DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF:            :
                             :
Little Red Fox, LLC          :
t/a Little Red Fox           :
5035 Connecticut Avenue, N.W.: Fact
Retailer B                   : Finding
License No. 92834            : Hearing
ANC 3F                       :
New Retailer Class B Full-   :
Service Grocery              :
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September 18, 2013

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member

MICHAEL SILVERSTEIN, Member

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

2 1:22 p.m.

3 CHAIRPERSON MILLER: All right.

4 We're ready to call our fact finding hearing

5 for Little Red Fox which is located at 5035

6 Connecticut Avenue, N.W., License Number 92834

7 in ANC 3F and this is an application for a

8 Class B full-service grocery store.

9 And we have some new regulations

10 that we have been looking at in connection

11 with fact finding hearings for grocery stores

12 to make sure that the grocery understands how

13 to do the calculations and for the Board to

14 ask questions with respect to certain drawings

15 and layouts to make sure that there's

16 understanding between all of us and that you

17 do, in fact, meet the new requirements.

18 So, I'm going to first ask if

19 you'll identify yourself for the record.

20 MR. O'BRIEN: Stephen O'Brien and

21 Brian Molloy for the Applicant. Stephen

22 O'Brien and Brian Molloy for the Applicant and

1 we're accompanied by Matthew Carr C-A-R-R
2 who's the managing member of the Applicant.
3 CHAIRPERSON MILLER: Okay. Good.
4 And Mr. Jones has really become our expert on
5 these kind of calculations. So, I think I'm
6 going to just turn this part of the hearing
7 over to you for now if you want to engage.
8 MEMBER JONES: Well, thank you,
9 Madam Chair. I've never been so flattered.
10 Welcome. Thank you for coming
11 before us.
12 This primarily is just an
13 opportunity for us to make sure that we're on
14 the same page. There are many interpretations
15 of what right is, but the one that matters is
16 how we apply it. So, I think it's important
17 for us to convey we as a Board what we're
18 looking for and how we do the calculations and
19 make the determinations for the test 1 as well
20 as test 2. Test 1 being 50 percent or the
21 6,000 square feet. Test 2 being 5 percent for
22 the respective categories associated

1 therewith.
2 So, based on the information that
3 I've been provided, I'm going to assume that
4 you're knowledgeable of what the thresholds
5 for the individual tests and how we get there,
6 but I'm going to ask that you provide
7 clarification where possible on the diagram
8 that you provided just to make sure I am
9 capturing the essence of your intent.
10 Is that fair?
11 MR. MOLLOY: Yes, sir.
12 MR. O'BRIEN: Yes.
13 MEMBER JONES: So, I noticed
14 there's a larger diagram that's posted up
15 here. I usually ask. This is a drawing that
16 we were looking at in making our initial pass-
17 through assessment and just to be clear,
18 today, we're just to come to a reasonable
19 level of understanding that we can placard
20 this establishment based on your compliance
21 with our interpretation of the rules as they
22 are currently stated.

1 Is that your understand as well?
2 MR. MOLLOY: Yes.
3 MR. O'BRIEN: Our understanding.
4 MEMBER JONES: All right. Cool.
5 Given that, we received this document. This
6 document I'm going to assume is the same
7 document that is in front of us. Is that a
8 fair assumption?
9 MR. O'BRIEN: Very fair.
10 MEMBER JONES: Okay. Is this also
11 the document upon which on made the
12 calculations that are derived and shown on --
13 well, actually not derived, but shown on page
14 2 of a package which has a table with colors
15 and numbers?
16 MR. O'BRIEN: Yes.
17 MR. MOLLOY: Yes.
18 MEMBER JONES: All right.
19 Excellent. Cool. Now, that we have a good
20 foundation upon which to base our discussions,
21 let us begin.
22 We the Board --

1 MR. O'BRIEN: Mr. Molloy's become
2 our expert on full-service grocery store
3 calculations. So, I'm going to let him and
4 Mr. Carr respond to particular questions and
5 provide the explanations you're looking for.
6 MEMBER JONES: Wunderbar. Are you
7 as equally as flattered as I was?
8 MR. MOLLOY: Equally.
9 MEMBER JONES: Well, Mr. Molloy,
10 would you help understand how it is you came
11 to calculate the total selling area as it is
12 noted on this page of the package that we
13 received and I say this page. So, I apologize
14 for the reporter. But, we received a
15 package.
16 There's a black and white photo at
17 the very top that says total selling area and
18 on the bottom left, it says floor plan,
19 selling area, dimensions, scale, et cetera.
20 That is the drawing or diagram to which I am
21 referring.
22 There's a second page which has a

1 table which has numbers on it in color and
2 there's a third page which has a colorful
3 diagram of the -- what I'm going to assume is
4 the intended selling or intended establishment
5 for this license or potential license
6 location. Is that fair?
7 MR. MOLLOY: That is fair.
8 MEMBER JONES: Okay. So, page 1
9 is the black and white diagram. At the very
10 top of that, it says total selling area. Can
11 you help me walk through how you made that
12 determination?
13 MR. MOLLOY: Yes. So, the space
14 is actually intended and hopefully will be
15 licensed to be both a full-service grocery
16 store B license and a restaurant D class
17 license.
18 So, there's a lot of area in the
19 back that will be used for the kitchen prep
20 and the staff area and the staff restroom and
21 since that area is only available to the staff
22 and will not be selling any products, will not

1 be accessible to customers, we removed
2 basically the whole back half of the staff.
3 You can see where it's labeled kitchen,
4 restroom, storage and then if you follow the
5 darker black line going forward to the front
6 of the store, you can see how it's also
7 labeled staff and food prep area.
8 So, we've removed that from the
9 selling area and if you keep going towards the
10 front of the store, then the next area is the
11 front counter and register. That is also not
12 included in the selling area and then
13 continuing forward from there, there's the
14 trash receptacles that we removed from the
15 selling area.
16 Everything else in the store has
17 display space and that is what we're including
18 in the selling area except for the -- there's
19 a small seating area in the very front which
20 is where class D restaurant customers would
21 sit and so, we removed that from the
22 restaurant selling -- I mean the grocery store

1 selling area.
2 MEMBER JONES: Okay. I think I
3 follow. So, that's helpful. So, let's -- let
4 me back up and ask this question and make this
5 statement. So, do you happen to know what is
6 the total square footage of the entire
7 establishment including those areas that you
8 noted as not being included?
9 MR. CARR: The entire
10 establishment is roughly 1300 square feet.
11 MEMBER JONES: All right. The way
12 in which we typically make the determination
13 of what the selling area is is we would take
14 what the total square footage of the entire
15 footprint for that establishment, all spaces
16 in that area, and subtract from that the non-
17 selling area component. So, food prep areas,
18 restrooms, areas that are not accessible to
19 the public with the exception of the bathroom
20 areas and that would be the selling area that
21 we would use going forward and that would be
22 the selling area upon which we would

1 determine what your 50 percent was or isn't
2 going forward. That would be my denominator
3 in that sense in terms of the ratio of food
4 selling area to overall selling area.
5 So, and what I heard from you it
6 sounds like there may be a little bit of an
7 inconsistency in how we move and based on how
8 you did it, but I just want to make sure we're
9 in lockstep from there.
10 So, if I look at this top level
11 diagram --
12 MR. MOLLOY: Yes.
13 MEMBER JONES: -- so, we have a
14 base number. My total is 1300 square feet.
15 Correct? Of the overall space.
16 MR. MOLLOY: Yes. Correct.
17 MEMBER JONES: So, this diagram
18 which is analogous to this diagram that's in
19 front of us.
20 MR. MOLLOY: Yes.
21 MEMBER JONES: That overall area
22 is 1300 square feet. The area that is to the

1 far left where it says walk-in cooler, that
2 area is not accessible to the public.
3 Correct?
4 MR. CARR: Yes, that is cold-food
5 storage.
6 MEMBER JONES: Fair enough.
7 Storage area is labeled. That area is not
8 accessible to the public. Correct?
9 Is there any area -- maybe this
10 will expedite this. So, on this diagram,
11 there's an E with an inside of a green box.
12 There's also a B inside of a blue box.
13 Immediately to the left of that, there's a
14 vertical line.
15 Is there aspect of the space to
16 the left as I look at this diagram of that
17 vertical line that would be accessible to the
18 public?
19 MR. CARR: That's for the staff to
20 get behind the counter area.
21 MEMBER JONES: So, is there any
22 area to the left of that line --

1 MR. CARR: Yes.
2 MEMBER JONES: -- that would be
3 accessible to the public?
4 MR. MOLLOY: There -- there is if
5 a customer or patron would need to use the
6 restroom. They can cross that left line and
7 walk towards the rear of the establishment and
8 use the restroom.
9 CHAIRPERSON MILLER: Okay. And
10 looking at this layout here, where would they
11 cross that line? Would the crossing point be
12 at the letter E? Would the crossing point be
13 at the letter B and they'd walk back?
14 It looks like there's a hallway or
15 some sort. I'm just trying to understand how
16 as a patron how I would access the bathroom.
17 MR. MOLLOY: If you look at the
18 green shaded area that's marked with the
19 letter E and then the second green shaded
20 area, the three-foot extension that's in front
21 of it, there is no wall right there. So, a
22 customer could walk through that space and

1 down that hallway to use that restroom.
2 MEMBER JONES: Okay.
3 MR. MOLLOY: There's a --
4 MR. CARR: The skinny blank
5 hallway just for accessing the bathroom.
6 MEMBER JONES: Understood. But,
7 that area -- that access to the bathroom is an
8 area that would be accessible to the general
9 public. It wouldn't be blocked off, guarded
10 or restricted from -- I'm a general patron of
11 your establishment. I could walk down there
12 to go to the restroom.
13 Now, does that apply -- would
14 individuals that are your full-service grocery
15 store patrons would they also be able to
16 access the bathroom or would the bathroom use
17 be limited to -- or would the bathroom be
18 limited to --
19 MR. CARR: The bathroom is meant
20 for people dining in the store.
21 MEMBER JONES: So, the bathroom is
22 meant for people dining in the store. So, let

1 me take another step back.
2 So, this area that is the colored
3 area with the G, E, B, et cetera is this part
4 of the restaurant component as well as the --
5 I guess I'm kind of confused in terms of which
6 element is the restaurant portion and which
7 element is the full-service grocery component
8 from the standpoint of a patron.
9 MR. CARR: A restaurant patron
10 would -- would use the seating area designated
11 and they could, of course, walk through the
12 store to enter the bathroom.
13 MEMBER JONES: Okay. So,
14 essentially, this whole area that I'm looking
15 at to the right of that vertical line that we
16 spoke earlier is accessible to the public and
17 your public in this instance -- you'd have
18 mixed patrons. You have patrons that could be
19 servicing your grocery store and you got
20 patrons that could be servicing your
21 restaurant. So, it's all one in the same from
22 the standpoint of where your -- the footprint

1 area where those patrons would occupy. It's
2 not a clear designation or line drawing a line
3 between a restaurant patron only and a grocery
4 store patron only. Correct?
5 MR. MOLLOY: Correct.
6 MEMBER JONES: Is that fair?
7 MR. MOLLOY: Yes.
8 MEMBER JONES: Okay. Okay. So,
9 the challenge is this. Because you have an
10 area that is accessible to your full-service
11 grocery store patrons, that is not restricted
12 if you will to a certain type of patron, i.e.,
13 I mean I don't have to sit at your restaurant
14 and I can go and use your bathroom. I don't
15 have to be a restaurant patron to go and use
16 your bathroom.
17 This hallway we would count that
18 as part of your selling area space. Not the
19 bathroom because that is specifically noted as
20 note being included, but the hallway to get to
21 the bathroom would be.
22 MR. CARR: It's -- I mean it's so

1 skinny, it's actually impossible to like put
2 anything on the walls or anything for sale in
3 any of the area. It's like only big enough as
4 a passage -- passageway.
5 MEMBER JONES: I appreciate your
6 statement, but we would count that as area
7 that is calculated as part of the selling area
8 space.
9 MR. MOLLOY: All right. As you
10 can see, the way we prepared the charts we
11 thought the selling area space was only an
12 area where items could be sold and since that
13 hallway was -- was meant for merely access to
14 the restroom, that -- that's why we made the
15 assumption and apparently, we weren't on the
16 same understanding as you that it could not be
17 -- or it could be excluded from the selling
18 area and, therefore, the denominator when
19 making our calculations.
20 MEMBER JONES: Fair enough.
21 Understood.
22 MR. O'BRIEN: Mr. Jones.

1 MEMBER JONES: Sir.
2 MR. O'BRIEN: May I just point
3 out? I believe the regulation -- I'm sorry.
4 I don't have it in front of me. Doesn't say
5 area accessible to the public. It says
6 selling area.
7 MEMBER JONES: Correct.
8 MR. O'BRIEN: And that hallway is
9 not a selling area.
10 MEMBER JONES: So, we are defining
11 selling area as an area that the public can
12 generally access that is servicing your full-
13 service grocery store. If you want to cut
14 that area off and keep them -- the patrons
15 from being able to access that, then that was
16 the line between what would be included as
17 selling area and not included as selling area.
18 MR. MOLLOY: So, if he instituted
19 once his establishment is running that only
20 the only restaurant customers could use the
21 restroom, then we could cut it off and not
22 count it?

1 MEMBER JONES: That would be an
2 area that we would consider in terms of the
3 calculation and that's why I was trying to
4 draw the distinction in terms of what type of
5 patron would be allowed to access that area.
6 Because if the bathrooms were
7 strictly for your restaurant patrons only,
8 then that's a different animal than if you're
9 saying your grocery store patrons could access
10 that.
11 MR. MOLLOY: I think as he
12 mentioned earlier, his initial intent was that
13 -- I mean they had the restrooms -- the public
14 restrooms available for the restaurant
15 customers only, but he wasn't going to forbid
16 a patron or a full-service grocery store
17 patron from using it if they asked. But, if
18 that's the only way we could qualify with the
19 numbers, then he is amenable to changing his
20 policy.
21 MEMBER JONES: Well, let's take a
22 step further back. I'm not recommending any

1 type of change to your business construct or
2 your model.
3 MR. MOLLOY: Um-hum.
4 MEMBER JONES: I'm just providing
5 to you information upon which to make an
6 assessment and I just want to make sure that
7 we are clear from a standpoint of our position
8 on what the selling area is and you can choose
9 to use that selling area in some kind of way.
10 Maybe put a shelf on the wall and have a
11 display item of a few things that could
12 possibly fall into these categories. It's up
13 to you as to how you find a way to make the
14 numbers work for your objective.
15 I'm not going to provide you
16 feedback from that standpoint. I can only
17 communicate to you that if this area is open
18 and accessible to your grocery store patrons
19 in anyway even if it is just a bathroom access
20 point, that hallway to get there is going to
21 be calculated in terms of -- or going to be
22 incorporated in the calculation of determining

1 what your selling area is.
2 MR. O'BRIEN: Well, may we then
3 presume for the purposes of this hearing that
4 the hallway to the bathroom will be restricted
5 to restaurant patrons only?
6 MEMBER JONES: Yes.
7 CHAIRPERSON MILLER: I just want
8 to interject for a second because I have the
9 regulation in front of me. So, I just thought
10 I would read it.
11 It says the term selling area
12 means the area in a retail establishment that
13 is open to the public and does not include
14 storage areas, preparation areas or restrooms.
15 So, I just throw that out to you
16 as to consider the exact language and how --
17 if you need to make any changes.
18 If this were a storage area for
19 instance, it wouldn't be counted.
20 So, I don't know. There may be
21 different options here.
22 I would be interested to see how

1 something like this throws you out -- if it
2 throws you out. I would be interested in
3 seeing --
4 MR. O'BRIEN: But, with the
5 stipulation that we just made, how could we
6 address that any farther?
7 CHAIRPERSON MILLER: Okay. So,
8 what I'm hearing is you're saying if you did
9 count that as a public area open to the
10 public, it would throw off all your numbers
11 and you might not qualify as a grocery store.
12 Is that correct?
13 MR. O'BRIEN: We don't know
14 whether that, in fact, would be the case.
15 CHAIRPERSON MILLER: You don't
16 know. Okay. Okay.
17 MR. O'BRIEN: Whether the numbers
18 then would fall below threshold. But, since
19 we've made a decision and commitment here that
20 it shall be available only to restaurant
21 patrons, I don't think that it will be -- on
22 that. It's not selling area as I understand

1 the Board.
2 CHAIRPERSON MILLER: I don't think
3 the Board -- has the Board spoken to that. I
4 mean --
5 MEMBER JONES: So, let me make
6 sure I'm clear. That was a factor that we as
7 the Board would then consider in our
8 assessment of determining whether or not it is
9 selling area or not selling area. I am not --
10 I'm one single Board Member and I'm sticking
11 to that standpoint at this juncture in terms
12 of my perception of how that would be because
13 then it would lead to other questions and
14 those other questions would be how would you
15 insure, how would you provide that level of
16 restriction, how are you going to separate one
17 type of patron from the other in terms of
18 insuring that your grocery store patrons don't
19 have access to that area while your restaurant
20 patrons do?
21 So, that is the same idea or
22 concept that I was putting out there as

1 something that we would consider. We as a
2 Board would have to make that assessment and
3 then rule on it or provide feedback based on
4 that assessment at that time.
5 Is that fair or --
6 MR. O'BRIEN: I think the answer
7 is probably signage.
8 MEMBER JONES: Okay.
9 MR. MOLLOY: And just to point
10 out, as you can see from the diagrams we gave
11 you, the restaurant seating area is actually
12 rather limited. There's only six seats
13 currently planned inside and so, it would be
14 fairly easy for any staff there to realize who
15 is a restaurant customer versus who is a
16 grocery store customers.
17 That, as well as, signs making
18 clear who the restaurant facilities are for.
19 MEMBER JONES: Okay. Let's
20 continue down the understanding of how you
21 made your calculations. I can understand
22 where you're coming from and I'm not trying to

1 overlay too much of an assessment on it at
2 this time. I just want to understand where
3 you're coming from in terms of how you
4 characterize certain areas.
5 And the reason why I ask that is
6 because as soon as you said the seating area,
7 our you counting the seating area as part of
8 the selling area?
9 MR. CARR: No, we are not.
10 MEMBER JONES: Okay. So, we would
11 be counting that seating area as part of your
12 selling area as well because this is
13 accessible to the public or we would have been
14 counting that area as well because it's
15 accessible to the public and there is no
16 restrictions in terms of the types of patrons
17 that are there and I will say that
18 restrictions in terms of the type of patrons
19 in the past in one other instance that we have
20 had this situation, we counted the entire
21 space as selling area where it was a
22 restaurant portion or not.

1 So, we would probably follow that
2 same precedence in this instance and count
3 that entire area as part of your selling area
4 where your grocery store patrons could have
5 access to that space.
6 MR. MOLLOY: But, as they plan to
7 use this space, the grocery store patrons
8 wouldn't. You would have to come to the staff
9 and be seated there and be ordering food.
10 MEMBER JONES: Okay.
11 MR. MOLLOY: This -- this wouldn't
12 be a casual area where they could just sit
13 down.
14 MEMBER JONES: So, it wouldn't be
15 a cafeteria type of establishment. It
16 wouldn't be -- I couldn't walk in that front
17 door and go into your grocery store buy food
18 and then go sit down at that restaurant
19 seating area?
20 MR. CARR: It's for customers
21 dining in only. So, it would have to have a
22 -- you know, actual utensils and plates.

1 MEMBER ALBERTI: Mr. Jones, can I
2 just --
3 MEMBER JONES: Go ahead. Sure.
4 MEMBER ALBERTI: Just real
5 quickly. Just to point out if we -- and this
6 may be helpful to you. If we were to count
7 that as a selling area, we would as we have in
8 the past counted it as the food selling area.
9 Correct?
10 MEMBER JONES: Yes.
11 MEMBER ALBERTI: I don't know if
12 that's helpful to you.
13 MR. MOLLOY: Would --
14 MEMBER ALBERTI: So, it would be
15 included -- the only way it would be included
16 in the total selling area it would included in
17 the food selling area.
18 MR. MOLLOY: That would be
19 helpful. Where it might not be beneficial is
20 hitting the 5 percent minimum in six of the
21 seven --
22 MEMBER ALBERTI: I understand.

1 But, I just want you to take that into account
2 as you think everything through.
3 MR. MOLLOY: Okay. Got you.
4 Thank you.
5 MEMBER JONES: So, sir, you
6 mentioned -- what's your ConOp? Again, can
7 you walk through that or excuse me, your
8 concept of operations. Your business
9 practice. So, I as a patron, I walk in your
10 front door.
11 MR. CARR: So, it's half
12 restaurant and half grocery store. I can just
13 go through category by category with the types
14 of things we would be selling. That would be
15 helpful?
16 MEMBER JONES: I just want to
17 break it down between am I a grocery store
18 patron or a restaurant patron? So, I'll ask
19 this question.
20 MR. CARR: Okay.
21 MEMBER JONES: Let me ask this
22 specific question.

1 MR. CARR: Sure.
2 MEMBER JONES: I come into your
3 front door as a general patron and I walk into
4 your grocery store item area. I buy some
5 groceries. Can I take those groceries and
6 seat myself in the food or the section -- I
7 can't read this, but this area that's hashed
8 off with the six seats?
9 MR. CARR: You have to order an
10 item that would be for here as opposed to go.
11 The grocery items would all be for take-out.
12 The restaurant items would be served for here
13 by the staff with, you know, silverware and
14 actual plates and not to-go containers. That
15 would --
16 MEMBER JONES: Okay. So, I --
17 MR. O'BRIEN: So, the answer to
18 your question is no.
19 MEMBER JONES: No. Okay. So, I
20 can come in -- I can buy all the groceries I
21 want, but they need to stay in that bag or
22 whatever and then I say hey, I also want to

1 sit down and eat here. I would be seated and
2 I'd get a menu of some sort or something along
3 those lines. I'd place an order and that meal
4 would be brought to me at that table?
5 MR. CARR: Yes.
6 MEMBER JONES: Okay. All right.
7 That's a slightly different ConOps. All
8 right. That's fair enough.
9 Given that, then I would -- we
10 would need to confer on this, but given my
11 perspective on that, I would understand that
12 there's a distinction in this ConOp versus our
13 precedence that we've set previously. That
14 being this is a situation where an individual
15 would be seated and their food would be
16 brought to that table as opposed to I'm a
17 patron in your grocery store. I buy some
18 food. I gather it and I set myself in your
19 restaurant area. That's a distinction.
20 Am I clear in that distinction in
21 how you plan on operating your establishment
22 and that you plan on allowing individuals to

1 be seated and then be served as opposed to
2 buying groceries or buying items or buying a
3 prepackaged sandwich and then going over and
4 seating myself at your restaurant area.
5 Okay.
6 Given that distinction then, I can
7 appreciate your perspective on this and I
8 think, Board, we would -- I would feel more
9 comfortable if we had weigh in or consensus
10 from everyone on the perspective of how we
11 assess this.
12 MEMBER ALBERTI: Just can I ask a
13 clarifying question?
14 MEMBER JONES: Yes, you may.
15 CHAIRPERSON MILLER: Um-hum.
16 MEMBER ALBERTI: Just so that --
17 now, flipping the coin, if I'm sitting in your
18 restaurant and I get served -- I have a
19 beverage and I'm done with my meal, can I pick
20 up my beverage and then go and, you know,
21 peruse your shelves with my beverage?
22 MR. CARR: You could not take it

1 -- your beverage around the store if it was a
2 glass or a ceramic. Only if you had ordered
3 coffee to go. We would ask that it wouldn't
4 leave --
5 MEMBER ALBERTI: If you ordered
6 coffee to go from the restaurant, you're
7 saying?
8 MR. CARR: I'm saying if you were
9 sitting in the --
10 MEMBER ALBERTI: Is there anything
11 I can --
12 MR. CARR: If you were sitting
13 down and having a cup of coffee for here --
14 MEMBER ALBERTI: Right.
15 MR. CARR: -- you wouldn't be able
16 to take the ceramic cup around the store.
17 MEMBER ALBERTI: I wouldn't be
18 able to take food items, beverages from the
19 restaurant into the grocery store?
20 MR. CARR: No, not meant for the
21 seating.
22 MR. MOLLOY: Not unless it was

1 package to then be in a to-go form. Like in
2 a new coffee cup with a lid or if you couldn't
3 finish your meal --
4 MEMBER ALBERTI: Unless it was a
5 doggie bag.
6 MR. MOLLOY: There you go.
7 MR. CARR: Yes.
8 MEMBER ALBERTI: I got you. Fair
9 enough. That's helpful to me. Thank you.
10 CHAIRPERSON MILLER: I have a
11 question. So, when you're seeking your
12 restaurant license, do you define the space
13 that's the restaurant? Is it that little
14 square as part of this or it is that whole
15 establishment?
16 MR. MOLLOY: That is the only
17 seating -- that is the only space that is
18 dedicated for the restaurant and the
19 establishment other than obviously the -- the
20 kitchen and food preparation area which is
21 needed for all restaurants.
22 CHAIRPERSON MILLER: Okay. That's

1 not my question. You know, I probably should
2 know the answer to this, but it would help me.
3 You have this large establishment
4 and then within this establishment, you have
5 your restaurant in that square. When you're
6 seeking your restaurant license, is it for
7 that square or is it for the whole
8 establishment?
9 MR. O'BRIEN: Question. Do you
10 mean your restaurant ABC license as opposed to
11 your business license?
12 CHAIRPERSON MILLER: Well, any of
13 them. Because I'm just wondering whether --
14 if you defined the space as this square and
15 the hallway, then I could see that that would
16 -- that might be a separate area from the
17 grocery store.
18 But, if you're getting a license
19 that reflects the whole establishment and your
20 space just happens to be a part of that area,
21 then it looks different to me.
22 MR. O'BRIEN: I'm still --

1 CHAIRPERSON MILLER: Okay.
2 MR. O'BRIEN: If you're talking
3 about a restaurant business license that we
4 get from DCRA --
5 CHAIRPERSON MILLER: All right.
6 Let's just do that one. Okay.
7 MR. O'BRIEN: Okay. They don't
8 ask for --
9 CHAIRPERSON MILLER: They want the
10 address.
11 MR. O'BRIEN: They want the
12 address and number of seats.
13 CHAIRPERSON MILLER: Okay.
14 MR. O'BRIEN: For --
15 CHAIRPERSON MILLER: That's the
16 whole establishment. Okay.
17 MR. O'BRIEN: Now, we now have two
18 ABC applications pending.
19 CHAIRPERSON MILLER: Right.
20 MR. O'BRIEN: The application for
21 a DR license is for that six-seat table. Is
22 that correct?

1 MR. CARR: Yes.
2 MR. O'BRIEN: Yes.
3 CHAIRPERSON MILLER: It's for that
4 square. Okay. So, just hypothetically, it
5 couldn't include that hallway as being part of
6 the restaurant as opposed to the grocery
7 store. That's my question. If it doesn't
8 read that way.
9 MR. O'BRIEN: No, I don't --
10 CHAIRPERSON MILLER: We could ask
11 Mr. Moosally to answer that.
12 MR. O'BRIEN: I have a --
13 CHAIRPERSON MILLER: Okay.
14 MR. O'BRIEN: -- hard time
15 imagining anyone going down that hallway with
16 a drink or food heading to the bathroom.
17 MEMBER ALBERTI: You would
18 restrict that. You would restrict --
19 MEMBER JONES: You would restrict
20 that. How about --
21 CHAIRPERSON MILLER: Okay.
22 MEMBER ALBERTI: I would hope --

1 MEMBER JONES: You would feel like
2 your patron -- it's a fairly tame
3 establishment.
4 CHAIRPERSON MILLER: Okay.
5 MEMBER JONES: Because I've seen
6 that on many occasions. Walk into the
7 bathroom with a drink. So, it's not -- it
8 wouldn't be foreign to me.
9 CHAIRPERSON MILLER: Okay. I
10 think you've answered my question. I don't
11 think that it does work that way. I was
12 trying to see if I could help you out that
13 way. Okay.
14 So, then -- Mr. Jones was saying
15 is, you know, can we just treat this as
16 restaurant space. Right. And not even
17 grocery store space. Just the square where
18 the seats are. Yes.
19 MEMBER JONES: Well, yes and no.
20 The question I think we need to come to a
21 consensus on, I think I know which way I'm
22 leaning, but I think we need to discuss this,

1 is if they provide us an ascertain, i.e., some
2 type of commitment here, here or elsewhere, in
3 terms of whether this proceeding or in writing
4 in some other form, that the area for the
5 restaurant patrons is restrict -- or the
6 restaurant patrons, excuse me, are this area
7 that is a square with six seats and only these
8 individuals that are patrons in this area have
9 access to the bathroom.
10 CHAIRPERSON MILLER: I mean I
11 think anybody off the street could come in and
12 have access to a bathroom. So, I have a
13 little difficulty with that, but I don't see
14 why this -- if this is considered restaurant
15 space and they have a license for that
16 specific space within the establish, why it
17 couldn't be considered separate.
18 MEMBER JONES: So, you're saying
19 two different things I think. So, I need to
20 make sure -- that's why I want to make sure we
21 talk and clear this up.
22 If they restrict -- otherwise

1 going with your current position, then that
2 area where the patrons -- any patron that
3 comes off the street can have access to the
4 bathroom. That hallway will be considered to
5 be selling area.
6 So, it's either they restrict it
7 and it's considered to be part of the
8 restaurant area only and thus accessible to
9 patrons that are patronizing the -- or excuse
10 me, that are providing -- getting service
11 through the restaurant only and we do not
12 count it or it's open to everyone and we count
13 all of it.
14 CHAIRPERSON MILLER: I might have
15 to think about this. I mean I don't know
16 whether --
17 MEMBER JONES: That's exactly my
18 point.
19 CHAIRPERSON MILLER: A bad
20 hallway, it might not be considered. Another
21 reason --
22 MEMBER JONES: So, I'm not going

1 to try to fix it right now.
2 CHAIRPERSON MILLER: Yes. Okay.
3 Yes.
4 MEMBER JONES: So, if you're
5 trying to fix it right now, I think it's a
6 mistake.
7 CHAIRPERSON MILLER: Yes, I agree.
8 Okay.
9 MEMBER JONES: All right.
10 CHAIRPERSON MILLER: Yes.
11 MR. CARR: Can I ask a
12 hypothetical question?
13 MEMBER JONES: Certainly, sir.
14 MR. CARR: If you had a bathroom
15 in the basement that goes to the stairwell
16 going to the bathroom up the stairwell count
17 as --
18 MEMBER JONES: Yes.
19 MEMBER ALBERTI: So, Mr. Jones,
20 are we -- the hallway is an issue that we need
21 to discuss.
22 CHAIRPERSON MILLER: Yes. Right.

1 MEMBER ALBERTI: And I will say in
2 that there may be -- after this hearing in
3 thinking about it, the licensee may want to
4 provide more comments on that to us. But,
5 that's just -- I'm just throwing that out
6 there. So, however, are we talking about the
7 restaurant area now?
8 CHAIRPERSON MILLER: Yes.
9 MEMBER JONES: No.
10 CHAIRPERSON MILLER: Oh.
11 MEMBER JONES: We're not talking
12 about the restaurant area. I was -- my
13 recommendation is that --
14 MEMBER ALBERTI: We discuss that.
15 MEMBER JONES: -- we discuss that.
16 MEMBER ALBERTI: Okay.
17 MEMBER JONES: Because I think
18 there's some nuances there that we need to
19 make sure we clearly understand --
20 MEMBER ALBERTI: Absolutely.
21 Okay.
22 MEMBER JONES: -- the impact on

1 the --
2 MEMBER ALBERTI: I wanted to make
3 sure I knew what we were --
4 CHAIRPERSON MILLER: Right.
5 MEMBER JONES: Right.
6 MEMBER ALBERTI: Okay.
7 CHAIRPERSON MILLER: That's what I
8 thought. Okay.
9 MEMBER JONES: So, my question was
10 related more towards clarifying the two other
11 areas that jumped out at me in reviewing the
12 diagram that we would typically consider to be
13 part of a selling area. Those two areas would
14 be -- well, excuse me. One area would be the
15 register. We always count that as part of the
16 selling area.
17 MR. CARR: It will also be a
18 coffee preparation area as we'll be doing
19 coffee pour-overs. That's like a pour-over
20 bar. So, there will be staff working there to
21 do coffee by the cup.
22 MEMBER JONES: So --

1 MR. CARR: Kind of a prep area.
2 MEMBER JONES: -- this register --
3 no one's going to be able to get by the bold
4 line that is your patron, i.e., no one's ever
5 going to be able to come through that line to
6 get through. So, this area that's labeled as
7 F --
8 MR. CARR: That is a glass case
9 pastry display. So, the staff will handle
10 that area as well.
11 MEMBER JONES: So, the staff will
12 be in this area that is -- so, if I'm looking
13 at the diagram, there's a solid line, there's
14 a horizonal line underneath F.
15 MR. MOLLOY: Yes.
16 MEMBER JONES: Staff only behind
17 that line?
18 MR. MOLLOY: Yes.
19 MEMBER JONES: Staff only -- if I
20 look to the right and I come to the right
21 where it says register --
22 MR. MOLLOY: Yes.

1 MEMBER JONES: -- there's a
2 counter that's there.
3 MR. MOLLOY: Yes.
4 MEMBER JONES: That counter would
5 prevent a patron from entering into that area
6 behind F. Correct?
7 MR. MOLLOY: Correct.
8 MEMBER JONES: Okay. And that
9 counter connects to F which is a display case.
10 MR. MOLLOY: Correct.
11 MEMBER JONES: And wraps all the
12 way around to the wall.
13 MR. MOLLOY: Yes.
14 MEMBER JONES: Correct?
15 MR. MOLLOY: And that --
16 MEMBER JONES: And that would
17 prevent a patron from entering into that space
18 at least from that point. Correct?
19 MR. MOLLOY: Yes, the frontest
20 location you can get --
21 MEMBER JONES: All right.
22 MR. MOLLOY: -- is to the bolded

1 black line.
2 MEMBER JONES: Got it. Okay. I
3 think I understand that better now. So, that
4 helps.
5 And the trash receptacles, are
6 those blocked off from patrons as well?
7 MR. CARR: It's a built-in cabinet
8 with a circle for the different trash
9 receptacles, recycling, compost and trash.
10 MEMBER JONES: Okay. But, that
11 area would be -- if I was at your restaurant,
12 would I take a recyclable item and drop it in
13 there?
14 MR. CARR: The staff would do it
15 for the restaurant seating areas, but if a
16 grocery store customer had a piece of trash
17 hypothetically --
18 MEMBER JONES: They would have
19 access to that space. Yes?
20 MR. CARR: Yes.
21 MEMBER JONES: Okay. We would
22 count that as part of the selling area.

1 MR. MOLLOY: We included it all.
2 Like they could walk all the way up to the
3 bolded line and that area is already included
4 in our selling area.
5 MEMBER JONES: Understood.
6 MR. MOLLOY: The only thing we're
7 not including --
8 MEMBER JONES: Not to the bolded
9 line, but from the bolded line to the wall is
10 not because you're considering those trash
11 receptacles to not be part of your selling
12 area.
13 MR. CARR: Well, it's a counter.
14 So, they couldn't like walk on top of the
15 counter.
16 MR. MOLLOY: They'd have to climb
17 up --
18 MEMBER JONES: So, let me say
19 this. What is F?
20 MR. CARR: A pastry display.
21 MEMBER JONES: It's a pastry
22 display. Right? From a physical standpoint,

1 that occupies some floor space and you're
2 counting that as part of your selling area.
3 Correct?
4 MR. CARR: The customer couldn't
5 access it, but it contains food that we're
6 selling.
7 MEMBER JONES: Exactly. That's
8 exactly my point.
9 MR. CARR: Okay.
10 MEMBER JONES: You're counting
11 that as part of your selling area. The public
12 has access to that right, but you made the
13 argument that it's not part of your selling
14 area. It is part of your selling area even
15 though it's a display case.
16 The same argument for your trash
17 receptacles. It's part of your selling area.
18 The public has access to it and you can use
19 that however it is you choose to use that
20 space, but it is part of your selling area
21 because the public has access to it. The
22 public that is part of your grocery store

1 patrons.
2 MR. MOLLOY: If, like the hallway,
3 we did not let patrons throw things away and
4 that was only trash receptacles for the staff
5 to clean the table and the seating area with,
6 could that not be counted in the selling area?
7 MEMBER JONES: Depending on the
8 outcomes of our discussions related to that
9 assuming it goes in -- assuming it goes in
10 that direction, then yes, if you make it so
11 that it is restricted space, then yes.
12 MR. MOLLOY: Okay.
13 CHAIRPERSON MILLER: I don't
14 understand the situation here. There are
15 trash cans taking up an area and you're saying
16 that customers can throw things in from one
17 side.
18 MR. MOLLOY: It's nicer than trash
19 cans. It's a built in facility and in the top
20 of the shelves, it's labeled -- there's holes
21 cut in it and it will be labeled for regular
22 garbage, recyclable paper, recyclable anything

1 else.
2 CHAIRPERSON MILLER: Right. Okay.
3 Okay.
4 MR. MOLLOY: And as it stands
5 right now or as Matt was saying, staff that
6 was serving the restaurant, the table area,
7 could then on the way -- when removing plates
8 and whatnot could throw away whatever items
9 were needed to be recycled or thrown into the
10 trash right there.
11 But, he was saying if a full-
12 service grocery store patron happened to have
13 a wrapper they wanted to throw away, they
14 weren't planning on stopping them from
15 throwing it away because there's the trash
16 right there.
17 CHAIRPERSON MILLER: Right.
18 MR. MOLLOY: But, for space
19 constraints, if we needed to keep that area
20 out of the selling area, you could make it a
21 staff only trash receptacle area.
22 CHAIRPERSON MILLER: So, okay, I

1 want to ask Mr. Jones then. That's what I
2 don't understand.
3 If this countertop had holes in it
4 for trash, then this -- the area, the
5 countertop would be included in the selling
6 area according to your understanding?
7 MEMBER JONES: Yes, just like the
8 display case would be.
9 MEMBER ALBERTI: Just like the
10 register counter would be.
11 CHAIRPERSON MILLER: Okay.
12 MEMBER ALBERTI: I mean the back
13 of the counter might not be. It wouldn't be,
14 but the register -- the counter for the
15 register would be because you could certainly
16 put display items there. Use it as you like.
17 MEMBER JONES: You looked puzzled.
18 CHAIRPERSON MILLER: Okay. I kind
19 of imagining open to the public where the
20 public is kind of walking in the area, but
21 that's all open to the public.
22 MEMBER ALBERTI: Well, I mean look

1 at it this way. If they had a free standing
2 trash can in the middle of the floor, it would
3 be open to the public. Right? And that area
4 of the floor --
5 MEMBER JONES: It would be part of
6 the selling area.
7 MEMBER ALBERTI: -- that would be
8 part of the selling area.
9 MEMBER JONES: It would just be no
10 different than this display case being in the
11 middle of the floor.
12 MEMBER ALBERTI: It's just the
13 position of this is stationary and up against
14 the wall I mean.
15 CHAIRPERSON MILLER: Okay. I just
16 think that as we go through this we'll see how
17 it turns out, but I -- this looks to me on
18 it's face like it's basically devoted to
19 selling food. So, if they were not able to
20 meet the requirements, then I think we need to
21 just, you know, look at how we're interpreting
22 things.

1 MEMBER JONES: So, pump your
2 brakes. No assessment as been made --
3 CHAIRPERSON MILLER: Right.
4 MEMBER JONES: -- as to whether or
5 not they can or cannot --
6 CHAIRPERSON MILLER: Right.
7 MEMBER JONES: -- meet the
8 requirements. All we're doing right now is
9 going through getting clarification on how
10 they plan on using the space. You're jumping
11 way ahead of the gun. All right. So, we're
12 just trying to get clarification on how you
13 plan to use the space to make sure our
14 understanding isn't in error in terms of how
15 you plan on using and this conversation's been
16 very useful because I had made some poor
17 assumptions based on how you planned on
18 utilizing the space and I think you've gotten
19 some information from us that could
20 potentially help you in how you want to
21 structure either your layout or your business
22 operations to facilitate meeting the

1 requirement.
2 That's all we're doing here. So,
3 no assessment has made. Is that -- did I miss
4 the purpose?
5 CHAIRPERSON MILLER: I think we're
6 all exploring what's going on here. So, no,
7 that's fine.
8 MEMBER JONES: Okay. Thank you
9 for your clarification and your feedback on
10 there and once again, we are not providing any
11 recommendations as to how to structure your
12 business or how to operate your business. We
13 are providing you feedback on how we determine
14 whether or not you meet the requirements as we
15 interpret them.
16 Is that -- did we lose sight of
17 that or did I miss that or did anything --
18 comments from anyone else distract away from
19 that -- what our intent was here today?
20 MR. MOLLOY: I think we understand
21 now.
22 MEMBER JONES: Okay.

1 MR. MOLLOY: And we appreciate
2 your clarification.
3 MEMBER JONES: Sir.
4 MR. O'BRIEN: Are you speaking to
5 me?
6 MEMBER JONES: Yes. No, it looked
7 like you had -- you were about to say -- if
8 not, that's fine. It looked like you were
9 about to say something. That's all.
10 MR. O'BRIEN: I was, but I decided
11 not to.
12 MEMBER JONES: Fair enough.
13 MR. CARR: Would it be okay to
14 make a general comment?
15 CHAIRPERSON MILLER: Yes, go
16 ahead. Anything.
17 MR. CARR: Since my store is
18 really, really small, you know, I think I do
19 meet all of the categories to the best of my
20 understanding.
21 CHAIRPERSON MILLER: Um-hum.
22 MR. CARR: But, being a very small

1 store, it makes the numbers a little bit
2 harder to meet than if I was like a Walmart or
3 a Giant.
4 CHAIRPERSON MILLER: Right.
5 MR. CARR: A general comment, by
6 the way the math works on this kind of a
7 situation.
8 MEMBER JONES: I would say I would
9 challenge that only because I think it's a
10 misnomer and I think you are not giving
11 yourself enough credit for how you are able to
12 utilize the space --
13 MR. CARR: Okay.
14 MEMBER JONES: -- that you have in
15 front of you. We've had many small stores.
16 I think we had one smaller than yours, in
17 fact, that met the requirements and has
18 qualified. So, it can be done.
19 MR. CARR: Okay.
20 MEMBER JONES: It just depends on
21 how you choose to lay it out and once again,
22 it's your choice on that one. I'm just trying

1 to provide you feedback on how we make that
2 assessment.
3 With the exception of the one item
4 that you brought to the table that is new for
5 us and I don't have any problem telling you
6 what I don't know and I don't know how we as
7 the Board are going to assess the mixed use
8 aspect of it. That's a new nuance that we
9 haven't explored before. So, that's why I
10 don't feel comfortable making a commitment to
11 that based on my individual perspective
12 without getting a consensus on the Board.
13 MR. MOLLOY: Thank you, sir.
14 MEMBER JONES: But, that would
15 make it -- that would have a big impact
16 obviously at how we interpret and how we view
17 that. So, I apologize for not being able to
18 answer that one, but I'd be -- I don't want to
19 give you misinformation or wrong information
20 and then the Board vote some other way. So.
21 Just trying to make sure I don't
22 have any other more technical questions.

1 Just for clarification standpoint,
2 how did you -- I think it's pretty self-
3 explanatory, but I just want to make sure.
4 How did you make the determination of your A,
5 B, C, D percentages? What was your numerator
6 and what was your denominator?
7 MR. MOLLOY: Well, our denominator
8 was the total A through G area which is 263
9 square feet and then the numerators were
10 calculated based on the size of the display
11 furniture, whether it was a display case or a
12 table that actually had the food on it and
13 then based on recommendations we had heard
14 from the Board, we extended a three-foot
15 reach-in area where a patron would mostly be
16 standing if they were contemplating an item in
17 that area and then reaching in to select it to
18 add it to their basket.
19 MEMBER JONES: Okay. I think I
20 understand. So, excuse me. Two comments or
21 point of feedback.
22 If you notice on your diagram, the

1 color diagram which has the full layout, you
2 look at Section D.
3 MR. MOLLOY: Yes.
4 MEMBER JONES: Section D, we
5 typically would give credit for the diagonal
6 space as well as the adjacent. So, that if it
7 wasn't occupied by another food carrier,
8 another food display.
9 So, for example, looking at D, if
10 you see the bottom right corner of display
11 case D --
12 MR. MOLLOY: Um-hum.
13 MEMBER JONES: -- if you extend to
14 the right, you'll run right into the beer and
15 wine area.
16 MR. MOLLOY: Yes.
17 MEMBER JONES: That would not be
18 allowed to be counted because the beer and
19 wine area 3 feet in front of that would be
20 counted towards the beer and wine section, but
21 there's a small gap between your display case
22 D or at least that's what it looks like on

1 this drawing.
2 MR. MOLLOY: Yes, there is.
3 MEMBER JONES: And the beer and
4 wine, you would be able to count those gaps
5 between the D and the beer and wine section
6 and between the two Ds as well. So, not a
7 huge difference maker, but a potential
8 difference maker in that sense.
9 Also, for your category A --
10 MR. MOLLOY: Um-hum.
11 MEMBER JONES: -- you did not get
12 -- we would normally count the space diagonal
13 of area -- so, if you look to the far right,
14 you have three display cases labeled as A.
15 The one to the far right if you look at the
16 bottom right corner of that, you can extend by
17 a box that is 3 feet by 3 feet from that
18 corner's edge as area that is accessible to
19 the public for that display case and you can
20 do that on each corner that is not occupied by
21 another food category as long as it is
22 accessible to the public.

1 So, I'm trying to verbally
2 describe this and hopefully, it's coming
3 across. I'm getting one head nod. So,
4 hopefully, it's clear at least to him on that
5 sense.
6 But, there's a few more -- there's
7 some more additional square footage that you
8 have available to you for the diagonal spaces.
9 What we call the diagonals, but the areas that
10 are at the corners of your display cases that
11 you are not currently giving yourself credit
12 for in this diagram.
13 Is that fair or is that clear? I
14 won't say is it fair. Is it clear?
15 MR. CARR: Yes.
16 MR. MOLLOY: Yes.
17 MEMBER JONES: Make sense? Okay.
18 MR. MOLLOY: Just to confirm.
19 MEMBER JONES: Sir.
20 MR. MOLLOY: So, if we're staying
21 in the As, if you go to the left, there's one
22 A display piece and then immediately -- or not

1 immediately, but to the right of it, there's
2 another A. In between those two, we have
3 reached some space, but just below them in
4 what you were calling the diagonal space,
5 there's a white rectangle and that's just
6 between two A and then a non-food category
7 below it.
8 Could that whole diagonal area be
9 counted as A?
10 MEMBER JONES: You can count that
11 diagonal area as A.
12 MR. MOLLOY: Okay.
13 MEMBER ALBERTI: Well, 3 feet.
14 MEMBER JONES: Three feet. Yes.
15 MEMBER ALBERTI: Three feet down
16 from --
17 MEMBER JONES: Up to 3 feet.
18 MR. MOLLOY: Yes.
19 MEMBER ALBERTI: Right.
20 MR. MOLLOY: And we already had
21 the 3 feet extended. So --
22 MEMBER ALBERTI: Right. So, it is

all of it.

MR. MOLLOY: Yes, so, the measurements would be accurate.

MEMBER JONES: And similarly, if you look at your display case A that is to the far left --

MR. MOLLOY: Um-hum.

MEMBER JONES: -- there is also a white space between the red and the blue that would be counted towards a diagonal. You could use that diagonal space for your A. You could use that for your B or you can break it up between the two. Whichever way you need to in order to help facilitate your objective.

MR. O'BRIEN: Well, it looks to me like we've already counted -- we've already counted 3 feet from each.

MEMBER JONES: But, now we're talking about the diagonal.

MEMBER ALBERTI: Diagonal and as Mr. Jones pointed out, on the far left, you have that little white space that I think that

1 we're talking about. I think -- that can
2 either be attributed to B or A or you can
3 divide it however you choose.
4 MEMBER JONES: Just make sure
5 you're clear, Mr. Alberti, on which white
6 space you're talking about.
7 MEMBER ALBERTI: We're talking
8 about the white space that is between the blue
9 and red on the bottom half of that diagram.
10 MR. O'BRIEN: Well, we've already
11 come out 3 feet.
12 MEMBER ALBERTI: But, you haven't
13 come out from the diagonal.
14 MR. O'BRIEN: From the diagonal.
15 MEMBER JONES: So, you can --
16 MEMBER ALBERTI: You haven't come
17 out from the diagonal.
18 MEMBER JONES: Right.
19 MEMBER ALBERTI: I think the owner
20 understands and you can designate that to
21 whatever products you want. So, you have a
22 flexibility.

1 MEMBER JONES: Well, no, you
2 cannot.
3 MEMBER ALBERTI: Well --
4 MEMBER JONES: You can dedicate
5 that to either A --
6 MEMBER ALBERTI: A or B. That's
7 what I meant. Your choice.
8 MEMBER JONES: -- or B.
9 MEMBER ALBERTI: You have your
10 choice between A or B how you designate that..
11 MR. O'BRIEN: Can I ask a
12 hypothetical --
13 MEMBER JONES: Sir, yes, sir.
14 MR. O'BRIEN: -- to help me at
15 least understand where the Board is on this
16 issue.
17 Let us say we have a 10-foot --
18 and this is a hypothetical. This is not this
19 case.
20 MEMBER JONES: Right.
21 MR. O'BRIEN: A ten-foot aisle
22 between two display cases.

1 MEMBER JONES: Yes, sir.
2 MR. O'BRIEN: Okay. And let us
3 assume one of the display cases for the entire
4 aisle is say meats.
5 MEMBER JONES: Yes, sir.
6 MR. O'BRIEN: And the one on the
7 other side is all dairy.
8 MEMBER JONES: Yes, sir.
9 MR. O'BRIEN: So, they both are
10 within the seven categories.
11 MEMBER JONES: Yes, sir.
12 MR. O'BRIEN: Ten-foot aisle. We
13 are entitled to what apparently is a practice
14 because I haven't seen it in a regulation or
15 anything that says this. We're entitled to
16 take 3 feet from each direction and count that
17 as devoted to the meat on one side and the
18 dairy on the other.
19 MEMBER JONES: Yes. Um-hum.
20 MR. O'BRIEN: All right. Okay.
21 Leaving 4 feet down the middle which counts as
22 selling area, but does not count for the 5

1 percent for meat or for dairy.
2 MEMBER JONES: That is correct.
3 MR. O'BRIEN: I suggest that I
4 don't think the regulation speaks in such a
5 manner as to count that maybe as a -- on the
6 denominator but not on the numerator.
7 MEMBER JONES: You said the
8 regulations do not speak to what again?
9 MR. O'BRIEN: Well, my reading of
10 it -- and I don't want to bog down on this,
11 but my reading of it is that you're talking
12 about selling area for the store that is
13 devoted -- we're past the 50 percent for
14 purposes of this hypothetical.
15 MEMBER JONES: That's correct.
16 MR. O'BRIEN: The selling area of
17 the store devoted to food and then at the 5
18 percent level, we go selling area devoted to
19 the categories.
20 CHAIRPERSON MILLER: Right.
21 MEMBER JONES: Yes.
22 MR. O'BRIEN: Well, if it's

1 devoted to the sale of food, this 4 feet, then
2 I believe the regulation requires it be
3 devoted to the sale of the adjacent food.
4 What other food is it devoted to?
5 MEMBER JONES: Understood. So, we
6 get this feedback. We've gotten this feedback
7 before. So, there are two separate tests.
8 There's test 1 which is the 50 percent. You
9 said you -- we're past that, but I want to
10 step back just for a second.
11 MR. O'BRIEN: Sure.
12 MEMBER JONES: We make the
13 determination of the 50 percent or more by
14 taking your food selling area and dividing
15 that by your selling area in its entirety.
16 MR. O'BRIEN: Yes.
17 MEMBER JONES: Okay. That's how
18 we get to the 50 percent and I think we're on
19 the same page when it comes to that.
20 MR. O'BRIEN: Yes.
21 MEMBER JONES: That same F or that
22 same food selling area that was used as your

1 numerator in test one, that F or that food
2 selling area becomes your denominator for test
3 2 and the category is a separate measure,
4 i.e., you take your display case, you take the
5 3 feet around it and you divide that number by
6 the food selling area. That's how we make the
7 determination for what percentage of the
8 category you're hitting. We've been applying
9 that fairly consistently.
10 The 3 feet I think is on the
11 application or in some document that is
12 forwarded with the application is a measure
13 that we use, in order to be perfectly frank,
14 to help prevent individuals from gaming the
15 system.
16 Right. Because we don't want you
17 to have a store that is truly a liquor store.
18 We have these huge gaps between spaces and
19 you're really just selling alcoholic
20 beverages. That's your primary focus.
21 But, I could just -- it helps to
22 limit how much of this area you can say is

1 claimed for food and that's really the primary
2 purpose there.
3 So, the food selling area is the
4 area -- is the denominator in a test 2 case.
5 MR. MOLLOY: So, then what --
6 MR. O'BRIEN: That 4 feet in my
7 hypothetical --
8 MEMBER JONES: Yes.
9 MR. O'BRIEN: -- doesn't count
10 towards any of the numerators.
11 MEMBER JONES: It counts towards
12 the denominator, but doesn't count towards the
13 numerator of test 2. It counts towards the
14 numerator of test 1.
15 MR. O'BRIEN: Well, if that 4 feet
16 is a food selling area --
17 MEMBER JONES: Um-hum.
18 MR. O'BRIEN: -- and on each side
19 of it are categories that fall within the
20 seven, if it's not attributable to those, what
21 can it be attributed to?
22 MEMBER JONES: It can attributed

1 to alcohol. You know how? Because you have
2 enough space in there, that 4 feet, you can
3 put up displays of alcohol or put the alcohol
4 on the floor or however it is you choose to
5 get around it. But, you can put things in
6 that space and that's why.
7 You can choose to use it. It's up
8 to you how you want to use your space. But,
9 we're telling you that we're only going to
10 give you up to 3 feet because that's a
11 reasonable amount of distance for you to have
12 access to the public.
13 MR. O'BRIEN: Answered my
14 question.
15 MEMBER JONES: I try.
16 MR. O'BRIEN: Good job.
17 MEMBER JONES: So, just to make
18 sure -- Board Member Alberti just wanted to
19 make sure I was clearly articulating to you
20 that from the standpoint of the drawing that
21 you provided, it is sufficient for us to make
22 our own internal calculations, determinations

1 of whether or not you meet the requirement.
2 So, kudos, good job in terms of annotating it.
3 It was very helpful. Exactly what we need to
4 do that.
5 So, that parts good -- trust me,
6 it's a huge hurdle to have been able to cross.
7 So, that's good from that standpoint.
8 But, I also just wanted to make
9 sure it was clear that for the test 2, the
10 denominator in that calculation is the food
11 selling area that was used in your
12 determination of whether or not you meet the
13 50 percent in test 1. All right. It's not
14 the aggregate of the A, B, C, D and adding
15 those up.
16 It's whatever your F is -- excuse
17 me. Whatever it is your food selling area is
18 determined from test 1 is what we use to be
19 the denominator for your test 2.
20 MR. MOLLOY: Understood.
21 MEMBER JONES: Is that understood?
22 MR. MOLLOY: That is the number we

1 used.

2 MEMBER JONES: Okay. Cool. As

3 long as we're on the same page as far as

4 that's concerned and that's all that I have.

5 Thank you. Thank you for your

6 patience.

7 CHAIRPERSON MILLER: Okay. I just

8 want to make a comment from me personally. As

9 I said before, looking at what you're selling,

10 you appeal as you should be able to qualify

11 for a full-service grocery store.

12 Sometimes small stores do have

13 some problems and they rearrange and then they

14 meet it.

15 And I would say this. I know

16 you've gotten different advice or whatever and

17 it has to work for your business, but, you

18 know, that big hallway or whatever that is, I

19 would hate to see that skew your whole

20 operation.

21 And I'd say look at the

22 definition. It doesn't include, for instance,

1 storage areas. If that means -- some people
2 have like put a shelf up to make it a storage
3 area. That can happen. I mean that's --
4 there are new regulations and, you know, so
5 far they're working so that stores that should
6 qualify have been qualifying. So, but it may
7 cause you to do certain changes or whatever.
8 MR. O'BRIEN: Madam Chair, I
9 appreciate what you're doing which is trying
10 to point a way that might help, but even if we
11 were to put shelves, storage, canned goods or
12 something along this narrow hallway, it would
13 still be accessible to the people trying to
14 get to the bathroom.
15 CHAIRPERSON MILLER: No, it
16 doesn't -- that's --
17 MR. O'BRIEN: Then it would have
18 to --
19 CHAIRPERSON MILLER: That's not
20 how the definition reads though. But, I don't
21 know. You look at it. And if -- and I would
22 say also if there are new regulations, you

1 know, if you're finding that something is
2 absurd, you know, like you said like oh, a
3 stairway or whatever feel free to bring that
4 to our attention and we'll look at everything,
5 you know.
6 MR. O'BRIEN: I don't want to use
7 the word absurd, but my hypothetical with that
8 4 feet, I don't think that is reasonable. I
9 understand it's the standard that the Board
10 has adopted, but I don't consider reasonable
11 when, in fact, there is nothing on either side
12 but products that count towards the seven
13 categories.
14 CHAIRPERSON MILLER: And I would,
15 you know, suggest that you put that in writing
16 and we could consider that. I think as you
17 stated, it's not in the definition. It's how
18 we have been using --
19 MR. O'BRIEN: Well, it's an
20 arbitrary standard that has been adopted. I
21 don't think we have to get to that issue in
22 order to satisfy the Board that this Applicant

1 is going to be a full-service grocery store.
2 CHAIRPERSON MILLER: Okay. So,
3 are we at -- I believe we're expecting one
4 more layout. Is that right? Showing that you
5 need it based on all the comments you heard
6 today.
7 MEMBER JONES: So, just to be
8 clear, you have the ability to submit a
9 revised drawing based on what information you
10 receive from us today. We're not expecting
11 you to do so, but it's your choice. If you
12 chose to provide it, you'll let us know what
13 our expectations should be.
14 I mean you could choose to walk
15 away from this in its entirety. Your
16 choice.
17 I just want to make sure it's
18 clear that you have an opportunity to provide
19 a revised drawing based on the feedback you've
20 heard from us.
21 But, I also think that it would
22 only be fair for us to provide you some

1 feedback on that question that was raised,
2 which is the mixed-use question, so that you
3 can better understand the impact of certain
4 decisions and I think that would be the first
5 and most appropriate thing to have and so that
6 you have good information upon which to base
7 your decisions.
8 MR. MOLLOY: I appreciate your
9 explanation and that, you know, the mixed use
10 is a new nuance that you guys are going to
11 have to discuss. Just before that discussion,
12 I would like to reiterate the business
13 operational points that we made earlier that
14 that seating area is exclusively for
15 restaurant customers only and patrons of the
16 full-service grocery store would not have
17 access to it unless they decided to then
18 become restaurant patrons, sit down and order
19 dinner.
20 And that hallway all the way to
21 the restroom and the restroom are exclusively
22 for restaurant customers only not for the

1 full-service grocery store customers. So,
2 we'd like to continue to exclude that as our
3 measurements have from the selling area.
4 MEMBER JONES: Understood. Fair
5 enough. Thank you for that.
6 MR. O'BRIEN: Does the Board now
7 have sufficient information?
8 CHAIRPERSON MILLER: I'm like to
9 ask a follow up just on the restaurant. Is
10 there a different entrance for the restaurant
11 than for the grocery store or is it the same?
12 MR. MOLLOY: The same.
13 CHAIRPERSON MILLER: Okay. All
14 right.
15 MR. O'BRIEN: I'm a little
16 confused about the posture. Does the Board
17 now have sufficient information to determine
18 whether as presented this qualifies as a full-
19 service grocery store?
20 MEMBER JONES: Yes.
21 MR. O'BRIEN: All right. Then
22 would it not perhaps make more sense then to

1 wait. The Board either telling us it is
2 approved or telling us what deficiencies are
3 perceived so we then can address.
4 MEMBER JONES: I would have no
5 issue with that. That's why I wanted to make
6 sure it was clear that the expectation isn't
7 necessarily that we're going to get a revised
8 drawing from you. That we have heard you. We
9 understand now. Understand what you're intent
10 is. Understand how you categorized certain
11 areas. There's enough information here for us
12 to make our own calculations based on the
13 information provided us and we can provide you
14 feedback. Which could be pass, fail, yes, no.
15 However it is you want to interpret that and
16 then from there, you can choose a course of
17 action.
18 MR. O'BRIEN: I would think that
19 would be the most expeditious.
20 MEMBER JONES: That's fine.
21 MEMBER ALBERTI: Yes, and I think
22 that was what Mr. Jones was suggesting

1 initially.
2 MEMBER JONES: Yes.
3 MEMBER ALBERTI: That you would
4 wait at least wait to hear -- well, you might
5 choose to wait to hear from us feedback on the
6 hallway.
7 MR. O'BRIEN: Um-hum.
8 MEMBER ALBERTI: And feedback on
9 the restaurant issue.
10 MR. O'BRIEN: Um-hum.
11 MEMBER ALBERTI: And then from
12 there decide whether you want to resubmit
13 drawings or not.
14 MEMBER JONES: That was my
15 intention.
16 MEMBER ALBERTI: That's your
17 choice. That's your choice. Once you see
18 that, once you go back and take a look at the
19 measurements, you can assess whether it's
20 necessary to resubmit drawings or not.
21 MR. O'BRIEN: Once we got the
22 feedback from the Board.

1 MEMBER ALBERTI: Correct. Right.
2 MEMBER JONES: Yes.
3 MEMBER ALBERTI: Exactly. So, I
4 think that's what he was suggesting.
5 MEMBER JONES: I failed to
6 communicate that effectively, but that was my
7 intent. Thank you, Board Member Alberti.
8 MEMBER ALBERTI: Well, I got it.
9 This is all very confusing, but I -- just real
10 quickly to Mr. O'Brien sympathetically as an
11 individual Board Member, I want to emphasize
12 something that Mr. Jones said earlier.
13 In that 10-foot space between
14 counters, it is your choice -- it's the
15 Licensee's choice how to use it and so, it's
16 not just our policy. It's -- we have to have
17 a standard policy and then let -- and then let
18 the Licensee choose how to use that space
19 knowing the policy.
20 Whether you put the horse before
21 the cart or the cart before the horse, that's
22 -- that's to me.

1 MR. O'BRIEN: The difficulty is
2 that the policy, that is the 3 feet, is
3 arbitrary. It was just for lack of a better
4 expression made up. Why not 4 feet? Why not
5 5 feet?
6 MEMBER JONES: I think it was
7 based on the DCRA Regulation requirement. A
8 minimum of 3 feet between aisles.
9 MR. O'BRIEN: Right.
10 MEMBER JONES: And I think you're
11 familiar with that. Are you not?
12 MR. CARR: Sure. The 3-feet
13 radius.
14 MEMBER JONES: So, that's where it
15 came from. It wasn't totally arbitrary. It
16 was based off of some accepted standard. Let
17 me put it that way.
18 MR. O'BRIEN: I'll accept that
19 it's not totally arbitrary.
20 MEMBER ALBERTI: Mr. O'Brien --
21 MR. O'BRIEN: Emphasis on the word
22 totally.

1 MEMBER ALBERTI: Mr O'Brien, it
2 really kind of was -- it was a rational
3 decision which we balance the needs of the
4 Licensee to be able to reasonably qualify
5 against preventing, as Mr. Jones said, some
6 from gaming the system.
7 MR. O'BRIEN: Some other
8 applicant.
9 MEMBER ALBERTI: Pardon?
10 MR. O'BRIEN: Some other
11 applicant.
12 MEMBER ALBERTI: Some other
13 applicant. We're talking hypothetically.
14 MR. O'BRIEN: I know.
15 MEMBER ALBERTI: So, we're talking
16 to everybody. So, yes, I mean it may be
17 arbitrary to you, but there was some rational
18 here and we did talk and consider this quite
19 a bit. It just didn't fall out of our hat.
20 MR. O'BRIEN: It wasn't from whole
21 cloth.
22 MEMBER ALBERTI: No, it wasn't

1 from whole cloth.
2 MR. O'BRIEN: Then I think the --
3 I don't think it's any point in the Applicant
4 in this instance submitting corrective
5 drawings when it may be that the Board finds
6 there's nothing to correct.
7 Okay. So, at that point, the real
8 issue is timing. This business is under
9 construction. I know the Board's busy, but
10 we're going to have to ask for the Board's
11 earliest convenient feedback.
12 These applications are taking a
13 long time. This was filed in July.
14 Construction if it goes according to schedule,
15 you know, October. Which means we don't
16 placard yet obviously.
17 CHAIRPERSON MILLER: Right.
18 MR. O'BRIEN: Which means we're
19 going to have to go to the ANC for a
20 stipulated license, but we'd like to keep this
21 moving to the extent that the Board's calendar
22 will permit that.

1 MEMBER JONES: Fair enough.
2 Understood and we will -- I and the rest of
3 the Board, I believe, but I, an individual
4 Board Member, will give it the appropriate
5 attention so that we can help to mitigate that
6 stress and get it done to you and out to you
7 as quickly as possible.
8 MR. O'BRIEN: Thank you.
9 MEMBER JONES: You've very
10 welcome.
11 CHAIRPERSON MILLER: So,
12 hopefully, that'll be a question of weeks not
13 months, you know, if that means anything. I
14 can't really commit to exactly when, but we
15 understand. We really do understand and
16 you've done all this work already.
17 So, okay. So, we'll get back to
18 you as soon as we can.
19 MR. O'BRIEN: Would the Board want
20 to hold onto this?
21 MEMBER JONES: Yes, sir. It helps
22 me greatly with my --

1 MR. O'BRIEN: Okay.
2 CHAIRPERSON MILLER: Thank you
3 very much.
4 MR. O'BRIEN: Thank you
5 CHAIRPERSON MILLER: Okay.
6 MR. MOLLOY: Thank you.
7 MR. CARR: Thank you.
8 CHAIRPERSON MILLER: The Board
9 just going to take a few minutes break. No
10 more than five.
11 (Whereupon, at 2:27 p.m., the
12 hearing was adjourned.)
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