DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF:               :
                                :
Barcode Corporation             :
t/a Barcode                     :
1101 17th Street, NW            :  Show Cause
Retailer CT                     :  Hearing
License No. 82039               :
ANC 2B                          :
Case No. 12-CMP-00112           :
Noise Violation                 :
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November 7, 2012

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

1 PRESENT
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3 RUTHANNE MILLER, Chairperson
4 NICK ALBERTI, Member
5 DONALD BROOKS, Member
6 HERMAN JONES, Member
7 CALVIN NOPHLIN, Member
8 MIKE SILVERSTEIN, Member
9
10 ALSO PRESENT
11 CHRISSY GEPHARDT, OAG
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1 P R O C E E D I N G S
2 10:35 a.m.
3 CHAIRPERSON MILLER: So is everybody here
4 now?
5 PARTICIPANT: All here.
6 CHAIRPERSON MILLER: All right. I'm going to
7 call the case then. The next case on the Board's
8 calendar is Case No. 12-CMP-00112, Barcode, located at
9 1101 17th Street, N.W., License No. 82039, in ANC 2B.
10 Good morning.
11 MS. GEPHARDT: Good morning, Board members.
12 Chrissy Gephardt on behalf of the District of Columbia.
13 MR. MCINTOSH: Good morning. Thomas McIntosh
14 on behalf of Barcode Corporation. And here today the
15 corporate representative is Arman Armirshahi.
16 CHAIRPERSON MILLER: Mr. Armirshahi is what,
17 corporate representative?
18 MR. MCINTOSH: Right. He's the -- I think
19 he's title director of operations for Barcode.
20 CHAIRPERSON MILLER: Are you a part owner or
21 anything like --
22 MR. ARMIRSHAHI: Yes.

1 CHAIRPERSON MILLER: Yes, okay. And you're
2 an attorney?
3 MR. MCINTOSH: Yes, yes.
4 CHAIRPERSON MILLER: Okay. Good. All right.
5 So this is a show cause hearing. Before we get into
6 the hearing, I want to ask if there are any preliminary
7 matters? I'm sorry, what? Did I forget something?
8 MR. ALBERTI: Ms. Miller, I'm just curious
9 what Mr. Armirshahi's share was in Barcode. You said
10 you were part owner.
11 MR. ARMIRSHAHI: What is my --
12 MR. ALBERTI: Yeah, and just approximately
13 what is your interest in --
14 MR. ARMIRSHAHI: Twelve percent.
15 MR. ALBERTI: Pardon?
16 MR. ARMIRSHAHI: Twelve percent.
17 MR. ALBERTI: Okay. Thank you.
18 CHAIRPERSON MILLER: Thank you very much.
19 All right. So are there any preliminary matters in
20 this case?
21 MR. MCINTOSH: A preliminary matter I've been
22 in contact with Ms. Gephardt and we agree to stipulate

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1 to the facts in the investigative report but not the
2 existence of the violations. So we suggest we just
3 move straight into legal argument, unless the Board has
4 any questions.
5 CHAIRPERSON MILLER: I just want to
6 understand what -- you're stipulating the facts set
7 forth in the investigative report? You're not
8 stipulating -- or are you stipulating that there was a
9 violation or that no?
10 MR. MCINTOSH: No, we are not stipulating the
11 existing violation. We have a legal issue we want to
12 address --
13 CHAIRPERSON MILLER: Okay.
14 MR. MCINTOSH: -- to the Board.
15 CHAIRPERSON MILLER: So that what would be
16 left is the legal arguments as to whether or not there
17 was a violation and then, if there was a violation,
18 what the --
19 MR. MCINTOSH: Right.
20 CHAIRPERSON MILLER: -- penalty should be or
21 whatever? Okay. Ms. Gephardt, do you agree to that?
22 MS. GEPHARDT: Yes, I do agree with Mr.

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1 McIntosh's representations. Thank you.
2 CHAIRPERSON MILLER: Okay. Then you can
3 proceed. Then so -- I'm not just sure then where we
4 are then. All the facts are done. So it's legal
5 argument. You have the burden of proof in this case.
6 MS. GEPHARDT: Sure.
7 CHAIRPERSON MILLER: So I would assume you're
8 going first on this.
9 MS. GEPHARDT: Sure, sure.
10 CHAIRPERSON MILLER: Okay.
11 MS. GEPHARDT: So the issue in this case is
12 the statute, which is DC Code 25-725(a). And
13 basically, what that says is that there is -- that
14 basically a licensee, under an on-premises retailer's
15 license, shall produce any sound, noise or music of
16 such intensity that it can be heard in any premises
17 other than the licensed establishment by use of -- and
18 then it goes into talking about what those things are.
19 But it -- then if we look at (b), it says,
20 "This section shall not apply to" -- specifically
21 (b)(3) -- "any premises other than the licensed
22 establishment which are located within C-1, C-2, C-3,

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1 C-4, C-M, or M Zone." In this case, Barcode is located
2 at 1101 17th Street, N.W., which is in a C-4 Zone. In
3 this case, the resident who complained of the noise
4 violation was residing at 1026 16th Street, N.W., which
5 falls within an SP-2 zone, which is a residential area.
6 So DC Code 25-725(b)(3) basically states that
7 -- so because SP-2 does not fall within the exceptions
8 of the statute, in this case there is a violation.
9 Obviously, the C-1, C-2, C-3, C-4 Zones -- the reasons
10 those were excepted from the statute, I would assume,
11 is that the DC Council thought that, "Well, if you have
12 other commercial entities around a bar or a restaurant,
13 they can't complain about a noise violation because
14 they're other commercial entities. They're probably
15 making their own music."
16 The intent of this statute and the reason
17 they're -- the reason it was written this way was to
18 protect residential neighborhoods and people to be able
19 to live in a -- quietly and peacefully without the
20 intrusion of bars and restaurants playing loud music
21 into the wee hours of the night.
22 So the District of Columbia would argue that

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1 in this case, because the zone in which this resident
2 was residing, which is an SP-2 Zone, does not fall
3 within the exceptions of the statute, and therefore,
4 there is a violation. And that would be our position.
5 Thank you.
6 CHAIRPERSON MILLER: Can I just -- I just
7 want to ask you a quick question instead of studying
8 the statute right this second.
9 MS. GEPHARDT: Okay.
10 CHAIRPERSON MILLER: Is it -- is it -- does
11 the -- does the zoning apply into the -- where the
12 establishment is or where the residence is?
13 MS. GEPHARDT: Well, thank you. The -- thank
14 you very much --
15 CHAIRPERSON MILLER: Okay.
16 MS. GEPHARDT: -- for asking that question
17 because the statute -- it is a bit confusing the way
18 it's worded. But it's clear from what the intent of
19 the statute is to protect residents from loud music,
20 that it's where the music is -- can be heard from. So
21 those zones that it's talking about -- these exceptions
22 -- is not where the music's emanating from, but rather

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1 where the noise can be heard from.
2 So in other words, like I said, if this were
3 to target where the music was emanating from, then all
4 bars and restaurants would be exempted from the
5 statute, which is completely ridiculous. You know,
6 then it says, "C-1, C-2, C-3." Therefore, Barcode
7 would be exempt from the statute. They could -- if it
8 meant where it was emanating from, then they could play
9 their music as loud as they want and they would not be
10 -- to the strictures of the statute, they would not be
11 liable.
12 However, it would only -- it makes logical
13 sense that we're talking about where the music can be
14 heard from. And so therefore, that is why there is a
15 violation in this case.
16 CHAIRPERSON MILLER: Thank you. Okay.
17 MR. MCINTOSH: An initial matter. I put
18 together a set of four really reference exhibits. We
19 previously showed them to the government. But the
20 Board -- if it's okay, I'd like to just pass a copy.
21 CHAIRPERSON MILLER: Ms. Walker is coming
22 down.

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1 MR. MCINTOSH: As I'm moving along here.
2 CHAIRPERSON MILLER: These exhibits, which I
3 haven't seen yet, are they -- are they evidence that's
4 different from what you stipulated to with the
5 investigative report or --
6 MR. MCINTOSH: What they are are legal
7 authorities. It's a copy of the statute and two
8 regulations, a letter to DCMR, a 518 and a 701, I
9 believe it is, just to provide the Board a reference
10 point so they can follow along a little more easily so
11 you're not flipping through, wondering what I'm talking
12 about.
13 CHAIRPERSON MILLER: Okay. That -- okay.
14 MR. MCINTOSH: The first one is a colored
15 copy of the zone. It shows where the complainant's
16 address is and where the establishment's located.
17 MR. SILVERSTEIN: Say again.
18 MR. MCINTOSH: A copy of the zoning map that
19 just allows -- find where the complainant's address is
20 and the establishment. So we have a point of
21 reference.
22 CHAIRPERSON MILLER: Is the zoning map from

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1 the zoning website or is it from -- from the zoning
2 website? Okay.
3 MR. MCINTOSH: Correct. From the zoning
4 website.
5 CHAIRPERSON MILLER: So do you want to wait
6 until we have these in front of us or no?
7 MR. MCINTOSH: I can proceed. Well, first I
8 would just ask --
9 MR. ALBERTI: May I ask a question?
10 CHAIRPERSON MILLER: Sure.
11 MR. ALBERTI: In terms of what's been
12 stipulated to here-I mean I read the report-- I believe
13 the report references the fact that the establishment's
14 in a C-4 Zone.
15 MR. MCINTOSH: Correct.
16 MR. ALBERTI: But the resident is in an SP
17 zone. And you stipulated to that, right?
18 MR. MCINTOSH: Correct.
19 MR. ALBERTI: Okay.
20 MR. MCINTOSH: Correct.
21 MR. ALBERTI: Great. Thank you.
22 MR. MCINTOSH: Yeah, we're not -- we're not

13

1 upsetting any of the facts that --
2 MR. ALBERTI: Okay. I'm just checking. All
3 right.
4 MR. MCINTOSH: We would ask that the Board
5 finally take judicial notice of these facts as they are
6 just legal issues.
7 CHAIRPERSON MILLER: Okay. I see Ms.
8 Gephardt is nodding her head. She doesn't have any
9 objection.
10 MS. GEPHARDT: To stipulating to the facts?
11 CHAIRPERSON MILLER: No, to stipulating to
12 these documents, that I take --
13 MS. GEPHARDT: No.
14 CHAIRPERSON MILLER: -- judicial notice of
15 them?
16 MS. GEPHARDT: No, I don't object.
17 CHAIRPERSON MILLER: Okay.
18 MR. MCINTOSH: Then I'll proceed.
19 CHAIRPERSON MILLER: Wait a second. Do you
20 have more copies of Exhibit 3 by any chance? We don't
21 seem to have the requisite number of 3 in here.
22 MR. MCINTOSH: One more here. While we're

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1 waiting for copies -- I'm sorry about that -- I'll
2 begin the argument.
3 Our basic position is -- just first off, let
4 me -- let me say, we agree with the government that the
5 intent of the statute is to provide an exception for
6 areas of the city where commercial activities can be
7 expected. We also agree that it is a bit confusing,
8 the way it's worded, as to whether it applies -- the
9 exception applies to where the sound is emanating from
10 or where it's being heard.
11 Ms. Gephardt makes a persuasive argument that
12 it should be judged from where it's heard. But I think
13 the ambiguity there is something to consider as I -- as
14 I go forward with my argument, which is this. The
15 statute contains exceptions of noise that occurs in
16 areas of the city where commercial activity is supposed
17 -- is expected. It's the government's position that
18 because SP-2 zones aren't specifically delineated in
19 that Subsection (b)(3) that this exemption doesn't
20 apply in this situation.
21 However, SP-2 zones, as a result of a 2010
22 amendment to the regulations defining permissible uses

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1 within SP-2 zones now permit C-1 uses within SP-2
2 zones. What this means, C-1 uses include bar or
3 cocktail lounge, restaurants and other similar uses
4 that are analogous to those things. In light of that
5 fact and in light of the ambiguity in the statute, we
6 believe the statute is best read to -- for the
7 exception to apply to areas of the city that permit C-1
8 uses, which would include SP-2 zones.
9 Reading it otherwise, frankly, could lead to
10 some absurd results. For example, the complainant
11 could have a licensed establishment, assuming that the
12 necessary approvals were obtained from the zoning
13 commission -- the Zoning Authority -- there could be a
14 licensed establishment on the first floor of his
15 building.
16 Because of the way the statute's written,
17 that establishment could make as much noise as it
18 wanted as long as it is below the prescribed decibel
19 limits and there would be no violation because there's
20 a special exemption for noise emanating from the
21 building. On the other hand, something across the
22 street or -- take Barcode, for example, just down the

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1 block, the statute would still apply under the
2 government's reasoning.
3 So it would create two regimes even though
4 SP-2 zones permit this type of commercial activity
5 within the zone. We take (inaudible) what would be
6 marked as Exhibit 1. It's the colored map. It kind of
7 gives you an idea of what we're talking about. The --
8 I think it's the square that's highlighted that I
9 marked, "857." That showed where Barcode is located on
10 the corner of, I believe, 16th and K; is that correct?
11 MR. ARMIRSHAHI: 17th and --
12 MR. MCINTOSH: 17th --
13 MR. ARMIRSHAHI: 17th and L.
14 MR. MCINTOSH: -- and L. Sorry, excuse me.
15 And then the square marked, "830," is where the
16 complainant's address is located just within the SP-2
17 zone on the corner of L and 16th. So we have -- this
18 SP-2 zone is near a corner sandwiched between a C-4
19 zone, which is the downtown business district.
20 CHAIRPERSON MILLER: Where -- what's the
21 other -- the first one, the establishment?
22 MR. MCINTOSH: Establishment's 857. It

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1 should be shaded a little bit the color on the map you
2 have.
3 CHAIRPERSON MILLER: Do you see that?
4 MR. ALBERTI: I don't see.
5 MR. SILVERSTEIN: I don't see. I don't see.
6 CHAIRPERSON MILLER: Where -- yeah, I don't
7 see it either.
8 MR. ALBERTI: And I believe it's there but --
9 MR. MCINTOSH: I see it.
10 MR. ALBERTI: -- I see 845, 855.
11 MR. MCINTOSH: If you look where it says,
12 "Farragut North," where it shows the Metro station?
13 CHAIRPERSON MILLER: Right.
14 MR. MCINTOSH: You go east one block on the -
15 -
16 CHAIRPERSON MILLER: I got it.
17 MR. MCINTOSH: -- corner that's the northeast
18 corner of that intersection.
19 MR. ALBERTI: Kind of that right there.
20 Okay.
21 CHAIRPERSON MILLER: Yeah, thank you. That
22 helps. That's a big --

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1 MR. ALBERTI: Just to the left of the -- next
2 to the (inaudible) okay.
3 MR. MCINTOSH: Right.
4 MR. ALBERTI: Got you.
5 MR. MCINTOSH: That's the corner of 17th and
6 L.
7 MR. ALBERTI: Okay.
8 MR. MCINTOSH: The complainant's address is
9 at the other end of the block.
10 CHAIRPERSON MILLER: At 850?
11 MR. MCINTOSH: 830.
12 CHAIRPERSON MILLER: 830. Okay. Right.
13 MR. MCINTOSH: So the -- the government's
14 reading really to allow premises located within this
15 SP-2 zone to nullify the exemption written in the
16 statute for C-4 zones, even though these SP-2 zones
17 allow commercial uses, including bars, restaurants,
18 cocktail lounges. It's our position that this doesn't
19 make sense in light of what the government would agree
20 is the intended statute to provide an exemption where
21 commercial activity is allowed, where these type of
22 businesses are going to operate, where there's an

19

1 expectation of some noise.
2 And I think it's important to note that this
3 doesn't leave residents living in an SP-2 zone without
4 any protection at all. The decibel levels within 25 --
5 Section 25. And scroll down; the regulation's cited
6 there and they still apply. The particular provision
7 at issue here prohibits, where it applies, any sound
8 whatsoever from being heard within the non-exempt areas
9 of the city.
10 And I think this really provides a great
11 example. If we look at the investigator's report, it
12 shows Investigator Shakoor visited the complainant's
13 address, went into his condo. And he reported that the
14 noise heard was only audible while standing in front of
15 the window and remaining silent. The noise could not
16 be heard over normal conversation. This is a -- the
17 exemption codified as a most practical of violations in
18 the first place.
19 It's our position, as I've articulated, that
20 the exemption should apply because SP-2 zones permit C-
21 1 uses. To give you a point of reference -- because
22 I've been talking more in a narrative -- the --

20

1 overlooking down here, the regulation, it's marked
2 Exhibit 4, that is uses permitted a matter of right
3 within C-1 zones. And at 701.1(b), it lists bar and
4 cocktail lounge. At 701.4(w), it lists restaurant.
5 And there's a catch-all at the end, 701.5, it just
6 says, "Other service retail use, similar and
7 aforementioned uses."
8 Now, Exhibit 3 is the SP-2 zone regulations.
9 518.4 states, "Uses permitted in SP-2 zone (inaudible)
10 approval shall be those permitted in Sections 701.1
11 through 701.5." So that's the cross-reference that
12 incorporates C-1 into the SP-2.
13 CHAIRPERSON MILLER: So are you saying that
14 SP-2 uses are allowed in the C-1 zone by zoning
15 regulations, correct?
16 MR. MCINTOSH: Correct.
17 CHAIRPERSON MILLER: Okay.
18 MR. ALBERTI: It's the other way around.
19 MS. GEPHARDT: No.
20 MR. ALBERTI: It's the other way around.
21 MS. GEPHARDT: Yeah, the other way around.
22 MR. ALBERTI: C-1 uses are allowed -- a

21

1 subset of C-1 uses are allowed in an SP zone.
2 MR. MCINTOSH: Correct, SP-2 zone. That's
3 correct.
4 MR. ALBERTI: SP-2 zone. Yeah.
5 MR. MCINTOSH: Yeah, those C-1 uses that are
6 allowable as a matter of right.
7 MR. ALBERTI: May I ask a question?
8 CHAIRPERSON MILLER: Sure, Mr. Alberti.
9 MR. ALBERTI: And -- I'm sorry, I forgot your
10 name, sir.
11 MR. MCINTOSH: It's Thomas McIntosh.
12 MR. ALBERTI: McIntosh. Mr. McIntosh, I'm a
13 little confused only because I think I'm hearing two
14 arguments from you.
15 MR. MCINTOSH: Okay.
16 MR. ALBERTI: And so I want to know which one
17 we're deciding on or both. So one is that because C-1
18 uses are allowed in an SP-2 zone, the Statute 725 -- I
19 forgot -- 25 --
20 MR. MCINTOSH: (B)(3), I believe.
21 MR. ALBERTI: -- 25(b)(3) does not apply --
22 MR. MCINTOSH: Right.

22

1 MR. ALBERTI: -- to the resident?
2 MR. MCINTOSH: Correct.
3 MR. ALBERTI: Okay. I understand that
4 argument -- that that's your argument. I think the
5 other argument you said is that 725(b)(3) just doesn't
6 apply in general. I mean, and so let me -- let me ask
7 a hypothetical here.
8 MR. MCINTOSH: Okay.
9 MR. ALBERTI: Let's say it's a different
10 location and the residence is an R-5 zone.
11 MR. MCINTOSH: Right.
12 MR. ALBERTI: Would the statute apply then?
13 And the establishment's in a C-4. The resident's in an
14 R-5 zone. Would the statute apply then?
15 MR. MCINTOSH: I think there is an ambiguity
16 in the statute but for the reasons Ms. Gephardt noted,
17 a better reading -- I think they're both permissible
18 readings, but the better reading, because of the
19 purpose by the statute to provide an exemption for
20 areas where commercial activities is accepted --
21 expected, the exemption wouldn't apply just because of
22 where the -- where the noise is emanating from.

23

1 MR. ALBERTI: Okay. Okay.
2 MR. MCINTOSH: But I think there's an
3 ambiguity. And I think that ambiguity --
4 MR. ALBERTI: I understand that.
5 MR. MCINTOSH: -- causes a little --
6 MR. ALBERTI: But for the sake -- for the
7 sake of this hearing, you're willing to concede her
8 interpretation with respect to the statute in general?
9 Your argument is that -- the clear reading of the
10 statute if we were dealing with strictly residential
11 zones, you would concede that that her argument has a
12 basis?
13 MR. MCINTOSH: I would -- I would definitely
14 concede that it's a very persuasive argument. I think
15 where this ambiguity comes into play is where my client
16 expected to read the statute -- it's confusing. I
17 think the party is reading from that -- from that
18 point.
19 MR. ALBERTI: Okay.
20 MR. MCINTOSH: Because we conceded that it
21 should apply that way. Whether we can expect the
22 establishment to know that is a different issue. So

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1 it's (inaudible) where even if that was the case, there
2 was a technical violation because the government's
3 reading -- taking out the SP-2 part of it would imply
4 that a warning would be appropriate because of the
5 confusing nature of the statute and the nature of the
6 violation.
7 MR. ALBERTI: Do you know -- do you have any
8 history of the dates of when these zone districts were
9 set down, the SP-2 zone, the C-4 zone in this area?
10 MR. MCINTOSH: I do not know. I know that
11 the SP-2 predated 2010 and the amendment was made at --
12 MR. ALBERTI: What amendments are you talking
13 about?
14 MR. MCINTOSH: In 2010 SP-2 zones were
15 amended to allow the C-1 uses. That is after this
16 noise statute was enacted. The noise statute was
17 reenacted in 2001. That's the last date of action on
18 725. 2010 after these zones were listed as an
19 exemption by the Council, a regulation was adopted and
20 I had a reference -- a cite for you so it can be
21 verified.
22 MR. ALBERTI: But you don't know when the SP-

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1 2 zones are --
2 MR. MCINTOSH: I don't know --
3 MR. ALBERTI: -- defined for this area?
4 MR. MCINTOSH: I don't know when the map was
5 created designating the complainant's address as an SP-
6 2.
7 MR. ALBERTI: Right. But you do have a cite
8 for the establishment or amendment? So your cite is
9 for the -- for the establishment in the SP-2 zone or
10 the definition of an SP-2 zone?
11 MR. MCINTOSH: For the amendment of an SP-2
12 zone regulation 518 permitting C-1 uses.
13 MR. ALBERTI: Okay. Okay.
14 CHAIRPERSON MILLER: Well, is that the date
15 on Exhibit 3, February 5th, 2010, when the final
16 rulemaking was published?
17 MR. MCINTOSH: That is -- that is the date.
18 CHAIRPERSON MILLER: Okay.
19 MR. ALBERTI: Okay.
20 CHAIRPERSON MILLER: That's on our exhibit.
21 MR. ALBERTI: All right. All right. Okay.
22 Thank you.

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1 CHAIRPERSON MILLER: Okay.
2 MR. ALBERTI: Thank you.
3 MR. MCINTOSH: DCR -- just for the record 57
4 DC Register 1242, February 5th, 2010.
5 MR. ALBERTI: Thank you. That was helpful.
6 Thank you.
7 CHAIRPERSON MILLER: Other questions? Yeah,
8 go ahead.
9 MS. GEPHARDT: Oh, the government would just
10 like to make a follow-up argument. Is that --
11 CHAIRPERSON MILLER: I have a question for
12 both of you.
13 MS. GEPHARDT: Okay.
14 CHAIRPERSON MILLER: And I assume the answer
15 is, "No," or else you might have done this. Has this
16 question been addressed at all by the Board of Previous
17 Orders or by the Court of Appeals at all or is this a
18 totally -- a first-time question?
19 MS. GEPHARDT: The government is not aware
20 that this has been addressed in other situations.
21 MR. MCINTOSH: I'm not aware of any situation
22 of --

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1 CHAIRPERSON MILLER: Okay.
2 MR. MCINTOSH: -- a body or a court looking
3 at this issue.
4 CHAIRPERSON MILLER: Okay. Okay. So the one
5 basic issue is the question I raised initially, who
6 this applies to, the premises or the -- is that -- is
7 that still an issue? I mean, does -- well, let me --
8 let me ask the Licensee. Is that an issue whether or
9 not this Statute 25-725(3) is directed at the licensed
10 establishment or the residence? Is that an issue or
11 not an issue?
12 MR. MCINTOSH: I think we're willing to
13 perceive it as a matter of law --
14 CHAIRPERSON MILLER: Okay.
15 MR. MCINTOSH: -- but applied to where the
16 noise is heard. I think as a matter of --
17 CHAIRPERSON MILLER: Heard. Okay. So that's
18 not --
19 MR. MCINTOSH: -- purpose it should be taken
20 into consideration the confusing nature of the statute.
21 CHAIRPERSON MILLER: Okay. So that's not an
22 issue. And so your basic argument besides the

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1 ambiguity of the statute is -- could you -- could you
2 articulate that so I know what then the issue is?
3 Yeah.
4 MR. MCINTOSH: Sure. Our basic argument is
5 the exemption for C-1 should be read -- for noises
6 occurring in C-1 zones should be read as applying to
7 areas of the city where C-1 uses are permitted, which
8 would include SP-2 zones.
9 CHAIRPERSON MILLER: So -- okay. So C -- SP-
10 2 should be read almost like C-1 because the same uses
11 are allowed?
12 MR. MCINTOSH: Correct. And I think that
13 jibes with the intent of the statute, to provide
14 exemption where commercial activity is allowed.
15 CHAIRPERSON MILLER: Okay. Okay. And also
16 then I think Mr. Alberti was exploring this with you
17 then, the fact that SP-2 isn't referenced in this
18 provision. Are you arguing that that's this because
19 this happened in 2010, after the statute was enacted?
20 MR. MCINTOSH: Yeah, that's part of our
21 argument, I think.
22 CHAIRPERSON MILLER: Of the case?

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1 MR. MCINTOSH: Council couldn't have foreseen
2 that at some later date, SP-2 zones would be redefined
3 to allow the C-1 uses.
4 CHAIRPERSON MILLER: Okay.
5 MR. MCINTOSH: Timing is an important
6 consideration. So I think in light of that, as defined
7 by the regulations, that zoning regulations of the
8 District should be taken into consideration, what the
9 zoning regulations say about permissible uses, the fact
10 that particular -- specifically incorporates by
11 reference C-1 uses. Well --
12 CHAIRPERSON MILLER: Oh, well, let me ask you
13 this then. I don't know if you went through the rest
14 of the zoning regulations but were there -- are there
15 any other uses other than in another zone, such as --
16 other than SP-2 that would be able to use the same uses
17 as in a C-1 zone or is this the only one, SP-2?
18 MR. MCINTOSH: I'm not -- I don't want to
19 speak authoritatively. I'm not aware of any other
20 situation where such a broad range of uses is
21 incorporated by reference. It incorporates all C-1
22 uses -- upon BZA approval but incorporates all C-1 uses

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1 that are uses as a matter of right. That I haven't had
2 a chance to canvas the area to see if there are similar
3 situations in other zones but --
4 CHAIRPERSON MILLER: Okay.
5 MR. MCINTOSH: -- they're pretty broad.
6 CHAIRPERSON MILLER: So you just looked at
7 SP-2 because that's the issue here?
8 MR. MCINTOSH: Correct.
9 CHAIRPERSON MILLER: Okay. And -- okay. Ms.
10 Gephardt, do you have a response to that or you're just
11 going to --
12 MS. GEPHARDT: Yes.
13 CHAIRPERSON MILLER: Okay.
14 MS. GEPHARDT: The government does have a
15 response.
16 CHAIRPERSON MILLER: Okay.
17 MS. GEPHARDT: I think it's important to keep
18 in mind here that we're not in front of the Zoning
19 Board. This is -- that we're not trying to reinterpret
20 zoning statutes and try to figure out what the intent
21 of the Zoning Board was. What we do know is that -- I
22 think it's important to know that these zoning

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1 exemptions were likely not intended to nullify the
2 noise statute that we have with 25-725(b)(3), which
3 would apply within SP-2 zones.
4 And in SP-2 zones, you have a lot of
5 residential -- residences and apartments and
6 condominiums. And the noise statute was intended to
7 protect bars and residents from having noise emanating
8 from their businesses which would affect the quality of
9 life, the peace and the enjoyment of people living in
10 these residential areas.
11 So the fact that these exemptions were
12 allowed within SP-2 zones, does not -- was not an
13 intent to then say, "Okay. Anybody who has a business
14 in a C-4 zone, because we have these exemptions now
15 within an SP-2 zone, you can play your music as loud as
16 you want because the statute no longer applies." That
17 simply just does not make sense. The intent of the
18 statute is to protect residents -- surrounding
19 residents.
20 And keep in mind too that a violation is a
21 violation. We don't want to get into a situation where
22 ABRA investigators are having to go around with noise

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1 decibel meters and saying, "Well, okay. The -- we can
2 hear this music but how loud was it?" A violation is a
3 violation. If the noise can be heard within an SP-2
4 zone of such a -- of such a decibel -- if we go back
5 and look at the statute -- "a mechanical device, a
6 bell, horn, a gong, a musical instrument can be heard
7 of such intensity that it may be heard in any premises
8 other than a licensed establishment."
9 So that's really what this is about. This is
10 not about determining, well, how loud was the music,
11 you know, were there exemptions. The intent of the
12 statute was to protect people that live in residential
13 areas from being disturbed by music levels that are of
14 such a nature and of such an intensity that it would
15 disturb their peace.
16 And again, any ambiguity in the statute -- I
17 know that opposing counsel has brought this up, that
18 because there's ambiguity in the statute -- ambiguity
19 in the statute that this should be a warning and not a
20 violation. Any ambiguity in the statute should be
21 resolved in favor of what the intent of the statute
22 was. And again, the intent was to prevent loud noises

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1 from residential areas. And the intent was not to take
2 into consideration these exceptions.
3 So the government would argue based on that
4 that there was a violation and, therefore, a fine
5 should be levied against the Licensee.
6 CHAIRPERSON MILLER: Okay. I have a question
7 for -- what? Do you know -- I mean, I can check this.
8 Just in case you do know, do you know the date of this
9 statute -- that the statute was enacted?
10 MS. GEPHARDT: The date of which statute?
11 CHAIRPERSON MILLER: 25 -- or 25 -- oh, it
12 was 2001?
13 MS. GEPHARDT: May 3rd, 2001, it looks like.
14 MR. ALBERTI: Yeah, 2001.
15 CHAIRPERSON MILLER: Okay. Okay. Did you
16 have a question?
17 MR. ALBERTI: Yeah.
18 CHAIRPERSON MILLER: Yeah, okay. Mr. Alberti
19 has a question.
20 MR. ALBERTI: Ms. Gephardt, I -- first of
21 all, if this residence -- if this resident was --
22 residence was in a residential district in R-1 through

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1 R-5, I would completely agree with you. There's no
2 ambiguity in this statute. That's ludicrous. However,
3 I'm willing to entertain the arguments that I'm hearing
4 today. And I've got to think about it.
5 And I understand also your argument -- I hear
6 your argument that we shouldn't allow the Zoning
7 Commission or the Zoning -- the Zoning Commission to
8 introduce the zoning regulations that sort of override
9 previously established statutes. Okay. That's where
10 I'm at so far. But let me play devil's advocate with
11 you. This SP-2 zone allows C-1 uses. So
12 hypothetically, I could have two bars next to each
13 other. One bar could be raucous and creating a lot of
14 noise. And the other bar could be some little, you
15 know, very quiet place and they're complaining about
16 the noise next door.
17 And would that be a violation according to
18 the -- according to the statute? I mean, it seems to
19 me that's what your interpretation is saying.
20 MS. GEPHARDT: Well, I mean, I think you make
21 a good point that technically, yes, that could be an
22 absurd result that we have here. However, just keep in

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1 mind that these exceptions to an SP-2 zone have to be
2 pre-approved by the Zoning Board. This is not, like,
3 someone's just going to go in and build a restaurant or
4 a bar that just plays bump-bump-bump music in the
5 middle of the night.
6 I would think that it would go under strict
7 scrutiny to look and see, "Okay. Well, what kind of
8 establishment is this? Is it a deli?"
9 MR. ALBERTI: But it's a matter of right.
10 CHAIRPERSON MILLER: Right.
11 MR. ALBERTI: It's a matter of right. That's
12 what I'm struggling with.
13 MS. GEPHARDT: Well, now, wait a minute. It
14 says --
15 MR. ALBERTI: 701 says --
16 MS. GEPHARDT: It says you --
17 MR. ALBERTI: -- "The following service
18 establishments shall be permitted in a C-1" -- okay.
19 Let me -- let me --
20 MS. GEPHARDT: But --
21 MR. ALBERTI: Well, actually maybe I'm wrong.
22 MS. GEPHARDT: But go back to --

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1 MR. ALBERTI: Because I --
2 MS. GEPHARDT: -- 518.1.
3 CHAIRPERSON MILLER: 518.1. Right.
4 MS. GEPHARDT: "Uses identified in" --
5 CHAIRPERSON MILLER: That's exactly --
6 MS. GEPHARDT: -- "518.4 shall be permitted
7 in certain properties in an SP-2 district if approved
8 by the Board of Zoning Adjustment under" --
9 MR. ALBERTI: Uh-oh.
10 CHAIRPERSON MILLER: There you go.
11 MS. GEPHARDT: -- "3104." So basically --
12 MR. ALBERTI: Well, they are now.
13 MS. GEPHARDT: -- you know, they can't just
14 say, "Well, I -- you know, I'm either going to make a
15 dressmaking shop or I'm going to have a nightclub."
16 The Board of Zoning Adjustment would take a look at
17 that, take a look at the application, take a look at
18 what the intent of this business owner is and say --
19 you know, I mean, frankly, you are correct, it does
20 say, "Bar or cocktail lounge."
21 And -- but again, I would find it difficult
22 to believe that the Zoning Board would allow a loud

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1 nightclub to come into a SP-2 zone as an exception.
2 That would be my argument.
3 MR. ALBERTI: Okay. Thank you.
4 MR. MCINTOSH: If the Board has some
5 additional questions for us--
6 MR. ALBERTI: Okay. Yeah, you can respond to
7 that if you'd like.
8 MR. MCINTOSH: Okay. So just to follow up on
9 Mr. Alberti's concern about the Zoning Commission
10 overriding the statute, I think that's already
11 addressed by the statute because the statute places the
12 onus on the Zoning Authorities to create the zoning
13 regulations that define the scope of these exemptions.
14 (B)(3) says, "As defined in the zoning regulations of
15 the District."
16 So that's not a concern because that's how
17 the Council intended it, for where the Zoning
18 Authorities would make a determination of where the
19 zones lined up and where commercial uses are
20 appropriate and where they're not. So -- and that's
21 where they decided that the exemption should lie.
22 Just as a more general point, I think the

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1 investigative report shows that the Barcode was
2 responsive to the situation. Putting aside the legal
3 issue, Barcode was completely responsive to the issue.
4 It was, even under the government's reading, the most
5 technical of violations, a sound that could only be
6 heard when the room is completely silent and you're
7 standing by the window, according to the investigator.
8 So if the Board finds that the exemption does
9 not apply, we would ask that the appropriate -- just
10 the appropriate penalty, if you want to call it, would
11 be a warning, something that's permitted under the
12 schedule for this type of violation.
13 MS. GEPHARDT: And just in terms of the
14 penalty phase, the government would argue for a $1000
15 fine payable within 30 days.
16 CHAIRPERSON MILLER: Ms. Gephardt, I just
17 want to ask you one more follow-up question -- oh, I'm
18 sorry --
19 MR. SILVERSTEIN: No, I'm fine.
20 CHAIRPERSON MILLER: -- on this subject
21 though of BZA looking at this. And I appreciate that
22 you brought it to our attention that they're not matter

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1 of right uses. In 518 in the SP-2 zone they are uses
2 that have been approved by the Board of Zoning
3 Adjustment. But if they are there, then they have been
4 approved by the Board of Zoning Adjustment.
5 And then I would assume that the Board would
6 have determined that a bar in a C-1 -- if they approve
7 it in an SP-2 that it probably would be treated the
8 same way or it would have the same -- it wouldn't have
9 greater adverse impact. So they would have approved
10 it. They've given it the scrutiny.
11 MS. GEPHARDT: Right. Correct. Correct. I
12 think -- I think I understood what you said.
13 CHAIRPERSON MILLER: Okay. Well, if this bar
14 is here, then it's only allowed pursuant to 518, then
15 it --
16 MS. GEPHARDT: Right.
17 CHAIRPERSON MILLER: -- would have had to
18 have had scrutiny.
19 MS. GEPHARDT: Correct.
20 CHAIRPERSON MILLER: Right. Okay.
21 MS. GEPHARDT: Correct. Correct.
22 CHAIRPERSON MILLER: By the Zoning Board.

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1 Okay.
2 MS. GEPHARDT: And obviously, you know, it's
3 a -- it's a factual dependent situation where -- you're
4 absolutely right. I mean, if a -- if a bar was
5 approved by the Zoning Board to go into an SP-2 zone as
6 an exception, and they're playing their own loud music
7 and then they're complaining about another bar or
8 restaurant in a C-1 -- C-4 zone, then that is something
9 that would need to be taken into consideration on a
10 fact-by-fact or a case-by-case basis because that would
11 be an absurd result.
12 CHAIRPERSON MILLER: No. I -- but I just
13 need -- and let me -- and let me ask you this then.
14 This -- we're looking at this particular bar. And
15 we're not getting into too many facts. But was this
16 approved given the -- granted a special exception by
17 the Zoning Board to operate pursuant to 518?
18 MR. ARMIRSHAHI: Was our -- was the
19 establishment given exception? No. We are in a C-4
20 zone. So --
21 CHAIRPERSON MILLER: Oh --
22 MR. ARMIRSHAHI: -- I think --

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1 CHAIRPERSON MILLER: Oh, I see. There --
2 MS. GEPHARDT: They're in a C-4.
3 CHAIRPERSON MILLER: That's what I'm getting
4 mixed up.
5 MR. ARMIRSHAHI: Yeah.
6 CHAIRPERSON MILLER: Okay. The residence is
7 in the SP-2 zone.
8 MS. GEPHARDT: Correct.
9 CHAIRPERSON MILLER: Okay. Now, go ahead,
10 Mr. Silverstein.
11 MR. SILVERSTEIN: Good morning, Ms. Gephardt.
12 It's good to see you got a good night's sleep, as did
13 we all last night.
14 CHAIRPERSON MILLER: Right, exactly.
15 MS. GEPHARDT: This is -- it's too early for
16 this after an election night -- 4:00 -- at 4:00 --
17 CHAIRPERSON MILLER: Exactly.
18 MS. GEPHARDT: Yeah.
19 MR. SILVERSTEIN: This event occurred pretty
20 much in my neighborhood. And it's one of these test
21 cases in an urban neighborhood that has a whole lot
22 more import than simply this one case because we have

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1 more and more people wanting to live downtown, wanting
2 to live in these areas that they want to be both lively
3 and livable. And how do you strike the balance?
4 And you have this narrow SP-2 corridor on
5 16th Street that is surrounded by commercial areas.
6 And it seems as though there's a number of difficulties
7 that this places on the Licensee, one of which is how
8 did they know in a situation like this that they were,
9 you know, being that they -- they do not have these
10 particular areas directly facing them, the SP-2s. How
11 do they know that they were in fact causing an
12 inconvenience or violating the law?
13 MS. GEPHARDT: You may a very good point.
14 The neighborhoods are changing and people are wanting
15 to live downtown near the action. And so it does
16 create sort of an interesting situation. I mean,
17 again, it -- I think it comes down to the fact that
18 because an establishment -- I mean, you're right. I
19 don't know how -- they don't -- you know, they can't go
20 into every single apartment on 16th Street and see,
21 "Well, can you hear the music?"
22 CHAIRPERSON MILLER: Right.

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1 MS. GEPHARDT: But at the same time, I think
2 that bars and restaurants sort of know what an
3 acceptable level for their music to be so that it can't
4 be heard down the street. Just because they have to
5 turn their music down a little bit doesn't mean that
6 the patrons of the establishment are having any less of
7 a good time or that they're somehow -- you know, it's
8 affecting their business.
9 I think that, you know, if there's any
10 question as to whether they're keeping their music too
11 loud in the evening, maybe somebody should go down and
12 stand on 16th Street and see, "Okay. Well, can you
13 hear it? How loud is it?" I mean, it does create a
14 sticky situation. But I think that these
15 establishments need to err on the side of turning the
16 music down a little bit so that it can't be heard.
17 MR. SILVERSTEIN: This was serious enough
18 that it could be heard softly through a double-pane
19 window, correct?
20 MS. GEPHARDT: That's correct. That's
21 correct. It could be heard through a double-pane
22 window. And I -- while I don't have the actual, you

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1 know, distance from Barcode to this person's residence,
2 you know, I didn't go do a test case where I stood in
3 his apartment. I wasn't there. Mr. Shakoor could
4 testify to that. But -- so if you want to know sort of
5 the situation in terms of the facts of this case, we
6 could bring Mr. Shakoor up here to talk about that.
7 But --
8 MR. SILVERSTEIN: That's your job.
9 CHAIRPERSON MILLER: No. You've stipulated -
10 - you've stipulated those. So --
11 MS. GEPHARDT: Yeah, we stipulated.
12 MR. SILVERSTEIN: Okay.
13 CHAIRPERSON MILLER: -- you can't do that.
14 Yeah.
15 MR. SILVERSTEIN: But only at -- only when
16 the room is silent could they hear it? If there was a
17 television on, a radio on, you're talking, they
18 couldn't hear it?
19 MS. GEPHARDT: Correct.
20 MR. SILVERSTEIN: So this is somewhat de
21 minimis. It probably did not --
22 MS. GEPHARDT: I would agree.

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1 MR. SILVERSTEIN: -- interfere with the
2 peaceable enjoyment of the establishment, which is
3 another --
4 MS. GEPHARDT: I would agree. I would agree
5 with that statement. It was -- it is a technical
6 violation. You know, was it a case where, you know,
7 the whole room was shaking? No.
8 MR. SILVERSTEIN: We've had those.
9 MS. GEPHARDT: Oh, I'm sure you have. But,
10 you know, it -- the question is, where do you draw the
11 line?
12 MR. SILVERSTEIN: It is. In fact --
13 MS. GEPHARDT: So I -- you know, and that's
14 something maybe the Board will decide. I don't -- I
15 don't know.
16 MR. SILVERSTEIN: So to help us draw the
17 line, there were no prior complaints that we know of?
18 MS. GEPHARDT: I believe that in this case --
19 MR. SILVERSTEIN: From the -- from residents,
20 that is?
21 MS. GEPHARDT: I -- you know, I'm not sure
22 honestly.

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1 MR. SILVERSTEIN: Okay.
2 MS. GEPHARDT: I'd have to go back and look
3 through the investigative report.
4 MR. SILVERSTEIN: Okay. I'll give you time
5 to do that. I'll ask you this then in the meantime.
6 There have been no subsequent complaints?
7 MS. GEPHARDT: Not that I know of. Not that
8 I know of. You know, I do -- I do have to say though
9 that based on the facts that I've read in this report,
10 the owner of Barcode was gracious about this. He did
11 talk to the resident. He agreed to reduce the music.
12 He told him to call him anytime if there's a problem.
13 I mean -- and so the government does admit that, you
14 know, he did resolve the situation. But again, it's a
15 -- it's a violation and, therefore, the government is
16 proceeding under that theory.
17 MR. SILVERSTEIN: Because where we are on
18 this, we're having more and more people moving into
19 these areas. They -- we've just had an application on
20 N Street for the -- what's called the N Street Follies
21 by the Tavern Inn, where they're going to be turning
22 those four magnificent buildings that have been vacant

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1 for 20 years into condos, where people are going to pay
2 $1 million for these things. And there are going to be
3 53 of them.
4 And it's right next to the alley at St.
5 Bernard's -- or rather, St. Matthew's Cathedral --
6 MS. GEPHARDT: Okay.
7 MR. SILVERSTEIN: -- where you have all the
8 noise coming up the alley from what's called Club
9 Central. We're going to have more and more cases like
10 this. So it isn't just this case that --
11 MS. GEPHARDT: Correct.
12 MR. SILVERSTEIN: -- we're deciding here.
13 MS. GEPHARDT: Well, perhaps this -- the
14 statute needs to be rewritten to say that -- instead of
15 saying, "Of such intensity that it may be heard in any
16 premises other than the establishment," maybe they do
17 have to get into decibel levels or --
18 MR. SILVERSTEIN: Peaceable enjoyment or --
19 MS. GEPHARDT: I mean, and that -- but that's
20 not something we're here to resolve today.
21 MR. SILVERSTEIN: Fine.
22 MS. GEPHARDT: But -- yeah, this -- that's

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1 something that probably has to be taken up --
2 MR. SILVERSTEIN: And --
3 MS. GEPHARDT: -- given what you've just
4 stated.
5 MR. SILVERSTEIN: And more important than any
6 of this -- and this is something that we have in our
7 neighborhood more than anyplace. We have sidewalk
8 cafes across the street and downstairs from apartments.
9 And that is that the residents who patronize these
10 places and the owners who run them have to get along
11 together, have to work together and have to make
12 accommodations to one another. The residents don't
13 expect to be living in Sterling.
14 MS. GEPHARDT: Well, like --
15 MR. SILVERSTEIN: And on the other hand, they
16 shouldn't have to live in the middle of Bourbon Street
17 either.
18 MS. GEPHARDT: Right. They kind of know what
19 they're getting into but to a point. I hear what
20 you're saying.
21 MR. SILVERSTEIN: Is -- I've had this
22 conversation with Ms. Gephardt. Mr. McIntosh, do you

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1 have anything that you would want to --
2 MR. MCINTOSH: I think the concern you raised
3 about the practical difficulties of the establishments
4 knowing when -- especially in the situation where we
5 have an establishment located in a C-4 with this narrow
6 sliver of SP-2 just right down the block, how do they
7 know when they're, under the government's reading,
8 creating a situation that could amount to a violation?
9 That's why the statute has Subsection C,
10 which is the decibel level requirements. It provides
11 an objective standard that applies across the board
12 with -- not taking into account the zoning issues. And
13 it's sensible, repeatable. It's predictable. There's
14 something that provides a benchmark that everybody
15 knows what they're dealing with. I think the -- that
16 plays into the intent of the statute.
17 Where -- we recognize there's areas of the
18 city where there's commercial uses. We're going to
19 provide exemption for that. However, we're going to
20 have an objective standard that we expect
21 establishments to live up to.
22 MR. SILVERSTEIN: Thank you, sir. I'd like

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1 to thank --
2 MR. MCINTOSH: Thank you.
3 MR. SILVERSTEIN: -- both counsels. This is
4 a -- this is far more serious than just this case
5 itself. And I think it's important that we get an
6 understanding fully of what we're dealing with here
7 because we're going to have more and more cases that
8 whatever we decide here will be the precedent. And we
9 want to get it right.
10 MS. GEPHARDT: Okay.
11 MR. MCINTOSH: Thank you.
12 MR. SILVERSTEIN: Thank you.
13 MS. GEPHARDT: Thank you.
14 MR. SILVERSTEIN: Thank you, Madam Chair.
15 CHAIRPERSON MILLER: You're welcome. Yeah, I
16 just want to follow up on just this penalty part now.
17 Because from what I'm seeing in this case is that the
18 law speaks to a resident or whatever hearing the noise
19 emanating from the establishment. And it's hard for
20 the establishment to know that a resident is hearing
21 something unless the resident contacts the
22 establishment, unless, you know, this is incredibly

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1 loud.
2 So, like in this case though -- and it seems
3 from what I'm reading in the investigative report that
4 the establishment did everything right. It's -- when
5 they heard that there was a noise, they turned it down.
6 They gave the cell phone number. So what I'm -- I
7 don't understand the penalty now, why the government is
8 recommending a $1000 penalty when an establishment
9 seems to have been acting responsibly.
10 MS. GEPHARDT: Well, again, the government
11 maintains that this was a violation. You know, if we
12 get into a scenario where we're just -- everyone who
13 plays their music loud and this situation happens, we
14 just give everyone warnings -- I mean, we want to, you
15 know, establish the fact that this is a violation. And
16 therefore, it should be penalized accordingly.
17 And we -- you know, we've tried to resolve
18 this and we weren't able to resolve this earlier. So
19 that's why the government is maintaining the $1000
20 fine. Now, the Board can make of that what they want
21 and obviously, you all will be deciding. But that's
22 our position and that's what we maintain.

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1 CHAIRPERSON MILLER: Okay. Thank you.
2 MR. ALBERTI: Thank you.
3 CHAIRPERSON MILLER: Any other question?
4 Okay. Thank you very much. So we will take this under
5 advisement --
6 MS. GEPHARDT: Thank you.
7 CHAIRPERSON MILLER: -- and I guess issue an
8 order within 90 days certainly.
9 MS. GEPHARDT: Okay.
10 CHAIRPERSON MILLER: Hopefully much less but
11 --
12 MS. GEPHARDT: Okay. Great. Thank you.
13 CHAIRPERSON MILLER: Okay. Thank you.
14 MR. SILVERSTEIN: Ms. Gephardt, get some
15 sleep.
16 MS. GEPHARDT: What?
17 MR. SILVERSTEIN: Get some sleep.
18 CHAIRPERSON MILLER: The election's over.
19 MS. GEPHARDT: Yeah, right. Seriously. Mr.
20 Alberti wasn't even on my ballot.
21 MR. ALBERTI: Ms. Miller, before everyone
22 leaves, would you please read --

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1 CHAIRPERSON MILLER: I got it. I got it.
2 MR. ALBERTI: Okay. Thank you.
3 CHAIRPERSON MILLER: I'm just going to read
4 (inaudible) which means that it basically goes to the
5 fact that we will take it into advisement (inaudible).
6 You're not required but -- as Chairman of the
7 Alcoholic Beverage Control Board for the District of
8 Columbia and in accordance with Section 405 of the Open
9 Meetings Amendment Act of 2010, I move that the ABC
10 Board hold a closed meeting for the purpose of seeking
11 legal advice from our counsel on Case No. 12-CMP-00112,
12 Barcode, per Section 405(b)(4) of the Open Meetings
13 Amendment Act of 2010 and deliberating upon this case
14 for the reasons cited in 405(b)(13) of the Open
15 Meetings Amendment Act of 2010.
16 Do I have a second?
17 MR. ALBERTI: Second.
18 CHAIRPERSON MILLER: Mr. Alberti has seconded
19 the motion. I'll now take a roll call vote on the
20 motion. Mr. Brooks?
21 MR. BROOKS: I agree.
22 CHAIRPERSON MILLER: Mr. Alberti?

1 MR. ALBERTI: I agree.
2 CHAIRPERSON MILLER: Ms. Miller agrees. Mr.
3 Silverstein?
4 MR. SILVERSTEIN: I agree, Madam Chair.
5 CHAIRPERSON MILLER: Okay. Then the vote --
6 or the motion passes by a vote of 4-0-0. And I hereby
7 give notice that the ABC Board will hold a closed
8 meeting in the ABC Board room conference room today
9 pursuant to the Open Meetings Amendment Act of 2010 and
10 issue an order within 90 days. Thank you.
11 MR. ALBERTI: Can we take a five-minute
12 break?
13 CHAIRPERSON MILLER: Sure. We're going to
14 take -- well, I think our next case is what, at 11:00?
15 MR. BROOKS: Yeah.
16 CHAIRPERSON MILLER: Okay. All right. So
17 we'll be taking a five-minute break and come back to
18 hear the next case on the calendar then.
19 (WHEREUPON, at 10:55 a.m., the hearing was
20 concluded.)
21
22

1 CERTIFICATE OF REPORTER
2
3 I, ERICK MCNAIR, the officer before whom the
4 foregoing hearing was taken, do hereby certify that
5 the testimony appearing in the foregoing pages was
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