

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD
4

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6 IN THE MATTER OF: :
7 Po Boy Jim, LLC, :
8 t/a Po Boy Jim :
9 709 H Street NE : Case #15-PRO-00025
10 License #87903, Retailer CR : Protest Hearing
11 ANC-6C :
12 Substantial Change :
13 (Entertainment Endorsement :
14 to Allow Karaoke and a DJ) :

15 - - - - -X

16

17 Wednesday, November 18, 2015

18

19 Whereupon, the above-referenced matter
20 came on for hearing at the Alcoholic Beverage
21 Control Board, Reeves Center, 2000 14th Street,
22 N.W., Suite 400S, Washington, D.C. 20009.

1 CHAIRPERSON:

2 DONOVAN W. ANDERSON, Presiding

3

4 BOARD MEMBERS:

5 RUTHANNE MILLER

6 NICK ALBERTI

7 MICHAEL SILVERSTEIN

8 JAMES SHORT

9

10 ALSO PRESENT:

11 REBECCA ANTOINE, Owner of Po Boy Jim

12 IAN REID, Nighttime Manager, Po Boy Jim

13 ROBERT COOPER, Esq., Counsel for ANC-6C

14 DREW COURTNEY,

15 Designated Representative of ANC-6C

16 MARK BRASHEARS, ABRA Investigator

17 CHRIS MILLER, ANC Commissioner

18 KIMBERLY NEUTZLING, District Resident

19 ALEX ACKEMANN, District Resident

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P R O C E E D I N G S

[1:40 p.m.]

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2
3 CHAIRMAN ANDERSON: So now we can go back
4 to our agenda. This is a protest hearing, and
5 the for the folks who are new, my name is Donovan
6 Anderson. I'm the new Chair for the ABC Board,
7 and so today is my first day of having a protest
8 hearing. So I apologize. I'll apologize to you
9 in the beginning if it doesn't go as smoothly as
10 you're used to, but the other Board member,
11 especially Ms. Miller will make sure -- and Mr.
12 Alberti will make sure that it goes well and that
13 your interests are properly represented.

14 This case involves -- okay. Let me start
15 at the beginning. So the case on our agenda is
16 the protest hearing, Case No. 15-PRO-00025, Po
17 Boy Jim, LLC, otherwise known as Po Boy Jim, 709
18 H Street, Northeast; License No. 87903. And the
19 purpose of this hearing, it's a protest hearing
20 for substantial change. The Licensee is asking
21 for entertainment endorsement to allow karaoke
22 and a deejay.

1 I would like -- the parties, of course,
2 you are already at the podium, so could you
3 please identify yourself for the record. And
4 there is a sign-in sheet on the desk. Make sure
5 that they just sign it for the proper spelling of
6 your name. So please identify yourself for the
7 record, please.

8 MS. ANTOINE: Good afternoon. My name is
9 Rebecca Antoine, and that's Rebecca with two c's,
10 A-n-t-o-i-n-e. I'm the owner of Po Boy Jim
11 located at 709 H Street, Northeast.

12 MR. REID: My name is Ian Reid, and I'm
13 the nighttime manager located at Po Boy Jim, 709
14 H Street, Northeast.

15 MR. COOPER: Good afternoon. My name is
16 Robert Cooper. I'm counsel for ANC-6C.
17 R-o-b-e-r-t. Last name Cooper, C-o-o-p-e-r.

18 MR. COURTNEY: My name is Drew Courtney.
19 First name Drew, D-r-e-w; last name Courtney,
20 C-o-u-r-t-n-e-y. And I'm the designated
21 representative of ANC-6C. I chair the Alcoholic
22 Beverage Licensing Committee there.

1 CHAIRMAN ANDERSON: Okay, thank you.

2 All right. Are there any preliminary
3 issues to address?

4 MR. COOPER: No.

5 CHAIRMAN ANDERSON: That means that you
6 guys have decided not to settle. You're moving
7 for a hearing. That's what -- so are there any
8 preliminaries that you'd like us to address?

9 MR. COOPER: None at this time.

10 CHAIRMAN ANDERSON: All right. As I said
11 to you, I'm new to this, but one of the things
12 that I would ask is that -- it's a protest
13 hearing because it's my understanding that the
14 establishment is asking for entertainment
15 endorsement, and I want to make sure that the
16 questions that are asked and the witnesses who
17 testify will testify to the issue that whether or
18 not community agrees or disagrees that this
19 establishment should receive the endorsement that
20 is being asked for.

21 So I just want to make sure that all our
22 questions and all our -- the questions that are

1 asked from both sides, that we address this issue
2 and not necessarily other issues that could be
3 addressed at a renewal.

4 And I will try to ensure that both
5 parties have -- or the Board will make sure that
6 both parties, we entertain all the issues, but if
7 I -- if I intercede to both sides and say that's
8 not relevant to what we need to decide -- and I
9 might also do that to my Board members, too, if I
10 believe that they are asking questions that I
11 think that it's not -- because it's my job for us
12 to be efficient and to make sure that both sides,
13 we have -- we listen to the issues, and so when
14 we deliberate, we make a decision that it's in
15 the best interest of both parties.

16 MR. COOPER: Okay.

17 CHAIRMAN ANDERSON: Yes, sir.

18 MR. COOPER: Chairman Anderson, I guess
19 as a preliminary matter, then I guess there are
20 two things. One, I --

21 MR. SILVERSTEIN: Please speak up, sir.

22 MR. COOPER: I'm sorry. Robert Cooper

1 for the ANC. I guess somehow I do need to get an
2 attorney representation form. I inadvertently
3 left it at my office that I was going to submit
4 today, so I do need to submit that for the
5 record.

6 Secondly, as far as the flow of this
7 hearing, there is a preliminary matter -- because
8 I guess there are -- one question that I want to
9 ask of the Board, in the investigative report
10 that has been produced, there are references to
11 other show-cause hearings as noted by the
12 investigator, and some of the issues that the
13 community has with respect to the entertainment
14 endorsement that is before us today -- it is
15 clearly before us today -- go to those issues.

16 One, the issue of this -- there is a
17 reference to a summer garden endorsement and a
18 warning of a summer garden endorsement, which
19 goes partly to the heart of the issue, the
20 opposition by the community about noise from this
21 establishment.

22 I could not glean from the documents

1 what's the status, if there is a summer garden
2 application pending, and whether that is before
3 us today or are we coming back at another time to
4 deal with that issue.

5 CHAIRMAN ANDERSON: I think -- and I'm
6 also new to this, but I -- this is a protest
7 hearing on the fact that they have asked for an
8 entertainment endorsement on their license, and
9 that is the issue that we will be addressing
10 today. So those are the issues. I'm not aware
11 of -- that's not the purpose of this hearing, and
12 so we will not be entertaining those issues.

13 [Pause.]

14 CHAIRMAN ANDERSON: And it's my
15 understanding that the summer garden endorsement
16 was approved. The Board, though, however, has
17 not issued an order as yet.

18 But as I stated before, this hearing,
19 though, is on whether or not they should get this
20 endorsement on their license.

21 MR. COOPER: Okay.

22 CHAIRMAN ANDERSON: Now, if you can prove

1 that some other tangential issues are directly
2 related to where we are today, of course you can
3 bring that up, but if it's -- if you cannot show
4 how it's relevant to -- show some nexus between
5 what they're asking for on these issues, then --
6 but as learned counsel, we know how to make those
7 arguments.

8 MR. COOPER: Well, we will try.

9 CHAIRMAN ANDERSON: All right.

10 MR. COOPER: Yeah, we will try. And I
11 guess, again, it all goes back to the underlying
12 issue of an opposition to -- a community
13 opposition to an entertainment endorsement. It
14 all goes to the issue of nobody stand -- I was
15 unaware of an approval of the garden endorsement.
16 So that's just part of the education here of
17 this, on this protest hearing.

18 Thank you.

19 CHAIRMAN ANDERSON: And you have made --
20 by your introduction, you have made your
21 appearance, so you don't have to formally do a
22 piece of paper. You have done it orally, and the

1 Board has taken notice. I would just say that
2 ensure that the Board has your address --

3 MR. COOPER: Yes.

4 CHAIRMAN ANDERSON: -- so, therefore, the
5 order will be sent to you at your address.

6 MR. COOPER: Thank you.

7 CHAIRMAN ANDERSON: My assumption is
8 that's what the Board is going to do because,
9 again, I'm new to that, but that's the way it
10 should occur.

11 MR. COOPER: Yes.

12 CHAIRMAN ANDERSON: All right. Give me a
13 couple minutes.

14 [Pause.]

15 CHAIRMAN ANDERSON: Okay. Now, can you
16 tell me about approximately how many witnesses
17 that you will have on your side?

18 MS. ANTOINE: Just --

19 MR. REID: Just us.

20 CHAIRMAN ANDERSON: Just both of you?
21 All right.

22 MR. REID: I did call in and ask if we

1 could -- well, I didn't know if we were allowed
2 to do it, but given that we have a lot of, like,
3 neighbors that come into our establishment, I was
4 going to write up, like, a generic letter and go
5 to, like, the neighborhood and ask them could
6 they sign it, but I was told that that might not
7 hold any weight or anything because they would
8 have to be here to testify. So we just came in
9 ourselves. I don't know if that would have made
10 a difference or not.

11 CHAIRMAN ANDERSON: Well, I'm new to
12 this. So --

13 MR. REID: Because we have a lot of
14 neighbors that come in our establishment that
15 support us.

16 CHAIRMAN ANDERSON: Well --

17 MR. REID: I had them sign -- a lot of
18 them signed it, but I didn't know --

19 CHAIRMAN ANDERSON: I mean, the ANC
20 represents the neighborhood, and from what I see,
21 the neighborhood -- the ANC, the official
22 representative of the neighborhood, but, of

1 course, you could have had witnesses to come here
2 and testify on your behalf. But since it's --
3 since they're not here, that's not relevant at
4 the moment. But I guess, in the future, you can
5 bring any witnesses from -- who can testify about
6 why they believe that what you're requesting is
7 something that's appropriate.

8 MR. REID: I will.

9 CHAIRMAN ANDERSON: Okay. Now, how many
10 witnesses will you have?

11 MR. COOPER: We have four. One is not
12 here yet. He's on his way. He's one of the
13 other ANC commissioners that interacted, and we
14 have two immediate neighbors to the property and,
15 of course, Mr. Courtney, who is the ANC
16 representative.

17 CHAIRMAN ANDERSON: And your witnesses
18 will testify -- just generally, can you provide
19 us a proffer?

20 MR. COOPER: Sure. Sure, absolutely.
21 And it was inclusive of the PIF that we filed as
22 well as the exhibits. Basically, the current

1 compliance with the existing voluntary agreement
2 or the lack thereof of compliance by the
3 applicant, as well as the current noise that
4 emanates from this establishment without the
5 entertainment endorsement.

6 And then, finally, the apparent lack of
7 clarity in the application of exactly what they
8 are requesting, when you compare it to the PIF
9 that was presented and --

10 CHAIRMAN ANDERSON: All right. Now, I
11 was just asking generally what is it that they
12 will testify to, so I'll provide some guidance
13 where we go the next step.

14 You'll have 5 -- each side will have 5
15 minutes for opening and 5 minutes for closing.
16 You'll have 90 minutes for direct caseload and
17 for cross and opposing witnesses.

18 As you know, your opening statement, you
19 have 5 minutes, and Mr. Short will -- Board
20 Member Short will have a timer, so he will time
21 your time, and as I said before, my goal is to
22 ensure that we hear everything that's relevant

1 here.

2 And if we keep it to the point, then the
3 Board members will -- we're always interested in
4 what you have to say, but they'll be alert. But
5 if you lose that -- but you know what I'm saying.

6 Anyway, so all right. All right. So
7 what we will -- so we can start our hearing, and
8 we can have then an opening statement by the
9 Applicant. That's you.

10 MS. ANTOINE: Yes. Like I said, my name
11 is Rebecca Antoine and the owner of Po Boy Jim
12 Restaurant.

13 When we started out last year -- I think
14 we're opened up over a year now. We opened up
15 the restaurant, Class C, food, alcohol, whatnot,
16 we served. Throughout the months, we had
17 determined -- and based on, you know, some of the
18 other establishments on the street itself, we
19 determined that we needed to provide some form of
20 entertainment for some of our patrons, and some
21 of them were requesting it.

22 When my manager, entertainment manager

1 and overall manager on the night shift, Ian, and
2 I talked about it, we had decided that, you know,
3 we were going to look for someone that will give
4 us more of a New Orleans feel, meaning a
5 one-person/two-man-type band or an instrument,
6 not necessarily a band, but an instrument,
7 someone playing an instrument or what have you.

8 Then we also brought up the idea of
9 having karaoke, which is what some of the other
10 establishments on the corridor currently have,
11 and of course, we were back and forth with the
12 ANC with respect to how we go about doing this.

13 Initially, I was told, you know, if you
14 have one person playing some type of instrument
15 or whatnot, there wouldn't be a problem. So, of
16 course, we got into questioning about whether or
17 not karaoke really meant a certain amount of
18 noise throughout the area, and, you know, we had
19 decided that it would not be that loud, whereas
20 it will cause some type of disruption in the
21 community itself or our neighbors or what have
22 you.

1 But, at any rate, you know, we decided
2 that we were going to go forward and try to, you
3 know, get this entertainment endorsement based on
4 just that. Of course, we came to disagreements
5 because -- at first, we were in agreement with
6 some things, but when I believe the last e-mail
7 that Drew and I went over, when he said to me
8 that he drafted up some type of an agreement, I
9 kind of disagreed with it because it was
10 restrictive. It stated there are three members
11 in the community within a certain mile radius can
12 complain on us, and, you know, we will have to
13 close it down at 9 p.m.

14 Well, based on what's going on right now,
15 there are more than three that are complaining.
16 We have yet to do any type of entertaining with
17 respect to having some type of karaoke or, you
18 know, whatever one person in there playing a
19 little flute or what have you. We have none of
20 that, but it seems as though every time we turn
21 around, someone is calling a Board -- the Board,
22 whether it be the health department or the ABC

1 board complaining, so --

2 MR. REID: We get like six visits a month
3 every --

4 MR. SILVERSTEIN: One person at a time,
5 please.

6 MR. REID: Oh, sorry about --

7 MS. ANTOINE: So I've come to realize
8 that, hey, you know, if it is that three people
9 can file this complaint or whatnot, then we are
10 doomed. Well, we are already there. So this is
11 why I just -- we made a decision, we'll just come
12 to the Board to have the decision made because we
13 cannot agree, you know.

14 Like I said, we are responsible. We have
15 not, since we have been open, had any incident of
16 a police, an ambulance, a fire department, or
17 anyone coming to our establishment and write us
18 up for anything. You know, the ABC Board has
19 been the only individuals with respect to trash,
20 you know, so I don't know what the fear is, so to
21 speak, with respect to us doing something like
22 that.

1 There was some type of concern about a
2 dance floor. We don't have a dance floor. We
3 don't have room to have a dance floor. Our
4 restaurant is family-oriented. There are kids
5 that come in there, whatnot, and, you know, we
6 weren't -- I don't know if there's a
7 misunderstanding as to what, you know, our
8 entertainment piece would be, but we weren't
9 going to do the nightclub-type setting that I
10 think is being presumed here by the ANC itself.

11 MR. SHORT: She's got about 30 more
12 seconds.

13 CHAIRMAN ANDERSON: Because you're not
14 lawyers and an opening statement is basically for
15 you to tell us what the case is about, I'm going
16 to call for your witnesses, but I do not expect
17 an individual to know. I mean, we all watch
18 Perry Mason. Maybe you guys are not old enough
19 for that. So I'll be more lenient in the sense
20 that I am not going to expect -- and if the ANC
21 didn't have an attorney, I would hold them to the
22 same standard.

1 But an opening statement is that you tell
2 us what you're requesting, who are the witnesses
3 who are going to testify, and what it is that you
4 are going to intend to prove, so -- but we're
5 fine. We go the gist.

6 MR. COOPER: Yes, thank you.

7 I'll start, and Mr. Courtney may add some
8 things at the very end.

9 But the very beginning of this hearing
10 when I first -- the preliminary matter, I raised
11 the issue with this Board that there are some
12 concerns that we have because we are really not
13 sure what is being requested in entertainment
14 endorsement, and that was the struggle with the
15 ANC.

16 We were prepared to present testimony
17 opposing the dancing that's being requested on
18 their application, and the deejay that's being
19 requested on their application, to have music
20 from a deejay till two in the morning, dancing
21 potentially till two o'clock in the morning. It
22 says on their application, they plan on hiring a

1 deejay on the weekends, presumably till two in
2 the morning.

3 But what -- and this is part of the
4 struggle in preparing for this hearing and being
5 able to tell you where we're going with providing
6 our witness testimony is because we're not really
7 sure what's being requested, because the PIF
8 actually goes in a different direction.

9 And so that sort of is the basis of our
10 response. As I say, we are struggling with
11 dealing with this application because, on the one
12 hand, one thing says one thing, another says
13 another, and we're really not sure what is the
14 entertainment endorsement being requested.

15 If you're asking for a flute, that's
16 different from a deejay, and I don't know how to
17 prepare my clients for this hearing. So I will
18 be struggling today with responding. A flute is
19 one thing; a deejay on the weekends is another.

20 MR. COURTNEY: Yes. I just want to
21 underscore I think we have three main points that
22 we're going to talk about over the course of this

1 hearing.

2 The first is, as Mr. Cooper alluded to, a
3 lack of clarity about what exactly is being
4 requested and what's being proposed for the
5 entertainment endorsement.

6 The second point that we want to make
7 very clear over the course of the hearing is that
8 there is a settlement agreement in place, and
9 that settlement agreement has been repeatedly
10 violated, despite the fact that we've done all we
11 can to make sure the Applicant knows that we are
12 watching and would like to resolve concerns,
13 garbage, around rats, around the noise. And we
14 tried to do something we can to make clear that
15 those should be resolved. They haven't been
16 resolved, which does not give us confidence that
17 more -- that they should receive more privileges.

18 The third point that I think we'd like to
19 make is that even setting that issue aside, we
20 have very grave concerns about issuing an
21 entertainment endorsement, especially given the
22 fact that it could include some very loud

1 activities.

2 We're very concerned about the lack of
3 soundproofing that's referenced in the
4 inspector's report.

5 We're concerned about the fact that there
6 are already a string of complaints about noise
7 before we even start adding additional amplified
8 music, a deejay, a dance floor, whatever that may
9 be. We have grave concerns about that.

10 And to testify to that, we'll have two
11 neighbors who are able to join us today as well
12 as the commissioner who represents that
13 single-member district.

14 And the final point that I would add
15 probably as a supporting point is just that the
16 ANC has tried to work through this process well
17 by offering several iterations of a settlement
18 agreement. We've tried to flesh out these issues
19 through the process.

20 One of the things that is important to us
21 that Ms. Antoine brought up about some kind of
22 provision, if there are concerns, we don't want

1 the community to be in a situation where an
2 entertainment endorsement is granted and then
3 there's a lot of bad behavior. And we're worried
4 about going there. We think it's very important
5 that any resolution either protect against that
6 immediately or have some mechanism for protecting
7 the community going forward.

8 As I say, we've offered several
9 settlement agreements. We've tried to make
10 modifications, but we've reached this point.

11 CHAIRMAN ANDERSON: Okay, thank you.

12 MS. MILLER: Mr. Chairman, I just want to
13 know if we could request the Applicant to clarify
14 what he's seeking.

15 CHAIRMAN ANDERSON: Right.

16 MS. MILLER: Okay, thank you. Sorry.
17 Probably, you're about to do that. I'm sorry.

18 CHAIRMAN ANDERSON: Even prior to --
19 that's what I'm looking for, the document that
20 the Applicant has provided to ABRA for exactly
21 what they're seeking, and then I'll ask it.

22 [Pause.]

1 CHAIRMAN ANDERSON: I need to get -- give
2 me, like, a minute. I didn't want to leave in
3 the middle of your -- I need to get my note pad,
4 so I can take notes.

5 [Pause.]

6 MR. SILVERSTEIN: While the Chair is
7 gone, a brief bit of housekeeping here. This is
8 something that folks who don't have an attorney
9 or haven't been here before may not always
10 understand.

11 You have 90 minutes to present your case,
12 but you don't have to use the 90. We encourage
13 you not to use 90 if you don't need it, but the
14 time you spend questioning other witnesses counts
15 against your 90 minutes, and the time that you
16 spend questioning our investigator in his
17 investigative report also counts against your 90
18 minutes, so we urge you to use it wisely and
19 understand that. Don't want you to be blindsided
20 at the end and think, "Oh, my goodness, I don't
21 -- where did the time go?"

22 CHAIRMAN ANDERSON: Then the order is

1 basically that we'll call the ABRA investigator.
2 Then the Board will ask questions of the
3 investigator. Then you will have -- then you
4 will have an opportunity to question the
5 investigator. Then the Protestant will have an
6 opportunity to question the investigator.

7 And after the investigator presents his
8 case, then you then will have the opportunity to
9 present your case in chief, and in presenting
10 your cases, you tell us what it is that you're
11 requesting and why is it that you believe that
12 the Board should view -- should vote to give you
13 the license that you are requesting, endorsement
14 that you are requesting.

15 And as we go by, then I will -- I'm also
16 learning, but I will also give you the process
17 and the procedure that we're going to follow and
18 how cases are presented. It's up to you to
19 present you case. Then you'll -- as you present
20 your case, they will have an opportunity to ask
21 questions. Then the Board will ask questions,
22 and then you can ask questions -- you can ask

1 questions on questions that the Board asked, and
2 then if you would have the opportunity to -- and
3 it's a little bit different in the sense that
4 redirect, that say if you need to clarify
5 something, you can recall that whoever was
6 testifying to redirect.

7 After you've presented your case in
8 chief, then the Protestant -- then they have an
9 opportunity to present their case. They will
10 have direct testimony. Once that person -- once
11 their attorney questions the witness, then you
12 will have an opportunity to ask questions of that
13 witness that was called, and then the Board will
14 ask questions. And then either side can ask
15 questions, and the questions you're asking should
16 be directly related to the questions that the
17 Board asks. So it can't be "Well, I've forgotten
18 to ask a question, so therefore this is my
19 opportunity to ask a question." Your questions
20 need to be directly related to the questions that
21 the Board member had asked.

22 And after that's done, we'll do redirect,

1 and that either side can redirect. Then if the
2 Applicant needs to -- say, for example, if some
3 say we had some testimony about one side, and
4 it's the sense that someone said you said
5 something and that's not true, then you have an
6 opportunity to rebut to say "I've spoken to that
7 person, but that's not true." And that's called
8 rebuttal to say if you are contradicting
9 something that was previously testified to.

10 And once that's done, then you have
11 closing, and closing is that, okay, you talk
12 about, okay, "This is our case." You're wrapping
13 up your case. You're again making your case why
14 is it that we should give you the license. On
15 the Protestant side, as they are wrapping up
16 their case, it's to say why is it that they
17 believe that you should not get the entertainment
18 endorsement.

19 And you go first in the sense of closing.
20 You're closing first. Then the Protestant goes
21 second, and then we'll close the record.

22 If you have documents or witnesses that

1 you -- documents that you need to be a part of
2 the record, whatever else that you do, you -- we
3 need to -- you'll have the document. You will
4 bring it to the attention. I need to know what
5 the document is before you give it to the witness
6 to ask them a question about the document.

7 After the witness has testified on that
8 document, then you will state that "I move to
9 admit it into the record." If you do not move to
10 admitting the document into the record, it's not
11 a part of the record. So you have to do that, to
12 say after the person looks at the document, to
13 say "I would like to move that into the record,"
14 and so it becomes a part of the official record.

15 And so we're both learning. I mean, I'm
16 learning, but I'll try to make sure that in my
17 learning, my learning curve does not unfairly
18 prejudice any of the sides, okay?

19 All right. So the first witness to be
20 called is --

21 MS. MILLER: Mr. Chairman?

22 CHAIRMAN ANDERSON: Yes.

1 MS. MILLER: I think when you stepped
2 out, we were just talking about a clarification
3 as to what the Applicants are seeking.

4 CHAIRMAN ANDERSON: I'm going to have the
5 Board -- I'm sorry -- the Board's witness clarify
6 that. So I'll have the Board witness clarify
7 what's on the form, and then I will have the
8 Applicant also clarify that.

9 So Mr. Brashears can actually testify
10 directly on what is it that the Applicant is
11 seeking as far as ABRA is concerned and then have
12 the Applicant when they do their case in chief,
13 that they provide verification.

14 MS. MILLER: Okay. I don't have an issue
15 with getting it directly from the witness, but
16 I'm not sure that our investigator knows what
17 they're seeking exactly. Do you mean what they
18 were seeking when the -- on the application?

19 CHAIRMAN ANDERSON: Well, the bottom line
20 is that there is an application, and this is the
21 way I'm going to run this hearing. We have an
22 application, and this is what has been asked for,

1 and we're moving on the application.

2 I'm not sure how folks have operated
3 before, but we can't sit here and then you're
4 moving the ball.

5 So, therefore, there is an application
6 that the Applicant had made to ABRA to say that
7 "We are seeking an endorsement, an entertainment
8 endorsement," and so that's what we're here for
9 today.

10 Now, I'm -- we should not be at a hearing
11 -- and I'm not -- and I've not been involved
12 because I'm new, but the process I think -- the
13 process is that you have a roll call. You have
14 mediation. You have status, and we should not be
15 sitting at the hearing today and folks are still
16 stating that I don't know what is going on. So,
17 therefore, someone did not do their job prior to
18 today, and it's not -- it should not be our job
19 to sit here and explain to folks what's been
20 asked for. That should have been done a long
21 time ago.

22 And so if the parties believe that they

1 need to -- they need to ask for a postponement so
2 they can figure out what it is that -- that's
3 needed, but we're moving today to have a protest
4 hearing, and the purpose of the hearing is that
5 the Applicant is asking for an entertainment
6 endorsement on their license.

7 MR. COOPER: May I ask --

8 CHAIRMAN ANDERSON: Yes.

9 MR. COOPER: May I ask just one question?
10 Would the Applicant have an opportunity to amend
11 a petition -- an application that has already
12 been submitted? And so would not this be the
13 most appropriate time to perhaps, before we even
14 bring Mr. Brashears, the investigator, up, so
15 that we know -- because it's a little bit unfair
16 for the ANC and community to not even know what
17 we're protesting because what has been stated in
18 the PIF and what was stated in the opening
19 record, although not evidence, it does direct us
20 in a completely different direction than what was
21 stated on the application.

22 So if they're -- if they are amending it

1 to say "We're not going to have dancing," then
2 that's a big deal. If they're saying "We're not
3 having a deejay," that's huge. If they're
4 limiting it to a flute player, we can probably
5 resolve this in a matter of minutes. But we just
6 don't know, and it's unfair to wait until they
7 present their case for us to know -- or the
8 community to know what they're actually asking
9 for.

10 CHAIRMAN ANDERSON: All right. Well --

11 MR. REID: Can we just tell them what
12 we're asking for?

13 CHAIRMAN ANDERSON: We're done -- we will
14 have an opportunity. We're doing a hearing, and
15 then you will have an opportunity to question
16 them. Mr. Brashears will testify. You'll have
17 an opportunity to question him, and so you will
18 have clarification because, of course, you have
19 -- everyone is going to be under oath in the
20 sense that you're -- you will have an opportunity
21 to question them on exactly what it is that they
22 are asking for in asking for this entertainment

1 endorsement on their license, okay?

2 So the Board will call its first witness,
3 and that is Mr. Brashears, and I -- can you take
4 the stand, please.

5 Can you raise your right hand, please.
6 Do you swear to tell the truth -- do you swear or
7 affirm to tell the truth, the whole truth, and
8 nothing but the truth?

9 MR. BRASHEARS: I do.

10 CHAIRMAN ANDERSON: Thank you. You may
11 have a seat.

12 [Witness sworn.]

13 CHAIRMAN ANDERSON: The way this is, the
14 Board will have the opportunity to ask the
15 investigator -- I'm sorry. All right. I'm
16 sorry.

17 Mr. Brashears, can you please provide us
18 an oral reading off on the report regarding this
19 Applicant's application.

20 MR. BRASHEARS: Yes, sir.

21 I was assigned the protest investigation
22 in a Class CR request for a substantial change

1 that an entertainment endorsement for Po Boy Jim,
2 LLC, trading as Po Boy Jim. Po Boy Jim is
3 located at 709 H Street, Northeast, Washington,
4 D.C.

5 The request to add an entertainment
6 endorsement, ABRA License 087903, was submitted
7 by the owner, Rebecca Antoine, on Thursday,
8 January 29th, 2015.

9 The request for a substantial change is
10 being protested by the Advisory Neighborhood
11 Commission, ANC-6C. The ANC-6C, represented by
12 Mr. Drew Courtney, submitted a letter to ABRA
13 opposing the substantial change dated April 13,
14 2015, on the basis of peace, order, and quiet.

15 On Thursday, July 23rd, 2015, I visited
16 Po Boy Jim and interviewed owner, Rebecca
17 Antoine, regarding the protest issues. Ms.
18 Antoine stated that she wanted to add an
19 entertainment endorsement to her ABRA license to
20 enhance business and encourage more patrons to
21 visit.

22 Ms. Antoine stated that if approved, she

1 planned to utilize a deejay to play urban and
2 jazz music and to have karaoke for her customers.
3 Ms. Antoine stated that the establishment would
4 not build a deejay booth but would utilize a
5 laptop for music near the upstairs bar. Ms.
6 Antoine stated that she planned to utilize the
7 current house speakers for music, not adding
8 anything new, to minimize the sound.

9 Ms. Antoine stated that during the
10 establishment's first mediation at ABRA with
11 ANC-6C, she invited the ANC-6C and concerned
12 neighborhood citizens to visit the establishment
13 to do what she called a test run with the
14 equipment she planned to utilize. Ms. Antoine
15 stated that if it were accomplished, the
16 concerned parties could come to a consensus on
17 the appropriate placement of the equipment and
18 appropriate sound levels.

19 Ms. Antoine stated that she spoke to Mr.
20 Courtney about the test run, but he had not
21 gotten back with her on the matter.

22 In reference to the soundproofing, Ms.

1 Antoine stated that the establishment was not
2 there yet. Ms. Antoine stated that she believed
3 the soundproofing to be cost prohibitive and,
4 thus, unnecessary.

5 Investigator Brashears asked about the
6 trash overflowing issues raised by the ANC-6C.
7 Ms. Antoine stated that the establishment had a
8 contract for trash and recycling with Stellar
9 Environmental. Ms. Antoine stated that the trash
10 is picked up three times a week, and the recycle
11 is picked up twice a week. Ms. Antoine stated
12 that the early shift at the establishment checked
13 the trash each morning and requested additional
14 pickups as needed.

15 Ms. Antoine also stated that some of the
16 previous complaints concerning trash may have
17 been due to the recent construction in the street
18 and the alley. Ms. Antoine stated that Stellar
19 Environmental had contacted her at least once
20 stating they could not pick up due to the
21 construction.

22 Ms. Antoine stated that she is working on

1 a settlement agreement to resolve the issues as
2 they pertain to the entertainment endorsement and
3 that the trash overflowing issues as they pertain
4 to the settlement agreement.

5 On Thursday, July 23rd, 2015, I
6 telephonically interviewed Mr. Drew Courtney
7 regarding the protest issues. Mr. Courtney
8 stated that the ANC-6C was protesting the
9 substantial change to add an entertainment
10 endorsement for Po Boy Jim on the basis of peace,
11 order, and quiet.

12 Mr. Courtney stated that there were
13 currently noise complaints by citizens in the
14 neighborhood, and adding an entertainment
15 endorsement featuring karaoke and deejays would
16 exacerbate the situation.

17 Mr. Courtney stated that the neighborhood
18 residents were not as concerned about background
19 music played during the day while Ms. Antoine was
20 present, but rather the volume and type of music
21 that Ms. Antoine's son might play during the
22 evening with an entertainment endorsement.

1 Mr. Courtney suggested that he suggested
2 to Po Boy Jim owner, Rebecca Antoine, that the
3 establishment install some type of soundproofing
4 to reduce sound emissions. Mr. Courtney stated
5 that he was told by Ms. Antoine that the
6 establishment could not afford the soundproofing
7 at the present time. Mr. Courtney stated that
8 Ms. Antoine had suggested having a test with the
9 sound equipment and music she planned to utilize
10 with the entertainment endorsement to see if it
11 met with the ANC's approval. Mr. Courtney stated
12 that it would not be legal to do such a test, as
13 the establishment does not have an entertainment
14 endorsement.

15 Furthermore, Mr. Courtney stated that it
16 would be difficult to articulate the agreed-upon
17 sound levels in a settlement agreement and
18 difficult to enforce.

19 Mr. Courtney also stated that the trash
20 in the alley behind the establishment had also
21 been a big problem. Mr. Courtney stated that the
22 neighbors of the establishment routinely

1 complained about the trash overflowing the
2 dumpster. In addition, Mr. Courtney stated that
3 the establishment sometimes placed refuge cans in
4 the alley, and those were frequently knocked
5 over, spilling to the ground.

6 The characteristics of the premises; the
7 outdoor area surrounding the establishment. Po
8 Boy Jim is a medium-sized establishment located
9 at 709 H Street, Northeast. Po Boy Jim is
10 bounded by H Street, Northeast, to the east; 7th
11 Street, Northeast, to the west; I Street,
12 Northeast, to the north; and G Street, Northeast,
13 to the south.

14 Po Boy Jim is located on H Street,
15 Northeast, which is a heavily populated
16 commercial area, including a total of 13
17 ABC-licensed establishments within 1,200 feet of
18 the establishment.

19 A total of five establishments are
20 restaurants, three are taverns, and one is a B
21 store. And there are three A stores.

22 The side of H Street, Northeast, to the

1 north of Po Boy Jim is comprised of mostly a row
2 of retail stores, a bank, fast food
3 establishments, and one ABRA establishment. The
4 side of H Street, Northeast, shared by Po Boy Jim
5 is comprised of various businesses on either side
6 of the establishment and some retail stores.

7 ABRA investigators monitored Po Boy Jim
8 located at 709 H Street, Northeast, on 14
9 separate occasions from 25 June through November
10 12, 2015. There was a total -- from the original
11 protest date until the publishing of this report,
12 there were a total of seven ABRA violations
13 noted.

14 There were -- there was one quarterly
15 statement citation in May of 2015. There was a
16 summer garden without endorsement on June 12th,
17 2015. Also, on June 12, 2015, a No ABC Manager
18 charge. On July 23rd, a No ABC Manager charge,
19 and a settlement agreement violation for trash.
20 On the 24th of July, there was a settlement
21 agreement for trash. On August 1st, there was a
22 quarterly statement citation, and on August 7th,

1 there was a settlement agreement violation for
2 trash.

3 I contacted the D.C. Office of Unified
4 Communications, and it was discovered that there
5 were nine calls to service to the establishment
6 from January 1st through July 2015. Of those
7 nine calls to service, there were no ABRA
8 incidents or violations associated with these
9 calls.

10 The Noise Task Force, comprised of
11 members of ABRA, DCRA, and MPD, responded to the
12 establishment three times from January 2015
13 through the publishing date of the report. Noise
14 complaints were not substantiated, and there were
15 no ABRA violations found.

16 CHAIRMAN ANDERSON: That's it?

17 MR. BRASHEARS: That's it, sir.

18 CHAIRMAN ANDERSON: All right. Do we
19 have any members of the Board who wish to ask
20 questions of the investigator?

21 MS. MILLER: I do, but you can go first,
22 Mr. Silverstein.

1 MR. SILVERSTEIN: Probably, the --

2 CHAIRMAN ANDERSON: Hold on.

3 MS. MILLER: Oh.

4 CHAIRMAN ANDERSON: Mr. Silverstein, go
5 ahead.

6 MR. SILVERSTEIN: Probably, the most
7 important thing here, your understanding is that
8 they are applying for exactly what?

9 MR. BRASHEARS: An entertainment
10 endorsement, and as I testified when I spoke with
11 Ms. Antoine, it was for some type of jazz music
12 or possibly karaoke.

13 MR. SILVERSTEIN: It has here on her
14 application: Po Boy Jim will offer a deejay on
15 weekends and have karaoke once a week. Is that
16 part of your understanding as well?

17 MR. BRASHEARS: I don't have that exhibit
18 in front of me, sir. I'm sorry.

19 MR. SILVERSTEIN: I'm trying to nail
20 Jell-O to the wall here --

21 MR. BRASHEARS: Yes, sir.

22 MR. SILVERSTEIN: -- trying to determine

1 what it is exactly that's being asked for.

2 No further questions.

3 CHAIRMAN ANDERSON: Ms. Miller, you have
4 -- you said you have some questions?

5 MS. MILLER: I do have a couple of
6 questions, and I'm not sure just on this -- what
7 are they seeking issue. I don't think you can
8 answer it, but I just wanted to read the statute
9 and then let that be out there, and maybe they'll
10 address that later.

11 But entertainment, when you apply for an
12 entertainment endorsement, unless we limited it,
13 I believe it means -- or they limit it
14 voluntarily, entertainment means live music or
15 any other live performance by an actual person,
16 including live bands, karaoke, comedy shows,
17 poetry readings, and disk jockeys.

18 CHAIRMAN ANDERSON: Ms. Miller, for the
19 record --

20 MS. MILLER: Yeah.

21 CHAIRMAN ANDERSON: -- can you tell us
22 what section --

1 MS. MILLER: Oh, yes. I'm sorry.

2 CHAIRMAN ANDERSON: -- of the law you're
3 referencing to? So the folks out there will know
4 and --

5 MS. MILLER: Thank you.

6 Okay. So I'm -- and I'm not saying
7 that's what they're applying for, but it's my
8 understanding, unless we limited it or unless
9 they limited it, that an entertainment
10 endorsement -- entertainment set forth in
11 definition Section 25-101, 21A, and then it says
12 the term "entertainment" shall not include the
13 operation of a jukebox, a television, or radio or
14 other prerecorded music.

15 So, going by that definition, my question
16 is, did they have operating -- at least when you
17 were there -- a jukebox, television, radio, or
18 other prerecorded music?

19 MR. BRASHEARS: Excuse me. I believe
20 there was a -- during the times of monitoring
21 when I went in the establishment, there was a TV
22 playing, but I don't recall seeing any jukebox or

1 anything like that. No, ma'am.

2 MS. MILLER: Okay. And I think you
3 stated that you're unaware of any noise
4 complaints that have been filed against them; is
5 that correct?

6 MR. BRASHEARS: Well, there were noise
7 complaints that came into the ABRA hotline on
8 three occasions.

9 MS. MILLER: Okay.

10 MR. BRASHEARS: But none of those were
11 substantiated or resulted in an ABRA violation.

12 MS. MILLER: Okay. And was that during
13 your monitoring period, or not necessarily?

14 MR. BRASHEARS: I believe it -- one was
15 in June, and two were in November, ma'am.

16 MS. MILLER: Okay, thank you.

17 And in the course of your duties in
18 general, do you have occasion to visit the H
19 Street Corridor often where this establishment is
20 located?

21 MR. BRASHEARS: Yes, ma'am, I do.

22 MS. MILLER: And how would you

1 characterize with respect to noise, the noise
2 level there in the nighttime?

3 MR. BRASHEARS: To be honest, I had -- in
4 my time driving and walking around on H Street, I
5 didn't have any -- had I not walked by or been in
6 the area monitoring, there wouldn't have been
7 nothing remarkable enough, you know, to cause me
8 to stop and pay attention to it.

9 MS. MILLER: Okay. That's all my
10 questions. Thank you very much.

11 CHAIRMAN ANDERSON: Mr. Short?

12 MR. SHORT: Yes. First of all -- and
13 thank you, Ms. Miller, for reading that.

14 There's a document that's been provided
15 to the Board, and I don't know if we can let the
16 witness see this before I ask my question.

17 MR. ALBERTI: Well, that's in the report.
18 That's in the protest report.

19 MR. SHORT: Well, again, Ms. Miller, when
20 you read the definition, unless they limit
21 themselves or we limit them, they are requesting
22 to offer a deejay on weekends and have karaoke

1 once a week. So they have limited themselves, if
2 I am reading this correctly.

3 Are you familiar with that request,
4 Investigator?

5 MR. BRASHEARS: Yes, sir.

6 MR. SHORT: Okay. So it's very plain
7 that they have requested if they are granted,
8 they want to just have a deejay on weekends and
9 have karaoke once a week. Is that your
10 understanding?

11 MR. BRASHEARS: Yes, sir.

12 MR. SHORT: That's all I have.

13 MS. MILLER: Can I respond to that, Mr.
14 Chairman?

15 CHAIRMAN ANDERSON: Go ahead.

16 MS. MILLER: Okay. I'm just saying to
17 me, that's not enough for my purposes here
18 because it may show an intent of what they think
19 they're going to do, but it's not clear to me
20 that they will be excluded unless we exclude them
21 from other types of entertainment.

22 CHAIRMAN ANDERSON: All right. I mean,

1 that's -- we need to have further questioning on
2 those issues, and one of the reasons I ask for
3 the statute, the statute talks about what
4 entertainment means, and it's clear what
5 entertainment means. And I'm not sure if the
6 Board can issue a license to say that you can
7 only have a -- if you have an entertainment
8 endorsement, you can only have karaoke. I don't
9 know that.

10 MR. SILVERSTEIN: Yes. Yes.

11 CHAIRMAN ANDERSON: If you can -- I'm
12 just saying, but what I'm saying, in reading the
13 statute, it's clear what entertainment is. So my
14 assumption, if we're issuing a license, we're
15 issuing an entertainment license, then other
16 issues in the sense of type of how the license go
17 can be settled through a settlement agreement
18 that you can -- you can -- but, anyway -- but
19 that's neither here or there.

20 But they're asking for it, and the
21 license, and we go by the statute, what it means,
22 and that's what -- that's what it means.

1 MS. MILLER: Okay. But I do -- I do want
2 to say that my understanding is certainly when
3 you have a protest hearing like this one and we
4 issue an order, we can then put conditions on the
5 license, which would be --

6 CHAIRMAN ANDERSON: Well, that's the part
7 I'm -- that's not a part of -- I would assume
8 that in this hearing here, but -- go ahead, Mr.
9 Alberti.

10 MR. ALBERTI: Chairman Anderson, I think
11 we're getting into the corporations of the Board,
12 and so I'd like to move off of this topic, if we
13 may.

14 CHAIRMAN ANDERSON: It's your -- to ask
15 questions.

16 MR. ALBERTI: Thank you. All right. So
17 I'm going to go in a completely different
18 direction.

19 All right. So you've got a bunch of
20 pictures of the establishment, and I'm trying to
21 understand what the establishment looks like in
22 terms of how do you understand it.

1 And the establishment sits in the middle,
2 sort of in the middle of the block, right?

3 MR. BRASHEARS: Yes, sir.

4 MR. ALBERTI: One of those long diagonal
5 establishments.

6 Tell me -- tell me where things are
7 situated going from H Street back towards the
8 alley in the back. Where are the functions
9 situated within that? So where is the bar, or
10 where the most likely would be the entertainment?
11 Where is the kitchen? Where is the summer
12 garden, which is not in use yet? What's behind
13 that? So just going from H Street back, sort of
14 describe for me what you see.

15 MR. BRASHEARS: All right, sir. To let
16 you know, I don't have a copy of the exhibits,
17 but I think I can pretty much go from --

18 MR. ALBERTI: Can we provide the
19 investigator with a copy of the report? Thank
20 you.

21 MR. BRASHEARS: Thank you, sir.

22 MR. ALBERTI: I may be referring to some

1 of those, and so I'd like you to have a copy.

2 MR. BRASHEARS: Yes, sir. Okay, sir.

3 Exhibit 8 and Exhibit 9 are a chart, as you come
4 in the front -- a photo when you come in the
5 front door.

6 MR. ALBERTI: Okay.

7 MR. BRASHEARS: To the left of the -- in
8 Exhibit 8, there are some counters there or
9 seating area to the left. There's a cash
10 register, and through the doorway is the kitchen.

11 MR. ALBERTI: Okay.

12 MR. BRASHEARS: It's like a long, narrow
13 kitchen.

14 In the middle of the floor on Exhibit 9,
15 there's an open space. To the right are tables.
16 Through the doorway are bathrooms and storage
17 area down the hallway.

18 MR. ALBERTI: Okay.

19 MR. BRASHEARS: Exhibit 10 is a shot from
20 the -- or photo from the middle of the
21 establishment, first floor, back toward the
22 front, which shows a window box on the left of

1 the door.

2 And Exhibit 11 is a photo back toward the
3 front of the establishment that shows the window
4 box from my point of view to the right.

5 MR. ALBERTI: Okay.

6 MR. BRASHEARS: Exhibit 12 shows the
7 opening down the hallway that I mentioned, with a
8 view into the kitchen for plates and serving
9 food.

10 MR. ALBERTI: Okay. And this is the
11 hallway that's at the back of Exhibit 9?

12 MR. BRASHEARS: Yes, sir.

13 MR. ALBERTI: Okay.

14 MR. BRASHEARS: Exhibit 13 is a photo
15 from with inside the kitchen, the far end of the
16 kitchen, back towards the cash register.

17 MR. ALBERTI: Okay.

18 MR. BRASHEARS: Exhibit 14 is on the
19 first floor, right-hand side, toward the back of
20 the establishment. It is metal -- metal cabinets
21 with locks on them for storage.

22 MR. ALBERTI: Okay.

1 MR. BRASHEARS: Exhibit 15 is further
2 down the back of the hallway, and there are rest
3 rooms and an office on the right-hand side.

4 MR. ALBERTI: Okay.

5 MR. BRASHEARS: The office is in Exhibit
6 16.

7 MR. ALBERTI: Mm-hmm.

8 MR. BRASHEARS: Exhibit 17 was actually
9 taken from the second floor. It's immediately
10 out the back door of the first floor of the
11 establishment, and as you can see, it contains
12 some tables, lights, things of that nature.

13 Through the back of that area, where --
14 next to the mural on the wall, there's a doorway.
15 That leads into the alley behind the
16 establishment.

17 MR. ALBERTI: Okay.

18 MR. BRASHEARS: Exhibit 18 is a
19 photograph from with inside the summer garden
20 area, back toward the establishment.

21 MR. ALBERTI: Okay. Investigator, for
22 the sake of time, I'm going to skip you to -- so

1 far, you're doing great, and you're answering my
2 questions. So I'm going to skip you to page 28.
3 is that upstairs?

4 MR. BRASHEARS: Exhibit 28?

5 MR. ALBERTI: Yeah. See, Exhibit 21 goes
6 upstairs, right?

7 MR. BRASHEARS: Yes.

8 MR. ALBERTI: Going upstairs, and then
9 there's a bunch of pictures of --

10 MR. BRASHEARS: Yes, sir.

11 MR. ALBERTI: -- a cash register and then
12 --

13 MR. BRASHEARS: Exhibit --

14 MR. ALBERTI: -- a room. Is that a room
15 upstairs?

16 MR. BRASHEARS: Yes, sir. The upstairs
17 is a long rectangular space. As you come up to
18 the top of the stairs, the bar is to the right.

19 MR. ALBERTI: Mm-hmm.

20 MR. BRASHEARS: This is toward the back
21 of the building. It's a -- it's almost like a
22 sun porch, kind of a step down into it, and it

1 overlooks where the summer garden will be.

2 MR. ALBERTI: Is that Exhibit 20 --

3 MR. BRASHEARS: Exhibit 28 and 29, sir.

4 MR. ALBERTI: Okay. So where is Exhibit
5 24? Is that upstairs also, looking towards the
6 back?

7 MR. BRASHEARS: Yes, sir.

8 CHAIRMAN ANDERSON: Do you guys have a
9 copy of --

10 MR. ALBERTI: They would have been given
11 one, wouldn't they have?

12 Can we get them another copy? Do the
13 Protestants have it?

14 MR. COURTNEY: Yes. We received it. It
15 was in the email received.

16 MR. ALBERTI: Yeah, I know. I just
17 wanted to make sure that our staff was doing the
18 right thing.

19 MR. COURTNEY: Yes. We're all listed on
20 the email.

21 MS. MILLER: But you have a copy. You
22 don't need a copy.

1 MR. COOPER: Yes, we have copies.

2 MR. REID: I could just look at his.

3 It's all right. I can see.

4 CHAIRMAN ANDERSON: We'll get you a copy.

5 I see you're trying to figure out where
6 -- what they're talking --

7 MR. ALBERTI: Should I continue?

8 CHAIRMAN ANDERSON: Yes.

9 MR. ALBERTI: All right. So 28 and 29,
10 that's looking over -- it's like a sun porch
11 looking over the summer garden.

12 MR. BRASHEARS: Yes, sir. That's how I
13 referred to it. You basically -- it's kind of
14 like a step down. It's open, but it's a separate
15 room, and the windows overlook the summer garden.

16 MR. ALBERTI: The summer garden is on
17 which level? The first? Second or the first
18 level?

19 MR. BRASHEARS: First floor, sir,
20 directly through the back door.

21 MR. ALBERTI: Okay, great.

22 And so is there like two windows and a

1 door or something like that? How many windows
2 and a door up there, up on that second -- on that
3 sun porch?

4 MR. BRASHEARS: If I remember correctly
5 -- and I can't see the middle of the photo, but
6 if I remember correctly, there's windows to both
7 sides, and maybe a door or a shuttered kind of
8 window. I mean, you can -- it's glass. You can
9 see --

10 MR. ALBERTI: You can see through --

11 MR. BRASHEARS: Yes, sir.

12 MR. ALBERTI: -- pretty much all through
13 it? Okay.

14 And that is right at the back of the --
15 right at the back of the building, overlooking
16 the summer garden?

17 MR. BRASHEARS: The back of the building
18 on the second floor.

19 MR. ALBERTI: What's behind the summer
20 garden?

21 MR. BRASHEARS: The alley, sir.

22 MR. ALBERTI: The alley. So the summer

1 garden is right on the alley. Okay, great.

2 Great, thank you.

3 And I'm sorry. I lost my place. I'm
4 going to go back to this map in here. There's a
5 map on -- I don't have a page number, but you
6 have sort of like a map of the buildings, right?

7 MR. BRASHEARS: Oh, the GIS map, sir?

8 MR. ALBERTI: Yeah, the GIS map. Right?

9 And so right behind that building, behind
10 the summer garden -- how deep is the summer
11 garden? Do you know, approximately?

12 MR. BRASHEARS: Twenty feet.

13 MR. ALBERTI: All right. So right behind
14 that summer garden is the alley?

15 MR. BRASHEARS: Yes, sir.

16 MR. ALBERTI: Do you know how wide that
17 alley is?

18 MR. BRASHEARS: It's just wide enough for
19 a vehicle to pass through.

20 MR. ALBERTI: Yeah. Yeah. Okay. I
21 happen to go down that alley occasionally.

22 Now, to the north -- to the south of that

1 alley is -- are those -- what are those? What
2 are those buildings to the south of that alley?
3 Do you know? I mean, it looks like row
4 buildings.

5 MS. MILLER: Yes.

6 MR. ALBERTI: There's row buildings --

7 MR. BRASHEARS: Yes, sir. I believe
8 that's --

9 MR. ALBERTI: Up the street, there's row
10 buildings on H Street. What are those buildings?

11 MR. BRASHEARS: I believe those are row
12 buildings.

13 MR. ALBERTI: Are they commercial or
14 residential? Do you know?

15 MR. BRASHEARS: I'm not sure, sir.

16 MR. ALBERTI: Okay. What else did I want
17 to ask?

18 So what's behind this? How is the summer
19 garden closed? Is it enclosed?

20 MR. BRASHEARS: Yes, sir.

21 MR. ALBERTI: And how is it enclosed?

22 MR. BRASHEARS: A wall.

1 MR. ALBERTI: How tall is that wall?

2 MR. BRASHEARS: I'm trying to locate a
3 good photo from the alley. I would say it's at
4 least -- at least 10 to 12 feet high.

5 MR. ALBERTI: Ten to 12 feet high. Is
6 there a door to the alley from that?

7 MR. BRASHEARS: Yes, sir. On Exhibit 32,
8 if you look at Exhibit 32, the -- pass the
9 recycle bins here. There's a metal door. That
10 opens into the summer garden, and then the metal
11 door that's in the background of the photo opens
12 into the establishments.

13 MR. ALBERTI: Okay. Okay, I see.

14 So when you were doing your interview
15 with the Protestants, did they talk about noise
16 from this establishment?

17 MR. BRASHEARS: Yes, sir.

18 MR. ALBERTI: Can you tell me what they
19 told you about noise?

20 MR. BRASHEARS: Well, I was just informed
21 that there had been noise complaints to the ANC
22 from the establishment, and I was also told that

1 there were issues concerning the overflowing
2 trash.

3 MR. ALBERTI: I got that. Okay.

4 Just staying on the noise, did they at
5 all tell you what the nature of the noise was
6 that was being complained about?

7 MR. BRASHEARS: My understanding, it was
8 music, sir.

9 MR. ALBERTI: Music.

10 MR. BRASHEARS: Yes, sir.

11 MR. ALBERTI: Okay. And do you know
12 whether this was from complainants who would have
13 been facing the rear? I'm assuming it's not --
14 do you know which direction that the complaints
15 would have been who were complaining about this?
16 The front? The rear or the sides? I mean, do
17 you have any idea?

18 MR. BRASHEARS: No, sir.

19 MR. ALBERTI: Okay. I have no further
20 questions. Thank you.

21 CHAIRMAN ANDERSON: Yes, Mr. Short.

22 MR. SHORT: Mr. Brashears, speaking of

1 the rear and the summer garden, where are the
2 trash dumpsters in relation to the rear exit to
3 the alley?

4 MR. BRASHEARS: I'm sorry. The trash
5 what, sir?

6 MR. SHORT: The trash dumpsters.

7 MR. BRASHEARS: Oh.

8 MR. SHORT: The trash receptacles.

9 MR. BRASHEARS: They are directly on the
10 other side of the wall that -- the outside wall
11 that comprises the outside of the summer garden,
12 and basically, if you look at Exhibit 30,
13 basically there's like a recessed -- there's a
14 recessed area off of the alley to the back of the
15 establishment visible in Exhibit 30 and Exhibit
16 31 that provide space for a medium-size dumpster.

17 MR. SHORT: So would it be fair to say
18 that if you were leaving that rear exit, you had
19 to walk past the dumpsters or the trash
20 receptacles?

21 MR. SHORT: If you went out the rear
22 exit, sir, the dumpsters -- coming out of the

1 exit, the dumpsters would be to your left, but
2 there are recycle bins, as you can see in Exhibit
3 32, that set right along the exit path from the
4 rear door.

5 MR. SHORT: Okay. That just brings up
6 some other issues, but I'll bring those up at
7 another time.

8 MR. BRASHEARS: All right, sir.

9 MR. SHORT: Thank you, Mr. Chair.

10 CHAIRMAN ANDERSON: Yes. Mr.
11 Silverstein.

12 MR. SILVERSTEIN: I have one question
13 following up on Mr. Alberti's questions. When
14 you were in the summer garden --

15 MR. BRASHEARS: Yes, sir.

16 MR. SILVERSTEIN: -- was there a line of
17 sight to any of these row house -- any of these
18 row buildings behind there? In other words,
19 could -- if you were talking and you looked in
20 that direction, would that sound go unimpeded to
21 those? Do you recall?

22 MR. BRASHEARS: No, sir. With the door

1 closed?

2 MR. SILVERSTEIN: No. From the summer
3 garden.

4 MR. BRASHEARS: Yes, sir. In the summer
5 garden with the rear exit door closed, there's no
6 line of sight. The wall is too high.

7 MR. SILVERSTEIN: The wall is too high
8 and will not --

9 MR. BRASHEARS: Yes, sir.

10 MR. SILVERSTEIN: Okay. That is your
11 testimony.

12 Thank you, sir.

13 CHAIRMAN ANDERSON: Yes, Mr. --

14 MR. ALBERTI: I just want to be clear.

15 CHAIRMAN ANDERSON: Yes, Mr. Alberti.

16 MR. ALBERTI: I just want to be clear,
17 Investigator, for sure. Those row buildings that
18 are behind the alley, are they one or two
19 stories?

20 MR. BRASHEARS: I'm not -- I don't
21 remember, sir.

22 MR. ALBERTI: Okay, thank you.

1 CHAIRMAN ANDERSON: Yes, Ms. Miller.

2 MS. MILLER: Mr. Brashears, I don't have
3 my book -- now I have my package in front of me,
4 but just based on the questioning that's gone on
5 recently, I just want to ask you, do you have a
6 concern that with windows open or in some way
7 that music playing in this establishment would
8 disturb neighbors or residents that are nearby?

9 MR. BRASHEARS: You know, I'm not a, you
10 know, sound engineer, but, you know, the back of
11 the building is brick. The summer garden area is
12 somewhat hollow and brick, and it's been my
13 experience in dealing with, you know, certain
14 ABRA establishments that music and sound bouncing
15 off of brick and bouncing off of buildings can
16 get out and be heard at quite a distance. So it
17 could be possible, ma'am.

18 MS. MILLER: Okay, thank you.

19 Thank you, Mr. Chairman.

20 CHAIRMAN ANDERSON: All right. I don't
21 have any questions.

22 So now you have an opportunity to ask

1 questions directly based on the report of the
2 investigator, and so, one -- all right. So you
3 have an opportunity to ask direct questions.

4 MS. ANTOINE: Officer Brashears, I know
5 we've met several occasions. I remember once
6 when you came and you asked about the summer
7 garden, and it was cited for a violation. And at
8 the time the violation was issued, there was no
9 one sitting in that summer garden. It was just
10 presumed that the summer garden was in use, and
11 at the time, it wasn't.

12 The exhibit that you showed, that you
13 took and gave to the Board, clearly shows that no
14 one was sitting there. So it was just presumed
15 that there was -- there were individuals in the
16 summer garden, and I don't know if it was called
17 upon that there was noise being made. But that
18 summer garden was not in use at this time. So
19 with respect to the particular violation that was
20 issued, like I think Ms. Yasmin, if I'm not
21 mistaken -- I told her that that's -- it's not
22 concrete enough for me to say, "Hey, you can

1 issue a violation on the grounds that I am using
2 a summer garden when you saw no one there." I
3 don't know why that was put in there with respect
4 to, you know, we have a summer garden.

5 CHAIRMAN ANDERSON: Hold one. I know
6 you're not an attorney.

7 MS. ANTOINE: Mm-hmm.

8 CHAIRMAN ANDERSON: And you have to ask a
9 question. So you have to -- if there is
10 something in the report based on his testimony,
11 if there are questions, you ask him a question
12 and have him elicit an answer.

13 During your case in chief, someone can
14 ask you a question, and you can elicit whatever
15 you think is favorable to your part, but for his
16 part, you have to ask a specific -- and I'll give
17 you some leeway because -- and I'll do the same
18 -- all right. I mean, I expect a different
19 behavior from attorneys because I expect
20 attorneys to ask questions.

21 But as someone who isn't an attorney, I'm
22 not going to hold you to the same standard

1 because that's just -- it's hard if you can't
2 hold someone who is an attorney. But you have to
3 ask him a question to -- that you think that --
4 so if he testified to something that you disagree
5 with, you can ask him a question about it, or if
6 there is something negative or positive in the
7 report that you want us to know about, you can
8 ask him a question and have him answer it,
9 because you will have an opportunity at the end
10 of the case to close to talk about what
11 violations, if they didn't occur or did occur.

12 Okay. So if you have -- if you don't
13 have any questions, then you don't have to ask
14 him questions. You don't have to ask a question.
15 You don't have to.

16 MS. ANTOINE: That was it. That was it.

17 CHAIRMAN ANDERSON: It's not mandatory,
18 and the same thing is you have 90 minutes. You
19 don't have to use 90 minutes. If you don't have
20 any questions to ask him directly, then you don't
21 have to ask a question.

22 And so if you don't have any questions to

1 ask -- and it's not my intent to cut you off. So
2 I just want to clarify the process. So if you
3 don't have any specific questions to what he
4 testified to, then you don't have to ask it.

5 So do you have any specific questions
6 that you believe that you need this in this
7 report or what he testified to that you believe
8 that the Board needs clarity on?

9 MS. ANTOINE: Well, one thing I can --
10 one more question I can ask Officer Brashears,
11 with respect to the summer garden, back to the
12 summer garden and noise emitting from there, did
13 you at any point have an expert with you to do a
14 test to say yea or nay as to whether or not there
15 was too much noise emitting from -- you know,
16 that would -- possibly can emit from that area?

17 MR. BRASHEARS: I did not, ma'am.

18 MS. ANTOINE: Okay. That was it.

19 CHAIRMAN ANDERSON: That's it?

20 MS. ANTOINE: Mm-hmm.

21 CHAIRMAN ANDERSON: All right. Now it is
22 your opportunity to ask questions.

1 MR. COOPER: Good afternoon, Officer
2 Brashears.

3 You mentioned earlier that the time -- at
4 least one time you were there, there was a
5 television that may have been on. Were you there
6 at any time when any music was being played?

7 MR. BRASHEARS: I don't recall any music
8 being played when I was there, sir.

9 MR. COOPER: Okay. How many times did
10 you personally go by the property during this --
11 since the filing of this entertainment
12 endorsement?

13 MR. BRASHEARS: The establishment was
14 monitored 14 separate locations.

15 MR. COOPER: How many times did you
16 personally go by there that you are here
17 testifying? How many times did you go?

18 MR. BRASHEARS: I don't recall, sir.

19 MR. COOPER: Did you go all 14 of those
20 times?

21 MR. BRASHEARS: No, sir.

22 MR. COOPER: Did you go one time?

1 MR. BRASHEARS: Multiple times. Yes,
2 sir.

3 MR. COOPER: More than five?

4 MR. BRASHEARS: I don't remember, sir.

5 MR. COOPER: Okay. Did you go -- what
6 times of day on the multiple times -- what times
7 of day did you go?

8 MR. BRASHEARS: One moment, sir. Let me
9 look at my notes. The establishment was
10 monitored in the -- in the evening on numerous
11 occasions, and a few times in the morning and a
12 couple of times in the afternoon.

13 MR. COOPER: What times did you go? Not
14 the 14 times monitored by the agency. You're
15 here to testify as to provide us testimony as to
16 your -- results of your investigations and your
17 inspection of the premises. I'm trying to find
18 -- I'm trying to establish what days and what
19 times of the week, times of the day did you
20 personally go by there?

21 MR. BRASHEARS: And as I said, sir, I do
22 not recall.

1 MR. COOPER: Okay. Did you go at any
2 time in the evenings?

3 MR. BRASHEARS: I don't recall, sir.

4 MR. COOPER: Did you go by there when the
5 establishment was open?

6 MR. BRASHEARS: Yes, sir.

7 MR. COOPER: Okay. The photographs that
8 you took, those were taken during the daytime, I
9 presume?

10 MR. BRASHEARS: Yes, sir.

11 MR. COOPER: And the photographs that
12 were attached to your report, did you take those
13 photographs?

14 MR. BRASHEARS: Yes, sir, I did.

15 MR. COOPER: Okay. Were there any other
16 photographs at any other times that you took?

17 MR. BRASHEARS: No, sir.

18 MR. COOPER: Okay. Do you always take
19 photographs when you go do inspections?

20 MR. BRASHEARS: If there's a violation.

21 MR. COOPER: Well, were there violations
22 when you took these pictures?

1 MR. BRASHEARS: Yes, sir, there were.

2 MR. COOPER: Okay. But you took pictures
3 of other areas of the property that were not in
4 violation, did you?

5 MR. BRASHEARS: Yes, sir.

6 MR. COOPER: Right, okay. So on any of
7 your other trips to the property, did you take
8 any other photographs? Because all of these are
9 dated July 23rd; is that correct?

10 MR. BRASHEARS: Yes, sir.

11 MR. COOPER: Okay. And on any of your
12 other occasions where there were violations
13 found, did you take any of those pictures?

14 MR. BRASHEARS: No, sir.

15 MR. COOPER: Okay. If you had gone to
16 the premises and they were playing music, would
17 you have deemed that a violation of their
18 license?

19 MR. BRASHEARS: No, sir.

20 MR. COOPER: Why not?

21 MR. BRASHEARS: Unless they're -- unless
22 it was being manipulated in some fashion. There

1 was a deejay, a deejay booth, someone taking
2 requests, physically changing the music. That is
3 what I would deem a violation for having an --
4 having an entertainment of some type.

5 MR. COOPER: Okay. So a stereo playing
6 music, in your opinion, is or is not a violation
7 of the entertainment endorsement?

8 MR. BRASHEARS: Would not be a violation.

9 MR. COOPER: Okay. I turn your -- I
10 direct your attention to Exhibit No. 20, a
11 photograph taken on July 23rd. I think you --
12 now, when you took these pictures, was the garden
13 area being utilized by patrons?

14 MR. BRASHEARS: No, sir.

15 MR. COOPER: I direct your attention to
16 this photograph because I want to ask you
17 something. You took this picture, right?

18 MR. BRASHEARS: Yes, sir.

19 MR. COOPER: What are those black things
20 on the -- attached to the brick wall?

21 MR. BRASHEARS: Those are speakers, sir.

22 MR. COOPER: Were those speakers playing

1 when you went there on July 23rd?

2 MR. BRASHEARS: No, sir, they were not.

3 MR. COOPER: Okay. I direct your
4 attention to Exhibit No. 18. There was a
5 question asked by Board Member Miller, I believe,
6 about noise emanating from the second floor.
7 There was a question about that. Are those --
8 what are those three objects above the mural on
9 that wall? Are those windows or doors?

10 MR. BRASHEARS: Those are windows, sir.

11 MR. COOPER: Okay. Are they windows?
12 What's the difference between a window and a door
13 to you?

14 MR. BRASHEARS: Well, a window would be
15 designed to open for fresh air. A door would be
16 utilized to -- for ingress or egress.

17 MR. COOPER: Okay. Are those metal bars
18 on the outside of those openings?

19 MR. BRASHEARS: In Exhibit 18, sir?

20 MR. COOPER: Yes.

21 MR. BRASHEARS: Yes, sir, at the bottom
22 part. Yes, sir.

1 MR. COOPER: Okay. So let's go to the
2 window -- the picture right before that, No. 17.
3 Do you recall opening a window or a door when you
4 took that picture?

5 MR. BRASHEARS: No, sir. I took the
6 photo through the window.

7 MR. COOPER: You took that through glass?

8 MR. BRASHEARS: Yes, sir.

9 MR. COOPER: Could you open the door
10 there to take a picture or window?

11 MR. BRASHEARS: I don't recall, sir.

12 MR. COOPER: Okay. I'm going to direct
13 your attention to one last photograph, just so
14 that I can understand the orientation as well.

15 No. 28, which was -- you were asked about
16 earlier. Is that -- that's a picture from the
17 sunroom looking out towards those things that you
18 said were windows on the back of the building; is
19 that correct?

20 MR. BRASHEARS: Yes, sir.

21 MR. COOPER: Now, looking at that
22 picture, right behind that chair, the four chairs

1 and the table, does that refresh your
2 recollection whether those are doors or windows?

3 MR. BRASHEARS: That appears to be a
4 door, sir.

5 MR. COOPER: Okay. Now, do you recall
6 whether those doors were the same across the
7 building, so that there were three of them, three
8 sets, as shown in the picture number -- I believe
9 it was 18.

10 MR. BRASHEARS: I don't recall what the
11 center one was, sir.

12 MR. COOPER: Okay. Well, let's go back
13 to 18. I'm just trying to get an orientation so
14 that I'm clear. Does that -- do they look to be
15 the same?

16 MR. BRASHEARS: They look very similar,
17 yes, sir.

18 MR. COOPER: So then would you agree with
19 me that there are three sets of French doors that
20 lead to metal bars that block ingress and egress
21 from the second floor, the sunroom?

22 MR. BRASHEARS: I would say that's a

1 possibility. Yes, sir.

2 MR. COOPER: And let me ask you a
3 question because the question was posed of you
4 earlier about the rear wall, and your testimony
5 was that, well, if you're in the patio area,
6 there's not a direct line of sight to neighboring
7 properties, even though you don't know what the
8 neighboring property is to the south on the other
9 side of the alley.

10 When you took that picture through the
11 French door that was not open, could you see
12 above the brick wall beyond the summer garden?

13 MR. BRASHEARS: From the second floor?
14 Yes, sir.

15 MR. COOPER: Okay. What did you see when
16 you looked out those French doors across the
17 summer garden and across the alley?

18 MR. BRASHEARS: I believe they were
19 buildings, sir.

20 MR. COOPER: Do you know whether they
21 were residential or commercial buildings?

22 MR. BRASHEARS: I don't know, sir.

1 MR. COOPER: And having been at the
2 establishment and having been at both the summer
3 garden area and the second story with or without
4 the French doors being open, could you give an
5 opinion as to whether noise from the second
6 story, the sunroom, we'll call it? If the French
7 doors were opened, would noise emanating from
8 that level travel behind the establishment over
9 the summer garden, across the trash receptacles
10 in the alley, to the properties, whatever they
11 may be on the south side?

12 CHAIRMAN ANDERSON: Counsel, Mr.
13 Brashears testified that he is not a sound
14 technician, and I think that that is too
15 speculative.

16 MR. COOPER: Okay.

17 CHAIRMAN ANDERSON: I mean, I know that
18 these are administrative hearings, but I think
19 that you're asking him to give an opinion that he
20 stated that he doesn't have that type of
21 expertise, so I think that's -- I would think
22 that that's not an appropriate question to ask

1 him.

2 MR. COOPER: With all due respect, he
3 said he's not a sound expert. He didn't take a
4 sound expert with him, but he already testified
5 that he believes that if he's in the summer
6 garden, voices emanating from the summer garden
7 would reverberate and bounce off the walls and
8 can be heard. So he's already gone down that
9 road.

10 So I'm merely asking a follow-up
11 question, not from the summer garden, which I
12 believe somebody on this Board asked. I'm asking
13 if he believes that voices would be directly and
14 sound directly transmitted and also equally heard
15 from the second floor.

16 CHAIRMAN ANDERSON: Well, you're asking
17 him to speculate, I think, because I think -- if
18 I heard correctly, you're asking to speculate
19 whether or not this could occur, and I don't --
20 he has testified that noise -- at least noise --
21 if I remember correctly, noise wasn't an issue
22 when he was there. So I don't think that's an

1 appropriate question to ask.

2 MR. COOPER: Well, again, just for the
3 record, the Board asked the exact same question
4 and answered it from the summer garden. All I'm
5 asking is to elaborate on that question that this
6 Board properly asked of him because his report
7 addresses issues of noise. If he's not a noise
8 expert -- and I'm sure he's not a trash expert
9 either, but his report is being put into
10 evidence, and the entire -- this entire case
11 hinges upon noise.

12 He is the District of Columbia's
13 representative who inspects the premises. With
14 all due respect, Chairman Anderson, I just want
15 to make sure that the record is complete that the
16 ANC is inquiring of this investigator, who is a
17 District of Columbia employee, whether he has an
18 opinion. If he says "I have no opinion," fine.
19 He has no opinion. But if he has an opinion, I'd
20 like to know what it is.

21 Obviously, if you say I can't ask the
22 question or he directs him not to answer the

1 question, then --

2 CHAIRMAN ANDERSON: No, I'm not going to
3 direct him to.

4 Mr. Brashears, I need you to answer the
5 question from -- not to speculate, but from your
6 expertise. So if you cannot give that answer
7 from an expertise, if it's an opinion you're
8 giving, that's behind your expertise, then you
9 can answer -- answer the question, but from that
10 perspective.

11 MR. BRASHEARS: I have no opinion.

12 MR. COOPER: Okay. Well, just for the
13 record, he -- this body asked him a question
14 about whether or not he's gone up and down the
15 alley and heard noise from other establishments,
16 and he gave an opinion of whether he believes --
17 so I kind of find it a little --

18 CHAIRMAN ANDERSON: Counsel? Counsel?

19 MR. COOPER: For the record, Chairman, I
20 only want to make sure I have a complete record
21 because he has made these exact representations
22 when the Board has asked a question. But now,

1 all of a sudden, when the ANC asks a question,
2 he's incapable of forming an opinion and
3 answering the question, but I'll move on.

4 CHAIRMAN ANDERSON: Well, counsel -- and
5 I will say for the record, I think I have more
6 authority in limiting the type of questions that
7 counsel or the Applicant can ask the witness.
8 It's a little difficult for me to tell a Board
9 member in the middle that they cannot ask a
10 question, but I think that as Chair, I can more
11 so kind of direct the attorneys and the
12 Applicant, the type of questions to ask the
13 witness.

14 MR. COOPER: Thank you. And, again, I
15 did not mean to be rude or anything. I just want
16 to make sure that there's a complete record, that
17 I have to represent my client zealously and
18 fully.

19 One other question. Mr. Brashears, other
20 than the inspections that were referenced in your
21 report, the 6 months prior to the first
22 inspection reference I think was in June, and

1 this application was filed -- I believe you said
2 in January. Do you know whether there were any
3 inspections regarding trash prior to the one
4 referenced in your report?

5 MR. BRASHEARS: If there were any
6 inspections, I was not aware of it, no, sir.

7 MR. COOPER: Okay.

8 CHAIRMAN ANDERSON: And I just want to --
9 just direct counsel that if you are going to ask
10 the witness regarding trash, please kind of
11 direct it to say how does that impact the type of
12 licensing that is being requested. So I need you
13 tie the two together. I'm not saying don't ask
14 the question, but I need you to tie those
15 directly to the purpose of why we are here.

16 MR. COOPER: Again, I'm only --

17 CHAIRMAN ANDERSON: I'm not saying you
18 can't ask a question. I'm just asking you to put
19 a nexus between the two.

20 MR. COOPER: I will ask this question,
21 then, I guess, because I don't know the nexus.

22 So let me ask you this. How long have

1 you been an employee of the District of Columbia,
2 in the ABRA?

3 MR. BRASHEARS: Two years.

4 MR. COOPER: Okay. And your position is
5 an inspector?

6 MR. BRASHEARS: ABRA investigator.

7 MR. COOPER: Investigator.

8 And you were asked to do these
9 investigations when there are changes being
10 requested or under other circumstances as well?

11 MR. BRASHEARS: Yes, sir.

12 MR. COOPER: Okay. And the purpose of
13 the inspection when there's a change in the
14 license, do you understand why you're asked to go
15 out and do an inspection?

16 MR. BRASHEARS: Yes, sir.

17 MR. COOPER: What is that purpose?

18 MR. BRASHEARS: Well, anytime we're given
19 any type of investigation, my job is to go out
20 and be an unbiased fact finder, to go out and
21 look, ask questions, document everything, and
22 place it in a report so that the Board can make

1 an informed decision.

2 MR. COOPER: So do you believe that the
3 compliance with the act with respect to the trash
4 collection is relevant in application or petition
5 for a change in the application?

6 MR. BRASHEARS: Well, my understanding
7 was that this was -- the protest was based on
8 peace, order, and quiet, that that was -- that
9 was what was given standing for. So, in that,
10 trash would fall under good order.

11 MR. COOPER: Okay. So if trash has not
12 been complied with, it is your opinion that
13 because the ANC appealed this change based on
14 peace, order, and quiet, that trash falls in and
15 establishment's compliance with trash regulations
16 is relevant?

17 MR. BRASHEARS: Yes.

18 MR. COOPER: Thank you. I have no
19 further questions.

20 CHAIRMAN ANDERSON: Do you have any
21 further questions?

22 MR. COOPER: Well, none other than these

1 photographs that you've taken, does it -- do they
2 reflect compliance with the act regarding trash?

3 MR. BRASHEARS: The photographs in
4 Exhibit 34, 35, and 37 basically depict a
5 violation of the settlement agreement, and that
6 the dumpster lid is supposed to be securely
7 closed. And the trash is clearly overflowing.

8 MR. COOPER: Let's go back to 30. You
9 picked our four, but let's go back to 30. Are
10 trash lids closed?

11 MR. BRASHEARS: No, sir, they are not.

12 MR. COOPER: How about 31?

13 MR. BRASHEARS: No, sir, they are not.

14 MR. COOPER: How about 32?

15 MR. BRASHEARS: No, sir, they are not.

16 MR. COOPER: How about 33?

17 MR. BRASHEARS: No, sir, they are not.

18 MR. COOPER: And, of course, 34?

19 MR. BRASHEARS: No, sir, they are not.

20 MR. COOPER: I believe you already said
21 35, 36, 37 reflect violations; is that correct?

22 MR. BRASHEARS: Yes, sir.

1 MR. COOPER: Thank you.

2 And on any other visits by you, did you
3 take photographs of the conditions of the trash
4 collection area?

5 MR. BRASHEARS: I visited the
6 establishment the following day and noted that
7 the trash was overflowing and listed that as a
8 violation, but I don't recall if I took photos.

9 MR. COOPER: Thank you.

10 No further questions.

11 CHAIRMAN ANDERSON: Thank you.

12 You are free to go.

13 MR. BRASHEARS: Thank you.

14 MS. MILLER: Mr. Chair, can I just ask
15 one more question on the trash? Sorry.

16 Mr. Brashears, Mr. Cooper just referred
17 to like --

18 CHAIRMAN ANDERSON: Hold on. This is --

19 MS. MILLER: No?

20 CHAIRMAN ANDERSON: This is the only
21 question that -- although it's not listed as the
22 way it should go, but since that's the only

1 question that will be asked, so you can go ahead.

2 MS. MILLER: Okay. It may be written in
3 your report. I'm not sure. But Mr. Cooper just
4 flagged like eight photographs of trash
5 violations, and I was just wondering if you could
6 put on the record, were they -- are these
7 different days? Are these different dumpsters,
8 or how many violations are depicted there really?

9 MR. BRASHEARS: Those were the photos
10 taken during the day that I did the photographs
11 and the interview with Ms. Antoine. So all the
12 photos referenced were on the same day. It was
13 just a -- I wanted to take an overall depiction
14 of the alley, the trash cans, the recycle bins,
15 and all of that. So all of that basically
16 constituted one violation.

17 MS. MILLER: Thank you.

18 MR. COOPER: Just may -- just one that --
19 because the exhibits have two different dates to
20 it, so I wanted to direct his attention back to
21 the first seven and then Nos. 36 and 37, which
22 have a different date on them. I just wanted to

1 -- for the record, so we're all clear.

2 CHAIRMAN ANDERSON: All right. Let the
3 record reflect that Exhibit 36 -- what's written
4 on the document states that it's dated July 25th,
5 2015, July -- I'm sorry. Exhibit -- what are the
6 numbers that you mentioned, sir?

7 MR. COOPER: Nos. 30 through 35 are noted
8 as July 23rd. Nos. 36 and 37 are noted as July
9 25th.

10 CHAIRMAN ANDERSON: Okay. The record
11 will --

12 MS. MILLER: Can I -- what we usually --
13 just allow questions on Board questions, which is
14 what yours seems to be, but I would just
15 appreciate it if Mr. Brashears could answer it as
16 a question, so that the record is complete,
17 because I think this is an important issue to
18 have clarity on what those photos represent.

19 MR. COOPER: So I guess may I --

20 MR. ALBERTI: Why don't you ask it?

21 CHAIRMAN ANDERSON: Mr. Brashears, did
22 you take these photographs, all the photographs

1 that are in the record?

2 MR. BRASHEARS: No, sir. I apologize.
3 It's been -- it's been a little while since these
4 photographs were taken. These photographs were
5 taken by another investigator doing monitoring of
6 the establishment in the evening, approximately 2
7 days after my visit. So this would constitute a
8 second violation.

9 CHAIRMAN ANDERSON: All right. Thank
10 you, sir.

11 This is your opportunity for -- at this
12 time. And so normally, we'll have questions be
13 asked, someone answers, but I'm not sure how is
14 it that you attempt to present your case. So
15 will you ask -- I'm sorry, and I'm bad with
16 names. So are you going to -- how are you going
17 to present your case? Are you going to just --
18 how do you plan to present your case?

19 MS. ANTOINE: Well, first off, are we
20 going to go through the clarification and what
21 the endorsement, entertainment endorsement is
22 altogether? Are we going to define that?

1 But with respect to trash, if we want to
2 go back to that, they're saying that it's in
3 violation. You know --

4 CHAIRMAN ANDERSON: All right. Hold on.
5 Hold on. Are both of you going to testify?

6 MR. REID: I mean, it's just saying. We
7 don't have to.

8 CHAIRMAN ANDERSON: I said, are both of
9 you going to testify?

10 MR. COOPER: Yes.

11 CHAIRMAN ANDERSON: Raise your right
12 hand, please, both of you. Do you swear or
13 affirm to tell the truth, the whole truth, and
14 nothing but the truth?

15 [Witnesses sworn en masse.]

16 CHAIRMAN ANDERSON: All right. You can
17 -- this is your opportunity to present your case,
18 so you can present your case in the way that you
19 -- whatever clarification you believe that you
20 need to provide to the Board, then you can
21 present that.

22 MS. ANTOINE: Okay. Well, I want to

1 touch on the trash mainly. I know we received a
2 violation, one of them for the trash.

3 You know, that alleyway in itself, for
4 most of the winter, they were replacing that
5 whole alley, and they did. There were times when
6 my dumpster couldn't get through to pick up
7 trash. Now, I know this was in the summertime,
8 but also on the H Street section, the D.C.
9 Government's housing -- I'm sorry -- welfare
10 office, for lack of a better term, were
11 renovating, and on that particular street, 8th
12 and H, it's a one-way, and the trash company
13 couldn't even get through that street because of
14 the many times they had closed it to allow these
15 large trucks with material to come there and, you
16 know, repair that building or renovate that
17 building. So there were many times when they
18 couldn't get to the alley to pick up dumpsters,
19 pick up the trash.

20 Like I said, that whole area is under a
21 lot of renovation, and a lot of times, even now,
22 I have to run out there and tell individual

1 contractors, hey, you have to move from the
2 alleyway so that the dumpster can get through,
3 because I know there's going to be a phone call
4 about it.

5 So, in all fairness, you know, there was
6 a lot going on -- and still is -- in that area
7 that sometimes the dumpster can't get through.

8 And there are times, yes, there -- you
9 know, the lids may not close on the trash because
10 we have trash. We're a restaurant. We do have
11 trash. There's deliveries in boxes that, you
12 know, things that we have to dump. So it's like
13 there is this only -- you know, this only thing,
14 we're bringing out Po Boy Jim is just trash, and
15 then there's this other issue with rats, when
16 D.C. has been inundated with rats from day one,
17 ever since I've known to be in the District.

18 So I don't know why this whole blaming
19 thing on Po Boy Jim, when two doors down, if you
20 were to go out there right there in that alley
21 right now, there's a bunch of trash and some type
22 of equipment sitting there that's been there for

1 as long as we've been there, but yet everything
2 is being pointed at Po Boy Jim.

3 And like I said, I mean, this is the only
4 way I can present my case. We have never had an
5 incident of police coming there, fire department
6 coming there, or anything like that. And it's
7 not like we couldn't have resolved all of this.

8 But let me go back to the very beginning
9 where we were opening up. The way I met Kim, who
10 is the resident behind us, she came in to Po Boy
11 Jim screaming "Fire! Fire! Fire!" There were
12 customers in there, and had I known that I would
13 be here today, I would have gotten the names of
14 those individuals. She came in the restaurant
15 with patrons in there screaming, "There's a fire!
16 There's a fire! There's a fire!" And I didn't
17 know who she was at that time.

18 Now, since then, you know, we exchange --

19 MR. REID: There was no fire.

20 MS. ANTOINE: -- numbers. There was no
21 fire out there. You know, police came, and they
22 were like, "Ma'am, ma'am, calm down. There is

1 nothing here." So, you know, a lot of this is
2 just I think a total disrespect.

3 I'm civil enough that anyone can come and
4 sit down and say, "Hey, listen, this is an issue
5 I'm having. Can you work on it or resolve it at
6 some point?" And like I told Kim before, I'm
7 there in the day for the most part. The nights
8 are my manager and my son, who is the chef.

9 And yes, they are younger, and there may
10 be a certain music that they'll listen to. I
11 don't understand why that should be prejudicial
12 at this point. Music is music.

13 And if you don't like that type of music
14 or whatnot, then I don't see the fairness in it
15 at all when you can render a decision on just the
16 basis of our music, if that may be the case.

17 So I just find the whole process -- I
18 just find it to be a little disrespectful.

19 Like I said, I'm civil enough that anyone
20 can come to me. They have sent people out there
21 to take pictures, non-ABC members or any
22 government official, sending the neighborhood to

1 take pictures and making phone calls. Hey, you
2 know, one of your staff members approached me.

3 And I remember an incident when my chef,
4 which I told him -- I said, "Listen, when you're
5 coming in here in the mornings, you walk the back
6 alley, and you take pictures of that area, the
7 trash area." He saw someone there, and this
8 person was taking pictures, and he said, "Sir,
9 you know, why are you taking pictures of our
10 trash?" He didn't know who he was. So he got on
11 the phone, and he called me. He said, "Listen, I
12 don't know who this man is, but I'm following him
13 into CVS to take his picture because he took a
14 picture of our trash.

15 Immediately, I knew who he was, and I
16 knew why they did it.

17 CHAIRMAN ANDERSON: We are going to take
18 a break for a couple of minutes, and when we come
19 back, one of the things I'll ask you to do in
20 presenting your case, you are asking for us for
21 an entertainment endorsement, so you need to let
22 us know what --

1 MS. ANTOINE: Sure.

2 CHAIRMAN ANDERSON: -- you're asking for
3 and why is it that you believe that the Board
4 should give you that endorsement.

5 MS. ANTOINE: Sure.

6 CHAIRMAN ANDERSON: So we'll just take a
7 5-minute break, okay?

8 [Recess taken from 3:19 to 3:30 p.m.]

9 CHAIRMAN ANDERSON: All right. We are
10 back on the record. We are in the continuation
11 of the protest hearing for Po Boy Jim, License
12 No. 087903, Case No. 15-PRO-00025. And the
13 Applicant is presenting its case.

14 One thing I just want to make the
15 Applicant aware for presenting your case, you're
16 requesting an entertainment endorsement. It's
17 been protested, and so, therefore, the burden is
18 on you to tell us exactly what it is that you are
19 seeking and whether or not you believe the impact
20 it will or will not have in the community. And
21 so that is the type of information that you need
22 to present to us. You will present that because

1 the burden is on you to let us know from your
2 perspective, what is it -- exactly what it is
3 that you're asking us for and how will it -- it
4 will have in this entertainment endorsement, how
5 will it impact or not impact the neighboring
6 community because that's your burden to present
7 to us.

8 And I am cognizant of the fact that you
9 are -- and if the ANC wasn't representative --
10 wasn't represented, I would be the same way
11 because I'm an ANC commissioner, so we don't
12 normally hire lawyers for issues. So -- and I've
13 -- I have observed some protest hearings, and the
14 ANC has been here unrepresented, and I wasn't on
15 the Board, but I saw that it was the same type of
16 issue.

17 Normally, it's the reverse, is that
18 there's an attorney here and there's an attorney
19 over that side, so I don't want you to feel that
20 I'm bending over backwards for them. I'm bending
21 over backwards because they don't have an
22 attorney, and you do. And if you didn't -- if

1 you didn't, we would be --

2 MR. COURTNEY: That's fine. We have no
3 objection.

4 CHAIRMAN ANDERSON: I just want to make
5 sure that everyone is clear where I stand because
6 my job is to make sure that both sides -- that
7 you have an opportunity to be heard, and that
8 when we go back there and deliberate, we're
9 making a decision because both sides have
10 presented their case and that -- for us to make a
11 determination, okay?

12 So tell us exactly what it is that you
13 are requesting and what impact, if any, it will
14 -- you believe it will have on the community and
15 the neighborhood.

16 MR. REID: All right. So, basically --

17 CHAIRMAN ANDERSON: And, again, you're
18 both under oath. I just want you -- all right.

19 MR. REID: Well, basically, what that
20 means is --

21 MR. SILVERSTEIN: So can we identify who
22 is speaking and -- we sort of switched witnesses,

1 so I think we need to identify. I think we have
2 to question the first witness first. We don't
3 question one at a time, do we?

4 CHAIRMAN ANDERSON: All right. Do you
5 have anything else to state? Then we'll have you
6 -- then you can go, and so, basically, what I
7 will do is that -- there are several ways to do
8 that. We can have both of you testify, ask
9 questions, or -- all right. So just identify who
10 is speaking, and I think more efficient -- and
11 then we can ask the questions. So just identify
12 yourself and then you can go ahead.

13 MR. REID: My name is Ian Reid. I'm the
14 nighttime manager.

15 MR. SILVERSTEIN: I'm sorry?

16 CHAIRMAN ANDERSON: I didn't get your
17 first name.

18 MR. REID: Ian Reid, and I'm the
19 nighttime manager.

20 CHAIRMAN ANDERSON: And I'm not picking
21 on Mr. Silverstein, but he doesn't hear well, so
22 that's why he always asks a whole lot, so --

1 MR. REID: I'm talking this louder or
2 talking to you louder?

3 CHAIRMAN ANDERSON: And you're making a
4 statement. If you hit that thing -- if you hit
5 that thing, it makes a whole lot of noise, and
6 I've been doing that up here, so just -- so just
7 cognizant of the fact that amplifies your voice,
8 okay?

9 MR. REID: All right.

10 CHAIRMAN ANDERSON: Okay, go ahead.

11 MR. REID: I'm Ian Reid, and I'm the
12 nighttime manager of Po Boy Jim, and by applying
13 for the entertainment endorsement, what that
14 means is that we plan on having events like
15 karaoke at our bar. We serve brunch on Sunday,
16 so maybe we might have like a -- maybe a
17 one-person band, a speaker singing blues or jazz
18 while people eat their brunch.

19 I know our alcohol distributors, they
20 like us a lot. They're, like, collaborating with
21 us and doing, like, events, like just as an
22 example, like Budweiser and Wings, where they

1 might come in and do like a promo on Budweiser,
2 and they might have like a deejay playing music
3 so people can listen to, make it a little bit
4 more entertaining.

5 The music won't affect -- well, I don't
6 think the music will affect the neighbors because
7 we're still a family-oriented restaurant, and
8 even though we will have things like that going
9 on, we still have like younger families, people
10 coming with their kids, and they want to sit down
11 and enjoy too. So it won't -- it will never turn
12 into, like, a nighttime club-type scene. You
13 know, we don't have a dance floor.

14 Just to make it easier on us -- I know,
15 right now, we play music off of Spotify, and
16 sometimes, you know, it -- when you put on a
17 certain station, it switches back and forth
18 between like different artists and stuff like
19 that. It's, like, inconsistent. So, with a
20 deejay, that will help us a lot more in that
21 sense because they can just play one time of --
22 you know, one type of music or whatnot.

1 As far as noise, I don't think the lady
2 is here. Those two cinder block walls that you
3 guys are talking about, that was a request from
4 the neighbors to barricade sound. We spent
5 \$8,000 putting those two cinder block walls up,
6 so sound won't penetrate those walls. That's
7 like a level of soundproofing that we did.

8 We didn't have to do that. We didn't
9 even have the money to do it, but we did it. But
10 the neighbor there behind us during the
11 construction phase of the restaurant, the fact
12 that they want -- when we were first in
13 construction.

14 And as far as that goes, sometimes we
15 have people that come in and request that they
16 might want to, like, paint pictures and sip wine
17 and whatnot, and they might want to have, like,
18 some -- I don't know -- sexy jazz or something
19 playing. You know, the reason why we're applying
20 for this license is to accommodate those people,
21 and this is not like an everyday thing. This is,
22 you know, like I said, a couple times out the

1 week, maybe, and we want to be able to have that
2 option also to be in -- also, like other
3 restaurants on our street, they have this
4 endorsement. So, in order for us to compete, you
5 know, we need these things too. I don't think we
6 should be singled out without it.

7 We have one of the most diverse crowds at
8 our restaurant. We have all shades, cultures,
9 and size that come into our restaurant. We're
10 not going to change that. We want to maintain
11 that same. We want everybody to feel the vibe.
12 We want everybody to feel comfortable when they
13 come in there. So, club scene, that's out of the
14 picture. There will never be that because we
15 know that would scare some people away. We're
16 not going in that direction.

17 Another thing is right now, we have 80
18 percent food sales, and our alcohol sales is at
19 20 percent, which is unheard of in a restaurant.
20 You know, we need, like, entertainment, to spice
21 up our bar a little bit. We have like a born-bar
22 [ph] guest, so people don't hang around as much.

1 So, you know, if it's entertainment, we believe
2 that it might help a little bit. You know, it
3 just -- we could just have, like, creative -- we
4 can do creative things with our Po Boys, our
5 food, and music, and just entertainment of that
6 source. That's all it's for. It's not like, you
7 know, to be a club or any crazy thing like that.

8 As far as that back room that you guys
9 were -- with the French doors or whatnot, we
10 don't even have speakers back there. We limit,
11 like, the sound. We stop the sound at the
12 restaurant way up from by the bar, so sound
13 doesn't travel all the way back there. You can't
14 hear sound in the alley.

15 I've turned the music up louder than we
16 would ever play it at that restaurant and stepped
17 into the alley. You can't hear music. We spent
18 like \$200 on the entire stereo system for a
19 two-level restaurant. It's a cheap stereo
20 system. You can't hear music. You just can't.
21 I mean, it would have to be completely dead
22 silent, like a bang for you to hear a sound.

1 I mean, as far as, like, bass and all
2 that craziness, there's no bass there. There's
3 no loud music there at all.

4 As you can see in the pictures, those
5 speakers, they're tiny, and those speakers in the
6 back aren't even hooked up, you know, because we
7 don't have that endorsement yet.

8 And I don't --

9 MS. ANTOINE: The speakers?

10 MR. REID: Yeah.

11 And as far as like the entertainment, it
12 will only be centered, like, around the bar.

13 It will be at the bar, and there's not
14 even a lot of room for it, so you don't have to
15 worry about crazy equipment going in because we
16 just don't have the space for it.

17 Like I said, it would be like a
18 one-piece, two-piece person. I know there are
19 people you can hire to come in for karaoke, and
20 they bring, like, I guess the stuff to put the
21 words on a TV and the lights and whatnot.

22 I'm trying to find --

1 MS. ANTOINE: Exhibit 24?

2 MR. REID: Yeah. So if you look at
3 Exhibit 24, that back wall that you see with the
4 little opening going out to the rear stairs,
5 that's like where our last speaker stops.
6 There's no speakers past that point, and then
7 it's not even facing the direction of the window.
8 So the sound actually comes in towards the bar,
9 and on top of that, the sound to even go -- I
10 mean, it's not going to pass -- with the system
11 that we have now, I mean, sound won't travel
12 through those walls, through the patio doors,
13 through the outdoor garden, past the two cinder
14 block walls. It's not going to do that. I mean,
15 it doesn't do it now.

16 I guess that's all I have to say.

17 CHAIRMAN ANDERSON: So because this is
18 you presenting your case, is this it? Is this
19 the extent of the presentation of your case?

20 MR. REID: Yeah.

21 MS. ANTOINE: I guess.

22 MR. REID: Yeah, I guess.

1 CHAIRMAN ANDERSON: Now, it's a little
2 bit unorthodox. Now the Protestants have an
3 opportunity to ask questions. Will you be the
4 only person asking questions?

5 MR. COOPER: Yes. I would be the only
6 one asking questions, and they would be filtered
7 through me if there were other questions. Yes.

8 CHAIRMAN ANDERSON: Then what I'll ask is
9 that you'll ask one person at a time, so you
10 don't -- so that you ask one person certain
11 questions, and then when you're done questioning
12 that person, then you can ask the other person
13 questions rather than going -- I know it's
14 somewhat unorthodox, but I'm not quite sure how
15 to -- how best to do that.

16 MR. COOPER: And, frankly, I don't
17 either, and so I think if I ask a question, they
18 can decide who to answer because I don't know
19 who's got expert subject-matter expertise on any
20 given issue.

21 MR. REID: Just ask me.

22 MR. COOPER: I'll ask a question, and

1 I'll direct it towards Mr. Reid, and then if he
2 --

3 CHAIRMAN ANDERSON: Okay.

4 MR. COOPER: I'll just direct my
5 questions to Mr. Reid.

6 CHAIRMAN ANDERSON: Sure. That's fine.

7 MR. COOPER: Well, I guess I should ask
8 you actually -- well, Mr. Reid, did you prepare
9 the entertainment endorsement application?

10 MR. REID: I think I was the one that
11 helped do it, yes.

12 MR. COOPER: Okay. So do you recall
13 checking the boxes on the application?

14 I'm going to hand you the -- well, this
15 is the application that was filed in October.

16 MR. REID: Mm-hmm.

17 MR. COOPER: Even though the report makes
18 reference to a January application -- well, maybe
19 I'll just -- I apologize. I'm going to show you
20 the one that was filed on January 29th. It's --
21 both of the -- this one is January 29th.

22 Is that your signature? Whose signature

1 is that?

2 MR. REID: That's my aunt. That's my
3 aunt.

4 MR. COOPER: And that's Ms. Antoine who
5 is sitting next to you?

6 MR. REID: Mm-hmm, mm-hmm.

7 MR. COOPER: Okay. So she filled this
8 out. She signed it, correct? It's notarized.

9 MR. REID: Yeah.

10 MR. COOPER: Okay. So then I guess I
11 will direct my questions to Ms. Antoine, then.

12 Ms. Antoine --

13 MS. ANTOINE: Sure.

14 MR. COOPER: Let me make sure I get the
15 right one.

16 MS. ANTOINE: Over here?

17 MR. COOPER: The other one right before
18 it.

19 MR. ALBERTI: So, Mr. Cooper, for the
20 record, you're showing them the application
21 Bates-stamped January 29th, and your questions
22 are directed towards that application?

1 MR. COOPER: Yes. There are actually --

2 MR. ALBERTI: Okay. Just for the record.

3 MR. COOPER: There are two. The very
4 first application, the one Bates-stamped January
5 29th and notarized at the bottom, January 29th.

6 MR. ALBERTI: Okay.

7 MR. COOPER: So, Ms. Antoine, is that
8 your signature at the bottom?

9 MS. ANTOINE: Yes. I'm Rebecca Antoine.
10 Mm-hmm.

11 MR. COOPER: And did you complete this
12 application?

13 MS. ANTOINE: Yes.

14 MR. COOPER: Okay. I am going to direct
15 your attention up to the 1A, where it says "to be
16 complicated by Applicant," that section up there.

17 MS. ANTOINE: Mm-hmm.

18 MR. COOPER: You checked -- two boxes are
19 checked, Entertainment and Dancing; is that
20 correct?

21 MS. ANTOINE: Yeah, I see it. Mm-hmm.

22 MR. COOPER: Okay. Are you requesting

1 ABRA approve the entertainment endorsement to
2 allow dancing at your establishment?

3 MS. ANTOINE: How do you -- when someone
4 hears music, there's no dance floor, but if
5 someone is standing at the bar, they'll -- they
6 can stand there and move their bodies. I don't
7 know how you stop it, but there's no dance floor.
8 But people tend to -- if they hear something
9 nice, a song that they like, they will -- they
10 will dance. I don't understand.

11 MR. COOPER: So you were not
12 contemplating and you are not asking that the
13 entertainment endorsement permit you to create a
14 dance floor?

15 MS. ANTOINE: No. No.

16 MR. COOPER: Okay. And when you check
17 the box, Entertainment, what was your -- what
18 were you requesting be permitted as far as
19 entertainment?

20 MS. ANTOINE: Well, we -- number one, we
21 had in my -- the karaoke, which involves your
22 patrons, you know. It's someone that's there

1 that's handling the equipment and getting the
2 crowd involved or whoever is there getting them
3 involved in the singing or what have you with the
4 karaoke machine. So that individual, as far as I
5 know, is called a deejay.

6 MR. COOPER: Okay. And what other -- so
7 the deejay, you're contemplating is limited only
8 to the karaoke?

9 MR. COOPER: The karaoke and --

10 MR. REID: Whatever event we might have.

11 MS. ANTOINE: Whatever -- I don't know.
12 Whatever other event we have, and they provide
13 someone that handles the entertainment piece,
14 meaning if that individual brings -- I know some
15 deejays will have, like, their little computer,
16 like a little laptop type of thing, where they
17 work from there.

18 MR. COOPER: So you're contemplating a
19 deejay in instances when there's a karaoke
20 machine --

21 MS. ANTOINE: Mm-hmm.

22 MR. COOPER: -- and people are singing

1 along with the screen.

2 MS. ANTOINE: Yeah.

3 MR. COOPER: But you're also requesting
4 that there be permitted a deejay when there's not
5 karaoke but just for events.

6 MR. REID: Yes.

7 MS. ANTOINE: That's correct.

8 MR. COOPER: Okay. And what other
9 entertainment are you contemplating or requesting
10 be permitted under your entertainment
11 endorsement?

12 MS. ANTOINE: Well, like we said earlier,
13 when we have our brunch and we have our patrons
14 there, you know, our vision is to have a
15 one-person or what have you either doing a little
16 singing, or, you know, if they have some type of
17 jazz instrument, that they entertain the crowd
18 with just by playing it.

19 MR. COOPER: Okay. And what else?
20 Anything else?

21 MR. REID: Maybe poetry someday. Maybe

22 --

1 MS. ANTOINE: We have like -- Budweiser,
2 some of our -- they do events. They collaborate
3 with us to do events to promote the business.

4 MR. COOPER: What type of -- focus on the
5 type of entertainment you're contemplating.

6 MR. REID: Well, deejay sums it all up.

7 [Simultaneous speaking.]

8 CHAIRMAN ANDERSON: Only one person can
9 --

10 MS. ANTOINE: It's just poetry. It's
11 just a deejay. I don't know how to define a
12 deejay.

13 CHAIRMAN ANDERSON: Maybe counsel --
14 maybe why don't you ask specific questions in the
15 sense that are you planning to have X, Y, Z,
16 because I think that I know where you're going,
17 but maybe to get a better answer, why don't you
18 ask the questions -- you know what type of
19 entertainment that your client opposes. So why
20 don't you ask them the question from that -- are
21 they planning to have this type of entertainment.

22 MR. COOPER: Again, I don't have an

1 exhaustive list of every conceivable means of
2 entertainment. It's their application. They
3 have an idea of what they want to do. I have no
4 idea what they want to do.

5 CHAIRMAN ANDERSON: Well, I --

6 MR. COOPER: I don't want to get into
7 "Well, you didn't ask me that, and so, therefore,
8 I'm going to do it."

9 So I think my question -- I'm just trying
10 to get an idea, since this thing has moved around
11 some -- and I'm going to get to some specific
12 questions in a minute. I just want to get a list
13 of their idea of what they want to do at this
14 establishment.

15 So we talked the deejay with the karaoke
16 machine, a deejay with regular -- without
17 karaoke, brunch, perhaps one person singing, an
18 instrument, poetry, and then Budweiser events
19 that have not yet been described as to what those
20 events are. If it's part deejay, fine.

21 Are we -- you know, I can say, "Are you
22 planning to have a go-go band?" I could ask,

1 "Are you having a zydeco band?" I don't know.
2 So I don't want to get into a list of trying to
3 figure out what it is. They know what they want
4 to do. It's their application.

5 MS. ANTOINE: No.

6 CHAIRMAN ANDERSON: Well, when you are
7 asking, it's not like they're -- and it's -- and
8 they're -- well, there's never an exhaustive list,
9 but I think that the community is clearly aware
10 of -- and from what I was told, that the proffer
11 that was made, at least earlier from the
12 community, I mean, if they're only -- if they're
13 doing certain things, if this is all they're
14 doing, then we don't have a protest, and so,
15 therefore -- however, we would -- we will have a
16 protest if they're doing these type of events.

17 So, therefore, I think that it would be
18 -- we'll get -- we'll get further if you put
19 together -- ask the questions of the event that
20 the community specifically have concerns with
21 because these are the events that the community
22 believes will impact -- impact our living.

1 MR. COOPER: And I think they will get to
2 that as far as what they believe will impact
3 them, and so I will try.

4 With the Budweiser package or options,
5 what is it that you contemplate a vendor
6 providing?

7 MR. REID: So they might bring in, like,
8 girls and stuff to pass around promo drinks, and
9 they might also have, like, a deejay playing
10 music that everybody listen to. I know that,
11 like, they just might be scared of go-go or that
12 type of music, so we keep our neighbors and also
13 our patrons that come in on an everyday basis and
14 we -- like I said, our establishment is made to,
15 you know, be comfortable, comfort everybody.

16 So, you know, they might come in and have
17 a deejay playing -- I don't know -- Brittny
18 Spears or something or -- I don't know, music
19 that everyone listens to, music for everyone,
20 while they're passing around drinks. It makes
21 the event more fun.

22 MR. COOPER: Okay. So let's -- so we

1 have ruled out the dance floor, dancing.

2 MR. REID: Mm-hmm.

3 MR. COOPER: So on the karaoke, you have
4 asked for the entertainment endorsement to permit
5 you to have entertainment till ten o'clock at
6 night, Sunday through Thursday, till two in the
7 morning on Friday and Saturday. So is it your --
8 on your entertainment endorsement request, are
9 you suggesting that deejay, karaoke can go until
10 two o'clock in the morning on Friday and Saturday
11 night?

12 MR. REID: SO maybe we might have that
13 option. I mean, I'm pretty sure around that
14 time, we're closing, so we probably want
15 everybody out of there. The reason why we put
16 those hours is just not to limit us. You know,
17 just in the event we want to be protected because
18 we know that the moment we don't go strictly by
19 what's on this paper, we're getting a phone call,
20 and it's going to be a big thing. So we just did
21 that sort of as a cushion to protect us in the
22 event. Around two o'clock, I highly doubt that a

1 deejay is still going to be playing music because
2 we still have to clean up. Our staff is ready to
3 leave. We've got to clear people out.

4 So, you know, like I said, it's --

5 MR. COOPER: So, again, this is your
6 application, and you put 2 a.m.

7 MR. REID: So, yes, 2 a.m.

8 MR. COOPER: I'm just trying to --

9 MS. ANTOINE: That's our hours of
10 operation.

11 MR. REID: To be on the safe side.

12 MR. COOPER: So are you -- is your
13 request limiting, as you put it in there under
14 10, that the Po Boy Jim will offer deejay on
15 weekends? Are you saying that the deejay will be
16 there on Friday, Saturday?

17 MR. REID: Not every Friday and Saturday.
18 Maybe. We did it so when we want to have events,
19 we have that option.

20 MR. COOPER: Okay. And you put karaoke
21 once a week. What --

22 MR. REID: Like during happy -- or --

1 MR. COOPER: What time is your happy
2 hour?

3 MR. REID: Four to seven.

4 MR. COOPER: Okay. And so your karaoke
5 would run between those hours?

6 MR. REID: Mm-hmm.

7 MR. COOPER: And no karaoke after seven?

8 MS. ANTOINE: I didn't say that.

9 MR. REID: I don't want to -- like I
10 said, I don't want to limit us.

11 MR. COOPER: Well --

12 MR. REID: I mean, I'm not -- you know,
13 if the bar is still -- people are still there and
14 they're having fun and enjoying themselves, as
15 long as we're not disturbing the neighbors, as
16 long as we keep music to a peaceful level, I
17 don't see what the problem with going past.

18 MR. COOPER: But that's what we're trying
19 to establish. I think --

20 MR. REID: I mean, it seem like you're
21 trying to put a whole bunch of restrictions in
22 that. It's --

1 MR. COOPER: This -- this --

2 MR. REID: We just want to be --

3 MR. COOPER: This body presents
4 restrictions. It won't let you do a lot of
5 things. It doesn't let you sell alcohol to
6 minors. It doesn't let you sell alcohol at
7 certain hours.

8 [Simultaneous speaking.]

9 CHAIRMAN ANDERSON: Hold on. Hold on,
10 please.

11 Counsel, please ask a question.

12 MR. COOPER: If there are restrictions
13 that are --

14 CHAIRMAN ANDERSON: But you have to ask
15 -- you have to ask a question, please, and we'll
16 leave the commentary for closing.

17 MR. COOPER: Well, there are two --

18 CHAIRMAN ANDERSON: At this juncture,
19 just ask direct questions, please.

20 MR. COOPER: I turn your attention to the
21 -- to the -- there are two applications before
22 the -- and I'm not sure which one we're quite

1 under. One says from seven to ten, Sunday
2 through Thursday, and then 6:30 to two. The
3 other says six to ten and six to two Friday and
4 Saturday. There's also a request regarding
5 brunch. What time is your brunch on Sunday?

6 MR. REID: What time --

7 MS. ANTOINE: Brunch starts from 11 a.m.
8 to 3.

9 Let me go back here a minute, if I may.
10 This is an administrative error here. I recall
11 that -- it's been so long, but one of these was
12 supposed to replace the other. I'm not sure why
13 both are in here, but I do recall this, this
14 particular piece here.

15 CHAIRMAN ANDERSON: But which is the
16 Applicant that we are voting on today?

17 MS. ANTOINE: This, this first one.

18 CHAIRMAN ANDERSON: I'm sorry. What --
19 tell me --

20 MS. ANTOINE: The one that has -- is that
21 January 29th?

22 CHAIRMAN ANDERSON: Is that the one

1 that's date-stamped January 29th? January 29th,
2 is that -- is this the application that we are --

3 MS. ANTOINE: Let me make sure.

4 CHAIRMAN ANDERSON: Only one is
5 date-stamped.

6 MS. ANTOINE: Mm-hmm.

7 MR. REID: Oh, no. The other one is too.

8 CHAIRMAN ANDERSON: One document -- I'm
9 looking at two documents. Only one document is
10 date-stamped January 29th, January 29th.

11 MS. ANTOINE: It's this one.

12 MR. REID: When it says hours
13 entertainment begin after 6 p.m., does that mean
14 that's the only time you can play, the
15 entertainment come on?

16 CHAIRMAN ANDERSON: Well, you need to
17 tell us. We have -- what I'm -- this is -- we
18 have two documents in front of us, and you said
19 one was supposed to replace the other. So let us
20 know which -- and the two documents that we have,
21 which one is the application that you wanted to
22 -- that you want us to utilize?

1 MS. ANTOINE: The one, in the top
2 right-hand corner, it says Greene.

3 CHAIRMAN ANDERSON: The one that says
4 Greene?

5 MS. ANTOINE: Mm-hmm.

6 CHAIRMAN ANDERSON: So that is a --

7 MS. ANTOINE: I believe that was the
8 individual that was working here at the time.

9 CHAIRMAN ANDERSON: So that is your
10 application?

11 MR. ALBERTI: Chairman Anderson, may I
12 interject?

13 MR. REID: Yeah.

14 MS. ANTOINE: That's it.

15 MR. ALBERTI: Just please pause, if I
16 have to interject.

17 The placard that was posted for the --
18 for the neighborhood said 10 a.m. to 2 a.m. for
19 weekends and 10 a.m. to 10 p.m. for weekdays.

20 CHAIRMAN ANDERSON: Which one is that?

21 MR. ALBERTI: And, actually, Wednesday is
22 till 1 a.m. So that is consistent with -- I'm

1 just pointing this out. You can decide what you
2 want to do, but that is consistent with the one
3 that has Greene on the top. I just wanted to
4 have that piece of information available.

5 CHAIRMAN ANDERSON: All right. So the
6 application that we are voting on is the
7 application that says --

8 MS. ANTOINE: Greene.

9 CHAIRMAN ANDERSON: -- Greene, having the
10 Greene endorsement on it, so everyone is clear.
11 So we can disregard the application that says --
12 that's date-stamped January 29th, okay?

13 MR. COOPER: Okay. So what -- your
14 brunch is from eleven in the morning till three
15 in the afternoon; is that correct?

16 MR. REID: Mm-hmm.

17 MR. COOPER: Okay.

18 CHAIRMAN ANDERSON: And for the -- for
19 her purpose, you need to say "yes" or "no,"
20 please.

21 MR. REID: All right.

22 CHAIRMAN ANDERSON: The transcriber,

1 please say "yes" or "no."

2 MR. REID: All right.

3 MR. COOPER: During your current
4 operations, are there occasions where the patio
5 doors on the second floor, the French doors on
6 the second floor, are open?

7 MR. REID: Maybe sometimes if people mop
8 the floor, and they'll be wanting like the air to
9 dry the floor quicker, or if it's nice outside,
10 you might have it open.

11 MR. COOPER: What do you mean by nice
12 outside?

13 MR. REID: Like, if a summertime, let a
14 nice breeze come in while people eat, we might
15 open the patio door.

16 MR. COOPER: Okay. So, in the
17 summertime, you have the doors opened?

18 MS. ANTOINE: Mm-hmm.

19 MR. REID: Sometime.

20 MR. COOPER: Okay. How often?

21 MR. REID: I don't know. I can't put the
22 weather every day. It depends on the weather.

1 MR. COOPER: Well, let me -- I'm trying
2 to find out how often, when it's nice out in the
3 summer, do you have the doors open. If you have
4 a very nice week all week and the weather is
5 beautiful, it's in the summertime, and it's
6 beautiful all day, do you have the windows -- the
7 doors open during those time frames?

8 MR. REID: Yeah.

9 MR. COOPER: Okay. So you open at eleven
10 to ten on Sunday through Thursday and from --
11 well, and here, it says eleven to two, the one we
12 work off of, and if it's nice during those time
13 frames, you'd have the doors open; is that
14 correct?

15 MS. ANTOINE: Not until 2 a.m., no.

16 MR. REID: Right.

17 MR. COOPER: What time do you ensure that
18 the doors are closed?

19 MS. ANTOINE: For the most part, we've
20 been closing our doors on Sundays by 12 midnight.
21 That particular room is usually the first to get
22 shut down, and it's never been my recollection

1 that that -- those doors have been open past 10
2 p.m.

3 MR. COOPER: You testified you're only
4 there during the daytime?

5 MS. ANTOINE: For the most part, yes.

6 MR. COOPER: So how would you know what
7 happens at night?

8 MR. REID: I'm pretty sure she --

9 MR. COOPER: I work some --

10 [Simultaneous speaking.]

11 CHAIRMAN ANDERSON: Only one person can
12 answer at a time, please.

13 MS. ANTOINE: I've worked -- I've worked
14 some nights. I have. And I -- even though I'm
15 not there physically, I am calling on the phones,
16 and the other manager who is there most of the
17 times at night --

18 MR. REID: And the cameras.

19 MS. ANTOINE: -- I let her know, you
20 know, when to close down or whatnot, and for the
21 most part, that particular room is the first to
22 be shut down.

1 With respect to just opening up and
2 leaving it like that in the summertime, we don't
3 do it because of flies, but if the customer comes
4 in and says, "Hey, can we have the doors opened,"
5 we will accommodate them.

6 I don't recall of an instance of someone
7 doing that late at night. You know, if I'm there
8 or, you know, I could see on the cameras because
9 I do look at the cameras while I'm home, and I
10 will let them know, "Hey, close this off. Close
11 that off." But that is the first room to be shut
12 down, you know, when it's time -- way before it's
13 time, I should say, to close.

14 MR. COOPER: And let me ask you. You
15 stated that this summer, at some point in the
16 summer, you did not have the summer garden
17 endorsement; is that correct?

18 MS. ANTOINE: Right.

19 MR. COOPER: Did you ever use the summer
20 garden this summer?

21 MS. ANTOINE: No. We didn't use the
22 summer garden. The employees go out there for

1 lunch, if anyone that goes out there. If it's a
2 nice day, they sit outside and have lunch.

3 And when I say lunch, there are
4 individuals that work in the afternoon. That
5 lunch for them is at 6 or 7 p.m.

6 MR. COOPER: Right.

7 MS. ANTOINE: Mm-hmm.

8 MR. COOPER: I have no further questions
9 at this time.

10 CHAIRMAN ANDERSON: All right.

11 MR. ALBERTI: Can we do a time check?
12 Chairman Anderson, can we do a time check just --
13 I think the Protestants have probably eaten up a
14 lot of time, and I think it in fairness to them
15 to give them a benchmark of where they are.

16 I'm testing Mr. Short's skills.

17 MR. SHORT: The Applicant has 66 minutes.
18 The ANC and -- well, Protestants have 70 minutes.

19 MR. ALBERTI: Is that they used 70
20 minutes or have 70 minutes?

21 MR. SHORT: No, they have 70 minutes.

22 MR. ALBERTI: Protestants have 70 minutes

1 left?

2 MR. SHORT: They have 70 minutes left,
3 and the Applicant has 66 minutes left.

4 MR. ALBERTI: Okay. Thank you.

5 CHAIRMAN ANDERSON: All right.

6 MR. COOPER: We won't be using 70
7 minutes.

8 CHAIRMAN ANDERSON: All right. Well, the
9 Board might.

10 We now have an opportunity for the Board.
11 Are there any questions by the Board?

12 Yes, Mr. Silverstein.

13 MR. SILVERSTEIN: I have some questions
14 of clarification to ask Ms. Antoine and Mr. Reid.

15 First, do you have any plans at all to
16 have any entertainment in the summer garden?

17 MR. REID: Yes.

18 MR. SILVERSTEIN: When --

19 MR. REID: Hold on. Entertainment in
20 summer garden, no. Sorry. You mean like a band
21 in the summer garden?

22 MR. SILVERSTEIN: Pardon?

1 MR. REID: You mean like a band or like a
2 deejay in a summer garden, right?

3 MR. SILVERSTEIN: Like anything in the
4 way of amplifying music from inside or anything
5 outside that would be considered under the terms
6 of an entertainment endorsement.

7 MS. ANTOINE: Not in the summer garden,
8 no.

9 MR. REID: No.

10 MR. SILVERSTEIN: What is -- if you had
11 to live with something, what's your best offer on
12 what you need for entertainment inside timewise?
13 What's -- do you really plan on going till two
14 o'clock in the morning on weekends?

15 MR. REID: So is there like a way that we
16 can --

17 CHAIRMAN ANDERSON: I think it's kind of
18 unfair to -- I mean, I think we can decide.

19 MR. SILVERSTEIN: We often ask these --
20 no, I'm not -- we were not sure until we got
21 here, basically, what was being asked for, and I
22 still want to know.

1 What is it that you really plan to do?
2 What's the latest that you regularly plan to go
3 on weekends?

4 MR. REID: Can I ask? So does it matter
5 if they can't hear us, period? I'm not trying to
6 be disrespectful, but does it matter what time we
7 go to if they don't know what's going on inside?
8 I mean, it's not like we're going to be breaking
9 the rules, so --

10 MR. SILVERSTEIN: Well, I'm asking the
11 question.

12 MR. ALBERTI: I think he answered your
13 question, Mr. Silverstein.

14 MR. SILVERSTEIN: Is the answer two
15 o'clock, then?

16 MR. REID: Yeah.

17 MR. SILVERSTEIN: Okay.

18 MR. REID: It's not a -- yeah.

19 MR. SILVERSTEIN: Not a problem.

20 CHAIRMAN ANDERSON: Do you have any other
21 questions, Mr. Silverstein?

22 MR. SILVERSTEIN: No, I do not. The key

1 question was about outdoors.

2 CHAIRMAN ANDERSON: All right.

3 [Simultaneous speaking.]

4 CHAIRMAN ANDERSON: No, you haven't lost
5 your chance.

6 Yes, Mr. Alberti.

7 MR. ALBERTI: Okay. So I just want to --
8 I'm going to follow up to Mr. Silverstein's
9 question about the outdoors, just so you
10 understand. When he talks about entertainment in
11 the outdoors, if you were -- if you had a deejay
12 inside --

13 MR. REID: Mm-hmm.

14 MR. ALBERTI: -- and piped the music
15 outside --

16 MR. REID: Mm-hmm.

17 MR. ALBERTI: -- we would consider that
18 --

19 MR. REID: Uh-uh.

20 MR. ALBERTI: -- as entertainment
21 outside. So you're not --

22 MS. ANTOINE: No.

1 MR. REID: No.

2 MR. ALBERTI: You have no problem -- you
3 would have no problem restricting the
4 entertainment to not -- having a restriction on
5 entertainment in the summer garden?

6 MR. REID: Yeah, that's fine.

7 MR. ALBERTI: Okay, great.

8 I'll just point out for the record, you
9 haven't been issued a summer garden endorsement.

10 MR. REID: Right. Yeah, yeah.

11 MR. ALBERTI: You haven't completed
12 whatever paperwork is necessary.

13 MR. REID: Yeah.

14 MR. ALBERTI: But, hopefully, you know,
15 for your sake, in the future, you'll get that
16 together, but anyways, all right.

17 So I think we settled the issue with the
18 dance floor. Ms. Antoine, I'm probably one of
19 those people who would start dancing, but -- so
20 you really don't want to create a dance floor.

21 MS. ANTOINE: No.

22 MR. ALBERTI: Okay, great. So where do

1 you intend to have entertainment? You have two
2 floors. Where would you intend to have
3 entertainment?

4 MR. REID: Upstairs.

5 MR. ALBERTI: Now, this means any place
6 that entertainment could be heard.

7 MR. REID: Right. So upstairs at the bar
8 or the main part because, like I said, like, the
9 way the building is designed, like, downstairs is
10 a lot more quiet for people that want to come in
11 with, like, their kids and stuff like that. It's
12 a lot more piped down. And I guess the bar will
13 be the more exciting part. So the entertainment
14 will be at the bar because during entertainment,
15 you know, we would still want families that come
16 in, you know, and hang out and feel comfortable,
17 too, with their babies and whatnot.

18 MR. ALBERTI: Okay. So what you are
19 telling me here -- this is important --

20 MR. REID: Right.

21 MR. ALBERTI: -- is that you would not
22 pipe any of the entertainment. If you had a

1 deejay upstairs, you wouldn't pipe that sound
2 into the downstairs.

3 MR. REID: I would say no, but say we had
4 like a special event. I'm just asking. Like,
5 say we had one special event where we might have
6 did that with somebody renting out the whole
7 entire building, because we have people that want
8 to rent out the building, maybe for something
9 like that.

10 MR. ALBERTI: Absolutely. So I
11 understand, one time means yes? You have that
12 intention of doing that?

13 MR. REID: So -- okay.

14 MR. ALBERTI: I mean, that's the way it
15 is. I mean, it's either yes or no.

16 MR. REID: So I guess we'd have to say
17 yes then, if we have to.

18 MS. ANTOINE: Yes.

19 MR. ALBERTI: Okay, that's fine. Okay,
20 that's fine.

21 All right. So now I'm looking at the
22 upstairs here, all right? And you've got the bar

1 area, and then you have this seating. I'm
2 looking at -- you've got a picture at 23, Exhibit
3 23 in the investigator's report.

4 MR. REID: Uh-huh.

5 MR. ALBERTI: Before we get there, do you
6 know whether those buildings behind you are
7 residential or not?

8 MS. ANTOINE: Yes.

9 MR. REID: Yeah, they are.

10 MR. ALBERTI: Are they two-story row
11 homes?

12 MS. ANTOINE: Yes.

13 MR. REID: Yeah.

14 MR. ALBERTI: Like most in the area?
15 Okay.

16 MR. REID: Yes.

17 MR. ALBERTI: Great. So let's go back to
18 picture 23. That's the front room?

19 MS. ANTOINE: Yes.

20 MR. ALBERTI: Upstairs. You've got the
21 seating area upstairs, and that's picture 24,
22 right?

1 MS. ANTOINE: Mm-hmm.

2 MR. ALBERTI: And then looking from that
3 seating area on picture 24, towards the back,
4 you've got what's been referred to as the sun --
5 sun porch, all right?

6 MS. ANTOINE: Yes.

7 MR. REID: Yes.

8 MS. ANTOINE: Mm-hmm.

9 MR. ALBERTI: And the sun porch has how
10 many windows, how many French doors?

11 MR. REID: Six.

12 MR. ALBERTI: Six.

13 MR. REID: Two, two, two.

14 MR. ALBERTI: Okay. So they are French
15 doors?

16 MR. REID: Yeah, they're French doors.

17 MS. ANTOINE: French doors.

18 MR. ALBERTI: Okay.

19 MS. ANTOINE: Three French doors.

20 MR. ALBERTI: Okay. So I'd prefer for
21 the record that one of you answer me. I don't
22 want to be mean, but we have to keep this kind of

1 -- just so that the transcript isn't confusing.

2 Okay.

3 So we have -- so we have six glass panes
4 back there --

5 MR. REID: Yeah.

6 MR. ALBERTI: -- which are sort of door
7 height?

8 MR. REID: Yes.

9 MR. ALBERTI: Okay. Is there any -- I
10 see this open, like, window area between the
11 seating area and that sun -- that sun porch.

12 MR. REID: Yes.

13 MR. ALBERTI: Is that just open?

14 MR. REID: Yeah, it's just like a little
15 opening. Yes.

16 MR. ALBERTI: Okay. So there's no way of
17 restricting sound between those two areas?

18 MR. REID: Yes. There's still a storage
19 cabinet in between that space right there.

20 MR. ALBERTI: But there's -- but sound is
21 free to travel from the seating area to that back
22 room, right?

1 MR. REID: Yeah. I mean yes.

2 MR. ALBERTI: All right. I'm just
3 trying to get picture here of what's going on.
4 All right.

5 I'm going to sort of tip my hand at my
6 concern here, and then you can -- you can respond
7 to my question. You've got six panes of glass in
8 the back. They don't do very well insulating
9 sound. I mean, it doesn't take Einstein to know
10 that. I've been here listening to lots of
11 testimony. I know that from other cases.

12 You have an alley that's -- you've got 20
13 feet of yard, and then you've got 10 feet of
14 alley before you get to the next residential
15 building.

16 MR. REID: We have --

17 MR. ALBERTI: Twenty feet of yard?

18 MR. REID: We got 20 feet, and then you
19 have an additional -- I would say 6 feet, and
20 then you have the alley.

21 MR. ALBERTI: Okay.

22 MR. REID: And then you have the --

1 MR. ALBERTI: Then you have the building.

2 MR. REID: -- the first, the very first
3 -- which is a yard, and then the house is way
4 over there somewhere.

5 MR. ALBERTI: All right. But my concern
6 is, is sound escaping out through those glass
7 windows? Any idea how you would mitigate that
8 sound escaping that?

9 MR. REID: So what does sound mean? That
10 means if you could hear like anything? That's
11 what sound means?

12 MR. ALBERTI: Well, yeah. I mean --

13 MR. REID: So what if they turn -- like,
14 I'm just saying. What if they just turned
15 everything off in their house. They opened their
16 window and stuck their head out and can hear
17 something. Does that mean we're making too much
18 noise? Like, what is sound?

19 MR. ALBERTI: I'm not going to answer
20 your question. I'll clarify my question for you.

21 MR. REID: All right.

22 MR. ALBERTI: I'm hearing you. I'm

1 listening to you. All right.

2 So sound enough so that someone in the
3 bedroom late at night with the windows closed
4 could be able to hear the kind of music you've
5 got going on. How would you mitigate that from
6 happening?

7 MR. REID: Well, place -- keeping the
8 speakers more towards the bar area. And, again,
9 I -- I mean, yeah. Just keeping the speakers
10 towards the bar area and face -- making sure the
11 sound travels towards the front of the building.

12 MR. ALBERTI: Okay. I'm not sure I want
13 to ask my next question or not.

14 Would you have any problem keeping those
15 doors and windows closed at all times, any time
16 you had entertainment?

17 MR. REID: We're going to do that --
18 we're doing that, anyway, because --

19 MR. ALBERTI: Didn't ask that --

20 MR. REID: -- we know we're going to get
21 that phone call.

22 MR. ALBERTI: Okay. So the answer is no,

1 you don't have a problem? Is that what I'm
2 hearing?

3 MR. REID: Yes. No problem at all.

4 MR. ALBERTI: Okay. I don't have any
5 other questions.

6 MR. REID: We can put blinds over the
7 windows if you want us to.

8 MR. ALBERTI: You would what?

9 MR. REID: We would put blinds over the
10 windows if you want us to.

11 MR. ALBERTI: Well --

12 MR. REID: What I'm saying is --

13 MR. ALBERTI: -- what kinds of sound
14 mitigation would you be willing to do on that
15 back wall?

16 MR. REID: I'm sorry. One more time?

17 MR. ALBERTI: What kinds of sound
18 mitigation would you be willing to do on that
19 back wall? You tell me.

20 MR. REID: I mean, we already spent
21 \$8,000 on that back wall. I mean --

22 MR. ALBERTI: No, no, no. The back --

1 the windows.

2 MR. REID: I mean, just keep the doors
3 closed. Okay. Just keep them closed.

4 MR. ALBERTI: All right. I have no
5 further questions. Thank you.

6 CHAIRMAN ANDERSON: Mr. Short?

7 MR. SHORT: Yeah. Again, good afternoon.

8 If you look at the first page of the
9 investigative report, under Introductions and
10 Background, if you go to midway of the second
11 paragraph, have you found that, on the very first
12 page, Introductions and Background? First page
13 of the report, the very first page, Introduction.

14 MR. REID: Okay.

15 MR. SHORT: Are you there?

16 If you look at the second paragraph and
17 about midway, there is a reference to what Ms.
18 Antoine says about soundproofing. In fact, it
19 says in reference to the soundproofing, Ms.
20 Antoine stated the establishment does not yet --
21 is not there yet. Ms. Antoine believes the
22 soundproofing to be cost prohibitive and

1 unnecessary.

2 Ms. Antoine, is that a true statement
3 from you?

4 MS. ANTOINE: Yes, it is.

5 MR. SHORT: So why do you think you need
6 soundproofing and it's too expensive if you don't
7 need soundproofing? I mean, you can't have it
8 both ways.

9 MS. ANTOINE: I never --

10 MR. SHORT: You were saying --

11 [Simultaneous speaking.]

12 MS. ANTOINE: I stated that it wouldn't
13 be necessary because of the small -- that was my
14 statement here. Because of the size of the
15 speakers that we have right now, that
16 soundproofing wouldn't be necessary because we
17 are playing music right now, and there is no
18 noise emitting from the building itself.

19 MR. SHORT: How long have you been in the
20 restaurant business in Washington, D.C.?

21 MS. ANTOINE: This is my first restaurant
22 in D.C.

1 MR. SHORT: How long have you had it?

2 MS. ANTOINE: A year and -- a year and 5
3 months, 6 months.

4 MR. SHORT: Are you familiar with any of
5 the other restaurants and businesses on your -- H
6 Street? Let's say from 14th Street on down to H
7 Street.

8 MS. ANTOINE: I know -- yeah, I know for
9 a few of them that they're there.

10 MR. SHORT: Some of them started out
11 small restaurants, just like yours, correct? And
12 then they morphed into nightclubs, and that's a
13 big fear for a lot of people.

14 I've been on the Board now just a little
15 under 2 years. It will be 2 years very soon.
16 And when I hear -- when I hear communities come
17 in and say, you know, they first started out,
18 they promised us they weren't going to make a lot
19 of noise, and then when you say something, the
20 young man's testimony, that we might rent it out,
21 the whole building to a promoter or someone. The
22 promoter comes in for one night, and he plays any

1 music he wants -- just let me -- hear me out.

2 What assurances can you give this body,
3 Board, that that won't happen to your business?
4 Besides just -- what assurances can you -- will
5 you put something in writing stating that that
6 won't happen?

7 MS. ANTOINE: Well, I'm willing to put
8 something in writing stating that we are not
9 going to hire a promoter for sure. I use the
10 term --

11 MR. SILVERSTEIN: Would you say that
12 again?

13 MS. ANTOINE: -- "promotion" loosely.

14 MR. SILVERSTEIN: Excuse me. What did
15 you say?

16 MS. ANTOINE: I said -- I said I can put
17 it in writing that we are not going to hire a
18 promoter, and then I don't know if you view the
19 term "promoter" as the same as I am, but a
20 promoter is -- let's say Ian or someone outdoors
21 that has a group of people that follows them and
22 say, "Hey, I'll charge you X, Y, Z, if you come

1 here, if you come here to Po Boy Jim, and we can
2 have a good time."

3 When I say promote, when I'm using the
4 term "promotion," I am promoting --

5 MR. SHORT: Promoter.

6 MS. ANTOINE: -- the business. Promoter.

7 MR. SHORT: Yeah.

8 MS. ANTOINE: Promoter. It's our vendors
9 that we deal with that say, "Hey, Rebecca, we can
10 come to Po Boy Jim, and let's -- let's say we
11 want to promote this new beer that we have. This
12 is how we do it. Will you be willing to go along
13 with it?"

14 So I would be willing to put it in
15 writing that I'm not going to hire a promoter
16 that is not, let's say, someone that's --

17 MR. REID: Like a club promoter.

18 MS. ANTOINE: Like a -- well, lack of a
19 better -- a club promoter. We are not doing a
20 nightclub.

21 MR. SHORT: Thank you. Thank you.

22 MS. ANTOINE: We have no interest in

1 doing a nightclub. That's a guarantee.

2 MR. SHORT: But it won't be -- okay. So
3 if you rent it out for a night, you won't have
4 somebody at the door collecting tickets and --

5 MS. ANTOINE: No.

6 MR. SHORT: -- for sale?

7 MS. ANTOINE: No.

8 MR. REID: No.

9 MR. SHORT: You will put that in writing?

10 MS. ANTOINE: I will put that in writing
11 because we just aren't. I'd be willing to put it
12 in writing.

13 MR. SHORT: One other problem that
14 happens to a lot of nice small restaurants like
15 yours is that they might say they get the
16 entertainment endorsement, and then 6 months from
17 now, they sell it to someone else who doesn't
18 have your same intentions for a lot of money,
19 because now they have an entertainment
20 endorsement, and they are not going to be as
21 honest as you are. And so a lot of times, the
22 community has issues with that. Can you

1 understand the community's --

2 MS. ANTOINE: I understand.

3 MR. SHORT: So I'm a person who really
4 believes in the community and businesses trying
5 to coexist, where you're respected and the
6 community is respected. So that's the reason why
7 you have these questions, especially this
8 question coming from me. I have -- I have a very
9 serious situation about morphing of businesses
10 into nightclubs in our communities.

11 That's all I have, Mr. Chair.

12 CHAIRMAN ANDERSON: Thank you.

13 Ms. Miller.

14 MS. MILLER: Thank you.

15 So I just want to follow up on a few
16 things. First of all, this promotion thing a
17 little bit. You had said something like you have
18 someone who comes in form Budweiser, and what do
19 they do?

20 MR. REID: Like, they have -- like, say
21 Budweiser comes up with a new -- I don't know --
22 Oktoberfest beer, and they want people to buy it.

1 They'll come in and do like a buy where they'll
2 let people sample beers, and they have the girls
3 come in there and put little samples in cups and
4 pass them out to people, so they could drink
5 them. Sometimes it might be nice to have -- you
6 know, we might do, like, a food special along
7 with it, and it would be nice to have, like, a
8 deejay playing some type of music while they're
9 doing it.

10 MS. MILLER: All right. So when you're
11 saying you're not going to have promoters or you
12 would be willing to not have promoters, is that
13 what you're referring to?

14 MR. REID: See, we -- we have two
15 different -- I don't know what your definition of
16 "promoter" is.

17 MS. MILLER: No. I just want to know
18 what your -- what you're saying, you're willing
19 not to have --

20 [Simultaneous speaking.]

21 MS. MILLER: So you're not talking about
22 this Budweiser thing?

1 CHAIRMAN ANDERSON: I think --

2 MS. MILLER: This Budweiser thing when
3 the girls come in and do I don't know what.

4 CHAIRMAN ANDERSON: I think it's clear
5 they are saying that they are not planning to
6 have any club promoters. I think that's what --
7 I think they're saying that the promoters, is
8 that one of their vendors come in the
9 establishment to promote. That's what -- that's
10 their definition of -- right.

11 MS. MILLER: SO this Budweiser thing that
12 you have is not in that category of promoters
13 that the Chair is talking about that, you know --

14 MR. REID: No.

15 MS. ANTOINE: No.

16 MS. MILLER: Okay. So this is the first
17 that I've heard about this type of vendor coming
18 in with girls, and so I'm wondering what are you
19 talking about with girls coming in.

20 MR. REID: Budweiser has girls, like girl
21 or male. I mean anyone. Most of the time, it's,
22 like, girls that come in and pass out beers,

1 sample beers to our customers at the bar.

2 MS. MILLER: Okay.

3 MR. REID: I mean, everybody -- everyone
4 has -- all vendors have like a foot team that
5 goes in and promotes their product, every single
6 alcohol -- I mean --

7 MS. MILLER: Okay, okay. So, you know,
8 the question that we started at the beginning and
9 that keeps being alluded to here -- and I wanted
10 to see if I could pin you down to, and it's
11 really -- I'm not trying to negotiate with you.
12 I want to know what you want in the entertainment
13 endorsement at this point. You know, is it like
14 all your rights that you could have, which would
15 include, the definition I read, you know, a
16 comedy show, or it could include a live band, et
17 cetera. So I would just want to get it
18 clarified, so we're considering what you actually
19 want.

20 So from what I've heard, you wanted
21 karaoke, and you want a deejay --

22 MR. REID: Right.

1 MS. MILLER: -- to be able to have that.

2 And I also heard that you wanted to have
3 some type of a live performer. So, when they say
4 a live band -- for instance, you're not asking
5 the Board -- you're not saying, "Well, I want to
6 be able to have a 10-piece band."

7 MR. REID: No.

8 MS. MILLER: Okay. Without -- you know,
9 without your restricting yourselves more than you
10 want, what is it you actually want with respect
11 to one person, two person? Is it, you know --

12 MR. REID: So one time when I was at the
13 National Harbor, there was this lady outside
14 singing, like, blues on, like -- I forgot the
15 name of the restaurant, but she just had, like, a
16 speaker and a little -- a microphone and, like, a
17 little speaker. She was singing and messing with
18 the people that was out there eating, singing,
19 like, blues and jazz and stuff like that.

20 MS. ANTOINE: Entertaining.

21 MS. MILLER: Okay.

22 MR. REID: So I think stuff like that

1 would be fun.

2 MS. MILLER: So a one-person?

3 MR. REID: I mean, but that's kind of
4 hard --

5 MS. ANTOINE: There are two.

6 MR. REID: -- to put a -- what if they --
7 what if there's two people? I mean --

8 MS. MILLER: Well, that's what I'm -- I'm
9 not asking you -- so -- in order to give this --
10 okay. You have a community here that's concerned
11 that it's going to be too noisy, okay? And I'm
12 not asking you to restrict yourselves any further
13 than you intend, but if you're not going to have
14 a 10-piece band, you can say to the community,
15 "Look, that's off the table." I'm just saying
16 you could say one, but maybe you really want two.
17 I mean, just --

18 MR. REID: Right.

19 MS. MILLER: And then we'll consider
20 that. If that's all it is, that's going to
21 satisfy your request, I just want to know that.

22 MR. REID: Right.

1 MS. MILLER: Is that it? Two?

2 MR. REID: Yeah, just a couple. We don't
3 even have the space for a full band. It's going
4 to be a very small one- or two-piece band.

5 MS. MILLER: Okay. Okay. So I think
6 that we heard, if I'm not mischaracterizing Mr.
7 Brashears' testimony, that there were noise
8 complaints, but they didn't turn into violations.
9 Are you -- do you know what he was referring to
10 with respect to what kind of noise complaints
11 you've had?

12 MR. REID: No.

13 MS. MILLER: Okay. So, for instance,
14 when we're talking about sound and you said,
15 "Well, what's sound?" you know -- okay. Have you
16 had noise complaints regarding voices, like your
17 crowd got too rowdy and --

18 MR. REID: No.

19 MS. MILLER: -- they were loud?

20 MR. REID: No. We have -- we have the
21 health department coming over and saying we have
22 hookah, calls and tells them we're smoking

1 hookah. We don't even have hookah. I mean,
2 these are just all -- we don't make noise.

3 MS. MILLER: Okay, so --

4 MR. REID: None of that.

5 MS. MILLER: You haven't had -- you
6 haven't had a problem with people complaining
7 about --

8 MR. REID: Not at all.

9 MS. MILLER: -- sound? Okay.

10 MR. REID: We actually had the neighbors
11 come in. I think the neighbor actually -- when
12 we was applying for entertainment, she the one
13 that gave all the neighborhood -- she passed out
14 little cards and whatnot saying that Po Boy Jim
15 was applying for live entertainment. We actually
16 had our neighbors come in and say, "Hey, you guys
17 be careful because" -- I guess the lady, she
18 didn't want us to have entertainment.

19 Like I said, we're a neighborhood
20 restaurant, and we cater to everybody. You know,
21 we respect everybody's feelings, so we don't have
22 those type of complaints or what not.

1 MS. MILLER: Okay, thank you.

2 All right. Thank you, Mr. Chairman.

3 CHAIRMAN ANDERSON: Mr. Alberti.

4 MR. ALBERTI: Just real quick. I noticed
5 on your application, you haven't applied for a
6 cover charge. So you understand very -- you
7 understand -- I'm just trying to be helpful to
8 everybody here. You understand very clearly that
9 whatever entertainment you have, you can't charge
10 admission?

11 MR. REID: Right.

12 MR. ALBERTI: All right. So we're all on
13 the same page there.

14 MR. REID: Yeah.

15 MR. ALBERTI: Great. Thank you.

16 CHAIRMAN ANDERSON: All right.

17 MR. COURTNEY: Do we have the ability to
18 ask a clarifying question?

19 CHAIRMAN ANDERSON: Yeah. Te, te, te,
20 te, te, te, te, te, te, te.

21 [Laughter.]

22 CHAIRMAN ANDERSON: I'm still new to

1 this, but at least I know.

2 Now, you have an opportunity to ask a
3 question, but your questions are -- it's only
4 limited to a question that was asked by a Board
5 member, okay?

6 MR. COOPER: I will defer to my
7 co-counsel here.

8 MR. COURTNEY: I have just one question I
9 want to clarify. There were questions -- and I'm
10 not sure from who -- about the possibility of
11 entertainment in the summer garden, and I think
12 the question was, will there be anything covered
13 by an entertainment endorsement that would be
14 amplified in the summer garden.

15 And I just want to ask, do you have
16 intentions of having entertainment not covered by
17 an entertainment endorsement? For instance,
18 regular background music, which is -- would
19 anything be amplified in the summer garden, or
20 are you guys willing to say --

21 MR. REID: I suppose amplify means a
22 speaker amplify?

1 MR. COURTNEY: Yeah.

2 MR. REID: Any speakers amplify?

3 MR. COURTNEY: Yeah.

4 MR. REID: Well, so it's a speaker back
5 there.

6 MR. COURTNEY: So I guess my question is
7 -- because it was disconnected before.

8 MR. REID: Right.

9 MR. COURTNEY: Are you comfortable saying
10 you're not -- you're not -- you're never going to
11 be connected?

12 MS. ANTOINE: Well, we do have a time
13 limit on it. It has to be cut off by ten. There
14 is a time on that, what we have.

15 MR. COURTNEY: So just to clarify, I just
16 want to get the facts.

17 MS. ANTOINE: Yes.

18 MR. COURTNEY: So you are going to plan
19 on playing music?

20 MR. REID: The summer gardens when people
21 eat because when they listen to music?

22 MR. COURTNEY: That's just my --

1 MR. REID: Yes.

2 MR. COURTNEY: Play music until --

3 MR. REID: If we get the summer garden
4 entertainment license, yes, we will play music so
5 people could -- right?

6 MS. MILLER: Can I --

7 MR. ALBERTI: So may I interject here?

8 MS. MILLER: Yeah. I'd like to too. Go
9 ahead.

10 MR. ALBERTI: I'm just trying to be
11 helpful, so cut me off if I'm -- this hearing is
12 about entertainment endorsement. So we're not
13 here to talk about other types of music. So if
14 they play something that's not technically
15 entertainment by us, like they just have an iPod
16 playing Spotify with music out on the summer
17 garden, that's not entertainment, and that's not
18 --

19 MS. ANTOINE: Okay.

20 MR. ALBERTI: So we're not here to
21 discuss that.

22 I will for the record say -- and I could

1 be wrong, but my understanding is that I think
2 when this establishment was originally placarded
3 and they originally got their license, there was
4 a summer garden endorsement on that application.
5 So that has been approved. The fact that they
6 don't have it right now means that they haven't
7 submitted the proper paperwork to be issued the
8 summer garden.

9 I don't know what's happening with that,
10 but the summer garden endorsement is not an issue
11 here. I just want to make that clear.

12 MR. COURTNEY: I just wanted to clarify
13 for the purpose of the speakers.

14 MR. ALBERTI: All right.

15 MR. COOPER: Just so that I can get some
16 clarity on the -- there was a statement made -- I
17 think you said if we, quote/unquote, rented out
18 the building, what did you mean by that?

19 MR. REID: So, like, we had a Senator
20 from Louisiana come in and have a private event
21 at the restaurant, and he wanted the entire
22 upstairs for his campaign or whatever part he

1 had.

2 MR. COOPER: Was it Danny Davis?
3 Congressman Danny Davis?

4 MR. REID: They come in, and they do
5 private events all the time. So sometimes people
6 -- you know, they don't want --

7 MS. ANTOINE: They don't want --

8 MR. REID: -- anybody else in their
9 party. Like, we throw -- well, majority of the
10 apartment buildings on the H Street Corridor, we
11 do their holiday party. So when they have their
12 holiday parties, they only want their residents
13 to be, you know, in the restaurant, so stuff like
14 that, yeah.

15 We haven't had anyone say we want
16 upstairs and downstairs yet, but if, you know,
17 it's money. If they say they want both floors,
18 we'll give it to them if we could.

19 MR. COOPER: And so if they want to have
20 something other than the additional
21 entertainment, how would you deal with that? If
22 they ask for, they want to bring in a five-piece

1 band.

2 MS. ANTOINE: No. It's not allowed. We
3 wouldn't do that.

4 MR. REID: I mean, if we had to set -- I
5 mean, if we had to agree that we couldn't do it,
6 then we would -- but if we had to agree, we'd say
7 they can't do it.

8 But if we had a five-piece band, so what?
9 I just want to know, like, so what if we had a
10 five-piece band downstairs? I don't get it.
11 Like, so what if we did? What does the
12 five-piece band mean? You can't hear it.

13 CHAIRMAN ANDERSON: There is no question
14 presented, so --

15 See, the way the process now would work
16 is that if there was a question that was brought
17 up that one of you -- if you have not spoken,
18 that you need to address it directly to -- to
19 address some misunderstanding that was -- it's
20 called redirect.

21 MR. REID: Yeah.

22 CHAIRMAN ANDERSON: You could ask -- so

1 is there anything, any statement that was made
2 that you believe that you need to clarify? You
3 can now do that.

4 MR. REID: Okay.

5 CHAIRMAN ANDERSON: No? You don't have
6 to. All right.

7 MR. COOPER: And it was just one final
8 question, just to piggyback on ABRA number --

9 CHAIRMAN ANDERSON: Well, I thought you
10 were done, so, therefore, I was giving them --

11 MR. COOPER: Asking me a question, and I
12 --

13 CHAIRMAN ANDERSON: I was giving them --
14 because I thought you -- I thought you said you
15 didn't have any other questions, so I went back
16 to them to say that the cross -- they could
17 redirect, and they didn't have any, so --

18 MR. COOPER: He -- I didn't -- he
19 followed up with a question to me, which I just
20 had this one question.

21 CHAIRMAN ANDERSON: All right. You can
22 ask one question.

1 MR. COOPER: Just the one question.

2 CHAIRMAN ANDERSON: And please -- and
3 please, it shouldn't be a two-parter that --

4 [Laughter.]

5 MR. COOPER: It isn't. It isn't.

6 CHAIRMAN ANDERSON: All right.

7 MR. COOPER: Can you look at number --
8 Exhibit 24? This question was asked, I believe,
9 by Mr. Alberti.

10 MR. REID: Mm-hmm.

11 MR. COOPER: I'm focusing on this section
12 here where there's an opening.

13 MR. ALBERTI: Can you describe it?

14 MR. COOPER: Yes.

15 MR. ALBERTI: Mr. Cooper, it's better if
16 you describe it for the record. Otherwise, we
17 have no idea when we get to the transcript.

18 MR. COOPER: I'm referring to Exhibit No.
19 24, which is a picture showing back towards the
20 rear of the restaurant. There is -- at the rear,
21 there is a white-bordered area, and next to that
22 white-bordered area, is there a pedestrian

1 walkway area --

2 MR. REID: Yeah.

3 MR. COOPER: -- to lead to the stepdown,
4 which I think you said is --

5 MS. ANTOINE: It's --

6 MR. REID: It's additional seating and
7 then the stepdown.

8 MR. COOPER: Right.

9 MS. ANTOINE: Mm-hmm.

10 MR. COOPER: So at the -- is that a wall?
11 Because this is not a full picture going across.
12 So there's an opening --

13 MR. REID: No, it's -- mm-hmm.

14 MR. COOPER: -- and is there a column?

15 MR. REID: No. There's, like, a straight
16 path there, and it's like storage.

17 MR. COOPER: Is there a way to close --
18 let me ask you this. Is there a way --

19 MR. REID: No.

20 MR. COOPER: -- to close off --

21 CHAIRMAN ANDERSON: Well, let him answer
22 the question first, and then you can answer.

1 MR. COOPER: Is there a way to close off
2 that rear sun room area from the front, which
3 includes the bar and the seating area, such that,
4 as the question was being asked, that sound would
5 not permeate beyond it?

6 MR. REID: No.

7 MR. COOPER: All right. Thank you.

8 CHAIRMAN ANDERSON: All right. Do you
9 rest your case? I mean, you don't have anything
10 else to say at this juncture?

11 MR. REID: Yeah.

12 CHAIRMAN ANDERSON: Now the Protestant
13 will present their case, and they're going to
14 present their case, and you'll have an
15 opportunity to -- once they have done it, to
16 cross-examine the witness, meaning that if they
17 said, "Well" -- if they say something that you
18 need some clarity on, then you have an
19 opportunity to question them.

20 I'm sorry. Counsel, who is your first
21 witness, please?

22 MR. COURTNEY: I'm sorry. Could we just

1 get one moment? We're dealing with some
2 scheduling issues here.

3 CHAIRMAN ANDERSON: All right.

4 [Pause.]

5 CHAIRMAN ANDERSON: Yes, sir.

6 MR. COOPER: Yes. My first witness is
7 ANC Commissioner Chris Miller.

8 CHAIRMAN ANDERSON: Mr. Miller, can you
9 please raise your right hand? Do you swear or
10 affirm to tell the truth, the whole truth, and
11 nothing but the truth?

12 MR. MILLER: I do.

13 [Witness sworn.]

14 CHAIRMAN ANDERSON: Your witness,
15 counsel.

16 MR. COOPER: Mr. Miller, could you please
17 again state for the record and spell your name.

18 MR. MILLER: Sure. Christopher Miller.
19 That's C-h-r-i-s-t-o-p-h-e-r. Miller,
20 M-i-l-l-e-r.

21 MR. COOPER: And do you have -- and what
22 is your position with the ANC?

1 MR. MILLER: I am the commissioner for
2 the single-member district 6C05.

3 MR. COOPER: And is this property within
4 your jurisdiction?

5 MR. MILLER: Yes.

6 MR. COOPER: And what has been your
7 involvement with Po Boy Jim restaurant as the ANC
8 commissioner?

9 MR. MILLER: I've been very involved in
10 the process since they filed their first
11 application back in January.

12 While I'd like to see entertainment
13 options be expanded within my single-member
14 district, I also want to make sure that my
15 constituents, you know, don't have their lives
16 upended by business owners who don't act in good
17 faith. So it's been my goal to try to reach an
18 accommodation between all parties.

19 MR. COOPER: And have you had an
20 opportunity to have any discussions with the
21 establishment about those concerns raised by the
22 constituents?

1 MR. MILLER: Yes. Rebecca has come to
2 several ANC meetings. I can't remember whether
3 they were with the Alcohol Licensing Committee or
4 the Full Committee, but Rebecca has been there.

5 And then I had an impromptu interaction
6 with one of her employees. This was several
7 months ago. I had been walking down their alley.
8 The trash been was overflowing with trash. I
9 decided to take some pictures. When one of her
10 employees then followed me into the CVS screaming
11 at me, I explained that I did not want to have a
12 conversation or debate, and instead, her employee
13 followed me around the store for 3 or 4 minutes,
14 screaming at me, shouting that I was
15 discriminating and harassing against them, not
16 even knowing who I was, just --

17 They then took our his camera phone,
18 screaming at me, "How do you like that? I'm
19 going to take pictures of you. How do you like
20 that? Ha-ha."

21 I then tried to leave the store, only to
22 find an additional employee at Po Boy Jim

1 blocking me from the cash register, and after I
2 approached the cash register, both the employee
3 who followed me around the store screaming at me
4 and the employee blocking the register both then
5 left the building.

6 And the next day, I immediately filed a
7 complaint with Martha Graham.

8 MR. COOPER: Do you mean Martha Jenkins?

9 MR. MILLER: Martha Jenkins.

10 CHAIRMAN ANDERSON: I remember that I
11 need -- and I know the witness was maybe giving
12 some background because you had asked a broad
13 question to say his involvement. I mean, that's
14 fine, but I want to make sure that the testimony
15 that's elicited clearly goes towards -- and let
16 me go specifically to the protest. I just want
17 to underline something. Hold on.

18 One of the reasons why this endorsement
19 was protested, on page 2 of the enforcement
20 action, the ANC is protesting the endorsement on
21 the basis of peace, order, and quiet. So I want
22 to make sure that whether or not you're talking

1 about trash or anything you're talking about,
2 that it leads back to the reason why you're
3 protesting the endorsement, okay?

4 MR. COOPER: And as an ANC commissioner,
5 was there a vote by the ANC to oppose this
6 endorsement?

7 MR. MILLER: Yes, there was.

8 MR. COOPER: And what was the basis for
9 the opposition to the endorsement?

10 MR. MILLER: They have not complied with
11 their current settlement agreement, both regards
12 to trash as well as an incident that occurred, at
13 least one incident that occurred after we
14 protested, and we didn't believe we should agree
15 to give them additional rights if they weren't
16 acting in good faith and, you know, following the
17 current agreement.

18 MR. COOPER: And has -- your knowledge,
19 how long has the violations of the settlement
20 agreement gone on?

21 MR. MILLER: Ongoing. I mean, between
22 myself and my constituents, we've noticed

1 consistent trash problems, and the trash problems
2 are only limited to Po Boy Jim.

3 The neighboring business, Addis
4 Restaurant, has had no trash problems, and months
5 and months after the construction on H Street was
6 completed and the construction trucks have no
7 longer blocked the alley, there has still been
8 consistent trash problems with the dumpsters at
9 Po Boy Jim.

10 MR. COOPER: Okay. Has there been any
11 other discussion other than just the trash
12 collection that addresses the issues of peace,
13 order, and quiet that has been raised as part of
14 the opposition?

15 MR. MILLER: Yes. Several weeks ago, I
16 walked by Po Boy Jim, and they had advertised on
17 a blackboard that they were advertising hookah
18 smoking inside the establishment. They are not
19 on the list of establishments allowed by the
20 health department to have indoor smoking such as
21 hookah, so I filed a complaint with the D.C.
22 Health Department.

1 You may recall back in June, they were
2 written up by an investigator for playing
3 amplified music in the summer garden, despite the
4 fact that they do not have a summer garden
5 endorsement, and there was an investigative
6 report from June 2015. And that's also in
7 conclude with the statement they made earlier
8 that the speakers in the summer garden are not at
9 all, you know, operational.

10 MR. COOPER: And was there any other, to
11 your recollection, issues that were raised at
12 the ANC leading to this protest against the
13 peace, order, and quiet?

14 MR. MILLER: Just the noise complaints
15 that I've heard from constituents, although I
16 myself have not personally witnessed because I
17 don't live adjacent to the establishment.

18 MR. COOPER: No further questions of the
19 witness.

20 CHAIRMAN ANDERSON: Yes.

21 MR. REID: I can ask a question?

22 CHAIRMAN ANDERSON: You have an

1 opportunity to ask questions based on the
2 questions that he asked. Right.

3 MR. REID: So --

4 CHAIRMAN ANDERSON: And remember you're
5 asking him a question. Yes.

6 MR. REID: Yeah. So do you know what
7 restaurant is next door to our restaurant?

8 MR. MILLER: Yes. That is the Addis
9 Ethiopian Restaurant.

10 MR. REID: Okay. And not to be racist,
11 what do Ethiopians like to do? Like what do a
12 lot of Ethiopian restaurants have inside their
13 establishment?

14 MR. MILLER: In general, honey wine.

15 MR. REID: They like hookah, right?

16 MR. MILLER: No. The sign was for your
17 establishment. It was not for Addis.

18 MR. REID: How do you know if the sign
19 was for our establishment?

20 MR. MILLER: Because it was in front of
21 your establishment, the blackboard you always
22 used.

1 MR. REID: How does our blackboard look?
2 Does it say "Po Boy Jim" on it?

3 MR. MILLER: Yes.

4 MR. REID: We don't have a blackboard
5 that says "Po Boy Jim" at all.

6 MR. MILLER: Well, that's not my
7 recollection.

8 MS. ANTOINE: Your recollection is
9 incorrect.

10 CHAIRMAN ANDERSON: It has to be -- it
11 has to be -- and ask him a question, and only one
12 person can ask a question, so --

13 MR. REID: How often -- how often did you
14 snoop around our back yard and take trash
15 pictures?

16 MR. MILLER: I'm not snooping around.
17 I'm talking down a public alley, and it varies.
18 It might be once a week. It might be -- might be
19 nothing within a week or two.

20 MR. REID: So I don't know if you guys
21 are familiar, but I speak to Lieutenant Bedlion
22 --

1 CHAIRMAN ANDERSON: You have to -- you
2 can do that -- you can do that in closing, so
3 maybe you can -- write yourself a note, so in
4 closing, you can state that. Right now, you have
5 to ask him a question, but if you have an
6 explanation, just maybe write yourself a note, so
7 at the end of the case when you're giving
8 closing, you can just bring everything together
9 and respond to it.

10 MR. REID: I don't have no more
11 questions.

12 CHAIRMAN ANDERSON: Are you sure?

13 MR. REID: I mean, that's --

14 MS. ANTOINE: I have some.

15 CHAIRMAN ANDERSON: Okay. I mean, ask
16 the questions, but as I said before, if there are
17 statements or if you want to explain, I mean,
18 closing then is the opportunity to wrap up your
19 case to touch on all the issues that were brought
20 up and all the issues that came up during
21 testimony, and so you can bring that in closing
22 to rebut, or if -- all right. Okay?

1 MR. REID: Okay.

2 CHAIRMAN ANDERSON: All right.

3 MS. ANTOINE: I have a question,
4 Commissioner Miller. First of all, I know we've
5 been -- I have been to several of the meetings
6 where I've seen you didn't realize that you were
7 the commissioner there, but now I know.

8 With respect to that particular day when
9 you met up with one of my staff members in the
10 alley and you were taking pictures of the trash,
11 when he asked you the question, "Who are you?"
12 did you identify yourself?

13 MR. MILLER: No. He asked me that
14 question when I was in the CVS, and I am not in
15 the business of giving out my name to people who
16 follow me down the block and are screaming at me,
17 so no, I did not.

18 MS. ANTOINE: Well, I said who you were,
19 not necessarily your name. You do go around with
20 a title, so I just want to know if you identified
21 yourself.

22 MR. MILLER: No, I did not.

1 MS. ANTOINE: With respect to -- you said
2 several times you took pictures of our trash.

3 MR. MILLER: Mm-hmm.

4 MS. ANTOINE: Out of those several times,
5 are any of those pictures that you've taken in
6 this exhibit here?

7 MR. MILLER: I've sent some of them to
8 Drew, but I can't remember --

9 MS. ANTOINE: You can't remember them?
10 Okay.

11 MR. MILLER: -- which pictures, you know,
12 since some of them were taken many months ago.

13 MS. ANTOINE: And when you made the call
14 to the health department with respect to seeing
15 hookah on a blackboard, when you saw that
16 blackboard on the sidewalk, was that blackboard
17 directly in front of Po Boy Jim? Was it in the
18 center of Po Boy Jim? Was it in between Addis
19 Ethiopia and Po Boy Jim? Do you have any
20 recollection of that?

21 And also, on that --

22 CHAIRMAN ANDERSON: Ask him one question.

1 MS. ANTOINE: Okay. Sure, sure, sure.

2 CHAIRMAN ANDERSON: Then you can ask a
3 follow-up question.

4 MS. ANTOINE: Go ahead. I'm sorry.

5 MR. MILLER: It was right in the middle
6 of your establishment, right where your
7 blackboard always is.

8 MS. ANTOINE: Okay. Did you see on that
9 blackboard at the very top -- did you see the
10 name "Po Boy Jim" written on that blackboard?

11 MR. MILLER: Yes.

12 MS. ANTOINE: As in -- okay.

13 Now, back to what you said you saw, can
14 you tell me in the best of your own words what
15 you saw on that blackboard?

16 MS. MILLER: Sure. This was first -- for
17 way of background, my fellow colleagues on the
18 commissioner, Mark Eckenwiler, he saw your sign
19 advertising hookah. He then called -- or sent me
20 an e-mail to let me know, and then I went by to
21 verify myself.

22 MS. ANTOINE: Mm-hmm.

1 MR. MILLER: I can't remember, you know,
2 the precise phrases, but it just advertised
3 hookah inside, and there may or may not have been
4 some drink specials that were advertised.

5 MS. ANTOINE: Okay. When you -- you said
6 that you also called the health department, which
7 they did come out. Did you get a response from
8 the health department indicating that we were in
9 violation of our business in the sense of we had
10 hookah there? Did they call you back and said --
11 or did you at any point see -- I don't know if
12 it's public; they usually do list things publicly
13 -- that Po Boy Jim was in violation of doing
14 business by having hookah at their establishment?

15 MR. MILLER: I haven't had a chance to
16 send that follow-up yet because I've been out of
17 town for the past week, but that's on my list of
18 things to do.

19 MS. ANTOINE: Okay. Okay, that's it.
20 Thank you.

21 CHAIRMAN ANDERSON: So we have -- do the
22 Board members have any questions of the witness?

1 MR. ALBERTI: I do. Thank you.

2 CHAIRMAN ANDERSON: Yes, Mr. Alberti.

3 MR. ALBERTI: Commissioner Miller, first
4 of all, thank you for your services,
5 Commissioner.

6 MR. MILLER: Thank you.

7 MR. ALBERTI: I'm an ex-commissioner. I
8 understand how much work it is.

9 Okay. I'm just going to preface this
10 with don't misinterpret my questions. I'm trying
11 to be helpful here.

12 MR. MILLER: Certainly.

13 MR. ALBERTI: But I'm at a quandary
14 trying to figure out why -- the nexus between
15 your trash complaints, complaints about alleged
16 violations of the smoking laws, how do they
17 relate to your concerns about entertainment?

18 MR. MILLER: Sure. Well, if we can't
19 trust them to follow the current settlement
20 agreement, it's just a matter of trust. That we
21 don't have any trust right now, so we don't trust
22 them to adhere to an entertainment endorsement if

1 they can't adhere to their current settlement
2 agreement and, you know, D.C. regulations
3 involving smoking.

4 MR. ALBERTI: Okay. So when you say you
5 can't trust them to adhere to an entertainment
6 endorsement, what does it mean to you that
7 they're not adhering to the entertainment
8 endorsement?

9 MR. MILLER: Any number of things. Not
10 adhering to the particular hours, you know, not
11 adhering to the type of entertainment that they
12 say they want. They started out with a deejay,
13 and all of a sudden, they have a dance floor or
14 they say that they just have a one-man band, and
15 then the next minute, a 10-person band, any
16 number of combinations.

17 MR. ALBERTI: Well, so, again, I'm trying
18 to get -- you need to help me out here.

19 MR. MILLER: Certainly.

20 MR. ALBERTI: There isn't any -- I mean,
21 I see what their application says, but I'll tell
22 you, quite frankly, if the Board issues an

1 entertainment endorsement without any qualifiers,
2 it means all kinds of entertainment, right? And
3 right now there aren't no qualifiers. So you've
4 got to tell me what your concerns are.

5 Otherwise, I don't know, and I'm just hearing
6 that you don't trust them. And that's not very
7 helpful to me.

8 MR. MILLER: That's a good point.

9 Yeah. I mean, the main concern is noise
10 and quality of life for my constituents. The
11 noise is -- the noise is too loud. You know,
12 that makes it difficult for them to sleep. Yes,
13 the main concern is noise, and some types of
14 entertainment produce more noise than other
15 types.

16 MR. ALBERTI: Okay. So why are you
17 concerned about noise? All right. Let me
18 clarify it. That's not a very good question.
19 I'm sorry.

20 I get that noise keeps you up at night,
21 all right, and noise can be disturbing and
22 annoying, all right? But why do you think that

1 noise is going to -- those types of disturbances
2 are going to occur from this building.

3 MR. MILLER: Like, as I mentioned
4 earlier, I don't trust them. My constituents
5 don't trust them. So we don't -- it's hard to --
6 hard to believe they won't put out too much noise
7 if they can't even fulfill basic functions like
8 picking up their trash and keeping it covered and
9 protected from rats.

10 MR. ALBERTI: Okay. I'm going to go to
11 some factual questions here.

12 First of all, are you aware -- I'm
13 putting this for the record for everybody's
14 information. Are you aware that your current
15 settlement agreement --

16 Pardon?

17 [Chairman Anderson and Mr. Alberti
18 conferring.]

19 [Laughter.]

20 MR. ALBERTI: Settlement agreement?

21 CHAIRMAN ANDERSON: Yeah.

22 MR. ALBERTI: All right. I'll let you go

1 there. I'll let you go there. All right.

2 I'm going to go a different direction.

3 So I have asked this question of others, but I'm

4 looking at -- across the alley behind them,

5 you've got buildings fronting H Street. You've

6 got buildings fronting 7th Street, and they're

7 row buildings. Are those row buildings

8 residential?

9 MR. MILLER: Yes. Behind H Street,

10 they're all residential to my knowledge.

11 MR. ALBERTI: All the ones --

12 MR. SILVERSTEIN: Please get close to the

13 mic.

14 MR. MILLER: Oh, sorry.

15 MR. ALBERTI: All the buildings that

16 front the alley there?

17 MR. MILLER: Yes. To --

18 MR. ALBERTI: Going north up to, say, the

19 next alley are all residential?

20 MR. MILLER: To the best of my knowledge,

21 yes.

22 MR. ALBERTI: Okay. What other

1 establishments are on that row?

2 MR. MILLER: Licensed by ABRA or just in
3 general?

4 MR. ALBERTI: Licensed by ABRA. I'm
5 sorry. Excuse me. Thank you.

6 MR. MILLER: Yeah. I believe the only
7 other one licensed by ABRA within that side of H
8 Street, between 7th and 8th, is the Addis
9 Ethiopian Restaurant.

10 MR. ALBERTI: Okay. What other
11 establishments are in that row? Do you know?

12 MR. MILLER: I believe there's a barber,
13 a barber shop. There's a restaurant right on the
14 corner of 7th and 8th that is currently either
15 undergoing renovations or new owner. I believe
16 on the corner closest to 8th, there's one of
17 those Liberty Tax preparation centers.

18 MR. ALBERTI: Okay. And across -- no,
19 I'm sorry.

20 I have no further questions. Thank you.

21 CHAIRMAN ANDERSON: I'm going to take the
22 Chair prerogative since I'm not asking questions.

1 The voluntary agreement is in the record,
2 so outside of the trash, can you tell us what --
3 because it seems you have not -- or you do not
4 trust them. So what other the provisions, if
5 any, of the settlement agreement has the
6 Applicant not complied with?

7 MR. MILLER: Yes. As I mentioned
8 earlier, they were written up in June of this
9 year by ABRA for playing amplified music in their
10 summer garden.

11 I don't know that -- some of the noise
12 complaints that were made may have been made
13 outside the hours, but I don't have information
14 in front of me.

15 CHAIRMAN ANDERSON: Now, do you know
16 whether or not ABRA has ever found them in
17 violation from the noise regulation? I know that
18 I've heard there have been several noise
19 complaints, but do you know whether or not ABRA
20 has ever found them in violation of that
21 regulation? Are you aware?

22 MR. MILLER: Not to my knowledge, no.

1 CHAIRMAN ANDERSON: Go ahead, Mr.
2 Silverstein.

3 MR. SILVERSTEIN: Okay. Thank you for
4 your service, ANC Miller.

5 So far, we have the Applicant saying
6 they'll have no outdoor entertainment, saying
7 they'll have no cover charge, saying they will
8 have no outside promoters, club promoters, and
9 that they will abide by a 10 p.m. time limit in
10 their summer garden, which is a limit that's
11 already there.

12 Assuming arguendo that this is going to
13 go through, what else do you need to make your
14 life okay?

15 MR. MILLER: An ironclad callback --
16 callback provision.

17 MR. SILVERSTEIN: I'm sorry?

18 MR. MILLER: An ironclad callback
19 provision. So if there are multiple violations,
20 that means the endorsement would get walked back.

21 MR. SILVERSTEIN: So you're saying then
22 essentially, beyond a notice or cure or something

1 to guarantee ironclad that these things are kept,
2 that you don't have a problem?

3 MR. MILLER: I have a problem with them
4 just because they haven't -- as I mentioned
5 earlier, they haven't been acting in good faith.
6 In a perfect world, we've offered them a very
7 generous settlement agreement, which they've
8 declined to sign.

9 MR. SILVERSTEIN: Okay. We can't go
10 there.

11 MR. MILLER: Oh, you can't go there?
12 Okay.

13 MR. SILVERSTEIN: No.

14 Okay. I have no further questions.
15 Thank you.

16 CHAIRMAN ANDERSON: Any other Board
17 members have questions?

18 MS. MILLER: I do.

19 CHAIRMAN ANDERSON: Yes, Ms. Miller.

20 MS. MILLER: So you're the ANC
21 single-member district commissioner for this area
22 where the establishment is located, right?

1 MR. MILLER: Correct.

2 MS. MILLER: Okay. So we've heard
3 references to noise complaints. Are you familiar
4 with those noise complaints?

5 MR. MILLER: Yes.

6 MS. MILLER: So can you elaborate on what
7 they involve, what kind of noise, who was
8 bothered, what time of the day, that kind of
9 thing?

10 MR. MILLER: The other witnesses can
11 testify more specifically to that, but it was
12 like music heard after night. My constituents in
13 particular has had trouble sleeping at night due
14 to noise problems. I can't give a specific
15 answer as to hours, and I don't want to speculate
16 on that.

17 MS. MILLER: Okay.

18 MR. MILLER: It's been at night.

19 MS. MILLER: How about what their
20 response was to the complaints?

21 MR. MILLER: At this point, from what
22 I've understood from constituents, they're no

1 longer interested in taking complaints from
2 people in the neighborhood, so they've instead
3 had to call up ABRA to file noise complaints on
4 the hotline.

5 MS. MILLER: Okay. I think I also read
6 in the investigator's report -- and I don't know
7 whether -- I can't remember if this involved you
8 or another witness, but they were talking about
9 the Applicant wanted to do some kind of testing
10 to make sure that the noise didn't bother the
11 neighbors. Were you involved in that? I mean,
12 what I read was it didn't happen because the
13 Protestor said -- Protestant said, "No, we're not
14 going to do that."

15 MR. MILLER: Yeah, this was quite some
16 time ago, but I believe I discussed it with Drew.
17 And yeah, the active noise test would itself be a
18 violation, so --

19 MS. MILLER: Did you actually ask anyone
20 at ABRA if that was the case?

21 MR. MILLER: No.

22 MS. MILLER: Okay. So I guess -- I mean,

1 I think Mr. Silverstein got pretty far, but I
2 just kind of want to get my hands around -- arms
3 around why you think that this establishment is
4 so distrustful or unworthy of the community's
5 trust because that's what I hear as your basic
6 concern, because if I look at the -- just the
7 statistics don't look that bad. There were
8 complaints, but there weren't any violations of
9 noise found, or there was, you know, a couple of
10 things, trash, but you seem to have a much
11 broader distrust then would be based on those
12 violations, based on my experience.

13 MR. MILLER: Yeah. The last thing I'd
14 want to do is imply we're in Tru-Orleans
15 territory here, but the basic function of any
16 restaurant in this city should be able to take
17 care of functions like trash. And, yeah,
18 consistently, they have been unable to do so.

19 MS. MILLER: Okay. And I would just ask
20 you -- and this is a little bit broader than,
21 okay, we're just looking at this entertainment
22 endorsement, but we do get into this a little

1 bit. We like communities and businesses to be
2 able to work together and live together, and so
3 I'm just curious what do you think it would take
4 in this situation -- they've only been there a
5 year -- for you all to be able to coexist better.

6 MR. MILLER: Yeah. Just start taking
7 care of the little things like trash, you know.
8 We've attempted them -- we've attempted to work
9 with them on this endorsement, without going into
10 further details, but yeah, I mean, just taking
11 care of the trash, making sure -- making sure
12 there's no noise violations, not playing
13 amplified music in the summer garden, despite the
14 lack of endorsement. Those things, you know, go
15 a long way.

16 When the new owners took over the
17 Tru-Orleans spot, we told them, "Look, this space
18 has a history. Spend a year through the entire
19 summer season proving you can be a good neighbor,
20 and we'll be more than happy to work with you on
21 this." And when I last spoke to the manager -- I
22 think it was at an H Street Festival, that 1-year

1 period has since past, and they're now
2 considering, you know, coming back for some
3 additional endorsements, and we'll be more --
4 like the ANC will be more than happy to work with
5 them on that because they've proven, you know,
6 that they're good neighbors.

7 MS. MILLER: Okay. Thank you.

8 MR. MILLER: You're welcome.

9 CHAIRMAN ANDERSON: All right. You now
10 have an opportunity to ask questions that are
11 directly related to the questions that were asked
12 by the Board.

13 MR. REID: I don't have any.

14 MS. ANTOINE: I don't have any.

15 MR. COOPER: The only one that I would
16 ask is about your callback provision that you
17 referred. What would be an appropriate time that
18 would be reflective in that provision if they
19 violated whatever endorsement that it would draw
20 back to?

21 MR. MILLER: The document that I can't
22 discuss had a provision we were happy with.

1 MR. COOPER: And what was that provision?

2 MR. MILLER: Drew --

3 MR. COOPER: You have to -- if you don't
4 remember, if you have an opinion --

5 MR. MILLER: I don't want to -- I don't
6 want to misspeak without conferring with Drew on
7 this.

8 MR. COOPER: All right.

9 CHAIRMAN ANDERSON: That's it. All
10 right.

11 You are free to go, sir. Thank you.

12 And your next witness?

13 MR. COOPER: My next witness is Kim
14 Neutzling.

15 CHAIRMAN ANDERSON: Can you raise your
16 right hand, please. Do you swear or affirm to
17 tell the truth and nothing but the truth, so help
18 you?

19 MS. NEUTZLING: I do.

20 MR. COOPER: The Court's indulgence.

21 Can you please state and spell your name
22 for the record.

1 MS. NEUTZLING: Yes. My name is -- first
2 name is Kimberly, K-i-m-b-e-r-l-y. Last name is
3 Neutzling, N-e-u-t-z-l-i-n-g.

4 [Laughter.]

5 MS. NEUTZLING: It's been a lifetime with
6 that name, so --

7 MR. COOPER: Ms. Neutzling, where do you
8 reside?

9 MS. NEUTZLING: I am the first house
10 across the alley from the rear of Po Boy Jim's.
11 My address is 727 7th Street, Northeast.

12 MR. COOPER: And I am going to direct
13 your attention to Exhibits 5 and 6, 5 and 6 on
14 the map that was attached to the protest report
15 prepared by Mark Brashears. The first is Exhibit
16 No. 5. There is a dot marking the spot of the
17 Applicant. Where is your home in relationship to
18 that map?

19 MS. NEUTZLING: It's if you move directly
20 to the right of that dot, it's the first
21 rectangle.

22 MR. COOPER: Okay. And I'm going to

1 refer you now to Exhibit No. 6.

2 MS. NEUTZLING: Yes.

3 MR. COOPER: Where is your home in
4 relationship to the dot that indicates Po Boy
5 Jim?

6 MS. NEUTZLING: If you move directly --
7 well, how are you holding this?

8 MR. COOPER: Well, if you hold it
9 horizontal.

10 MS. NEUTZLING: Horizontally? Okay.

11 MR. COOPER: Horizontal as the map legend
12 reflects. Where is your property in relationship
13 to the dot?

14 MS. NEUTZLING: If you move directly down
15 from the dot, my house is the first rectangle
16 there.

17 MR. COOPER: So behind the Po Boy Jim
18 property is an alley going east to west; is that
19 correct?

20 MS. NEUTZLING: Correct.

21 MR. COOPER: And that alley is signified
22 as a white line; is that correct?

1 MS. NEUTZLING: Right.

2 MR. COOPER: And directly across, from
3 behind Po Boy Jim's, the first property in
4 yellow, that's your property?

5 MS. NEUTZLING: That is my property, yes.

6 MR. COOPER: Okay. And how long have you
7 lived in that property?

8 MS. NEUTZLING: I moved in May of 2014.

9 MR. COOPER: Okay.

10 MR. SHORT: Excuse me, Counsel. That
11 address, her address again?

12 MR. COOPER: 727 7th Street, Northeast.

13 MR. SHORT: And the address of Po Boy's?

14 MR. COOPER: 709 H Street, Northeast.

15 MR. SHORT: For the record, I wanted that
16 because we wanted to -- you're saying yellow
17 dots. I want it clear when we do the transcript.

18 MR. COOPER: Yes. I apologize.

19 MR. ALBERTI: Just, Mr. Cooper, if you
20 would like, you have can have her mark it on a
21 map. You could submit that as an exhibit, if you
22 would like.

1 MR. COOPER: I will do that. Thank you.
2 I will do that.

3 [Laughter.]

4 MR. COOPER: Thank you for the -- I will
5 make this as a Protestant's Exhibit No. 1, which
6 is Mr. Brashear's Exhibit No. 6. I'm sorry. No.
7 12. Exhibit No. 12. We already have some
8 premarked exhibits which remain --

9 MR. ALBERTI: That's fine. However you
10 number it is fine.

11 MR. COOPER: So what I will do is, can
12 you --

13 MS. NEUTZLING: Put my initials?

14 MR. COOPER: And maybe put an arrow to
15 your property, and put the address.

16 And so is your property the closest
17 residential property to the establishment?

18 MS. NEUTZLING: Yes, it is.

19 MR. COOPER: From the rear?

20 MS. NEUTZLING: Yes.

21 MR. COOPER: Okay. And you said you've
22 lived there since May 21st, 2014?

1 MS. NEUTZLING: No. May 28th, 2014.

2 MR. COOPER: At the time that you
3 purchased your property, was the Po Boy Jim
4 establishment operational?

5 MS. NEUTZLING: No.

6 MR. COOPER: Okay. Did you have any
7 involvement with the Po Boy Jim voluntary
8 agreement that had been -- that we understand has
9 been entered into by the ANC and Po Boy?

10 MS. NEUTZLING: No.

11 MR. COOPER: Can you describe the
12 condition of your property prior to the opening
13 of Po Boy Jim's restaurant?

14 MS. NEUTZLING: The house is still in
15 basically the same shape. I've made some
16 improvements. The back yard was in fairly good
17 shape prior to opening of the restaurant. Once
18 they opened, within a few months, I started
19 seeing their -- my back yard is directly across
20 from their trash collection area, and there have
21 been multiple rat burrows directly across from
22 there coming up and starting to undermine one of

1 the trees in my yard.

2 MR. COOPER: And did you see that
3 condition prior to the opening of Po Boy Jim's
4 restaurant?

5 MS. NEUTZLING: No.

6 MR. COOPER: And you said this began
7 several months afterwards?

8 MS. NEUTZLING: Yes.

9 MR. COOPER: And what is the condition
10 now with respect to the rat burrows?

11 MS. NEUTZLING: Two are gone. One
12 remains.

13 MR. COOPER: What efforts have you been
14 taking to remediate and eradicate the rat burrow
15 problem?

16 MS. NEUTZLING: I engaged a pest
17 management company and now have a pest management
18 plan in place for the months of January -- well,
19 actually started in November, December, January.
20 So November 2014 through January of 2015, they
21 were coming weekly, but I am supposed to have
22 quarterly visits. I have three of the large

1 black rate poison boxes in my yard.

2 MR. COOPER: And it is your testimony
3 that the rats are coming from or enjoying the --

4 MS. NEUTZLING: Well, they're certainly
5 enjoying the fruits of the uncontrolled trash for
6 the first 16 or 17 months that they were open.
7 Over the last 6 weeks, 8 weeks, that condition
8 has improved, but that is where the initial pest
9 or rodent problem came from, is my opinion, and
10 the opinion of my exterminator.

11 MR. COOPER: And is it your understanding
12 that -- what is your understanding of the
13 requirements regarding the trash in the voluntary
14 agreement?

15 MS. NEUTZLING: That the trash is
16 supposed to be maintained in a secure bin. There
17 shouldn't be anything on the ground.

18 MR. COOPER: And are the bins secured in
19 your opinion?

20 MS. NEUTZLING: No.

21 MR. COOPER: And have you expressed these
22 concerns to the ANC and/or to Po Boy Jim's,

1 again, just concerning the trash?

2 MS. NEUTZLING: Yes. Specifically to the
3 ANC, I have a series of photos dating from
4 January 2015 through September 2015 showing the
5 state of the trash collection space.

6 MR. COOPER: Okay.

7 MS. NEUTZLING: And I do show both days
8 where the trash is emptied and when the trash is
9 overflowing.

10 MR. COOPER: I'm going to hand you two
11 e-mails that are marked as No. 2 and No. 3 in the
12 package submitted.

13 CHAIRMAN ANDERSON: What package
14 submitted?

15 MR. COOPER: The exhibits that we
16 submitted to the agency as part of our exhibit
17 list and the exhibits that we submitted.

18 CHAIRMAN ANDERSON: I don't have -- I
19 have not received them, so just --

20 MR. COOPER: I will be happy to approach
21 and --

22 CHAIRMAN ANDERSON: Sure.

1 MR. COOPER: I have one set, but they
2 were e-mailed. May I approach?

3 CHAIRMAN ANDERSON: Sure. Sure. Yes.
4 So what document are you referring to?

5 MR. COOPER: Exhibit number -- well,
6 actually, let me provide you -- I also have --

7 MS. MILLER: Could I ask if the Applicant
8 has a copy of these exhibits?

9 MR. REID: [Shaking head side to side.]

10 MS. MILLER: You all -- do you have a --
11 you don't have a copy?

12 CHAIRMAN ANDERSON: Did you provide the
13 -- did you provide them?

14 MR. COOPER: Yes. I provided all the
15 exhibits, the exhibit list, the witness list, and
16 our PIF to the Applicant as well as to the
17 agency, and they were e-mailed -- again, separate
18 e-mail, so that they were all e-mailed, as the
19 documents from the Protestant -- I mean the
20 Applicant were e-mailed to us, and we'd print
21 them out.

22 MS. MILLER: Okay.

1 CHAIRMAN ANDERSON: When did you e-mail
2 these documents?

3 MR. COOPER: On Thursday, which was the
4 stated deadline by the agency because of the
5 holiday on Wednesday, Veterans Day. We submitted
6 them on Thursday.

7 CHAIRMAN ANDERSON: So, but you --

8 MS. ANTOINE: It came on e-mail, but in
9 the beginning, I didn't know who Robert Cooper
10 were -- was. I was used to seeing Drew's
11 e-mails, but --

12 CHAIRMAN ANDERSON: But you have received
13 them?

14 MS. ANTOINE: We did have -- yeah, the
15 e-mails did come.

16 CHAIRMAN ANDERSON: All right. Okay. So
17 you can -- we have the documents, so you can let
18 me know what document you're referring to, so I
19 can share with my other board members.

20 MR. COOPER: Sure. I'm actually looking
21 for my exhibit list. I will provide -- I have
22 several. I only have one set.

1 CHAIRMAN ANDERSON: That's fine.

2 MS. MILLER: I'll take one if you're
3 giving them out. Thank you. Okay.

4 MR. COOPER: I have some extras here.

5 MS. MILLER: Okay. Oh, I think we got
6 this, yeah.

7 MR. COOPER: Okay.

8 I am referring specifically to Exhibit
9 Nos. 2 and 3, which are the e-mails, and was this
10 -- were these the e-mails that you sent to the
11 ANC reciting the concerns that you had regarding
12 the trash collection?

13 MS. NEUTZLING: Yes.

14 MR. COOPER: And did you also reference
15 in these e-mails -- and again, let's -- to the
16 noise that was -- you were experiencing as a
17 result of the trash collection itself?

18 MS. NEUTZLING: Yes.

19 MR. COOPER: And what was that? What was
20 the concern that you had there?

21 MS. NEUTZLING: The trash collection
22 service -- I believe it's Stellar -- arrives

1 between 7 and 7:45 in the morning. They do that
2 several times a week and on Saturday morning.
3 According to the settlement agreement, they are
4 not supposed to arrive before nine.

5 MR. COOPER: And how has that impacted
6 you?

7 MS. NEUTZLING: Well, Saturday is my day
8 to sleep, and occasionally, I have small children
9 staying at my house, and it freaks them out.
10 They're not city kids, so they hear the trash
11 collection coming that early, things are banging
12 around.

13 MR. COOPER: And does that affect the
14 peace, order, and quiet --

15 MS. NEUTZLING: Yes.

16 MR. COOPER: -- in your opinion?

17 MS. NEUTZLING: Yes, it does.

18 MR. COOPER: Okay. Now, on the -- I am
19 going to refer you -- direct your attention to
20 Exhibit No. 3, the fourth paragraph where you
21 address the issue of Jim's -- PB Jim's open
22 patio.

1 MS. NEUTZLING: Yes.

2 MR. COOPER: Can you explain to the Board
3 what your concern was there?

4 MS. NEUTZLING: They opened the patio on
5 the 25th of April, and there was music on the
6 patio until 11 p.m. I called and called back --
7 it was still playing, and at 11:15, I called
8 back, but there was on answer. And the music
9 went off by the third ring.

10 MR. COOPER: And what happened on April
11 30th, Friday, April 30th?

12 MS. NEUTZLING: They were playing music
13 till 1 a.m. I called and asked them to turn it
14 off.

15 MR. COOPER: Okay. And is it your
16 understanding that those -- the violations
17 reflected the concerns you addressed in your May
18 3rd, 2015, e-mail, which is Exhibit No. 3, are in
19 violation of the voluntary agreement?

20 MS. NEUTZLING: Yes.

21 MR. COOPER: Okay. Now I turn your --
22 direct your attention to Exhibit Nos. 5 through

1 9.

2 May I approach the witness?

3 I direct your attention to Exhibit Nos. 5
4 through 9. If you could first flip through those
5 and let us know whether these are photographs
6 that you took.

7 MS. NEUTZLING: Yes. These are all
8 photographs that I've taken.

9 MR. COOPER: Okay. What is reflected in
10 photograph -- Exhibit No. 5?

11 MS. NEUTZLING: Is that page 5 or image
12 5?

13 MR. COOPER: Actually, the very first
14 document, which is this one.

15 MS. NEUTZLING: Okay.

16 MR. COOPER: The very first. Start at
17 the first page and work our way through.

18 When did you take that picture?

19 MS. NEUTZLING: I don't have the exact
20 time. I've taken those photo off my phone, but
21 all my photos are either taken in the morning
22 before I go to work or in the evening when I get

1 home.

2 MR. COOPER: Okay. And it says --
3 there's a stickie that says 1/14/15.

4 MS. NEUTZLING: Right.

5 MR. COOPER: Is that the date that these
6 pictures were taken?

7 MS. NEUTZLING: Yes.

8 MR. COOPER: Okay. So on January 14,
9 '15, the condition of the rear alley, the trash
10 looked like that?

11 MS. NEUTZLING: Yes.

12 MR. COOPER: Okay. Turn to the third
13 page, which begins March 20th.

14 MS. NEUTZLING: Yes.

15 MR. COOPER: Those three pictures
16 accurately reflect the conditions of the trash
17 area on the dates reflected?

18 MS. NEUTZLING: Yes.

19 MR. COOPER: Next page, which runs from
20 March 29th and March 31st. Do those accurately
21 reflect the condition of the trash collection
22 area of the dates noted?

1 MS. NEUTZLING: Yes.

2 MR. COOPER: The bottom of that page says
3 April 3rd, and then going through the next three
4 pictures, all in April, do those dates accurately
5 reflect the condition of the premises, where the
6 trash collection area?

7 MS. NEUTZLING: Yes.

8 MR. COOPER: Next page beginning at the
9 bottom of page 10 going through April 10th
10 through April 26th?

11 MS. NEUTZLING: Yes.

12 MR. COOPER: Came condition there?

13 MS. NEUTZLING: yes.

14 MR. COOPER: And you did take these
15 photographs?

16 MS. NEUTZLING: I did take all these
17 photographs, yes.

18 MR. COOPER: May 1st through May 2nd,
19 those accurately reflect the conditions of the
20 trash receptacle area behind Po Boy Jim's
21 restaurant?

22 MS. NEUTZLING: Yes.

1 MR. COOPER: Next page, beginning on May
2 26th, dropping down to May 19th.

3 MS. NEUTZLING: Yes.

4 MR. COOPER: Do those photographs
5 accurately reflect the conditions of the
6 collection area for trash and recycling?

7 MS. NEUTZLING: Yes.

8 MR. COOPER: Next page, May 14th through
9 May 11th -- or May 11th through May 14th.

10 MS. NEUTZLING: Yes, yes.

11 MR. COOPER: Does that accurately reflect
12 the conditions?

13 MS. NEUTZLING: Yes.

14 MR. COOPER: The bottom of page 6, May
15 6th, going down through May 5th.

16 MS. NEUTZLING: Yeah.

17 MR. COOPER: Again, does that accurately
18 reflect the conditions?

19 MS. NEUTZLING: Yes.

20 MR. COOPER: May 4th, the ones noted on
21 May 4th.

22 MS. NEUTZLING: Yes.

1 MR. COOPER: Those accurately reflect the
2 conditions?

3 MS. NEUTZLING: Yes.

4 MR. COOPER: April 6th -- April -- let me
5 start. Excuse me. June 30th through June 28th,
6 as reflected, does that accurately reflect the
7 conditions?

8 MS. NEUTZLING: I don't have those -- oh,
9 yes, I do. Yes, it does.

10 MR. COOPER: The next page beginning with
11 June 26th through June 21st.

12 MS. NEUTZLING: Yes.

13 MR. COOPER: Does that accurately reflect
14 the conditions?

15 MS. NEUTZLING: Yes.

16 MR. COOPER: June 18th through the 16th.

17 MS. NEUTZLING: Yes.

18 MR. COOPER: June 13th and June 18th?

19 MS. NEUTZLING: Yes. June 8th.

20 MR. COOPER: I'm sorry. June 8th.

21 Reading too fast.

22 June 4th through -- the two photographs

1 on June 4th, do those accurately reflect the
2 conditions of the garbage collection area on
3 those dates?

4 MS. NEUTZLING: Yes.

5 MR. COOPER: Next page, June 3rd and June
6 2nd, do they accurately reflect the conditions of
7 the storage area behind Po Boy Jim's?

8 MS. NEUTZLING: Yes.

9 MR. COOPER: The last page is June 1st.
10 Does that accurately reflect the conditions?

11 MS. NEUTZLING: Yes.

12 MR. COOPER: In all of your photographs
13 -- and again, you can take the time and look --
14 and your personal knowledge, is there any rat
15 protocol measures established behind Po Boy Jim's
16 in the trash collection area?

17 MS. NEUTZLING: I don't see any of the
18 large black, kind of the rodent poison boxes that
19 I would expect to be part of any integrated pest
20 management plan that a food establishment should
21 have. I don't know if they have them on the
22 other side of the wall, but there doesn't appear

1 to be anything in the trash collection area.

2 MR. COOPER: Okay. And the conditions
3 that are reflected, do they reflect closed
4 storage bins?

5 MS. NEUTZLING: No.

6 MR. COOPER: Are any of these storage
7 bins of the locking nature?

8 MS. NEUTZLING: No.

9 MR. COOPER: And do these accurately
10 reflect that the trash and recycling is
11 overflowing the bins as reflected in your
12 photographs?

13 MS. NEUTZLING: In these photos, yes.

14 MR. COOPER: Okay.

15 CHAIRMAN ANDERSON: Counsel, we have got
16 it that there's a trash issue. So remember that
17 we're asking for -- they're applying for an
18 entertainment endorsement. So I think you've
19 made your point on that issue.

20 MR. COOPER: Okay. Well, I -- thank you.

21 Now, as to noise, what has been your
22 experience regarding noise emanating from Po Boy

1 Jim's restaurant, and how do you know that it's
2 coming from Po Boy's restaurant as opposed to any
3 other establishment?

4 MS. NEUTZLING: The way -- I've actually
5 visited their establishment. I've dined there,
6 and the way the space is configured -- and I'm
7 not sure anybody else has actually addressed
8 this. When you have a narrow space and you have
9 sound compressed in that narrow space, it has to
10 travel, and they have lots of glass on the back
11 side of the building. So, on that second floor,
12 that sound travels right through that glass and
13 can be heard. You can't necessarily hear it in
14 the alley, but you can definitely hear it on the
15 second floor and then the back yards of the homes
16 adjacent.

17 MR. COOPER: I am going to turn your
18 attention back to this exhibit which we listed as
19 Protestant's Exhibit No. 12. The rear of their
20 building, the establishment, comes out near the
21 rear part of your property; is that correct?

22 MS. NEUTZLING: Correct.

1 MR. COOPER: And what is directly behind
2 their establishment?

3 MS. NEUTZLING: My back yard.

4 MR. COOPER: Okay. And so --

5 MS. NEUTZLING: And part of my garage.
6 It kind of splits it.

7 MR. COOPER: Okay. So you have your
8 house first. Then there is a --

9 MS. NEUTZLING: A yard.

10 MR. COOPER: -- yard.

11 MS. NEUTZLING: Then a garage.

12 MR. COOPER: And then there's an alley
13 behind your garage.

14 MS. NEUTZLING: Yes.

15 MR. COOPER: And that alley runs north to
16 south?

17 MS. NEUTZLING: Correct -- no, that alley
18 runs east to west, doesn't it? Okay. So this
19 alley -- this alley runs east.

20 MR. COOPER: So the alley from 7th to 8th
21 runs east to west?

22 MS. NEUTZLING: Yes.

1 MR. COOPER: And there's another alley in
2 the middle of the back?

3 MS. NEUTZLING: In the back that runs
4 north-south.

5 MR. COOPER: And that runs -- that is
6 behind -- that your garage lets out into that
7 alley that runs north and south?

8 MS. NEUTZLING: Correct.

9 MR. COOPER: Okay. And so noise
10 emanating from Po Boy Jim's goes directly towards
11 your back yard and right into your garage a
12 little bit?

13 MS. NEUTZLING: Correct.

14 MR. COOPER: Okay. How are the windows
15 situated on your home?

16 MS. NEUTZLING: I have a bedroom on the
17 back, and I have two windows facing the back. I
18 can see -- I can see their patio and the trash
19 collection area from my bedroom.

20 MR. COOPER: Okay. And what have been
21 some of the concerns that you had -- have had
22 thus far about noise?

1 MS. NEUTZLING: Just the way the space is
2 configured, and I know they've put money into the
3 patio, but that noise comes right up. It bounces
4 off those walls, comes right up and out, and I
5 have audio recording of what it sounds like in my
6 house and in my yard when they have people on the
7 patio and when they have people inside. Even
8 with my windows close and their doors closed, I
9 can still hear conversation. I can still hear
10 music. It's pretty clear.

11 MR. COOPER: And have you addressed these
12 concerns to Po Boy other than the times that were
13 reflected in your e-mail?

14 MS. NEUTZLING: I called a few times
15 asking for the music to be turned down, and the
16 last time I actually called, I was asked to stop
17 harassing them and let them get on with their
18 business, so I didn't call anymore, and I
19 submitted my complaints to the Enforcement
20 Hotline.

21 MR. COOPER: How would, in your opinion,
22 what you heard today about their entertainment

1 endorsement -- how would that impact you if the
2 entertainment endorsement were approved?

3 MS. NEUTZLING: If they put the
4 entertainment on the second floor with that glass
5 wall and no buffer between the music, even though
6 the speakers are in the front of the restaurant,
7 that music is going to travel through the
8 restaurant and be funneled right out the glass
9 doors. And as soundwaves travel, they don't
10 necessarily drop immediately into the alley.
11 They travel across, so the neighbors can actually
12 hear what's going on over there.

13 MR. SILVERSTEIN: Say it again, please?

14 MS. NEUTZLING: When soundwaves travel,
15 they get compressed. They'll shoot out those
16 glass windows or those French doors. It doesn't
17 drop and stop at their property line. It just
18 travels, so the neighbors can actually hear
19 what's going on inside their establishment. It's
20 pretty clear.

21 MR. COOPER: So on the second floor, is
22 there are brick wall that rises to the height of

1 your second story, such that noise does not come
2 straight out across the alley?

3 MS. NEUTZLING: No.

4 MR. COOPER: Approximately how high is
5 that wall in relation to your property?

6 MS. NEUTZLING: It's about as high --
7 about as high as the first floor. It's like a
8 one-story wall, maybe, 10 to 12 feet.

9 MR. COOPER: Okay. And this question was
10 asked of Commissioner Miller. What would you
11 propose as an accommodation or resolution with
12 respect to their request for an entertainment
13 endorsement, if at all?

14 MS. NEUTZLING: If it goes through, I
15 would request that there's some kind of buffer
16 between where they're proposing to have a deejay
17 or karaoke, a buffer on that second floor to
18 block the sound from traveling through those
19 glass, to the French doors, and out into the
20 neighboring airspace.

21 MR. COOPER: And have you had occasions
22 where those patio French doors are actually open?

1 MS. NEUTZLING: I can't say. I've not
2 visually seen the patio doors open, but it sounds
3 as if on some evenings, those doors are open.

4 MR. COOPER: So, on the evenings when
5 they are closed, when you've seen them closed,
6 you could still here --

7 MS. NEUTZLING: Yes.

8 MR. COOPER: -- substantial noise from
9 music and voices coming through there?

10 MS. NEUTZLING: Yes.

11 MR. COOPER: What about hours of
12 operating on entertainment? What would be your
13 suggestion?

14 MS. NEUTZLING: Ten o'clock during the
15 week, and eleven o'clock on the weekends, as
16 their original agreement stated.

17 MR. COOPER: Okay. So you would not mind
18 an entertainment endorsement. It was just you
19 would like to have it capped at a certain hour.

20 MS. NEUTZLING: And there has to be some
21 kind of restrictive something to block the sound
22 that travels.

1 MR. COOPER: Okay. I have no further
2 questions at this time.

3 CHAIRMAN ANDERSON: You now have an
4 opportunity to ask her direct questions,
5 questions based on the questions that were
6 elicited from counsel.

7 MR. REID: So my first question is, what
8 time do you have to be to work in the morning?

9 MS. NEUTZLING: I have to be there at
10 eight, but I don't think that has any impact on
11 your ability to abide by your agreement.

12 MR. REID: So what time do you get up for
13 work in the morning?

14 MS. NEUTZLING: It depends on the day.
15 Between 5:30 and 7.

16 MR. REID: So, because you said a trash
17 truck comes there between 7:45 and -- I forgot
18 what you said. You said it wakes you up from
19 your sleep, but it seems like you're already
20 awake.

21 MS. NEUTZLING: Saturday mornings, I'm
22 not.

1 MR. REID: Oh, Saturday morning.

2 MS. NEUTZLING: And your agreement states
3 9 a.m.

4 MR. REID: Okay. Second, why would rats
5 -- if we have the trash, why would rats -- why
6 would you have rats in your yard?

7 MS. NEUTZLING: They travel from your
8 trash, run through my yard, and go wherever
9 they're going to go with their trash. They
10 actually pull -- there are napkins and forks and
11 all kinds of odd things that show up in my yard
12 through the rat burrows.

13 MR. REID: You can go ahead because I
14 lost my train of thought.

15 MS. ANTOINE: Okay. We had quite a few
16 exhibits that were presented, and I take it, you
17 sent those exhibits to ABC Board or health
18 department or what have you, and based on what
19 you have sent them, what was the outcome of it?

20 MS. NEUTZLING: Well, we're here. We've
21 talked before you asked for these. I believe
22 you've asked for the entertainment endorsement

1 before, and it was denied, but I'm not positive
2 if that's true, because you were not controlling
3 your trash.

4 MS. ANTOINE: When I say that, Kim, I
5 mean before when we -- we got one violation for
6 trash, and if you're sending that many pictures
7 and that many days on trash to the ABC Board,
8 health down payment, what have you, I'm trying to
9 figure out based on all these dates here.

10 MS. NEUTZLING: Mm-hmm.

11 MS. ANTOINE: Was there ever an outcome
12 from these government agencies directly to you?

13 MS. NEUTZLING: Do you mean call me?

14 MS. ANTOINE: Not for the hearing today.

15 MR. SILVERSTEIN: Hold on. Let her
16 finish asking the question for you.

17 MS. NEUTZLING: Okay.

18 MS. ANTOINE: Yeah. I'm just asking did
19 they -- was anything ever done based on all of
20 your dates that you sent over to either ABRA or
21 to health department?

22 MS. NEUTZLING: I'm not sure I understand

1 your question. Do you mean did anybody call me,
2 or were you cited or --

3 MS. ANTOINE: Well --

4 MR. REID: We were cited.

5 MS. NEUTZLING: You were cited.

6 MS. ANTOINE: Yeah, but we were cited in
7 July. You have dates from January to April, May,
8 June, what have you. We were cited once.

9 MS. NEUTZLING: Okay.

10 MS. ANTOINE: We were cited once.

11 MS. NEUTZLING: Yeah.

12 MS. ANTOINE: With respect to trash, we
13 were cited once, and you have a ton of dates
14 here, and I don't know how ABRA operates when it
15 sees these images and e-mails from the
16 neighborhoods or the health department, but if I
17 were them, this many dates, I would definitely be
18 out there or have someone out there.

19 MS. NEUTZLING: I don't know how they
20 function. You were cited once. That doesn't
21 mean that you didn't continue to have the
22 problem. Just because you were only cited once

1 doesn't mean you didn't continue to function
2 against your agreement.

3 MS. ANTOINE: Okay. With respect to
4 noise, I know you and I have been in contact
5 before.

6 MS. NEUTZLING: Mm-hmm.

7 MS. ANTOINE: We exchanged phone numbers,
8 what have you, and you have called me several
9 times --

10 MS. NEUTZLING: Mm-hmm.

11 MS. ANTOINE: -- and whatnot.

12 You also state -- there was also a
13 statement -- it was also stated that you had
14 called ABRA about noise.

15 MS. NEUTZLING: Yes.

16 MS. ANTOINE: And Officer Brashears, I
17 recall came to me, and he said, based on what you
18 might have said with respect to noise, when they
19 came out, they did not find anything conclusive
20 stating that Po Boy Jim is, you know, making a
21 bunch of noise type of think.

22 MS. NEUTZLING: Right.

1 MS. ANTOINE: So I've never gotten any
2 type of tickets or what have you, whatever the
3 Board would issue with respect to noise. I never
4 got any of those. I think we were just being
5 civil when we called -- you called me and I said
6 okay, whatnot, whatnot.

7 CHAIRMAN ANDERSON: Remember you have to
8 ask her a question, okay?

9 MS. ANTOINE: Mm-hmm.

10 CHAIRMAN ANDERSON: So you have to ask
11 her a question and get an answer.

12 MS. ANTOINE: Did you at any point get
13 any resolution with respect to noise from ABRA
14 from our establishment? When I say resolution,
15 did they ever send you any type of -- or was
16 there any type of citation issued to Po Boy Jim
17 or ticket or what have you with respect to noise?

18 MS. NEUTZLING: I'm not aware, no.

19 MS. ANTOINE: You're not aware. Okay.

20 MR. REID: Could I just clarify something
21 real quick that you said? Just 5 seconds.

22 CHAIRMAN ANDERSON: You have to ask a

1 question. If you need to clarify stuff, you do
2 that in closing. That's why I'm saying --

3 MS. ANTOINE: I'll do it in closing.

4 CHAIRMAN ANDERSON: -- get a pen, write
5 it down, so when you're giving your closing
6 statement, then you can provide clarification to
7 anything that came up because you're wrapping up
8 your case. Borrow a pen from somewhere.

9 MR. REID: That's fine.

10 CHAIRMAN ANDERSON: I'm just saying in
11 the heat of battle, even as a practicing attorney
12 --

13 MR. REID: I know.

14 CHAIRMAN ANDERSON: So you need to write
15 it down so you'll bring it up later on, okay?

16 MR. REID: All right.

17 CHAIRMAN ANDERSON: But this is just an
18 opportunity to ask if you have direct questions
19 to ask her based on the questions that were --
20 that counsel asked her.

21 MR. REID: Okay.

22 MS. ANTOINE: Based on where your home is

1 in relation to Po Boy Jim, I know your property
2 running -- your property horizontal. We're
3 vertical practically.

4 MS. NEUTZLING: Mm-hmm.

5 MS. ANTOINE: At the corner, there is the
6 Spot Deli. There is the pawn shop. There is
7 Chris, the barber shop. There's Addis Ethiopia.
8 There's Po Boy Jim. And based on how your home
9 is and these stores, there are all these stores
10 that pretty much you can say you can see from
11 your home.

12 MS. NEUTZLING: Correct.

13 MS. ANTOINE: Isn't that correct? In the
14 back.

15 At any point or currently, have you
16 looked out of your home --

17 MS. NEUTZLING: Mm-hmm.

18 MS. ANTOINE: -- and noticed trash from
19 any other areas --

20 MS. NEUTZLING: Yes.

21 MS. ANTOINE: -- on that -- on that
22 particular --

1 MS. NEUTZLING: Yes.

2 MS. ANTOINE: -- you know, alleyway or
3 what have you? Okay.

4 Is it Po Boy Jim's trash?

5 MS. NEUTZLING: Well, I see your trash,
6 and I see other people's trash.

7 MS. ANTOINE: Okay. That's all I have to
8 ask you.

9 CHAIRMAN ANDERSON: Do we have any
10 questions from the Board members?

11 Yes, Mr. Miller.

12 MS. MILLER: Good evening.

13 MS. NEUTZLING: Hi.

14 MS. MILLER: I have a few questions. I
15 think I heard you testify about complaining with
16 respect to music --

17 MS. NEUTZLING: Yes.

18 MS. MILLER: -- and any reaction you got.
19 What was your experience with complaints about
20 the trash? Did you make complaints to the
21 Applicant about the trash?

22 MS. NEUTZLING: No.

1 MS. MILLER: Why not?

2 MS. NEUTZLING: Once I became aware of
3 the process and what I was allowed to do and what
4 the rules were regarding their trash, I chose to
5 take my complaints to ANC.

6 MS. MILLER: Okay. And you said you're
7 getting results finally now in the last 6 weeks?

8 MS. NEUTZLING: Yes.

9 MS. MILLER: What -- how is it different
10 over there?

11 MS. NEUTZLING: Trash is not spilling out
12 of the dumpster. The recycling is not spilling
13 out of the recycling bin. There aren't any
14 garbage bags on the ground. At least for the
15 last 6 weeks or so, there haven't been any.
16 There have been 2 days where all the recycling
17 did not fit in the recycling bin, but it was
18 temporary. It was gone by the time I got home
19 from work.

20 MS. MILLER: Okay. I thought you may
21 have also said this, and let me know if I'm
22 wrong. You seem to be concerned about music on

1 the second floor --

2 MS. NEUTZLING: Correct.

3 MS. MILLER: -- because of the glass.

4 MS. NEUTZLING: And the patio.

5 MS. MILLER: And a patio.

6 Are you concerned about music on the
7 first floor with the doors closed?

8 MS. NEUTZLING: If it were controlled and
9 buffered, I wouldn't be able to hear that. If it
10 were kept closer to the street side, the H Street
11 side of the establishment, I'm certain that that
12 would help control what the neighbors could hear.

13 MS. MILLER: Okay. I believe that the
14 Applicant testified that speakers were facing the
15 bar.

16 MS. NEUTZLING: It's a small space up
17 there. Sound gets compressed. It travels. It
18 has to go somewhere, and the weak point are the
19 six French doors.

20 MS. MILLER: Okay. On the second floor?

21 MS. NEUTZLING: Correct.

22 MS. MILLER: Okay. As far a noise, where

1 you are now, emanating from this establishment,
2 has it been in the nature of just music, or has
3 it been other kind of noise such as voices or
4 anything like that?

5 MS. NEUTZLING: You can hear voices.

6 MS. MILLER: You can hear voices. Can
7 you say when did you hear voices? When the doors
8 were open or when -- on the second floor or where
9 do you hear it?

10 MS. NEUTZLING: On the second floor,
11 mostly from the second floor in the evening and
12 at night, it's music, and the voices emanate from
13 the patio.

14 MS. MILLER: Okay.

15 MS. NEUTZLING: At least that's my
16 experience.

17 MS. MILLER: Okay. I don't know who else
18 is here to testify, so I just want to ask you.
19 Do you have other neighbors who are experiencing
20 the same issues?

21 MS. NEUTZLING: Yes.

22 MS. MILLER: Okay. And what action did

1 they take that you know of, or did you act
2 collaboratively or what?

3 MS. NEUTZLING: I believe they've made
4 some other similar complaints that I have made.

5 MS. MILLER: To the ANC?

6 MS. NEUTZLING: Yeah.

7 MS. MILLER: Okay. Okay. I don't have
8 any other questions. Thank you.

9 CHAIRMAN ANDERSON: Yes, Mr. Short.

10 MR. SHORT: Good afternoon.

11 MS. NEUTZLING: Hello.

12 MR. SHORT: I'm going to say your
13 testimony has been quite compelling, and you have
14 a right as a citizen to complain about conditions
15 that are not conducive.

16 I know one time, we -- we have -- our rat
17 problems are coming back, so we need to get on
18 top of it again.

19 You say things have gotten better
20 recently?

21 MS. NEUTZLING: In the last 6 weeks,
22 they've improved, yes.

1 MR. SHORT: Is that just Po Boy's, or is
2 that all the businesses?

3 MS. NEUTZLING: No, just Po Boy's.

4 MR. SHORT: So the other businesses are
5 still --

6 MS. NEUTZLING: The other businesses
7 weren't a problem until recently, and so that's
8 going to be undertaken at a different time.

9 MR. SHORT: So one business has gone
10 down, and the other ones have come up?

11 MS. NEUTZLING: If you want to look at it
12 that way, yes.

13 MR. SHORT: Okay. Well, you are working
14 diligently with your ANC, which is the right way
15 to go, but I would think the other agencies in
16 the city should be made aware of it also, and I
17 think the more agencies you get involved,
18 councilmember and whomever else -- I say that
19 because I once worked for the city myself, and I
20 do know that we cleaned up rats in the city at
21 one time, but we need to get back on top of that.

22 They have what they call a Vector?

1 MS. NEUTZLING: Yes, I've used it.

2 Mm-hmm.

3 MR. SHORT: You know Vector? Okay.

4 Well, that was when we made businesses hold off
5 their other boxes. They just couldn't put a box
6 in their door on top of it. So maybe if we go
7 back to that. I think there was a Vector Sector
8 at one time for the D.C. Government, but at any
9 rate, thank you again for your testimony.

10 CHAIRMAN ANDERSON: Mr. Alberti.

11 MR. ALBERTI: Ms. Neutzling --

12 "Neutzling"?

13 MS. NEUTZLING: Correct.

14 MR. ALBERTI: Thank you. That's a great
15 name.

16 MS. NEUTZLING: Thanks.

17 MR. ALBERTI: I wouldn't have gotten it
18 without the spelling.

19 [Laughter.]

20 MR. ALBERTI: So correct me if I heard
21 you wrong. I thought I heard you testify that
22 you heard noise from the establishment with the

1 French doors closed?

2 MS. NEUTZLING: Yes.

3 MR. ALBERTI: All right. What time of
4 year was that?

5 MS. NEUTZLING: I could not tell you now.
6 It's -- I couldn't tell you.

7 MR. ALBERTI: Okay. Was it -- do you
8 remember what the weather was like? Was it cold?
9 I mean, was it winter? Was it spring? Was it
10 fall?

11 MS. NEUTZLING: There have been
12 consistent noise issues from -- as far as my
13 memory serves, from January until September. So
14 I can't tell you.

15 MR. ALBERTI: Okay. So I'm going to ask
16 you to recall, if you can, like maybe one
17 instance because we've got --

18 MS. NEUTZLING: Actually, I have --

19 MR. ALBERTI: I want to get some detail.
20 I want to get some detail here.

21 MS. NEUTZLING: I have a recording. Let
22 me look at the date.

1 MR. ALBERTI: All right. Because I want
2 to ask you, where were you when you heard these
3 noises?

4 MS. NEUTZLING: This particular
5 recording, I was actually in bed. The windows
6 were closed. It was September 5th.

7 MR. ALBERTI: Okay. And what was the
8 nature of the sound that you heard?

9 MS. NEUTZLING: It was music.

10 MR. ALBERTI: And you could hear it in
11 your house?

12 MS. NEUTZLING: I could record it from my
13 bed. Yes.

14 MR. ALBERTI: Okay. Was it -- you may
15 not understand this, but we have a lot of cases
16 where's -- it's just like bass vibration or you
17 can hear the words.

18 MS. NEUTZLING: No, I could hear the
19 words.

20 MR. ALBERTI: You could hear the words.
21 It wasn't just --

22 MS. NEUTZLING: I couldn't hear it

1 clearly. It wasn't just boom, boom, boom, and
2 the type of music shouldn't matter. It's just --

3 MR. ALBERTI: And how do you know it was
4 from this establishment?

5 MS. NEUTZLING: Because at that time, the
6 only other establishment on the block that would
7 have music was Addis, and they were not playing
8 music at that time, at least not --

9 MR. SILVERSTEIN: And they were not?

10 MS. NEUTZLING: I'm sorry.

11 MR. SILVERSTEIN: It was Addis and?

12 MS. NEUTZLING: And Po Boy Jim are the
13 only two establishments that would be playing
14 music, and at that time, Addis did not have their
15 music on.

16 MR. ALBERTI: How do you know that?

17 MS. NEUTZLING: I went outside.

18 MR. ALBERTI: Okay. So you went outside?

19 MS. NEUTZLING: I go outside a lot.

20 MR. ALBERTI: All right. So when you
21 heard that music, you went outside, and you could
22 identify the direction of the music?

1 MS. NEUTZLING: Yes.

2 MR. ALBERTI: All right. Thank you very
3 much.

4 CHAIRMAN ANDERSON: Any other members?

5 MS. MILLER: I just had a follow-up
6 question about --

7 CHAIRMAN ANDERSON: Well, let me --

8 MS. MILLER: But after you, sir.

9 CHAIRMAN ANDERSON: I'm going to --

10 MS. MILLER: Okay.

11 CHAIRMAN ANDERSON: On September 5th,
12 approximately what time did you hear the noise?

13 MS. NEUTZLING: The audio recording isn't
14 dated. It's dated. It doesn't have a time sync
15 on it, but it was after hours. Otherwise, I
16 wouldn't have had a problem with it.

17 CHAIRMAN ANDERSON: What do you call
18 after hours?

19 MS. NEUTZLING: Well, eleven o'clock is
20 their agreement. It was after eleven o'clock.

21 CHAIRMAN ANDERSON: So it was after
22 eleven?

1 MS. NEUTZLING: Yeah.

2 CHAIRMAN ANDERSON: All right.

3 You can go ahead, Ms. Miller, if you have
4 a question.

5 MS. MILLER: Oh, I just want to know, do
6 you know where the music was coming from in their
7 establishment? Was it the patio? Was it the
8 second floor? You don't know?

9 MS. NEUTZLING: No. It looked like -- it
10 didn't sound like it was the patio. Addis has a
11 cut-in. I can go in and listen. Po Boy's has
12 the trash area. I'm standing there. It didn't
13 sound like it was coming from the patio, so I'm
14 guessing it was from the second floor.

15 MS. MILLER: Okay, thank you.

16 CHAIRMAN ANDERSON: All right. Do you
17 have any other questions?

18 MS. MILLER: No. No, no. Thank you.

19 CHAIRMAN ANDERSON: Let me -- prior to 6
20 weeks ago, do you know approximately how many
21 days a week that the establishment had its trash
22 picked up?

1 MS. NEUTZLING: It seems to vary. I
2 don't know if it's 2 days a week and they have
3 extra calls or it seems -- either the trash
4 pickup was on Monday or Tuesday, sometimes
5 Thursday, and Saturday mornings, always Saturday
6 mornings.

7 CHAIRMAN ANDERSON: But it's not -- it's
8 not like 2 days a week, 3 days a week, you're not
9 sure?

10 MS. NEUTZLING: I'm not sure, no.

11 CHAIRMAN ANDERSON: Do any other Board
12 members have any other questions?

13 [No audible response.]

14 CHAIRMAN ANDERSON: All right. Do you
15 guys have any specific questions on the questions
16 -- as far as the questions that the Board raised?

17 MR. COOPER: Nothing.

18 CHAIRMAN ANDERSON: Applicant? No?

19 [No audible response.]

20 CHAIRMAN ANDERSON: Okay. Thank you.
21 You are excluded.

22 Do you have any other witnesses?

1 MR. COOPER: Yes, I do. I would like to
2 call Mr. Alex Ackemann.

3 CHAIRMAN ANDERSON: Can you raise your
4 right hand, please. Do you swear or affirm to
5 tell the truth, the whole truth, and nothing but
6 the truth?

7 MR. ACKEMANN: I do.

8 [Witness sworn.]

9 CHAIRMAN ANDERSON: Thank you. Have a
10 seat.

11 Your witness, sir.

12 MR. COOPER: Would you please state and
13 spell your name for the record.

14 MR. ACKEMANN: Yes. Alex Ackemann. Last
15 name is A-c-k-e-m-a-n-n.

16 MR. COOPER: And, Mr. Ackemann, where do
17 you live? What's your address?

18 MR. ACKEMANN: It's 723 7th Street,
19 Northwest, so I'm two houses further south on the
20 block from Kim's house.

21 MR. COOPER: I'm going to - -may I
22 approach the witness?

1 CHAIRMAN ANDERSON: Sure.

2 MR. COOPER: I am going to hand you what
3 had previously been marked as Protestant's
4 Exhibit No. 12, and I am going to ask you to do
5 the same thing we did and put your initials and
6 an arrow at your address.

7 So, based on that exhibit, you are two
8 doors south of the last witness' home; is that
9 correct?

10 MR. ACKEMANN: Correct.

11 MR. COOPER: Okay. And how long have you
12 resided at that property?

13 MR. ACKEMANN: I moved in like February
14 of 2015, February or March of -- or sorry --
15 2008.

16 MR. COOPER: In 2008. So that was prior
17 to Po Boy Jim's restaurant opening?

18 MR. ACKEMANN: Correct.

19 MR. COOPER: Were you aware at some point
20 that Po Boy Jim's was going to open on H Street,
21 Northeast?

22 MR. ACKEMANN: Yeah.

1 MR. COOPER: And how did you find out?

2 MR. ACKEMANN: I think my wife was
3 actually involved in the initial process where
4 the initial agreement was come to.

5 MR. COOPER: Okay.

6 MR. ACKEMANN: So I'm not as abreast on
7 all the nomenclature.

8 MR. COOPER: Okay. That's okay.

9 And have you expressed to the ANC any
10 concerns about the operations of Po Boy Jim's?

11 MR. ACKEMANN: Yeah. I've sent e-mails
12 to the ANC. I have not directly to Poor Boy's,
13 but yeah, I've sent some e-mails.

14 Kim and I have talked on a number of
15 occasions just about the general issues that have
16 been discussed already quite a bit here.

17 MR. COOPER: And what were the concerns
18 that you raised concerning Po Boy Jim's?

19 MR. ACKEMANN: My biggest problem -- and
20 we're situated, my house has a bump-out in the
21 back, and Kim's house, unfortunately for her,
22 acts as soundproofing for much of the living

1 space on my house. Our master bedroom is in the
2 front of the house, and my son is also sheltered
3 by three houses and multiple party walls. So
4 unless windows are open in the back, we don't get
5 the noise.

6 So my biggest issue was the early trash
7 pickup. I mean, there is -- I also go to work
8 fairly early, and the dumpster is just rattling.
9 It's the dumpster shaker trucks that back down
10 the alley that reverse alarms coming down the
11 alley. It seems inappropriate. I wasn't
12 actually familiar with the agreement that
13 required them to do that after nine, but Kim
14 informed me of it. It certainly for a long
15 period of time was well before that -- before
16 that time in the morning, which on occasion woke
17 up my son, whose bedroom is in the back, towards
18 the back of the house.

19 MR. COOPER: Okay. Any other concerns
20 you have expressed to the ANC concerning the
21 current operations of Po Boy Jim's that affects
22 the peace, order, and quiet?

1 MR. ACKEMANN: Yeah. I mean, the rat
2 issue became an issue once there were two
3 restaurants located there. I couldn't tell you
4 where they were coming from specifically, but
5 she's got burrows on our house. There's been
6 carcasses in the alley and on 7th Street, and
7 there's droppings in our garage now. And I've
8 had to -- If I started just leaving our -- on the
9 inner yard, I left the door open. We have two
10 little dogs that like to go sniff around, and
11 they seem to keep them out. And I have to keep
12 it clean because otherwise they do bring whatever
13 they're eating in to seek shelter from cars or
14 pedestrians or whatever.

15 It hasn't been as big a problem lately,
16 as has been pointed out. The conditions have
17 gotten better around the trash, but there have
18 been -- we were out there in the back yard on
19 Friday night, and you can hear them.

20 Like, Kim has got measures in place.
21 I've got my dogs, but the person in between us is
22 a house of renters, and they don't spend any time

1 in the back yard, and you can hear the rustling
2 of leaves with the rates. They have taken up
3 residence there because it's available.

4 MR. COOPER: Any other concerns you have
5 concerning the current operations of Po Boy Jim
6 that you hadn't already expressed?

7 MR. ACKEMANN: Well, yeah. My one
8 observation, I don't -- like I said, I think Kim
9 takes the brunt of it in her house because of
10 where it is. When I'm in my back yard, though, I
11 can hear when the windows are open -- I think
12 it's only when the windows are open. I can hear
13 actual conversations of people in the -- I don't
14 know. I've actually not been upstairs, but I can
15 describe it as the area above the courtyard where
16 there are windows there. You can actually see
17 the people and hear specific conversations.

18 So when there's -- when the windows are
19 open, I can certainly say I can hear down to
20 actual words and whatever music is playing. And
21 I think we're fortunate because, like I said, we
22 sleep towards the front of the house, with the

1 exception of my son who is 6 and sleeps in the
2 dog-leg room. So he's got the bump-out and then
3 a bedroom and then his room. The dog-leg does
4 come down there, and he has a window that opens
5 out at the back.

6 MR. COOPER: Make sure you speak up.

7 MR. ACKEMANN: Sorry.

8 MR. COOPER: And did you express those
9 concerns in any correspondence to the ANC?

10 MR. ACKEMANN: Yeah. I just sent an
11 e-mail once this issue started coming up because
12 my concern is -- going forward, if we're
13 extending these hours, if we're extending the
14 types of entertainment and volume, that it would
15 become a much bigger problem than it is now.

16 MR. COOPER: I hand you what has been
17 previously marked as Protestant's Exhibit No. 1.
18 Is that the e-mail that you've sent to the ANC
19 asserting your concerns about operation and
20 potential future changes to the entertainment
21 endorsement?

22 MR. ACKEMANN: Correct. Yep.

1 MR. COOPER: And how do you think that
2 the -- again, just for the record, how do you --
3 what do you believe would be the impact by an
4 entertainment endorsement being added to the
5 current license?

6 MR. ACKEMANN: My primary concerns are
7 the -- I didn't even realize there was a garden
8 patio endorsement happening. That's a major
9 concern in and of itself. I know we're not
10 addressing that now, but just because there's a
11 wall at the first level, that -- the noise in
12 there bounces off of any surface, and that alley
13 is like a canyon back behind -- bounded by 7th
14 and 8th Street. The houses come down, and
15 there's a brick alley.

16 And my concern is that if there is
17 increased noise, if there's more late night
18 entertainment, that that's going to be heading
19 down that alley on a regular basic. And, you
20 know, my son is not the only one who lives there.
21 We've got four kids in the next house south of
22 us, and two more kids, two more houses down.

1 So, I mean, I would just be concerned
2 more that it's -- and, again, this goes to what
3 types of plans they have. I mean, if they're not
4 planning on that type of regular loud activity,
5 that's one thing, but it seems like we're asking
6 to leave kind of an open invitation to do it
7 whenever -- whenever they feel like doing it.
8 That's my concern; it becomes a regular thing,
9 and it's disturbing multiple neighbors and young
10 neighbors at that.

11 MR. COOPER: What would be your
12 accommodation? What do you believe would be an
13 appropriate accommodation if the Board were to
14 grant an entertainment endorsement? What would
15 you like it to look like?

16 MR. ACKEMANN: I hate to set limits
17 because, like I said, I'm down the line a bit
18 from the most major impact, but I think we've got
19 a pretty good situation or scenario in place
20 right now, and it sounds like you're negotiated
21 -- I'm willing to back up anything that the ANC
22 agrees to, particularly with Kim in

1 consideration.

2 I just, you know -- to be honest with
3 you, I don't even know what the limits are right
4 now, but two in the morning on the weekends and
5 1:30 on a Wednesday, I don't want my kid waking
6 up at 1:30 with music playing on a Wednesday.
7 That's just not reasonable.

8 It's difficult for me to tell you what I
9 would accept. I love the fact that there's a
10 viable restaurant in that space. I like the fact
11 that they -- I mean, they serve delicious
12 sandwiches. Anyone who has eaten there will
13 confirm that, but I don't want it -- the slippery
14 slope is my concern, that it turns into, as Mr.
15 Short said -- it turns into the slippery slope
16 where we say "Yes, you can do this," and then
17 gradually, it just becomes more of a club scene.

18 MR. COOPER: Okay. I have no further
19 questions at this time.

20 CHAIRMAN ANDERSON: Do you guys have any
21 direct questions?

22 MS. ANTOINE: No.

1 CHAIRMAN ANDERSON: All right. Members
2 of the Board?

3 Yes, Ms. Miller.

4 MS. MILLER: Good evening. So I hear
5 your concern about not wanting to be woken up by
6 music, and -- but my question is, do you think
7 the type of entertainment they were talking about
8 -- deejay, karaoke -- would wake you up
9 necessarily? And then I mean, for instance -- I
10 seem to hear differences between the second floor
11 doors open, doors closed, and then the first
12 floor. And I know you said you're set back,
13 anyway, but as far as your own concerns, speaking
14 for yourself, I wasn't hearing that it would be a
15 problem on the first floor. Do you know? I
16 mean, based on -- let me just get through this
17 one caveat.

18 My understanding also is there's been
19 some kind of maybe prerecorded music or whatever
20 that isn't required for an entertainment
21 endorsement, already had been played, so what's
22 your opinion on that with respect to -- you know,

1 does it matter if it's -- the location of music?

2 MR. ACKEMANN: Yeah. I don't know. I
3 haven't been nearly as diligent about tracking
4 particularly where it's coming from.

5 MS. MILLER: Mm-hmm.

6 MR. ACKEMANN: I can confirm, but the one
7 thing that I have noticed is being in my back
8 yard or in the bump-out bedroom, the one in the
9 back of our room, which is where our guests would
10 stay. You can clearly hear noise coming from the
11 second floor.

12 Earlier we were talking about -- they
13 were saying that the music would be isolated to
14 the bar area, and my instinct was that's
15 downstairs, the bar is downstairs. It sounds
16 like it's actually upstairs.

17 MS. MILLER: Oh, okay.

18 MR. ACKEMANN: And I would agree that
19 acoustically, there's just -- it's not realistic
20 that no matter where the speakers are pointing,
21 you're going to have issues with stuff traveling
22 out the back of the building. Whether the close

1 doors and some weather stripping or something can
2 minimize that, I couldn't tell you, but there
3 certainly is an acoustical thing that happens
4 that comes right over the top of the first-level
5 wall.

6 And when -- you can also hear on -- I
7 don't know. I can't give you any specific dates,
8 but I can kind of generalize. When I've heard
9 people speaking in the courtyard area, the noise
10 goes off the building and comes right back over
11 top into the alley area.

12 MS. MILLER: Do you have an opinion about
13 hours? For instance, you don't want to be woken
14 up at one o'clock in the morning to this noise,
15 but do you have an opinion whether the noise
16 would be bothersome, say, at ten o'clock at night
17 or eleven o'clock at night?

18 MR. ACKEMANN: Well, my son goes to bed
19 at 7:30, but again, it depends on -- we turn on a
20 fan in his room, get some white noise. We can be
21 creative with some solutions. I understand we're
22 in an urban setting. It's not silent. We have

1 ambulances going by our front door, it seems like
2 every 10 minutes.

3 Yeah. During the week, I mean, I would
4 have a huge problem with anything after ten.
5 Even ten to me is pushing it, but again, they're
6 trying to run a business. It's in a commercial
7 district. I understand that. 1:30 on a
8 Wednesday, like I said, that's a nightmare for
9 me, Hump Day and your kid is getting woken up in
10 the middle of the night, heading into Thursday.

11 And weekends are weekends. It's a
12 restaurant. I expect it will be open a little
13 bit later. If there's not as much of an impact
14 with the doors closed, then, you know, like I
15 said, it wouldn't be as big a bother to me, but,
16 again, with that caveat that I'm not the closest
17 to it. And we do have the luxury of having
18 padding on the sides in the back of our hours
19 before we get to our beds.

20 MS. MILLER: Okay, thank you.

21 CHAIRMAN ANDERSON: Yes, Mr. Short.

22 MR. SHORT: Mr. Ackemann, thank you for

1 spending a lot of time with us today. You guys
2 really hung in there.

3 It sounds, though -- you said they have
4 nice sandwiches, and you'd rather have a
5 restaurant there than have some other kinds of
6 businesses.

7 MR. ACKEMANN: Yeah. No, as someone who
8 moved here when those properties were not
9 occupied, I'm appreciative that there is someone
10 who is there. You know, you take the good and
11 you take the bad a little bit, but if there are
12 agreements, I think it is critical that we adhere
13 to the agreements, and I think that's -- you
14 heard a lot of that earlier. I mean, it's nice
15 to have residents -- or tenants that are
16 respectful of the rest of the neighborhood.
17 There were problems for a while.

18 MR. SHORT: Thank you very much for your
19 testimony again. I think that the Applicants
20 have heard that somebody is trying to work with
21 them, so we need to make it a mutual agreement,
22 that the community and the business can function

1 together, so thank you very much for your
2 testimony.

3 MR. ACKEMANN: You're welcome.

4 CHAIRMAN ANDERSON: Are there any other
5 questions? Yes, Mr. Alberti.

6 MR. ALBERTI: Sir, I'm sorry. Your name
7 again? I'm sorry.

8 MR. ACKEMANN: Ackemann.

9 MR. ALBERTI: Ackemann. Mr. Ackemann.

10 So I will follow up with Ms. Miller's
11 question, and you answered her succinctly about
12 what you thought were reasonable hours during the
13 week, but you didn't touch on the weekend. So
14 I'm going to put you on the spot.

15 I'm going to put you on the spot. So
16 what do you think a reasonable -- you know, if
17 you were living where Ms. Neutzling was living --
18 well, even where you're living. I mean, you
19 might -- you said you can hear the noise. What
20 do you think is reasonable hours on weekends for
21 you to not have to deal with any threat of being
22 awoken by sound?

1 MR. ACKEMANN: Well, I mean, you know,
2 I'm aging pretty rapidly. So I go to bed
3 earlier, and I've got a son. I don't really go
4 out anymore.

5 [Laughter.]

6 MR. ACKEMANN: No. I mean, if I had my
7 ultimate wish, it would be ten o'clock the whole
8 time. It would always be -- for loud music. I
9 mean, I don't expect them to close prior to that.
10 I obviously expect them -- you know, they need to
11 entertain. I don't think there needs to be
12 bass-stomping, you know, to adjacent neighborhood
13 after that time. They can tone down the music
14 or, you know --

15 MR. ALBERTI: Okay.

16 MR. ACKEMANN: I don't know. It's hard
17 to tell. Without a noise meter or something,
18 with the windows closed and testing what the
19 impacts are, it's difficult to say.

20 I mean, we're -- on a regular basis, I'm
21 in bed by 10:30.

22 MR. ALBERTI: Okay. I'm going to ask you

1 a leading question, so forgive me here,
2 everybody. The ANC's settlement agreement that's
3 currently in place says that the courtyard,
4 summer garden, has to close down by 11 p.m. on
5 Fridays and Saturdays, and it also says that on
6 Fridays and Saturdays, the windows, the doors of
7 the upstairs, French doors, have to be closed by
8 11 p.m. What's your opinion about that? Is that
9 reasonable? Is that too late?

10 MR. ACKEMANN: The courtyard area, I
11 would like to see earlier than that. I mean,
12 that -- because that -- again, that's the outside
13 noise. It's just completely open. I referred to
14 it as a canyon a couple times, but it does. It
15 just kind of heads down the alley and obviously
16 diminishes as it gets further away, but there is
17 considerable noise from that area.

18 That's why those dumpsters in the
19 morning, the stuff that's outside just echoes off
20 the -- and, again, Kim is on the alley, so it's
21 going off the brick walls back and forth for her.
22 For us, it's a one-time impact, kind of shooting

1 down the alley.

2 But anything that is happening outside is
3 readily audible, and like I said, when the
4 windows are open upstairs, you can literally
5 listen to a conversation of somebody, if they're
6 speaking -- I mean, if they're speaking in normal
7 voices, that's one thing, but late at night,
8 people tend to be a little louder, and you can
9 hear them.

10 MR. ALBERTI: Thank you. That's very
11 helpful. Thank you.

12 CHAIRMAN ANDERSON: Do we have any other
13 questions by other Board members?

14 [No audible response.]

15 CHAIRMAN ANDERSON: All right. Then,
16 with that said, now you have your opportunity to
17 ask questions of your witness based on the
18 questions that were asked.

19 MR. COOPER: I have no other questions.

20 CHAIRMAN ANDERSON: Do you have -- no,
21 you don't?

22 MR. REID: No.

1 MS. ANTOINE: No.

2 CHAIRMAN ANDERSON: So you have any other
3 witnesses to call?

4 MR. COOPER: The final witness that I
5 have is Commissioner Drew Courtney just to
6 conclude. He is the representative of ANC.

7 CHAIRMAN ANDERSON: I'm sorry. You're
8 free to go.

9 [Witness excused.]

10 CHAIRMAN ANDERSON: Raise your right
11 hand, please.

12 [Simultaneous speaking.]

13 CHAIRMAN ANDERSON: Do you swear to tell
14 the truth, the whole truth -- do you swear or
15 affirm to tell the truth, the whole truth?

16 MR. COURTNEY: I do.

17 [Witness sworn.]

18 CHAIRMAN ANDERSON: Have a seat.

19 Your witness.

20 MR. COOPER: Yes, thank you.

21 Can you please state and spell your name
22 for the record?

1 MR. COURTNEY: Yes. My name is Drew
2 Courtney, D-r-e-w, C-o-u-r-t-n-e-y.

3 MR. COOPER: And what is your position
4 with respect to the ANC?

5 MR. COURTNEY: I am the appointed
6 chairman of the Alcoholic Beverage Licensing
7 Committee. I'm actually not a commissioner. I'm
8 just an appointed chair of that committee, and I
9 am one of the designated representatives on this
10 case and also other cases that we negotiate
11 settlement agreements for.

12 MR. COOPER: And you participate in
13 settlement agreement negotiations on behalf of
14 the ANC with respect to retailers with ABC
15 licenses?

16 MR. COURTNEY: Yes.

17 MR. COOPER: And about -- approximately
18 how many have you been involved with?

19 MR. COURTNEY: Probably 10 or 12 in the
20 last couple of years.

21 MR. COOPER: And are you also the
22 designated person to receive the complaints from

1 the neighborhood about various operators with
2 ABRA licenses?

3 MR. COURTNEY: I'm not sure I'm the
4 designated person, but I am the person. I have
5 gotten a lot of feedback, especially when things
6 come up for renewal or new applications come
7 through or there's a substantial change. We try
8 to advertise it. Commissioners try to reach out
9 to people in their community, and either they ask
10 them to send things directly to me or they
11 forward things to me.

12 MR. COOPER: Okay. And as part of those
13 duties and responsibilities with respect to Po
14 Boy, what has been your involvement with this?

15 MR. COURTNEY: So I've been involved in
16 this application since, I believe, November of
17 last year, when the application was first filed.
18 It was then dismissed due to a missed hearing,
19 refiled. We protested it, and I've been working
20 to be in conversation with Po Boy's since that
21 time and try to work out some kind of settlement
22 agreement.

1 MR. COOPER: And just --

2 MR. COURTNEY: And we -- I'm sorry. We
3 also held one Alcoholic Beverage Licensing
4 Committee hearing where we brought in members of
5 the community and invited folks in addition to
6 the ANC meetings where this came up and we
7 discussed it.

8 MR. COOPER: And just to confirm, the ANC
9 voted to oppose the entertainment endorsement; is
10 that correct?

11 MR. COURTNEY: The protest, yes.

12 MR. COOPER: The protest.

13 MR. COURTNEY: Yes.

14 MR. COOPER: The protest.

15 Now, there's been some discussion about
16 the summer garden endorsement. Are you familiar
17 with that?

18 MR. COURTNEY: I wish I was more familiar
19 with the summer garden endorsement, but I believe
20 that it's on there. Apparently, it's in process
21 right now.

22 MR. COOPER: Okay. I'm going to hand you

1 what had previously been marked as Petitioner's
2 Exhibit No. 11. Did you receive that as part of
3 your duties with respect to this application?

4 MR. COURTNEY: Yes. This is one of the
5 case reports that we found when we were preparing
6 for this.

7 MR. COOPER: And what does -- and what
8 was the -- and so you were familiar with that
9 report?

10 MR. COURTNEY: That's correct.

11 MR. COOPER: And what was the issues
12 raised in that report?

13 MR. COURTNEY: This is just a report that
14 says that there was an issue with an ABC manager
15 being on duty, and that there was much playing
16 through amplified speakers in the summer garden
17 without obtaining summer garden endorsement at
18 that time. So it was a noise complaint. Given
19 that we were in the midst of a long conversation
20 about noise, we thought that this was relevant to
21 include.

22 MR. COOPER: Okay. And so that's why

1 this -- and again, so that's why this is included
2 as part of your exhibits to the Board?

3 MR. COURTNEY: That's correct.

4 MR. COOPER: Do you know what happened as
5 a result of this investigation and the action, if
6 there was any action taken?

7 MR. COURTNEY: I'm sorry. I don't know.
8 I wouldn't want to say the wrong thing. I don't
9 know exactly what --

10 MR. COOPER: So you don't know what
11 happened?

12 MR. COURTNEY: I'm sorry. I don't.

13 MR. COOPER: All right. And as a result
14 of this investigation, it was deemed that they --
15 it is determined that they were in fact using the
16 garden -- the findings were that they were using
17 the summer garden without an endorsement; is that
18 correct?

19 CHAIRMAN ANDERSON: I'm going to object
20 to that. He stated that he doesn't know. So
21 rephrase the question to get an answer.

22 MR. COOPER: Yeah. The question that I

1 was asking -- I'll ask a different question. The
2 question I asked was, what were the results?
3 Were there any fines? I asked -- I was going
4 back to -- the original question was there's a
5 finding that they had in fact been using the
6 garden without an endorsement. That's reflected
7 -- and I was asking was that reflected in this
8 report, that they found that they were using the
9 garden, which resulted in the notice being
10 issued.

11 What happened after that, he doesn't
12 know.

13 I'll withdraw the question. The document
14 speaks for itself.

15 Mr. Courtney, as the representative, what
16 is the ANC's position with respect to this
17 endorsement, other than to protest it? What is
18 it that you would like or the ANC would like to
19 happen with this petition?

20 MR. COURTNEY: So, ultimately, I think
21 the conclusion that have come through the course
22 of the negotiations is that --

1 MR. SILVERSTEIN: Sir, please face us.

2 MR. COURTNEY: Sorry.

3 Ultimately, I think the conclusion that
4 we came to is that we think that there's room for
5 there to be an entertainment endorsement that
6 addresses both the needs of the Applicant and the
7 needs of the ANC, but we have to deal with the
8 noise issue that's come up.

9 I know some of the things that have
10 already come up earlier, including hours, we were
11 very concerned about the hours going so late at
12 night. The ANC was concerned about music that
13 was running after ten or after midnight on
14 weekends.

15 The ANC is also particularly concerned,
16 given the fact that we have had trouble adhering
17 not just to the letter, but to the spirit of
18 previous -- the previous settlement agreement,
19 that the ANC was very interested in there being
20 some mechanism whereby if the settlement
21 agreement was being abused, the community would
22 have some protection, such that, you know,

1 there's not a lot of concern about a little bit
2 of music being played during the day downstairs
3 on acoustic instruments.

4 That said, if what we find is that that
5 turns into music being played blazingly loud late
6 at night, we think -- we believe that there
7 should be some kind of claw-back provision to go
8 back to sometime like eight o'clock so that
9 children in the area can sleep.

10 Those are the kinds of things we were
11 worried about that we really think have to be
12 addressed in any kind of conclusion of this
13 process.

14 MR. COOPER: Anything else that you would
15 like the --

16 MR. COURTNEY: Yes. We also have
17 concerns about outside promoters coming in that
18 we think could be potentially very problematic.
19 Although this has been a strained relationship,
20 there is a relationship between this
21 establishment and the community. We are very
22 nervous about someone coming into the community

1 with no preformed relationship renting the club
2 and throwing a rager [ph].

3 We also have concerns about things like
4 the doors and the soundproofing and particular
5 problems with anything that's outside where
6 there's nothing to protect the neighbors from the
7 noise.

8 Those are all the kinds of issues that we
9 would really want to be addressed in any
10 conclusion to this. If those are addressed --
11 actually, the point was raised earlier. If
12 people outside the establishment can't hear
13 what's going on, that mitigates a lot of our
14 concerns, but right now we don't have confidence
15 that that's what will happen.

16 MR. COOPER: I have no further questions.

17 CHAIRMAN ANDERSON: Thank you.

18 Do you have any questions for him?

19 MS. ANTOINE: No, I don't.

20 CHAIRMAN ANDERSON: Board members?

21 MS. MILLER: Now?

22 CHAIRMAN ANDERSON: Yeah.

1 MS. MILLER: Okay.

2 It is a kind of question that you raised.
3 If nobody can hear anything, then there's
4 probably not a problem. Then you don't really
5 care that much whether it's karaoke or deejay if
6 you can't hear it, right?

7 MR. COURTNEY: Yeah. I think -- I'm sure
8 that there are probably some exceptions to that,
9 but I can't think of any right now.

10 When we were thinking about it, we wanted
11 to try to think about a way to ensure that it was
12 the kind of thing that no one could hear --

13 MS. MILLER: Right.

14 MR. COURTNEY: -- that was keeping the
15 sounds down, but ultimately, we don't care if
16 it's go-go music or what as long as the sound
17 outside is not an issue.

18 MS. MILLER: And I brought up the
19 question earlier that was referenced in the
20 investigative report about testing. You know,
21 like, if they tested it, karaoke, with the doors
22 closed, then you might know. As of now, we're

1 just kind of guessing, right, based on the
2 information we have?

3 MR. COURTNEY: Can I speak about our
4 mediation session?

5 CHAIRMAN ANDERSON: No.

6 MS. MILLER: Well, you --

7 MR. COURTNEY: Let me try to phrase this.
8 We were given --

9 CHAIRMAN ANDERSON: Hold on. Hold on a
10 minute, and maybe it's a little bit different
11 here. But, I mean, you're not supposed to be
12 discussing settlement agreement --

13 MR. COURTNEY: I, of course, am --

14 CHAIRMAN ANDERSON: -- at this hearing.

15 MR. COURTNEY: My impression that I
16 received from ABRA was that that would be
17 problematic.

18 However, we did have real concerns about
19 any kind of test where we said, "Well, that loud
20 is loud enough, but louder is no further" -- we
21 didn't know how to -- we don't want something
22 that's unenforceable. We don't want a kind of

1 settlement agreement that works great for this
2 owner and then the establishment is sold to a bad
3 actor who wants to get away with murder, and
4 there is nothing there to protect the community.

5 So for those two reasons, concern about
6 whether we could have a karaoke party without an
7 entertainment endorsement in place and also
8 concerns about whether testing would actually be
9 actionable in terms of moving our conversation
10 forward, we'd never move forward on that.

11 MS. MILLER: Okay. And I heard you say
12 in general what your concerns were, like
13 soundproofing or hours or whatever. I did hear
14 some specifics on hours, but I would just say now
15 is the time if you have any concrete ideas as to
16 what you would like us to consider, what would be
17 good soundproofing really, or what should that be
18 based on?

19 MR. COURTNEY: So without adequate
20 soundproofing upstairs -- and I am the latest
21 person on the stage to not be an audio engineer.

22 MS. MILLER: Right.

1 MR. COURTNEY: There are obviously much
2 fewer concerns about downstairs compared to
3 upstairs.

4 Anything that could seal off the summer
5 garden in the back room -- or excuse me -- the
6 sun room that we're talking about upstairs, to
7 affirmatively block that, not just kind of
8 designate it another room, and keep sound from
9 going back there would certainly be helpful,
10 although I don't want to speak with any authority
11 about what that would do.

12 Clearly, even if there's noise being
13 played downstairs, those windows upstairs should
14 be closed.

15 And then with regard to hours, I think we
16 would want to have no later than 10 p.m. during
17 the week under any circumstances. No later than
18 midnight during the weekend under any
19 circumstances. And this is key: some kind of
20 provision that still prevents us from having a
21 bad actor. Just because it's 11:30 on a Saturday
22 night doesn't mean that children don't need to be

1 sleeping nearby, and so we need some kind of
2 provision that allows a bad actor situation to go
3 back to 8 p.m., bedtime, because that could be an
4 issue.

5 That said, we have no problem with trying
6 it at that time, and building up a level of trust
7 and track record that this does work, that it can
8 go forward, that no one needs to hear it outside.

9 MS. MILLER: Okay. And just to be clear,
10 your thought is that, say, the Board limited it
11 to ten o'clock during the week, the entertainment
12 endorsement, and they were violating that for a
13 few times or whatever, that it would revert back
14 to an earlier hour?

15 MR. COURTNEY: Yes.

16 MS. MILLER: Not ten o'clock, but
17 actually eight o'clock or something.

18 MR. COURTNEY: Correct.

19 MS. MILLER: Is that what you're
20 suggesting?

21 MR. COURTNEY: Correct.

22 MS. MILLER: Okay.

1 MR. COURTNEY: And, of course, we'd want
2 that to be a mechanism that doesn't require
3 moving heaven and earth to do because --

4 [Laughter.]

5 MR. COURTNEY: It's been a long day, and
6 I don't want to do this anytime soon --

7 MS. MILLER: Okay.

8 MR. COURTNEY: -- as much as I've enjoyed
9 spending time with all of you.

10 [Laughter.]

11 MS. MILLER: Thank you.

12 CHAIRMAN ANDERSON: Are you aware of the
13 settlement agreement that was signed between the
14 establishment and the ANC?

15 MR. COURTNEY: I am, although it was
16 before my time, and I wouldn't want to speak to
17 any details of it without having it in front of
18 me. But, yes, I am generally aware of it.

19 CHAIRMAN ANDERSON: But you are the
20 alcohol guru. So you don't really know --

21 MR. COURTNEY: Alcohol guru is just my
22 hobby. Really, I have another job. So I do have

1 --

2 [Simultaneous speaking.]

3 MR. COURTNEY: This is the weirdest hobby
4 in the world. I have tried to pay close
5 attention to it, yes, but I just don't want to
6 say I know it like the back of my hand.

7 CHAIRMAN ANDERSON: Are you aware that
8 within a voluntary agreement, there are specific
9 -- agreement regarding the hours of operation of
10 business?

11 MR. COURTNEY: We are aware of the hours
12 and the noise restrictions therein.

13 CHAIRMAN ANDERSON: And so is the
14 Applicant complying with the cooperation and the
15 noise suppression paragraph of the current
16 settlement agreement?

17 MR. COURTNEY: I'm sorry.

18 CHAIRMAN ANDERSON: Do you know whether
19 or not they're complying with the provision, the
20 hours provision in the current settlement
21 agreement, and the noise suppression provision
22 off the current settlement agreement?

1 MR. COURTNEY: I don't think that their
2 current application would -- it seems like it
3 would obviate what -- it would change what's
4 already in the settlement agreement, is my
5 understanding of it.

6 CHAIRMAN ANDERSON: It's my understanding
7 that, irrespective of what we do, there is still
8 a current settlement agreement. So they have to
9 comply with the settlement agreement that is in
10 existence.

11 MR. COURTNEY: Great.

12 CHAIRMAN ANDERSON: So I guess are you --
13 is the community -- are they in -- do they
14 believe that the settlement agreement that
15 currently exists with the Licensee, the
16 Applicant, that that is appropriate to address
17 the noise issue and the hours of operation?

18 MR. COURTNEY: No. I think that there
19 are other issues in that settlement agreement
20 that if we could do them over, we would, and so I
21 don't want to bring up things that aren't germane
22 to this hearing, but there are other issues that

1 we'd want to address.

2 And, of course, you know, we've discussed
3 adherence to the current settlement agreement as
4 being an issue. So I think if we were to
5 renegotiate that agreement, we would want to be
6 thoughtful about how to address that as well.

7 CHAIRMAN ANDERSON: Any other questions
8 by the Board?

9 MR. ALBERTI: I do.

10 CHAIRMAN ANDERSON: Yes.

11 MR. ALBERTI: Mr. Courtney, you may have
12 said this in answering Ms. Miller, but I missed
13 it, and if I did, I apologize.

14 So you talked about weekday hours which
15 -- 10 p.m. After that, you really don't want to
16 hear any disturbing noise. What about weekends?

17 MR. COURTNEY: So I -- I'm trying to
18 think. You my preference, of course, is when the
19 sun goes down, so I don't want to say this is our
20 preference, and we should negotiate from where
21 we're --

22 [Laughter.]

1 MR. ALBERTI: I will not comment.

2 MR. COURTNEY: Where we've come to is
3 that I think for the entertainment endorsement,
4 pending the including some kind of clawback
5 agreement, some kind of claws that protects the
6 community --

7 MR. ALBERTI: Forget about the --

8 MR. COURTNEY: -- midnight and weekends.

9 MR. ALBERTI: -- clawback. Forget about
10 the clawback.

11 MR. COURTNEY: Midnight on weekends is
12 something that we feel we could --

13 MR. ALBERTI: If you had to hear noise --
14 if people could hear noise inside of their back
15 room at midnight at 11:30, do you think that
16 that's reasonable?

17 MR. COURTNEY: No. I think that they
18 could have entertainment at that time. I don't
19 think that people should be in their bedroom or
20 back room hearing the noise inside their room
21 with all the doors closed.

22 MR. ALBERTI: All right. I misspoke.

1 Let's say if they're in the back yard.

2 MR. COURTNEY: Yes.

3 MR. ALBERTI: Because if it was in the
4 bedroom, it would be a violation. Thank you.
5 You're on it.

6 So if there is a back yard and at 11:30
7 can hear the sounds coming from the
8 establishment, that's not a problem?

9 MR. COURTNEY: I think if people can hear
10 it outdoors at 11:30, that's tolerable.

11 MR. ALBERTI: Okay, okay. So twelve
12 o'clock is what I was going for, but that's -- I
13 mean, that was really my question. That's okay?

14 MR. COURTNEY: Yes.

15 MR. ALBERTI: Okay. And you -- just to
16 be clear, you represent the ANC here officially,
17 and I'm assuming you've talked to the other
18 commissioners about this?

19 MR. COURTNEY: I have been in touch with
20 various commissioners in the committee throughout
21 the process to greater and lesser degrees,
22 depending on their proximity and interest.

1 MR. ALBERTI: Great. Thank you very
2 much.

3 CHAIRMAN ANDERSON: Yes, Ms. Miller.

4 MS. MILLER: I just have a follow-up
5 question, so I understand your position. On this
6 twelve o'clock, if people can't hear it after
7 twelve o'clock, do you think it's still into
8 twelve? I think you were saying people shouldn't
9 be able to hear it after twelve.

10 So let's say it's on the first floor and
11 the sound isn't coming out to the neighbors.

12 MR. COURTNEY: I think our comfort level
13 is that given the inevitable slippages and
14 challenges that come with an entertainment
15 endorsement, we are not comfortable with any
16 entertainment endorsement after midnight on
17 weekends or 10 p.m. on Saturdays.

18 With those in place, obviously we still
19 want it to be as quiet as possible. We don't
20 want people to be able to hear it inside their
21 houses.

22 So, yes, we would -- I would be very,

1 very concerned about any time going past those
2 hours.

3 MS. MILLER: Okay, good. I just wanted
4 to be clear.

5 MR. COURTNEY: And any entertainment
6 endorsement going past the hours of 10 p.m. on
7 weekdays and midnight on weekends.

8 CHAIRMAN ANDERSON: All right. Any other
9 questions by the Board?

10 [No audible response.]

11 CHAIRMAN ANDERSON: You have no questions
12 to ask based on -- counsel have any questions?

13 MR. COOPER: No.

14 CHAIRMAN ANDERSON: All right. You are
15 free to go. You can step down.

16 MR. COURTNEY: Thank you very much.

17 [Witness excused.]

18 CHAIRMAN ANDERSON: Do you have any other
19 witnesses?

20 MR. COOPER: No other witnesses. I'd
21 just like to move my exhibits into evidence,
22 Exhibits 1, 2, 3, 5 through 9, 11 and 12.

1 CHAIRMAN ANDERSON: Okay. Exhibits 1, 2,
2 3, 5 through 9?

3 MR. COOPER: Yes. Eleven.

4 CHAIRMAN ANDERSON: Eleven?

5 MR. COOPER: And 12.

6 CHAIRMAN ANDERSON: All right.

7 MR. COOPER: And 12 is the map that was
8 part of Mr. Brashears' --

9 CHAIRMAN ANDERSON: Okay, so moved. So
10 Exhibit 1, 2, 3, No. 5, No. 6, No. 7, No. 8, No.
11 9, No. 11, and No. 12 have been moved into the
12 record.

13 MR. COOPER: Thank you.

14 CHAIRMAN ANDERSON: This is the point
15 from -- all right. Do you -- you still have an
16 opportunity to call a rebuttal witness, meaning
17 that if someone over this side said something and
18 you have a witness that can directly rebut what
19 was stated, you have this opportunity to call a
20 witness to say, for example, "John said I spoke
21 to Sally, and Sally said the sky was blue." And
22 if you have -- and if Sally is here to say, "No,

1 I did not state the sky was blue," that's what
2 rebuttal is. You have that opportunity. No?
3 Okay.

4 All right. Now, we're at the point where
5 you have closing, and you have 5 minutes to
6 close. Closing is basically you think about
7 everything that was stated, everything that was
8 testified, and this is your opportunity to wrap
9 everything up. So whatever points that came out
10 that you thought were clear, this is not just
11 testifying. You are closing. So you are
12 repeating basically the evidence that was given,
13 the testimony -- you're summarizing the testimony
14 that was given. So you shouldn't be bringing any
15 new facts in.

16 But you shouldn't bring any new facts in,
17 but you're closing the loop that if someone said
18 something that we didn't quite get the
19 connection, so this is your opportunity to just
20 close. So you let us know what the issues are,
21 what is it that you're seeking, and why do you
22 think that this Board should approve the

1 entertainment -- endorsement of the entertainment
2 license.

3 And the Protestant, they have the same
4 opportunity in the sense that what the testimony
5 was and how is it that the Protestants believe
6 that the board -- that they have not met their
7 burden, and the Board should not grant the
8 endorsement.

9 So you both have 5 minutes, and the hour
10 is late, so 5 minutes, please. So whoever wants
11 to do that have that opportunity to wrap up the
12 case.

13 MS. ANTOINE: Okay. Well, we've been on
14 that H Street Corridor over a year, 6 months. We
15 have done our part with respect to, you know,
16 being good citizens of the community. The
17 reflection of just one trash citation, you know,
18 one trash citation reflects that when we got
19 there, this whole area itself, a lot of places
20 were dormant. There's a lot of construction
21 going on right now. So all those areas that were
22 sitting there for years, they had rats in there,

1 and they are now running for shelter anywhere
2 they can get it.

3 Of course, rats love trash. There is no
4 question about it. We're not the only ones with
5 trash in the area. Considering all the
6 construction that has been going on, like I said
7 before, there have been a lot of street closings
8 that prevented out establishment from having its
9 trash removed. The alleys were repaired, and all
10 those months that were referenced for the most
11 part, the early part of the year, was the time in
12 which all this was going on.

13 But needless to say, like I said, we are
14 civil people. Our entertainment is strictly --
15 entertainment endorsement is strictly for what we
16 said. It's not for a club. It's not for
17 dancing. It's not going to be sold to anyone,
18 and we plan on complying with whatever rules that
19 we have to follow with respect to having an
20 entertainment piece.

21 But it will enhance our business.
22 Anything that enhances our business enhances the

1 city itself because, after all, we do pay taxes,
2 and we do -- we are responsible on our part with
3 that. So we contribute to the revenue of this
4 city, and, you know, we just want to continue
5 doing our part. We have done quite a bit with
6 the school systems, charity work or what have
7 you, and we will continue doing it, whether or
8 not we get an endorsement, but like I said, it's
9 a piece that our customers are asking for, and
10 it's something that we would like to give to
11 them.

12 And that's all I'd like to say.

13 CHAIRMAN ANDERSON: Thank you.

14 MR. COOPER: Thank you. This case
15 emanates from a lack of clarity on the part of
16 the Applicant as to what is exactly being
17 requested. We've pointed that out, the contrary
18 statements made in application and the PIF and
19 even in their testimony and in their statements
20 to the inspector, exactly what they wanted, which
21 has caused a certain level of concern from the
22 community.

1 The concern is about -- not about whether
2 they are a good restaurant, whether the food is
3 good, whether they're good neighbors, whether
4 they're trying to be good neighbors, whether
5 they're providing benefits to the community. All
6 that is irrelevant.

7 The issue, which I thought she just
8 succinctly said is "We want to follow the rules
9 that we have to follow," and unfortunately, the
10 evidence that's been presented is that they have
11 not been following the rules that they are
12 obliged to follow. Despite the fact that the
13 District hadn't come out and cited them, the --
14 I've showed the conditions. In fact, the
15 inspector hadn't even gone out there for 7
16 months, until June, and then between -- a 30-day
17 period, he found several violations.

18 So the ANC and neighbors are not coming
19 down on this restaurant or telling them to shut
20 down or to leave or really care what kind of
21 music or the patrons that come and visit the
22 restaurant. They enjoy the restaurant

1 themselves. They're just asking that the
2 establishment endorsement have some protections
3 for the community. In the event that things
4 don't go as we all hope that they would go, which
5 is that they would have a flutist and a jazz
6 guitarist on Sundays, that would be wonderful.
7 It enhances the restaurant. It enhances the
8 ambiance. Nobody's got a problem with that.

9 But they do have a problem with the
10 inability to capture the noise and leave it on
11 the second floor. We have an outdoor
12 entertainment area. The voices are going to be
13 heard there. As you said, there's an agreement
14 that that courtyard closes at ten on the weekdays
15 and eleven on the weekends. The doors, the patio
16 doors have to be closed at certain times, but
17 even after those hours, there are still
18 complaints. And even within those hours, there
19 have been complaints.

20 So the burden of proof is on the
21 Applicant to prove that they have met the burden
22 of establishing the need for the entertainment

1 endorsement and their ability to meet the
2 requirements of the act with respect to their
3 compliance. They have not done that.

4 We would ask that it be denied; however,
5 in the event that it is granted, we ask that
6 there be reasonable caps on the hours of
7 operation, not until two o'clock in the morning
8 on the weekends and until eleven o'clock or
9 midnight during the weekdays, but as the
10 community has asked, ten o'clock across the
11 board, perhaps even to midnight, but include a
12 provision that allows the neighborhood to say
13 "You're violating it too many times. Enough is
14 enough." It drops back. Allow them to maintain
15 the entertainment endorsement, but drop it back
16 to a reasonable hour, eight or nine o'clock in
17 the evening across the board.

18 Thank you.

19 CHAIRMAN ANDERSON: Thank you for your
20 testimony, and thank you for bearing with me
21 through my first protest hearing. So I hope you
22 folks don't complain about me to say he was not

1 fair.

2 MR. COOPER: Not at all.

3 CHAIRMAN ANDERSON: All right. Do the
4 parties wish to file proposed findings of fact
5 and conclusions of law or waive their right to do
6 so? That means, do you want to write something,
7 and we will wait to receive something from you,
8 or do you just want to close a case with the
9 evidence as presented today?

10 MR. REID: Close. Huh?

11 MS. MILLER: Could I add something, just
12 to clarify, though? It's not new evidence. It
13 just would be like a brief based on the facts
14 that will be in the transcript that will be
15 available in a few weeks.

16 MR. COOPER: I would -- my client asked
17 to waive that and just allow this to go through
18 the process, so we can -- if they get it, they
19 can get it. If not, no sense in delaying.

20 CHAIRMAN ANDERSON: Well, okay. The
21 Board will issue a decision within 90 days, so
22 thank you.

1 I have a closing statement to make. As
2 Chairman of the Alcoholic Beverage Control Board
3 for the District of Columbia --

4 MR. ALBERTI: Just you need to say the
5 record is closed. That's all.

6 CHAIRMAN ANDERSON: All right. Well,
7 since they want me to say it this way, the record
8 is now closed. Now I will make my statement.
9 Thank you. Which I have to make the statement.

10 All right. As Chairperson of the
11 Alcoholic Beverage Control Board for the District
12 of Columbia and in accordance with D.C. Official
13 Code Section 2574(b), closed meetings, and
14 Section 2574, notice of meetings of the Open
15 Meetings Act, I move that ABC Board hold a closed
16 meeting on November 18th, 2015, for the purpose
17 of discussing and hearing reports concerning
18 ongoing --

19 MR. ALBERTI: That's the wrong one.

20 CHAIRMAN ANDERSON: All right. I'll
21 start -- I will start it back.

22 As Chairperson of the Alcoholic Beverage

1 Control Board for the District of Columbia and in
2 accordance with Section 45 of the Open Meetings
3 Amendment Act of 2010, I move that ABC Board hold
4 a closed meeting for the purpose of deliberating
5 upon the protest case of -- give me one minute,
6 please -- Case No. -- Case No. 15-PRO-00025.

7 Is there a second?

8 MR. SHORT: Second.

9 CHAIRMAN ANDERSON: Mr. Short.

10 I will now take a roll call vote on the
11 motion before us that has been seconded.

12 Ms. Miller?

13 MS. MILLER: Approve.

14 CHAIRMAN ANDERSON: Mr. Alberti?

15 MR. ALBERTI: I agree.

16 CHAIRMAN ANDERSON: Mr. Short?

17 MR. SHORT: I agree.

18 CHAIRMAN ANDERSON: Mr. Silverstein?

19 MR. SILVERSTEIN: I agree.

20 CHAIRMAN ANDERSON: Donovan for Mr.
21 Anderson, the Chair.

22 As it appears, the motion has passed. I

1 hereby give notice that the ABC Board will hold a
2 closed meeting in the ABC Board conference room
3 pursuant to the Open Meetings Amendment Act of
4 2010 and issue an order within 90 days.

5 The hearing is adjourned. Thank you very
6 much. Thank you.

7 [Whereupon, at 6:35 p.m., the
8 above-entitled matter concluded.]

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