a place with four  
20 employees leaving at the end of the night.  
21 It's just not -- you know, I don't have 100  
22 employees rolling out of there creating a

1 disturbance.

2 CHAIRPERSON MILLER: How many do  
3 you have?

4 MR. AUSLANDER: At the end of the  
5 evening, last night for instance, I think at  
6 the end of the evening were two, maybe three  
7 people leaving there.

8 CHAIRPERSON MILLER: Okay. So it  
9 says that the Licensee use reasonable efforts  
10 to prevent or disperse loitering or other  
11 sources of noise or disturbance in front of  
12 the establishment, that part of it. Do you  
13 take active steps to address loitering or --

14 MR. AUSLANDER: Yes.

15 CHAIRPERSON MILLER: You do? What  
16 are you doing?

17 MR. AUSLANDER: We're as active as  
18 we can be.

19 CHAIRPERSON MILLER: Okay. What  
20 do you do?

21 MR. AUSLANDER: We address the  
22 people that hang out on the streets in Adams

1 Morgan. You know, we'll get the police if  
2 necessary. You know, you do the best you can  
3 without putting yourself in danger.

4 CHAIRPERSON MILLER: Okay. And  
5 you probably answered this, but I don't know.  
6 Did you say how many times a week actually you  
7 do remove your trash?

8 MR. AUSLANDER: I believe it's  
9 three days a week.

10 CHAIRPERSON MILLER: Okay. Is  
11 that recycling, too? The same?

12 MR. AUSLANDER: Yes, I believe so.

13 CHAIRPERSON MILLER: Okay. Do you  
14 have something separate for oil?

15 MR. AUSLANDER: Yes, there's, you  
16 know, a drum, and you've seen them in the  
17 alleys, the drum with a lid --

18 CHAIRPERSON MILLER: Right.

19 MR. AUSLANDER: -- that cranks on.

20 CHAIRPERSON MILLER: Okay. Does  
21 that get attended to a certain amount of times  
22 a week?

1 MR. AUSLANDER: Absolutely. You  
2 know, these days you don't even have to attend  
3 it, because people steal it because they use  
4 it for private diesel.

5 CHAIRPERSON MILLER: Oh, okay.  
6 All right. Let me just double-check, see if  
7 I have anything else. Oh, yes, do you know  
8 whether Meze and Jyoti have settlement  
9 agreements or not?

10 MR. AUSLANDER: I can find it out  
11 right here on the list, I believe.

12 CHAIRPERSON MILLER: What is that  
13 list?

14 MR. AUSLANDER: Meze does  
15 according to this.

16 CHAIRPERSON MILLER: Okay.

17 MR. AUSLANDER: And Jyoti does not  
18 according to this.

19 CHAIRPERSON MILLER: Okay. All  
20 right. I don't have any other questions. Mr.  
21 Alberti, did you say you had another question?

22 MEMBER ALBERTI: Yes, I sort of

1 want to talk about some concrete concerns  
2 issues here. All right? One is -- and based  
3 on my knowledge of what others have done and  
4 what's -- could -- what the potential for you  
5 to do. You have big windows that open out to  
6 the patio, right?

7 MR. AUSLANDER: No, it's just a  
8 door. It's just --

9 MEMBER ALBERTI: Door. A door.  
10 But they open out?

11 MR. AUSLANDER: Yes, it's a door  
12 and it opens to the patio.

13 MEMBER ALBERTI: They open up  
14 right out to the front so that --

15 MR. AUSLANDER: A set of double  
16 doors.

17 MEMBER ALBERTI: Yes.

18 MR. AUSLANDER: And that's it.

19 MEMBER ALBERTI: Right, right,  
20 right. Beside your entrance there's --

21 MR. AUSLANDER: Right.

22 MEMBER ALBERTI: -- a set of

1 double doors --

2 MR. AUSLANDER: That is correct.

3 MEMBER ALBERTI: -- that open out  
4 to the sidewalk caf,. All right. So if I was  
5 to say to you that at some hour you would be  
6 required to keep those doors closed and the  
7 front door of the establishment closed if you  
8 had entertainment so that the noise wouldn't  
9 spill out except -- an over-concentration of  
10 noise is better way of saying it, but noise  
11 wouldn't spill out onto the street, how would  
12 that affect your business? Potentially. All  
13 this is potential.

14 Because I think one of the things  
15 that Mr. Jones was going to is that you can  
16 talk about what your track record is for the  
17 last month and you can talk about what your  
18 vision is, but there is a potential. There's  
19 always a potential for the future for other  
20 activities. And you're admitting that. So  
21 let's talk about what would it mean  
22 potentially to your business if I said that to

1       you?

2                   MR. AUSLANDER:  I have no idea.  I  
3       can't -- I mean again, part of the reason  
4       we're here is we're trying to avoid a number  
5       of conditions placed on the license because I  
6       can't predict what may happen in the future.

7                   MEMBER ALBERTI:  So you can  
8       predict what your --

9                   MR. AUSLANDER:  I can try.

10                  MEMBER ALBERTI:  -- what the  
11       potential parameters of your business might be  
12       that you would not exceed?  I mean you can't  
13       predict whether or not you'll have a 10-piece  
14       jazz band there with the windows open at 2:00  
15       in the morning?  I mean there's got to be some  
16       limits.

17                  MR. AUSLANDER:  Sure.

18                  MEMBER ALBERTI:  You are the  
19       owner.  You have a vision.  You have control.

20                  MS. BOWMAN:  Our license doesn't  
21       go into --

22                  MEMBER ALBERTI:  And what --

1       excuse me. Excuse me. And what you're saying  
2       to me is that you want unlimited potential  
3       here. And that's a scary concept.

4                   MR. AUSLANDER: I understand.  
5       Right now the license allows us to have  
6       entertainment only up to a certain time.

7                   MEMBER ALBERTI: Until what time?

8                   MR. AUSLANDER: To be honest with  
9       you, I don't know off the top of my head.  
10      Okay?

11                  MEMBER ALBERTI: All right.

12                  MR. AUSLANDER: I know that the  
13      time is a lot earlier than the time of  
14      closing. So will we have, you know, a band  
15      until 1:00 in the morning? No, I don't think  
16      so. I think that the entertainment may end as  
17      early as 11:00 or 12:00. So, you know, this  
18      entertainment does not go all night. There's  
19      already --

20                  MEMBER ALBERTI: Okay. So if I  
21      said to you you have to keep those doors and  
22      windows closed after 11:00 or 12:00 -- let's

1 say 12:00 if you have entertainment, are you  
2 saying that's not going to have an effect on  
3 your business?

4 MR. AUSLANDER: I don't know. I  
5 mean would I like to have the -- to me there's  
6 a difference between -- there's different  
7 types of entertainment. You know, can I have  
8 somebody up on my little mezzanine with an  
9 acoustic guitar playing a song on a bar stool  
10 that's not much louder than the radio? Yes,  
11 probably. And to me that's different than,  
12 you know, the six-piece jazz band.

13 MEMBER ALBERTI: So what you're  
14 saying is trust me?

15 MR. AUSLANDER: Yes.

16 MEMBER ALBERTI: Okay. I mean  
17 that's what I'm hearing.

18 (Laughter.)

19 MEMBER ALBERTI: Yes, let's not --  
20 I'm not going -- just I'm not going to --

21 CHAIRPERSON MILLER: Are you  
22 saying though that --

1                   MEMBER ALBERTI:  -- play games.  I  
2                   mean that's what I'm hearing.

3                   MR. AUSLANDER:  But, you know, I  
4                   mean these renewals, they come up every two  
5                   years.  I mean not that I want to be back  
6                   here, but you know, I like to think that if  
7                   the neighborhood or the ANC or somebody had a  
8                   problem with the way the establishment was  
9                   being run, they'd come to us.

10                  MEMBER ALBERTI:  I understand  
11                  that, but I have to look at the --

12                  MR. AUSLANDER:  I understand.

13                  MEMBER ALBERTI:  -- this Board has  
14                  to look at the big picture of what's going on  
15                  in Adams Morgan, how noise can affect peace,  
16                  order and quiet in Adams Morgan.  You know,  
17                  noise emanating from an establishment can  
18                  attract loiterers.  I mean let's be -- it's  
19                  not just residents.  All right?

20                  MR. AUSLANDER:  Understand.

21                  MEMBER ALBERTI:  There's a bigger  
22                  picture here.  So I'll get off my soapbox.  I

1 think Mr. Jones has a question.

2 MEMBER JONES: Yes, just --

3 CHAIRPERSON MILLER: Mr. Jones?

4 MEMBER JONES: Thank you, Madam

5 Chair. We have Board Members up here shaking

6 their heads and offering their opinions, so I

7 figure I'd take an opportunity to offer mine.

8 Not draconian. I currently own my own

9 businesses. I get the whole concept of

10 flexibility. Just wanted to give you an

11 opportunity to provide some feedback as to

12 where your limits are.

13 You say you're -- trust you.

14 MR. AUSLANDER: Right.

15 MEMBER JONES: We're not going to

16 do that because that's not the type of

17 operators we are. That's all fine and good,

18 but you must have your own limits. I mean you

19 and your partner must have your own limits as

20 to what you're willing to do and what you're

21 not willing to do in order to turn a buck, in

22 order to make a profit. I just haven't heard

1 that from you. I've heard we want to be  
2 flexible because we don't what we're going to  
3 do in the future and just trust me that it's  
4 not going to be something that is  
5 inappropriate.

6 We've heard trust me many a time  
7 from this position and we've been burned many  
8 a time with bold-faced open lies and open lies  
9 from people in establishments in this  
10 neighborhood. Not from you, but from people  
11 running and operating establishments in this  
12 neighborhood.

13 So excuse me for trying to get to  
14 the bottom of really where your limits are.  
15 And I'm giving you that opportunity if you  
16 want to offer that up, that's great.

17 MR. AUSLANDER: Sure.

18 MEMBER JONES: If not, you have  
19 every right not to. I just wanted to let you  
20 know where I was coming from.

21 MR. AUSLANDER: I'm familiar with  
22 who the operators are who come before this

1 Board in Adams Morgan and talk about the kinds  
2 of places that they operate. And then, you  
3 know, me more so than even your investigators,  
4 I'm standing there on Friday night. I know  
5 what kind of places they actually operate.

6 You know, in terms of our limits,  
7 I mean we are not -- I don't know how -- I  
8 mean our limits are pretty high. I mean we're  
9 not going to open up schlocky places that  
10 cater to -- you know, that cater to unruly  
11 people. We don't employ security staff, you  
12 know, at these establishments. We do have  
13 people who check IDs at the door, but you  
14 know, we're not employing security. That's  
15 not the kind of the place. We're looking for  
16 an older demographic. We're not looking for  
17 young people in their early 20s. We're  
18 looking for people in their 30s mostly for  
19 these establishments.

20 I mean I don't know the right way  
21 to answer the question.

22 MEMBER JONES: That's fine.

1 MR. AUSLANDER: And I do  
2 understand your concern. People come before  
3 this Board, and I read the stuff online, and  
4 they say, you know, trust me, we're going to  
5 turn the place into a real high-end  
6 establishment and you go by two weeks later  
7 and, you know, it's open bar every night. And  
8 those are not the kind of places we operate.  
9 And, you know, I guess the best I can do is  
10 assure of you of that.

11 MEMBER JONES: Fair enough. Thank  
12 you. Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Others? Yes,  
14 Mr. Silverstein?

15 MEMBER SILVERSTEIN: One very  
16 brief question. Being that the license  
17 transfers to whoever, what happens when you  
18 sell the place, for the sake of argument?

19 MR. AUSLANDER: Well, I guess if  
20 you sell the place; and you can do that, you  
21 know, the neighborhood would have this  
22 opportunity with the next operator. If

1 they're not running a joint that complies with  
2 the laws, if they're not running an operation  
3 that meets the needs of the neighborhood, then  
4 they do have an opportunity to come before the  
5 Board and say this guy's not doing it right.

6 But that's not why we're here  
7 today. We're here to talk about the renewal.  
8 We've been doing things right and they still  
9 want to impose these whether you want to call  
10 them penalties or conditions on the license.  
11 We've done nothing wrong.

12 MEMBER JONES: No further  
13 questions.

14 CHAIRPERSON MILLER: I just want  
15 to ask you a follow-up question. Did you say  
16 you check IDs at the door?

17 MR. AUSLANDER: Sometimes.

18 CHAIRPERSON MILLER: You're just a  
19 restaurant. Why would you do that?

20 MR. AUSLANDER: You know, it's  
21 funny, in Adams Morgan; and we talk about this  
22 a lot --

1 CHAIRPERSON MILLER: Okay.

2 MR. AUSLANDER: -- we sometimes  
3 check IDs at the door, especially later in the  
4 evening after -- you know, sometimes earlier  
5 than we'd like. We actually have this  
6 conversation a lot. I wish we didn't have to  
7 have a door guy out here. It's only 10:00.  
8 We're trying to serve dinner, trying to get  
9 people in for dinner and we've got this guy  
10 standing at the door. It's to keep people  
11 out. You know, to keep unruly people out, to  
12 keep some of these loiterers we're talking  
13 about from wandering into the establishment,  
14 use the bathroom. It's to keep, you know, the  
15 kind of customers you want without being  
16 disturbed. And to address some of the  
17 loitering issues.

18 CHAIRPERSON MILLER: So it is kind  
19 of like a security person?

20 MR. AUSLANDER: Well, when I think  
21 about security, I think about a guy, you know,  
22 wearing cargo pants and a black shirt. Our

1       guy wears a tie --

2                   CHAIRPERSON MILLER:   Okay.

3                   MR. AUSLANDER:   -- and a jacket

4       and --

5                   (Laughter.)

6                   CHAIRPERSON MILLER:   Okay.

7                   MR. AUSLANDER:   I mean --

8                   CHAIRPERSON MILLER:   Okay.   All  
9       right.   Are there questions on Board  
10      questions?

11                  MR. JAMES:    Yes.

12                  CHAIRPERSON MILLER:   Okay.

13                  MR. JAMES:    So in reference to the  
14      question about Jyoti, the Indian restaurant  
15      which is the most to the right of your  
16      establishment, what hours do they operate?

17                  MR. AUSLANDER:   I have no idea  
18      what their legal hours are.   It's right here.  
19      Well, this is just their sidewalk caf, hours.  
20      I don't know.   They're not typically open too  
21      late.   It's an Indian restaurant.

22                  MR. JAMES:    So they don't stay

1 open until the legal hours, legal limit?

2 MR. AUSLANDER: Until 2:00 a.m.?

3 I do not -- no.

4 MR. JAMES: Okay.

5 MR. AUSLANDER: But I don't know  
6 what their exact hours are.

7 MR. JAMES: And then the next  
8 establishment going from Libertine towards  
9 Black Squirrel is?

10 MR. AUSLANDER: La Fourchette.

11 MR. JAMES: La Fourchette?

12 MR. AUSLANDER: Right.

13 MR. JAMES: And do they also close  
14 earlier than the legal hours?

15 MR. AUSLANDER: They do. And they  
16 do not have a -- neither one of those  
17 establishments have voluntary agreements.

18 MR. JAMES: Okay. Thank you for  
19 that. What are the hours of the entertainment  
20 endorsement that Libertine applied for?

21 MR. AUSLANDER: Like I stated a  
22 minute ago, I don't have it in front of me.

1 MR. JAMES: So are you familiar  
2 with this document? It's the application.

3 MR. AUSLANDER: Sure.

4 MR. JAMES: And it's -- would it  
5 be all right for me to hand it to the  
6 Applicant?

7 MEMBER ALBERTI: What application  
8 is that?

9 MR. JAMES: It's the ABRA  
10 application for the entertainment endorsement.

11 CHAIRPERSON MILLER: For  
12 Libertine's?

13 MR. JAMES: Yes.

14 CHAIRPERSON MILLER: It's their  
15 application?

16 MR. JAMES: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. AUSLANDER: Like I said, we  
19 haven't -- we've been open a month. We  
20 haven't broached the entertainment.

21 MEMBER ALBERTI: So that's for  
22 entertainment?

1 MR. AUSLANDER: That's for  
2 entertainment.

3 MEMBER ALBERTI: Okay. So, well,  
4 I --

5 MR. JAMES: I could pose it in a  
6 different way, I guess.

7 MR. AUSLANDER: You could just  
8 tell us the hours.

9 MEMBER ALBERTI: Are you just  
10 trying to get at the hours of entertainment?  
11 Why don't you just read them and ask him to  
12 confirm that?

13 MR. JAMES: Very good. So are  
14 the hours on this entertainment endorsement  
15 application of 1:00 a.m. seven days a week for  
16 Libertine accurate?

17 MR. AUSLANDER: Yes, I would  
18 assume. Yes.

19 CHAIRPERSON MILLER: Do you want  
20 him to show it to you?

21 MR. AUSLANDER: I will read them.

22 CHAIRPERSON MILLER: Okay.

1 MR. AUSLANDER: Entertainment.  
2 10:00 p.m. to 1:00 a.m. Monday through Friday.  
3 Or, no, I'm sorry. 9:00 p.m. other days.

4 MR. JAMES: 9:00 p.m. starting  
5 time?

6 MR. AUSLANDER: Sunday 10:00 p.m.  
7 to 1:00 a.m., Monday through Saturday 9:00  
8 p.m. to 1:00 a.m.

9 MR. JAMES: Okay. So it goes  
10 until 1:00 a.m. seven days a week, correct?

11 MR. AUSLANDER: That is correct.

12 MR. JAMES: Okay. Thank you. May  
13 have that document back?

14 MR. AUSLANDER: Sure.

15 MR. JAMES: Thanks. Is Libertine  
16 likely to seek to have entertainment on  
17 the sidewalk caf,?

18 MR. AUSLANDER: Likely? No.

19 MR. JAMES: Is it something you  
20 would consider doing?

21 CHAIRPERSON MILLER: How is that  
22 related to renewal?

1 MR. JAMES: Well, it was a  
2 question that the Board asked. Mr. Jones  
3 asked a question about where the entertainment  
4 would -- some general questions about  
5 entertainment. Anyway --

6 CHAIRPERSON MILLER: No, he --  
7 okay. Understood.

8 MR. JAMES: So one of the Board  
9 Members asked a question about how many seats  
10 you have inside and I believe your answer was  
11 30. But what is your legal occupancy?

12 MR. AUSLANDER: Again, like I said  
13 minutes ago, I don't have the Certificate of  
14 Occupancy in front of me. So I can't speak to  
15 what -- I know we have about 30 seats.

16 MEMBER ALBERTI: That's okay.  
17 Because this has been asked and answered.

18 CHAIRPERSON MILLER: It's on the  
19 Certificate of Occupancy.

20 MEMBER ALBERTI: Well, it was  
21 asked and answered. He said he didn't know.

22 CHAIRPERSON MILLER: Yes.

1                   MEMBER ALBERTI: I asked it, or  
2 someone asked it here.

3                   CHAIRPERSON MILLER: I asked it,  
4 too.

5                   MEMBER ALBERTI: He doesn't know.

6                   MR. JAMES: Was there anything to  
7 prevent you from having the 60 persons inside  
8 and 10 persons on the sidewalk caf, that the  
9 Certificate of Occupancy allows?

10                  MR. AUSLANDER: No.

11                  MR. JAMES: So there could be as  
12 many as 70 persons there instead of just the  
13 30 that you mentioned?

14                  MR. AUSLANDER: No, D.C.  
15 government sends people by, including ABRA,  
16 and they check on occupancy. And I'm not sure  
17 that many people could fit inside with tables  
18 and chairs out there.

19                  MR. JAMES: What time will dinner  
20 service at Libertine end?

21                  MR. AUSLANDER: Right now like  
22 Friday and Saturday he was open until --

1 Friday and Saturday this week he was open  
2 until 1:00 in the morning and midnight during  
3 the week.

4 MR. JAMES: And what will occur  
5 after dinner service then?

6 MR. AUSLANDER: Post-dinner  
7 service. We serve drinks.

8 CHAIRPERSON MILLER: Mr. James,  
9 can you just tell me how this was related to  
10 a Board question?

11 MR. JAMES: It's what?

12 CHAIRPERSON MILLER: About how  
13 your line of questioning is related to a Board  
14 question. I don't remember one dealing with  
15 your line of questioning.

16 MR. JAMES: Well, the Board asked  
17 how many services there would be, like I  
18 believe one of the Board Members asked will  
19 there be more than one service or something  
20 along those lines.

21 CHAIRPERSON MILLER: Okay.

22 MR. JAMES: And I'm just curious

1 as to -- I mean have you had customers for  
2 dinner --

3 MR. AUSLANDER: Late? Yes, we  
4 have. And that's part of the reason we're --  
5 I mean we're -- it's a new business. I got to  
6 keep it open as late as possible, get as many  
7 customers in as possible. You know, sometimes  
8 right now we have a problem on Sunday nights,  
9 because when the patio closes, it -- our patio  
10 has to close at 10:00. So when you walk by at  
11 10:00 all the patio chairs are folded up  
12 really early and it looks like we're closed  
13 for business.

14 When we first opened up, we opened  
15 during the day on Saturday and Sunday, but  
16 Saturdays in particular, without the patio  
17 being open, it was very difficult, because  
18 this time of year if you have a patio out  
19 front, you've got all the furniture and it's  
20 stacked up and chained up, people really  
21 assume you're closed. So that's been a real  
22 challenge on those two parts of the nights.

1 That's partly, you know, what we dealt with at  
2 hours last time.

3 MR. JAMES: Okay. One of the  
4 Board Members asked a question about your  
5 settlement agreement for Ventnor.

6 MR. AUSLANDER: Sure.

7 MR. JAMES: Has a settlement  
8 agreement in place for Ventnor harmed the  
9 business?

10 MR. AUSLANDER: Sure.

11 MR. JAMES: How has it done so?

12 MR. AUSLANDER: Well, at Ventnor,  
13 for instance, I'm not allowed to do --

14 MEMBER ALBERTI: Mr. James?

15 CHAIRPERSON MILLER: Wait.

16 MEMBER ALBERTI: Well, please, I'm  
17 doing -- I'd like -- all right. I was just --  
18 Ms. Miller, just -- you can overrule me, but  
19 my concern was the relevance to the renewal  
20 application. How a settlement agreement  
21 affects an establishment, I don't understand  
22 how that relates to the renewal considerations

1 here. But you can overrule me. Go ahead.

2 CHAIRPERSON MILLER: My  
3 understanding is that the settlement agreement  
4 is tied to these conditions that are proposed,  
5 that they're necessary. The argument of the  
6 Protestants is that they're necessary for the  
7 renewal. Now, that's not to say they are, but  
8 that's what the point of their argument is.

9 MR. AUSLANDER: If I may?

10 CHAIRPERSON MILLER: Yes.

11 MR. AUSLANDER: It's pretty clear  
12 to me, I mean it's always been clear, we're  
13 not here to talk about the renewal. We're  
14 here to talk about settlement agreements. We  
15 are here today --

16 CHAIRPERSON MILLER: But we're  
17 not.

18 MR. AUSLANDER: -- as we were told  
19 by the Protestants, because they were  
20 concerned that with our prior hearing that we  
21 were at, they were concerned that we might  
22 withdraw that and then we couldn't be here

1       today so they could address those issues. We  
2       are here procedurally because we had the  
3       opportunity to withdraw the substantial change  
4       on what we had a month ago which would --

5                   CHAIRPERSON MILLER: Okay. But --

6                   MR. AUSLANDER: We're here to talk  
7       about settlement agreements.

8                   CHAIRPERSON MILLER: I understand,  
9       you know, everybody has an agenda, but  
10      basically the focus of this case is --  
11      regardless of --

12                  MR. AUSLANDER: I understand.

13                  CHAIRPERSON MILLER: -- what  
14      people's motives are that, okay, the  
15      Protestants are saying that the renewal needs  
16      to have these conditions attached to it  
17      because they don't have a settlement  
18      agreement, or whatever, if I might paraphrase  
19      it.

20                  MR. AUSLANDER: It's my  
21      understanding that the way it should be stated  
22      by the Protestant is we need to have these

1 conditions because these are problems.

2 CHAIRPERSON MILLER: Right, for  
3 peace, order and quiet.

4 MR. AUSLANDER: And that's not  
5 what we're hearing today.

6 CHAIRPERSON MILLER: That's  
7 correct. And that's the underlying point. It  
8 has to be for peace, order and quiet.

9 MR. AUSLANDER: But we haven't had  
10 those problems. What we're really to talk  
11 about when we talk about is the lack of a  
12 settlement agreement, which is what brought us  
13 here today.

14 CHAIRPERSON MILLER: Okay. So,  
15 Mr. James, maybe you've forgotten your  
16 question, I don't know, but --

17 MR. JAMES: No, I haven't.

18 CHAIRPERSON MILLER: Does it go to  
19 the peace, order and quiet that these  
20 conditions are supposed to --

21 MR. JAMES: I believe it does,  
22 because there's a follow-up question --

1 CHAIRPERSON MILLER: -- address?

2 MR. JAMES: -- to it. I will  
3 leave that question unanswered, but I would  
4 just like to ask has the settlement agreement  
5 in place for Ventnor been beneficial to the  
6 community?

7 CHAIRPERSON MILLER: How is that  
8 related to the renewal in this case?

9 MR. AUSLANDER: The settlement  
10 agreement at my other restaurant don't relate  
11 to the problems you're having with Libertine.

12 MR. JAMES: I'll withdraw this  
13 question.

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: I'll withdraw this  
16 question.

17 MEMBER ALBERTI: Ms. Miller, if I  
18 could just interject. I want to help you out  
19 here. I think what you're trying to get at is  
20 -- and this would be helpful to me, if you  
21 could reference certain conditions in the  
22 Ventnor settlement agreement and ask whether

1 they have harmed or benefitted the Licensee.

2 MR. JAMES: Sure.

3 CHAIRPERSON MILLER: And then  
4 relate Ventnor to this operation so that I  
5 know whether I am comparing apples and  
6 oranges. That's information that would be  
7 helpful to me.

8 CHAIRPERSON MILLER: I mean if  
9 that's helpful to you, then he should answer  
10 it, but to me I think that's off subject,  
11 because I think we need to talk about the  
12 peace, order and quiet that's related to this  
13 establishment.

14 MEMBER ALBERTI: Well then why  
15 even allow him to ask about the settlement  
16 agreement for Ventnor? You were just letting  
17 him go down that route.

18 CHAIRPERSON MILLER: If --

19 MEMBER ALBERTI: I mean --

20 MR. JAMES: Well, I mean --

21 CHAIRPERSON MILLER: If a  
22 connection can be made to this place.

1                   MEMBER JONES: With all due  
2                   respect in terms of that aspect of it, the  
3                   Licensee himself drew a connection between the  
4                   operations of his other establishments and how  
5                   we should use that as a basis for  
6                   understanding how he's going to operate this  
7                   establishment. So I don't --

8                   CHAIRPERSON MILLER: Well, that's  
9                   different.

10                  MEMBER JONES: -- think it's far  
11                  reaching.

12                  CHAIRPERSON MILLER: I think that  
13                  goes to the history of this --

14                  MEMBER JONES: The Licensee drew a  
15                  connection between --

16                  CHAIRPERSON MILLER: -- business  
17                  person, how he's going to run an operation.

18                  MEMBER JONES: The Licensee drew a  
19                  connection between the two.

20                  CHAIRPERSON MILLER: Right.

21                  MEMBER JONES: Once he has  
22                  established a connection between the two, I

1 don't see how you could artfully and correctly  
2 mitigate questions related to both at this  
3 point.

4 CHAIRPERSON MILLER: Okay. Well,  
5 I disagree.

6 MEMBER JONES: You allowed it to  
7 go on.

8 CHAIRPERSON MILLER: I think they  
9 go to different topics, but I don't want to  
10 really spend too much time arguing about it  
11 because I think that if you have the same  
12 business person operating both establishments,  
13 then there's a history there as to how they  
14 run a business. But if you have noise --

15 MEMBER JONES: But they're also --

16 CHAIRPERSON MILLER: -- related  
17 to --

18 MEMBER JONES: -- there's a  
19 history also how they're being run. One is  
20 governed by an SA, the other one is not. So  
21 I think to imply that the --

22 CHAIRPERSON MILLER: Okay.

1                   MEMBER JONES:  -- history is only  
2                   the history independent of any other  
3                   mitigating circumstances, I think it's not  
4                   taking into full consideration the full  
5                   picture.  And those both items were presented  
6                   by the individuals, not by us.  So those were  
7                   brought by the Licensee or the Protestants to  
8                   the table.  So they drew the connections  
9                   themselves.  So I don't understand how it is  
10                  you're --

11                  CHAIRPERSON MILLER:  I don't --

12                  MEMBER JONES:  -- bifurcating the  
13                  two at this point.

14                  CHAIRPERSON MILLER:  I don't want  
15                  to argue it in the abstract.  If there's a  
16                  pending question, we can deal with that.

17                  Is there a pending question?

18                  MR. JAMES:  I'd just like to ask,  
19                  Mr. Auslander, do you believe there are noise  
20                  problems in Adams Morgan from numerous  
21                  establishments that --

22                  MR. AUSLANDER:  Absolutely.

1 MR. JAMES: Wait a minute. I  
2 haven't finished my question.

3 MR. AUSLANDER: Sorry.

4 MR. JAMES: That having noise  
5 provisions in the so-called settlement  
6 agreements is beneficial to the community?

7 MR. AUSLANDER: No. I hate to  
8 break the news to the Protestants, but you got  
9 good operators in Adams Morgan and you've got  
10 bad operators in Adams Morgan. I look at this  
11 list of places that have settlement  
12 agreements, and I apologize to the  
13 Protestants, but they have settlement  
14 agreements with a lot of bad operators on this  
15 list, and it ain't helping.

16 MR. JAMES: I think those are all  
17 my questions.

18 CHAIRPERSON MILLER: Okay. Any --

19 MR. JAMES: I do have a question  
20 though, if I might. It's not directly to the  
21 Applicant, but it could be depending on what  
22 the Board's answer is.

1                   As a Protestant, KCA sought the  
2                   food quarterly reports for this establishment,  
3                   as we're allowed to by the code, and we  
4                   received those. And I turned them into a bit  
5                   of a report. This is under the operation of  
6                   the current owners. But I know that the Board  
7                   is sensitive about the information, you know,  
8                   that there's some sort of consideration that  
9                   it's -- what's the right word?

10                   CHAIRPERSON MILLER: Confidential?  
11                   What?

12                   MR. JAMES: Well, maybe, but  
13                   that's not quite the word. Somebody help me  
14                   out.

15                   MEMBER ALBERTI: Proprietary.

16                   MR. JAMES: Yes, proprietary. I'm  
17                   sorry. So how free am I as the KCA to talk  
18                   about the quarterly food reports under this  
19                   operation?

20                   CHAIRPERSON MILLER: I believe  
21                   that's public information. Are they not?  
22                   Quarterly reports? No?

1                   Hold on.

2                   Okay. A couple things. First of  
3 all, you've created a new report from the  
4 quarterly statement with information that was  
5 in that, is that correct?

6                   MR. JAMES: Yes.

7                   CHAIRPERSON MILLER: Okay. I want  
8 to ask the Licensee if he objects. But before  
9 I do that, I just kind of wanted to know where  
10 you're going with it. Why do you want to  
11 submit such a report into this proceeding?

12                   MR. JAMES: Well --

13                   CHAIRPERSON MILLER: Without  
14 divulging proprietary information.

15                   MR. JAMES: -- because it goes to  
16 what might happen if the current business plan  
17 is not successful. This is a small  
18 establishment. You know, I have no idea  
19 whether it made its food requirements under  
20 the previous ownership --

21                   CHAIRPERSON MILLER: Okay.

22                   MR. JAMES: -- because that's not

1 available to us. But during this renewal  
2 period, under these owners, you know --

3 CHAIRPERSON MILLER: This goes --

4 MR. JAMES: -- it didn't meet  
5 their food requirement on occasion.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: And I wish the Board  
8 to be aware of that information.

9 CHAIRPERSON MILLER: How is that  
10 related to peace, order and quiet?

11 MR. JAMES: Well, I'd be glad to  
12 make the argument.

13 CHAIRPERSON MILLER: Okay.

14 MR. JAMES: But do you want me to  
15 make it now or do you want me --

16 CHAIRPERSON MILLER: No, now,  
17 because we were going to consider accepting --

18 MR. JAMES: All right. This  
19 establishment is not meeting its food  
20 requirement. You know, it could be because  
21 it's not trying and therefore is becoming a  
22 problematic establishment that doesn't have

1 any interest in serving food. I'm not saying  
2 that's the case here. That's something we see  
3 all -- just like in -- you know, that's  
4 something we see. But then when an  
5 establishment gets an entertainment  
6 endorsement; by the way without public notice,  
7 then it gives even more likelihood that a  
8 restaurant will not actually be acting as a  
9 real restaurant, but become a disturbing  
10 element in the community.

11 CHAIRPERSON MILLER: Okay.

12 MR. JAMES: So I just wanted the  
13 Board to be aware that this location, under  
14 this ownership, prior to the renovation did  
15 not meet its food requirement. And, you know,  
16 the Board at the previous hearing, and  
17 somewhat at this hearing, it's been talked  
18 about.

19 CHAIRPERSON MILLER: No. Now why  
20 do we need your report then? Because we have  
21 the quarterly statements, or quarterly  
22 reports --

1 MR. JAMES: Right.

2 CHAIRPERSON MILLER: -- in our  
3 record. So do you want to just -- so because,  
4 you know, you raise this proprietary  
5 information, if you just want us to take  
6 administrative notice of those statements, we  
7 can look at those and we don't need your  
8 report.

9 MR. JAMES: That would be fine  
10 with me.

11 CHAIRPERSON MILLER: Okay.

12 MR. JAMES: I just didn't know to  
13 broach the subject --

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: -- with the Board,  
16 because, you know, it's --

17 CHAIRPERSON MILLER: So you're  
18 saying that you need these conditions, that we  
19 need to adopt these conditions because they  
20 didn't meet their quarterly statement? They  
21 may morph into something other than a  
22 restaurant?

1 MR. JAMES: You know, a place  
2 that's restaurant licensed -- I mean this is  
3 one of the typical morph issues that we face  
4 in communities, that some place gets a  
5 restaurant license and doesn't act like a  
6 restaurant and it becomes a nuisance often  
7 with noise, attendant noise, drunken folks --

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: -- leaving the  
10 establishment.

11 MR. AUSLANDER: If I may?

12 CHAIRPERSON MILLER: Yes, you can.  
13 Yes.

14 MR. AUSLANDER: I would object to  
15 the --

16 CHAIRPERSON MILLER: Wait. Okay.  
17 Wait. All right. Wait. Wait. We're not --  
18 yes, what is the question now, because your  
19 question was about the report and I've just  
20 said we'll take administrative notice of that  
21 quarterly statement for the reasons that you  
22 have --

1 MR. JAMES: But you asked me  
2 again, you know, why? What's the connection?

3 CHAIRPERSON MILLER: But you  
4 answered that. You did answer that. So, yes,  
5 I don't want to get into too much of a closing  
6 argument. So do you have a question pending  
7 for the witness related to that?

8 MR. JAMES: I am curious if it's a  
9 subject that we can ask witnesses questions  
10 about, about their food service quarterly  
11 reports.

12 CHAIRPERSON MILLER: Okay. So I'm  
13 going to give you a little leeway, just, you  
14 know, a few questions, but don't bring in any  
15 proprietary information unless the Licensee  
16 says he doesn't care.

17 MR. JAMES: Okay. I'll settle for  
18 the administrative --

19 CHAIRPERSON MILLER: Okay. So  
20 we'll --

21 MR. JAMES: -- review by the  
22 Board.

1                   CHAIRPERSON MILLER: Okay. Any  
2 other questions?

3                   MR. JAMES: No thanks.

4                   CHAIRPERSON MILLER: Okay. Thank  
5 you very much.

6                   MR. AUSLANDER: Thank you.

7                   CHAIRPERSON MILLER: Now you were  
8 up there as part of your case, the Licensee's  
9 case. Is there anything else you want to put  
10 on? Do you want to put on any other witness?  
11 Do you want to put in any other documents, or  
12 are you going to rest your case?

13                   MR. AUSLANDER: I'd be happy to  
14 submit a copy of the finalized -- you know,  
15 we've been open now a month so we have a  
16 finalized menu --

17                   CHAIRPERSON MILLER: Okay.

18                   MR. AUSLANDER: -- as opposed to  
19 the draft that the Board saw.

20                   CHAIRPERSON MILLER: Okay.

21                   MR. AUSLANDER: I'd be happy to  
22 submit that to the Board for their perusal.

1                   CHAIRPERSON MILLER: Do you have  
2                   it? Do you want to show it to the  
3                   Protestants --

4                   MR. AUSLANDER: Oh, sure.

5                   CHAIRPERSON MILLER: -- and see if  
6                   they have any objection?

7                   MR. AUSLANDER: I believe they've  
8                   seen it.

9                   CHAIRPERSON MILLER: Okay. We can  
10                  mark that as Applicant's No. 1, or Licensee's  
11                  entertainment No. 1.

12                  Okay. Anything else? Anything  
13                  else from the Licensee? You finished?

14                  (No audible response.)

15                  CHAIRPERSON MILLER: You know, I  
16                  know there was definitely a lack of clarity  
17                  with respect to Ms. Bowman's --

18                  MS. BOWMAN: Yes.

19                  CHAIRPERSON MILLER: --  
20                  participation, so if you would like to testify  
21                  at all, you know, before you close your case,  
22                  you can. I'd put you under oath.

1 MS. BOWMAN: It's fine. I guess I  
2 just sort of object to -- we --

3 CHAIRPERSON MILLER: Do you  
4 want --

5 MS. BOWMAN: -- do sell food at  
6 our --

7 CHAIRPERSON MILLER: If you want  
8 to -- I have to put you under oath.

9 MS. BOWMAN: Oh, okay.

10 CHAIRPERSON MILLER: That's all.

11 MS. BOWMAN: Well, I don't know  
12 what to do. I mean I'm obviously not a  
13 lawyer. I don't do this every day, so I mean  
14 I just thought the characterization that we --

15 CHAIRPERSON MILLER: Okay.

16 MS. BOWMAN: -- didn't sell food  
17 before was inaccurate.

18 CHAIRPERSON MILLER: All right.  
19 Okay. See, what I'm going to say to you is,  
20 you know you're a lawyer and things get a  
21 little fuzzy sometimes with who's a lawyer,  
22 who's not a lawyer and whatever. But it is an

1 evidentiary hearing.

2 MS. BOWMAN: Okay.

3 CHAIRPERSON MILLER: And if you  
4 want anything that you're saying to be  
5 considered evidence, you know, then I need to  
6 put you under oath.

7 MS. BOWMAN: No, I think Scott  
8 covered everything.

9 CHAIRPERSON MILLER: Okay.

10 MS. BOWMAN: Thank you.

11 CHAIRPERSON MILLER: Okay. So we  
12 would go to the Protestants' side, but the  
13 Licensee will have any opportunity if you want  
14 to -- I was just conferring with counsel, you  
15 could, if you want to, put on a rebuttal  
16 witness. You can decide that later.

17 Okay. Mr. James?

18 MR. JAMES: I have a statement  
19 that I wish to make.

20 CHAIRPERSON MILLER: Okay. As  
21 evidence? Then we'll put you under oath.

22 MR. JAMES: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MR. JAMES: I'm sure the -- well,  
3 my guess is the Board is the Board might have  
4 questions, so I guess I'll have to be under  
5 oath.

6 CHAIRPERSON MILLER: All right.  
7 Doesn't hurt. You want to come over here? Is  
8 all right for me to have the various  
9 documents --

10 CHAIRPERSON MILLER: Yes.

11 MR. JAMES: -- in case there are  
12 questions?

13 CHAIRPERSON MILLER: Do you swear  
14 to tell the truth, the whole truth, nothing  
15 but the truth?

16 MR. JAMES: Yes, I do.

17 CHAIRPERSON MILLER: Okay. Thank  
18 you. Okay.

19 MR. JAMES: You want me to  
20 identify myself?

21 CHAIRPERSON MILLER: I'm sorry, I  
22 can't hear you.

1 MR. JAMES: Do I need to identify  
2 myself.

3 CHAIRPERSON MILLER: Oh, well,  
4 yes, sure.

5 MR. JAMES: Yes, Denis James.

6 CHAIRPERSON MILLER: Yes.

7 MR. JAMES: Representing the  
8 Kalorama Citizens Association.

9 CHAIRPERSON MILLER: Okay.

10 MR. JAMES: Okay. So I have a  
11 statement that I'd like to read, and that is  
12 this, the following:

13 The Kalorama Citizens Association  
14 protested both the substantial change -- oh,  
15 I have copies for the Board. Sorry.

16 CHAIRPERSON MILLER: Okay.

17 MR. JAMES: -- and the renewal of  
18 Libertine's CR01 license based upon the  
19 grounds of disturbance of the peace, order and  
20 quiet of the surrounding neighborhood.

21 KCA wished to come agreement with  
22 the Applicant upon appropriate conditions of

1 operation for the restaurant memorialized in  
2 a settlement agreement. To that end, KCA and  
3 ANC 1C participated in Board-ordered mediation  
4 and other private discussions with the  
5 Applicant. All the discussions failed to  
6 reach any agreement because the Applicants  
7 declared that they didn't wish to have any  
8 settlement agreement. The Applicants did not  
9 negotiate in good faith. In fact, they didn't  
10 negotiate at all.

11 As the burden of proof that is  
12 appropriate is on the Applicant in a contested  
13 proceeding, the Board must reverse its  
14 previous administrative approval of an  
15 entertainment endorsement for the Applicant.  
16 Without the ability to judge whether the  
17 community could find such a request  
18 appropriate by giving public notice, this part  
19 of the Applicant's renewal is a key reason  
20 that KCA objected to the renewal.

21 In Adams Morgan we have witnessed  
22 a long history of restaurant-licensed

1 establishments seeking entertainment. This  
2 usually is a signal of a basic change in the  
3 nature of the establishment away from  
4 restaurant activity and toward club activity.  
5 This is generally not beneficial for the  
6 residents due to the large number of licensees  
7 with entertainment permissions. Such  
8 permissions bring much late night activity to  
9 the neighborhood leading to many of the  
10 disturbances for which Adams Morgan is  
11 unfortunately well known.

12 KCA is not saying that the license  
13 should not be renewed, but that it's currently  
14 constituted that the renewal is inappropriate  
15 and likely to lead to disturbance,  
16 particularly if there is not a Board order  
17 with appropriate conditions in place. We urge  
18 the Board to give careful considerations to  
19 the suggested order that ANC 1C and KCA have  
20 submitted.

21 In addition I'd like to ask the  
22 Board to take judicial notice of the calls for

1 service and the MPD 251 reports that we  
2 submitted as the previous --

3 CHAIRPERSON MILLER: Okay.

4 MR. JAMES: -- substantial change.

5 CHAIRPERSON MILLER: Yes. Okay.

6 Definitely.

7 MR. JAMES: Any questions?

8 CHAIRPERSON MILLER: Okay. Is  
9 there cross-examination?

10 MR. AUSLANDER: I can ask a couple  
11 questions. We've been open a month now. Has  
12 the entertainment that we've had bothered you  
13 or your constituents?

14 MR. JAMES: No.

15 MR. AUSLANDER: You know, I'm  
16 reading your statement. Does this place look  
17 like a nightclub?

18 MR. JAMES: I don't know what a  
19 nightclub looks like. Is there a definition  
20 that I should be thinking of?

21 MR. AUSLANDER: Well, I just -- if  
22 you're -- are there tables and chairs for

1 dining?

2 MR. JAMES: Yes.

3 MR. AUSLANDER: Also it says we  
4 didn't, you know, negotiate at all. Did we  
5 meet you for mediation twice?

6 MR. JAMES: Yes.

7 MR. AUSLANDER: I really don't  
8 have any questions.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you. Board questions? Mr. Alberti?

11 MEMBER ALBERTI: Let's cut to the  
12 chase, Mr. James. What conditions would you  
13 ask the Board to impose?

14 MR. JAMES: Well, we submitted  
15 along with ANC precisely the same conditions  
16 in our PIF.

17 MEMBER ALBERTI: Okay. So the  
18 ones that you presented in your PIF are the  
19 conditions that you would like this Board to  
20 impose?

21 MR. JAMES: Yes.

22 MEMBER ALBERTI: Okay. I have no

1 further questions.

2 CHAIRPERSON MILLER: Others?

3 (No audible response.)

4 CHAIRPERSON MILLER: Mr. James,  
5 could you refresh my memory? So this place  
6 currently doesn't have a settlement agreement,  
7 correct?

8 MR. JAMES: That is correct.

9 CHAIRPERSON MILLER: Okay. So  
10 it's been in operation for one month. And  
11 then we've heard that a little different  
12 establishment was in operation for like nine  
13 months or something previously?

14 MR. JAMES: I think it was longer  
15 than that actually, judging from the quarterly  
16 reports that were filed. Perhaps a year and  
17 a quarter. But it could just be some partial  
18 quarter.

19 CHAIRPERSON MILLER: Okay.

20 MR. SIMPSON: But roughly  
21 something like --

22 CHAIRPERSON MILLER: Did that have

1 a settlement agreement?

2 MR. JAMES: No.

3 CHAIRPERSON MILLER: No?

4 MR. JAMES: No, the license has  
5 never to my knowledge --

6 CHAIRPERSON MILLER: Never?

7 MR. JAMES: -- had a settlement  
8 agreement.

9 CHAIRPERSON MILLER: There's never  
10 been a settlement agreement here? But has  
11 this establishment under any of those  
12 ownerships ever caused a problem here?

13 MR. JAMES: Well, I think it's  
14 caused some minor problems in the past under  
15 previous ownership.

16 CHAIRPERSON MILLER: Well, like  
17 what problems?

18 MR. JAMES: Well, it's been  
19 alluded to actually by the owners that there  
20 was drug activity and, you know, disturbing  
21 loitering going on around the front of the  
22 establishment. And, you know, it's not one of

1 the larger establishments. It's sort of  
2 slipped by a bit under the radar until these  
3 changes seem to be coming forth. We have  
4 numerous larger establishments with, you know,  
5 lots of issues and, you know, just this seemed  
6 to be an establishment that was kind of  
7 limping along from year-to-year, you know,  
8 kind of not one of the bigger problems in the  
9 neighborhood, but not much of a positive  
10 contributor. This is under the previous  
11 ownership that I'm --

12 CHAIRPERSON MILLER: Okay. With  
13 respect to your proposed conditions, looking  
14 at No. 1, why do you think there has to be a  
15 limit on occupancy separate from what the  
16 District of Columbia government imposes in the  
17 Certificate of Occupancy and by the District's  
18 Public Space Committee?

19 MR. JAMES: Well, it's not  
20 uncommon for us to learn that a larger  
21 Certificate of Occupancy has been issued  
22 during a renewal period or, you know,

1 sometimes we find out six years, eight years  
2 later, like we go back to an establishment  
3 that maybe changed ownership, that we sit down  
4 to begin negotiations about something and then  
5 all of a sudden we see, you know, a C of O  
6 that far exceeds what's in the voluntary or  
7 settlement agreement, or what we understood to  
8 be the case. I can quote different ones to  
9 you.

10 CHAIRPERSON MILLER: Have you  
11 looked at their Certificate of Occupancy?

12 MR. JAMES: In this case?  
13 Libertine? Yes.

14 CHAIRPERSON MILLER: What is it?

15 MR. JAMES: It's 60. But then if  
16 we have 60 stated in the agreement, that means  
17 that any change would at least be considered  
18 by the Board to be a substantial change, let's  
19 say within its way of determining what is a  
20 substantial change.

21 CHAIRPERSON MILLER: Well, how  
22 would it change? It's 60 now. So what's

1 going to happen with that --

2 MR. JAMES: I see changes made to  
3 the occupancy up and down for purposes of, you  
4 know, meeting or adjusting for food  
5 requirements, you know, changes made by this  
6 Board, reductions of occupancy. I see a wall  
7 knocked out and all of a sudden more occupancy  
8 is allowed, or rearranging tables. You know,  
9 depends on which --

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: -- DCRA inspector you  
12 get out there that day.

13 CHAIRPERSON MILLER: Okay.

14 There's nothing in the renewal -- I mean  
15 there's nothing in this establishment's  
16 history that leads you to that fear that it's  
17 going to change, is it? It's just that you  
18 want to make sure there isn't a change. Is  
19 that correct?

20 MR. JAMES: Well, to at least  
21 establish a baseline. I mean there's nothing  
22 to say they couldn't have a substantial

1 change. Say they took over the second floor  
2 or they wanted to make part of the basement --  
3 I mean this is not uncommon. I would say it's  
4 almost routine in Adams Morgan for  
5 establishments to be on multiple floors. But  
6 at least, you know, we'd have a starting  
7 point. We would know many are allowed inside  
8 the establishment. You know, I believe it's  
9 good for the investigators to see. If a place  
10 is causing a problem, they can say, oh, look,  
11 you're 10 over. You know, you're overcrowded.  
12 You're causing a problem in the neighborhood.  
13 Noise is seeping out because of this or, you  
14 know, that sort of --

15 CHAIRPERSON MILLER: Okay. So you  
16 think it's related to peace, order and quiet  
17 because --

18 MR. JAMES: Yes.

19 CHAIRPERSON MILLER: -- it could  
20 change and become overcrowded?

21 MR. JAMES: Yes.

22 CHAIRPERSON MILLER: Okay. No. 2,

1 cover charge?

2 MR. JAMES: Well, number one, they  
3 didn't seek it in their entertainment  
4 endorsement.

5 CHAIRPERSON MILLER: They didn't  
6 seek it?

7 MR. JAMES: They did not. The box  
8 isn't checked on the entertainment endorsement  
9 application. And it just seems to me to not  
10 be a very restaurant-like activity to have a  
11 bar at the door, meaning, you know, a bar to  
12 entry, you know an artificial bar to entry.  
13 Then most people don't think that you're going  
14 to have to pay to go into a restaurant. They  
15 just think, oh, they'll be delighted to seat  
16 me as a customer, you know, and not have to  
17 pay an extra cover charge at the door.

18 CHAIRPERSON MILLER: Ever? I mean  
19 does it worry you like for a one or two,  
20 three, four-time event in the --

21 MR. JAMES: Well, number one,  
22 there are things that are available to them.

1       There's a possibility of having a one-day  
2       substantial change. Or if there had been  
3       negotiations towards a voluntary agreement, it  
4       could have been something that we could have  
5       found a middle ground on. But lacking that,  
6       and the fact that an entertainment endorsement  
7       had been granted, a mere letter to the Board  
8       could establish a cover charge capability,  
9       because that's not one of the items in the  
10      entertainment endorsement package that has to  
11      be placarded.

12                   CHAIRPERSON MILLER: Okay. Then  
13      No. 3 which deals with bar crawls, pub crawls,  
14      tours and similar events. Is it your position  
15      that any event would be detrimental to peace,  
16      order and quiet?

17                   MR. JAMES: I think those words  
18      used here are descriptive of the kind of event  
19      that we don't like to have in Adams Morgan,  
20      that we experienced a lot in the early 2000s  
21      that were very objectionable. I don't think  
22      that sort of small arrangement -- like a

1       tasting/sampling between say their three  
2       establishments would be prohibited by this.  
3       I mean I think it would depend on how they  
4       described it.

5                   CHAIRPERSON MILLER:   Okay.  I'm  
6       going to skip sidewalk caf, hours, because I  
7       think that was addressed in the other hearing,  
8       unless there's something more you want to  
9       address there.

10                   Closing the windows at all times  
11       when music is played.  You heard the testimony  
12       of the Licensee with respect to the radio  
13       playing at a level wouldn't bother the patrons  
14       inside, so therefore it not being very loud  
15       when it hits the outside.  Do you have  
16       anything you want to say about why this  
17       provision is necessary?

18                   MR. JAMES:  Well, I think, number  
19       one, it's a provision that is present I  
20       believe in every single voluntary agreement  
21       that's in place in Adams Morgan.  And then  
22       many of the places that don't have a

1 settlement agreement don't have any activity  
2 like this that would cause us concern. And  
3 the reason that this matters a lot to us is  
4 that it's sort of a ripple effect. If one  
5 establishment has their windows and doors  
6 open, whether or not there's live  
7 entertainment or just loud house music or  
8 whatever playing, then the next one wants to  
9 do that. Why can't I do it? The other guy's  
10 doing it.

11 And my understanding is that this  
12 was not enforced even though it was our  
13 agreements generally because there wasn't a  
14 line item in the civil penalties schedule  
15 until last fall that made it a tiered  
16 violation. I believe it's when voluntary  
17 agreements -- you know, a voluntary agreement  
18 violation got elevated I believe by this Board  
19 to a tiered violation. And that's what makes  
20 it much more enforceable by ABRA to, you know,  
21 enforce our desire to not be bothered as  
22 residents by the establishment's open windows

1 and doors.

2 CHAIRPERSON MILLER: Have you ever  
3 heard the radio from their --

4 MR. JAMES: No, I haven't.

5 CHAIRPERSON MILLER: You haven't?  
6 Okay. Do you think that the noise from their  
7 establishment, from what you've heard so far,  
8 is heard in nearby residences?

9 MR. JAMES: I haven't paid close  
10 enough attention to make any such  
11 determination. I would say maybe I walked by  
12 there four or five times, just walking by, not  
13 to particular note them, but just, oh, I'm  
14 walking by. Let me just turn my head in that  
15 direction. You know, not studying Libertine.  
16 I haven't noticed any problems. It's usually  
17 been earlier in the evening when I've walked  
18 by. But there's nothing to prevent them from  
19 having other types of music projecting devices  
20 inside their establishment.

21 CHAIRPERSON MILLER: So are you  
22 saying you haven't really noticed anything or

1 heard anything that has caused you to want to  
2 have these conditions imposed on them, that  
3 these are just general conditions that you  
4 like imposed on all establishments in Adams  
5 Morgan?

6 MR. JAMES: No, I don't believe  
7 that's our purpose at all. Our purpose is  
8 because there's an entertainment endorsement  
9 in place we wish to have the kind of coverage  
10 we need to protect us from, you know, those  
11 possible sounds. I mean the intention on the  
12 part of the Applicant could be wonderful in  
13 all respects.

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: But they might not  
16 just live up to it. They might not be present  
17 at the establishment. Some manager or  
18 assistant manager might be there while they're  
19 busy running their other establishments.

20 CHAIRPERSON MILLER: Okay.

21 MR. JAMES: And a noise condition  
22 could occur.

1                   CHAIRPERSON MILLER:  So it's  
2                   because of the entertainment endorsement that  
3                   they have you're concerned that there will be  
4                   these consequences, not that you've noticed  
5                   them yet?

6                   MR. JAMES:  Yes.  And I would just  
7                   say it's only been a month that they've been  
8                   open, I think.  That's what their submission  
9                   is.

10                  CHAIRPERSON MILLER:  Okay.  Have  
11                  you seen any efforts on their part with  
12                  respect to preventing loitering?

13                  MR. JAMES:  I haven't noticed one  
14                  way or the other.

15                  CHAIRPERSON MILLER:  You haven't  
16                  noticed loiterers in front either?  Is that  
17                  what you mean one way or the other?

18                  MR. JAMES:  I haven't made any,  
19                  you know, observations along those lines.

20                  CHAIRPERSON MILLER:  Okay.

21                  MR. JAMES:  If I might just -- in  
22                  going back to the previous question, I did

1 reread the updated -- I believe it was in the  
2 updated, but perhaps the first investigative  
3 report, and there was a line or a mention that

4 Ms. Bowman -- it was quoting Ms. Bowman  
5 saying that there have been no sound  
6 insulation installed in the -- I believe it  
7 was in the front walls of the establishment.  
8 But it -- maybe not the -- you know, it might  
9 have been generally, but I believe that it  
10 referred to the front wall. So sort of like  
11 we have an entertainment endorsement. We  
12 don't want to have any limitation on, you  
13 know, how we present our sound and we also  
14 haven't done any noise insulation. So while  
15 we were talking about it I wanted to bring  
16 that out. I appreciate your letting me get it  
17 in.

18 MEMBER SILVERSTEIN: I'm sorry?  
19 What we're talking about?

20 MR. JAMES: Well, the Chair's  
21 question was about noise levels and so forth  
22 and I thought that it was a related

1 observation in the investigator's report about  
2 the lack of sound insulation.

3 CHAIRPERSON MILLER: Okay.

4 Finally, with respect to trash, have you  
5 noticed a trash problem?

6 MR. JAMES: No, I have not.

7 CHAIRPERSON MILLER: Okay. All  
8 right. Other questions?

9 (No audible response.)

10 CHAIRPERSON MILLER: All right.  
11 Questions on the Board's questions?

12 MR. AUSLANDER: No.

13 CHAIRPERSON MILLER: Okay. Thank  
14 you very much.

15 MR. JAMES: Thank you.

16 CHAIRPERSON MILLER: Are you going  
17 to testify?

18 MR. SIMPSON: (No audible  
19 response.)

20 CHAIRPERSON MILLER: Do you swear  
21 to tell the truth, the whole truth, nothing  
22 but the truth?

1 MR. SIMPSON: I do.

2 CHAIRPERSON MILLER: Okay.

3 MR. JAMES: My name is William  
4 Simpson, testifying on behalf of Advisory  
5 Neighborhood Commission 1C.

6 And I'll start out by saying  
7 honestly I'm happy that Libertine is open and  
8 up and running on 18th Street. I don't tend  
9 to make it to 18th Street late at night when  
10 I can avoid it, but the times that I've walked  
11 by during the day it's an attractive  
12 establishment. It seems they've been  
13 conscientious about putting it together.

14 It's also good to hear from the  
15 investigator that there have not been any --  
16 that she did not perceive any issues over the  
17 past three or four weeks, but I'd like to  
18 emphasize that's three or four weeks. It's  
19 not a high bar to run an establishment well  
20 over three or four weeks when you know you're  
21 being scrutinized by a regulatory agency.

22 One of the most challenging

1 aspects of the discussions that we have  
2 attempted to have with the Licensees is that  
3 they seem to fundamentally mis-perceive what  
4 the community's objectives are. They're very  
5 focused on this question of settlement  
6 agreement.

7 I'm a lawyer by day. I'm not  
8 acting in my capacity as a lawyer for purposes  
9 of these proceedings. The last thing I need  
10 in my life is more contracts. That's what I  
11 do all day long. When I'm off of work the  
12 last thing I want to think about is more  
13 contracts.

14 The community is not in this to  
15 generate contracts. The community is in this  
16 to try to provide some concrete protections  
17 for a commercial strip that has been widely  
18 recognized by this Board as an area that has  
19 problems. There's a clear over-concentration  
20 of alcohol-serving establishments, many of  
21 which are not operating in a very good  
22 fashion. And so over the course of a decade

1 we've tried to establishment these rules of  
2 the road to raise the bar on what appropriate  
3 operations are.

4 And the Licensee wants to point  
5 out the instances where we haven't fully  
6 succeeded in raising that bar. They want to  
7 point out the few establishments where we  
8 don't yet have settlement agreements or  
9 haven't yet succeeded at getting proper  
10 protections in place. I'll be the first to  
11 acknowledge we haven't achieved that perfect  
12 standard yet. But that's our objective and  
13 that's why we're here today, to try to move  
14 closer to that goal rather than move further  
15 away from it.

16 The Applicants have asked you to  
17 look to their operating histories in the other  
18 establishments that they own on 18th Street  
19 and use those as evidence that you should just  
20 trust them as to how they're going to run this  
21 business. I was very happy to say that the  
22 Board highlighted, and I would like to

1 reiterate that those other establishments that  
2 they own are subject to settlement agreements  
3 that impose the very kinds of constraints that  
4 we're now asking the Board to impose on them  
5 as a matter of Board order.

6           And I want to reiterate the theme  
7 that's come up several times. They started  
8 out -- again, I give them credit for the kind  
9 of operation that they have tried to put  
10 together, but if there's one thing we know  
11 about on 18th Street it's people that start  
12 out with good intentions that don't manage to  
13 stick with those good intentions. And indeed,  
14 I have personally heard Ms. Bowman recount how  
15 at the Black Squirrel she's had to adjust her  
16 menu from something that was more steak and,  
17 you know, entr,e-oriented towards something  
18 that's hamburger-oriented.

19           When we were discussing with Mr.  
20 Knot, who is the other principal, for  
21 Libertine about their menu, he himself said he  
22 doubted that he could sustain selling high-

1 quality seafood products like mussels over the  
2 long-term in a place like 18th Street.

3 The two most troubling statements  
4 that I've heard in the hearing today were Mr.  
5 Auslander's statements that he insists on  
6 having the flexibility to take the business  
7 wherever it might need to go; that's the  
8 recipe for disaster we've seen on 18th Street,  
9 and the related statement that he can't  
10 predict and he can't anticipate what he may or  
11 may not want to do in the future.

12 That's not what we need in terms  
13 of business operators on 18th Street. We need  
14 business operators who are willing to decide  
15 what their future is going to be, who are  
16 going to choose what their operations are  
17 going to be like and who are willing to choose  
18 to operate in a manner that respects the  
19 standards that the community is trying to set.

20 So I think I will end my testimony  
21 just by saying we did our best to put together  
22 a list of standards in our PIF that we thought

1       were appropriate and I'll be the first to say  
2       I don't think what we've put down is perfect.  
3       I hope in the course of the hearing we've  
4       garnered the additional information you need  
5       to think about how to tinker with those. I  
6       think it could have been a much more refined  
7       list if the Applicants had been at all willing  
8       to discuss these with us, but they weren't.  
9       So I'll leave it at that. Thank you.

10                   CHAIRPERSON MILLER: Okay. Thank  
11       you. Cross?

12                   MR. AUSLANDER: I mean, so how  
13       does it look? You made some comments to me.  
14       How does it look? Tell me about Libertine.  
15       Tell me about your impression? You've been by  
16       a few times, walked by. Tell me --

17                   MR. SIMPSON: As I said, it looks  
18       nice. I have not been inside. I've only  
19       walked by on the street during the afternoons,  
20       and it looks nice from the outside.

21                   MR. AUSLANDER: Has anybody  
22       expressed to you concerns over it being

1 disruptive or loud?

2 MR. SIMPSON: They have not.

3 MR. AUSLANDER: So is your concern  
4 today more with the lack of conditions on the  
5 license or with the way the establishment is  
6 being operated?

7 MR. SIMPSON: Again, your  
8 establishment has only been in operation for  
9 about three our four weeks, so --

10 MR. AUSLANDER: How long has the  
11 liquor license been in this location for?

12 MR. SIMPSON: For a long time --

13 MR. AUSLANDER: Since you and I  
14 were in high school, right?

15 MR. SIMPSON: -- under different  
16 operators. And again, you know, this is an  
17 ongoing effort by the community to improve the  
18 standards on the street.

19 MR. AUSLANDER: I have nothing.

20 MS. BOWMAN: Can I ask a  
21 question --

22 MEMBER ALBERTI: Sure.

1 MS. BOWMAN: -- since he  
2 referenced me in his testimony?

3 MR. AUSLANDER: Yes, you can ask.

4 MEMBER ALBERTI: Sure.

5 CHAIRPERSON MILLER: If my Board  
6 members don't object.

7 MEMBER ALBERTI: We allowed the  
8 both of them to have a question, so --

9 CHAIRPERSON MILLER: Do you  
10 object?

11 MR. JAMES: We don't object.

12 CHAIRPERSON MILLER: Okay.  
13 There's no objection then.

14 MS. BOWMAN: Have you ever been  
15 into my other establishment, the Black  
16 Squirrel?

17 MR. SIMPSON: I've eaten there  
18 once and I've been twice for neighborhood  
19 events.

20 MS. BOWMAN: And do you know what  
21 we served when we first opened?

22 MR. SIMPSON: I don't other than

1 the anecdote that I recounted that I've heard  
2 you say, that you had to adjust your menu  
3 downward.

4 MS. BOWMAN: I think you're mis-  
5 characterizing that. Our menu is very much  
6 the --

7 CHAIRPERSON MILLER: Okay. Wait.  
8 You can't --

9 MS. BOWMAN: Okay.

10 CHAIRPERSON MILLER: -- make a  
11 statement --

12 MS. BOWMAN: Okay.

13 CHAIRPERSON MILLER: -- right now.  
14 You can only ask a question in this capacity.

15 MS. BOWMAN: Do you know that we  
16 serve sort of basic -- we do serve steaks  
17 there? Do you know that we serve steaks at  
18 the Black Squirrel? I mean you're -- okay. I  
19 guess I should -- because I didn't really say  
20 that. I'm sorry.

21 CHAIRPERSON MILLER: Okay.

22 MS. BOWMAN: Yes. Okay. But I

1 didn't say what he's saying that I did.

2 CHAIRPERSON MILLER: You can --

3 MS. BOWMAN: Okay. So I don't  
4 know how to get around it.

5 CHAIRPERSON MILLER: You'll have  
6 an opportunity for rebuttal --

7 MS. BOWMAN: Okay.

8 CHAIRPERSON MILLER: -- to be a  
9 rebuttal witness if you so choose.

10 MS. BOWMAN: Well, that's okay.

11 CHAIRPERSON MILLER: Okay.

12 MS. BOWMAN: Well, it's better to  
13 leave it alone.

14 CHAIRPERSON MILLER: Okay.

15 MS. BOWMAN: I mean --

16 CHAIRPERSON MILLER: Board  
17 questions? Yes, Mr. Alberti?

18 MEMBER ALBERTI: No, let Mr.  
19 Silverstein go ahead.

20 CHAIRPERSON MILLER: Mr.  
21 Silverstein?

22 MEMBER SILVERSTEIN: Mr. Simpson,

1       there are any number of issues here, one of  
2       which is that of the level playing field. Of  
3       these requests or issues that you have I want  
4       to know if these are across the board in the  
5       community. Is there a limit of occupancy in  
6       all of the settlement agreements that you have  
7       negotiated and that KCA has negotiated?

8                   MR. SIMPSON: I've not personally  
9       reviewed every settlement agreement that  
10      exists on 18th Street. They have come into  
11      existence over the course of a decade plus.  
12      I can say that ever settlement agreement that  
13      I've been involved in since being on the ANC,  
14      this is a condition that we have sought. And  
15      it's my understanding that it exists in quite  
16      a number of Adams Morgan settlement  
17      agreements. So again, these are conditions  
18      that we are aspirationally seeking to have  
19      apply to all of our licensees.

20                   MEMBER SILVERSTEIN: Cover charge.  
21      Is that universally applied or --

22                   MR. SIMPSON: Again, my sense is

1 that there are some establishments that have  
2 this as a hangover from past times and they  
3 tend to be the more problematic establishments  
4 on the block because they're operating more as  
5 entertainment and club-like spaces rather than  
6 as restaurants. Again, this is another  
7 condition that we have been seeking to expand  
8 and have apply to as many establishments as  
9 possible.

10 MEMBER SILVERSTEIN: Windows  
11 closed during entertainment. Across the  
12 board?

13 MR. SIMPSON: Again, as an  
14 objective across the board. I'm aware I think  
15 of only one establishment that routinely does  
16 not follow that approach.

17 MEMBER SILVERSTEIN: Well, tell me  
18 about that one.

19 MR. SIMPSON: My understanding is  
20 that -- or not my understanding. I have  
21 observed Madam's Organ having live  
22 entertainment, and frankly, it's the one place

1 where you can reliably hear noise from way,  
2 way down the street, which is annoying to  
3 people.

4 MEMBER SILVERSTEIN: Trash pick  
5 ups on X number of days. Is the uniform  
6 across the board?

7 MR. SIMPSON: This is a classic  
8 example of what I was trying to articulate.  
9 We put in five days based on what we had seen  
10 in other agreements, what we had seen -- I  
11 can't tell you from personal experience  
12 whether that's the most appropriate figure for  
13 this particular establishment. We did the  
14 best we could. Again, that's something that  
15 could have been improved upon if the Licensee  
16 had been willing to have any dialogue with us  
17 about it, but they were not.

18 MEMBER SILVERSTEIN: You haven't  
19 abolished pub crawls, but is that uniformly  
20 across the board? I mean --

21 MR. SIMPSON: We have very nearly  
22 abolished pub crawls.

1 MEMBER SILVERSTEIN: Yes?

2 MR. SIMPSON: My understanding is  
3 that virtually all of the settlement  
4 agreements in Adams Morgan prohibit them. And  
5 I mean maybe --

6 MEMBER SILVERSTEIN: Maybe that's  
7 why they're all in my neighborhood.

8 (Laughter.)

9 MR. SIMPSON: Yes, maybe once a  
10 year we learn about a pub crawl that is being  
11 organized and it turns out that they end up  
12 having to cancel it or severely limit which  
13 establishments can be visited.

14 MEMBER SILVERSTEIN: Of these  
15 requests that you have, are there any that you  
16 simply absolutely got to have, that are -- you  
17 know, you'd run out of here screaming if you  
18 didn't have them? Which -- you know, or rank  
19 the top three, I guess, is a fair way to put  
20 it. I mean you're going to tell me that you  
21 need them all.

22 MR. SIMPSON: No, but I can give

1       you -- I mean there are some that we sort of,  
2       you know, hope will play out well just because  
3       of other constraints that exist. The  
4       discussion about the Certificate of Occupancy  
5       was an example. Hopefully that takes care of  
6       itself for the most part, although we do see  
7       circumstances where that gets tinkered with,  
8       adjusted. So, you know, I can rank that lower  
9       down.

10               In terms of the most critical  
11       ones, I think that the pub crawl/bar crawl one  
12       is very significant for Adams Morgan.

13               MEMBER SILVERSTEIN: Why?

14               MR. SIMPSON: Pardon?

15               MEMBER SILVERSTEIN: Why?

16               MR. SIMPSON: We had a history of  
17       very aggressive and unruly and disruptive bar  
18       crawls where people were coming, getting  
19       completely inebriated and far beyond safe  
20       appropriate levels coming out onto the street,  
21       vomiting on the street, urinating on the  
22       street, you know, absolutely disrupting the

1 peace, order and quiet. And to this day, you  
2 know, nobody wants to become the next Adams  
3 Morgan. And, you know, these are the reasons  
4 why.

5 MEMBER SILVERSTEIN: Okay. Move  
6 onto the next one.

7 MR. SIMPSON: Pardon?

8 MEMBER SILVERSTEIN: Move onto  
9 your next --

10 MR. SIMPSON: I think the cover  
11 charge is quite significant again because it's  
12 such a linchpin between whether an  
13 establishment is operating as a restaurant or  
14 whether it's operating as a club. It's such  
15 a key turning point there. Again, if Mr.  
16 Auslander --

17 MEMBER SILVERSTEIN: Do you think  
18 that's more important than windows?

19 MR. SIMPSON: -- is able to book  
20 the Pope, I will be more than happy to have an  
21 exception to that, but --

22 MEMBER SILVERSTEIN: Do you think

1 that's more important than windows?

2 MR. SIMPSON: On the same part  
3 that was the very next one I was going to go  
4 to, which is the keeping of the windows  
5 closing when there is music being played  
6 inside. Those were definitely the top three.

7 MEMBER SILVERSTEIN: You're  
8 familiar with the Applicant's. The Licensee's  
9 actually. And are you familiar with their  
10 other establishments?

11 MR. SIMPSON: I am. I've actually  
12 never been inside Ventnor. I've been in the  
13 Black Squirrel a few times. So I have seen  
14 some of --

15 MEMBER SILVERSTEIN: Are they good  
16 operators?

17 MR. SIMPSON: Pardon?

18 MEMBER SILVERSTEIN: Are they good  
19 operators?

20 MR. SIMPSON: They're fine  
21 operators. Yes, my sense is they run  
22 reasonable businesses. I do understand there

1 were some issues with noise with Ventnor in  
2 the past and that got resolved. Again, I  
3 credit to a significant extent the presence of  
4 the settlement agreements for the success of  
5 that appropriate behavior.

6 MEMBER SILVERSTEIN: We're always  
7 faced with the issue here, we're promised  
8 every restaurant is going to be a fine steak  
9 restaurant and it doesn't always turn out that  
10 way, and we have to depend on the record of  
11 the people. And you're telling us their track  
12 record is not a bad one, but that you don't  
13 know what the future will hold.

14 MR. SIMPSON: Their track record  
15 as subject to these very kinds of conditions  
16 is a good one.

17 MEMBER SILVERSTEIN: Okay. I have  
18 no further questions.

19 CHAIRPERSON MILLER: Yes, Mr.  
20 Alberti?

21 MEMBER ALBERTI: Thank you, Mr.  
22 Silverstein. Your line of questioning was

1 very helpful. Answered a lot of my questions.

2 And good afternoon, Commissioner  
3 Simpson. First of all, I want to thank you  
4 for your service to the city as an ANC  
5 commissioner and than you for your comments.  
6 I'm just going to very quick here.

7 The only thing I didn't get from  
8 Mr. Silverstein's questioning was have you  
9 examined the trash facilities at the  
10 establishment as they currently exist?

11 MR. SIMPSON: I have not.

12 MEMBER ALBERTI: Has anyone  
13 commented on them?

14 MR. SIMPSON: I have not received  
15 any comments on them.

16 MEMBER ALBERTI: Okay. So you  
17 can't really provide me with any information  
18 as to whether or not, as the Licensee claims  
19 -- that they are sufficient even for an  
20 increase in business?

21 MR. SIMPSON: I could not comment  
22 on that.

1                   MEMBER ALBERTI:   Okay.   And the  
2                   last thing I'll ask you is aside from the  
3                   conditions in the PIF, the ones that Mr. James  
4                   referred to, is there anything else that you  
5                   think is critical?

6                   MR. SIMPSON:   That would be  
7                   sufficient.

8                   MEMBER ALBERTI:   Great.   Thank  
9                   you.   No further questions.

10                  CHAIRPERSON MILLER:   Okay.   I just  
11                  have a few.   Do you think that every alcohol  
12                  establishment should have a settlement  
13                  agreement, in Adams Morgan anyway?

14                  MR. SIMPSON:   I think that would  
15                  be a very appropriate goal for the Adams  
16                  Morgan community given the over-concentration  
17                  of establishments that we have and the need,  
18                  the ensuing need for rules of the road.

19                  CHAIRPERSON MILLER:   So I take it  
20                  that's a yes?

21                  MR. SIMPSON:   (No audible  
22                  response.)

1                   CHAIRPERSON MILLER: Do you think  
2                   there are good operators who don't have  
3                   settlement agreements?

4                   MR. SIMPSON: I do.

5                   CHAIRPERSON MILLER: Do you know  
6                   of them in Adams Morgan?

7                   MR. SIMPSON: I do.

8                   CHAIRPERSON MILLER: Okay. So  
9                   what distinguishes them from this case?

10                  MR. SIMPSON: Again, you don't --  
11                  in trying to go from a place about a decade  
12                  ago where there were almost no settlement  
13                  agreements and no common rules of the road to  
14                  today, you take it in steps and pieces. You  
15                  get there when you can, when the opportunity  
16                  arises. This particular establishment got  
17                  particular attention this time around because  
18                  of the granting of the entertainment  
19                  endorsement as a significant trigger followed  
20                  by the application for the extended hours.  
21                  Both of those things raised particular  
22                  questions.

1                   There's a challenge as you go  
2                   along about when to try to expand coverage  
3                   that the community has. There are any number  
4                   of factors that can affect that. It could be  
5                   a time when an establishment changes owners.  
6                   It could be a time when it changes operations.  
7                   This is one of those times for them.

8                   CHAIRPERSON MILLER: Okay. Let's  
9                   say       from what I've heard in this case that  
10                  there isn't a trash problem here. So why  
11                  would the Board need to impose a condition  
12                  relating to trash in this case if there's not  
13                  a problem.

14                  MR. SIMPSON: I mean again, of the  
15                  various things we've put out, this is one I  
16                  would de-prioritize because I think there  
17                  probably are other mechanisms to try to  
18                  address that if it would become a problem.  
19                  That said, I think it is -- you know, I think  
20                  it's a useful thing for an applicant to be  
21                  reminded and to have it be made very clear  
22                  that this is the way we expect that to run.

1 Again, I'm told that a decade ago the trash in  
2 the alley in Adams Morgan was a wreck. And  
3 then these kind of conditions were imposed on  
4 licensees up and down the street and they  
5 brought that alley into better order through  
6 the laying down of those baseline standards.

7 CHAIRPERSON MILLER: And we were  
8 talking about the windows being open or  
9 closed, because that was -- is that the top of  
10 your priority list? Right?

11 MR. SIMPSON: It's high on the  
12 priority list.

13 CHAIRPERSON MILLER: Because noise  
14 is -- okay. Were you referring though to  
15 radio, you know, that we heard testimony about  
16 or were you concerned mainly with live  
17 music?

18 MR. SIMPSON: Live entertainment  
19 is the one that's particularly worrisome  
20 because it has the potential for being the  
21 loudest, has the biggest potential for  
22 audience participation, which further

1 increases the noise. But just to say most of  
2 the establishments that I'm aware of on 18th  
3 Street have also agreed to keep their windows  
4 closed even when recorded music is being  
5 played, at least past a certain point of  
6 night.

7 CHAIRPERSON MILLER: Okay. And  
8 finally, well, which do you think is more  
9 important, a good settlement agreement or a  
10 good operator?

11 MR. SIMPSON: Certainly a good  
12 operator.

13 CHAIRPERSON MILLER: Okay. I  
14 don't have any other questions. Anybody else?

15 (No audible response.)

16 CHAIRPERSON MILLER: Questions on  
17 Board questions?

18 (No audible response.)

19 CHAIRPERSON MILLER: Okay. Thank  
20 you. The Licensee has an opportunity if they  
21 want to put on a rebuttal witness for anything  
22 that was --

1 (Laughter.)

2 MR. AUSLANDER: D,j... vu from last  
3 time.

4 (Laughter.)

5 CHAIRPERSON MILLER: Okay. Then  
6 we could do closing. And the Licensee can go  
7 first and the Protestants then go second. And  
8 generally it's five minutes each and the  
9 Licensee can save some time for rebuttal, if  
10 you choose to.

11 MR. AUSLANDER: I would just close  
12 with, you know, we're here about renewal.  
13 We're not here about your settlement  
14 agreement. You know, we have been open a  
15 month. There's been a license in this  
16 location for almost 20 years. As I've been in  
17 the neighborhood for almost 10 years, I'm not  
18 aware of any problems or any concerns from the  
19 neighborhood about this license in this  
20 location with these doors and windows for 20  
21 years. Yes, we did renovate. We opened a  
22 month ago opening a much higher-end

1 establishment and had been there for the prior  
2 God knows how long.

3 Again, with the renewal the  
4 neighborhood has no concerns about noise.  
5 They have no concerns about trash. They have  
6 no concerns that this is a pub crawl kind of  
7 place. Yet we're here today because we  
8 wouldn't enter into a settlement agreement.  
9 ABRA, MPD, all these agencies come out. They  
10 check on these things. ABRA is in our  
11 establishment -- I believe they have somebody  
12 in Adams Morgan Thursday and Friday night,  
13 every night.

14 So, you know, their request is for  
15 the Board to impose a settlement agreement on  
16 us. That makes it not voluntary, you know,  
17 and I just don't think that that's what these  
18 proceedings are really for. A renewal should  
19 be for an Applicant where the neighbor has  
20 real concerns, a real problemo, not you have  
21 to have a settlement agreements, so let's get  
22 the ABRA Board to impose those restrictions on

1 the Applicant. That's not what these  
2 proceedings should be about. That's not what  
3 all our time is for. And I understand the  
4 Protestants have hurt feelings over the lack  
5 of wanting a settlement agreement, but this is  
6 to talk about the renewal of a license for an  
7 establishment that has no neighborhood  
8 concerns. Thank you.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you.

11 MR. JAMES: I think I'd basically  
12 like my written statement to serve as the  
13 closing and just say that my feelings and the  
14 KCA's feelings are not hurt, but we do believe  
15 that the settlement agreements that are in  
16 place throughout the neighborhood have been  
17 very beneficial to helping move Adams Morgan  
18 a little bit in the direction of having peace,  
19 order and quiet.

20 MR. SIMPSON: And I'll just close  
21 by also saying that our feelings are not hurt.

22 CHAIRPERSON MILLER: Good.

1                   MR. SIMPSON: What we do have is a  
2                   community that this Board has described as  
3                   having significant problems with peace, order  
4                   and quiet, particularly with respect to  
5                   criminal activity, noise, litter, disorderly  
6                   conduct, crowd control and vehicular and  
7                   pedestrian safety. That doesn't come from  
8                   nowhere. It comes from the aggregate  
9                   contribution of every establishment up and  
10                  down 18th Street, and that's why the community  
11                  has worked hard over a decade to set some  
12                  common rules of the road for all of the  
13                  establishments. It's disappointing when we  
14                  can't encounter a licensee that's so unwilling  
15                  to share in that community effort.

16                  And our concerns clearly aren't on  
17                  the basis of nothing. They're on the basis of  
18                  having the licensee sit in that box and say we  
19                  may very well want to have bar crawls and pub  
20                  crawls at some future point. We may very well  
21                  want to have cover charges. So it's not as if  
22                  the concerns are unfounded. That's all.

1 Thank you.

2 CHAIRPERSON MILLER: Okay. Thank  
3 you. Okay. I assume there's no rebuttal.

4 MR. AUSLANDER: And we're butted  
5 out.

6 CHAIRPERSON MILLER: Yes. All  
7 right. Then I am going to close the record.  
8 I have the menu in here as Licensee's  
9 entertainment No. 1. And I know I'm taking  
10 judicial notice of some of the other record,  
11 including the -- and also the quarterly  
12 statements of the Licensee.

13 Yes, anything else?

14 MR. SIMPSON: We were instructed  
15 to bring seven copies of our exhibits. Should  
16 I just turn these in?

17 CHAIRPERSON MILLER: Oh, where did  
18 she go?

19 MEMBER ALBERTI: Well, wait.

20 CHAIRPERSON MILLER: We'll get  
21 them.

22 MEMBER ALBERTI: Wait, wait, wait.

1 We never --

2 CHAIRPERSON MILLER: What is that?

3 What is it?

4 MEMBER ALBERTI: -- it was not  
5 introduced.

6 CHAIRPERSON MILLER: What is it?

7 MR. SIMPSON: It was the list of  
8 establishments with settlement agreements in  
9 Adams Morgan and the list of closing hours for  
10 sidewalk caf,s.

11 CHAIRPERSON MILLER: Oh.

12 MR. SIMPSON: They were attached  
13 to our PIF.

14 CHAIRPERSON MILLER: They were  
15 attached to your PIF? You know, you kept  
16 referring to that and I'm wondering where are  
17 they, you know? So, no, there's no objection  
18 to those exhibits. Are there? Okay.

19 MS. BOWMAN: We got those last  
20 time.

21 MEMBER ALBERTI: Well, they're --

22 CHAIRPERSON MILLER:

1 They're in the PIF?

2 MEMBER ALBERTI: I'll just mention  
3 they're part of the record since they were  
4 submitted as part of the PIF.

5 MR. SIMPSON: And you've already  
6 got copies. I just didn't know.

7 CHAIRPERSON MILLER: You could  
8 leave me a copy, because I'm not sure where my  
9 copy is. Do we have -- he said they were  
10 attached to their PIF, but I didn't --

11 MR. SIMPSON: If they want us to  
12 submit it now --

13 CHAIRPERSON MILLER: They're  
14 probably already in the record, but we'll take  
15 them.

16 MEMBER ALBERTI: You want to  
17 submit this as evidence?

18 MR. SIMPSON: I'll leave them with  
19 you.

20 MEMBER ALBERTI: Okay.

21 MR. SIMPSON: The PIF said to  
22 bring seven printed copies.

1                   MR. JAMES: Here, why don't you  
2 show them the --

3                   MEMBER ALBERTI: Because they're  
4 part of the PIF, so they're part of the  
5 record?

6                   MR. SIMPSON: Okay.

7                   CHAIRPERSON MILLER: Do you want  
8 to get them?

9                   MEMBER ALBERTI: Yes.

10                  CHAIRPERSON MILLER: Yes.

11                  MEMBER ALBERTI: We can take the  
12 extra ones. I just wanted to make sure that  
13 we've established that they're part of the  
14 record so that we're not accepting something  
15 that's not in evidence.

16                  MR. JAMES: Also, this submittal  
17 was not signed, so I just -- it was one signed  
18 copy. I never got around to signing it. I'm  
19 sorry. I don't know if that matters, but --

20                  MR. AUSLANDER: No, I've seen  
21 this. Seen it all.

22                  CHAIRPERSON MILLER: Yes, let me

1 see it because I -- are you saying you  
2 submitted it with the PIF?

3 MR. SIMPSON: Electronically. At  
4 the time that I submitted the PIF those were  
5 attached to it then in reference.

6 CHAIRPERSON MILLER: Okay. And  
7 who told you to make seven copies?

8 MR. SIMPSON: I think the PIF  
9 forms says you need to bring seven copies.

10 CHAIRPERSON MILLER: Oh, okay.  
11 Oh, I see that. Okay.

12 CHAIRPERSON MILLER: We need to  
13 mark these then?

14 MR. SIMPSON: Yes.

15 CHAIRPERSON MILLER: Okay. So,  
16 okay, these are exhibits you attached to your  
17 PIF, but I'm going to give them exhibit  
18 numbers to make sure that they are part of the  
19 record as exhibits. So sidewalk caf,, closing  
20 hours in Adams Morgan, is this Protestants' or  
21 ANC?

22 MR. SIMPSON: ANC.

1 CHAIRPERSON MILLER: ANC's Exhibit

2 1. And then ANC Exhibit 2 is ANC 1C's  
3 settlement agreements with Adams Morgan  
4 establishments.

5 Do you have a copy of these as  
6 well?

7 MR. AUSLANDER: Yes.

8 CHAIRPERSON MILLER: You should.  
9 Okay. So then everything's in the record. Do  
10 the parties wish to file proposed findings of  
11 facts and conclusions of law or waive their  
12 right to do so?

13 MR. AUSLANDER: I'm waving the  
14 flag.

15 CHAIRPERSON MILLER: I hear  
16 waivers. Okay. So what's left is then just  
17 for the Board to vote on considering this case  
18 in closed session as provided by the Open  
19 Meetings Act for adjudicatory cases.

20 Okay. As Chairperson for the  
21 Alcoholic Beverage Control Board for the  
22 District of Columbia and in accordance with

1 Section 405 of the Open Meetings Amendment Act  
2 of 2010, I move that the ABC Board hold a  
3 closed meeting for the purpose of seeking  
4 legal advice from our counsel on Protest No.  
5 13-PRO-00034, Libertine renewal application  
6 per Section 405(b)(4) of the Open Meetings  
7 Amendment Act of 2010 and deliberating upon  
8 this case for the reasons cited in Section  
9 405(b)(13) of the Open Meetings Amendment Act  
10 of 2010. Is there a second?

11 MEMBER SILVERSTEIN: Second.

12 CHAIRPERSON MILLER: Mr.

13 Silverstein has seconded the motion. I'll now  
14 take a roll call. Mr. Brooks?

15 MEMBER BROOKS: I agree.

16 CHAIRPERSON MILLER: Mr.

17 Silverstein?

18 MEMBER SILVERSTEIN: I agree.

19 CHAIRPERSON MILLER: Mr. Alberti?

20 MEMBER ALBERTI: I agree.

21 CHAIRPERSON MILLER: And, Mr.

22 Jones?

1 MEMBER JONES: I agree.

2 CHAIRPERSON MILLER: And Ms.

3 Miller agrees. And so therefore the vote is  
4 5-0-0. Motion passes. I hereby give notice  
5 that the ABC Board will hold a closing meeting  
6 in the ABC Board conference room today  
7 pursuant to the Open Meetings Amendment Act of  
8 2010 and issue an order within 90 days.

9 Okay. Done.

10 MR. AUSLANDER: Thank you.

11 MS. BOWMAN: Thank you.

12 MR. JAMES: Thank you.

13 MR. SIMPSON: Thank you.

14 MEMBER ALBERTI: Everybody did a  
15 great job. Thanks.

16 CHAIRPERSON MILLER: Thank you.  
17 Okay. The Board will now recess and come back  
18 shortly to do the agenda.

19 (Whereupon, the hearing was  
20 concluded at 4:36 p.m.)

21

22

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