

Capital Reporting Company  
In the Matter of: Walgreen's Co., t/a Walgreen's 11408 08-08-2012

1

DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE CONTROL BOARD

MEETING

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IN THE MATTER OF: :  
 :  
Walgreen's Co., :  
t/a Walgreen's 11408 :  
4225 Connecticut Avenue, NW :  
Retailer B : Protest  
License No. 88579 : Hearing  
ANC 2B :  
Case No. 11-251-00274 :  
New application :  
-----x

August 8, 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.

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

HERMAN JONES, Member

CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

ALSO PRESENT

STEPHEN O'BRIEN, Attorney for Licensee

KAREN PERRY, ANC 3F

(866) 448 - DEPO

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<p style="text-align: right;">3</p> <p style="text-align: center;">EXHIBITS</p> <p style="text-align: center;">PAGE</p> <p>1 LICENSEE EXHIBITS</p> <p>2 1 Sign - Receiving door . . . . . 202</p> <p>3 2 Certificate of Occupancy . . . . . 202</p> <p>4 3 Video of Store . . . . . 202</p> <p>5 4 Floor Plan of Store . . . . . 202</p> <p>6</p> <p>7 ANC EXHIBITS</p> <p>8 1 Photo of Store with banner . . . . . 330</p> <p>9 2 Various Walgreen's Brochures . . . . . 330</p> <p>10 3 Walgreen's Magazine . . . . . 330</p> <p>11 4 Copy of Walgreen's website . . . . . 330</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 MS. PERRY: I just called him. He said any -</p> <p>2 - he's en route.</p> <p>3 CHAIRPERSON MILLER: He's en route? Okay.</p> <p>4 MR. O'BRIEN: May we inquire as to what Mr.</p> <p>5 Lederer's role is?</p> <p>6 CHAIRPERSON MILLER: Okay.</p> <p>7 MS. PERRY: He's one of our witnesses.</p> <p>8 MR. O'BRIEN: He's a witness. Okay.</p> <p>9 CHAIRPERSON MILLER: Well, we're going to --</p> <p>10 MS. PERRY: Or he's also an attorney and I</p> <p>11 understand now that we're going to be doing some kind</p> <p>12 of oral arguments that I wasn't prepared for --</p> <p>13 CHAIRPERSON MILLER: Ms. Perry --</p> <p>14 MS. PERRY: -- or motions or whatever.</p> <p>15 CHAIRPERSON MILLER: -- you filed a motion</p> <p>16 for a continuance.</p> <p>17 MS. PERRY: Yes.</p> <p>18 CHAIRPERSON MILLER: And we wanted to give</p> <p>19 you the opportunity to address it.</p> <p>20 MS. PERRY: Okay.</p> <p>21 CHAIRPERSON MILLER: So, that's the motion</p> <p>22 that the Board had in mind to do first. And then I was</p>

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6	<p>1 just informed by our attorney that there may be another 2 motion by Mr. O'Brien. Do you want to tell us what 3 that is? 4 MR. O'BRIEN: Yes. So, it would be an oral 5 motion to dismiss the protest on the grounds of 6 violation of the prohibition against ex parte 7 communications which occurred last night, when 8 apparently Council Member Cheh communicated with the 9 Board about the substance of this case. 10 CHAIRPERSON MILLER: Okay. 11 MS. PERRY: Could we begin with that? 12 CHAIRPERSON MILLER: If you'd -- we'll be 13 happy to begin with that, if you're -- 14 MS. PERRY: I would like to -- 15 CHAIRPERSON MILLER: -- all right with 16 proceeding. 17 MS. PERRY: I would like to hear it, because -- 18 CHAIRPERSON MILLER: All right, as long as we 19 don't -- you don't need Mr. Letterman (sic). 20 MS. PERRY: I would love Brian to be here, 21 but we can only do what we can do. 22 CHAIRPERSON MILLER: Why don't we -- we can</p>	8	<p>1 MR. ALBERTI: -- and I want this to go 2 smoothly. 3 MS. PERRY: -- how close he is? Let me call 4 him right now and see who close he is. I was hoping he 5 would just be here for -- 6 MR. O'BRIEN: Will Mr. Lederer be entering an 7 appearance on behalf of the ANC? 8 MS. PERRY: No, he will not. He is not an 9 ABRA lawyer. 10 MR. O'BRIEN: Well, then I don't understand 11 what standing he would have to speak. 12 MS. PERRY: Okay. Let's proceed. 13 CHAIRPERSON MILLER: No. Wait a minute. 14 MS. PERRY: Let's just proceed. 15 CHAIRPERSON MILLER: Isn't he -- is he a 16 protestant? No, what -- is he -- what's -- I thought 17 I've seen his name in the pleadings. 18 MS. PERRY: Mr. Lederer filed a letter, at 19 one point, on behalf of the Van Ness South Tenants' 20 Association and that might be what you're referring to. 21 The Tenant Association is -- represents 625 apartments 22 that are 16 feet away from Walgreen's.</p>
7	<p>1 wait. 2 MR. ALBERTI: Madam Chair, if Ms. Perry 3 thinks that Letterman (sic), Mr. Letterman is important 4 to speak to this case, then I -- he's probably, I would 5 assume he -- that implies his -- it's important for him 6 to be here to speak to both motions. 7 MS. PERRY: I would like -- 8 MR. ALBERTI: And so, I would like -- 9 MS. PERRY: -- that, just for advice. 10 MR. ALBERTI: -- Ms. Perry, let me finish. I 11 would hate to have us begin and then have to pause 12 because you feel that you're disadvantaged. So, I 13 would like us either to decide that we're going to move 14 forward on all matters or we're going to wait for Mr. 15 Letterman. And I think it's prudent that we make that 16 decision now rather than getting in the midst of 17 hearing oral arguments on a motion and then having Ms. 18 Perry say, well, you know, I really need Mr. Letterman 19 here. 20 And I'm not accusing you, but, you know, I 21 want to be fair to everybody -- 22 MS. PERRY: Can I call him and see --</p>	9	<p>1 CHAIRPERSON MILLER: Okay, so -- 2 MS. PERRY: It's incorporated. But that 3 request was turned down by the Board for party status 4 because they said it wasn't five people. 5 CHAIRPERSON MILLER: Correct. Right. So, 6 what -- how did you anticipate him participating in -- 7 MS. PERRY: Just sitting next to me -- 8 CHAIRPERSON MILLER: -- this protest? 9 MS. PERRY: -- giving advice. 10 CHAIRPERSON MILLER: Okay. 11 MS. PERRY: And he also would be one of the 12 witnesses for the ANC. 13 CHAIRPERSON MILLER: Okay. So, I think you 14 could give him a call then and see how long he's going 15 to be. 16 MS. PERRY: If he's still far away then I'll 17 go ahead and proceed. He had a court case this 18 morning, he's a landlord/tenant lawyer. 19 (Pause in proceedings) 20 MS. PERRY: I just left him a voicemail. His 21 phone isn't picking up, so that means he must be in the 22 car en route, but where he is, I just asked him to call</p>

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<p style="text-align: right;">10</p> <p>1 me back.</p> <p>2 CHAIRPERSON MILLER: All right. So, last you</p> <p>3 talked to him he was coming back from the courthouse to</p> <p>4 here?</p> <p>5 MS. PERRY: Yes. That's what he said.</p> <p>6 BOARD MEMBER: Give him ten minutes.</p> <p>7 MS. PERRY: And that was as you were walking</p> <p>8 in the door.</p> <p>9 CHAIRPERSON MILLER: Okay. So, I think we</p> <p>10 could wait ten minutes, unless there's objection.</p> <p>11 MS. PERRY: If not, if you want me to go</p> <p>12 ahead and argue our motion, I will do my best.</p> <p>13 CHAIRPERSON MILLER: I mean, we have waited</p> <p>14 ten minutes for people, before so --</p> <p>15 BOARD MEMBER: Let's wait ten minutes.</p> <p>16 CHAIRPERSON MILLER: I think that we can do</p> <p>17 that and if he comes sooner, you can contact staff and</p> <p>18 let us know that he's here.</p> <p>19 How long -- you think he was coming from the</p> <p>20 courthouse. Is that correct? Which isn't that far</p> <p>21 away.</p> <p>22 MR. JONES: D.C. Courthouse?</p>	<p style="text-align: right;">12</p> <p>1 Board was going to decide this, because she said she</p> <p>2 would let us know ASAP of the Board's decision. So, we</p> <p>3 did not come prepared to argue. That was the last I</p> <p>4 heard last night.</p> <p>5 CHAIRPERSON MILLER: Okay. Okay. If he gets</p> <p>6 here within ten minutes and we're in there and have a</p> <p>7 chance to talk to him, I just want to tell you ahead of</p> <p>8 time, you know, with the ANC and protest groups, really</p> <p>9 only one person usually does the advocacy. You know,</p> <p>10 so, if you wanted him to do the advocacy you could --</p> <p>11 he could do that, he could enter an appearance, he's an</p> <p>12 attorney. Otherwise, you can proceed.</p> <p>13 MS. PERRY: I think -- you know what, let me</p> <p>14 proceed.</p> <p>15 CHAIRPERSON MILLER: You're going to proceed?</p> <p>16 MS. PERRY: I think so.</p> <p>17 CHAIRPERSON MILLER: Okay. All right. So,</p> <p>18 why don't we take a recess and --</p> <p>19 UNIDENTIFIED MALE: No, she's proceeding.</p> <p>20 CHAIRPERSON MILLER: Oh, you're proceeding</p> <p>21 now?</p> <p>22 MR. JONES: She wants to proceed.</p>
<p style="text-align: right;">11</p> <p>1 MS. PERRY: Yeah.</p> <p>2 MR. JONES: Maryland Courthouse.</p> <p>3 MS. PERRY: It's -- I think it's Superior</p> <p>4 Court --</p> <p>5 MR. JONES: Venturas (ph) County Courthouse?</p> <p>6 MS. PERRY: -- where you have the</p> <p>7 landlord/tenant cases downstairs?</p> <p>8 MR. JONES: D.C.?</p> <p>9 BOARD MEMBER: D.C. or --</p> <p>10 MS. PERRY: Yeah, D.C.</p> <p>11 MR. JONES: Okay.</p> <p>12 MS. PERRY: I've never been, thankfully.</p> <p>13 CHAIRPERSON MILLER: We -- are you going to</p> <p>14 be doing the arguing or did you intend for him to do</p> <p>15 the arguing?</p> <p>16 MS. PERRY: I guess me. Or him. I'm not</p> <p>17 sure, truthfully.</p> <p>18 CHAIRPERSON MILLER: All right. Because then</p> <p>19 we --</p> <p>20 MS. PERRY: We weren't really -- we were</p> <p>21 under the impression that we were going to get -- from</p> <p>22 that email we got from Thea Davis last night that the</p>	<p style="text-align: right;">13</p> <p>1 MS. PERRY: Let's just go ahead and if he</p> <p>2 shows up, he shows up.</p> <p>3 CHAIRPERSON MILLER: Okay.</p> <p>4 MS. PERRY: And he can sit here and give me -</p> <p>5 - you know, poke me in the arm.</p> <p>6 CHAIRPERSON MILLER: I'll give you one more</p> <p>7 choice, Ms. Perry. We have two --</p> <p>8 MS. PERRY: Let's go ahead.</p> <p>9 CHAIRPERSON MILLER: -- we have two motions</p> <p>10 to consider.</p> <p>11 MS. PERRY: Okay.</p> <p>12 CHAIRPERSON MILLER: One -- maybe we should</p> <p>13 start with Mr. O'Brien's then, since -- or do you have --</p> <p>14 MS. PERRY: He's going to dismiss the</p> <p>15 protest.</p> <p>16 CHAIRPERSON MILLER: Okay. Go ahead. It</p> <p>17 doesn't -- we're going to hear both, so Mr. O'Brien.</p> <p>18 MR. O'BRIEN: Thank you.</p> <p>19 CHAIRPERSON MILLER: I guess we're ready to</p> <p>20 proceed then with hearing your motion --</p> <p>21 MR. O'BRIEN: Yes.</p> <p>22 CHAIRPERSON MILLER: -- for dismissal.</p>

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14	<p>1 MR. O'BRIEN: This is an oral motion to 2 dismiss the protest. 3 MS. PERRY: Is it possible for me to get a 4 copy of that, since I haven't -- oh, just -- 5 MR. O'BRIEN: Oral. 6 MS. PERRY: Oh, it's just oral. Okay. 7 CHAIRPERSON MILLER: We haven't seen it 8 either. 9 MS. PERRY: Okay. 10 CHAIRPERSON MILLER: Okay. 11 MR. O'BRIEN: For violation of 23 DCMR 12 Section 1720.1 which provides, in Subsection A: A 13 person shall not make or knowingly cause to be made, to 14 a member of the Board, an ex parte communication 15 relevant to the merits of the proceeding. 16 Apparently at some point last -- later 17 yesterday, a letter was transmitted, dated August 7th, 18 from Council Member Mary Cheh to each of the members of 19 the Board. May I ask if the Board is aware of this 20 letter? 21 CHAIRPERSON MILLER: Maybe you should 22 identify --</p>	16	<p>1 virtually instructing the Board not only to grant the 2 continuance requested by Ms. Perry, but also lecturing 3 the Board on the merits of this case. In particular of 4 taking apart and parsing the Board's advisory opinion 5 of a week ago on the grocery store exception. 6 This letter did not write itself. I suggest 7 that Commissioner Perry contacted Council Member Chay - 8 - Cheh, excuse me, or, members of her staff and 9 solicited assistance in dealing with the Board. Or as 10 I think more appropriately put, leaning on the Board. 11 It is a direct violation of the regulations, 12 it is no more appropriate than me picking up the phone 13 and calling one or more Board members at home to urge a 14 Board member to rule a certain way in a case. I would 15 never do it, it's utterly improper. It's very 16 disappointing that Council Member Cheh, a lawyer, would 17 not know better than to do something like this. 18 But, it is misconduct, instigated by the 19 protestant and for that reason I move that the protest 20 be dismissed. 21 CHAIRPERSON MILLER: Ms. Perry, do you want 22 to respond to that motion?</p>
15	<p>1 MR. O'BRIEN: It's a three page letter dated 2 August 7th signed by Mary Cheh. 3 CHAIRPERSON MILLER: Okay. 4 MR. O'BRIEN: The Board is in receipt of this 5 letter? I'm asking a question, if I may. 6 MR. SILVERSTEIN: Mr. O'Brien, I received it, 7 email. 8 MR. O'BRIEN: Okay. All right. 9 MR. ALBERTI: I -- let's let the chair 10 respond, please. I think it's most appropriate for the 11 chair to respond to this. 12 CHAIRPERSON MILLER: Okay. Yes, I believe 13 we're in receipt of it. I was just looking in my file 14 to make sure this is the same letter that you're 15 talking about. But we did receive a letter from Council 16 Member Cheh. 17 MR. O'BRIEN: Okay. Of course -- I shouldn't 18 say okay, let me take of course back. I was not aware 19 of this letter until the Board's legal staff, I infer 20 recognizing the issue here, transmitted a copy to me 21 some time after the close of business last night. 22 It is clearly an ex parte communication,</p>	17	<p>1 MS. PERRY: First of all, I have not seen nor 2 talked to Mary Cheh. I think as the Washington Post 3 and other papers will tell you, she has been in Mexico, 4 as far as I know, taking a two week course and living 5 with a family. So, I have not seen or talked to Mary, 6 nor did I ask her for a letter to the Board. That's 7 number one. 8 And if she were here today, and I -- maybe 9 you can -- you know, I can try and call her at her 10 council offices, I'm sure she would say the same thing. 11 Number two, I did go to ask for help from 12 Council -- from the council and it was not for a letter 13 or anything else, it was to search for certain 14 documents. I'm not a lawyer. I wanted to get a copy of 15 the emergency legislation that -- and the committee 16 report that set up the -- that allowed the grocery 17 store exemption. And that was my purpose. 18 And I talked to a staff member of Mary Cheh's 19 on Monday. I did not ask him for a letter, I did not 20 do anything of the sort, or tell him to lecture the 21 Board. In fact, I was surprised when I saw the letter 22 come by email yesterday.</p>

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<p style="text-align: right;">18</p> <p>1 MR. O'BRIEN: I would ask the Board to                  2 observe that the first paragraph of the letter, from                  3 Mary Cheh, virtually tracks the August 1st and August                  4 7th letters from the ANC, from Commissioner Perry --                  5 MS. PERRY: I --                  6 MR. O'BRIEN: -- asking for a continuance.                  7 MS. PERRY: I did --                  8 MR. O'BRIEN: It is not coincidence.                  9 MS. PERRY: Excuse me. I did tell them that                  10 we had a -- I did tell her staff member that I needed                  11 the information quickly because we had a protest                  12 hearing on Wednesday. I did not say -- that was the                  13 extent of the conversation.                  14 CHAIRPERSON MILLER: Okay. Yeah, Mr.                  15 Silverstein has a question.                  16 MR. SILVERSTEIN: My question, Ms. Perry, is                  17 you say you spoke with a staff member --                  18 MS. PERRY: Yes.                  19 MR. SILVERSTEIN: -- of Council Member Cheh?                  20 MS. PERRY: Yes.                  21 MR. SILVERSTEIN: Who is the staff member?                  22 MS. PERRY: Leah -- oh, it's her new one.</p>	<p style="text-align: right;">20</p> <p>1 MR. O'BRIEN: That's what's disturbing.                  2 MR. ALBERTI: Yes. No, I understand that.                  3 MR. O'BRIEN: The Board has, in fact,                  4 received this communication.                  5 MR. ALBERTI: Right.                  6 MR. O'BRIEN: Sorry.                  7 MR. ALBERTI: I understand your position, is                  8 the point, all right.                  9 And here's what I'm splitting hairs. I see                  10 her as providing advice to the board on whether or not                  11 to grant the motion for a continuance. I understand                  12 that she, in her letter, spoke to our decision about --                  13 MS. PERRY: Excuse me, this is Mr. Lederer.                  14 MR. ALBERTI: That she -- in her letter spoke                  15 to our decision about -- our advisory decision on                  16 whether or not this licensee application should qualify                  17 to apply for this license. But that decision has been                  18 made. That's done and gone. We've made that decision.                  19 Right now before us is a motion whether or                  20 not to continue this protest hearing. I don't see that                  21 Council Member Cheh has spoken to the outcome of the                  22 protest, I think she's speaking to -- I'm reading this</p>
<p style="text-align: right;">19</p> <p>1 It's the one who -- I don't even know her name. Leah                  2 Singleton (ph), I believe it is. She's the scheduler                  3 now. She replaced a former staff member.                  4 MR. SILVERSTEIN: Mary is not here.                  5 MS. PERRY: And I believe she -- I forgot her                  6 -- I think it's Leah Singleton. She sent us an email                  7 about picking up baseball tickets for Mary Cheh's Board                  8 3 Night Out. And that's why I was at the council on                  9 Monday, was to pick up tickets.                  10 MR. O'BRIEN: I can suggest some additional                  11 questions of Commissioner Perry --                  12 CHAIRPERSON MILLER: We have --                  13 MR. O'BRIEN: -- if the Board wants to hear.                  14 MS. PERRY: Oh, I'm sure you have them, Mr.                  15 O'Brien.                  16 CHAIRPERSON MILLER: No, I don't think that's                  17 necessary. Yeah, Mr. Alberti?                  18 MR. ALBERTI: Mr. O'Brien?                  19 MR. O'BRIEN: Yes.                  20 MR. ALBERTI: I'm going to split hairs with                  21 you here on your motion. I've read this letter very                  22 carefully, from Council Member Cheh.</p>	<p style="text-align: right;">21</p> <p>1 very narrowly, because I have to. I read it very                  2 narrowly, which says she's really weighing in on                  3 whether or not we should continue this hearing.                  4 Now, if I'm missing something, and I -- you                  5 know, I overlooked something in that letter, please                  6 point it out to me.                  7 MR. O'BRIEN: I would point out that the                  8 first paragraph of the letter deals with the                  9 continuance. The second paragraph, which is the                  10 conclusion of the first page, deals with the substance                  11 of the case. The entire second page of the letter                  12 deals with the substance of the case. The first                  13 paragraph on Page 3 deals with the substance of the                  14 case. And then the final paragraph addresses both.                  15 MR. ALBERTI: Well, when you say substance of                  16 the case, it really -- it addresses the substance of                  17 our advisory discussion, which is not the subject of                  18 the protest.                  19 MR. O'BRIEN: And argument I was prepared to                  20 make.                  21 MR. ALBERTI: And you understand that.                  22 MR. O'BRIEN: Yes.</p>

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22	<p>1 MR. ALBERTI: I'm making that distinction and 2 I will hold by that distinction that it's not -- our 3 decision and advisory opinion is not an issue in this 4 protest. It's -- that decision is made, it's not a 5 protestable issue. So, I don't think she's -- 6 technically I don't think she's talking to the 7 substance of the protest, she's talking about whether 8 we should continue this case. 9 So, I'll take your motion as dismissing 10 whether -- dismissing the request for a continuance. 11 MR. O'BRIEN: No, the motion -- 12 MR. ALBERTI: I understand. 13 MR. O'BRIEN: Okay. I do believe that that 14 analysis splits hairs. 15 MR. ALBERTI: Right. 16 MR. O'BRIEN: I do believe that analysis is 17 technical. I don't know quite why you feel compelled 18 to read it narrowly, because I think the substance of 19 this is clear. I believe, based on the text of this 20 letter, compared to the text of Commissioner Perry's 21 letters of the 1st and 7th, that Commissioner Perry 22 complained to Council Member Cheh's staff that the</p>	24	<p>1 party -- 2 MR. O'BRIEN: They -- 3 CHAIRPERSON MILLER: -- to submit a letter. 4 MR. O'BRIEN: Yes, but it was instigated by 5 the protestant. And that's clear from the context of 6 it. 7 CHAIRPERSON MILLER: But -- 8 MR. O'BRIEN: It was instigated by the 9 protestant in order to attempt the Board to rule a 10 certain way. The chair drew a distinction between a 11 letter and a phone call, I don't understand what that 12 distinction is. 13 CHAIRPERSON MILLER: Because a phone call is 14 not on the record, a phone call is -- that's ex parte. 15 It's one on one, nobody else hears it, you're trying to 16 influence somebody unofficially. So, this letter came 17 to ABRA and to the Board, through the official channels 18 and it's on the record for you to respond to. 19 MR. O'BRIEN: It's on the record only because 20 last night the Board's legal staff recognized the 21 problem presented by this and the Board's legal staff 22 contacted me to make me aware of it. Had the Board's</p>
23	<p>1 Board wasn't giving her what she wanted and encouraged 2 Council Member Cheh's staff to lean on the Board. 3 That's what happened. 4 MS. PERRY: I disagree wholeheartedly. 5 CHAIRPERSON MILLER: Can I -- 6 MS. PERRY: And the -- you know, if you want, 7 I would be happy to have Mary Cheh come here. 8 CHAIRPERSON MILLER: No, you -- I know, I 9 understand, you're on the record. And my question is I 10 had never seen this type of a letter from a council 11 member called an ex parte communication, that it's 12 common in administrative proceedings that a council 13 member will take a position and write a letter. And 14 it's not ex parte because it's on the record, it's not 15 a conversation somebody has on the telephone trying to 16 influence a Board member, it's a letter, like anybody 17 else's letter, submitted in the record for others to 18 rebut or do whatever. 19 MR. O'BRIEN: The difference is it was 20 instigated. The council member is not a party to this 21 proceeding. 22 CHAIRPERSON MILLER: You don't have to be a</p>	25	<p>1 legal staff had not been astute enough to realize the 2 impropriety of this, I would not know about it. 3 CHAIRPERSON MILLER: Do you have some 4 authority that would substantiate what you're saying, 5 that it's ex parte, that this type of letter is 6 considered ex parte? 7 MR. O'BRIEN: A communication, either from a 8 party or caused by a party to the tribunal, on the 9 merits of the matter is ex parte communication. 10 MS. PERRY: I don't know if I'm allowed to 11 respond, but I have to say I think this is absolutely 12 ludicrous because I have not spoken to Mary Cheh, I did 13 not instigate any letter. I did say I would -- you 14 know, I needed some documents in a hurry because of 15 this hearing coming up on Wednesday. I mean, I wasn't 16 made aware of a fact finding hearing or of the 17 documents or given a lot of the stuff, so, you know, 18 should -- I mean, that's is -- we did not -- I did not 19 instigate it. I resent the implication, truthfully, 20 and I find it scandalous that he's just allowed to sit 21 there and say that I did something. 22 MR. O'BRIEN: I've got some questions if the</p>

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26	<p>1 Board wishes --</p> <p>2 MR. ALBERTI: May I ask a question?</p> <p>3 CHAIRPERSON MILLER: Yes.</p> <p>4 MS. PERRY: I mean, I'm having trouble with</p> <p>5 this.</p> <p>6 MR. ALBERTI: Ms. Perry? Based on what you</p> <p>7 said I'm confused, because in the letter it says that</p> <p>8 indeed --</p> <p>9 MS. PERRY: I haven't even read the letter.</p> <p>10 MR. ALBERTI: -- two of the witnesses the</p> <p>11 commissioners would like to call to testify in respond</p> <p>12 to the Board's order are unavailable tomorrow. If your</p> <p>13 -- if the sole purpose of your conversation with</p> <p>14 Council Member Cheh's staff was to request documents,</p> <p>15 how did -- how do they know?</p> <p>16 MS. PERRY: I don't know. I never sent them,</p> <p>17 truthfully, unless they looked at the Board record or</p> <p>18 something. You know, I might have mentioned, and I --</p> <p>19 to be honest, it was a very informal -- not -- I didn't</p> <p>20 go in with a script, I went in to pick up baseball</p> <p>21 tickets. I went down originally to Gottlieb Simon's</p> <p>22 office and asked for help from Gottlieb to find these</p>	28	<p>1 Do I remember word for word everything that</p> <p>2 was said to Leah? No. And I think it's Leah, I'm not</p> <p>3 even sure.</p> <p>4 CHAIRPERSON MILLER: Okay. Are there other</p> <p>5 questions?</p> <p>6 BOARD MEMBER: (inaudible) the other motion</p> <p>7 and then (inaudible)?</p> <p>8 CHAIRPERSON MILLER: No. Mike has one more</p> <p>9 question.</p> <p>10 MR. SILVERSTEIN: I read this letter last</p> <p>11 night, Ms. Perry. You speak of scandalous and</p> <p>12 ludicrous and I hope you enjoy eating those words,</p> <p>13 because I can't tell you, I would never say publicly</p> <p>14 what came out of my mouth when I read this. It is</p> <p>15 dismissive, it is wrong. She spends two pages barking</p> <p>16 up the wrong tree, arguing about something that is not</p> <p>17 part of the case, but argues facts in the case, merits</p> <p>18 of the case without putting it on the record and</p> <p>19 providing a copy to the other side.</p> <p>20 It is ethically, morally and legally</p> <p>21 reprehensible and untenable. That said, I don't see</p> <p>22 the clear nexus between the protestants and the these</p>
27	<p>1 documents.</p> <p>2 His -- Cathy Williams walked me over to</p> <p>3 Legislative Services and they sent her 210 pages and we</p> <p>4 couldn't find it. So, I went upstairs. I might have</p> <p>5 said something that I was going to ask for a</p> <p>6 postponement, it was not a scripted, planned meeting,</p> <p>7 in other words. It was all very informal saying that</p> <p>8 I've been downstairs, we couldn't find these documents,</p> <p>9 could they be of help to me. Did they know -- you</p> <p>10 know, I went to Jim Graham's -- not Jim Graham's</p> <p>11 office, I went to Marion Barry's office trying to find</p> <p>12 somebody, I was in Jim Graham's office trying to find</p> <p>13 somebody. His -- I forgot -- his committee person was</p> <p>14 away for two weeks. The receptionist knew nothing about</p> <p>15 the emergency documents. It was not a planned,</p> <p>16 scripted thing.</p> <p>17 I mean, if I mentioned -- and I know I never</p> <p>18 gave them a copy of any letter saying I requested a</p> <p>19 postponement or anything else. I was merely looking</p> <p>20 for documents. If they relayed to Mary, and I don't</p> <p>21 know that they did, because I mean, -- you know, that's</p> <p>22 all I can tell you, it was not a planned whatever.</p>	29	<p>1 horrifically wrong-headed words by the council member.</p> <p>2 And as much as I see this as just being wrong, wrong,</p> <p>3 wrong, to try to influence a Board this way, I'm not</p> <p>4 sure that I can vote to dismiss at this point.</p> <p>5 CHAIRPERSON MILLER: Thank you.</p> <p>6 MR. SILVERSTEIN: But that doesn't mean I'm</p> <p>7 not infuriated that something like this could be one in</p> <p>8 a way, through the back door, trying to influence a</p> <p>9 Board. She should know better. She claims to be a</p> <p>10 lawyer, she should know better.</p> <p>11 MS. PERRY: You know, all I can do is after</p> <p>12 this hearing let her know your feelings by email. But</p> <p>13 I have not spoken to her, honestly.</p> <p>14 MR. SILVERSTEIN: I don't think it would be</p> <p>15 proper for me to do so, other than at this bench and</p> <p>16 I've done so just now.</p> <p>17 MS. PERRY: Yeah, I mean, I have to be</p> <p>18 honest, I have not spoken to Mary, I have not seen her.</p> <p>19 The last I heard she was in Mexico.</p> <p>20 CHAIRPERSON MILLER: Okay.</p> <p>21 MS. PERRY: I mean --</p> <p>22 CHAIRPERSON MILLER: Yeah, you've said that.</p>

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30	<p>1 You've said that. 2 MS. PERRY: Yeah, I mean -- 3 CHAIRPERSON MILLER: Okay. 4 MS. PERRY: I can't tell you whether her 5 letter -- anyway, I'm not going to go into it. It's 6 her letter, not mine. 7 CHAIRPERSON MILLER: Okay. That's fine. So, 8 does that complete the questions on this motion? We 9 can proceed with the other motion? And we'll after 10 hearing both motions we will probably -- 11 MR. SILVERSTEIN: Madam Chair? 12 CHAIRPERSON MILLER: -- consider them and 13 then come back. Yeah? Um hmm? 14 MR. SILVERSTEIN: If we were to vote 15 affirmatively on this motion there would be no reason 16 to have the other motion. 17 CHAIRPERSON MILLER: Okay. 18 MR. SILVERSTEIN: Should we adjourn? 19 CHAIRPERSON MILLER: Okay. Well, I'm getting 20 mixed messages. So, what -- you want to go now? 21 MR. ALBERTI: Madam Chair, I understand Mr. 22 Silverstein's point of view but I don't think it -- I</p>	32	<p>1 That's not at issue. There was a -- that one was 2 denied. But then another one came in which is more 3 extensive. And so, the Board decided today that we 4 would give you the chance to address it, if you like. 5 You don't have to. You can leave it, you know, we can 6 just look at the motion, which we've read. If you want 7 to address it at all, we wanted to give you that 8 opportunity. 9 MS. PERRY: Thank you. Our ANC does feel 10 that we should have a delay in this hearing. When we 11 filed our protest we filed it back in -- wait a minute -- 12 CHAIRPERSON MILLER: Ms. Perry, I forgot to 13 say this, because it's already 2:04, but since you did 14 fully address it, we would -- I just want to give a 15 little parameter, like, maybe you know, five minutes or 16 so -- 17 MS. PERRY: Okay. 18 CHAIRPERSON MILLER: -- to address it and 19 then they can respond. Okay. 20 MS. PERRY: Okay. When we filed our protest 21 we filed it based on the ABRA's placarding of the 22 restaurant -- of the grocery -- of the drugstore. We -</p>
31	<p>1 think it's best that the Board seek legal counsel 2 before we rule on this motion. And so -- and for a 3 matter of expediency, I don't want to break twice, so 4 I'd like to hear -- 5 CHAIRPERSON MILLER: Okay. Right. 6 MR. ALBERTI: Go ahead. They may be -- you 7 know, it may become a moot point, but I would think for 8 the matter of -- sake of time it would be best to hear 9 the arguments on the next motion. 10 CHAIRPERSON MILLER: Okay. I concur with 11 that. Everybody's all right with that? 12 Okay, so Ms. Berry, as I understood it there 13 -- we've got two motions from you. The first one we 14 got by email asking for a continuance based on the fact 15 that your witnesses weren't available. 16 MS. PERRY: One -- two of our key witnesses 17 could not -- 18 CHAIRPERSON MILLER: Right. 19 MS. PERRY: -- be here today. 20 CHAIRPERSON MILLER: And -- 21 MS. PERRY: Did you -- 22 CHAIRPERSON MILLER: -- okay, wait a second.</p>	33	<p>1 - it was posted on January 6th, our petition date was 2 February 21st and our hearing date was supposed to have 3 been March 5th. 4 We protested it on the grounds that we knew 5 at the time. And at the time Walgreen described it -- 6 the nature of its operation. It says, Walgreen company 7 has operated retail drugstores since 1901. Walgreen's 8 and it's wholly owned subsidiaries currently operate 9 more than 7,000 stores in the United States. 10 Walgreen's holds an interest in thousands of liquor 11 licenses in various jurisdictions and has held interest 12 liquor licenses nationwide for over 30 years. That, at 13 the time was the basis of our protest. 14 Subsequent to that, we learned, very late, 15 that -- well the Board did change the hearing to -- 16 from March 5th to May 23rd then to June 27th and the 17 times on June 27th changed several times and I think 18 the last time was at five something, then to august 19 8th. And we never really knew the reason. Then we 20 learned all -- you know, towards the time of the August 21 8th hearing, that Walgreen's had asked for -- to be a 22 grocery store and that the Board held a fact finding.</p>

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34	<p>1 We were not aware of the fact finding. We 2 weren't asked to participate in it or anything else. 3 The Board issued its advisory ruling. We did 4 not get a copy of that, as we said in our letter, until 5 August the 2nd. So, we could not have put that in our 6 original letter, because we didn't know it at the time, 7 we didn't have that advisory opinion. That's less than 8 five or six calendar days from today. 9 The record in that case basically says that 10 we, the ANC can provide evidence as to whether 11 Walgreen's is or is not a grocery store. We would like 12 to provide that evidence, but we do feel that we've 13 never seen the video tape that was entered into the 14 record, we've never seen any of the other attachments 15 that were entered into the record, the 75 -- 25, 75 16 page document. And we would like to see some of these 17 documents so that we know what we're dealing with and 18 so that we can also do maybe our own video or something 19 to refute what was put into the record. 20 When we also filed our original protest, we 21 didn't know there was a moratorium on Class B licenses, 22 that's not something ABRA shares with the ANC. We</p>	36	<p>1 Anyway, you have our motion. We do feel that 2 it's in the interest of representing the community, we 3 need to know whether Walgreen's is a drugstore or a 4 grocery store, should it be re-placarded. And we would 5 like time to enter into the record, as the Board 6 allowed in their advisory opinion, that Walgreen's is 7 not a grocery store and therefore not entitled to a 8 license. 9 (Whispered conversation) 10 MS. PERRY: Yeah, you know, we feel, you 11 know, we've been prejudiced straight along by not 12 knowing these things. And we feel that the 13 neighborhood would be -- has the right to a fair 14 hearing, with all of the documents in our possession 15 and time to address the issue. Things have changed 16 dramatically since we filed our protest. 17 CHAIRPERSON MILLER: Yeah. Time? 18 BOARD MEMBER: Time. 19 CHAIRPERSON MILLER: Time. Okay, thank you. 20 Mr. O'Brien? 21 MR. O'BRIEN: This hearing was scheduled to 22 today's date by email from staff on June 5. So,</p>
35	<p>1 don't get a list of how many licenses are out there or 2 who has them or anything else. In order for us to -- 3 you know, this protest can really -- our protest should 4 not go forward until it's really determined if 5 Walgreen's is a grocery store or whether it is a 6 drugstore. 7 Because it's a grocery store, they're 8 entitled to the license. As a drugstore they probably 9 would not be because of the moratorium. And we do feel 10 we need more than three or four days. I mean, we're 11 not a law firm, we don't have lawyers on our staff, we 12 don't even meet in the summer to really make our case. 13 And to me, that's the main issue, is this a drugstore, 14 is it a grocery store? Should it be re-placarded? 15 We also go the inspector's report, without 16 all the attachments. We've never even seen the C of O. 17 Without all the attachments, we didn't even get it till 18 Monday morning, today is Wednesday. I mean, so we 19 would like to see well, all of the attachments and 20 everything. Some of it was sent to us but not all of it 21 was. I have it what was sent to us here. But we got 22 something like 42 pages or something on Monday morning.</p>	37	<p>1 there's no lack of notice. 2 As observed by one of the Board members a few 3 moments ago in colloquy, whether the applicant meets 4 legal standards in this case qualifies as a grocery 5 store is not a protest issue. It is legal 6 determination to be made by the Board, upon 7 consideration of the evidence. The ANC, as a party, is 8 entitled to express opinions, the statute, I believe, 9 says recommendations and so forth. But, the ANC, I 10 submit, does not have a dog in the fight as to whether 11 this -- whether this qualifies, under the statute, as a 12 grocery store. That's a legal determination for the 13 Board to make. The Board made an advisory -- 14 positioned advisory opinion. The Board, in its 15 findings of fact and conclusions of law, after this 16 hearing, will have to address the issue, but the ANC 17 doesn't have standing to tell the Board their opinion 18 as to whether this satisfies the legal standard or not. 19 They're not talk -- the ANC is not talking 20 about an opportunity to present facts, it's talking 21 about an opportunity to express opinions on an issue 22 that is not one of the enumerated protest issue in 25-</p>

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38	<p>1 601.                  2 CHAIRPERSON MILLER: Yes. Oh, you need to                  3 give your name for the record, please.                  4 MR. LEDERER: I signed in. Brian Lederer and                  5 I live at Van Ness across the alley from Walgreen's.                  6 CHAIRPERSON MILLER: Okay.                  7 MR. LEDERER: I just -- could I say                  8 something?                  9 MS. PERRY: No. Read this into the record.                  10 The conclusions of law, this is what -- a sentence.                  11 MR. O'BRIEN: I would ask that Mr. Lederer's                  12 status be ascertained.                  13 MS. PERRY: No, you can't say, you're the                  14 lawyer. If I may, I have here --                  15 CHAIRPERSON MILLER: Okay, let's pause here.                  16 Mr. Lederer, could you identify in what capacity you're                  17 here today with Ms. Perry.                  18 MR. LEDERER: I came here to testify.                  19 CHAIRPERSON MILLER: Oh, could you identify                  20 in what capacity you're here today with Ms. Perry.                  21 MR. LEDERER: I can here to present evidence,                  22 among evidence on the question of whether this store,</p>	40	<p>1 for a new retailer's Class B license." So, this record                  2 was left open for the ANC to participate and to present                  3 evidence.                  4 CHAIRPERSON MILLER: Mr. O'Brien, do you have                  5 a comment to that?                  6 MR. O'BRIEN: Yes, on appropriateness issues.                  7 On those issues that were identified in the ANC's                  8 protest letter dated February 17th, not on a legal                  9 standard which the Board has already ruled in an                  10 advisory manner on.                  11 MS. PERRY: If I may, and I didn't read that                  12 whole paragraph. And if you look at it, and I can                  13 bring it up there, "The Board finds that under these                  14 facts, so long as the licensee proves it satisfies the                  15 other criteria described in Subsection 25-331 and                  16 Subsection 25-332, the licensee may proceed in it's                  17 application for a retailer's Class B license, because                  18 it can meet the primary business and purpose tests                  19 described in 25- 331(d)(1) and 25-332(c)(1) and                  20 qualifies as a full service grocery store under 25-                  21 331(d)(4) and 25- 332(c)(4), provided it complies with                  22 the conditions set forth below. We note that this</p>
39	<p>1 this pharmacy is a grocery store, evidence.                  2 CHAIRPERSON MILLER: Okay. And --                  3 MR. LEDERER: And evidence I assume this                  4 Board wants to receive to make the factual                  5 determinations. Because the last time I didn't come                  6 here to argue, I don't know how many -- you know, what                  7 is a grocery store is a matter of law, I know what it                  8 is --                  9 CHAIRPERSON MILLER: Okay, we're not getting                  10 into the merits right now.                  11 MR. LEDERER: Okay, but I came to come as a                  12 witness.                  13 CHAIRPERSON MILLER: And we just -- we want                  14 to know are you a witness, are you an attorney for the                  15 ANC, are you --                  16 MR. LEDERER: I'm a witness.                  17 CHAIRPERSON MILLER: Witness? Okay.                  18 MS. PERRY: If I may. I have here the                  19 advisory opinion, on Page 5 it states, "We note that                  20 this conclusion does not consider any possible or                  21 potential evidence that ANC 3F or other protestants may                  22 submit during a protest hearing against the application</p>	41	<p>1 conclusion does not consider any possible or potential                  2 evidence that ANC 3F or other protestants may submit                  3 during a protest against the application for a new                  4 retailer's Class B license."                  5 It does not say that all we have to do --                  6 that all we are allowed to address is the protest                  7 issues. We were not aware that it was a grocery store                  8 when we filed our protest or that a fact finding                  9 hearing had taken place, to begin with.                  10 CHAIRPERSON MILLER: Okay. You're on the                  11 record for that.                  12 MS. PERRY: Yes.                  13 CHAIRPERSON MILLER: Let me ask you this, Ms.                  14 Perry, though. You're aware that they applied for a                  15 liquor license, correct?                  16 MS. PERRY: As a drugstore.                  17 CHAIRPERSON MILLER: Whatever, as Walgreen's,                  18 as the Walgreen's that you know and see and -- right?                  19 Whatever it's called, you knew that they, okay, applied                  20 for a liquor license way back, months ago. So, how                  21 does the fact that the Board, in this advisory opinion,                  22 characterized them to be eligible under the grocery</p>

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42	<p>1 store exemption, affect your case that they impact 2 peace, order, quiet, parking, things like that? 3 MS. PERRY: I think it makes a very big 4 difference. First of all, how do I phrase this? 5 There's a moratorium on Class B licenses, so under that 6 moratorium our protest would basically be null and void 7 because they weren't entitled to a license. Whether we 8 had factual grounds or whether we had peace, order and 9 quiet or proliferation, too many licenses in the area, 10 it doesn't matter. The only reason we're here today, 11 basically, is because they couldn't get it as a 12 drugstore under the Class B, but they can get a license 13 as a grocery store. And it makes a very big 14 difference. 15 We feel, you know, the -- you know, our ANC 16 should have been notified. Yes? I can tell you have a 17 question. 18 MR. SILVERSTEIN: No. Go right ahead, I'm 19 just wondering -- 20 MS. PERRY: No. Go ahead. I -- you know, 21 I'll stop. But it does make a big difference. One way 22 they can't get a license, because there's a moratorium,</p>	44	<p>1 And one block away, within 400 feet, or 200 feet even, 2 is the Burke -- Edmund Burke School. 3 CHAIRPERSON MILLER: Okay. I just want to 4 say, don't give us all the merits. Okay? 5 MS. PERRY: Okay. 6 CHAIRPERSON MILLER: But, if you're going to 7 say -- I don't know where you're going with this, 8 because the question was about, you know, how do those 9 issues change depending on what you call this store, 10 because if it -- 11 MS. PERRY: It contributes to the over 12 concentration of licensed establishments. 13 CHAIRPERSON MILLER: Okay. So, you knew that 14 months ago. If it was going to get a liquor license it 15 was going to contribute to this over concentration. 16 So, that hasn't changed. 17 Has -- you asked for a continuance based on, 18 you know, different things, being prejudiced. Are you 19 ready to go forward today or are you prejudiced by 20 something? 21 MS. PERRY: I think we're prejudiced if all 22 we can address today is those issues, because we came</p>
43	<p>1 one way they can. 2 MR. SILVERSTEIN: Ms. Perry -- Commissioner, 3 we are bound by some very narrow protestable issues. 4 How does any of this relate directly, not to whether 5 they can get a license, which is an administrative 6 issue, but peace, order, quiet, residential parking, 7 property values or pedestrian safety? How does any of 8 what you're talking about deal with those specific 9 issues? Not with whether it's okay for them to get a 10 license, but the protestable issues themselves that 11 give you standing? 12 MS. PERRY: Let me pull out our form and go 13 into all of the issues that we really actually raised. 14 I have more papers than I know what to do with. 15 Okay. In the talk about proximity to 16 schools, daycare centers and an alcohol and drug rehab 17 clinic. The inspector's report that we saw on Monday, 18 and I haven't read the whole 42 pages, says that there 19 are no schools. That's not accurate. Directly across 20 the street is the University of the District of 21 Columbia, which has a program with Wilson High School 22 that the Wilson kids come there for classes and stuff.</p>	45	<p>1 prepared to argue the -- or anything, I came more on -- 2 prepared to -- I think we would be prejudiced. We 3 don't have some of our key witnesses that we need for 4 this and we'd like to see -- you know, we would like to 5 argue the merits of whether it's a grocery store, 6 because I think it does make a difference in 7 contributing to the over concentration. 8 (Whispered conversation) 9 MS. PERRY: I mean, this is the first time 10 we're asking for a continuance. Our witnesses were 11 available -- you know, summer is vacation month in 12 this city, especially the month of August. 13 CHAIRPERSON MILLER: I think that the Board 14 had already denied it on that basis. 15 MS. PERRY: It has. 16 CHAIRPERSON MILLER: And if I can speak to 17 that, you know, I think that that affects everybody. 18 And if everybody else is prepared and, you know, 19 planned their schedule, that's not -- the Board hasn't 20 found that to be a sufficient reason, especially since 21 you knew, in June, of the date. You know, so -- 22 MS. PERRY: True. But people can't change</p>

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<p style="text-align: right;">46</p> <p>1 dates for going to weddings or other issues.                  2 CHAIRPERSON MILLER: No, but they can notify --                  3 MS. PERRY: Or plan cruises.                  4 CHAIRPERSON MILLER: -- earlier.                  5 MS. PERRY: No, but cruises. You know, the                  6 Board is the one that postponed this case many times                  7 and I think it was basically to hear the application as                  8 to whether they were a grocery store. We didn't ask                  9 for all of these, you know, things.                  10 CHAIRPERSON MILLER: Okay.                  11 MS. PERRY: You know, I don't think asking                  12 for a 30 day delay or just until September when our ANC                  13 reconvenes, for a hearing is that much of a imposition.                  14 (Whispered conversation)                  15 MS. PERRY: And we would like to enter -- you                  16 know, and then schedule a time or however we do it to                  17 prove that it's not a grocery store.                  18 CHAIRPERSON MILLER: Are there any other                  19 questions?                  20 MS. PERRY: As I said, we're -- you know,                  21 we're not lawyers.                  22 BOARD MEMBER: Thank you.</p>	<p style="text-align: right;">48</p> <p>1 CHAIRPERSON MILLER: Mr. Brooks?                  2 MR. BROOKS: I agree.                  3 CHAIRPERSON MILLER: Mr. Alberti?                  4 MR. ALBERTI: I agree.                  5 CHAIRPERSON MILLER: Ms. Miller agrees.                  6 Mr. Silverstein:                  7 MR. SILVERSTEIN: I agree.                  8 CHAIRPERSON MILLER: Mr. Jones?                  9 MR. JONES: I agree.                  10 CHAIRPERSON MILLER: It appears the motion                  11 has passed by a vote of 6-0. I hereby give note that                  12 the ABC Board will hold closed meeting in the ABC Board                  13 conference room now to consider the motions.                  14 If you all want to take a quick break, you're                  15 free to.                  16 (WHEREUPON, the hearing went off record.)                  17 CHAIRPERSON MILLER: Okay, we're back on the                  18 record to issue our rulings on the two motions.                  19 Okay. The first motion that we heard was an                  20 oral motion by the Applicant to dismiss the protest                  21 based on a letter from Mary Cheh and which he                  22 characterized as ex parte. And I'm going to make a</p>
<p style="text-align: right;">47</p> <p>1 CHAIRPERSON MILLER: Okay. All right? So,                  2 the Board is going to recess and consider both motions                  3 and then come back and report on that and rule on that.                  4 So, I'm going to read the open meetings                  5 instructions. The chairperson of the Alcoholic                  6 Beverage Control Board for the District of Columbia and                  7 in accordance with Section 405 of the Open Meetings                  8 Amendment Act of 2010, I move that the ABC Board hold a                  9 closed meeting for the purpose of seeking legal advise                  10 from our counsel on Case Number 12-PR0-00013, Walgreen,                  11 11408, per Section 405(b)(4), The Opening Meetings                  12 Amendment Act of 2010. And deliberating on the two                  13 motions that have been made this afternoon for Case                  14 Number 12-PR0-00013, Walgreen's, for the reasons cited                  15 in Section 405(b)(13) of the Open Meetings Amendment                  16 Act of 2010.                  17 Is there a second?                  18 BOARD MEMBER: Second.                  19 CHAIRPERSON MILLER: Now that the motion has                  20 been second, I'll take a role call.                  21 Mr. Nophlin?                  22 MR. NOPHLIN: I agree.</p>	<p style="text-align: right;">49</p> <p>1 motion that we deny the Applicant's motion to dismiss                  2 and the grounds would be that we can't conclude, with                  3 certainty, based on what was presented to us, that this                  4 letter was initiated by the protestant, the ANC, and                  5 therefore however it's characterized, it would not be                  6 grounds for dismissing the ANC as the protestant in                  7 this case or dismissing the protest.                  8 Do I have a second?                  9 BOARD MEMBER: Second.                  10 CHAIRPERSON MILLER: Any other comments by                  11 board members?                  12 Not hearing any, all those in favor say aye.                  13 (Chorus of ayes.)                  14 CHAIRPERSON MILLER: All those opposed?                  15 (No audible response.)                  16 CHAIRPERSON MILLER: All those abstaining?                  17 (No audible response.)                  18 CHAIRPERSON MILLER: Okay. Then the motion                  19 passes to deny the motion to dismiss.                  20 The section motion that the Board has before                  21 it is a motion for a continuance, submitted by ANC 3F.                  22 And I would move that we deny this motion for a</p>

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50	<p>1 continuance on the grounds that ANC 3F has had notice 2 of this hearing for many months and the advisory 3 opinion did not change the grounds for the protest that 4 being dealing with Appropriateness Standard. 5 Do I have a second on that? 6 BOARD MEMBER: Second. 7 CHAIRPERSON MILLER: Any other comments by 8 board members? 9 (No audible response.) 10 CHAIRPERSON MILLER: Okay. Then all those in 11 favor say aye. 12 (Chorus of ayes.) 13 CHAIRPERSON MILLER: All those opposed? 14 (No audible response.) 15 CHAIRPERSON MILLER: All those abstaining? 16 (No audible response.) 17 CHAIRPERSON MILLER: Okay. Then that motion 18 passes to deny the ANC's motion for a continuance. 19 So, we'll now go forward with the protest 20 hearing. Why don't we just discuss the preliminary 21 issues related to the protest hearing. Can each of you 22 tell us how many witnesses you have?</p>	52	<p>1 supposed to argue this grocery store thing, if not 2 today? 3 CHAIRPERSON MILLER: Okay. Let me just say 4 this and then we'll move forward. There are many board 5 members, if not the majority probably, that don't think 6 that that issue dealing with the advisory opinion means 7 what you think it means, that in a protest you get into 8 whether it's a grocery store or a liquor store. But 9 that being said, you know, and I -- and we've heard -- 10 we understand you got some documents just recently, but 11 we've also heard that they're not -- there's no 12 requirement that you get them in a certain time. 13 Let me just say this. We're going to have 14 the hearing, go forward with your case on the issues 15 that you should be prepared to address dealing with the 16 Appropriateness Standard. At the end of the hearing if 17 you want to request that the records be left open for 18 something, the Board will entertain that. 19 MS. PERRY: Okay. Let me ask a question, 20 then. When do we enter evidence in this case, Number 21 25? Your advisory opinion? It says, we note that -- 22 the conclusion about the grocery store, and this is all</p>
51	<p>1 MR. O'BRIEN: We will have two witnesses. 2 CHAIRPERSON MILLER: Two witnesses. Okay. 3 They were identified on the PIF form? 4 MR. O'BRIEN: Yes, they were. 5 CHAIRPERSON MILLER: Okay. Ms. Perry? 6 MS. PERRY: First of all, I would like to go 7 on record right now as objecting to the allowing this 8 hearing to continue. Maybe it's our fault, maybe it 9 isn't, but when we got the Board's advisory opinion we 10 were under the impression that we could argue also the 11 grocery -- the merits of whether it's a grocery store, 12 based on when we got that hearing and stuff and it did 13 leave it open that we could argue it. And we did think 14 it was part of this protest hearing. 15 We also did not get the inspector's report 16 and not all of the documents even attached to it, until 17 Monday morning, two days from -- before -- you know, 18 today's Wednesday, that's not even two full days. We 19 do feel we are being extremely prejudiced by those two 20 facts. 21 CHAIRPERSON MILLER: Okay. 22 MS. PERRY: You know, and when were we</p>	53	<p>1 in Number 25, does not consider any possible or 2 potential evidence that the ANC may submit during a 3 protest against the application for a new retailer's 4 Class B license. When do we do this? 5 CHAIRPERSON MILLER: Okay. This is my -- 6 this is from my understanding, is similar to what Mr. 7 O'Brien said, that in this case you enter your evidence 8 regarding Appropriateness Standard, and that will be 9 considered. 10 MS. PERRY: This does not say Appropriateness 11 Standards, this says grocery store and that is the 12 reason -- these sections that were quoted here are 13 grocery store sections, not appropriateness sections. 14 CHAIRPERSON MILLER: Okay. All right, let me 15 say this, Ms. Perry. That's an argument, you know, 16 that you want to make and you're not prepared to go 17 forward with that today to present evidence, and we 18 understand that. So, what I would suggest is we go 19 forward with the Appropriateness Standards that are 20 germane to a protest hearing and then if you want to 21 make a motion at a later time about the other, you 22 know, we can entertain it.</p>

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54	<p>1 Yeah, Mr. O'Brien.</p> <p>2 MR. O'BRIEN: Thank you. I think I perceive</p> <p>3 what a misunderstanding may be.</p> <p>4 CHAIRPERSON MILLER: Okay.</p> <p>5 MR. O'BRIEN: The Board has issued an</p> <p>6 advisory opinion on a legal issue, that is what it</p> <p>7 takes to qualify as a grocery store under the relevant</p> <p>8 statute. The factual issue as to whether the grocery</p> <p>9 store exception may be, that has to be proved, and it's</p> <p>10 certainly fair ground they'd.</p> <p>11 For instance, one of the standards is that it</p> <p>12 be new construction with a certificate of occupancy</p> <p>13 issued after January 1, 2000. Okay? Well, I mean</p> <p>14 going to introduce the certificate of occupancy because</p> <p>15 that's a factual matter which I have to address in my</p> <p>16 presentation. And I would agree that if I introduce</p> <p>17 it, it's fair game for the other side to challenge.</p> <p>18 Okay. It's the legal issue as to whether</p> <p>19 this is -- this -- what constitutes a grocery store.</p> <p>20 In essence, the subject of the Board's advisory</p> <p>21 opinion, that is not an appropriate grounds for an</p> <p>22 appropriateness proceeding.</p>	56	<p>1 the C of O. It was not attached to anything we've ever</p> <p>2 gotten.</p> <p>3 CHAIRPERSON MILLER: How does that prejudice</p> <p>4 you?</p> <p>5 MS. PERRY: It does, because if he's going to</p> <p>6 introduce it, it all deals with the grocery store. And</p> <p>7 that's what we haven't seen.</p> <p>8 MR. ALBERTI: Madam Chair, may --</p> <p>9 CHAIRPERSON MILLER: Yes.</p> <p>10 MS. PERRY: And if it deals with new</p> <p>11 construction.</p> <p>12 MR. ALBERTI: May I speak, Madam Chair?</p> <p>13 Ms. Perry, you keep referring to a paragraph</p> <p>14 in the order, and would you read that paragraph again?</p> <p>15 MS. PERRY: Okay. It says Conclusions of</p> <p>16 Law, and it's --</p> <p>17 MR. ALBERTI: Right.</p> <p>18 MS. PERRY: -- Number 25.</p> <p>19 MR. ALBERTI: Right. Read it again.</p> <p>20 MS. PERRY: "The Board finds that under these</p> <p>21 facts," and I'm assuming these are the facts that were</p> <p>22 presented during the --</p>
55	<p>1 I don't know if that's helpful to anybody.</p> <p>2 CHAIRPERSON MILLER: So, are you saying that</p> <p>3 your -- the ANC can challenge whether or not selling --</p> <p>4 you're selling food is a primary part of your business?</p> <p>5 MR. O'BRIEN: They can challenge whether</p> <p>6 we're selling food. The question of primary is the</p> <p>7 legal issue that the Board as addressed.</p> <p>8 MR. LEDERER: It's a factual issue, too.</p> <p>9 MS. PERRY: I think you see our confusion.</p> <p>10 MR. LEDERER: And it's a factual issue. How</p> <p>11 do you even know what they're selling?</p> <p>12 CHAIRPERSON MILLER: Yes, I can see your</p> <p>13 confusion, but my point is, unless I --</p> <p>14 MS. PERRY: And if it is --</p> <p>15 CHAIRPERSON MILLER: -- have, you know, other</p> <p>16 board members feel differently, I know you're -- we</p> <p>17 know you're not prepared to address that issue at this</p> <p>18 time --</p> <p>19 MS. PERRY: But, if it's going to be --</p> <p>20 CHAIRPERSON MILLER: But it's --</p> <p>21 MS. PERRY: -- but if it's going to be</p> <p>22 introduced into evidence, a C of O, we have not seen</p>	57	<p>1 MR. ALBERTI: Okay, just read it, please.</p> <p>2 MS. PERRY: -- show cause hearing.</p> <p>3 MR. ALBERTI: Yes.</p> <p>4 MS. PERRY: "So long as the licensee proves</p> <p>5 it satisfies the other criteria discussed in 25-331 and</p> <p>6 25- 332, the licensee may proceed in its application</p> <p>7 for a retailers Class B license, because it can meet</p> <p>8 the primary business and purpose test described in 20 -</p> <p>9 - Subsection 25-331(d)1 and 25-332(c)1 and qualifies as</p> <p>10 a full service grocery store under 25-331(d)4 and 25-</p> <p>11 332(c)4, provided it complies with the conditions set</p> <p>12 forth below. We note these conclusion does not</p> <p>13 consider any possible or potential evidence that ANC 3F</p> <p>14 or other protestants may submit during a protest</p> <p>15 against the application for a new retailer's Class B</p> <p>16 license."</p> <p>17 MR. ALBERTI: Okay. That last phrase, I</p> <p>18 understood that last phrase is -- was the way for the</p> <p>19 Board to signal to everyone that -- to make it clear</p> <p>20 that this -- that our decision in the advisory opinion</p> <p>21 can -- is not read as we are approving the license. We</p> <p>22 are only stating that in our opinion they qualify as an</p>

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58	<p>1 applicant and that all the other standards of issuing a 2 license have to be met and will be heard in the protest 3 hearing. 4 MR. LEDERER: So, what does that mean? 5 MS. PERRY: With, if that's -- 6 MR. ALBERTI: Is that clear? 7 MS. PERRY: No. Not to me. 8 MR. ALBERTI: Well. 9 MS. PERRY: I'd like -- because if I read the 10 second sentence, the second one, it says, "We note that 11 25-331(d) and 25-332(c) state that among other 12 requirements the prohibition on issuing new retailer's 13 Class B licenses shall not apply if the primary 14 business and purpose is the full sale of a full range 15 of fresh, canned and frozen food items and the sale of 16 alcoholic beverages is incidental to the primary 17 purpose, Subsections 25-331(d) and 25-332(c). 18 Furthermore, among other requirements the statutes 19 state that the exception will only be granted to a full 20 service grocery store," blah, blah, blah. 21 So, that's why we felt we could come here 22 today and we asked for the time to make the case.</p>	60	<p>1 names are on that. We wrote that along with our staff. 2 And what Board Member Alberti said is exactly the case. 3 We could not, nor would we, grant a license with our 4 advisory position. Our advisory position simply said 5 they qualify. 6 I'm not going to get into all the reasons as 7 what a grocery store is, how this all ties into big box 8 stores that do a whole lot of things, we're not going 9 to get into the weeds of the case. But what that bottom 10 part says is that just because they qualify doesn't 11 mean that they should get the license. They still have 12 to go -- they still have to prove the Appropriateness 13 Standards in 25-313, peace, order, quiet, residential 14 parking, the same as everybody else, pedestrian safety, 15 real estate values. And that is what the protest 16 hearing is about, because that's what the law says we 17 have to have it about. We don't have any choice in 18 this matter. 19 We've made our advisory position. We've said 20 they qualify based on that. And now we have to have 21 the hearing based on whether or not, that they 22 qualified, that they are appropriate.</p>
59	<p>1 MR. ALBERTI: Well, you know -- 2 MS. PERRY: Because as part of the protest 3 hearing. 4 MR. ALBERTI: That advisory opinion states 5 that the Board has concluded that they qualify under 6 the provision of a full service grocery store. 7 MS. PERRY: Correct. 8 MR. ALBERTI: All right. But they qualify as 9 an applicant. 10 MS. PERRY: Correct. 11 MR. ALBERTI: All right? What we chose to 12 signal in there was that our approval of them as an 13 applicant should not be construed as our approval of 14 the license, per se. That's really what that order is 15 trying to convey. 16 And so now we're here to hear the 17 appropriateness of them as an applicant for this 18 license, under the grounds of -- under the umbrella of 19 protestable issues. 20 CHAIRPERSON MILLER: Yes, Mr. Silverstein? 21 MR. SILVERSTEIN: Commissioner Perry, my name 22 is on that, Board Member Alberti's name is on that, our</p>	61	<p>1 MS. PERRY: I have to be honest, I am now 2 totally, thoroughly confused. I don't know what the 3 intent of this was or what everybody thought it meant, 4 but reading what it -- 5 CHAIRPERSON MILLER: (inaudible). 6 MS. PERRY: -- actually says, it basically 7 says they can't get a license until they're a grocery 8 store and that we can come here today and argue as to 9 whether they're a grocery store. 10 MR. SILVERSTEIN: We -- 11 MS. PERRY: It does not, in here, say -- in 12 this -- these two lines, that we can only argue under 13 the -- whether it is appropriate, under peace, order 14 and quiet or proalition (sic) of licenses. Nowhere 15 does that say that in this advisory opinion. 16 MR. SILVERSTEIN: Commissioner, this does. 17 This is the D.C. municipal code that we are required to 18 operate under. That is an advisory opinion that states 19 that it -- that they qualify under this. 20 MS. PERRY: But, I guess what I'm saying -- 21 MR. SILVERSTEIN: And I'm -- please don't 22 speak --</p>

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62	<p>1 MS. PERRY: Okay, I'm -- 2 MR. SILVERSTEIN: -- unless you're spoken to 3 or unless you're recognized. 4 We are operating under that. We already 5 decided that, that was the purpose of the initial 6 arguments. Madam Chair, I suggest we move on. 7 CHAIRPERSON MILLER: Yeah, let's move on. 8 Let's move on. 9 Just so that you're clear, you're here to -- 10 as a Protestant, challenging the -- under the 11 Appropriateness Standards. If they weren't determined 12 that they could apply for this status, then no one 13 would be here, the Board determined -- the majority of 14 the Board determined, yes, they could be here as an 15 applicant. That's the -- so now we're going to go 16 forward. 17 MS. PERRY: As a grocery store? 18 MS. PERRY: Under the grocery store 19 exemption. 20 MR. LEDERER: Yeah, but how -- 21 MS. PERRY: So, then how -- 22 MR. SILVERSTEIN: Stop it. Stop it.</p>	64	<p>1 you're saying. 2 MS. PERRY: And I'm here -- 3 CHAIRPERSON MILLER: Okay, all right -- 4 MS. PERRY: -- I'm only going by what you 5 wrote in your conclusions of law, not by -- not in some 6 thick manual that we -- you know, we are not lawyers, 7 we go by what we read and see. 8 CHAIRPERSON MILLER: Okay. Ms. Perry, I 9 think that Mr. Silverstein tried to explain it to you 10 twice -- 11 MS. PERRY: And I'm -- that -- I was 12 thoroughly confused even more. 13 CHAIRPERSON MILLER: And -- okay, I know you 14 may not like what the decision is, and you can, you 15 know, deal with this at another time. 16 We're now here for a protest hearing that you 17 should be prepared to go forward with respect to the 18 Appropriateness Standards. And as I said before, come 19 the end of the hearing, if you want to make a motion to 20 leave the record open for some reason, we will 21 entertain it then. So, at this point though, we need 22 to go forward.</p>
63	<p>1 CHAIRPERSON MILLER: Okay. We can't really 2 argue about this at this point, that was the Board's 3 decision. 4 MS. PERRY: I think -- then I'm going to 5 renew my request for a delay. Mr. O'Brien just said 6 that he's going to introduce -- 7 MR. SILVERSTEIN: Madam Chair, point of 8 order. This has been decided. We're not going to be 9 here all night on renewing requests on things that have 10 already been decided. 11 MR. LEDERER: Well, I don't know what you 12 mean "qualifies as a grocery store when you have no 13 evidence from anybody else. They're not a grocery 14 store. 15 MR. O'BRIEN: Is counsel presenting the ANC? 16 MR. LEDERER: No. 17 MS. PERRY: No. 18 MR. LEDERER: I'm listening to this. 19 MS. PERRY: Brian! 20 MR. LEDERER: I don't know what it means. 21 CHAIRPERSON MILLER: Okay. All right. 22 MR. LEDERER: I'm a lawyer, I don't know what</p>	65	<p>1 Do you have -- do you want -- was that the 2 preliminary issue stage where I asked if you had any -- 3 the number of witnesses you intend to put forward. 4 MS. PERRY: Three. 5 CHAIRPERSON MILLER: Three. Okay. And those 6 were identified in your PIT, I assume? 7 MS. PERRY: Aaron Bernstein (ph) was 8 identified from Calvert Woodley. 9 CHAIRPERSON MILLER: Okay. 10 MS. PERRY: He had a medical thing and could 11 not be here today. And Ed Sands who I just met this 12 morning, is here. 13 MR. O'BRIEN: We have no objection to 14 substitution of Mr. Sands for Mr. Bernstein as the 15 protestant's witness. 16 CHAIRPERSON MILLER: Okay, good. And does 17 anybody want to invoke the rule on witnesses? 18 MR. O'BRIEN: Yes, I do. 19 CHAIRPERSON MILLER: You do want? 20 MS. PERRY: What's that? 21 CHAIRPERSON MILLER: Okay, the rule on 22 witnesses means that only the witness who's going to be</p>

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66	<p>1 testifying will be in the room, the other witnesses 2 will be out of the room, so they're not influenced by 3 hearing other witnesses' testimony. So, that would 4 mean -- go to his witnesses -- 5 MR. O'BRIEN: Except for the parties. 6 CHAIRPERSON MILLER: Except for the parties, 7 yeah. Okay. 8 MR. O'BRIEN: Yeah, I'm going to -- 9 CHAIRPERSON MILLER: Okay, so you're invoking 10 it? 11 MR. O'BRIEN: -- excuse Mr. Kim from the 12 room. 13 CHAIRPERSON MILLER: Okay. 14 MR. LEDERER: And I have to leave. 15 CHAIRPERSON MILLER: So, then you would be 16 asking that the ANC's witnesses be excused as well? 17 MR. O'BRIEN: Yes. 18 CHAIRPERSON MILLER: Okay. Next we will do 19 opening statements, starting with the Applicant, to be 20 limited to five minutes. Is that workable? Okay. 21 Just waiting for witnesses to -- well, you can start 22 whenever you're ready.</p>	68	<p>1 And we also want to go on record that -- 2 stating we have not seen any of the documents that we 3 should have seen prior to this hearing, including the 4 inspector's report. 5 MR. O'BRIEN: Not argument, but may I make a 6 point just so the record is clear? We also, the 7 Applicant, received the report at the same time that 8 the ANC did. This is not a case of the ANC getting the 9 report contemporaneously with the Applicant getting it. 10 MS. PERRY: I find it -- if Mr. O'Brien wants 11 that on the record then I'd like to put it on the 12 record that he has seen his certificate of occupancy, 13 the ANC has not. These are his documents. 14 CHAIRPERSON MILLER: Okay. All right. Does 15 that complete your opening statement, Ms. Perry? 16 MS. PERRY: Yes. 17 CHAIRPERSON MILLER: Okay. Why don't we call 18 the Board's witness, our investigator in this case. 19 Who is that? 20 BOARD MEMBER: Ms. Maisel. 21 CHAIRPERSON MILLER: Okay. Do you swear to 22 tell the truth, the whole truth and nothing but the</p>
67	<p>1 MR. O'BRIEN: The Applicant's position is 2 that the evidence will show addition of modest beer and 3 wine service to this existing business will not cause 4 or exacerbate the conditions complained of in the 5 protest, that is peace, order and quiet, residential 6 parking needs or over concentration. Thank you. 7 CHAIRPERSON MILLER: That was less than five 8 minutes. 9 MR. O'BRIEN: Yes, it was. As I'd like to 10 say at the court, may I reserve my time? But I don't 11 think it will be necessary. 12 CHAIRPERSON MILLER: All right. Ms. Perry, 13 do you have an opening statement? 14 MS. PERRY: Not really, because we feel that 15 we are being prejudiced today by going forth with this 16 and I want to put that on the record again. 17 We do not feel that Walgreen's qualifies for 18 a license as a drugstore, which is the way this Board 19 placard it. It did not placard it as a quote, "grocery 20 store" and we do not feel they're entitled to the 21 exemption under the standards, even Appropriateness 22 Standards.</p>	69	<p>1 truth? 2 INVESTIGATOR MAISEL: Yes. 3 CHAIRPERSON MILLER: Thank you. Okay. And 4 would you give your name for the record. 5 INVESTIGATOR MAISEL: I'm Investigator 6 Maisel. I'm an ABRA investigator. 7 CHAIRPERSON MILLER: Okay. Did you have 8 testimony to present with respect to your report? 9 INVESTIGATOR MAISEL: Yes. 10 CHAIRPERSON MILLER: Okay. 11 INVESTIGATOR MAISEL: I would like to refer 12 to my report, if that's okay. 13 CHAIRPERSON MILLER: Um hmm. 14 INVESTIGATOR MAISEL: This is the protest of 15 Walgreen's Number 11408, the business name is 16 Walgreen's Co., located at 4225 Connecticut Avenue, NW, 17 Washington D.C., 20008. It is a new application for a 18 License Class Retailer B. The license number, if it is 19 granted, will be 088579. 20 The protest issues are adverse impact on 21 peace, order and quiet, adverse impact on residential 22 parking, adverse impact on vehicular and pedestrian</p>

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70	<p>1 safety, over concentration of ABC establishments in the                  2 area and the proximity to schools.</p> <p>3       The protest issues that the protestant raised                  4 specifically encompass that Walgreen vendors are not                  5 using the loading dock and are parking illegally on                  6 adjacent streets. The protestants also stated there                  7 were already enough establishments in the area for                  8 purchase of alcoholic beverages. And additionally,                  9 protestant stated that the granting of the license                  10 would exacerbate pre- existing drug and alcoholic                  11 beverage abuse problems in the area.</p> <p>12       The protestants are comprised of ANC 3F,                  13 which is represented by ANC 3F Commissioner, Karen Lee                  14 Perry, who I spoke to on July 30th, 2012. She stated                  15 she is a resident of Archstone Van Ness which is                  16 located at 3003 Van Ness Street, NW.</p> <p>17       She stated that Walgreen's vendors park                  18 illegally on Van Ness Street, NW and Veazey Terrace, NW                  19 or in the alleyway behind the establishment.</p> <p>20       Ms. Perry stated, on behalf of ANC 3F that                  21 there were already enough alcoholic beverage vendors in                  22 the area to satisfy the needs of the community. Ms.</p>	72
71	<p>1 Perry stated, for example, there was Van Ness Liquors,                  2 Giant Food Store Number 382 and Calvert Woodley Wine                  3 and Liquor close by the establishment.</p> <p>4       Ms. Perry stated that the wines will be                  5 priced for the average consumer and will not be like                  6 the wines offered at restaurants. And she also gave,                  7 for example, that Walgreen's has its own brand of wine.</p> <p>8 Ms. Perry stated -- Commissioner Perry, I'm sorry.                  9 Commissioner Perry stated that the wines -- I'm sorry,                  10 that the Department of Health has issued a certificate                  11 of need for the reason with regards to drug and alcohol                  12 abuse. Additionally she stated that there was a drug                  13 and alcohol abuse treatment center one block from --                  14 one block away from Walgreen's. Ms. Perry --</p> <p>15 Commissioner Perry also stated that there was too much                  16 alcoholic beverage in the area already.</p> <p>17       On July 31st, 2012 I spoke to Stephen                  18 O'Brien, who is the attorney for the establishment. He                  19 stated, on behalf of Walgreen's that they have been                  20 aggressive in telling vendors to use the loading dock.                  21 Mr. O'Brien stated that vendors must ring the doorbell                  22 in the loading dock area in order to make deliveries.</p>	73
70	<p>1 Mr. O'Brien stated that they are not supposed to do                  2 deliveries at the front entrance. Mr. O'Brien stated                  3 that the loading dock in the rear of the establishment                  4 is large enough for most deliveries. He stated that                  5 there are not many occasions when the loading dock                  6 proves to be too small.</p> <p>7       Mr. O'Brien also raised the point that the                  8 trucks on Veazey Terrace may be servicing Giant Food                  9 Store Number 382, which is across the street from                  10 Veazey Terrace, NW, from Walgreen's.</p> <p>11       Mr. O'Brien stated the beverage selection                  12 will be modest and that the Alcoholic Beverage                  13 Department at Walgreen's will not be enormous.</p> <p>14       Mr. O'Brien stated that the Alcoholic                  15 Beverage Department at Walgreen's will be comprised of                  16 12 feet of shelving for wine and 7.5 feet of cooler                  17 space for beer, approximately.</p> <p>18       Mr. O'Brien stated that the quality and the                  19 pricing of the alcoholic beverages will be comparable                  20 to Giant Food Store Number 382. Additionally -- I'm                  21 sorry, that the establishment will be offering                  22 alcoholic beverages more for the common man and not</p>	73

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74	<p>1 of over concentration visible on the streets around the                  2 establishment, Walgreen's. For example, there are not                  3 any panhandlers or drunks.                  4 Mr. O'Brien stated that there was no evidence                  5 Walgreen's, selling a modest amount of alcoholic                  6 beverages will create the ill effects normally                  7 associated with over concentration. And Mr. O'Brien                  8 stated that it's not the alcoholic beverage                  9 establishment themselves but what they attract that                  10 creates the ill effects normally associated with over                  11 concentration.                  12 Mr. O'Brien concluded that Walgreens' license                  13 will not contribute to the neighborhood going downhill.                  14 Moving on to the zoning. It's in a C-3-A                  15 zone. The nearby establishments, according to                  16 geographic information system documentation I was                  17 provided, showed that there were 12 active licensed                  18 establishment within 1,200 feet of Walgreen's.                  19 Of these establishments, four of the                  20 alcoholic beverage licenses that are operating within                  21 1,200 feet are off premises retailers. These are                  22 comprised of two Class A retailers, Van Ness Liquors</p>	76	<p>1 from the establishment.                  2 The University of the District of Columbia,                  3 located at 4200 Connecticut Avenue, NW is west of                  4 Walgreen's across Connecticut Avenue, NW. The                  5 University of the District of Columbia occupies public                  6 space.                  7 Surrounding Walgreen's on all other sides are                  8 residential and commercial buildings. Walgreen's is to                  9 the north of Sushi Sigh (ph), Indian Ocean, 876 Cafe,                  10 Direct Due Domain and Van Ness Liquors. Walgreen's is                  11 south of Chalin's Restaurant, Epicurean and Company and                  12 Giant Food Store Number 382. Northwest of Walgreen's                  13 is the residential building Van Ness North, located at                  14 3001 Veazey Terrace, NW. To the east of Walgreen's is                  15 the residential building Archstone Van Ness, located at                  16 3003 Van Ness Street, NW. South of Walgreen's is the                  17 residential building The Consulate, located at 2950 Van                  18 Ness Street, NW. And south of Walgreen's, again, is                  19 another residential building, Van Ness East, located at                  20 2939 Van Ness Street, NW.                  21 For the public transportation in the area,                  22 two -- I'm sorry, Walgreen's is located 250 feet south</p>
75	<p>1 and Calvert Woodley Wine and Liquor, one Class B                  2 retailer, Giant Food Store Number 382 and one Class B                  3 wholesaler called Direct Due Domain (ph).                  4 According to geographic information system                  5 documents that I was provided, there are no schools                  6 within 400 feet of the establishment.                  7 Now I will describe the establishment itself.                  8 Walgreen's is located at the southeast corner of                  9 Connecticut Avenue, NW and Veazey Terrace, NW. There                  10 are four parking spots in the alleyway to the rear of                  11 the establishment. There are 22 parking spots in an                  12 underground parking garage that is underneath                  13 Walgreen's and for Walgreen's customers only. That                  14 entrance is on Veazey Terrace, NW. There is a loading                  15 document to the rear of the establishment and to the                  16 right of the loading dock, out of view from the public,                  17 there is trash room.                  18 There is mostly metered parking or two hour                  19 parking in Zone 3, the permit holder's excepted, on the                  20 adjacent streets. Additionally, there is limited                  21 residential parking and a paid-to-park parking garage                  22 that is across the street, across Veazey Terrace, NW,</p>	77	<p>1 of the Van Ness UDC Metro Station, which is served by                  2 the red line going towards Shady Grove or Glenmont.                  3 The Metro bus routes in the area are W45, W47, L1, L2,                  4 L4, D32 and H2. Two hundred and fifty feet south of                  5 the establishment is located Capital Bike Share, Van                  6 Ness Metro/UDC Station Number 31300 which has capacity                  7 for holding 15 bicycles.                  8 The building exterior I will describe now.                  9 It is a two story building, made of glass, brick and                  10 concrete. There is an underground parking garage                  11 underneath the establishment which has access from                  12 Veazey Terrace, NW. There is 50 feet of sidewalk space                  13 between Walgreens' front door and the east side of                  14 Connecticut Avenue, NW. There is an automatic sliding                  15 door entrance which faces west towards Connecticut                  16 Avenue, NW.                  17 It is bounded, to the east, by an alleyway                  18 which has access to four Walgreen's customer only                  19 parking spots and also the loading dock.                  20 Across the alleyway, directly to the                  21 establish of the establishment is Archstone Van Ness,                  22 located at 3003 Van Ness Street, NW. Additionally,</p>

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78	<p>1 Sushi Sigh, located at 4221 -- I'm sorry, I'll say that                  2 again. Sushi Sigh located at 4221A Connecticut Avenue,                  3 NW is housed in a building that touches the south wall                  4 of Walgreen's.                  5 Now I will describe the building interior.                  6 Right behind the entrance is an escalator that leads                  7 upstairs. To the right of the entrance are retail                  8 items that are on shelves, cash registers and elevators                  9 leading downstairs to the parking garage and upstairs                  10 to the second floor. When you take the escalator                  11 upstairs or the elevators, the second floor is                  12 comprised of a pharmacy, pharmacy items, health items,                  13 beauty items and a bathroom.                  14 Now, in terms of where the alcoholic                  15 beverages will be, they will be shelved where the                  16 coolers are currently located, to the right of the                  17 entrance. However, Mr. O'Brien stated that they will                  18 not be visible from the entrance, that people will have                  19 to go look for them.                  20 Mr. O'Brien stated that there will be 12 feet                  21 of shelf space for wine and 7.5 feet of cooler space                  22 for beer.</p>	80
79	<p>1 don't have any other questions. Thank you.                  2 CHAIRPERSON MILLER: Mr. Silverstein -- oh,                  3 Mr. Brooks?                  4 MR. BROOKS: Yes. Investigator, I just had                  5 one question concerning I think I heard or read                  6 someplace that there was a drug rehab facility nearby.                  7 INVESTIGATOR MAISEL: Um hmm.                  8 MR. BROOKS: Were you aware of that?                  9 INVESTIGATOR MAISEL: I did not come across                  10 that in the documents I was provided regarding schools                  11 or treatment facilities or care facilities.                  12 MR. BROOKS: Thank you, Madam Chair.                  13 CHAIRPERSON MILLER: Okay. Mr. Silverstein.                  14 MR. SILVERSTEIN: Thank you. Investigator,                  15 it's a question that I always ask in these cases. Is                  16 there anything that you saw there that appears to be a                  17 red flag, anything that we should keep an eye on, look                  18 closely at, any warning signal or anything that                  19 concerns you about this establishment as opposed to any                  20 other?                  21 INVESTIGATOR MAISEL: No. I wouldn't say so,                  22 no.</p>	81

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<p style="text-align: right;">82</p> <p>1 MR. SILVERSTEIN: Okay. No further                  2 questions.                  3 CHAIRPERSON MILLER: Let me ask you, did you                  4 say the MPD reports showed no cause related to ABRA                  5 violations --                  6 INVESTIGATOR MAISEL: Right.                  7 CHAIRPERSON MILLER: -- for this address? If                  8 they don't have a license there wouldn't be. Isn't                  9 that right?                  10 INVESTIGATOR MAISEL: Right.                  11 CHAIRPERSON MILLER: Okay. And same with no                  12 -- there was another statement about no ABRA                  13 violations.                  14 INVESTIGATOR MAISEL: Yes.                  15 CHAIRPERSON MILLER: Okay. Does it -- does -                  16 - do you consider the fact that there's a university                  17 across the street to be an issue?                  18 INVESTIGATOR MAISEL: If you don't mind, I                  19 want to look at the GIS, the geographic information                  20 system --                  21 CHAIRPERSON MILLER: Um hmm.                  22 INVESTIGATOR MAISEL: -- printout that I was</p>	<p style="text-align: right;">84</p> <p>1 INVESTIGATOR MAISEL: If you don't mind, I'm                  2 just going to flip to that section in my report.                  3 CHAIRPERSON MILLER: Okay.                  4 INVESTIGATOR MAISEL: On the issue of over                  5 concentration, I provided a listing of the nearby                  6 establishments, which show there are 12 active ABC                  7 licensed establishments operating within 1,200 feet of                  8 Walgreen's.                  9 CHAIRPERSON MILLER: Can you refer -- are you                  10 looking at certain page of your --                  11 INVESTIGATOR MAISEL: Yes. That is Page 5.                  12 CHAIRPERSON MILLER: Okay.                  13 INVESTIGATOR MAISEL: I apologize.                  14 (Whispered conversation)                  15 CHAIRPERSON MILLER: Okay. Mr. Silverstein's                  16 going to ask another --                  17 MR. SILVERSTEIN: Investigator Maisel, in                  18 your report here you have -- within that two block area                  19 you have an A, Calvert Woodley Wine and Liquor, a B,                  20 Giant Food another A, Van Ness Liquor and a wholesaler                  21 and five or six CR or DRs, restaurants, all of which                  22 are serving liquor. The question is not -- is one of</p>
<p style="text-align: right;">83</p> <p>1 provided. I'll just be a brief moment. I am referring                  2 to Exhibit 28 to my report. The description that I was                  3 provided stated there are no schools, recreation                  4 centers or public libraries located within 400 feet of                  5 the establishment. And in the map printout the                  6 designations for University of the District of Columbia                  7 and Community College of the District of Columbia,                  8 those designations are located outside of the 400 foot                  9 buffer around the establishment.                  10 CHAIRPERSON MILLER: Okay. So, the circle                  11 that's drawn on this Exhibit 28, is that the 400 foot                  12 radius?                  13 INVESTIGATOR MAISEL: Yes.                  14 CHAIRPERSON MILLER: Okay. But -- so even                  15 though the -- some of the words go into that circle,                  16 actually you're saying the university is actually                  17 outside of it?                  18 INVESTIGATOR MAISEL: Yes.                  19 CHAIRPERSON MILLER: Okay. And then my last                  20 question for you is how do you -- or what do you look                  21 for when you're considering the question of over                  22 concentration?</p>	<p style="text-align: right;">85</p> <p>1 what is over concentration? Is this simply a lively                  2 major shopping area or is this an area where there's a                  3 large number of vagrant people or people go there to                  4 drink and displace intemperate habits?                  5 Do you see a lot of vagrants out in the                  6 street? Is there -- is this the kind of place --                  7 INVESTIGATOR MAISEL: No.                  8 MR. SILVERSTEIN: -- where there's a lot of                  9 bad behavior or is there an over concentration of                  10 stores that creates a loss of a quality of life, or is                  11 this just an area where people go to shop, to eat and                  12 to drink to entertain and basically it's a vibrant area                  13 or is it neither?                  14 INVESTIGATOR MAISEL: I don't know, but --                  15 MR. SILVERSTEIN: But you're saying it's not                  16 an area where there's a lot of vagrancy, crime where                  17 people hang out in the streets passed out or anything                  18 like that?                  19 INVESTIGATOR MAISEL: Yes. I would agree                  20 with that.                  21 MR. SILVERSTEIN: So, in terms of quality of                  22 life you don't have -- you don't have the loss of</p>

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<p style="text-align: right;">86</p> <p>1 quality of life due to over concentration, at this          2 point?          3 INVESTIGATOR MAISEL: I believe so.          4 MR. SILVERSTEIN: Okay. No further          5 questions.          6 CHAIRPERSON MILLER: Can I just follow up on          7 Mike?          8 MR. SILVERSTEIN: Sure, go ahead.          9 CHAIRPERSON MILLER: But, so when you look at          10 that question of over concentration, do you look at          11 loitering and things like that or do you look at a          12 point where it's just too many or, you know, what do          13 you -- what are you looking for when you address the          14 over concentration (inaudible)?          15 INVESTIGATOR MAISEL: What I can point to is          16 the fact that when we monitor, as ABRA investigators,          17 when we monitor the establishment we look specifically          18 at pedestrian traffic and vehicular traffic. And if          19 there was anything out of the ordinary or that should          20 be noted I would have included it in my observations          21 for each day.          22 CHAIRPERSON MILLER: Okay. Thank you.</p>	<p style="text-align: right;">88</p> <p>1 area zoned for, please? I may have missed it in your          2 report.          3 INVESTIGATOR MAISEL: That is C-3A zone.          4 MR. NOPHLIN: C-3A.          5 INVESTIGATOR MAISEL: Would you like me to          6 describe what the -- I'm sorry.          7 MR. NOPHLIN: No, that would be fine.          8 MR. ALBERTI: You want her to describe it?          9 MR. NOPHLIN: What? Yes.          10 INVESTIGATOR MAISEL: Okay. A C3-A zone is          11 where Walgreen's is located. A C3-A zone permits          12 matter of right medium density development, including          13 office, retail, housing and mixed uses. Intended for          14 uptown locations where the largest component of          15 development will be office, retail and other non-          16 residential uses, to a maximum lot occupancy of 100          17 percent, maximum height of six stories or 70 feet, rear          18 yard requirements are 12 feet. I believe that's all          19 that applies to Walgreen's.          20 MR. NOPHLIN: Thank you. Thank you, Madam          21 Chair.          22 CHAIRPERSON MILLER: Okay. Anything else</p>
<p style="text-align: right;">87</p> <p>1 Yes. Mr. Alberti?          2 MR. ALBERTI: Just two things. One,          3 Investigator Maisel, thank you for your report and the          4 information you've just given. I will note for the          5 record that it's really the Board's determination as to          6 whether there's over concentration. But, the          7 information you have given us has been -- will be          8 helpful in us making that determination.          9 The other thing is, I just want to note,          10 Exhibit 40 to your report --          11 INVESTIGATOR MAISEL: Yes.          12 MR. ALBERTI: -- is a list of calls for          13 service and I just want to make sure that we note that          14 for the record. And it's from December 8th, 2011          15 through April 15th, 2012. And there are seven calls          16 for service, including one is a traffic compliant and          17 others listed. I just wanted to note that for the          18 record.          19 Thank you very much.          20 CHAIRPERSON MILLER: Yes, Mr. Nophlin?          21 MR. NOPHLIN: Yes, please. Thank you for          22 your report. And I may have missed this, what is that</p>	<p style="text-align: right;">89</p> <p>1 from the board members?          2 Now, Mr. O'Brien, do you have some questions          3 for the investigator?          4 MR. O'BRIEN: Yes, thank you. Is the          5 investigator's report in evidence?          6 CHAIRPERSON MILLER: Nothing's been moved          7 yet, but -- we'll -- yeah, it was submitted earlier, so          8 well, I guess it is in evidence.          9 MR. O'BRIEN: Okay.          10 CHAIRPERSON MILLER: Okay.          11 MR. O'BRIEN: It's in evidence?          12 CHAIRPERSON MILLER: If it needs to be.          13 MR. O'BRIEN: I think it does need to be --          14 CHAIRPERSON MILLER: Yeah.          15 MR. O'BRIEN: -- if the Board's going to rely          16 on it.          17 CHAIRPERSON MILLER: Thank you. Okay.          18 MR. O'BRIEN: Okay.          19 CHAIRPERSON MILLER: So moved or admitted.          20 MR. O'BRIEN: Investigator Maisel you were          21 there I think I counted 45 times at all different hours          22 of the day and night. Is that correct?</p>

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<p style="text-align: right;">90</p> <p>1 INVESTIGATOR MAISEL: Let me make sure that's                  2 correct. One minute here. Forty-five occasions, yes.                  3 MR. O'BRIEN: Okay. At all different hours                  4 of the day and night, correct?                  5 INVESTIGATOR MAISEL: Yes.                  6 MR. O'BRIEN: Sometimes Walgreen's was open,                  7 sometimes it wasn't?                  8 INVESTIGATOR MAISEL: Correct.                  9 MR. O'BRIEN: Okay. And you went out into                  10 the back alley behind Walgreen's on some visits; did                  11 you not?                  12 INVESTIGATOR MAISEL: Yes.                  13 MR. O'BRIEN: Okay. Now, did you ever see                  14 any evidence of loitering in the neighborhood, in any                  15 of those visits?                  16 INVESTIGATOR MAISEL: What do you mean by                  17 "loitering?"                  18 MR. O'BRIEN: Just people hanging around                  19 doing nothing.                  20 INVESTIGATOR MAISEL: I can't recall                  21 specifically.                  22 MR. O'BRIEN: Okay. And likewise, you never</p>	<p style="text-align: right;">92</p> <p>1 MR. O'BRIEN: No.                  2 INVESTIGATOR MAISEL: -- I will refer to my                  3 report?                  4 MR. O'BRIEN: It's in evidence. Go ahead.                  5 INVESTIGATOR MAISEL: KMG is the company that                  6 handles Walgreen's trash and recycling. That's once a                  7 week on Wednesday mornings. The trash and recycling                  8 are stored in a secured, gated location to the right of                  9 the loading dock and the rear of the establishment, out                  10 of view from the public. The area of trash and                  11 recycling storage is approximately 15 feet long, by 8                  12 feet wide and contains two large cans for trash and                  13 recycling.                  14 MR. O'BRIEN: In your 45 visits to the site,                  15 at all different hours of the day and night, did you                  16 ever see any traffic conditions that you felt                  17 threatened pedestrian safety?                  18 INVESTIGATOR MAISEL: I don't know what kind                  19 of traffic conditions --                  20 MR. O'BRIEN: Well, did you ever see                  21 something that caused you to worry that a pedestrian                  22 might be hurt by a car?</p>
<p style="text-align: right;">91</p> <p>1 saw any evidence of panhandling, did you?                  2 INVESTIGATOR MAISEL: No.                  3 MR. O'BRIEN: Or evidence of drunks --                  4 INVESTIGATOR MAISEL: No, sir.                  5 MR. O'BRIEN: -- stumbling up and down the                  6 street.                  7 INVESTIGATOR MAISEL: No.                  8 MR. O'BRIEN: Okay. In any of these 45                  9 visits, were you ever personally afraid for your                  10 safety?                  11 INVESTIGATOR MAISEL: No.                  12 MR. O'BRIEN: In any of these 45 visits, did                  13 you see any accumulation of trash that you could                  14 associate with Walgreen's?                  15 INVESTIGATOR MAISEL: No.                  16 MR. O'BRIEN: Did you determine if Walgreen's                  17 has regular trash hauling service?                  18 INVESTIGATOR MAISEL: Yes.                  19 MR. O'BRIEN: Okay. And what did you                  20 determine in that regard?                  21 INVESTIGATOR MAISEL: I determined -- if you                  22 don't mind --</p>	<p style="text-align: right;">93</p> <p>1 INVESTIGATOR MAISEL: No.                  2 MR. O'BRIEN: Can we go to I believe it was                  3 Exhibit 28 of your report, which is the circle. Now,                  4 am I correct that Calvert Woodley Wine and Liquor is                  5 also located within that circle?                  6 INVESTIGATOR MAISEL: You may be referring to                  7 a different exhibit. Is it --                  8 MR. O'BRIEN: I'm sorry, 28 is how I have it                  9 marked.                  10 INVESTIGATOR MAISEL: Twenty-eight refers to                  11 schools.                  12 MR. O'BRIEN: Okay, I'm sorry. Let me make                  13 sure we're looking at the same document. All right,                  14 well let's just look at Exhibit 28. You mentioned                  15 there were three other off-premises licenses nearby,                  16 two Class As and one Class B. I'm correct, am I not,                  17 that all three of those existing licenses are located                  18 within that circle that's depicted on Exhibit 28?                  19 INVESTIGATOR MAISEL: I don't know because                  20 this map specifically refers to schools only and does                  21 not refer to other licensed alcoholic beverage                  22 establishment.</p>

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<p style="text-align: right;">94</p> <p>1 MR. O'BRIEN: Okay. Did you see any sign                  2 that the presence of Calvert Woodley Wine and Liquors                  3 presented some sort of problem, disruption problem with                  4 respect to the operation of the University of the                  5 District of Columbia?                  6 INVESTIGATOR MAISEL: I don't know.                  7 MR. O'BRIEN: Did you see any sign of a                  8 problem at the University of the District of Columbia,                  9 as a result of operation of Calvert Woodley Liquors?                  10 INVESTIGATOR MAISEL: I don't know what would                  11 constitute a sign that there was a problem.                  12 MR. O'BRIEN: Anything that bothered you.                  13 INVESTIGATOR MAISEL: I was not monitoring                  14 specifically Calvert Woodley Wine and Liquors, so I                  15 can't make that determination.                  16 MR. O'BRIEN: Very well. I'm going to show                  17 you -- or ask you, I'm sorry, to refer to Exhibit 11 of                  18 your report. Can you tell the Board what Exhibit 11                  19 depicts?                  20 INVESTIGATOR MAISEL: It is the alleyway                  21 behind Walgreen's which contains Walgreen's parking and                  22 the loading dock.</p>	<p style="text-align: right;">96</p> <p>1 MR. O'BRIEN: Okay. Your report indicates                  2 that those dumpsters to the left of what looks like a                  3 light pole there, are not Walgreen's dumpsters. Is                  4 that correct?                  5 INVESTIGATOR MAISEL: Correct.                  6 MR. O'BRIEN: Now, I want you to take a close                  7 look, if you would, and let me point to you. As you                  8 look back from the angle on Exhibit 3, to the loading                  9 dock, do you see a white square or rectangle?                  10 INVESTIGATOR MAISEL: Yes, where you're                  11 pointing, yes.                  12 MR. O'BRIEN: Okay. Would you like to look                  13 at a color version of that?                  14 INVESTIGATOR MAISEL: If you don't mind.                  15 MR. O'BRIEN: I don't mind. Do you see that?                  16 INVESTIGATOR MAISEL: Yes.                  17 MR. O'BRIEN: Do you recall what that was?                  18 INVESTIGATOR MAISEL: No.                  19 MR. O'BRIEN: Okay. May I have that exhibit                  20 back, please?                  21 I'm going to show you what's -- what I'm                  22 going to have marked as Exhibit 1 for identification.</p>
<p style="text-align: right;">95</p> <p>1 MR. O'BRIEN: Okay. When you say "parking,"                  2 are those the four spaces, exterior spaces you referred                  3 to earlier?                  4 INVESTIGATOR MAISEL: Correct.                  5 MR. O'BRIEN: Okay. And as we look at                  6 Exhibit 11, can you tell the Board where the loading                  7 dock is.                  8 INVESTIGATOR MAISEL: It is to the left of                  9 this paragraph in that dark space next to that door.                  10 MR. O'BRIEN: Okay. It's -- as we look at                  11 the photograph, there's a gray door on the left and                  12 what looks like a very dark space behind it?                  13 INVESTIGATOR MAISEL: Correct.                  14 MR. O'BRIEN: Is it your testimony that is                  15 the loading dock?                  16 INVESTIGATOR MAISEL: Yes.                  17 MR. O'BRIEN: Okay. Now, I'd ask you now to                  18 look at Exhibit 3, please. All right. Am I correct                  19 that the gray door in the center right is the same gray                  20 door we just referred to and that this is another angle                  21 showing the loading dock?                  22 INVESTIGATOR MAISEL: Yes.</p>	<p style="text-align: right;">97</p> <p>1 Should I go ahead and mark it myself?                  2 CHAIRPERSON MILLER: No. Can you help him?                  3 He wants to do an exhibit.                  4 MR. ALBERTI: He wants to mark it. He wants                  5 to (inaudible).                  6 (Whispered conversation)                  7 MR. O'BRIEN: Madam Chair, I've written                  8 Applicant Number 1 on this and we can catch up with the                  9 marking.                  10 CHAIRPERSON MILLER: Right.                  11 MR. O'BRIEN: All right?                  12 CHAIRPERSON MILLER: Okay.                  13 (Applicant's Exhibit 1 marked for                  14 identification.)                  15 MR. O'BRIEN: I'm going to show you what                  16 we've marked as Applicant's Exhibit Number 1 for                  17 identification and it depicts a sign. Do you recall                  18 seeing that sign?                  19 INVESTIGATOR MAISEL: No.                  20 MR. O'BRIEN: All right. Thank you.                  21 Those are my questions. Thank you.                  22 CHAIRPERSON MILLER: Okay. Ms. Perry?</p>

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98	<p>1 MS. PERRY: I do have some questions. 2 CHAIRPERSON MILLER: Okay. 3 MS. PERRY: Inspector, let me start with 4 going through your report on the times that you visited 5 the neighborhood. I note that on Page 9 of your report 6 you visited our neighborhood on April 20th at 1:15 in 7 the morning, April 21st at 2:20 a.m., Sunday April 8 22nds at 2:15 a.m., Wednesday the -- May 2nd at 2:05 9 a.m., Thursday at 1:15 a.m. and I can go on and on 10 through this report. Are you aware that all of our 11 restaurants and liquor establishments, including Giant, 12 are closed by 11:00 and 12:00 at night? 13 We have voluntary agreements with most of our 14 establishment. So, I am questioning, I guess, why did 15 you come -- you know, what would you have seen at two 16 in the morning when everything closes by 11:00 and 17 12:00? 18 INVESTIGATOR MAISEL: The purpose of the 19 monitoring is to determine pedestrian traffic, trash 20 and routine day to day activity in the surrounding 21 area. 22 MS. PERRY: I understand that. But you would</p>	100	<p>1 really argument. 2 CHAIRPERSON MILLER: Okay, yeah. Try to just 3 ask a -- 4 MS. PERRY: I guess my question is -- 5 CHAIRPERSON MILLER: -- question. 6 MS. PERRY: -- did you visit any of our 7 establishments while they were in operation or did you 8 visit our neighborhood only when the establishments 9 were all closed? 10 INVESTIGATOR MAISEL: I visited during my 11 tour of duty, which is sometimes nights and 12 additionally other investigators visited during their 13 tour of duty, which was also sometimes at nights. 14 However, I did monitor Walgreen's during the day, 9:00 15 to 5:00, regular business hours as well. 16 MS. PERRY: So, you're saying that some of 17 these days and hours, visits, were not visits made by 18 you but made by another inspector? 19 INVESTIGATOR MAISEL: Yes. 20 MS. PERRY: And is he here to testify as to 21 what he saw? Or she? 22 INVESTIGATOR MAISEL: No.</p>
99	<p>1 not have seen activity at 2:15 in the morning, going in 2 or out of one of our licensed establishments if they 3 all close at 11:00 at night or 12:00 midnight on 4 weekends. So, you could not have seen -- I mean, unless 5 somebody was breaking in. 6 (Whispered conversation) 7 MS. PERRY: My question, would she have -- 8 seen activity if all of the restaurants are closed by 9 11 and 12:00 p.m. at these hours. 10 INVESTIGATOR MAISEL: What kind of activity? 11 MS. PERRY: Pedestrian activity going in and 12 out of a restaurant or pedestrian activity with people 13 loitering. If everything is closed, would you have 14 seen that at these hours? 15 (No audible response.) 16 MS. PERRY: You indicate things such as no 17 ABRA violations -- 18 INVESTIGATOR MAISEL: Right. 19 MS. PERRY: -- establishments closed, no 20 public -- public parking was available, I'm sure, you 21 know, at 12:15 and 2:00 in the morning. 22 MR. O'BRIEN: I'm going to object, this is</p>	101	<p>1 MS. PERRY: Okay. I'm going through these 2 times that when you say you were there 9:00 to 5:00. 3 Can you please point to one. Oh, I do see one. On 4 Thursday, May the 24th, there were no ABRA violations, 5 no loud noises. 6 Are you aware that Walgreen's -- did you -- 7 Walgreen's did not have a license, so you would not 8 have seen an ABRA violation. Is that correct? 9 INVESTIGATOR MAISEL: Correct. 10 MS. PERRY: Did you monitor any other areas, 11 such as the plaza by Giant? Did you go across the 12 street to Epicurean and monitor those areas or did you 13 monitor any of the areas around Calvert Woodley to see 14 if there were any loitering, drunks, you know, 15 pedestrian traffic there? 16 INVESTIGATOR MAISEL: The purpose of this 17 section in my report is logging the days and hours of 18 visits to the premises, which means specifically 19 Walgreen's. 20 MS. PERRY: So, you can't really testify as 21 to the neighborhood conditions around any of the other 22 establishments or what may or may not be, because you</p>

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<p style="text-align: right;">102</p> <p>1 didn't see -- you didn't visit them, correct?                  2 INVESTIGATOR MAISEL: I don't understand the                  3 question.                  4 MS. PERRY: The question, I guess, is when                  5 you've been asked about what you saw in our                  6 neighborhood, in the way of peace, order, quiet,                  7 whether you saw any people drunk or panhandling or                  8 loitering or whatever, you did not visit the Giant                  9 Plaza, did you?                  10 INVESTIGATOR MAISEL: Not specifically.                  11 MS. PERRY: Did you visit and look at the                  12 area surrounding Calvert Woodley?                  13 INVESTIGATOR MAISEL: No.                  14 MS. PERRY: Did you look at the area around -                  15 - here it's listed as Shay Lynn's (ph) I still know it                  16 as Charlie Chang's (ph) but did you visit that area                  17 across the street?                  18 INVESTIGATOR MAISEL: If it's not in the                  19 immediate vicinity of Walgreen's, then no.                  20 MS. PERRY: Okay. And then you did not look                  21 at Epicurean, directly across the street, either? That                  22 plaza area?</p>	<p style="text-align: right;">104</p> <p>1 INVESTIGATOR MAISEL: Correct.                  2 MS. PERRY: Okay. So, that does not indicate                  3 the total extent of the neighborhood activity, does it?                  4 INVESTIGATOR MAISEL: I don't know.                  5 MS. PERRY: Okay. Let me move on. I'd like                  6 to go to your map, which I think was Exhibit 28. And I                  7 might be missing some exhibits here, because we didn't                  8 get the whole report.                  9 And that's to the accuracy of this map,                  10 because I'm looking at it right now and directly across                  11 the street, within the circle I see the building of                  12 UDC. I mean, the University of the District of                  13 Columbia is directly across Connecticut Avenue and I                  14 see some of the building shapes. Is that -- so, the                  15 university is within 400 feet; is it not?                  16 INVESTIGATOR MAISEL: According to the                  17 designation of where the University of the District of                  18 Columbia is situated on this map, the bullet points                  19 that indicate where the University of the District of                  20 Columbia is, those bullets are not within the 400 foot                  21 of the establishment.                  22 MR. O'BRIEN: Madam Chair, we'll stipulate</p>
<p style="text-align: right;">103</p> <p>1 INVESTIGATOR MAISEL: No.                  2 MS. PERRY: Okay. So, you really can't                  3 testify as to whether we have too many establishments,                  4 whether there was any panhandling or anything else?                  5 MR. O'BRIEN: Objection. That's really two                  6 questions.                  7 MS. PERRY: So, I'll break it apart. You                  8 cannot testify to the total effect of the other                  9 establishments on the neighborhood, because you did not                  10 visit any of them or witness the activity around them.                  11 Is that correct?                  12 INVESTIGATOR MAISEL: Can you repeat it? I'm                  13 sorry.                  14 MS. PERRY: I'm not sure. You did -- you                  15 stated that you did not visit any of the other                  16 establishments. Am I correct?                  17 INVESTIGATOR MAISEL: Yes.                  18 MS. PERRY: So, when you were asked earlier,                  19 by somebody and I'm not sure who, whether you witnessed                  20 any loitering, drunks, panhandlers, activity of a                  21 negative nature, you can't testify as to anything other                  22 than what you saw at Walgreen's. Is that correct?</p>	<p style="text-align: right;">105</p> <p>1 that portions of the UDC campus are within 400 feet of                  2 the Walgreen's store.                  3 CHAIRPERSON MILLER: Okay.                  4 MS. PERRY: I think their address is 4200                  5 Connecticut Avenue, so I think they are with -- you                  6 know, so I question the accuracy of your map.                  7 You also mentioned, are you aware that the                  8 land that the University of the District of Columbia is                  9 situated on is not C3-A, but it's R2, which is a                  10 residential zone, is the underlying zoning for that?                  11 INVESTIGATOR MAISEL: No.                  12 MS. PERRY: So, that is a residentially zoned                  13 piece of property.                  14 MR. O'BRIEN: Is this testimony or questions?                  15 MS. PERRY: I asked it as a question. So,                  16 the inspector is not aware of that, it is zoned                  17 residential across the street. Am I correct?                  18 INVESTIGATOR MAISEL: No. Yes. Correct.                  19 MS. PERRY: Are you aware that the University                  20 of the District of Columbia, directly across the                  21 street, has a child daycare center?                  22 INVESTIGATOR MAISEL: No, I'm not aware.</p>

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<p style="text-align: right;">106</p> <p>1 MS. PERRY: Because it's not shown on this 2 map. 3 You mentioned that Van Ness East was within 4 your circle of 400 feet? Is that correct? 5 INVESTIGATOR MAISEL: I don't recall 6 specifically saying that Van Ness East is a specific 7 distance away. 8 MS. PERRY: So, you're not aware that the law 9 school of Howard Law School, which is zoned R-1A which 10 is also residential is on Van Ness Street, right next 11 to Van Ness South -- or Archstone Van Ness and that the 12 law school goes around this property? 13 INVESTIGATOR MAISEL: No. 14 MS. PERRY: So, it is within your circle? 15 INVESTIGATOR MAISEL: Which circle? 16 MS. PERRY: Your 400 foot circle. 17 INVESTIGATOR MAISEL: According to this map, 18 the designation for Howard University Law School is not 19 bullet pointed within that 400 foot zone. 20 MS. PERRY: However, I think -- 21 CHAIRPERSON MILLER: Okay, now it's questions 22 though.</p>	<p style="text-align: right;">108</p> <p>1 might not be with -- in the neighborhood, because it's 2 not listed in her report. 3 CHAIRPERSON MILLER: Is it in the 4 neighborhood, but not within the -- 5 MS. PERRY: It's not -- 6 CHAIRPERSON MILLER: -- 400 feet? 7 MS. PERRY: -- it might -- I cannot testify 8 to the accuracy of that map. 9 CHAIRPERSON MILLER: Well, you can't testify 10 right now anyway. 11 MS. PERRY: No, I mean, it -- I don't believe 12 the map. So, we have -- in the way of schools in the 13 neighborhood, is Edmund Burke a school in the 14 neighborhood? 15 INVESTIGATOR MAISEL: According to this map, 16 I do see Edmund Burke School indicated, but I note that 17 it is not within that 400 foot circle. 18 MS. PERRY: Are you aware -- I notice also 19 that most of your visits to our neighborhood took place 20 -- or all of the -- when schools were not in session. 21 INVESTIGATOR MAISEL: I don't know. 22 MS. PERRY: Yes?</p>
<p style="text-align: right;">107</p> <p>1 MS. PERRY: Okay. So, a lot depends on where 2 somebody types in the name Howard University Law 3 School, correct? 4 INVESTIGATOR MAISEL: I don't know. 5 MS. PERRY: Because -- are you aware that 6 Howard University Law School is also on Van Ness Street 7 and the main entrance to the school is Van Ness Street, 8 not Upton Street, where it's shown here? 9 INVESTIGATOR MAISEL: No. 10 MS. PERRY: Okay. So, Howard -- will you 11 concede that Howard Law School is within 400 feet, Mr. 12 O'Brien? 13 MR. O'BRIEN: I actually don't know that, but 14 I'll concede it's at the end of Van Ness Street. 15 MS. PERRY: Okay. So, it is at the end of 16 Van Ness Street. 17 MR. O'BRIEN: I'll so stipulate. 18 MS. PERRY: Okay. In the way of schools, it 19 might not be within 400 feet, but we also have the 20 Edmund Burke School. Is that correct? 21 CHAIRPERSON MILLER: What was the question? 22 MS. PERRY: I asked if Edmund Burke School</p>	<p style="text-align: right;">109</p> <p>1 CHAIRPERSON MILLER: Mr. Silverstein wants to 2 say something. 3 MR. SILVERSTEIN: I want to try and be 4 helpful here. I -- first of all, I want to remind you 5 that this time is taken away from you, the time that 6 you're speaking here. 7 MS. PERRY: Oh. 8 MR. SILVERSTEIN: And -- 9 MS. PERRY: I didn't know cross 10 examination was -- 11 MR. SILVERSTEIN: -- you have an hour and a 12 half. 13 MS. PERRY: -- included. 14 MR. SILVERSTEIN: You have an hour and a half 15 for each side for the whole case. 16 MS. PERRY: Oh, I didn't know that. 17 MR. SILVERSTEIN: So, I just don't want -- 18 MS. PERRY: I'm sorry. No, I'm glad you told 19 me. I didn't know. 20 MR. SILVERSTEIN: -- you know, I want to be 21 helpful. 22 The other thing, I'm wondering, there is --</p>

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110	<p>1 and I want to make sure you're not going there 2 incorrectly, there is a 400 foot rule involving schools 3 and things like that. And if you're going there, I 4 also want to remind you that there is -- that that rule 5 is waived if another establishment of a similar license 6 category is also within that 400 feet. 7 MS. PERRY: Okay. 8 MR. SILVERSTEIN: So, if you're going there, 9 I just want -- you know, I don't want you to be wasting 10 your valuable time. 11 MS. PERRY: Okay. 12 MR. SILVERSTEIN: I'm sorry to interrupt. 13 MS. PERRY: No, I didn't realize that. I'm 14 glad you told me. 15 MR. SILVERSTEIN: But I wanted to be helpful. 16 MS. PERRY: Thank you. 17 In the way of your description of the 18 neighborhood and the parking, did you say that Veazey 19 Terrace, is the side street to Walgreen's is a no 20 standing, no parking street? I did not see that here. 21 INVESTIGATOR MAISEL: Let me find that 22 specifically in my report. On Page 6 there's a section</p>	112	<p>1 At the bottom of Number 11 you see that little I guess 2 it's like little herringbone lines? Right here. It's 3 at the very bottom. 4 INVESTIGATOR MAISEL: Yes. 5 MS. PERRY: Or tracks, whatever? You're 6 aware that on the other side of that -- those tracks 7 are -- on Van Ness South property, or Archstone Van 8 Ness property, that -- are you aware that it's a 16 9 foot two way alley behind the store? 10 MR. O'BRIEN: I'm sorry, I don't understand 11 the question. 12 MS. PERRY: It's going to go to -- 13 CHAIRPERSON MILLER: Could you repeat the 14 question? 15 MS. PERRY: -- it's going to go to the load - 16 - yes. I asked her if she realized that that -- the 17 other side of the 16 foot alley designated by those 18 little lines is Archstone Van Ness property. 19 INVESTIGATOR MAISEL: No. 20 MS. PERRY: And you are -- are you aware that 21 the alley behind Walgreen's, where their delivery 22 trucks are, is a 16 foot, two way public alley?</p>
111	<p>1 underneath parking, under the umbrella of parking, 2 which describes the parking situation on Veazey 3 Terrace, NW and I state in my report, there's a no 4 standing or parking any time on Veazey Terrace, NW. 5 MS. PERRY: Okay. Did you ask the police for 6 any reports of pedestrian incidents or accidents for 7 Connecticut and Veazey Terrace, Connecticut and Van 8 Ness Street or crime reports for the area around -- for 9 the Giant Food or other establishments? Or did you 10 just request incidences at 4225? 11 INVESTIGATOR MAISEL: Correct, only 12 incidences at 4225. 13 MS. PERRY: So, you don't really know whether 14 there have been pedestrian incidents or anything else 15 in -- at any of these other locations, do you? 16 INVESTIGATOR MAISEL: No. 17 MS. PERRY: I think I will stop here for now. 18 Oh, one other thing, and I forgot what exhibit it was. 19 Mr. O'Brien called your attention to the loading dock 20 behind Walgreen's. 21 MR. O'BRIEN: Three and 11. 22 MS. PERRY: Which, let me go to Number 11.</p>	113	<p>1 INVESTIGATOR MAISEL: I don't know 2 specifically. 3 MS. PERRY: Okay. I'll leave it at that. 4 CHAIRPERSON MILLER: Do you have a follow up 5 question? 6 MR. O'BRIEN: Yeah, just two. 7 CHAIRPERSON MILLER: Okay. 8 MR. O'BRIEN: Directly related. 9 CHAIRPERSON MILLER: All right. 10 MR. O'BRIEN: Investigator Maisel, do you 11 recall how many -- of the 45 visits that you made or 12 other investigators made, how many were during hours 13 when Walgreen's was closed? 14 INVESTIGATOR MAISEL: Do you want me to go 15 through? 16 MR. O'BRIEN: I would invite your attention 17 to Page -- 18 MS. PERRY: Does he come out of my time? 19 MR. SILVERSTEIN: No. 20 CHAIRPERSON MILLER: No. 21 MS. PERRY: Just thought I'd ask. 22 MR. O'BRIEN: I'd invite your attention to</p>

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<p style="text-align: right;">114</p> <p>1 Page --</p> <p>2 UNIDENTIFIED MALE: I think it was right</p> <p>3 after the --</p> <p>4 MR. O'BRIEN: Right after.</p> <p>5 UNIDENTIFIED MALE: -- trash records.</p> <p>6 MR. O'BRIEN: Yeah.</p> <p>7 INVESTIGATOR MAISEL: Page 9?</p> <p>8 (Whispered conversation)</p> <p>9 MR. O'BRIEN: I think, yeah. Page --</p> <p>10 MS. PERRY: It starts on Page 9.</p> <p>11 MR. O'BRIEN: Yeah, go to Page 13. I see</p> <p>12 that on the very first line of Page 13 you say 45</p> <p>13 separate occasions, we've already established that. I</p> <p>14 -- then in Roman Numeral 5, effective establishment,</p> <p>15 I'd invite your attention to the last sentence and ask</p> <p>16 you if that refreshes your recollection as to how many</p> <p>17 times during - - on how many of the 45 visits was</p> <p>18 Walgreen's closed.</p> <p>19 May I invite your attention to a particular</p> <p>20 line? No, no. If you would go to the --</p> <p>21 INVESTIGATOR MAISEL: Eighteen times it was</p> <p>22 closed.</p>	<p style="text-align: right;">116</p> <p>1 MR. O'BRIEN: Okay. Thank you.</p> <p>2 CHAIRPERSON MILLER: Yeah?</p> <p>3 MS. PERRY: I'd like to redirect? You just --</p> <p>4 CHAIRPERSON MILLER: Based on that -- based</p> <p>5 on those comments?</p> <p>6 MS. PERRY: Yes.</p> <p>7 CHAIRPERSON MILLER: Okay.</p> <p>8 MS. PERRY: When Mr. O'Brien referred to</p> <p>9 "blindens" and said you were looking up the street and</p> <p>10 down the street, in my questions you indicated you did</p> <p>11 not see the Giant Plaza, you did not see the area</p> <p>12 across the street and you didn't really look at them.</p> <p>13 In fact, you cannot see the Giant Plaza by just looking</p> <p>14 up and down the street, because it's recessed; isn't</p> <p>15 it?</p> <p>16 MR. O'BRIEN: Asked and answered, as far as</p> <p>17 whether she inspected the Giant Plaza.</p> <p>18 MS. PERRY: I believe on redirect she said</p> <p>19 she looked up and down in answer to your question. I'm</p> <p>20 asking, how do you see through blinders when you told</p> <p>21 me -- when you -- in my questions you said you did not</p> <p>22 see any of those areas. It's -- you can't have it both</p>
<p style="text-align: right;">115</p> <p>1 MR. O'BRIEN: It was closed 18 times? Okay.</p> <p>2 Which then by my math means that it was open 30 -- 27</p> <p>3 times, when it was inspected.</p> <p>4 INVESTIGATOR MAISEL: Correct.</p> <p>5 MR. O'BRIEN: Thank you. All right. Do you</p> <p>6 know what I mean -- would you know what I mean by the</p> <p>7 term "blinders," like a horse might wear?</p> <p>8 INVESTIGATOR MAISEL: Not with regards to</p> <p>9 this hearing.</p> <p>10 MR. O'BRIEN: No. But you know the</p> <p>11 expression? Blinder -- but you know what a blinders are</p> <p>12 that a horse wears, right?</p> <p>13 INVESTIGATOR MAISEL: Yes.</p> <p>14 MR. O'BRIEN: Okay. On any of these</p> <p>15 inspection visits to the area, did you wear blinders?</p> <p>16 INVESTIGATOR MAISEL: No.</p> <p>17 MR. O'BRIEN: Okay. So, would it be</p> <p>18 reasonable for the Board to infer that although you</p> <p>19 were concentrating on 4225, you were looking up the</p> <p>20 street and down the street and in the alley behind,</p> <p>21 correct?</p> <p>22 INVESTIGATOR MAISEL: Yes.</p>	<p style="text-align: right;">117</p> <p>1 ways.</p> <p>2 CHAIRPERSON MILLER: Do you want to just --</p> <p>3 are you asking her, Ms. Perry, if she saw that</p> <p>4 particular plaza when she was looking up and down the</p> <p>5 street or behind? Is that --</p> <p>6 MS. PERRY: Did you see --</p> <p>7 CHAIRPERSON MILLER: -- your question?</p> <p>8 MS. PERRY: -- the Giant Plaza when you</p> <p>9 looked up and down the street?</p> <p>10 INVESTIGATOR MAISEL: I can't recall</p> <p>11 specifically --</p> <p>12 MS. PERRY: Okay.</p> <p>13 INVESTIGATOR MAISEL: -- whether I saw down</p> <p>14 in there or whether it was just the area surrounding</p> <p>15 that area.</p> <p>16 MS. PERRY: Okay. Let me leave it at that.</p> <p>17 CHAIRPERSON MILLER: Okay. Thank you. Mr.</p> <p>18 Silverstein, do you have any questions?</p> <p>19 MR. SILVERSTEIN: Very brief. I look through</p> <p>20 these lists of times that you visited or that were</p> <p>21 visited, Inspector Maisel. What -- do you work a</p> <p>22 specific set of hours all the time, or do your hours,</p>

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119	<p>1 INVESTIGATOR MAISEL: No, sir.</p> <p>2 MR. SILVERSTEIN: When you say ABRA</p> <p>3 violations, does -- is that specifically just ABRA</p> <p>4 violations or does this also -- were you also looking</p> <p>5 for trash, loitering, nuisance problems that you would</p> <p>6 see on a -- in a property that would become an ABRA</p> <p>7 violation if they had a license?</p> <p>8 INVESTIGATOR MAISEL: Precisely. Yes, sir.</p> <p>9 MR. SILVERSTEIN: Did you see any of those --</p> <p>10 INVESTIGATOR MAISEL: No.</p> <p>11 MR. SILVERSTEIN: -- at that particular</p> <p>12 location? Did you see or look for any in other areas</p> <p>13 or was this specifically for this area?</p> <p>14 INVESTIGATOR MAISEL: It was specific to the</p> <p>15 establishment and the direct proximate area to that</p> <p>16 establishment.</p> <p>17 MR. SILVERSTEIN: Thank you very much,</p> <p>18 Inspector.</p> <p>19 CHAIRPERSON MILLER: I just have one follow</p> <p>20 up on the remark you made earlier that you weren't the</p> <p>21 only investigator who made these observations. Of the</p> <p>22 45 observations, how many are yours?</p>	121	<p>1 MR. O'BRIEN: Five.</p> <p>2 CHAIRPERSON MILLER: Five minutes?</p> <p>3 MR. O'BRIEN: Five is five.</p> <p>4 CHAIRPERSON MILLER: Okay.</p> <p>5 MR. O'BRIEN: Thank you.</p> <p>6 CHAIRPERSON MILLER: Now we'll be recessing</p> <p>7 for five minutes.</p> <p>8 (Whereupon, the hearing went off record.)</p> <p>9 CHAIRPERSON MILLER: Okay, we're back on the</p> <p>10 record. It's now the Applicant's turn to present</p> <p>11 witnesses.</p> <p>12 MR. O'BRIEN: Our first is Rick --</p> <p>13 MR. JONES: Sir --</p> <p>14 MR. O'BRIEN: Yes, sir.</p> <p>15 MR. JONES: Excuse me, Madam Chair, I'd just</p> <p>16 like to notify the participants that for the</p> <p>17 Protestants you've used up 35 minutes.</p> <p>18 MS. PERRY: I did.</p> <p>19 MR. JONES: You have 55 minutes left.</p> <p>20 Licensee you've used up 14 minutes, you have 76 minutes</p> <p>21 remaining.</p> <p>22 MR. O'BRIEN: Thank you</p>

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122	<p>1 MR. JONES: Thank you, Madam Chair.          2 CHAIRPERSON MILLER: Thank you.          3 MS. PERRY: Before you begin, may I correct          4 the record on something, because I made a mistake.          5 CHAIRPERSON MILLER: Quickly, okay.          6 MS. PERRY: Quickly. In addition to this          7 Leah I talked to, just so you know the documents were          8 sent to me, though, by Drew Neuman (ph) from Mary's          9 committee staff.          10 CHAIRPERSON MILLER: Okay.          11 MS. PERRY: I just wanted to correct the          12 record, because I just looked at them.          13 CHAIRPERSON MILLER: Okay. Now, we'll go          14 forward to --          15 MR. O'BRIEN: Our first witness is Rick          16 Conner, who's at the witness chair, waiting to be          17 sworn.          18 CHAIRPERSON MILLER: Okay. Do you swear to          19 tell the truth, the whole truth and nothing but the          20 truth?          21 MR. CONNER: I do.          22 CHAIRPERSON MILLER: Okay. Thank you.</p>	124	<p>1 I'm sorry, one in West Virginia and the remainder in          2 Northern Virginia.          3 MR. O'BRIEN: All right. When did Walgreen's          4 first enter the District of Columbia, market?          5 MR. CONNER: It was right -- prior to I          6 coming out here in September of 2008, so roughly around          7 the spring of 2007.          8 MR. O'BRIEN: And where was Walgreen's first          9 store?          10 MR. CONNER: 22nd and Elm.          11 MR. O'BRIEN: In the District?          12 MR. CONNER: In the District, correct.          13 MR. O'BRIEN: And where are the other two          14 current District of Columbia stores?          15 MR. CONNER: One is at the corner of          16 Connecticut and Porter, the other one is Connecticut          17 and Veazey.          18 MR. O'BRIEN: All right. Of the -- to what          19 extent, to your knowledge, does Walgreen's have plans          20 to open additional stores in the District of Columbia?          21 MR. CONNER: Currently we are looking          22 throughout the whole city to open up stores, based on</p>
123	<p>1 MR. O'BRIEN: Would you state your full name,          2 please.          3 MR. CONNER: Rick Conner.          4 MR. O'BRIEN: And Mr. Conner, how are you          5 employed?          6 MR. CONNER: I'm a district manager for          7 Walgreen's.          8 MR. O'BRIEN: And as a district manager, what          9 are your duties?          10 MR. CONNER: To be there to, in this area, I          11 was brought out here to open up Walgreen's stores in          12 Washington D.C., Northern Virginia and oversee the          13 operations of the establishments.          14 MR. O'BRIEN: All right. Do you continue to          15 oversee operations of establishments?          16 MR. CONNER: Yes, I do.          17 MR. O'BRIEN: Okay. How many?          18 MR. CONNER: I have 43 stores right now.          19 MR. O'BRIEN: Okay. And where are those          20 stores located?          21 MR. CONNER: We have three currently in          22 Washington, D.C. I would say the one in Northern -- or</p>	125	<p>1 real estate and availability of locations.          2 MR. O'BRIEN: Do you have any plans to open          3 any -- any firm plans to open more than the current          4 three stores?          5 MR. CONNER: Yes. We have one that's slated          6 to be opened up in January, based on the continuance of          7 construction, at 7th and H in Chinatown. And then we          8 have about another half a dozen that are being looked          9 at right now to be opened up in the next probably 18 to          10 24 months.          11 MR. O'BRIEN: Have you had occasion to look          12 at the payroll records for the three D.C. stores that          13 are opened?          14 MR. CONNER: Yes, I have.          15 MR. O'BRIEN: All right. Taking the three          16 stores combined, how many employees were on the most          17 recently payroll?          18 MR. CONNER: A total of about 80 employees.          19 MR. O'BRIEN: And of those, how many were          20 District of Columbia residents?          21 MR. CONNER: Forty-eight.          22 MR. O'BRIEN: Do you -- does Walgreen's</p>

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126	<p>1 participate in any D.C. government employment programs?  2 MR. CONNER: Yes, we've been involved with  3 the Mayor's One City One Hire and then there's a city  4 re- directory that Store Manager Chin (ph) has been  5 involved with.  6 MR. O'BRIEN: In addition to stores that  7 carry the Walgreen's -- well, let me go back a step.  8 Nationwide, how many stores carry the Walgreen's name?  9 MR. CONNER: Over 8,000 units.  10 MR. O'BRIEN: Are there any stores that are  11 owned by Walgreen's that do not carry the Walgreen's  12 name  13 MR. CONNER: There were at one time, through  14 major acquisitions. Sometimes we own the buildings,  15 like Duane Reade's in New York that we bought. And  16 based on some of the contractual agreements as to how  17 long we leave them at their current name before they  18 convert to Walgreen's establishments and sometimes  19 based on, you know, those contractual agreements, they  20 -- even though we own them, they still continue with  21 the name that they were known for.  22 MR. O'BRIEN: Are there any pharmacy</p>	128	<p>1 marked as Applicant's Number 2 for identification. Can  2 you tell the Board what that single piece of paper is?  3 MR. CONNER: It's a certificate of  4 occupancies for that establishment --  5 MR. O'BRIEN: For?  6 MR. CONNER: -- for Veazey.  7 MR. O'BRIEN: For the store at Connecticut  8 and Veazey?  9 MR. CONNER: Correct. It was issued on 12/5.  10 MR. O'BRIEN: Say the full date out loud.  11 MR. CONNER: I'm sorry, 12/5/2011.  12 MR. O'BRIEN: And that -- what's the  13 significance of that date?  14 MR. CONNER: It was -- oh, that was the date  15 when the certificate of occupancy was issued or  16 released.  17 MR. O'BRIEN: Okay. Thank you. Does  18 Walgreen's own the real estate that the subject store  19 is located at?  20 MR. CONNER: No, that is -- it's ground  21 leased.  22 MR. O'BRIEN: Okay. How -- who is</p>
127	<p>1 businesses in Washington D.C. that are owned by  2 Walgreen's but do not carry the Walgreen's name?  3 MR. CONNER: Yes. In May we bought out --  4 well, the company bought a company called BioScrips,  5 which is a specialty pharmacy, mostly catering to  6 HIV/AIDS patients. We have one on 14th Street, the  7 name, they changed it, it's still -- everybody knows it  8 as BioScrips, but we call it Community Pharmacy, it's a  9 little softer name, so because of the discreetness of  10 the medical conditions.  11 MR. O'BRIEN: Now, let's talk about this  12 store at -- on Connecticut Avenue at Veazey Terrace.  13 MR. CONNER: Okay.  14 MR. O'BRIEN: All right. When did the store  15 open?  16 MR. CONNER: The store opened up on December  17 23rd of 2011.  18 MR. O'BRIEN: I'm going to mark this as  19 Applicant's Number 2 and show it to Commissioner Perry.  20 (Applicant's Exhibit 2 marked for  21 identification.)  22 MR. O'BRIEN: I'm going to show you what's</p>	129	<p>1 responsible for building the structure?  2 MR. CONNER: Walgreen's was responsible for  3 that.  4 MR. O'BRIEN: And do you know how much  5 Walgreen's invested --  6 MR. CONNER: It was --  7 MR. O'BRIEN: -- in developing the property?  8 MR. CONNER: Well over five and a half  9 million.  10 MR. O'BRIEN: Have you had occasion to look  11 at the payroll records for this particular store?  12 MR. CONNER: Yes, I have.  13 MR. O'BRIEN: All right. In the most recent  14 pay period, how many employees were on the payroll for  15 this store?  16 MR. CONNER: Thirty-two.  17 MR. O'BRIEN: And of those 32 how many were  18 District of Columbia residents?  19 MR. CONNER: Sixteen.  20 MR. O'BRIEN: Madam Chair, at this point I  21 would like to play the video. I know the Board has  22 seen it once, but as the Board's order says, we have to</p>

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130	<p>1 prove at the hearing, as opposed to what we advised 2 previously. 3 So, hopefully Mr. Hager (ph) is at the switch 4 and we'll start the video. He is. 5 Now, Mr. Conner, could you come around 6 please? 7 MR. CONNER: Sure, absolutely. 8 MR. O'BRIEN: And -- actually come over here 9 by the microphone, if you would. And we could start 10 the video, and I may ask Mr. Hager to stop it from time 11 to time for some clarification. 12 So, if we could start it, please. 13 CHAIRPERSON MILLER: Can you wait? I'm 14 sorry, I don't have it on my screen now. Maybe I'll 15 watch yours. 16 MR. ALBERTI: It's not (inaudible) screen. 17 CHAIRPERSON MILLER: Oh. All right, I'll 18 just watch yours then. I don't want to hold it up. 19 MR. O'BRIEN: You can have a seat. While 20 it's coming on, Mr. Conner, do you know when this video 21 was prepared? 22 MR. CONNER: It was roughly in the middle of</p>	132	<p>1 MR. CONNER: And the first thing that you 2 would see here is our food peninsula, which has a 3 variety of fresh foods all for healthy eating, fresh 4 made sandwiches, yogurts. I'm pulling out a sandwich 5 now, probably a turkey or ham sandwich on wheat. Then 6 we go around and I'm showing some of the salads that 7 are available. Fresh fruit is brought in daily. And 8 over here are single serve entrees that we have made 9 up, chicken parmigiana, a variety of other ones. And I 10 believe that was a chicken wrap sandwich and some other 11 salads with fruit mixtures in it. 12 (Whispered conversation) 13 MR. CONNER: And next on this end stand here 14 are fresh produce. And then on another front end stand 15 we have a mixture of different types of nuts. 16 Then we went back to the coolers and showing 17 different frozen foods where there were blueberries, 18 fresh blueberries. 19 MR. O'BRIEN: Fresh or frozen? 20 MR. CONNER: Frozen, I'm sorry. Frozen. And 21 then we go down to frozen entrees, Healthy Choice was, 22 I believe, the one that I was pulling out. And just</p>
131	<p>1 April, I believe. 2 MR. O'BRIEN: All right. And who actually 3 was the cameraman? 4 MR. CONNER: My store manager, Jin Kim (ph). 5 (Video played) 6 MR. O'BRIEN: All right. The video has 7 started. What do you see? 8 MR. CONNER: This is outside of our 9 Walgreen's establishment on Connecticut Avenue, the 10 front entrance. 11 MR. O'BRIEN: Who's that loitering out front? 12 MR. CONNER: That would be me. 13 MR. O'BRIEN: All right and why don't you go 14 ahead and describe what you're doing at this point. 15 MR. CONNER: Okay, now we're just entering 16 the establishment and going to show everyone what the 17 store looks like once you enter in. 18 MR. O'BRIEN: What's that over your left 19 shoulder? 20 MR. CONNER: That's the escalators going up 21 to the second floor. 22 MR. O'BRIEN: All right.</p>	133	<p>1 another option for a chicken dinner, from a different 2 vendor. That was our frozen section. 3 Now we're just showing some of the things 4 that are in the coolers. I believe here we'll be 5 showing bacon -- no, that's the fresh deli meat, eggs. 6 This is just a variety of different soft drinks and 7 energy drinks, juices, soda. 8 The next section we are going into one of the 9 alleys with the canned goods. I believe that might be 10 some tuna fish. It looks like pear halves there. 11 Progresso soups and some pastas. And down here was our 12 section of cereals and we get into the breads and 13 pastries. 14 MR. O'BRIEN: Are those fresh breads? 15 MR. CONNER: Yes. And this is our isotonic 16 and juice section. And then some -- another variety of 17 nuts and crackers, cookies. This was the main nut 18 section. And this gets into some of the chips and 19 Tostitos and then there's also the healthy alternative 20 chips that are in there. 21 MR. O'BRIEN: And that's the end of the 22 video.</p>

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134	<p>1 MR. CONNER: That's fresh flowers.                  2 MR. ALBERTI: Were those fresh flowers?                  3 MR. CONNER: Yes, they are.                  4 MR. O'BRIEN: Strangely they wilted suddenly,                  5 but -- all right. Can we call the video Applicant's                  6 Exhibit Number 3 for identification?                  7 CHAIRPERSON MILLER: Yes. I just want to say                  8 that the Applicant's Exhibit Number 2, none of these                  9 have been admitted yet, but --                  10 MR. O'BRIEN: Correct. I haven't moved                  11 anything yet.                  12 CHAIRPERSON MILLER: -- right, is the                  13 certificate of occupancy. But I don't have a name next                  14 to Applicant's Number 1.                  15 MR. O'BRIEN: Applicant's Number 1 was shown                  16 to the investigator and she was unable to identify it.                  17 CHAIRPERSON MILLER: Oh.                  18 MR. O'BRIEN: I will address that --                  19 CHAIRPERSON MILLER: Later?                  20 MR. O'BRIEN: -- as our presentation goes on.                  21 CHAIRPERSON MILLER: Okay. Just wanted to                  22 let you know. All right?</p>	136	<p>1 MR. NOPHLIN: That's okay. What, you said 5                  2 to 60?                  3 MR. O'BRIEN: I believe the testimony was 55                  4 to 60 --                  5 MR. NOPHLIN: Fifty-five to 60.                  6 MR. O'BRIEN: -- fresh perishable items out                  7 of the approximate 2,000 total food items for sale in                  8 the store. I don't want to put words in the witness's                  9 mouth. And is that --                  10 MR. CONNER: No, that's correct. And it                  11 varies, based on the vendors that come in, but that's                  12 the average.                  13 MR. O'BRIEN: Now, the video showed only the                  14 first floor of the establishment.                  15 MR. CONNER: Correct.                  16 MR. O'BRIEN: All right. What is upstairs?                  17 MR. CONNER: Upstairs, as you go up there,                  18 the main area up there would be the pharmacy and then                  19 we also have a Take Care Clinic with a nurse                  20 practitioner for people to come in and, you know, get                  21 physicals and minor ailments. And then you have your                  22 health and beauty aides, pain and sleep, you know, the</p>
135	<p>1 (Applicant's Exhibit Number 3 marked for                  2 identification.)                  3 MR. O'BRIEN: Mr. Conner, at this store, how                  4 many food items are available for sale any one point in                  5 time?                  6 MR. CONNER: Well, over 2,000.                  7 MR. O'BRIEN: Okay. And how many of those                  8 are what I would call perishable, that is fresh foods?                  9 MR. CONNER: At least 55, 55 to 60.                  10 MR. O'BRIEN: Okay.                  11 MR. NOPHLIN: I'm sorry, that was --                  12 MR. O'BRIEN: Fifty-five to 60 of those 2,000                  13 are perishable fresh food.                  14 MR. NOPHLIN: Right, I was --                  15 MR. O'BRIEN: I'm sorry, I thought somebody --                  16 MR. NOPHLIN: No, I asked the question.                  17 MR. O'BRIEN: Oh, I'm sorry it's Mr. Nophlin,                  18 I apologize. I thought it was Mr. Alberti. And he's                  19 wondering why I'm looking at him.                  20 MR. NOPHLIN: I could see, that's why I                  21 repeated it.                  22 MR. O'BRIEN: Thank you, Mr. Nophlin.</p>	137	<p>1 normal type of medications, over-the-counter that would                  2 pertain to pharmacy, so you have a pharmacist's                  3 recommendations. Then we go into our health and beauty                  4 where we have our normal beauty aides, like L'Oreal                  5 cosmetics, things like that and we also have a Look                  6 Boutique which is a higher end franchise, European                  7 beauty aides and cosmetics and that --                  8 MR. O'BRIEN: Now, what --                  9 MR. CONNER: (inaudible).                  10 MR. O'BRIEN: -- floors is Walgreen's asking                  11 to be approved for beer and wine service? Both floors?                  12 MR. CONNER: Just the first floor.                  13 MR. O'BRIEN: Would there be any beer and                  14 wine sales on the second floor?                  15 MR. CONNER: No, there will not.                  16 (Whispered conversation)                  17 MR. O'BRIEN: I want to show you now what I'm                  18 marking as Applicant's Exhibit Number 4 for                  19 identification. Can you tell us what this is?                  20 MR. CONNER: This is the -- it's called the                  21 MD1 which lays out the store and the floors where the                  22 gondolas will be and what departments are on which</p>

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<p style="text-align: right;">138</p> <p>1 floor and which aisle.                  2 (Applicant's Exhibit Number 4 marked for                  3 identification.)                  4 MR. O'BRIEN: All right. Now, at the top of                  5 the page I see some color.                  6 MR. CONNER: Correct.                  7 MR. O'BRIEN: What floor is that depicting?                  8 MR. CONNER: That would be the first floor.                  9 MR. O'BRIEN: Okay. Now, to your estimate,                  10 what percentage of floor space, on the first floor of                  11 the store, is devoted to sale of food products?                  12 MR. CONNER: Although 50 percent.                  13 MR. O'BRIEN: Thank you. Based on your                  14 experience with other stores, what percentage of total                  15 store sales do you estimate will be from sale of beer                  16 and wine, if the Board grants a license?                  17 MR. CONNER: It varies, but between like 3                  18 and 5 percent.                  19 MR. O'BRIEN: Of total store sales. Is that                  20 correct?                  21 MR. CONNER: Correct.                  22 MR. O'BRIEN: Okay. Now, will sale of beer</p>	<p style="text-align: right;">140</p> <p>1 available for sale?                  2 MR. CONNER: Yes, I am.                  3 MR. O'BRIEN: And, are you aware of what one                  4 must do in order to get an ABC manager's license?                  5 MR. CONNER: Yes. I know that my managers do                  6 have to go to some training classes and get certified                  7 and then have the certification posted in the store.                  8 MR. O'BRIEN: Okay. Will you comply with                  9 those requirements?                  10 MR. CONNER: Absolutely.                  11 MR. O'BRIEN: May I have just one moment,                  12 Madam Chair?                  13 CHAIRPERSON MILLER: Um hmm.                  14 MR. O'BRIEN: We heard testimony earlier                  15 about parking spaces. What parking is available                  16 exclusively for Walgreen's customers at this site?                  17 MR. CONNER: Well, down in the parking                  18 garage, underneath the building, are 22 parking stalls                  19 there that are exclusive for Walgreen's customers, as                  20 well as the four behind the building.                  21 MR. O'BRIEN: All right. If one parks in the                  22 garage, how does one get into the store proper?</p>
<p style="text-align: right;">139</p> <p>1 and wine ever exceed 50 percent of total -- 15 percent?                  2 Will sale of beer and wine ever exceed 15 percent of                  3 total store sales?                  4 MR. CONNER: No, it should not.                  5 MR. O'BRIEN: Should not or will not.                  6 MR. CONNER: Will not.                  7 MR. O'BRIEN: What measures does Walgreen's                  8 employ to preclude sales of alcoholic beverages to                  9 minors?                  10 MR. CONNER: Prior to having alcohol in any                  11 of our stores, once it's been approved, everybody gets                  12 assigned, it's called PPL's, People Plus Learning, it's                  13 training modules. It's at least a 45 minute training                  14 module on what employees need to look for minors, the                  15 importance of carding and the criteria for carding as                  16 well as them to analyze each person that comes into the                  17 store and if they feel that they might be intoxicated                  18 or inebriated, how they should handle refusing the sale                  19 of alcohol to those people, even if they're of age.                  20 MR. O'BRIEN: Are you aware of the                  21 requirement that there be an ABC licensed manager on                  22 duty at the store at any time alcoholic beverages are</p>	<p style="text-align: right;">141</p> <p>1 MR. CONNER: There is an elevator that goes                  2 from the underground parking to the first floor and to                  3 the second floor.                  4 MR. O'BRIEN: Those are my questions for Mr.                  5 Conner.                  6 CHAIRPERSON MILLER: Ms. Perry?                  7 MS. PERRY: Is your store divided? Well, I                  8 guess what I'm asking is you mentioned first floor,                  9 second floor. Is it -- wine and beer could be carried                  10 upstairs to the second floor, correct?                  11 MR. CONNER: No. I mean --                  12 MS. PERRY: How will you prevent it, when if                  13 a customer has a shopping basket?                  14 MR. CONNER: Well, there'd be signs posted                  15 and then the managers on the floor will be cognitive of                  16 what's going on on the floor and prohibit the people                  17 from taking it upstairs.                  18 MS. PERRY: So, if I pick a couple -- if I                  19 would have a basket and I put wine in it and I put                  20 other things in it, and I throw some donuts on top or a                  21 couple of apples, somebody's going to inspect my basket                  22 as I take the escalator upstairs and/or the elevator?</p>

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<p style="text-align: right;">142</p> <p>1 MR. CONNER: I would not say that they would                  2 inspect it, but we will prohibit sales, so anybody                  3 upstairs with a cash register will be prohibited to do                  4 the sale of alcohol up on the second floor.                  5 MS. PERRY: How many cash registers are                  6 upstairs?                  7 MR. CONNER: I believe there's four upstairs.                  8 Two in the pharmacy, one in the regular Cosmetic                  9 Department and then one in the Look Boutique Cosmetic                  10 Department.                  11 MS. PERRY: When you applied to the BZA to                  12 build this store, how did you -- did you describe that                  13 store as the Appliance proposes to demolish the                  14 existing gas station/auto repair shop and construct a                  15 20,000 square foot Walgreen's Pharmacy and Drugstore?                  16 MR. CONNER: I can't answer that, that was                  17 done prior to me being transferred out here.                  18 MS. PERRY: And your building permit, it was                  19 for a retail pharmacy and drugstore?                  20 MR. CONNER: Okay --                  21 MS. PERRY: Am I correct?                  22 MR. CONNER: I haven't seen that document. I</p>	<p style="text-align: right;">144</p> <p>1 MR. CONNER: Consumable food items.                  2 MS. PERRY: Do you count each brand of nuts                  3 as a separate item?                  4 MR. CONNER: I would say yes, because the --                  5 those numbers have come from what the SKUs are                  6 available into the store.                  7 MS. PERRY: Now, I noticed you had some                  8 bushels on the side with bananas and stuff.                  9 MR. CONNER: Um hmm.                  10 MS. PERRY: Do you carry potatoes?                  11 MR. CONNER: No, I do not.                  12 MS. PERRY: Do you carry onions?                  13 MR. CONNER: No.                  14 MS. PERRY: Do you carry, I don't know,                  15 squash, cabbage, zucchini, all those things I don't                  16 eat.                  17 MR. CONNER: No.                  18 MS. PERRY: I'm not a vegetable person.                  19 MR. O'BRIEN: Well, then what's the problem?                  20 MS. PERRY: No -- because it gets back to                  21 what is a grocery store.                  22 So, you are claiming that you are a full</p>
<p style="text-align: right;">143</p> <p>1 would -- like that was, again, was before my time.                  2 MS. PERRY: Okay. So, you didn't mention to                  3 either one of these entities that you were going to                  4 have a grocery store?                  5 MR. CONNER: I'm sorry?                  6 MS. PERRY: You didn't mention to either                  7 entity, the -- get your building permit --                  8 MR. O'BRIEN: I'm going to object --                  9 MR. CONNER: That's beyond my scope of work,                  10 that's done at our corporate office.                  11 MS. PERRY: Okay. And you mentioned that you                  12 have about 2,000 -- the day that this video was shot,                  13 you knew the camera was coming to your store, didn't                  14 you? I mean, this wasn't a surprise video?                  15 MR. CONNER: No.                  16 MS. PERRY: So, you knew to have these -- all                  17 of these food products stocked, you made sure that                  18 everything was in place?                  19 MR. CONNER: Nothing out of the nor, what we                  20 do every day.                  21 MS. PERRY: You mentioned you have 2,000 food                  22 -- is it 2,000 consumable items or is it all just food?</p>	<p style="text-align: right;">145</p> <p>1 grocery store. And if I'm not mistaken, and maybe this                  2 is -- that's for my testimony.                  3 Walgreen's has its own brand of beer, does it                  4 not?                  5 MR. CONNER: Yes.                  6 MS. PERRY: When you come into the Walgreen's                  7 is this the front of the Walgreen's store -- pharmacy,                  8 I'm showing you this picture, as it looks today? There                  9 is --                  10 MR. O'BRIEN: Can I see which picture those -                  11 - please?                  12 MS. PERRY: Oh, sure.                  13 MR. O'BRIEN: All right, you may want to mark                  14 that as an exhibit.                  15 MS. PERRY: Okay, I'll mark it as an Exhibit                  16 1 or something.                  17 MR. O'BRIEN: Protestant's 1.                  18 MS. PERRY: Protestant's 1.                  19 MR. O'BRIEN: And then show it to him.                  20 MS. PERRY: Then show it to him? Okay.                  21 Thank you for your help because you know I'm not a                  22 lawyer.</p>

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146	<p>1 (Protestant's Exhibit Number 1 marked for 2 identification.) 3 MS. PERRY: Is this the way your store looks 4 today? Is that banner up there? 5 MR. CONNER: I would probably imagine yes. I 6 haven't seen the store today or -- so, I wouldn't know 7 if it was there, but going into the immunization season 8 we do have banners that we put up to let everybody know 9 what kind of immunizations that the pharmacist can 10 provide. 11 MS. PERRY: Are you aware that this banner 12 has been up now for close to a month? 13 MR. CONNER: No, I'm not. 14 MS. PERRY: Do I have to show it to the 15 board? 16 CHAIRPERSON MILLER: Only if you're going to 17 admit it into -- 18 MS. PERRY: I'm going to admit it into 19 evidence. 20 CHAIRPERSON MILLER: -- you're going to move 21 it into evidence. 22 MS. PERRY: It says, "Visit --</p>	148	<p>1 advertised anywhere on the outside of the store? 2 MR. CONNER: No. 3 MS. PERRY: When you come into your store, is 4 there a table next to the escalator that displays 5 Walgreen's merchandise? 6 MR. CONNER: I believe, yes, there is one, 7 like I said, for our PSE Program. 8 MS. PERRY: I will be putting all of these 9 into the record. One is for your one stop Medicare 10 source. One's answers on vitamins. Great reasons for 11 prescriptions. Visit our Take Care Clinic. All of 12 this is drugstore related; is it not? 13 MR. CONNER: The purpose of those is to let 14 everybody know what is upstairs, since they are not 15 able to see it once they walk through the front door. 16 So, everything that's available upstairs we have 17 downstairs as I guess to entice people or let them know 18 there is a second floor and that the pharmacy's and 19 everything else that they don't see on the first floor 20 is available on the second floor. 21 CHAIRPERSON MILLER: Ms. Perry, just for the 22 record, these -- what would you call these, are these</p>
147	<p>1 CHAIRPERSON MILLER: Give it to our legal 2 assistant, Ms. Walker. 3 MR. O'BRIEN: No. 4 CHAIRPERSON MILLER: Ms. Perry. Ms. Perry, 5 Ms. Walker is going to -- 6 MS. PERRY: Oh. 7 CHAIRPERSON MILLER: -- take it from you. 8 MS. PERRY: It says, "Visit our immunization 9 center." Can I put these in at the end of the hearing? 10 CHAIRPERSON MILLER: Um hmm. 11 MS. PERRY: Okay, let me do it that way. 12 MR. O'BRIEN: Stop, stop, stop. Don't move. 13 Don't move. 14 MS. PERRY: I'm free. That's not a great 15 day. 16 CHAIRPERSON MILLER: Okay. It could have 17 been worse. 18 MS. PERRY: Just for the record, this says, 19 "Visit our immunization center, vaccines available, flu 20 shots, hepatitis, meningitis, whooping cough, shingles, 21 tetanus, pneumonia and more. No appointment needed." 22 Is there anything on here about groceries</p>	149	<p>1 brochures? 2 MR. CONNER: Pamphlets, brochures. 3 MS. PERRY: They're like pamphlets -- 4 CHAIRPERSON MILLER: Pamphlets, brochures? 5 MS. PERRY: -- brochures. One is, "Answers, 6 Vitamins and Supplements," one is "Welcome to your New 7 Walgreen's." One is, "Experiencing delays with your 8 Prescriptions." "Make Every Step Rewarding." These 9 are all drugstore and pharmaceutical related. 10 CHAIRPERSON MILLER: And where are they from? 11 Where are they front, where are they located? 12 MS. PERRY: They're all Walgreen's. They are 13 located right next to the escalator when you walk in 14 the store. 15 CHAIRPERSON MILLER: Okay. 16 MR. ALBERTI: Excuse me, that's her 17 testimony. We cannot -- 18 CHAIRPERSON MILLER: Well, I'm asking her to 19 identify the documents. Are you showing them to Mr. 20 Conner -- 21 MS. PERRY: I'll be happy to. 22 CHAIRPERSON MILLER: -- to verify?</p>

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150	<p>1 MR. ALBERTI: It would be helpful to us if 2 Mr. Conner could identify those as -- 3 MS. PERRY: Does that come out of my time? 4 MR. ALBERTI: -- belonging to Walgreen's. 5 MS. PERRY: Okay. 6 MR. CONNER: I'm sorry, could you repeat 7 that? 8 MR. ALBERTI: It would be helpful -- if Ms. 9 Perry wants to enter them into evidence, it would be 10 necessary for Mr. Conner to identify those as being 11 belonging to Walgreen's. 12 MR. CONNER: Okay. 13 MR. ALBERTI: Otherwise we won't have 14 testimony that they belong to Walgreen's. 15 MS. PERRY: Okay. 16 MR. O'BRIEN: Okay. I believe Mr. Conner 17 could shuffle through them quickly and confirm that 18 these are all -- 19 MR. CONNER: (inaudible) here. 20 MR. O'BRIEN: -- Walgreen's brochures. 21 CHAIRPERSON MILLER: Okay. 22 MR. CONNER: Yes, these are all brochures</p>	152	<p>1 MR. ALBERTI: Okay. 2 CHAIRPERSON MILLER: That's if the Applicant 3 doesn't object. 4 MR. O'BRIEN: No, I don't object. 5 CHAIRPERSON MILLER: I think it makes sense. 6 Okay. 7 MR. O'BRIEN: No, but why don't we simply 8 call it Protestant's Exhibit Number 2, various 9 Walgreen's brochures. 10 MR. ALBERTI: Thank you, Mr. O'Brien. 11 CHAIRPERSON MILLER: Okay. All right. 12 (Protestant's Exhibit Number 2 marked for 13 identification.) 14 MS. PERRY: In your magazine, on Page 17 you 15 talk about meat, poultry and seafood for a healthy 16 heart. Is that correct? 17 MR. CONNER: Yes, that's in this addition. 18 MS. PERRY: Okay. Let me ask you, does 19 Walgreen's carry beef at this store? 20 MR. CONNER: I guess I need to explicit a 21 beef. I mean, we have -- 22 MS. PERRY: Do you have steak?</p>
151	<p>1 from Walgreen's and like I said, mostly pharmacy 2 related to let everybody know all the services that are 3 offered upstairs. 4 MS. PERRY: Is this also your magazine that 5 was -- that's on the table? I think it says Walgreen's 6 on the back. 7 MR. CONNER: Yes. "Diabetes and You" is a 8 magazine we carry to help people with diabetes. 9 MS. PERRY: Okay. 10 MR. CONNER: It does have nutritional facts 11 in there about healthy foods as well. 12 MR. NOPHLIN: Can I ask you to speak up a 13 little bit? 14 MR. CONNER: Oh, I said it has nutritional 15 facts in there as well, healthy foods to eat while 16 you're on a diabetic with your insulin. 17 MR. ALBERTI: Ms. Perry, if that's going to 18 be entered into evidence, can we -- Madam Chair, can we 19 suggest that that all be entered into evidence as a 20 package and be labeled as a package? 21 MS. PERRY: Yes. I have no problem with 22 that.</p>	153	<p>1 MR. CONNER: -- soups that have beef in it. 2 MS. PERRY: Do you have steak? Can I 3 purchase a steak at your store? 4 MR. CONNER: Just a piece of meat, steak? 5 MS. PERRY: Yeah, a piece of meet. 6 MR. CONNER: No. But in our entrees on the 7 thing there was beef in those single serve entrees. 8 MS. PERRY: For a frozen, when you say 9 "entrees" -- 10 MR. CONNER: No, the fresh served entrees. 11 MS. PERRY: Are you talking about a roast 12 beef sandwich? 13 MR. CONNER: That's beef in my opinion. 14 CHAIRPERSON MILLER: Mr. Conner, can you 15 speak up or speak more slowly -- 16 MR. CONNER: Oh, I'm sorry. 17 CHAIRPERSON MILLER: -- because we're missing 18 the ends of your sentences -- 19 MR. CONNER: Okay. 20 MS. PERRY: Okay. Then let me -- 21 CHAIRPERSON MILLER: -- or answers. 22 MS. PERRY: -- make my -- it clear. Can you</p>

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154	<p>1 purchase a piece of steak in your store?  2 MR. CONNER: No.  3 MS. PERRY: Can I buy raw hamburger meat in  4 your store?  5 MR. CONNER: No.  6 MS. PERRY: Can I buy a chicken in your  7 store? By chicken I'm talking about a fresh chicken to  8 take home and cook.  9 MR. CONNER: No.  10 MS. PERRY: Can I buy a piece of fresh salmon  11 -- a piece of fresh salmon in your store?  12 MR. CONNER: Not fresh.  13 MS. PERRY: Can I buy a piece of cod in your  14 store?  15 MR. CONNER: No.  16 MS. PERRY: Can I buy shrimp in your store?  17 MR. CONNER: Not fresh shrimp.  18 MS. PERRY: Can I buy frozen shrimp in your  19 store -- at this store, I'm not talking about  20 Walgreen's elsewhere.  21 MR. CONNER: I couldn't answer that. Some  22 stores do have every now and then. I don't know what's</p>	156	<p>1 MR. ALBERTI: -- is Applicant's (sic) Exhibit  2 3. Is that correct?  3 MS. PERRY: Um hmm.  4 (Protestant's Exhibit Number 3 marked for  5 identification.)  6 MS. PERRY: What -- when you talk about  7 consumables -- let me ask a question, what percentage  8 of food sales -- of sales is food? And when I say  9 "food" I'm talking about your frozen food, your apples,  10 whatever, and sandwiches that you get from -- your  11 sandwich selection comes from Panache, does it not?  12 MR. CONNER: Correct.  13 MS. PERRY: And the fresh -- the fruit that  14 comes from Panache is already cut up in little  15 containers. Am I correct?  16 MR. CONNER: Correct.  17 MS. PERRY: So, can I buy a whole watermelon  18 at your store?  19 MR. CONNER: No.  20 MS. PERRY: Can I buy corn on the cob at your  21 store?  22 MR. CONNER: No.</p>
155	<p>1 currently in the freezer.  2 MS. PERRY: Can I buy hamburger meat in your  3 store?  4 MR. CONNER: No.  5 MS. PERRY: At St. Patrick's Day, can I buy a  6 corned beef?  7 MR. CONNER: No.  8 MS. PERRY: At Thanksgiving, can I buy a  9 turkey?  10 MR. CONNER: No.  11 MS. PERRY: Aren't all of those things that I  12 can purchase at Whole Foods, Giant, Safeway?  13 MR. CONNER: I believe so.  14 MR. O'BRIEN: Is the magazine part of Number  15 2 or is it a separate Number 3?  16 MS. PERRY: However you would like it, I'm  17 very agreeable to whatever you want.  18 MR. ALBERTI: It's your exhibits.  19 MS. PERRY: I'm comfortable with making it a  20 separate exhibit, making it Number 3.  21 MR. ALBERTI: All right, so the magazine is --  22 MS. PERRY: Number 3.</p>	157	<p>1 MS. PERRY: Or a whole melon?  2 MR. CONNER: No.  3 MS. PERRY: Okay. Can I buy those at a  4 Giant, Safeway?  5 MR. CONNER: I'm sure you can.  6 MS. PERRY: Okay. What percentage of sales  7 is food items versus the Makeup Department and/or the  8 drugstore and Take Care Clinic?  9 MR. O'BRIEN: Madam Chair, for purposes of  10 clarification only --  11 CHAIRPERSON MILLER: Okay.  12 MR. O'BRIEN: -- we're using the word "food"  13 and then we're using the word "consumables --"  14 MS. PERRY: Well, because I'm asking just  15 strictly --  16 CHAIRPERSON MILLER: Wait a second, Ms.  17 Perry, let him finish, then you can respond.  18 MR. O'BRIEN: Yes.  19 CHAIRPERSON MILLER: Go ahead.  20 MR. O'BRIEN: Does the question also  21 encompass liquids, beverages?  22 CHAIRPERSON MILLER: Okay.</p>

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<p style="text-align: right;">158</p> <p>1 MR. O'BRIEN: The Board's definition of food                  2 includes non-alcoholic beverages. I'm just trying to                  3 make sure that the question that's asked is actually                  4 the question that gets answered.                  5 CHAIRPERSON MILLER: You're saying your                  6 definition of food includes non-alcoholic beverages?                  7 MR. O'BRIEN: I'm saying the Board's does.                  8 CHAIRPERSON MILLER: The Board's definition --                  9 MR. O'BRIEN: Yeah.                  10 CHAIRPERSON MILLER: -- as set forth in the                  11 advisory opinion?                  12 MR. O'BRIEN: No, it's actually in the                  13 statute.                  14 CHAIRPERSON MILLER: In the statute? Okay.                  15 So, in -- now we know where we're coming from.                  16 MS. PERRY: Okay.                  17 CHAIRPERSON MILLER: So, your question is,                  18 when she's asking about food, is she referring to what                  19 the statute address --                  20 MR. O'BRIEN: Is she talking about --                  21 CHAIRPERSON MILLER: -- including beverages.                  22 MR. O'BRIEN: -- just the colloquial food or</p>	<p style="text-align: right;">160</p> <p>1 items, food and drink related -- non-alcoholic related                  2 drink items versus the sales of the Makeup Department,                  3 your Look Boutique?                  4 MR. CONNER: That I don't have knowledge of.                  5 I don't have those facts with me.                  6 MS. PERRY: What percentage of sales of your                  7 -- what I'm going to call, you know, things you can eat                  8 and/or drink, versus your prescriptions and your                  9 drugstore items? What is the percentage of sales?                  10 MR. CONNER: That -- I don't have those data                  11 with me. It varies from store to store.                  12 MS. PERRY: Is that something that you can                  13 provide to the ANC and for the record?                  14 MR. O'BRIEN: I -- for the record, I believe                  15 that the next witness may be able to answer those                  16 questions.                  17 CHAIRPERSON MILLER: Let me ask, are you                  18 talking about just the store that's at issue here?                  19 MS. PERRY: Yeah.                  20 CHAIRPERSON MILLER: Not --                  21 MS. PERRY: Because that's what we're talking                  22 about --</p>
<p style="text-align: right;">159</p> <p>1 is she talking about food and beverage, which together                  2 come to consumables?                  3 MS. PERRY: Let me clarify. Consumables can                  4 also be toothpaste, toilet paper, so I would like not                  5 to use the word "consumable." Well, I'm strictly                  6 referring to ice cream, nuts, maybe bottled water,                  7 Hostess cupcakes, the sandwiches from Panache.                  8 CHAIRPERSON MILLER: So, you're --                  9 MS. PERRY: I can't --                  10 CHAIRPERSON MILLER: -- referring to food and                  11 -- you're referring to what we would consider food and                  12 beverages.                  13 MS. PERRY: Things you can eat.                  14 CHAIRPERSON MILLER: Right.                  15 MR. O'BRIEN: Or drink.                  16 CHAIRPERSON MILLER: Or drink?                  17 MS. PERRY: Or drink. I'm not referring to --                  18 MR. O'BRIEN: Okay.                  19 MS. PERRY: -- unless let's use something and                  20 I know eats toothpaste, but no, I'm not referring to                  21 those kinds of consumables.                  22 So, what percentage of sales is food related</p>	<p style="text-align: right;">161</p> <p>1 CHAIRPERSON MILLER: Right.                  2 MS. PERRY: -- the alcohol license for is                  3 this store.                  4 CHAIRPERSON MILLER: Exactly. Okay. I just                  5 wanted to clarify because I thought the witness made                  6 reference to other stores or something.                  7 MR. CONNER: Right. I mean --                  8 CHAIRPERSON MILLER: (inaudible).                  9 MR. CONNER: -- I look at things at a broader                  10 spectrum. I believe the store manager will know                  11 specifics, since he's at the store every day.                  12 CHAIRPERSON MILLER: Okay. Good.                  13 MR. CONNER: And I see monthly totals, but I                  14 don't -- it's not broken down to those determinations.                  15 CHAIRPERSON MILLER: Okay.                  16 MS. PERRY: Walgreen's has recently acquired                  17 44 percent of -- let me show you this. Are you aware                  18 that Walgreen's --                  19 MR. O'BRIEN: May I see it first?                  20 MS. PERRY: Oh, sure. Sorry. I think it's                  21 two different -- it's basically the same. I think I                  22 Xeroxed it twice, I think.</p>

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162	1 MR. O'BRIEN: Thank you. 2 MS. PERRY: Are you aware that Walgreen's has 3 recently acquired 45 percent of Boots and Great Private 4 brands, the leading international pharmacy led health 5 and beauty group? 6 MR. CONNER: Yes, I am. 7 MS. PERRY: Has Walgreen's acquired any 8 grocery stores? 9 MR. O'BRIEN: Objection. Relevance. The 10 issue is whether there's a full range of fresh and 11 frozen products available at this store. 12 MS. PERRY: Okay. 13 CHAIRPERSON MILLER: Okay, sustained on this -- 14 MS. PERRY: I'm going to be entering this 15 stuff. Huh? 16 CHAIRPERSON MILLER: Do you have a response 17 to the relevance? 18 MS. PERRY: I think it leads to the term 19 primary -- the -- if I -- I understand -- if I 20 understand the statute, food -- to be a full scale 21 grocery store you have -- that has to be your prime 22 business or primary business. And I think --	164	1 MS. PERRY: -- later. 2 CHAIRPERSON MILLER: Okay. 3 MS. PERRY: Walgreen's has a website, doesn't 4 it? 5 MR. CONNER: Yes, it does. 6 MS. PERRY: Is this an accurate -- I'm 7 learning. 8 MR. O'BRIEN: Thank you. 9 MS. PERRY: Is this an accurate depiction -- 10 MR. O'BRIEN: Before it's shown to the 11 witness it ought to be marked as an exhibit. 12 CHAIRPERSON MILLER: Is this your -- I think 13 we're up to Number 4. Is that right? 14 MR. O'BRIEN: That's correct. 15 CHAIRPERSON MILLER: Okay. Do you want to 16 identify what it is, Ms. Perry? 17 MS. PERRY: It's a picture -- it's a 18 photocopy or picture I should say, I printed it off the 19 website, of Walgreen's, find a Walgreen's near you, 20 only it's for Walgreen's at 4225 Connecticut Avenue and 21 it shows their services and it's a little bit of a 22 description.
163	1 CHAIRPERSON MILLER: Mr. O'Brien objected to 2 your asking about whether they have other -- whether 3 they took over other grocery stores -- 4 MS. PERRY: Okay. 5 CHAIRPERSON MILLER: -- whether Walgreen's 6 did. And he said that the -- it's not relevant, because 7 we're just looking at the Walgreen's at issue in this 8 case. 9 MS. PERRY: But the Walgreen's at issue in 10 this case will be acquiring some of the beauty products 11 and other things that were in this new, recent 12 acquisition, in the way of pharmaceuticals and beauty 13 supplies. Boots is a very well known British pharmacy. 14 CHAIRPERSON MILLER: The question is what's 15 the relevance of your question -- 16 MS. PERRY: I think -- 17 CHAIRPERSON MILLER: -- about acquiring other 18 grocery stores? 19 MS. PERRY: Okay, well I just asked if they - 20 - okay, I'll do it in a different -- 21 CHAIRPERSON MILLER: All right, then 22 sustained.	165	1 CHAIRPERSON MILLER: Okay. 2 (Protestant's Exhibit Number 4 marked for 3 identification.) 4 MS. PERRY: Is this accurate of your store, 5 from the website? 6 MR. CONNER: Yes. 7 MS. PERRY: The witness answered yes. On 8 Page -- well, take -- it printed out as Page 2 of what 9 I'm going to enter. Does it not call you a -- does it 10 not say that your services are shop, pharmacy, photo, 11 web pick up, Take Care Clinic and then on the second 12 page it says -- on my second page as I printed, 13 convenience store in Washington, D.C.? 14 MR. CONNER: I didn't read the second page. 15 I'd like to look at it. What was the question? 16 MS. PERRY: Does that say convenience store? 17 MR. CONNER: The subtitle says convenience 18 store. Do you want me to read the description down 19 here? 20 MS. PERRY: No, that's okay. 21 MR. CONNER: It mentions grocery products. 22 MS. PERRY: Because that comes out of my

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166	<p>1 time. I'm learning. 2 So, Walgreen's classifies the things that 3 they have at the store, they classify their wellness, 4 beauty products and their food as -- food and drink as 5 a convenience store? 6 MR. CONNER: According to that particular 7 article. 8 MS. PERRY: And this is from your website? 9 MR. CONNER: Correct. 10 MS. PERRY: Thank you. 11 MR. O'BRIEN: May I see that, please? 12 MS. PERRY: While he's looking at that I 13 would like to once again reiterate my objection to 14 continuing with this hearing because we did not come 15 prepared to really cross examine on grocery store, 16 that's why we had asked for the delay so that we could 17 produce our own video of the store as we see it. I 18 think I want to make sure I can get my witnesses in, so 19 I think I better stop. 20 CHAIRPERSON MILLER: Okay. Board questions? 21 Okay, Mr. Alberti? 22 MR. ALBERTI: Mr. Conner, I'll be real quick.</p>	168	<p>1 witness know? 2 MR. O'BRIEN: May or may not, but I think the 3 Board may take notice that -- of the application that 4 was on file here. 5 MR. ALBERTI: Which is? 6 MR. O'BRIEN: And I believe that specifies 7 9:00 a.m. to 10:00 p.m. 8 MR. ALBERTI: Okay, I'll take administrative 9 note that it's 9:00 a.m. to 10:00 p.m. 10 MR. O'BRIEN: I'll look for that while you're 11 doing that -- 12 MR. ALBERTI: Okay. 13 MR. O'BRIEN: -- to see if there's anything 14 change in that. 15 MS. PERRY: I have it right in front of me, 16 from the placard. 17 MR. ALBERTI: Okay. My question is, let's 18 assume that there's at least an hour when the store is 19 going to be opened when -- there's at least an hour I'm 20 looking at, if this information is correct, that the 21 store will be opened in which alcohol sales are not 22 permitted.</p>
167	<p>1 Food items, and I think we sort of defined what we're 2 thinking of as food items. I think -- I'll rely on 3 sort of what Ms. Perry described as food items, things 4 that you can eat or things that you can consume. All 5 right? Would you say that the full range of food items 6 is -- sale of those items is an essential component of 7 your sales? 8 MR. CONNER: Yes. 9 MR. ALBERTI: And you said 50 percent of your 10 first floor space is devoted to consumables? 11 MR. CONNER: Correct. 12 MR. ALBERTI: All right. I'm going to switch 13 gears here a little bit. What are your hours of 14 operation for the store? 15 MR. CONNER: That one I believe is 7:00 a.m. 16 to 11:00 p.m. 17 MR. ALBERTI: And what will the operation -- 18 what will the hours of alcohol sales be if you're 19 granted a license? 20 MR. CONNER: That I don't have in front of 21 me, to be honest. I'm sorry. 22 MR. ALBERTI: Mr. O'Brien, will your next</p>	169	<p>1 MR. CONNER: Correct. 2 MR. ALBERTI: How will you prevent alcohol 3 from being sold during those hours? 4 MR. CONNER: In the other stores we lock it 5 up. There's cages that could come down in the front for 6 like the wine is on shelves, a cage will come down and 7 it gets locked to the bottom and secured. 8 MR. ALBERTI: And that will be the same here? 9 MR. CONNER: Correct. 10 MR. ALBERTI: Okay. Thank you. 11 MR. CONNER: Unless something new came along, 12 but that's what is currently in our stores now. 13 MR. ALBERTI: Okay. Thank you. I have no 14 further questions. 15 CHAIRPERSON MILLER: Yes. Mr. Nophlin. 16 MR. NOPHLIN: You -- your other stores you 17 have -- that you have responsibility for, do all of 18 them have -- service alcoholic beverages? 19 MR. CONNER: Not all of them, no. 20 MR. NOPHLIN: What percentage would you say? 21 Roughly. 22 MR. CONNER: I would probably say currently</p>

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170	<p>1 and I'm just going to be guessing, 85 percent. A 2 couple of them are because we're in a shopping center 3 where there's exclusivity from other retailers. 4 MR. NOPHLIN: I'm sorry. 5 MR. CONNER: Exclusivity from other 6 retailers. So -- 7 MR. NOPHLIN: What does that mean? 8 MR. CONNER: -- the landlord would not allow 9 -- he has -- already has merchants within a shopping 10 center that sells alcohol and sometimes there's what's 11 called exclusivity, that they guarantee one merchant 12 that they will have the exclusive rights to something. 13 MR. NOPHLIN: Um hmm. Thank you, Madam 14 Chair. That's all I have. 15 CHAIRPERSON MILLER: Okay. Others? All 16 right. What's your understanding of the difference 17 between consumables and food? 18 MR. CONNER: Consumables and food? 19 CHAIRPERSON MILLER: Um hmm. 20 MR. CONNER: I consider them merely the same 21 as long as they have nutritional value. 22 CHAIRPERSON MILLER: Okay, so you use that --</p>	172	<p>1 make sure that it's contained in one area that can be 2 overseen. 3 CHAIRPERSON MILLER: Okay. And did I 4 understand you correct that you don't know what 5 percentage of sales are made up by food -- 6 MR. CONNER: Correct. 7 CHAIRPERSON MILLER: -- this Walgreen's? 8 MR. CONNER: I don't have that readily 9 available to me. 10 CHAIRPERSON MILLER: Who would have it? The 11 manager? 12 MR. CONNER: The store manager might have it 13 when he looks at his daily sales and there's ways to 14 break it down -- 15 CHAIRPERSON MILLER: Okay. 16 MR. CONNER: -- per store. 17 CHAIRPERSON MILLER: All right. That's all 18 my questions. Anybody else? Mr. Silverstein? 19 MR. SILVERSTEIN: Alcoholic beverages are 20 sold at some Walgreen's in some areas. Is that 21 correct? 22 MR. CONNER: Correct.</p>
171	<p>1 you use that term interchangeably? 2 MR. CONNER: Correct. 3 CHAIRPERSON MILLER: So, when you talk about 4 the first floor I think you said, 50 percent is devoted 5 to the sale of food products. 6 MR. CONNER: Consumables, food consumables. 7 Yes. 8 CHAIRPERSON MILLER: Okay, so you're talking 9 food and beverages? 10 MR. CONNER: Correct. 11 CHAIRPERSON MILLER: What percentage is that 12 of the whole store? 13 MR. CONNER: I don't know the exact 14 percentage there. I would assume since the second 15 floor is equal to the first floor that it would 16 probably -- that would turn out to be what, 20, 25 17 percent. 18 CHAIRPERSON MILLER: Okay. Why are patrons 19 prohibited from bringing -- if you get this license, 20 why would patrons be prohibited from bringing the 21 alcohol upstairs? 22 MR. CONNER: Security reasons and just to</p>	173	<p>1 MR. SILVERSTEIN: Can you give us a general 2 ballpark figure as to what the percentage of sales 3 would be at those locations. Would 10 percent, 20 4 percent or 50 percent of our overall sales be alcoholic 5 beverages, or 4 percent? 6 MR. CONNER: I couldn't give you exact 7 details in my current location. It's not all the 8 Walgreen's, but where I am it varies. Some stores are 9 3 percent, some are 12 percent, some are 7 percent. 10 MR. SILVERSTEIN: Do you know any that are 11 more than 20? 12 MR. CONNER: Not within my district that I 13 have access to that data. 14 MR. SILVERSTEIN: Do you know any that are 15 more than 15? 16 MR. CONNER: Not my district. 17 MR. SILVERSTEIN: Very well. No other 18 questions. 19 CHAIRPERSON MILLER: I'm sorry, I have one 20 other question. The video that was shown, what was the 21 purpose of that? What did you wish to convey in that 22 video?</p>

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174	<p>1 MR. CONNER: Well, the purpose of the video</p> <p>2 was to show the store so everybody can see it. It's</p> <p>3 one of our newer innovations. It's not a typical</p> <p>4 Walgreen's. We're getting in -- you saw the wallpaper</p> <p>5 with the oranges, it's more health and daily living.</p> <p>6 As we say, you know, "Get well. Live well. Stay</p> <p>7 well." And we're starting incorporating more healthy</p> <p>8 alternatives, fresh food, fresh alternatives to stay</p> <p>9 healthy and tie that in with our pharmacists that, you</p> <p>10 know, based on different medical conditions that we can</p> <p>11 bring in. We also bring in nutritionists who talks</p> <p>12 there to help people from the diabetic, high blood</p> <p>13 pressure, plus, for all things of that nature to learn</p> <p>14 that besides medication exercise, nutrition is very</p> <p>15 important in your medical conditions.</p> <p>16 CHAIRPERSON MILLER: Okay. Thank you.</p> <p>17 MS. PERRY: I have one other question if I</p> <p>18 may?</p> <p>19 CHAIRPERSON MILLER: Let's -- wait, I think</p> <p>20 it's Mr. O'Brien first. I know (inaudible).</p> <p>21 MR. O'BRIEN: Mr. Conner --</p> <p>22 CHAIRPERSON MILLER: Based on our questions.</p>	176	<p>1 competitive within the market. And that if a, you</p> <p>2 know, customer wishes to come in and buy a bottle of</p> <p>3 wine or a 12 pack of beer but also needs other</p> <p>4 necessities, whether it be toothpaste, Tylenol,</p> <p>5 anything that they need, that we give them the</p> <p>6 opportunity to shop in our store and be competitive,</p> <p>7 versus, you know, the convenience of everybody's in a</p> <p>8 hustle bustle and if we don't have that competition or</p> <p>9 that competitiveness with our competition, that they</p> <p>10 will venture to go somewhere else and get all their</p> <p>11 other needs there as well, because it's a one stop</p> <p>12 shop. And that would put us at a disadvantage.</p> <p>13 CHAIRPERSON MILLER: Just before we go to Ms.</p> <p>14 Perry, I just want to be clear, when you say</p> <p>15 "toothpaste," is that a consumable or not a consumable?</p> <p>16 MR. CONNER: That's not a consumable.</p> <p>17 CHAIRPERSON MILLER: Okay, so you're really</p> <p>18 talking food.</p> <p>19 MR. CONNER: I'm talking about any health</p> <p>20 essential needs that everybody needs, deodorant or</p> <p>21 anything like that. But you know how people come in</p> <p>22 and they do the one stop shop.</p>
175	<p>1 Yeah, okay.</p> <p>2 MR. O'BRIEN: -- what is your profession?</p> <p>3 MR. CONNER: I'm a pharmacist by trade.</p> <p>4 MR. O'BRIEN: I showed you earlier</p> <p>5 Applicant's Exhibit Number 4 and you identified the</p> <p>6 first floor and stated that -- I believe you said that</p> <p>7 50 percent or more of the first floor is taken up by</p> <p>8 food, consumables. I did not ask you the next question</p> <p>9 which, what do the blue and red represent on Exhibit 4?</p> <p>10 MR. CONNER: The blue is mostly the food</p> <p>11 where the red is mostly drinks and consumables.</p> <p>12 CHAIRPERSON MILLER: I'm sorry, I didn't</p> <p>13 catch the red is mainly what?</p> <p>14 MR. CONNER: Drinks.</p> <p>15 CHAIRPERSON MILLER: Drinks? Okay.</p> <p>16 MR. CONNER: But it's just broken down kind</p> <p>17 of color coded.</p> <p>18 MR. O'BRIEN: Mr. Conner, why does Walgreen's</p> <p>19 need a license at this store?</p> <p>20 MR. CONNER: Well, we feel that we want to be</p> <p>21 competitive within the market and we feel that if we</p> <p>22 give the opportunity for full service that we will be</p>	177	<p>1 CHAIRPERSON MILLER: Are you talking about --</p> <p>2 I'm sorry, so, are you talking about vitamins? Is that</p> <p>3 in this consumables or not? Is that pharmacy or what</p> <p>4 is that?</p> <p>5 MR. CONNER: I mean, I guess you could say</p> <p>6 consumable is that you take it within your body, but</p> <p>7 it's not considered -- I don't consider that as a food,</p> <p>8 but it is a nutritional alternative.</p> <p>9 CHAIRPERSON MILLER: Okay. I mean, we -- I</p> <p>10 just want to know when you say 50 percent is food.</p> <p>11 MR. CONNER: Oh, that -- no, that was just on</p> <p>12 the first floor. Those items are on the second floor.</p> <p>13 CHAIRPERSON MILLER: Those are the second --</p> <p>14 okay, that's it.</p> <p>15 MR. CONNER: Yes, anything that's related to</p> <p>16 pharmacy or OTC, over-the-counter medications.</p> <p>17 CHAIRPERSON MILLER: Right. Okay. Thank you</p> <p>18 very much. So, Ms. Perry, you can ask questions based</p> <p>19 on what Mr. Conner testified in response to our</p> <p>20 questions and in response to Mr. O'Brien's.</p> <p>21 MS. PERRY: Thank you. Is there a separate</p> <p>22 entrance to the second floor or do you have to go in</p>

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<p style="text-align: right;">178</p> <p>1 through the first floor?                  2 MR. CONNER: You have to -- if you would take                  3 the -- if you take the elevator from the garage you can                  4 hit two and go straight up to the second floor.                  5 MS. PERRY: Do you have a guard posted in the                  6 garage?                  7 MR. CONNER: No, at this time we didn't feel --                  8 MS. PERRY: Do you have a garage --                  9 MR. CONNER: -- that security was need.                  10 MS. PERRY: -- do you -- you have an                  11 elevator, when you come into the right of the store, by                  12 the cash registers?                  13 MR. CONNER: Yes, that's the elevator coming                  14 up from the garage.                  15 MS. PERRY: Do you have a guard posted there                  16 or a manager that's stationary there?                  17 MR. CONNER: We have managers on the floor                  18 all day long.                  19 MS. PERRY: How many managers do you have on                  20 your floor?                  21 MR. CONNER: Depends on the time of day,                  22 anywhere from two to four.</p>	<p style="text-align: right;">180</p> <p>1 MS. PERRY: Does he have to leave now?                  2 MR. O'BRIEN: No.                  3 MS. PERRY: Okay. But what if we want to                  4 call him back? You did -- you said that you wanted --                  5 CHAIRPERSON MILLER: I don't -- I --                  6 MR. O'BRIEN: He's a representative.                  7 MS. PERRY: Oh, okay.                  8 MR. O'BRIEN: He's entitled to sit there.                  9 MS. PERRY: Okay.                  10 CHAIRPERSON MILLER: That's correct. And                  11 he's already testified.                  12 MS. PERRY: No, I'm only asking that because                  13 somebody raised it earlier.                  14 MR. SILVERSTEIN: Well, while Mr. O'Brien                  15 gets the next witness can I ask how much time we have                  16 for both sides here.                  17 MR. JONES: Thirty-two minutes for the                  18 Protestants, 51 minutes for the Licensee.                  19 MR. O'BRIEN: I'm sorry, I didn't hear that.                  20 MR. JONES: Thirty-two minutes for the                  21 Protestant, 51 minutes for the Licensee.                  22 MR. O'BRIEN: Thank you. Remain standing and</p>
<p style="text-align: right;">179</p> <p>1 MS. PERRY: Do you have a manager or a guard                  2 stationed at the escalator?                  3 MR. CONNER: No, not stationed permanently                  4 there.                  5 MS. PERRY: So, if I put a bottle of wine in                  6 my shopping cart, I can still go upstairs, because you                  7 have nobody stationed at the escalator or -- or the                  8 elevator, correct?                  9 MR. CONNER: That is correct.                  10 MS. PERRY: And you only have two managers,                  11 necessarily, that might be able to stop -- or they                  12 could be in another area of the store. Am I correct?                  13 MR. CONNER: It's possible they could be in                  14 another area.                  15 MS. PERRY: Okay. And there is no -- okay,                  16 there's no outside street entrance to the second floor?                  17 MR. CONNER: No.                  18 MS. PERRY: Okay. That's all.                  19 CHAIRPERSON MILLER: Okay. Thank you very                  20 much.                  21 MR. O'BRIEN: Ready for the next witness?                  22 CHAIRPERSON MILLER: Um hmm.</p>	<p style="text-align: right;">181</p> <p>1 face the chair.                  2 CHAIRPERSON MILLER: Good afternoon. Would                  3 you raise your right hand? And, do you swear to tell                  4 the truth, the whole truth and nothing but the truth?                  5 MR. KIM: Yes, I do.                  6 CHAIRPERSON MILLER: Okay. Thank you. Have                  7 a seat.                  8 MR. O'BRIEN: Would you state your full name,                  9 please.                  10 MR. KIM: Jin Kim.                  11 MR. O'BRIEN: How do you spell Jin?                  12 MR. KIM: J-I-N as in Nancy.                  13 MR. O'BRIEN: And how do you spell Kim?                  14 MR. KIM: K-I-M as in Mary.                  15 MR. O'BRIEN: And what is your position, Mr.                  16 Kim?                  17 MR. KIM: I'm the store manager.                  18 MR. O'BRIEN: Store manager of what?                  19 MR. KIM: Of Walgreen's Store 11408.                  20 MR. O'BRIEN: Which is located at?                  21 MR. KIM: 4225 Connecticut Avenue, NW.                  22 MR. O'BRIEN: How long have you been in that</p>

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<p style="text-align: right;">182</p> <p>1 position?</p> <p>2 MR. KIM: For Walgreen's?</p> <p>3 MR. O'BRIEN: No, as store manager at 4225</p> <p>4 Connecticut Avenue.</p> <p>5 MR. KIM: For eight months now.</p> <p>6 MR. O'BRIEN: All right. When did the store</p> <p>7 open for business?</p> <p>8 MR. KIM: December 23rd, 2011.</p> <p>9 MR. O'BRIEN: Okay, were you the manager of</p> <p>10 the store at that time?</p> <p>11 MR. KIM: Yes, I was.</p> <p>12 MR. O'BRIEN: Have you been the manager of</p> <p>13 the store continuously?</p> <p>14 MR. KIM: Yes.</p> <p>15 MR. O'BRIEN: All right. I'm going to show</p> <p>16 you two exhibits. I apologize, Madam Chair, I should</p> <p>17 have had this teed up.</p> <p>18 Let me show you first what has been marked as</p> <p>19 the Board's investigator's report Exhibit Number 3.</p> <p>20 MS. PERRY: Okay.</p> <p>21 CHAIRPERSON MILLER: Excuse me, is that</p> <p>22 Exhibit 3, the investigator's report?</p>	<p style="text-align: right;">184</p> <p>1 MR. O'BRIEN: -- photograph?</p> <p>2 MR. KIM: Yes.</p> <p>3 MR. O'BRIEN: All right. To the left of that</p> <p>4 there is what looks like a white square or rectangle.</p> <p>5 Do you see what I'm pointing at?</p> <p>6 MR. KIM: Yes, I do.</p> <p>7 MR. O'BRIEN: Okay. Do you know what that</p> <p>8 is?</p> <p>9 MR. KIM: I do not. I do not know.</p> <p>10 MR. O'BRIEN: Okay.</p> <p>11 MR. KIM: Some sign.</p> <p>12 MR. O'BRIEN: Hmm?</p> <p>13 MR. KIM: Some sign.</p> <p>14 MR. O'BRIEN: Okay, what sign?</p> <p>15 MR. KIM: The no parking? I'm not sure.</p> <p>16 MR. O'BRIEN: Okay. All right, I'm going to</p> <p>17 show you what's been marked as Applicant's Exhibit</p> <p>18 Number 1 for identification and ask you if you</p> <p>19 recognize that.</p> <p>20 MR. KIM: Yes, I do.</p> <p>21 MR. O'BRIEN: All right. And what do you</p> <p>22 recognize that as?</p>
<p style="text-align: right;">183</p> <p>1 MR. O'BRIEN: Correct.</p> <p>2 CHAIRPERSON MILLER: Okay.</p> <p>3 MR. O'BRIEN: All right. I don't believe</p> <p>4 you've seen this photograph before, can you -- but, can</p> <p>5 you tell the Board if you recognize what it depicts?</p> <p>6 MR. KIM: Yes, I do.</p> <p>7 MR. O'BRIEN: And what does it depict?</p> <p>8 MR. KIM: It looks like it's half of my</p> <p>9 building in the back and the other half is another</p> <p>10 building.</p> <p>11 MR. O'BRIEN: Okay. And what part of your</p> <p>12 building in back does it show?</p> <p>13 MR. KIM: Just the receiving area and it</p> <p>14 looks like just one of the parking spots that we have</p> <p>15 for the customers.</p> <p>16 MR. O'BRIEN: Okay. When you say "receiving</p> <p>17 area," is there another name for that?</p> <p>18 MR. KIM: The loading dock.</p> <p>19 MR. O'BRIEN: Okay. Now, I'm going to ask</p> <p>20 you to look very carefully. Do you see what appears to</p> <p>21 be a light pole right down the middle of the --</p> <p>22 MR. KIM: Yes.</p>	<p style="text-align: right;">185</p> <p>1 MR. KIM: That's a sign that we placed on a -</p> <p>2 - on our receiving door.</p> <p>3 MR. O'BRIEN: And what does that sign say?</p> <p>4 MR. KIM: We will not accept your deliver is</p> <p>5 you are not parked in the receiving area. Thank you.</p> <p>6 MR. O'BRIEN: Okay. Having -- when was that</p> <p>7 sign placed there?</p> <p>8 MR. KIM: This was placed after our first</p> <p>9 hearing, I believe back in March when -- after we speak</p> <p>10 with --</p> <p>11 MR. O'BRIEN: Commissioner Perry?</p> <p>12 MR. KIM: -- Ms. Perry. Yes.</p> <p>13 MR. O'BRIEN: Okay. Has the sign been up</p> <p>14 continuously since March?</p> <p>15 MR. KIM: Yes, it has.</p> <p>16 MR. O'BRIEN: Okay. I'm going to show you</p> <p>17 again what's -- Exhibit Number 3 to the Board's report.</p> <p>18 Having looked at this exhibit, do you now have any idea</p> <p>19 what that rectangle is?</p> <p>20 MR. KIM: Is it that sign?</p> <p>21 MR. O'BRIEN: I'm not asking --</p> <p>22 MR. KIM: Oh, sorry.</p>

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<p style="text-align: right;">186</p> <p>1 MR. O'BRIEN: -- I'm asking you a question.                  2 If you don't know, you don't know.                  3 MR. KIM: Yeah, I don't know.                  4 MR. O'BRIEN: Okay, thank you. What is your                  5 policy regarding delivery of products to the store by                  6 vendors, other than through the loading dock, receiving                  7 dock door?                  8 MR. KIM: All deliveries come through the                  9 back door. So, our policy is, if they're not parked in                  10 the receiving area, that we ask them to park in the                  11 receiving area before we take the delivery.                  12 MR. O'BRIEN: Okay. And how do you monitor                  13 that?                  14 MR. KIM: When we open the receiving door,                  15 the receiving --                  16 MR. O'BRIEN: Well, let me go back a step.                  17 MR. KIM: Sorry.                  18 MR. O'BRIEN: How do you know when to open                  19 the receiving door?                  20 MR. KIM: Oh, they ring the bell. There's a                  21 bell in the back. They ring the bell, we look through                  22 the peephole, we see that's a vendor, we open the door,</p>	<p style="text-align: right;">188</p> <p>1 MR. O'BRIEN: I may have asked this question,                  2 but if you determined that a vendor who's rung the back                  3 bell's truck is not in the back loading dock area, what                  4 do you do?                  5 MR. KIM: We ask him to move his vehicle back                  6 to receiving.                  7 MR. O'BRIEN: Before or after you accept the                  8 delivery?                  9 MR. KIM: Before we accept the delivery.                  10 MR. O'BRIEN: How many spaces -- parking                  11 spaces for patrons of Walgreen's are available?                  12 MR. KIM: We have 22 downstairs in the garage                  13 and we have four spots behind the store, next to                  14 receiving.                  15 MR. O'BRIEN: All right. Have you, at any                  16 time ever, experienced that the 22 space garage was                  17 entirely full?                  18 MR. KIM: I've never.                  19 MR. O'BRIEN: Do you monitor the garage?                  20 MR. KIM: Yes.                  21 MR. O'BRIEN: How do you do that?                  22 MR. KIM: I mean, there's video cameras, we</p>
<p style="text-align: right;">187</p> <p>1 we make sure that his truck is in the -- parked in the                  2 front or in the receiving area and then we'll take him                  3 in. If he's not parked in the front, you know, we'll -                  4 - we'll ask him if he's on Veazey, if he is, we'll tell                  5 him to move, move the car. But, it's -- a lot of times                  6 you could see through the window of the store on Veazey                  7 and see if there is a vendor's truck parked outside.                  8 MR. O'BRIEN: Are you aware that trucks, from                  9 time to time, are parked on Veazey Street?                  10 MR. KIM: Yes. There are many trucks parked                  11 there daily.                  12 MR. O'BRIEN: What kinds of trucks?                  13 MR. KIM: There's construction trucks,                  14 there's other vendor trucks, there's just pedestrian                  15 vehicles, police vehicles.                  16 MR. O'BRIEN: Do you know -- when you say                  17 "vendor trucks," do you know what other businesses,                  18 other than Walgreen's these vendor trucks might serve?                  19 MR. KIM: I believe they serve the 7-11,                  20 Giant, maybe the other liquor store. That's --                  21 MR. O'BRIEN: You say maybe, do you know?                  22 MR. KIM: I do not know.</p>	<p style="text-align: right;">189</p> <p>1 periodically look at the video, but, you know, there'll                  2 be cars that go down there with customers and baskets                  3 that we periodically have to bring back up, it's swept,                  4 you know, every -- a couple times a day, so, I mean,                  5 that's (inaudible) employees and video.                  6 MR. O'BRIEN: Do you ever see vendors                  7 delivering -- I'm sorry, vendors parking on Veazey                  8 Street and then going south on Connecticut Avenue with                  9 their product past Walgreen's?                  10 MR. KIM: Yes. I see that a lot.                  11 MR. O'BRIEN: And where are those vendors                  12 going? If you know.                  13 MR. KIM: Yes, I've seen them go into 7-11.                  14 MR. O'BRIEN: And where's 7-11?                  15 MR. KIM: It's I think about two doors down                  16 from the street, south of Walgreen's.                  17 MR. O'BRIEN: On the same side of the street?                  18 MR. KIM: On the same side of the street.                  19 MR. O'BRIEN: Have you ever experienced                  20 complaints from neighborhood residents regarding noise                  21 coming from Walgreen's?                  22 MR. KIM: Yes, we did.</p>

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<p style="text-align: right;">190</p> <p>1 MR. O'BRIEN: Okay. How many occasions?          2 MR. KIM: One that was brought to my          3 attention. It was only once.          4 MR. O'BRIEN: And what was the nature of that          5 complaint?          6 MR. KIM: It was about our warehouse          7 deliveries being too loud.          8 MR. O'BRIEN: And what did you do to address          9 that complaint, if anything?          10 MR. KIM: We -- originally we used to have a          11 warehouse that used to come in at ten o'clock, we asked          12 them --          13 MR. O'BRIEN: Ten o'clock?          14 MR. KIM: P.m., sorry, between 10:00 and          15 11:00 p.m. So, we asked through our transportation to          16 our warehouse we got pushed forward to about 8:00 p.m.,          17 so we moved it forward so it wouldn't disrupt the          18 residents when they were sleeping.          19 MR. O'BRIEN: How does your store -- do you          20 have -- let me start again, Madam Chair. Do you          21 personally have hiring authority --          22 MR. KIM: Yes, I do.</p>	<p style="text-align: right;">192</p> <p>1 where the customer parking is. They'll just put --          2 wait to the side and they'll bring it through the same          3 back receiving area.          4 MR. O'BRIEN: Do you ever experience          5 situations where you have so many vendors at once?          6 MR. KIM: Not so many vendors. It'll happen          7 from time to time when there's multiple vendors that          8 show up at once, but, I mean, that's very -- it's not          9 very frequent.          10 MR. O'BRIEN: Okay. Do vendor trucks ever          11 block the alley behind Walgreen's?          12 MR. KIM: Well, they -- I mean, when they're          13 park -- aside from when they're parking, they're not          14 parked to block the alleyway, no.          15 MR. O'BRIEN: Okay. In addition to vendors,          16 how do you receive -- how else do you get product?          17 MR. KIM: Through our warehouse.          18 MR. O'BRIEN: Okay. So, when I asked the          19 question about whether the alley is ever blocked, there          20 was -- I meant to include --          21 MR. KIM: Oh, warehouse?          22 MR. O'BRIEN: -- not just vendors but also</p>
<p style="text-align: right;">191</p> <p>1 MR. O'BRIEN: -- at your store? And how do          2 you identify candidates for employment?          3 MR. KIM: A lot of it is through our computer          4 system, through Walgreen's.com new jobs, but we also          5 work with, you know, like, other, like, outsourcing          6 where they kind of do the screening for us. One is          7 with the Mayor's campaign with One City, One Hire.          8 Another one is Project Redirect, I mean, we're -- and          9 we -- that relationship we just started building up          10 about a couple weeks ago.          11 MR. O'BRIEN: Can you explain how One City,          12 One Hire works?          13 MR. KIM: They -- you've got candidates that          14 are unemployed and try to get them employed, but they          15 go through a screening process of their own. Once that          16 is complete and they pass all their screening process,          17 then it gets forwarded to our hiring department where I          18 will be able to look at their application.          19 MR. O'BRIEN: What happens when a vendor          20 comes and the receiving dock is occupied by another          21 vendor?          22 MR. KIM: They'll kind of park on the side of</p>	<p style="text-align: right;">193</p> <p>1 warehouse.          2 MR. KIM: Yes. I'm sorry, yes. The          3 warehouse does block the alleyway.          4 MR. O'BRIEN: Okay. And does it totally          5 block the alleyway?          6 MR. KIM: No, there's enough room for a car          7 to go by.          8 MR. O'BRIEN: Okay. And how often do you get          9 warehouse deliveries?          10 MR. KIM: We get it twice a week.          11 MR. O'BRIEN: And why does the warehouse          12 delivery truck block the alley?          13 MR. KIM: Well, it's a -- because it's too          14 long for the dock. We did get the -- we did request          15 the shortest, smallest trailer available and that's          16 what we are getting in, but it does -- I would say it          17 blocks the alleyway maybe about a third of the way,          18 maybe a little bit more, but there is enough for cars          19 and pedestrians to go by the alleyway.          20 MR. O'BRIEN: All right. Those are my          21 questions. Thank you.          22 CHAIRPERSON MILLER: Okay. Ms. Perry?</p>

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<p style="text-align: right;">194</p> <p>1 MS. PERRY: Regarding the alleyway, isn't 2 that a 16 foot two way alley? 3 MR. KIM: I'm not sure what the -- how many 4 footage it is. 5 MS. PERRY: When you say that a car can get 6 by, two cars can't get by, though, can they, since it's 7 a two way alley? 8 MR. KIM: No. 9 MS. PERRY: So, in some -- now, you also say 10 when you get more than one truck one parks kind of 11 sideways. Can more than one car get through the alley? 12 Can two way traffic still flow? 13 MR. KIM: Yes. 14 MS. PERRY: It can? 15 MR. KIM: Yes. 16 MS. PERRY: Not that I've ever seen. 17 Questions came up earlier, so I'm not going to go into 18 it, is to the percentage of sales -- what do you 19 consider grocery items or food and drink items? 20 MR. KIM: Anything -- would that concern 21 consumable items? 22 MS. PERRY: Well, what is your -- we're just</p>	<p style="text-align: right;">196</p> <p>1 MR. KIM: Compared to the whole store, right? 2 MS. PERRY: Compared to the whole store, 3 correct? 4 MR. KIM: Okay. I would say it's about 20 5 percent, maybe 25 percent. 6 MS. PERRY: So, 20 to 25 percent of your 7 sales -- 8 MR. KIM: Yes. 9 MS. PERRY: -- are just food and drink? 10 MR. KIM: Yes. 11 MS. PERRY: Okay. So, I have time for my 12 witnesses, I'm going to pass on the trucks and stuff. 13 Can I ask a dumb question? Do we get to write findings 14 of fact like we do at the BZA? 15 CHAIRPERSON MILLER: Yeah, we say that at the 16 end. 17 MS. PERRY: Okay. 18 CHAIRPERSON MILLER: All right. You're 19 finished with your cross? 20 MS. PERRY: I'm not going to ask anything 21 else, because I want time for witnesses. 22 CHAIRPERSON MILLER: Okay. Board questions?</p>
<p style="text-align: right;">195</p> <p>1 talking food and drink. 2 MR. KIM: Okay. 3 MS. PERRY: What percentage of that, in the 4 way of sales, versus the sales of cosmetics or the Look 5 Boutique and L'Oreal products and stuff upstairs? 6 What's the percentage of sales? 7 MR. KIM: What's the percentage of sales of 8 like -- 9 MS. PERRY: Of the food and drink only. 10 MR. KIM: Compared to the rest of the store? 11 MS. PERRY: No, compared to the Look 12 Boutique. 13 MR. KIM: Just Look Boutique? 14 MS. PERRY: For now just Look Boutique. 15 MR. KIM: Okay. I would say they're -- I 16 mean, my grocery does more than Look Boutique. I'm not 17 sure what your question is. 18 MS. PERRY: In -- as compared -- 19 MR. KIM: In -- dollars-wise? 20 MS. PERRY: Compared to the rest of the 21 store, what percentage of sales are just grocery, food 22 and drink?</p>	<p style="text-align: right;">197</p> <p>1 I want to follow up on that question. When you said 20 2 to 25 percent of your sales were food and drink, it's - 3 - that's -- I'm sorry, your sale of food and drink make 4 up 20 to 25 percent of the sales for the whole store. 5 MR. KIM: Yes. 6 CHAIRPERSON MILLER: Is that revenue? Is 7 that money? Is that what we're talking about? We're 8 not talking about quantity, we're -- 9 MR. KIM: I'm talking about sales, dollars. 10 CHAIRPERSON MILLER: Sales, dollars? 11 MR. KIM: Yes. 12 CHAIRPERSON MILLER: Okay. And do you know 13 what the pharmacy's percentage is compared to the whole 14 store? 15 MR. KIM: I would say maybe about the same. 16 CHAIRPERSON MILLER: So, your testimony is -- 17 MR. KIM: Maybe between 20 and 30. I would 18 say 20 and 30. 19 CHAIRPERSON MILLER: Yes, okay. You have the 20 statistics, though, do you not? 21 MR. KIM: Yeah, we do have the numbers. I 22 mean, I just don't know it off the top of my head.</p>

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198	<p>1 CHAIRPERSON MILLER: Okay. Do you know the 2 percentage of shelf and floor space that the food item 3 -- food and beverage items take up in the store? 4 MR. KIM: Square footage-wise? 5 CHAIRPERSON MILLER: The percentage-wise, you 6 know, how much percentage of the shelves and floor 7 space is devoted to food and beverage. 8 MR. KIM: For the entire store? I mean, if I 9 would have to guess I would say somewhere -- maybe 10 about 20 percent. 11 CHAIRPERSON MILLER: Okay, that's a guess, 12 but you have the statistics on that? 13 MR. KIM: I personally do not. There's a way 14 for us to get it through corporate, yes. 15 CHAIRPERSON MILLER: Okay. Will the hours of 16 operation for the store change if the application for a 17 liquor license is granted? 18 MR. KIM: Not that I know of. 19 CHAIRPERSON MILLER: Okay. And do you carry 20 fresh food items? 21 MR. KIM: Yes. 22 CHAIRPERSON MILLER: Okay. Could you just</p>	200	<p>1 Wait, Mr. O'Brien has it first. 2 MR. O'BRIEN: No redirect. 3 CHAIRPERSON MILLER: No? Okay. Ms. Perry? 4 MS. PERRY: You mentioned the percentage of 5 space downstairs on the first floor, what percentage is 6 food and drink on the first floor of the store? 7 MR. KIM: I mentioned -- I'm sorry, one more 8 time. 9 MS. PERRY: What percentage of food and drink 10 -- you're there every day from what I understand so -- 11 MR. KIM: Right. 12 MS. PERRY: -- what percentage of the floor 13 area of the first floor is food and drink? 14 MR. KIM: I would say around 50 percent, half 15 the store with food and drink for downstairs. 16 MS. PERRY: Okay. That's it. Do -- can I 17 buy a corned beef in your store or any -- or a steak or 18 anything like that? 19 MR. KIM: You can buy corned canned beef. 20 MR. SILVERSTEIN: Madam Chair, that question 21 has nothing to do with your questions. 22 CHAIRPERSON MILLER: Is that relevant to my</p>
199	<p>1 describe that? 2 MR. KIM: We carry -- we have an end stand, 3 which is about four feet wide, it has eight shelves 4 that has fresh fruit. We also have -- 5 CHAIRPERSON MILLER: So, when you say fresh 6 fruit, is that -- are they cut up in containers or are 7 they like apples and oranges? 8 MR. KIM: They're actually apples, oranges, 9 bananas. 10 CHAIRPERSON MILLER: Okay. Whole food. 11 MR. KIM: They're just, you know, stuff that 12 we get through our wholesaler or vendors. We do also 13 have a peninsula cooler, which is three sided, 14 obviously. I mean, that houses I want to say about 100 15 different items that range from entrees to desserts, 16 but they're all freshly made through one of our vendors 17 that we also pay, through Panache. I think the fresh 18 (inaudible) fresh, something that's prepared. 19 CHAIRPERSON MILLER: Okay. Good. That's all 20 my questions. Any other Board questions? 21 (No audible response.) 22 CHAIRPERSON MILLER: Okay. Any redirect?</p>	201	<p>1 questions? 2 MS. PERRY: Maybe not. I don't know. Okay, 3 forget it. 4 CHAIRPERSON MILLER: I asked about fresh 5 fruit. 6 MS. PERRY: You asked about fresh fruit. 7 Okay, can buy a watermelon in your store? 8 CHAIRPERSON MILLER: No, it's -- all right, 9 go ahead. 10 MS. PERRY: You said fruit. 11 CHAIRPERSON MILLER: Go ahead. 12 MR. KIM: When in season. 13 MS. PERRY: Okay. Thank you. 14 CHAIRPERSON MILLER: All right. 15 MS. PERRY: I'll just leave it at that. 16 CHAIRPERSON MILLER: Okay. Then I think you 17 can be excused. Thank you very much. 18 MR. O'BRIEN: May Mr. Kim now remain, given 19 his testimony's been concluded? 20 MS. PERRY: I -- 21 CHAIRPERSON MILLER: What? 22 MS. PERRY: -- there's a possibility we might</p>

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202	1 want to recall him. 2 CHAIRPERSON MILLER: We don't really usually 3 do that, but -- 4 MR. O'BRIEN: If there's a possibility -- 5 CHAIRPERSON MILLER: Okay. 6 MS. PERRY: It could be done. 7 MR. O'BRIEN: -- that she might -- 8 CHAIRPERSON MILLER: Okay. 9 MR. O'BRIEN: -- want to recall, then the 10 rule applies. 11 CHAIRPERSON MILLER: All right. Okay. 12 MS. PERRY: Or the Board might want to, 13 following our (inaudible). You never know. 14 CHAIRPERSON MILLER: Okay. All right. Then 15 he does have to step out. Okay. 16 MR. O'BRIEN: At this time I would like to 17 move into evidence Applicant's Exhibits Number 1 18 through 4. The refresh, Number 1 was the sign on the 19 receiving door identified by Mr. Kim. Number 2 is the 20 certificate of occupancy identified by Mr. Conner. 21 Number 3 was the video and Number 4 is the floor plan 22 that was identified by Mr. Conner.
203	1 CHAIRPERSON MILLER: Ms. Perry, do you have 2 any objection? 3 MS. PERRY: No. 4 (Applicant's Exhibits Numbers 1 through 4 5 admitted into evidence.) 6 MR. O'BRIEN: At which point we rest. 7 CHAIRPERSON MILLER: Okay. All right, they 8 are admitted then into evidence. And we can now turn 9 to the Protestant's case, unless you want -- you need a 10 break (inaudible). 11 MS. PERRY: I wouldn't mind a couple minutes. 12 CHAIRPERSON MILLER: Would you like a few 13 minutes to -- 14 MS. PERRY: Just a couple, so I can tell my 15 witnesses we're getting ready. 16 CHAIRPERSON MILLER: Okay. So, why don't -- 17 MS. PERRY: If they're still here. 18 CHAIRPERSON MILLER: -- why don't we take a 19 five minute break then. 20 MR. SILVERSTEIN: I would ask what our -- 21 CHAIRPERSON MILLER: Do you want to them him 22 in?
204	1 MR. SILVERSTEIN: -- time situation is, Mr. -- 2 MR. JONES: Twenty-seven minutes for the 3 Protestants, 25 minutes for the Licensee. 4 MR. O'BRIEN: Remaining? 5 MR. JONES: Remaining. I apologize. Thank 6 you for that clarification. 7 CHAIRPERSON MILLER: Okay. So, we'll see you 8 in five minutes? Okay. 9 MR. SILVERSTEIN: 6:08. We'll see you at 10 6:08. 11 MR. O'BRIEN: I'm sorry? 12 MR. SILVERSTEIN: We'll see you at 6:08. 13 MR. O'BRIEN: Be there or be square. 14 MR. SILVERSTEIN: Be there or be square. 15 (WHEREUPON, the hearing went off record.) 16 CHAIRPERSON MILLER: Okay, we're back on the 17 record. Ms. Perry, are you ready to proceed with your 18 first witness? 19 MS. PERRY: Yes. We don't have a choice, do 20 we? I'm going to be very quick in my opening. 21 CHAIRPERSON MILLER: Didn't you do an 22 opening?
205	1 MS. PERRY: Huh? 2 CHAIRPERSON MILLER: Didn't you do an opening 3 at the beginning? No? I think -- 4 MS. PERRY: No, we kept objecting. Oh, can I 5 do -- can I put into evidence the -- I mean, I don't 6 know -- 7 CHAIRPERSON MILLER: Okay, so what -- if you 8 have a witness -- 9 MR. O'BRIEN: I have -- 10 CHAIRPERSON MILLER: -- that you want to 11 testify -- 12 MR. O'BRIEN: I -- 13 CHAIRPERSON MILLER: -- that now's the time 14 to call them. 15 MR. O'BRIEN: -- I suspect what Ms. Perry's 16 trying to do is figure out how she gets what she has to 17 say in. 18 MS. PERRY: Yeah. 19 MR. O'BRIEN: Okay. And that would be -- 20 CHAIRPERSON MILLER: You can notify -- 21 MR. O'BRIEN: -- done by her taking the stand 22 and being sworn. And she could just deliver a

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<p style="text-align: right;">206</p> <p>1 narrative, since there's no one to ask her questions.                  2 CHAIRPERSON MILLER: Unless Mr. Lederer -- is                  3 that the way you want to proceed?                  4 MS. PERRY: I guess so, because I want to get                  5 this in.                  6 MR. LEDERER: I mean, I can sit here or go                  7 back out if -- whatever the Board wants.                  8 CHAIRPERSON MILLER: Oh, right. Exactly.                  9 Okay.                  10 MR. LEDERER: I invoked the rule against                  11 witnesses myself.                  12 CHAIRPERSON MILLER: Right. Okay. So,                  13 you're here as a witness not to ask Ms. Perry                  14 questions?                  15 MR. LEDERER: I'm here as a witness. Yeah.                  16 CHAIRPERSON MILLER: Yeah, so you need to                  17 step out again.                  18 MR. LEDERER: Okay.                  19 CHAIRPERSON MILLER: Unless Mr. O'Brien                  20 doesn't have any objection, in which case you can stay.                  21 MR. O'BRIEN: No, I'd like to adhere --                  22 CHAIRPERSON MILLER: You would like him to</p>	<p style="text-align: right;">208</p> <p>1 MS. PERRY: I know I'm supposed to be sworn                  2 in?                  3 MR. O'BRIEN: Yes.                  4 MS. PERRY: Whatever it is, I swear to it.                  5 CHAIRPERSON MILLER: Okay, you swear to tell                  6 the truth, the whole truth, nothing but the truth?                  7 MS. PERRY: I do.                  8 CHAIRPERSON MILLER: Okay. Now, you're going                  9 to refer to your papers there --                  10 MS. PERRY: Yes.                  11 BOARD MEMBER: Yeah, she can testimony --                  12 testify.                  13 CHAIRPERSON MILLER: -- (inaudible)? So, I -                  14 - do you have any objection to her -- Ms. Perry                  15 testifying, I mean, if she's sworn in?                  16 MR. O'BRIEN: No, I do not.                  17 CHAIRPERSON MILLER: Okay. Then I don't have                  18 any objection. Okay.                  19 MS. PERRY: Okay. Real quick. In the fact                  20 finding -- in the transcript when you did your fact                  21 finding hearing Mr. O'Brien mentioned a case of the                  22 D.C. Court of Appeals on the Upper Georgia Avenue</p>
<p style="text-align: right;">207</p> <p>1 step out?                  2 MR. O'BRIEN: -- to the rule on witnesses,                  3 please.                  4 MR. LEDERER: Yeah, that's fine.                  5 CHAIRPERSON MILLER: Okay. Go ahead.                  6 MR. LEDERER: (inaudible).                  7 MR. ALBERTI: Ms. Perry, did you want to                  8 speak just to enter evidence or do you want to enter                  9 testimony?                  10 MS. PERRY: Enter evidence.                  11 MR. ALBERTI: Oh, well --                  12 MR. JONES: Would that be testimony?                  13 MR. ALBERTI: Without testimony?                  14 MR. O'BRIEN: No, I think Ms. Perry has some                  15 things she wants to say? Okay?                  16 MR. LEDERER: Let me just --                  17 MR. JONES: Ms. Perry, do you have some                  18 testimony?                  19 MS. PERRY: I don't know whether it's                  20 testimony or evidence, because I'm very confused.                  21 (Multiple speakers at one time.) She'll come                  22 and get you when we're ready.</p>	<p style="text-align: right;">209</p> <p>1 Planning Committee versus the ABC Board. And it                  2 referred to what is primary. And in it Mr. -- he left                  3 the record kind of muddled and opened.                  4 It said -- so what the Court of Appeals said                  5 is what I think is a very closely and closely analogous                  6 situation. Chief source of revenue, primary business                  7 is it doesn't necessarily mean a fixed percentage.                  8 We're going to let the Board decide what that means.                  9 So my point here is that I don't think we are bound and                  10 locked into the proposition that primary means 50                  11 percent plus one.                  12 Just for the record, and I will be entering                  13 this in, here is the decision of the Court of Appeals.                  14 And it basically remanded it back to the Board. It                  15 disagreed with Mr. O'Brien's analogy. And it said, the                  16 Board is not free to disregard the statutory criteria                  17 and base its findings on a mere promise by the                  18 Applicant to make its chief source of revenue the sale                  19 of meals rather than beverages. Hard evidence is                  20 required not promises or good intentions. And the                  21 Board failed to make the necessary finding that the                  22 chief source of the Chevered Park Restaurant's (ph)</p>

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210	<p>1 revenue is from the sale of food and not beverages. We                  2 must reverse the decision of the Board and remand for                  3 further processing.                  4       It is my understanding that the Grocery Store                  5 Amendment Act of 2000 was done for a Walgreen's -- no,                  6 for Whole Foods and that exemption was made to put --                  7 by emergency declaration to encourage high quality                  8 grocery stores to locate new stores in the District of                  9 Columbia where they -- in areas that were under served.                  10       Now, what is the definition of -- these are,                  11 and I can put them into record, but I would want to                  12 Xerox them first. These are both the committee                  13 transcripts which all refer to a supermarket or grocery                  14 store, they do not refer to a drugstore. The council                  15 has not weighed in on that yet and maybe it does need                  16 to, since there is now overlap.                  17       But a supermarket or grocery store, according                  18 to the encyclopedia, because I had nowhere else to                  19 look, is a self-service store offering a variety of                  20 food, household merchandise, organized into                  21 departments. It typically comprises fresh meat, fresh                  22 produce, dairy and baked goods along with shelf space</p>	212	<p>1 definition is not grocery store, it is a pharmacy that                  2 might have an accessory of a convenience store type                  3 thing where you can pick up milk or eggs, but you can't                  4 purchase meat, fresh poultry or anything else.                  5       I also want to submit into evidence Aquila                  6 Recovery. This is the ask your doctor if you're                  7 drinking or drugging too much, 4455 Connecticut Avenue,                  8 a licensed chemical dependency clinic, eligible for                  9 most insurance plans. A certificate of need was                  10 granted for Ward 3 by the Department of Health less                  11 than a year ago, and I can get all the documents for                  12 you, that we had a drinking and dependency problem in                  13 Ward 3 and they authorized this clinic. And they also                  14 authorize -- this clinic also has prescriptions that                  15 people I guess that are chemically dependent, they do                  16 prescriptions, that will be taking their prescriptions                  17 to Walgreen's and/or CVS.                  18       I also want to get into the record that                  19 you've heard the inspector with all of the liquor                  20 licenses we have, within two blocks you saw the number                  21 of licensed establishments. If Walgreen's is granted a                  22 license as a grocery store, we will then be seeing our</p>
211	<p>1 reserved for canned and packaged goods as well as                  2 various nonfood items and household cleaners, pharmacy                  3 products, blah, blah, blah.                  4       A convenience store or corner store is a                  5 small store that stocks a range of every day items such                  6 as groceries, toiletries, alcoholic and soft drinks,                  7 possibly, tobacco products, newspapers, blah, blah,                  8 blah.                  9       Basic -- convenience stores, various types                  10 exist but you think mostly carry small items such as                  11 desserts, et cetera and it's usually for when you're                  12 shopping in a store to pick up something before you go                  13 home.                  14       And we would submit that that is what                  15 Walgreen's is, is a convenience store. They do that in                  16 their own literature and on their website.                  17       Then I went to -- when words aren't defined I                  18 went to Webster's dictionary, the unabridged, which is                  19 what the Board of Zoning uses, so I just went to that.                  20 The definition of primary, something that stands first                  21 in order, rank or importance. And I would submit here                  22 that the primary purpose of Walgreen's, by the</p>	213	<p>1 CVS come in here for the same exemption, which will                  2 leave us with exactly two businesses between Windham                  3 Place and Van Ness Street that won't have licenses.                  4 One is the Bank of America and one is a barber shop,                  5 everything else will have liquor licenses, including                  6 InteliStaf (ph), which we -- which is catty-corner                  7 across the street from Walgreen's that has a license.                  8       And with that I'm ready for Brian.                  9       CHAIRPERSON MILLER: For what?                  10       MS. PERRY: Brian.                  11       CHAIRPERSON MILLER: Oh, okay. First --                  12       MS. PERRY: Oh, you get to --                  13       CHAIRPERSON MILLER: -- cross examination.                  14       MS. PERRY: Oh, okay. I forgot. Sorry.                  15       CHAIRPERSON MILLER: Mr. O'Brien, do you have                  16 any questions?                  17       MR. O'BRIEN: Just a couple.                  18       MS. PERRY: I figured.                  19       MR. O'BRIEN: What was there before                  20 Walgreen's was built?                  21       MS. PERRY: It was a gas station and it had                  22 three service bays.</p>

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214	<p>1 MR. O'BRIEN: And --</p> <p>2 MS. PERRY: And it had a little convenience</p> <p>3 store, I think, a Tiger -- it wasn't Tiger Mart that</p> <p>4 the Esso Stations have, it was a smaller one.</p> <p>5 MR. O'BRIEN: Okay. And was it not</p> <p>6 considered a neighborhood eyesore?</p> <p>7 MS. PERRY: No, it was not.</p> <p>8 MR. O'BRIEN: This is not the location where</p> <p>9 the zoning administrator shut it down because it was</p> <p>10 really a car repair place and not a grocery store?</p> <p>11 MS. PERRY: The area that you're talking</p> <p>12 about was not the corner gas station. The area that</p> <p>13 you're talking about was in the alley. It was in the</p> <p>14 building owned by Dunjumul (ph), next to where the</p> <p>15 Walgreen's site is. And it's where the Board has now</p> <p>16 authorized Direct Due Domain, or whatever their name</p> <p>17 is, the wholesaler's license. There's no entrance to</p> <p>18 it from Connecticut Avenue, it faces the 625 unit Van</p> <p>19 Ness South building, that is the -- was the subject of</p> <p>20 all the BCA hearings, not the gas station and those</p> <p>21 service bays, it was the service repair shop in the</p> <p>22 basement of the Dunjumul building.</p>	216	<p>1 talking, not me as an ANC commissioner, just serve</p> <p>2 their own brand of beer and their own brand of wine of</p> <p>3 which they have -- I forgot how it's displayed, but</p> <p>4 they evidently didn't feel theirs was good end, because</p> <p>5 they turned me down.</p> <p>6 MR. O'BRIEN: In fact, Commissioner Perry,</p> <p>7 you're just plain opposed to this license under any</p> <p>8 circumstances. Is that not correct?</p> <p>9 MS. PERRY: Are you talking to me personally</p> <p>10 or --</p> <p>11 MR. O'BRIEN: Yes, I'll talk to you</p> <p>12 personally.</p> <p>13 MS. PERRY: I'm -- no, I'm not.</p> <p>14 MR. O'BRIEN: You're not? All right. So,</p> <p>15 the question again is, what conditions could the Board</p> <p>16 impose upon this license to make it palatable to you</p> <p>17 personally?</p> <p>18 MS. PERRY: I can't answer that because I</p> <p>19 haven't given it any thought as to me personally, and</p> <p>20 I'm --</p> <p>21 MR. O'BRIEN: Well, you were one of the three</p> <p>22 votes against --</p>
215	<p>1 MR. O'BRIEN: Okay. Commissioner Perry</p> <p>2 you're here today representing the ANC.</p> <p>3 MS. PERRY: Correct.</p> <p>4 MR. O'BRIEN: I am correct, am I not, that</p> <p>5 the ANC was divided as to whether to oppose the</p> <p>6 Walgreen's application?</p> <p>7 MS. PERRY: The ANC voted in favor of it.</p> <p>8 Two - - and we could take another vote, if you'd like,</p> <p>9 in September. Two members of the ANC that were opposed</p> <p>10 to this license could not be at the meeting that night.</p> <p>11 MR. O'BRIEN: That didn't answer my question.</p> <p>12 MS. PERRY: It was a three to two vote.</p> <p>13 MR. O'BRIEN: Three to two vote to protest?</p> <p>14 MS. PERRY: Yes, it was.</p> <p>15 MR. O'BRIEN: Okay. What conditions could</p> <p>16 the Board impose on this license that would make it</p> <p>17 palatable to you?</p> <p>18 MS. PERRY: It's not to me, it would be to</p> <p>19 the ANC. So, let's distinguish that. And I would have</p> <p>20 to go back to the ANC to ask them what conditions.</p> <p>21 Originally, in mediation, I had suggested that</p> <p>22 Walgreen's just provide -- and this was just me</p>	217	<p>1 MS. PERRY: I --</p> <p>2 MR. O'BRIEN: -- this at the ANC.</p> <p>3 MS. PERRY: -- my vote was based on the</p> <p>4 testimony that we heard the night of the ANC meeting</p> <p>5 from the representatives from Giant, Calvert Woodley,</p> <p>6 Van Ness Liquors and the residents from Van Ness North,</p> <p>7 East and from different parts of the neighborhood that</p> <p>8 came and testified. I base my votes on what I hear at</p> <p>9 an ANC meeting versus my own personal feelings.</p> <p>10 MR. O'BRIEN: Well, based on what you've</p> <p>11 heard today at this hearing, what conditions could the</p> <p>12 Board impose upon this license that would make it</p> <p>13 palatable to you personally?</p> <p>14 MS. PERRY: I cannot answer that without</p> <p>15 giving it some thought.</p> <p>16 MR. O'BRIEN: Okay. Those are my questions.</p> <p>17 CHAIRPERSON MILLER: Board questions?</p> <p>18 Mr. Alberti?</p> <p>19 MR. ALBERTI: Ms. Perry, you've talked about</p> <p>20 over concentration, but you haven't specifically said -</p> <p>21 - told the Board what detrimental effects you think</p> <p>22 this license would have on peace, order and quiet,</p>

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218	<p>1 parking, pedestrian, vehicular safety or property 2 values. 3 MS. PERRY: I can -- 4 MR. ALBERTI: And so I'll give you an 5 opportunity now to speak to those. 6 MS. PERRY: Okay. Thank you. Over 7 concentration, to me, means the number of licenses in 8 the area. We have a sufficient amount of licenses now 9 to serve our neighborhood, plus the other people coming 10 into the neighborhood. Walgreen's, to me, and I'm 11 speaking from my personal observations, because I live 12 in that building, on Veazey Terrace is our -- basically 13 the main door to our building, because that's the door 14 that takes you out to the Metro and Giant and 15 everything else, it's more convenient than our front 16 door. We have observed, and I have observed, contrary 17 to what was said here today, delivery trucks backing in 18 and out of trying to angle their way to get into that 19 loading dock. They drive over Archstone Van Ness South 20 property, they drive -- they come in and out because of 21 the angles they have to try and negotiate, that we 22 almost had a -- very -- a few near misses.</p>	220	<p>1 were made she didn't mention the fact that when school 2 was in session, the Edmund Burke School, which is 3 junior high to high school, does not have a cafeteria. 4 So, all of the students go into either Giant or 5 Walgreen's, basically, to get their sandwiches and to, 6 you know, eat their food or to get food. So, alcohol 7 is going to be clearly distributed there. 8 We don't feel we need another license. We 9 have Giant across the street. We have Van Ness Liquors 10 on that same block. We now have another wine store 11 directly next door, which is that Direct Due Domain 12 that hasn't even moved in yet, it was just approved as 13 a wholesaler for sales and -- and we don't even know 14 the impact of that yet, because it doesn't have a 15 loading dock, it doesn't have any parking places, it 16 has nothing. So, we are very concerned about the 17 number of alcohol licenses in the neighborhood. 18 MR. ALBERTI: Okay. Thank you. 19 CHAIRPERSON MILLER: Mr. Silverstein? 20 MR. SILVERSTEIN: Commissioner Perry, I -- 21 I'll be somewhat repeating what the Applicant's counsel 22 had asked you, but I always ask this question. And</p>
219	<p>1 The alley is blocked more than you know. 2 Giant's loading dock, for the record, is not -- is on 3 Windham Place, it's not on -- and there is no entrance 4 to the Giant Store from Veazey Terrace. The Walgreen's 5 -- the Calvert Woodley loading dock is on Windham, if 6 I'm not mistaken. So, trucks are blocking the 7 neighborhood, they are on the street, they are parked - 8 - as I said, blocking, basically, our back door and the 9 way. And it has -- it is very dangerous, there is -- 10 according to D- doc (ph) there's a thousand cars that 11 go through that alley on any given day in a ten hour 12 period, because it is a two way alley. And the corner 13 of Connecticut and Van Ness is probably one of the 14 worst in the District, according to Mayor Fenty as for 15 getting through, so everybody uses the alleys to walk 16 and to -- I'm not saying it's right, but it's the way 17 basically people do walk in our neighborhood. And it 18 is our back door. 19 Over concentration, to me, is how many 20 licenses do we need when all we're going to have left 21 is basically a barber shop, in a two block radius, that 22 doesn't have a license. When the inspector's reports</p>	221	<p>1 understand that I'm being respectful that you oppose 2 this, but we always ask, if it came to the opposite and 3 we were going to decide in favor, what could we do to 4 make it more livable for you? What do you need, 5 arguendo, you know, for the sake of argument, what do 6 you need to make this more palatable -- 7 MS. PERRY: You know -- 8 MR. SILVERSTEIN: -- if it happens in the 9 worst? 10 MS. PERRY: I really cannot answer that 11 because I don't know what can make it more palatable, 12 because their loading dock is so big. The Pepsi truck 13 doesn't fit in it, the 7 -- the their own truck that 14 brings groceries blocks the alley and it has to back 15 over our property, basically, to get into their loading 16 dock. I honestly, without giving it some thought, you 17 know, we have never thought -- I can't answer you 18 personally, because I didn't look at it from that 19 standpoint. 20 MR. SILVERSTEIN: Okay. I'll make you this 21 deal, if you can't answer that now, I'll leave the 22 question open and if you find a way to, you know, later</p>

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222	<p>1 in the hearing and say, "Oh, this came to mind, if you 2 were to, you know, stop the sale at such an hour or if 3 you would do this and that it might make things better 4 --" 5 MS. PERRY: You know, one -- 6 MR. SILVERSTEIN: -- I'll reopen the 7 question. 8 MS. PERRY: I have to be honest, one of my 9 concerns, and this is a personal concern, and it did 10 come up at our ANC meeting also, we have, in our 11 neighborhood we are not a popular neighborhood, we're 12 not Cleveland Park or U Street, we need our small 13 businesses, we really do, and we need to keep them. 14 Because, when we lose storefronts we don't get them 15 back. What I'm getting at is, we have some small 16 businesses there that will be hurt by this license. 17 We used to have a small video store in the 18 Giant Plaza. Video Warehouse moved in, we lost it. 19 And that is a concern of mine is how do we -- this will 20 take further away from their business. 21 MR. SILVERSTEIN: I'll withdraw the question, 22 then.</p>	224	<p>1 MS. PERRY: We definitely feel we're over 2 concentrated. 3 MR. JONES: But you can't tell me what the 4 impact of -- 5 MS. PERRY: If you walk in -- 6 MR. JONES: -- can you tell me -- 7 MS. PERRY: If you walk in to -- 8 MR. JONES: Can you tell me, specifically, 9 how over concentration, generally in your neighborhood, 10 has impacted your quality of life? 11 MS. PERRY: I can very easily tell you that I 12 can't walk into my trash room on a Saturday morning or 13 a Sunday morning or ever a Friday that you don't get 14 drunk from the number of wine bottles in it. We -- I 15 can't -- 16 MR. JONES: So, you get drunk from the number 17 of wine bottles where exactly? 18 MS. PERRY: In our trash rooms, our buildings -- 19 MR. JONES: In your trash rooms? 20 MS. PERRY: I'm just not -- I'm talking my 21 personal experience, I'm not talking from the ANC's 22 perspective. We have a great -- we have a lot of</p>
223	<p>1 MS. PERRY: Maybe I'm not answering the it 2 correctly, but -- 3 MR. SILVERSTEIN: You're not. Okay, I'm 4 sorry. Mr. Jones. 5 CHAIRPERSON MILLER: Mr. Jones? 6 MR. JONES: Thank you, Madam Chair. You keep 7 referring to not being able to answer what would make 8 it more palatable to you personally. Have you given 9 any consideration to it as an ANC? 10 MS. PERRY: Our ANC had -- did not discuss 11 that, I have to be honest. And without going back 12 actually at our September meeting and calling -- you 13 know, having this back on our agenda to see how other 14 people feel, we did not discuss it. 15 MR. JONES: Okay, so -- 16 MS. PERRY: But, you know -- 17 MR. JONES: -- why are you protesting? 18 MS. PERRY: We protested the license because 19 of peace, order and quiet, the number of liquor 20 licenses we already have. 21 MR. JONES: So, you feel like there's over 22 concentration?</p>	225	<p>1 people, we have a lot of young students in our 2 building, we have a lot of drinking going on. We now 3 have to have, because of it, a drug and alcohol rehab 4 clinic a block away. 5 MR. JONES: Um hmm. 6 MS. PERRY: I don't know how you want me to 7 answer it. 8 MR. JONES: So, no, you're answering it -- 9 MS. PERRY: Over concentration is -- 10 MR. JONES: -- fine. You're answering it 11 fine. The next question -- 12 MS. PERRY: Yeah, we have a two block stretch -- 13 MR. JONES: Okay, let me interrupt you. 14 MS. PERRY: -- with already -- one store that 15 won't have a license and that's a barber -- 16 MR. JONES: Ma'am? 17 MS. PERRY: -- and maybe he'll apply. 18 MR. JONES: Ma'am? Ma'am? I'm trying to 19 help you help me. 20 MS. PERRY: Okay. 21 MR. JONES: All right. So, if you could just 22 bear with me for a second.</p>

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226	<p>1 MS. PERRY: Sure, I'll be happy to. 2 MR. JONES: So, you have an existing 3 condition right now, Walgreen's doesn't have a license 4 to sell alcohol. 5 MS. PERRY: Correct. 6 MR. JONES: Right now you have an existing 7 condition where you say you get drunk when you walk 8 downstairs, because you have so many wine bottles in 9 the trash can. If -- I'm maybe paraphrasing a little 10 bit, but that was the context or the -- what I got from 11 what you said. 12 MS. PERRY: It's -- that's just my personal 13 feeling. 14 MR. JONES: That's your personal feeling. 15 Okay. 16 MS. PERRY: That we have enough wine and beer 17 in the area, and alcohol. 18 MR. JONES: Okay. So, your opposition to 19 this license, one, is based on your concern that this 20 establishment selling alcohol is going to contribute 21 further to individuals putting more wine bottles in the 22 trash and thus obviously consuming more.</p>	228	<p>1 MS. PERRY: -- but you know -- but let's be 2 honest. 3 MR. JONES: Or this applicant. I'm sorry. 4 MS. PERRY: Walgreen's is a drugstore. 5 People are going to go in there and treat it just like 6 Giant, maybe, or some other store where you're going to 7 go in and you're going to buy your -- pick up your 8 prescription and you might pick up a bottle of wine as 9 you're leaving. But we do -- is it something that this 10 neighborhood needs or do we need a good quality 11 drugstore? 12 MR. JONES: Which you currently have, I'm 13 assuming, based on its presence. 14 MS. PERRY: I guess so. I mean, I've not 15 bought -- 16 MR. JONES: Well, let me -- 17 MS. PERRY: -- I haven't had the need. 18 MR. JONES: -- I guess I was kind of being 19 terse or a little contrite. Would you consider the way 20 in which this store is being ran and operated -- as an 21 ANC, would you consider this store to be a good 22 neighbor?</p>
227	<p>1 MS. PERRY: Not just in the trash. I have to 2 be -- you know, you're putting me on the spot. We came 3 here today to ask for a delay, so maybe we could answer 4 these questions. I have to be honest, I don't have a 5 personal feeling in this, nor do I have a personal 6 stake in this. You keep wanting to put this on me, this 7 is not me. 8 MR. JONES: So, with all due respect, I'm 9 asking from the standpoint of the ANC. 10 MS. PERRY: Well, from the standpoint of the 11 ANC, we feel that there's a -- that we have enough 12 liquor licenses to serve the needs of our residents. 13 We have enough truck traffic. The alleys are 14 congested. More deliveries mean more trucks. We do 15 have a safety problem, we do have a drinking problem in 16 the area. And that's -- 17 MR. JONES: But those -- 18 MS. PERRY: -- already been proven. 19 MR. JONES: -- but those are existing 20 problems prior to this licensee -- 21 MS. PERRY: But another license -- 22 MR. JONES: -- getting a license, right?</p>	229	<p>1 MS. PERRY: No. 2 MR. JONES: No? Okay, why not? 3 MS. PERRY: Because they have not controlled 4 their truck traffic. Their customers and patrons that 5 do have trouble parking in their parking lot. I don't 6 know if you've ever seen it. You come in on Veazey 7 Street and it's straight down. Many of them do park in 8 the alley, they park on private property, they park on 9 Veazey Terrace. The four spaces in the back, one of 10 them, according to the Board, was supposed to be a 11 handicapped space, a lot of times there are trucks 12 parked on the apron because they can't get into that 13 loading dock and it blocks the alley and we get the 14 horns. People can't get through the alley because it's 15 two ways. You should hear the horns going. We are 16 16 feet away. 17 MR. JONES: Okay. So, it sounds like parking 18 slash traffic is a point over concern for you as an ANC 19 as it relates to the current operations of this 20 establishment? 21 MS. PERRY: Correct. 22 MR. JONES: Is that a fair -- okay.</p>

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<p style="text-align: right;">230</p> <p>1 MS. PERRY: That's fair. That is fair. You                  2 know, we -- more -- we also do have a pedestrian safety                  3 problem with the trucks in this alley and pedestrians                  4 coming out of our doors. And it's not just my -- our                  5 doors, it's Van Ness North, it's Van Ness East, it's                  6 the Consulate, it's the way to the Metro.                  7 MR. JONES: Understood. But -- and that's                  8 related to --                  9 MS. PERRY: Pedestrian safety.                  10 MR. JONES: -- trucks -- excuse me.                  11 MS. PERRY: Trucks.                  12 MR. JONES: Is that related to trucks --                  13 MS. PERRY: Correct.                  14 MR. JONES: -- and deliveries?                  15 MS. PERRY: It is. It really is.                  16 MR. JONES: Okay. All right. And --                  17 MS. PERRY: Because of the angles that have                  18 to be maneuvered to get into that loading dock.                  19 MR. JONES: Okay. And would the timing of                  20 those deliveries make it any better, any worse? Is it                  21 -- if we only got deliveries between 8:00 p.m. and                  22 10:00 p.m., hypothetically, would that -- is that</p>	<p style="text-align: right;">232</p> <p>1 identified, as an ANC, as being an issue related to                  2 deliveries, pedestrian issues or whatever the case may                  3 be? Or you just know that you feel like it's a problem                  4 and you're looking for some help in dealing with that                  5 problem? Because that problem exists now. This                  6 establishment doesn't have a license, that problem                  7 exists now, so that problems --                  8 MS. PERRY: You know, I really have to be                  9 honest --                  10 MR. JONES: -- not going to go away. But we                  11 potentially will be in a position --                  12 MS. PERRY: -- I can't answer you within ANC.                  13 I can only base what we protested on based on what we                  14 heard at the ANC, not hypotheticals. As -- the                  15 commissioners did not ask anybody out in the audience                  16 what would make it palatable to them, what would make -                  17 - what conditions, what hours would you want the                  18 trucks. Because I'm sure we would get a myriad of                  19 answers to that.                  20 MR. JONES: Okay. That's more than fair.                  21 So, the only --                  22 MS. PERRY: I mean --</p>
<p style="text-align: right;">231</p> <p>1 something that you think would make a difference, or --                  2 MS. PERRY: I think if you heard that beep                  3 beep of the back up and your window was 16 feet away,                  4 you would not be happy at 10:00 p.m. at night. I mean,                  5 I'm a night person, so it would hurt me if you did it                  6 at 7:00 in the morning.                  7 MR. JONES: Okay. So, let me back away --                  8 MS. PERRY: I'm just saying --                  9 MR. JONES: -- let me back away from the                  10 specific --                  11 MS. PERRY: -- people have different sleep                  12 habits.                  13 MR. JONES: Let me back away from the                  14 specifics to the hypothetical, because I feel some                  15 reluctance to your being able to -- or willingness to                  16 answer the question --                  17 MS. PERRY: It's not that.                  18 MR. JONES: -- in the way I'm asking.                  19 MS. PERRY: I -- you know, I really can't                  20 answer.                  21 MR. JONES: So, as an ANC, have you given any                  22 consideration at all, to what you've just now</p>	<p style="text-align: right;">233</p> <p>1 MR. JONES: -- the only substantiate -- or                  2 the only item that I've heard from you, from an ANC                  3 standpoint that appears to be a true protestable issue                  4 is related to the deliveries, traffic related to the                  5 trucks coming back and forth or what have you. I have --                  6 MS. PERRY: Over concentration of licenses.                  7 We have -- every storefront has a license to sell wine.                  8 MR. JONES: Okay.                  9 MS. PERRY: I mean, I think that is an issue.                  10 MR. JONES: So, related to noise, any issues                  11 there?                  12 MS. PERRY: I'm sure, if I get the police                  13 report, and I'll be happy to get it. And the                  14 loitering, I mean, when you hear -- you know, I will be                  15 happy if we have -- if we're given the time, because                  16 I'm not sure how much time we have left, to have                  17 Calvert Woodley come in here and talk about loitering.                  18 I can get the police reports of the number of thefts of                  19 alcohol we have in these stores, of the numbers of                  20 stores that have now had to hired guards.                  21 I mean, I'd be happy to provide all of that                  22 and that's part of the reason we did ask for the delay</p>

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234	<p>1 today so that we could get all this evidence quickly. 2 You know, we only saw some of this grocery store stuff 3 on, I guess, Monday or Tuesday. So, I mean, some of 4 the questions you're answer -- you're asking are not 5 questions that we asked at the ANC meeting. And I'm 6 uncomfortable -- 7 CHAIRPERSON MILLER: Okay. 8 MS. PERRY: -- answering them -- 9 MR. JONES: That's -- 10 MS. PERRY: -- from an ANC perspective 11 without the ANC being here and having those questions 12 answered. 13 MR. JONES: Oh, and -- just to make sure I'm 14 clear, you're here as what? 15 MS. PERRY: I'm here as the representative of 16 the ANC -- 17 MR. JONES: Okay. Thank you. 18 MS. PERRY: -- based on what we heard that 19 night. 20 MR. JONES: Thank you, Madam Chair. 21 CHAIRPERSON MILLER: Okay. Are there other 22 board questions?</p>	236	<p>1 MR. BROOKS: Thank you, Madam Chair. 2 CHAIRPERSON MILLER: Okay. Mr. Nophlin? 3 MR. NOPHLIN: Yes, please. Yes, I'd like to 4 know, excuse me, what percentage of the people in the 5 area where you live feel the way you do? Have you 6 polled that area to see? 7 MS. PERRY: We -- you know, I have to be 8 honest, the ANC posted the agenda item, people came. 9 We did not do a survey of all of the buildings or 10 anything else. 11 MR. NOPHLIN: What percentage of you think, 12 10 percent, 20 percent? 13 MS. PERRY: Oh, I don't even know east from 14 west, I had to learn that, so I'm the wrong one to ask 15 percentages. I can't answer that. You know, we did 16 not do a survey, so I can't tell you. Our -- my 17 apartment building alone has over 2,000 people living 18 in it. I know people that I talk to, just in a lobby 19 and said, "We might have this hearing today," all said 20 we have enough licenses was the answer I was getting. 21 And I can, you know, being people that I've 22 spoken to, but did we do a survey? No. I know</p>
235	<p>1 Mr. Brooks? 2 MR. BROOKS: Yes. Just one question, Ms. 3 Perry. Given all of the trucks and the traffic and the 4 parking illegally on private property and blocking the 5 alley on occasions, do you call the police when that 6 occurs? 7 MS. PERRY: We have many, many times. Our -- 8 in fact I personally have gone out and asked them to 9 move from the Van Ness South loading dock. And I won't 10 tell you the answers these trucks give me. Personally, 11 I have stood in the alley, I have also -- residents of 12 ours have called the police. It's not considered 13 priority for the police. 14 MR. BROOKS: So, they don't respond. 15 MS. PERRY: You dial 311, by the time you -- 16 the police come, a truck is -- half an hour, over an 17 hour later, the trucks are gone or the car is gone. I 18 mean, unfortunately that's the case. And I won't tell 19 you what the FedEx driver delivering to Walgreen's said 20 to me. They aren't very nice when they can't park and 21 we ask them to move or to tell them they're on private 22 property.</p>	237	<p>1 representatives from Van Ness North were there, from 2 The Park Connecticut at our meeting, but I can't give 3 you a head count as what people -- how many people feel 4 that way, because we have -- in my single member 5 district alone I have more than 3,000 residents. 6 MR. NOPHLIN: Thank you, Madam Chair. Thank 7 you. 8 CHAIRPERSON MILLER: Okay. Commissioner 9 Perry, did the ANC vote on a resolution related to this 10 protest? 11 MS. PERRY: Yes, we did. 12 CHAIRPERSON MILLER: So, did you articulate, 13 in that resolution, the specific concerns? 14 MS. PERRY: No, we just put in -- if I 15 remember the letter correctly, the protest letter, it 16 just listed what our areas of concern were. We didn't 17 elaborate on any of them, we just said, like, over 18 concentration, peace order and quiet on our -- that PIF 19 sheet, whatever. We did list -- oh, no, grocery store. 20 CHAIRPERSON MILLER: Okay. And I'm sure I 21 understand you correctly that the ANC did not address 22 any kind of recommendations as to what would make it</p>

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<p style="text-align: right;">238</p> <p>1 palatable at all. They just --                  2 MS. PERRY: We really --                  3 CHAIRPERSON MILLER: -- identified those                  4 areas of protest.                  5 MS. PERRY: We just identified the areas. We                  6 heard the -- we heard from people that we have enough                  7 licenses to satisfy the community and the general                  8 public, because I think Calvert Woodley is a very                  9 popular store in the area. I think you can see their                  10 traffic blocks up Connecticut Avenue on any given                  11 Saturday or Friday night. So, no, we did not.                  12 CHAIRPERSON MILLER: Okay. And if I heard                  13 you correctly, your testimony with respect to problems                  14 with the truck traffic in the alley and pedestrian                  15 safety could be documented in police reports and --                  16 MS. PERRY: I believe it can.                  17 CHAIRPERSON MILLER: -- any other                  18 documentation?                  19 MS. PERRY: When I talked about the police                  20 reports, I was talking that I would like to get police                  21 reports for crime in that general area related to, you                  22 know, thefts of alcohol, thefts in the neighborhood</p>	<p style="text-align: right;">240</p> <p>1 when? 2000 what, '11, '10?                  2 MR. O'BRIEN: I think the testimony was                  3 December 23rd, 2011.                  4 CHAIRPERSON MILLER: 2011. Did -- has the                  5 ANC made any complaints with respect to the safety of                  6 the alley, to Walgreen's?                  7 MS. PERRY: Yes, we have and that's part of                  8 the reason, I think, they changed their truck stop.                  9 CHAIRPERSON MILLER: And they changed in                  10 response to your complaint?                  11 MS. PERRY: That's why I think they started                  12 saying that they were only going to take deliveries                  13 through the back, even though Panache, a lot of times,                  14 does park on the side. But I -- and I think they                  15 testified to that, that in response to the complaint --                  16 CHAIRPERSON MILLER: Okay.                  17 MS. PERRY: -- they did try to address some                  18 of it. I think part of the problem, truthfully, is the                  19 loading dock and that area, because of the size of the                  20 store, is just not big enough to accommodate a lot of                  21 these trucks.                  22 CHAIRPERSON MILLER: Okay. The trucks are</p>
<p style="text-align: right;">239</p> <p>1 from the stores. I don't know how the police identify                  2 whether the accident or the pedestrian involved was in                  3 the alley or on the street. I honestly can't answer                  4 that.                  5 CHAIRPERSON MILLER: Okay.                  6 MS. PERRY: And I don't know how many people                  7 actually call when they almost get hit by a truck or                  8 they just jump out of the way and go on their merry                  9 way. I do know that there are reports, though, for                  10 pedestrian accidents on the corners of Connecticut and                  11 Van Ness and Connecticut and Veazey.                  12 CHAIRPERSON MILLER: Okay. I was just                  13 wondering if you had any other evidence that you were                  14 interested in submitting, related to what goes on in                  15 that alley.                  16 MS. PERRY: You know, I believe we could,                  17 given some time, put together something for you. You                  18 know, I would speak to my fellow commissioners and do                  19 some kind of a survey or put together some kind of                  20 form.                  21 CHAIRPERSON MILLER: Okay. My last question                  22 is, I guess, when -- Walgreen's has been there since</p>	<p style="text-align: right;">241</p> <p>1 too big for the loading dock?                  2 MS. PERRY: In a lot of cases, yes. You                  3 know, the Pepsi truck, the -- originally Walgreen's was                  4 going to go for a variance at the BZA on their loading                  5 dock, they chose not to.                  6 CHAIRPERSON MILLER: Okay. All right. I                  7 don't have any other questions. Any --                  8 MR. O'BRIEN: Just based --                  9 CHAIRPERSON MILLER: -- redirect?                  10 MR. O'BRIEN: -- two quick ones for                  11 clarification based on --                  12 CHAIRPERSON MILLER: All right.                  13 MR. O'BRIEN: -- the Board's questions.                  14 CHAIRPERSON MILLER: Okay.                  15 MR. O'BRIEN: Number one, you -- Commissioner                  16 Perry you were referring to a trash room full of wine                  17 bottles. That's the interior trash room in your                  18 building, correct?                  19 MS. PERRY: Correct. I haven't been in other                  20 buildings. I'm just saying we have trash room -- we                  21 have two on each floor in our building.                  22 MR. O'BRIEN: All right. You mentioned</p>

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<p style="text-align: right;">242</p> <p>1 windows within 16 feet.                  2 MS. PERRY: Yes.                  3 MR. O'BRIEN: Okay. Where is your window?                  4 MS. PERRY: Oh, my window is not -- I do not                  5 overlook, I'm down -- further down the alley. I cannot                  6 see Walgreen's, unless I actually go out on my patio                  7 and make an effort to do it.                  8 MR. O'BRIEN: Okay. Thank you.                  9 CHAIRPERSON MILLER: Okay.                  10 MS. PERRY: But I do go out -- just to                  11 clarify, I do in and out the back door on -- I won't                  12 tell you, probably ten times a day.                  13 CHAIRPERSON MILLER: Ms. Perry, do you want                  14 to call your next witness?                  15 MS. PERRY: Brian? Yes.                  16 CHAIRPERSON MILLER: Yeah.                  17 MR. ALBERTI: Mr. Jones, when Ms. Perry                  18 returns, would you summarize the time (inaudible)?                  19 MR. JONES: (inaudible).                  20 MR. ALBERTI: Thank you.                  21 (Pause in proceedings.)                  22 MS. PERRY: You can't get in to get your</p>	<p style="text-align: right;">244</p> <p>1 the Board after. I wrote it out.                  2 CHAIRPERSON MILLER: Okay. So, it's being                  3 transcribed.                  4 MS. PERRY: How much time do we have?                  5 MR. JONES: Madam Chair, we have 20 minutes                  6 left for Protestant, 23 minutes left for the Applicant.                  7 MS. PERRY: Brian, would you please make your                  8 testimony very quick and abbreviated. In other words,                  9 run through it.                  10 MR. LEDERER: Well, my name is Brian Lederer                  11 and I'm here on the protest and I live in the Van Ness                  12 Apartments, which is across the alley --                  13 MR. ALBERTI: Brian, could you speak up.                  14 BOARD MEMBER: Speak up.                  15 MR. LEDERER: I live at the Van Ness                  16 Apartments which is across from the alley. So, I know                  17 why we're here. So, in terms of -- I'm testifying                  18 about what I concluded Walgreen's was in the business                  19 of, because of the issue of whether it was a full                  20 service grocery store. So, I went over there and looked                  21 at it, walked all over the places.                  22 And what I started out with first was to see</p>
<p style="text-align: right;">243</p> <p>1 witnesses. My first witness is Brian Lederer.                  2 CHAIRPERSON MILLER: Your second witness.                  3 MS. PERRY: He has some testimony.                  4 MR. LEDERER: I actually wrote it out.                  5 MS. PERRY: Oh, he has to -- you have to be                  6 sworn in.                  7 CHAIRPERSON MILLER: You need to be sworn in.                  8 MS. PERRY: No, you have to stand up to do                  9 it.                  10 MR. LEDERER: Oh, okay.                  11 CHAIRPERSON MILLER: Do you swear to tell the                  12 truth, the whole truth, nothing but the truth?                  13 MR. LEDERER: I do.                  14 CHAIRPERSON MILLER: Okay. Now, do you need                  15 access to all your papers over there? We let Ms. Perry --                  16 MR. LEDERER: No, I can it here if you want.                  17 CHAIRPERSON MILLER: You can sit there?                  18 Okay.                  19 MR. LEDERER: I have my testimony.                  20 CHAIRPERSON MILLER: Okay, good. Go ahead                  21 and have a seat.                  22 MR. LEDERER: Which I will make available to</p>	<p style="text-align: right;">245</p> <p>1 if I can obtain, you know, what I think of a full                  2 service grocery store, whether I can obtain what I                  3 needed for a dinner party. So, my potatoes, my                  4 asparagus, I'll say my fish, my salad, ginger, other                  5 spices. I had a list. I went over there, walked                  6 around, I couldn't get any of it.                  7 You know, there were no fresh fruits. I mean,                  8 there was a rack of some what I -- one box of apples,                  9 one box of bananas and one box of pears. That was it.                  10 (inaudible) some stuff that was prepackaged. But I                  11 couldn't get any fresh meat, I couldn't get any fresh                  12 vegetables, none of that stuff, so I had to go to                  13 another store.                  14 Anyway, so then I decided to walk around and                  15 so my conclusion was, if I wanted a full service                  16 grocery store I definitely wouldn't go to Walgreen's                  17 because nothing's there.                  18 So, then I walked around and actually                  19 inventoried the alleys and things that were there,                  20 because I was curious. So, aisle number one was snacks                  21 and electronics, this is first floor. Aisle number two                  22 was candy, bagged candy, premium chocolates and nuts.</p>

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246	<p>1 Aisle three was beverages, most of which were like 2 sodas and low quality fruit juices, in my opinion, a 3 lot of sugar. Cookie and juice. Aisle four was bread, 4 cereal, groceries, paper goods, paper towels and 5 tissues. Aisle five was household cleaners, dish 6 soaps, home supplies, air freshners, pesticides. Aisle 7 six was seasonal items and pet needs. Aisle seven baby 8 gear, toy --baby gear, toys, games, baby formula. 9 Number eight is Hallmark and gift cards. 10 That was on the first floor. And then around 11 the rear wall, that would be away from Connecticut 12 Avenue, let me make sure I'm on the right floor here, 13 there was wall of magazines and books. Then at the end 14 of aisle two there was a little Eat Well corner, which 15 was the closest area that could be called grocery 16 items. And they weren't -- they were sandwiches, pre- 17 packaged sandwiches and I mentioned the apples, pears 18 and bananas. Then pre-packaged salads and that was 19 about it. That were newspapers around the wall and 20 there was a cash register. 21 And then on the south side of the first floor 22 there was a long case, the south side of Connecticut,</p>	248	<p>1 and bath. Aisle 11, cosmetics. Aisle 12, first aid 2 and incontinence items. Thirteen, nutrition, digestive 3 health, including a section energy drinks and weight 4 management items. Aisle 14, cough and cold items, 5 allergy items, humidifier items, children's medicine 6 and sinus relief. And aisle 15, muscle therapy, pain 7 and sleep. 8 In the back around the second floor was the 9 pharmacy and the Take Care Clinic. And then around the 10 walls at the back, which would be on the west side -- 11 east side of the second floor were vitamins and vitamin 12 supplements. 13 So, I saw nothing that I would consider -- 14 expect to find in a full service grocery store. I 15 mean, I wasn't coming in as a full service grocery 16 store expert, but as a person looking for what I expect 17 to find there. 18 I checked Walgreen's own website description 19 of the store and its products and I have two pages 20 attached to it. And what they say is that they're a 21 pharmacy. That's what their sign out front says they're 22 a pharmacy. And then it says here they have photo</p>
247	<p>1 the south wall. A very long case of various products 2 behind doors in coop or a freezer. So, they had doors 3 one, two, three ice cream. Door four was frozen 4 dinners. Door five was frozen appetizers including hot 5 dogs. Doors six and seven were frozen pizzas. Door 6 eight was orange juice, various colas and Gatorade. 7 Door nine was bottles of water. Door 10 was ice tea in 8 cans and bottles. Door 11, milk, water and ice -- more 9 ice teas. Twelve -- door 12 was margarine, cream 10 cheese, orange juice and a few Chobani and Yoplait 11 yogurt, three of each. Door 13, American cheese, pre- 12 packaged ham, salami, bologna, hot dogs, bacon and two 13 cartons of eggs. Fourteen -- doors 14 and 15 Arizona 14 tea and all big bottles of soda. Door 16, energy 15 drinks and Red Bull. Door 17, 18, 19, 20 and 21 were 16 lots and lots of bottles of water, Pepsi and Coke. 17 And around the back wall there was school 18 supplies, stationary and other promotions. 19 On the second floor at the front was a Look 20 Boutique. And counters of fragrances, nail polish, 21 lipstick, foot care, mouthwash and things of that sort. 22 Then on aisle nine had hair care. Aisle 10, skincare</p>	249	<p>1 services, although I didn't see it. And they're a 2 convenience store. Now, I'd say a convenience store, 3 fair description. Full service grocery store, not even 4 close. I mean, using common sense what you would 5 expect to get. 6 Now, if you go across the street into the 7 Giant, you know, you can get all the things you need 8 for a dinner party. You couldn't get any of it, not 9 one could I find there. And so, if they're looking to 10 have an exception as a full service grocery store, I 11 can understand why Giant could have gotten a Class B 12 liquor license, but it just boggles my common sense, 13 you know, that they're even trying to say it. 14 I mean, so that's my testimony. And it's 15 personal observation, careful investigation, looking 16 everywhere in the store. And I'm not against them 17 being a full service grocery store, if they were, but 18 they weren't. And then I think the rest of it, they're 19 supposed to have a full range of fresh, canned and 20 frozen items and they clearly didn't have that. That's 21 my testimony. 22 CHAIRPERSON MILLER: Thank you. Any cross?</p>

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<p style="text-align: right;">250</p> <p>1 MR. O'BRIEN: No.</p> <p>2 CHAIRPERSON MILLER: Any board questions?</p> <p>3 MR. ALBERTI: Okay, was Ms. Perry finished</p> <p>4 with her --</p> <p>5 MR. LEDERER: Are you finished?</p> <p>6 MR. ALBERTI: -- with her questions?</p> <p>7 CHAIRPERSON MILLER: Oh, I'm sorry.</p> <p>8 MS. PERRY: Oh, am I first this time? Okay.</p> <p>9 CHAIRPERSON MILLER: No, this is your</p> <p>10 witness. I'm sorry. I thought he was finished with his</p> <p>11 testimony.</p> <p>12 MS. PERRY: Oh, okay.</p> <p>13 CHAIRPERSON MILLER: But you don't some --</p> <p>14 MR. LEDERER: Do you have any other direct?</p> <p>15 MS. PERRY: I do have some questions.</p> <p>16 CHAIRPERSON MILLER: I'm very sorry.</p> <p>17 MS. PERRY: That's okay. It's late.</p> <p>18 CHAIRPERSON MILLER: It's late. Right.</p> <p>19 Thank you, Mr. Alberti.</p> <p>20 MR. ALBERTI: You're welcome.</p> <p>21 MR. LEDERER: And what I wrote, I mean, I</p> <p>22 have it written down, so you can --</p>	<p style="text-align: right;">252</p> <p>1 it shown in blue and red and I believe the Board has a</p> <p>2 copy of it of what they --</p> <p>3 MR. O'BRIEN: Referring to Applicant's</p> <p>4 Exhibit 4 in evidence.</p> <p>5 MS. PERRY: Applicant's Exhibit Number 4.</p> <p>6 MR. LEDERER: This is Applicant's Exhibit 4?</p> <p>7 MS. PERRY: Yes.</p> <p>8 MR. O'BRIEN: Yes.</p> <p>9 MS. PERRY: They are showing the blue as</p> <p>10 grocery items and the red as drinks. Would you please</p> <p>11 go through our list with me, starting at the rear of</p> <p>12 the --</p> <p>13 MR. LEDERER: Well, first of all, the map of</p> <p>14 what I inventoried, this doesn't reflect the shape of</p> <p>15 the store and the location of the aisles that I</p> <p>16 inventoried. So, I think aisles one through eight --</p> <p>17 MS. PERRY: Brian, you need to speak into</p> <p>18 mic.</p> <p>19 MR. LEDERER: Aisles one through eight, this</p> <p>20 is an accurate representation of what I saw in terms of</p> <p>21 the layout of the aisles. So -- and then the aisles</p> <p>22 one through eight would be down here and the other</p>
<p style="text-align: right;">251</p> <p>1 CHAIRPERSON MILLER: You have copies of the</p> <p>2 testimony?</p> <p>3 MR. LEDERER: Yes, I do.</p> <p>4 CHAIRPERSON MILLER: It's also written down.</p> <p>5 MR. LEDERER: Pardon?</p> <p>6 CHAIRPERSON MILLER: We have a court</p> <p>7 reporter, also.</p> <p>8 MR. LEDERER: I'll give it -- I have one for</p> <p>9 the court reporter.</p> <p>10 CHAIRPERSON MILLER: Okay.</p> <p>11 MR. LEDERER: (inaudible).</p> <p>12 CHAIRPERSON MILLER: I just mean that it will</p> <p>13 be on the record.</p> <p>14 MS. PERRY: Hey, you're on my time. Be</p> <p>15 quiet.</p> <p>16 MR. LEDERER: Okay.</p> <p>17 CHAIRPERSON MILLER: That was my question.</p> <p>18 That's not on your time.</p> <p>19 MS. PERRY: Oh, okay.</p> <p>20 CHAIRPERSON MILLER: It shouldn't be.</p> <p>21 MS. PERRY: I thought it would be. Okay.</p> <p>22 Into the record today Walgreen's submitted this list,</p>	<p style="text-align: right;">253</p> <p>1 higher ones are up here on the second floor. And the</p> <p>2 Look Boutique was here, all the cosmetic items were</p> <p>3 here. Okay.</p> <p>4 CHAIRPERSON MILLER: I just want to ask Mr.</p> <p>5 O'Brien is Applicant's Exhibit Number 4, now that the</p> <p>6 Board is looking at it, could you repeat what you said</p> <p>7 about what the blue is and what the red is?</p> <p>8 MR. O'BRIEN: The blue and the red together</p> <p>9 are food and drink.</p> <p>10 CHAIRPERSON MILLER: Oh, was there a</p> <p>11 distinction between the blue and red?</p> <p>12 MR. O'BRIEN: Yes. I believe the blue was</p> <p>13 food and the red was beverage.</p> <p>14 MR. CONNER: Mostly liquids.</p> <p>15 CHAIRPERSON MILLER: Okay, thank you.</p> <p>16 MR. O'BRIEN: I believe that was the</p> <p>17 testimony.</p> <p>18 CHAIRPERSON MILLER: Okay.</p> <p>19 MR. LEDERER: Well, I can say that if you</p> <p>20 take -- when I was there were this long cabinet along</p> <p>21 the south wall, where some of it's blue, some of it's</p> <p>22 red, you know, that's where the frozen pizza was. They</p>

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254	<p>1 had --</p> <p>2 MS. PERRY: Brian, would you answer my</p> <p>3 question, please.</p> <p>4 MR. LEDERER: Okay.</p> <p>5 MS. PERRY: Starting at the back of the store --</p> <p>6 MR. LEDERER: Starting at the back of the</p> <p>7 store --</p> <p>8 MS. PERRY: -- case number one, in case</p> <p>9 number one, what did you find there? Was case number</p> <p>10 one ice cream?</p> <p>11 MR. LEDERER: Yes. They were --</p> <p>12 MS. PERRY: So, cases one, two and three were</p> <p>13 nothing but ice cream?</p> <p>14 MR. LEDERER: When she uses the term case I</p> <p>15 use the term doors, it's the same thing.</p> <p>16 MS. PERRY: Doors, okay.</p> <p>17 MR. LEDERER: The doors open out.</p> <p>18 MS. PERRY: In case number four were there</p> <p>19 frozen dinners?</p> <p>20 MR. LEDERER: Yes. The answer is yes.</p> <p>21 MS. PERRY: In case number five did you find</p> <p>22 some frozen appetizers?</p>	256	<p>1 so you -- would you repeat --</p> <p>2 MR. LEDERER: That would be the area here</p> <p>3 that they claimed was food items.</p> <p>4 CHAIRPERSON MILLER: "Here," where are you</p> <p>5 pointing at for the record?</p> <p>6 MS. PERRY: Just let me take this up for a</p> <p>7 second. We're starting here with case --</p> <p>8 CHAIRPERSON MILLER: No, I understood, but</p> <p>9 Mr. --</p> <p>10 MR. LEDERER: Door one --</p> <p>11 MS. PERRY: Door or case number one back</p> <p>12 here.</p> <p>13 CHAIRPERSON MILLER: Okay.</p> <p>14 MR. LEDERER: Door one is --</p> <p>15 CHAIRPERSON MILLER: That's fine.</p> <p>16 MR. LEDERER: -- on the east side of the --</p> <p>17 CHAIRPERSON MILLER: That's fine.</p> <p>18 MR. LEDERER: -- south wall where this whole</p> <p>19 long cabinet is, when I went door one, two, three,</p> <p>20 four, five, to 21.</p> <p>21 CHAIRPERSON MILLER: Okay. Good. I mean, I</p> <p>22 wanted you to describe it for the record so that it's</p>
255	<p>1 MR. LEDERER: Yes, including hot dogs.</p> <p>2 MS. PERRY: Yes. And in case number six and</p> <p>3 seven was nothing but pizza?</p> <p>4 MR. LEDERER: Frozen pizzas.</p> <p>5 MS. PERRY: Frozen pizzas?</p> <p>6 MR. LEDERER: (inaudible).</p> <p>7 MS. PERRY: Case number eight was that orange</p> <p>8 juice, colas and Gatorade?</p> <p>9 MR. LEDERER: Yes.</p> <p>10 MS. PERRY: Case number nine was water?</p> <p>11 MR. LEDERER: Yes.</p> <p>12 MS. PERRY: Case number 10 was ice team?</p> <p>13 MR. LEDERER: Yes.</p> <p>14 MS. PERRY: Case number 11 had some milk and</p> <p>15 some American cheese and that's where the eggs were?</p> <p>16 MR. LEDERER: Case which one?</p> <p>17 MS. PERRY: Case Number 10 -- 11.</p> <p>18 MR. LEDERER: I --</p> <p>19 MS. PERRY: Or door number 11.</p> <p>20 MR. LEDERER: I saw milk, water and ice teas.</p> <p>21 I saw the cheese in door number 13.</p> <p>22 MS. PERRY: Oh, you see cheese in 13? Okay,</p>	257	<p>1 in the transcript of where it is, instead of just like</p> <p>2 here.</p> <p>3 MR. LEDERER: So, it's clear, so you can read</p> <p>4 it. Okay.</p> <p>5 CHAIRPERSON MILLER: Yeah.</p> <p>6 MS. PERRY: Behind door number 12 what did</p> <p>7 you find?</p> <p>8 MR. LEDERER: Margarine, cream cheese, orange</p> <p>9 juice and some various yogurts, Chobani and</p> <p>10 (inaudible).</p> <p>11 MS. PERRY: Behind door number 13?</p> <p>12 MR. LEDERER: That's where I found the pre-</p> <p>13 packaged ham, salami, bologna, you know, hot dogs,</p> <p>14 bacon and some cartons of eggs and some American</p> <p>15 cheese.</p> <p>16 MS. PERRY: Behind doors --</p> <p>17 MR. LEDERER: I couldn't -- didn't find any</p> <p>18 provolone or any other type of cheese.</p> <p>19 MS. PERRY: Behind doors 14, 15, 16 and 17 --</p> <p>20 MR. LEDERER: Well, that --</p> <p>21 MS. PERRY: -- 18 and 19, 20 and 21, what did</p> <p>22 you find?</p>

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<p>1 MR. LEDERER: A lot of various types of 2 liquids. They had a brand name Arizona Tea, lots of 3 soda, tons and tons of various types of soda, energy 4 drinks, Red Bulls, lots and lots of water and Pepsi and 5 Coke and that's what was there. 6 MS. PERRY: Mr. Lederer when were you in the 7 store doing your survey? 8 MR. LEDERER: I did it the night before last, 9 the 6th. Monday night. 10 MS. PERRY: Monday night? Okay. So, now 11 looking at this drawing of where they say the red is 12 just liquids, is that an accurate depiction of what you 13 found in the store? 14 MR. LEDERER: I guess that would be milk, 15 water and ice teas. I see -- 16 MS. PERRY: But that does not include all of 17 the -- 18 MR. LEDERER: No. 19 MR. O'BRIEN: Objection. Now how's 20 testifying? This is -- 21 MR. LEDERER: No, it doesn't. No, that's -- 22 CHAIRPERSON MILLER: I was waiting for you.</p>	<p>1 MR. LEDERER: Basically, with one exception 2 where they had one area where they had American cheese, 3 pre-packaged ham, salami, pre-packaged salami and 4 bologna, pre-packaged hot dogs, bacon and some -- 5 couple cartons of eggs. That was it. 6 MS. PERRY: And weren't there two cabinets 7 with pizzas? 8 MR. LEDERER: Yes, that was earlier. 9 CHAIRPERSON MILLER: Okay. Commissioner 10 Perry, I just want to tell you, with your own 11 witnesses, you can't -- 12 MR. LEDERER: You can lead. 13 CHAIRPERSON MILLER: -- ask really leading 14 (inaudible). 15 MS. PERRY: Oh, I can't? Okay. 16 CHAIRPERSON MILLER: It's the same kind of 17 questions you can ask the others. 18 MS. PERRY: Okay, I'm sorry. 19 CHAIRPERSON MILLER: So, they're a little bit 20 leading. 21 MR. LEDERER: Door six and seven, I did 22 testify there were frozen pizzas. Door six and seven.</p>
259	261
<p>1 Okay? 2 MR. LEDERER: The red -- 3 MR. O'BRIEN: Trying to keep it moving, but -- 4 CHAIRPERSON MILLER: Okay. You can't 5 testify. 6 MS. PERRY: I wasn't. I was asking the 7 question. 8 MR. LEDERER: There was not a lot of the red -- 9 MS. PERRY: I was going to ask him -- 10 MR. LEDERER: -- the red is supposed to 11 represent what, food or water? 12 MS. PERRY: Drinks. 13 MR. LEDERER: Drinks. Well, that's not all 14 the drinks. Most of the thing, with the exception of 15 this door 13, are all drinks. From door 13, which is 16 where the red is, all the way to the end of door 21 are 17 water, soft drinks, energy drinks, Arizona Tea, tons 18 and tons of soda. 19 CHAIRPERSON MILLER: Are you saying on the 20 right hand side of the first diagram where it's red and 21 blue and red is supposed to be beverages and blue is 22 food, you're saying that it's all beverages?</p>	<p>1 So, taking this map, when I say door one, on the east 2 side of this long cabinet, on the south side, that's 3 door one, this is door 21. 4 CHAIRPERSON MILLER: Okay. 5 MR. LEDERER: So, for the record, door 21 is 6 the last door on the Connecticut side of that and door 7 one is on the alley side of that cabinet. And then 8 they go -- I counted them in sequential order. 9 COURT REPORTER: I can't hear what you're 10 saying, sir. 11 MR. LEDERER: I counted them in sequential 12 order starting with door one on the alley side of this 13 south side series of cabinets. 14 MS. PERRY: Where did you -- when you said 15 what you found in aisles, one, two, three, how did you 16 determine, was that -- that those were the -- what was 17 in those aisles? 18 MR. LEDERER: I looked at it. I went there 19 and visually inspected the contents of every aisle. 20 MS. PERRY: Did you see signs above these 21 aisles? 22 MR. LEDERER: Oh, the other thing is what I</p>

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<p style="text-align: right;">262</p> <p>1 have written down here, what I testified to is their  2 description, because what I wrote down, each aisle, you  3 know, like a good director, I mean, they have aisle one  4 and then they give the contents. So, when I say aisle  5 one is snacks and electronics, that's their words. So,  6 these are not my words, these are their words. Aisle  7 two, candy bag, candy, premium chocolate, nuts, that's  8 their words. So --  9 MS. PERRY: Mr. Lederer, I want to show you a  10 copy of a transcript from the April 18th hearing.  11 Would you read the -- starting from here, please? And  12 this is on page 41 of the transcript. And go down to  13 the size of the amount of consumables, the square  14 footage.  15 MR. O'BRIEN: Objection. Foundation.  16 CHAIRPERSON MILLER: Do you understand what  17 that means?  18 MS. PERRY: No.  19 CHAIRPERSON MILLER: Okay. You're --  20 MR. LEDERER: I do.  21 CHAIRPERSON MILLER: -- asking him a  22 question, so can you give us an idea of -- you know,</p>	<p style="text-align: right;">264</p> <p>1 disagree?  2 MS. PERRY: How --  3 CHAIRPERSON MILLER: Do you -- he -- it  4 sounded like he had some testimony related to the  5 issue, though, that he wanted --  6 MS. PERRY: Yeah.  7 MR. LEDERER: Yeah, what I was going to say  8 is I know --  9 (Multiple speakers at one time.)  10 MS. PERRY: Approximately -- okay, go ahead  11 Brian.  12 MR. LEDERER: For the Board's --  13 MR. ALBERTI: Just a moment, please.  14 (Board members confer.)  15 MS. PERRY: Can you stop the clock?  16 MR. JONES: I do a very good job with the  17 time.  18 MS. PERRY: I know. I'm sure you do.  19 MR. JONES: Thank you.  20 CHAIRPERSON MILLER: Ms. Perry, I'm sorry.  21 Do you want your witness to testify in response to  22 something in the transcript?</p>
<p style="text-align: right;">263</p> <p>1 lead up to that question --  2 MS. PERRY: I --  3 CHAIRPERSON MILLER: -- and what's the basis  4 for it?  5 MS. PERRY: -- the basis for it is the amount  6 of square footage dedicated to consumable goods, from  7 your transcript, versus what was heard today.  8 MR. LEDERER: Well, it would probably be what  9 I observed, whether what I observed was consistent or  10 inconsistent with this. I could not be --  11 CHAIRPERSON MILLER: What was your question?  12 MS. PERRY: I asked him to read from the  13 transcript.  14 CHAIRPERSON MILLER: Oh, I see.  15 MR. O'BRIEN: That's not his testimony. He  16 wasn't here.  17 CHAIRPERSON MILLER: Right.  18 MS. PERRY: Okay.  19 CHAIRPERSON MILLER: The transcript can speak  20 for itself.  21 MS. PERRY: Okay.  22 CHAIRPERSON MILLER: What? Does somebody</p>	<p style="text-align: right;">265</p> <p>1 MS. PERRY: Yes.  2 CHAIRPERSON MILLER: Okay. Then in which  3 case I'm sorry that I would allow that. For you to  4 read it, for him to respond to, if that was your  5 intent.  6 MR. LEDERER: Okay.  7 MS. PERRY: Oh, I have to read it? Okay.  8 MR. ALBERTI: No, he can read it.  9 MS. PERRY: Oh, he can read it.  10 MR. LEDERER: I'll read it. So, I'll just  11 say I'm looking at Page 41 and starting on Line 6 and  12 reviewing the answer down to Line 21, on Page 41 of the  13 transcript, just so we know.  14 CHAIRPERSON MILLER: Then you need to read it  15 so we can understand what --  16 MR. LEDERER: Okay.  17 CHAIRPERSON MILLER: -- you might be  18 responding to. Mr. Jones, do you have a comment before  19 he does that?  20 MR. JONES: Yes. Just for a point of  21 information, the Protestant has six minutes left.  22 CHAIRPERSON MILLER: And did you stop it when</p>

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266	<p>1 you left the room or no? Because there was a time when 2 I asked some questions, so there might be a few more 3 minutes than that. 4 MR. JONES: I have generously accounted for 5 both the time when I left the room and you asked 6 questions and the subsequent times when you've asked 7 questions that interrupted her testimony. So, I have 8 those times noted here. 9 CHAIRPERSON MILLER: Okay. Good. Good. 10 MR. SILVERSTEIN: Madam Chair, for your 11 information, the times when Board Member Jones left the 12 room I took down the notes as to when -- 13 CHAIRPERSON MILLER: Oh, okay. 14 MR. SILVERSTEIN: -- testimony began and 15 stopped, to make sure that people were properly given 16 credit. 17 MR. LEDERER: Well, let me just -- I can 18 answer. This is a discussion about how much floor space 19 dedicated to consumable items. There are a lot of 20 consumable items there, but that I would expect to find 21 in a convenience store. They're not a full service 22 grocery store. Most of those consumable items would</p>	268	<p>1 MS. PERRY: Did you witness approximately 2 20,000 square feet in the store? 3 MR. LEDERER: Yeah, I would say -- yeah, if 4 you take both floors. I marked it out, yeah, it's 5 probably 20,000 square -- gross square feet inside, you 6 know, that's dedicated to all the products that they 7 sell. 8 MS. PERRY: Do you believe that this floor -- 9 that the diagram entered into evidence as Exhibit 10 Number 4 is an accurate depiction of what you saw in 11 the store and the fact that blue is groceries and red 12 is liquids? 13 MR. LEDERER: If you call them groceries. 14 No, they're not groceries. They're described in the 15 transcript as consumables. I don't consider being able 16 to buy peanuts and candy -- 17 MS. PERRY: Okay, Brian, you have to be 18 quick. 19 MR. LEDERER: -- and hot dogs -- anyway -- 20 MS. PERRY: How many -- 21 MR. LEDERER: -- frozen pizzas. What -- I'm 22 not sure that it's grocery. You can eat them.</p>
267	<p>1 have been -- are nuts, fast food items, frozen pizzas, 2 soft drinks with lots of sugar in them -- 3 MS. PERRY: Rather -- 4 MR. LEDERER: -- and so on. 5 MS. PERRY: -- would you please tell me what 6 does the transcript say that the amount of -- 7 MR. LEDERER: Oh, it says -- 8 MS. PERRY: -- the gross square footage. 9 MR. LEDERER: -- 1,700. Oh, they say not 10 knowing how big the upstairs is, 1,700 square feet was 11 dedicated to consumable items. 12 MS. PERRY: And the size of the store, on 13 Page -- 14 MR. O'BRIEN: Madam Chair, the witness 15 reading from a transcript, not of his own testimony -- 16 MR. LEDERER: Well, I -- 17 MR. O'BRIEN: -- but somebody else's, cannot 18 constitute evidence. 19 CHAIRPERSON MILLER: It may not constitute 20 evidence, but my understanding was that the purpose is 21 for him to respond to it. 22 MR. LEDERER: I can -- because I saw. So --</p>	269	<p>1 MS. PERRY: Okay. Aisle number -- when you 2 were in the store, on aisle number four, which you 3 labeled as breads, cereals and groceries. 4 MR. LEDERER: Um hmm. There was maybe -- 5 MS. PERRY: How -- and then baby -- paper 6 goods, paper towels and tissues. How many shelves or 7 how much of that aisle did you see that was canned tuna 8 fish or canned goods? 9 MR. LEDERER: Maybe three -- two or three 10 shelves, half -- third of the shelves. So, if you have 11 this shelf, it was maybe one, two, three, three feet 12 and that was it, out of maybe 10 or 12 feet, whatever 13 it is. Very, very little. Same thing with the bread, 14 there was only one or two shelves. A little bit more 15 cereal and that was about it. So, you have to see it 16 and see how little of these items they actually have. 17 MS. PERRY: And with that I'm going to end 18 because I would like to get my other witnesses in 19 quickly. 20 MR. LEDERER: Okay. 21 MR. O'BRIEN: No questions. 22 CHAIRPERSON MILLER: No questions? All</p>

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270	<p>1 right. Board questions? 2 MR. LEDERER: When -- yes, sir? 3 MR. ALBERTI: Madam Chair, may I speak? 4 CHAIRPERSON MILLER: Go ahead, Mr. Alberti. 5 MR. ALBERTI: Thank you. 6 MR. LEDERER: I mean, I'm not the chair. 7 MR. ALBERTI: That's okay. It's late. 8 MR. LEDERER: I was in court this morning. 9 MR. ALBERTI: Thank you. 10 CHAIRPERSON MILLER: I explained to them 11 that's why you weren't here. 12 MR. ALBERTI: Yeah, I understand. Mr. 13 Lederer, what were you planning to make for dinner? 14 MR. LEDERER: I was planning to either have 15 some steak or some fish along with potatoes and 16 broccoli or asparagus and a salad with some ginger, 17 because I like ginger and some spices, that's what I 18 was finding. 19 MS. PERRY: And his wife's a good cook. 20 MR. ALBERTI: Good. 21 MR. LEDERER: She (inaudible). 22 MR. ALBERTI: Lucky you.</p>
271	<p>1 MR. LEDERER: Thank you. 2 MR. ALBERTI: Did you find any of this pre- 3 prepared? 4 MR. LEDERER: I didn't even find it pre- 5 prepared. Actually, I found no potatoes, not even 6 canned potatoes, I didn't find any canned broccoli, 7 canned asparagus. 8 MR. ALBERTI: You didn't find it in any of 9 the prepared dinners that they had? 10 MR. LEDERER: No. 11 MR. ALBERTI: Okay. Thank you. 12 CHAIRPERSON MILLER: Yes, Mr. Nophlin? 13 MR. NOPHLIN: Real quick. So, the video that 14 we saw, it's almost the same -- 15 CHAIRPERSON MILLER: He didn't -- I'm sorry, 16 he didn't get to see the -- 17 MR. NOPHLIN: Oh, he didn't get to see it? 18 MR. LEDERER: Just give me a foundation. I 19 saw the store, so what -- 20 MR. NOPHLIN: Well, no, you weren't here when 21 they showed the video. That's what I was saying. 22 MR. LEDERER: Because I was under the rule</p>
272	<p>1 against witnesses. 2 MR. NOPHLIN: I'm sorry, I couldn't hear you. 3 CHAIRPERSON MILLER: He was under the rule -- 4 the witness rule, but he's been in the store is what he 5 says. 6 MR. NOPHLIN: Well, it won't apply to this 7 then. I'll withdraw my question. 8 CHAIRPERSON MILLER: Are you sure? 9 MR. NOPHLIN: Yeah. 10 CHAIRPERSON MILLER: Okay. Others? I just 11 have a few. Mr. Lederer, did you take any pictures of 12 the inside of the store, what was on the shelves or 13 what the sign said? 14 MR. LEDERER: No, I didn't but I -- that's 15 why I was very careful in my inspection of what I took 16 notes. I figured that if I started taking pictures I'd 17 be escorted out by the (inaudible). 18 CHAIRPERSON MILLER: (inaudible) -- 19 MR. LEDERER: I'm not saying I would have 20 been. 21 CHAIRPERSON MILLER: You need to speak up. 22 MR. LEDERER: I felt that they might have --</p>
273	<p>1 it might have been too intrusive an inspection, too 2 obvious and I might have been escorted out. Like, it 3 happened to me once at another store where I was 4 gathering evidence on a case. 5 CHAIRPERSON MILLER: Okay, so you just took 6 extensive notes? 7 MR. LEDERER: I took notes and I really 8 inspected it carefully. So, and then I translated it 9 immediately into this testimony. 10 CHAIRPERSON MILLER: Okay. Let me ask you, 11 one of the last things you said was something about how 12 little they had of each thing or something. 13 MR. LEDERER: Yes. 14 CHAIRPERSON MILLER: Can you elaborate on 15 that? For instance -- 16 MR. LEDERER: Well, for example -- 17 CHAIRPERSON MILLER: -- if they have cereal 18 in an aisle are you saying, well, they had like two 19 cereal boxes as opposed to ten or what do you mean? 20 MR. LEDERER: Well, for the bread they might 21 have had five or six loaves. For the can -- for the 22 cereal, they had more cereal, you know, than they had</p>

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274	<p>1 bread. They had more cereal than they had apples, 2 pears and bananas. They might have had 20 cereals. 3 So, they had more than they had canned tuna fish. 4 CHAIRPERSON MILLER: Sometimes I lose your -- 5 MR. LEDERER: They had more cereal than they 6 had canned tuna fish, but in general, the amounts of 7 these items were very slender. So, I mentioned the 8 bread, there might have been three or four, five or six 9 loaves of bread. 10 CHAIRPERSON MILLER: So, it's -- it wasn't 11 just perishables that they were low on. It was also 12 some non- perishables like cans of tuna? 13 MR. LEDERER: Yes. 14 CHAIRPERSON MILLER: Okay. Then finally, you 15 estimates 20,000 gross square feet as what, the total? 16 MR. LEDERER: Both floors. 17 CHAIRPERSON MILLER: Both floors. And -- 18 MR. LEDERER: The total gross area inside. 19 CHAIRPERSON MILLER: -- how do you make that 20 estimate? 21 MR. LEDERER: I walk it out. You know, I'm 22 not -- maybe it's 19,000 or -- but I paced it out. I</p>	276	<p>1 shaving equipment or toothpaste or anything else. 2 That's what I find in a convenience store, that's how 3 they describe themselves on their website. They don't 4 say they're a full service grocery store. And what I 5 found is what they said they were, a pharmacy and a 6 convenience store. 7 CHAIRPERSON MILLER: Thank you. 8 All right. Any other questions? 9 MS. PERRY: I just have one on cross. 10 CHAIRPERSON MILLER: Okay. 11 MS. PERRY: Following up on one of the 12 questions, did you find anything -- any hot meals that 13 you could purchase to go home and eat for dinner? Or 14 did you just see some sandwich -- cold sandwiches? 15 MR. LEDERER: That's a little leading, but I 16 did -- 17 MS. PERRY: Oh, I'm sorry. 18 MR. LEDERER: -- in their ready to go area 19 there were cold sandwiches, there were salads, pre- 20 packaged salads, pre-packaged fruit. Now, the pizza 21 that was frozen, I mean, you -- I assume you'd heat it 22 up, but there was nothing that -- you didn't --</p>
275	<p>1 think when I was in Boy Scouts I learned that if I just 2 took my regular pace it would be about three feet, so I 3 think it was like, it turned out to be maybe 150 feet. 4 It's an odd shape, so along one dimension maybe 175 5 feet, maybe 30 feet, maybe 20 feet at the two ends or 6 50 feet. So, then -- and you double that. Of course 7 you have the escalator so that takes up space, but 8 that's what I did to try to get a sense of the size of 9 the store. 10 CHAIRPERSON MILLER: And -- 11 MR. LEDERER: But of course I think they 12 would concede what the square footage is anyway. 13 CHAIRPERSON MILLER: What was your -- the 14 point you were trying to make with respect to giving us 15 the figure? 16 MR. LEDERER: The only point was it's a very 17 large store with almost -- with no fresh fruits and -- 18 I mean, it's like -- it just hits you in the face. I 19 mean, if I want to buy lipstick for my wife, it's 20 easier to do that than to get fresh fruit. 21 CHAIRPERSON MILLER: Okay. 22 MR. LEDERER: They're very good at that. Or</p>	277	<p>1 couldn't walk in there and get a hot meal like you 2 could in some other places. 3 CHAIRPERSON MILLER: Okay? 4 MS. PERRY: Thank you. 5 MR. LEDERER: Your oven would make it hot. 6 Okay. Thank you. 7 MS. PERRY: And I believe you can complete 8 your testimony into the record. 9 MR. LEDERER: If that's okay? 10 CHAIRPERSON MILLER: No, it's in the record. 11 MS. PERRY: Oh, it is? 12 CHAIRPERSON MILLER: If you want -- 13 MR. LEDERER: But the written -- 14 CHAIRPERSON MILLER: What's wrong? 15 MR. ALBERTI: Does Mr. O'Brien have any 16 recross? 17 MR. LEDERER: Fair. Yes. 18 MR. O'BRIEN: No thank you. 19 MR. ALBERTI: Thank you. Just wanted to give 20 you the opportunity, Mr. O'Brien. 21 CHAIRPERSON MILLER: Okay, let me ask -- 22 MR. LEDERER: For the convenience of the</p>

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<p style="text-align: right;">278</p> <p>1 Board I'm willing to submit.  2 CHAIRPERSON MILLER: Okay, that's fine.  3 MR. O'BRIEN: I --  4 CHAIRPERSON MILLER: But don't submit it yet.  5 Ms. Perry hasn't submitted anything.  6 MR. LEDERER: Okay.  7 CHAIRPERSON MILLER: So, you can just add it  8 to her group.  9 MS. PERRY: Add it to my exhibits.  10 CHAIRPERSON MILLER: Her documents.  11 MR. LEDERER: Okay.  12 CHAIRPERSON MILLER: And you can have a seat  13 next to Ms. -- now you can.  14 MR. LEDERER: Now I'm allowed to sit here.  15 CHAIRPERSON MILLER: Yeah. Okay. So, --  16 MS. PERRY: Can I get my next witness?  17 CHAIRPERSON MILLER: You have another  18 witness?  19 MS. PERRY: We have Calvert Woodley here and  20 Van Ness Liquors.  21 CHAIRPERSON MILLER: You do.  22 MR. LEDERER: Can you have them testify</p>	<p style="text-align: right;">280</p> <p>1 how many minutes do you have left?  2 MR. O'BRIEN: -- to impose time limits that  3 it chooses. Hmm?  4 CHAIRPERSON MILLER: Thank you for your  5 generosity in saving your five minute --  6 MR. ALBERTI: All I ask Ms. Perry is that we  7 proceed quickly.  8 CHAIRPERSON MILLER: Go get your witness, Ms.  9 Perry.  10 MS. PERRY: Brian, can you bring them in.  11 Can they come in together?  12 MR. O'BRIEN: No.  13 MS. PERRY: Make it faster?  14 CHAIRPERSON MILLER: No?  15 MR. ALBERTI: No, no.  16 CHAIRPERSON MILLER: No.  17 (Pause in proceedings.)  18 CHAIRPERSON MILLER: So, Mr. Lederer if you  19 can let --  20 MR. LEDERER: Oh, yes. I'll move.  21 CHAIRPERSON MILLER: I'm sorry. If you can  22 let the witness testify --</p>
<p style="text-align: right;">279</p> <p>1 together, maybe?  2 MR. SILVERSTEIN: They got two minutes.  3 CHAIRPERSON MILLER: Okay. Well, they have  4 two minutes unless we give her extra time. You know?  5 MS. PERRY: Can we ask for --  6 MR. SILVERSTEIN: No.  7 MS. PERRY: -- a few extra minutes, if I tell  8 them to go very quickly?  9 MR. SILVERSTEIN: No. Who?  10 CHAIRPERSON MILLER: Well --  11 (Board members confer.)  12 MR. O'BRIEN: Madam Chair --  13 MR. ALBERTI: Let's just keep moving on.  14 CHAIRPERSON MILLER: Yes?  15 MR. O'BRIEN: I will cede five minutes of our  16 remaining time to Ms. Perry.  17 CHAIRPERSON MILLER: Thank you. I would like  18 to give Ms. Perry five minutes per witness. Do you  19 have any objection to that, Mr. O'Brien?  20 MR. O'BRIEN: I don't think it's my place to  21 object. It's the board's position --  22 CHAIRPERSON MILLER: Okay. You would cede --</p>	<p style="text-align: right;">281</p> <p>1 MR. LEDERER: Yes.  2 CHAIRPERSON MILLER: -- from there.  3 MR. LEDERER: I'll sit in the --  4 CHAIRPERSON MILLER: Okay.  5 MR. ALBERTI: You can sit in the back there.  6 MR. LEDERER: I'll sit in the back. Sure.  7 Of course.  8 MR. ALBERTI: We get confused easily.  9 MR. O'BRIEN: Well, can I ask Ms. Perry,  10 given her limited remaining time, there's no  11 possibility she's going to call Mr. Kim as her witness.  12 Is she?  13 MS. PERRY: No.  14 MR. O'BRIEN: Then he may also come into the  15 room?  16 MS. PERRY: As far as I'm concerned, yes.  17 MR. ALBERTI: Sir, please -- we're going to  18 ask you to sit at the table.  19 MS. PERRY: There -- because of the  20 microphones.  21 CHAIRPERSON MILLER: There has been -- yeah,  22 a microphone (inaudible). Mr. Jones?</p>

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282	<p>1 MR. JONES: (inaudible) -- 2 MS. PERRY: I believe you can't. 3 CHAIRPERSON MILLER: No, don't come -- we 4 don't take any documents -- 5 MS. PERRY: No. 6 CHAIRPERSON MILLER: -- right here. 7 UNIDENTIFIED MALE: No, just what I'm going 8 to -- 9 CHAIRPERSON MILLER: What you're going to 10 read? Is Ms. Jenkins right there? 11 MR. O'BRIEN: Yes, she is. 12 CHAIRPERSON MILLER: Yeah, she's going to 13 gather them for you. Okay? He wants to give us the 14 testimony. 15 MR. JONES: Just for clarification on what we 16 decided to do regarding the time. What I picked up was 17 that Mr. O'Brien was willing to cede five of his 18 remaining 23 minutes to the Protestants. Is that all 19 that we were going to do? 20 CHAIRPERSON MILLER: No. I said that the 21 Board was also going to give five minutes to the other 22 witness, five minutes per witness.</p>	284	<p>1 MS. PERRY: We'll be as quick as possible. I 2 just ask my -- 3 MR. JONES: So, just to make sure -- 4 CHAIRPERSON MILLER: You have five minutes 5 per witness. 6 MR. ALBERTI: (inaudible). 7 MS. PERRY: But that includes cross 8 examination from me? 9 CHAIRPERSON MILLER: That -- 10 MR. O'BRIEN: That includes -- 11 CHAIRPERSON MILLER: You're the direct 12 examination from you. 13 MS. PERRY: I'm direct? Okay. 14 CHAIRPERSON MILLER: Okay. Yeah. 15 MS. PERRY: Whatever I am. 16 CHAIRPERSON MILLER: All right. Okay. 17 MR. JONES: So, with that, there's a total of 18 12 minutes remaining for the Protestants and 23 for the 19 Applicants. 20 MS. PERRY: Okay. 21 MR. O'BRIEN: Okay. 22 CHAIRPERSON MILLER: I just want to clarify --</p>
283	<p>1 MR. JONES: So, a total of ten? 2 CHAIRPERSON MILLER: Correct. 3 MR. JONES: So, we're adding a total of 15 4 minutes to the Protestant's column? 5 MR. O'BRIEN: Then I'll take back my five. 6 CHAIRPERSON MILLER: No, ten. It's ten 7 minutes. 8 MR. ALBERTI: There is -- the bottom line, as 9 I understand it, is Ms. Perry has five minutes per 10 witness. If she doesn't use the five minutes on one 11 witness, she doesn't get any other time for the second 12 one. It's five minutes per witness. 13 MR. JONES: Okay. So, a total of ten, five 14 and five. 15 MR. ALBERTI: Yes. 16 MR. JONES: And the Applicant remains at 23, 17 because he's no longer willing to cede his five. 18 MR. ALBERTI: I think that's the 19 understanding. 20 CHAIRPERSON MILLER: It doesn't matter. 21 That's fine. 22 MR. ALBERTI: That's the understanding.</p>	285	<p>1 MS. PERRY: I believe he has to be sworn in? 2 CHAIRPERSON MILLER: -- Ms. Perry, I just 3 want to clarify that this doesn't count towards closing 4 argument, so you don't have to worry that you have to 5 save time for closing. Okay. This is -- 6 MS. PERRY: Oh, I didn't even know I got one. 7 CHAIRPERSON MILLER: Okay. This is your -- 8 for the witness time, your evidence here. Okay. 9 MS. PERRY: All right. 10 MR. O'BRIEN: I think the Chair would like -- 11 CHAIRPERSON MILLER: Are we clear? 12 MR. O'BRIEN: -- probably ought to swear the 13 witness at this point. 14 CHAIRPERSON MILLER: I'm sorry. Swearing the 15 witness. Are we ready to proceed? 16 Would you raise your right hand, please. Do 17 you swear to tell the truth, the whole truth and 18 nothing but the truth? 19 MR. SANDS: Yes, ma'am. 20 CHAIRPERSON MILLER: And will you speak into 21 the microphone, because that's why you've been moved 22 over here.</p>

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286	<p>1 MS. PERRY: This is the mic. I don't know if                  2 that's the mic or not.                  3 MR. SANDS: Yes, ma'am. I swear.                  4 CHAIRPERSON MILLER: Okay. Thank you.                  5 MR. SANDS: Do I proceed?                  6 CHAIRPERSON MILLER: Yes, sir.                  7 MR. SANDS: I had said good afternoon, but I                  8 guess it's good evening. My name is Ed Sands. I'm not                  9 a lawyer but it seems to me that the conclusion the                  10 Board has come to in granting this exception is based                  11 on an erroneous interpretation of the facts and                  12 precedence.                  13 MR. O'BRIEN: I'm going to object. That is                  14 clearly not the focus of the protest hearing, whether                  15 the Board's legal conclusions thus far are correct or                  16 incorrect.                  17 CHAIRPERSON MILLER: That is correct. And                  18 you might be wasting your five minutes by --                  19 MR. SANDS: Well, I was --                  20 CHAIRPERSON MILLER: -- addressing that.                  21 MR. SANDS: I understand that I could talk                  22 about the grocery store issue.</p>	288	<p>1 of store sales in February, 2012. That's Number 22 no                  2 Page 5. This includes snack items normally carried by                  3 a pharmacy. Is this consistent with full grocery                  4 store?                  5 The website for this store has the following                  6 tabs to click on for items carried in that store.                  7 Pharmacy and health, photo, contact lenses, beauty,                  8 medicines and treatments, vitamins and supplements,                  9 home healthcare solutions, sexual wellness, diet and                  10 fitness, baby, kids and toys, household, more. Guess                  11 where the grocery store items can be found.                  12 This weeks ad for this store is 27 pages on                  13 its website and only one page, Page 12, having what                  14 could be considered grocery store items. Hershey's                  15 candy, Progresso soup, cereal, Pepsi, Aquafina water,                  16 Folger's instant coffee, Maxwell House coffee, one                  17 gallon of milk. All of these items are carried in any                  18 convenience store or pharmacy.                  19 Lastly, it's interesting to me that this --                  20 the exemption was not a unanimous decision by the Board                  21 with the dissenting member stating, "In my view D.C.                  22 Code 25- 331 and 25-332 apply to supermarkets and</p>
287	<p>1 CHAIRPERSON MILLER: You can talk about --                  2 MR. SANDS: That's --                  3 CHAIRPERSON MILLER: -- the grocery store                  4 aspect with respect to -- if they're actually meeting                  5 the criteria that was --                  6 MR. SANDS: That's -- okay, that's what I was                  7 talking --                  8 CHAIRPERSON MILLER: Okay? As opposed to                  9 challenging legal conclusions. Okay?                  10 MR. SANDS: No. Okay. All right. I guess                  11 I'm questioning why the Board would grant the store a                  12 full grocery store exemption to the moratorium on Class                  13 B Retailers' licenses where according to its own                  14 document only 55 of 2,000 consumable items in their                  15 inventory are categorized as fresh food. That's on                  16 Number 3 on Page 2. I'm saying, is this consistent with                  17 a full grocery store?                  18 Only 8 1/2 percent of the retail space of the                  19 store, 1,700 of 20,000 square feet is dedicated to the                  20 sale of food products. That's Number 3 on Page 3. You                  21 know, is this consistent with a full grocery store?                  22 The sale of consumable items was 19 percent</p>	289	<p>1 grocery stores and did not contemplate pharmacies such                  2 as Walgreen's --                  3 MR. O'BRIEN: Same objection.                  4 MR. SANDS: -- and CVS."                  5 MR. O'BRIEN: Madam Chair, it's the same                  6 objection. The witness's opinion as to what the                  7 statute provides is not relevant in the slightest to                  8 this hearing.                  9 MR. SANDS: This is not my opinion, I'm just                  10 -- I'm reading -- I'm quoting the dissenting opinion of                  11 the Board. This is a quote, it's not my opinion.                  12 CHAIRPERSON MILLER: Yes, I understand.                  13 What's the evidence that, you know, you're presenting.                  14 MR. SANDS: I'm sorry?                  15 CHAIRPERSON MILLER: What's -- this is the                  16 time for evidence or, you know, you've talked about the                  17 website which is -- I consider evidence. Reading a                  18 decision is not really evidence. The Board has that                  19 decision in its record.                  20 MR. SANDS: Okay, well I just thought it was                  21 relevant because the opinion, you know, was specific in                  22 not contemplating pharmacies such as Walgreen's and</p>

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<p style="text-align: right;">290</p> <p>1 CVS.          2 MS. PERRY: Can I redirect questions now?          3 CHAIRPERSON MILLER: Yes. Um hmm.          4 MS. PERRY: Mr. Sands, we just met here          5 today, is that correct? Because you're substituting          6 for Mr. Bernstein?          7 MR. SANDS: Correct.          8 MS. PERRY: So, you really weren't prepared          9 for this whole hearing and testimony and everything          10 else --          11 MR. SANDS: No.          12 MS. PERRY: -- other than --          13 MR. SANDS: I stayed up late last night.          14 MS. PERRY: Okay. How will the -- will --          15 have you had trouble at Calvert Woodley with people --          16 with panhandling, people loitering in the neighborhood,          17 thefts in the store from people grabbing liquor or          18 whatever?          19 MR. SANDS: Yes. Certainly.          20 MS. PERRY: And have you -- there've been          21 police reports to that effect?          22 MR. SANDS: Several. Yes, several over the</p>	<p style="text-align: right;">292</p> <p>1 MS. PERRY: Okay. Let me ask the next          2 question, because we have to move on.          3 MR. SANDS: All right.          4 MS. PERRY: Does Calvert Woodley sell mustard          5 and ketchup and some canned goods? Do you sell like          6 coffee?          7 MR. SANDS: Yes.          8 MS. PERRY: And other convenience items such          9 as that?          10 MR. SANDS: Yes.          11 MS. PERRY: Do you also sell sandwiches at          12 your store?          13 MR. SANDS: Yes.          14 CHAIRPERSON MILLER: Oh, okay.          15 MS. PERRY: Am I done?          16 CHAIRPERSON MILLER: I guess so. Is that          17 right, Mr. Jones?          18 MR. JONES: Five minutes per witness.          19 They're done.          20 CHAIRPERSON MILLER: Okay.          21 MS. PERRY: Can I just ask the last question          22 then?</p>
<p style="text-align: right;">291</p> <p>1 years. Yes.          2 MS. PERRY: How -- will another license          3 affect your business or take away from the business?          4 MR. SANDS: Well, I don't think -- yeah,          5 there's no question about that. The more licenses in          6 the area, the more -- there's only so much business and          7 it's just going to be divided that much -- you know,          8 that much greater by more licensees.          9 MS. PERRY: Would you agree with -- I don't          10 know I guess I can't ask a leading question. When          11 Giant received its liquor license, did that affect your          12 business?          13 MR. SANDS: Yes. Yes. Certainly.          14 MS. PERRY: How did it affect the business?          15 MR. SANDS: I can't give you an exact          16 percentage because it's hard, but it certainly -- it          17 affected us in certain types -- in the types of wines          18 that -- and beer that Giant now carries, it affected          19 our business on those items. And it affected our          20 customer count, which is in some sense more important          21 than the loss of sales of a couple of bottles of wine,          22 because --</p>	<p style="text-align: right;">293</p> <p>1 CHAIRPERSON MILLER: All right.          2 MS. PERRY: Or let him answer it. Do you          3 consider yourself a grocery store?          4 MR. SANDS: No.          5 MS. PERRY: Thank you.          6 CHAIRPERSON MILLER: Mr. O'Brien, do you have          7 cross?          8 MR. O'BRIEN: Mr. Sands, whereabouts in the          9 neighborhood do you live?          10 MR. SANDS: I live in --          11 CHAIRPERSON MILLER: You need to speak into          12 the mic, because --          13 MR. SANDS: Oh. I live in Maryland.          14 MR. O'BRIEN: And it wasn't stated directly,          15 but I'm inferring from the testimony that you're one of          16 the owners of the Calvert Woodley Liquor Store?          17 MR. SANDS: Yes. I have -- Aaron Bernstein          18 and I each own 50 percent.          19 MR. O'BRIEN: And your store is a block away          20 from the Walgreen's. Is that correct? A block north          21 on Connecticut?          22 MR. SANDS: Yes.</p>

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294	<p>1 MR. O'BRIEN: Okay. And the reason that 2 you're here testifying against the Walgreen's 3 application is your fear of the competitive consequence 4 of granting the license to Walgreen's, the competitive 5 consequences on your store. Is that correct? 6 MR. SANDS: Not completely. I'm -- I've been 7 in business 46 years and when I started in business you 8 could only -- each Licensee could only have one store. 9 With the coming of the Whole Foods about 12, 13 years 10 ago, you probably know better than I the date, the city 11 council, in its ultimate wisdom had an emergency 12 session and gave Whole Foods the ability to have a 13 second license so that they could open up, that was the 14 condition of them opening up the store at P Street and 15 Thomas Circle. 16 Subsequent to that the grocery stores and now 17 pharmacies are carrying wine and beer and they are 18 allowed to have multiple stores whereas A licenses, 19 such as ourselves, can only have one store in the 20 District. 21 So, this has been something that, you know, I 22 feel very strongly about, because it has -- yes, it's</p>	296	<p>1 MR. SANDS: That's one of my concerns. 2 MR. O'BRIEN: Thank you. 3 CHAIRPERSON MILLER: Board questions? 4 Mr. Alberti? 5 MR. ALBERTI: Mr. Sands, thank you for 6 coming. You said -- in response to a question from Ms. 7 Perry, you said -- she asked you if there was loitering 8 and panhandling outside your store, if that was a 9 problem. And you said there was. 10 MR. SANDS: Yes. 11 MR. ALBERTI: Am I correct? 12 MR. SANDS: Yes. 13 MR. ALBERTI: All right. Has the ANC ever 14 complained to you about the panhandling and loitering 15 outside of your store? 16 MR. SANDS: No, not directly. 17 MR. ALBERTI: So, is it your impression that 18 the panhandling and loitering outside your store has 19 not risen to a problem that is of critical concern to 20 the ANC? 21 MR. SANDS: Well, I don't know about the 22 concern of the ANC, but it's been a concern of ours.</p>
295	<p>1 hurt us, but we're fortunate. We're fortunate. I have 2 no complaints about, you know, the business that we've 3 done. But it's hurt an awful lot of small businesses 4 in Washington. And the number of liquor licenses has 5 diminished greatly and one of the reasons that I feel 6 that it has is because the proliferation of stores such 7 as grocery store and pharmacies and others who are 8 allowed to have multiple stores, as opposed to the A 9 stores. 10 So, to get back to your question, yes, of 11 course I don't want another Licensee a block away, but 12 I also feel that it's not a good thing for the District 13 and for the businesses in the District that have, you 14 know, supported, you know, the District of Columbia, 15 you know, for many, many years. I think it's hurt a 16 lot of people. 17 MR. O'BRIEN: Giant's acquisition of a 18 license on the same block hurt your business? 19 MR. SANDS: Yes. Of course. 20 MR. O'BRIEN: Okay. And your concern is 21 that if Walgreen's gets a license it will further hurt 22 your business?</p>	297	<p>1 And, you know, we have spoken to the neighborhood -- 2 you know, to the police in the area because there's 3 this little area - - right, we have a CVS right next to 4 us and there's an area right between the two and it 5 seems to be an area that some of these people, you 6 know, congregate. 7 MR. ALBERTI: Thank you. And has the ANC 8 protested your license? 9 MR. SANDS: I don't believe so. 10 MR. ALBERTI: Okay. Thank you. Thank you 11 very much. 12 MR. SANDS: Okay. 13 CHAIRPERSON MILLER: Others? 14 MS. PERRY: On redirect (inaudible). 15 CHAIRPERSON MILLER: No, we're not finished 16 yet. 17 MS. PERRY: Oh. 18 CHAIRPERSON MILLER: Mr. Jones. 19 MR. JONES: Thank you, ma'am. How did you 20 come to be here today to testify? 21 MR. SANDS: How did -- 22 MR. JONES: How did you come to be here today</p>

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298	<p>1 to testify?</p> <p>2 MR. SANDS: Well, as I said, my partner was</p> <p>3 supposed to be. I was -- I've been out of town. I got</p> <p>4 back in town Monday night. My partner was supposed to</p> <p>5 be here today, but had to go to a doctor today, so he</p> <p>6 asked me if I would come.</p> <p>7 MR. JONES: How did your partner come to be</p> <p>8 here and then not be able to be here and then you have</p> <p>9 to come in his place? All right, how were you made</p> <p>10 aware, you and/or your partner, made aware of this</p> <p>11 hearing and made aware -- make a decision to come down</p> <p>12 and testify?</p> <p>13 MR. SANDS: I'm not 100 percent sure because</p> <p>14 of the way I came into it, but I believe that he had a</p> <p>15 discussion with Ms. Perry that this -- there was going</p> <p>16 to be a hearing today and, you know, would he want --</p> <p>17 would he like to testify.</p> <p>18 MR. JONES: Okay. And what was your</p> <p>19 understanding of what this hearing was about?</p> <p>20 MR. SANDS: Well again, I came in late and I</p> <p>21 didn't get all of this information really until</p> <p>22 yesterday. But, my understanding was that it had to do</p>	300	<p>1 MR. SANDS: Well, we called the police that -</p> <p>2 - you know, when the people who were out there were</p> <p>3 disruptive or would stop our customers from coming into</p> <p>4 the store, or, you know, would be intimidating to the</p> <p>5 people walking in and out of the store. So, we -- you</p> <p>6 know, we called the police.</p> <p>7 MR. JONES: Okay. So, you found that measure</p> <p>8 to be effective, ie., your calling of the police</p> <p>9 mitigated the problem?</p> <p>10 MR. SANDS: In most cases.</p> <p>11 MR. JONES: Okay. Is there -- would you have</p> <p>12 reason to believe that another establishment, if they</p> <p>13 called the police to address a similar problem, that it</p> <p>14 wouldn't also be mitigated by the same efforts or</p> <p>15 tactics?</p> <p>16 MR. SANDS: I can't say that. I mean, I</p> <p>17 don't know.</p> <p>18 MR. JONES: You can't say that?</p> <p>19 MR. SANDS: I --</p> <p>20 MR. JONES: Is there some -- do you have a</p> <p>21 special relationship with the police?</p> <p>22 MR. SANDS: Well, I wouldn't call it a</p>
299	<p>1 with the exception to the -- on the moratorium of B</p> <p>2 licenses and that Walgreen's -- this Walgreen's store</p> <p>3 was granted an exception based upon it being a grocery</p> <p>4 store.</p> <p>5 MR. JONES: Okay. And you mentioned that you</p> <p>6 had a issue with loitering and -- at least loitering I</p> <p>7 believe you --</p> <p>8 MR. SANDS: Um hmm.</p> <p>9 MR. JONES: -- mentioned specifically, out in</p> <p>10 front of your establishment? Did I get that correctly?</p> <p>11 MR. SANDS: Yes.</p> <p>12 MR. JONES: Okay. But you also indicated you</p> <p>13 have received a -- well, I may be paraphrasing it, so</p> <p>14 please correct me if I'm wrong. That you never</p> <p>15 received a formal complaint directly from the ANC as</p> <p>16 relates to the loitering that was occurring out in</p> <p>17 front of your establishment.</p> <p>18 MR. SANDS: No, they never --</p> <p>19 MR. JONES: Is that a correct statement?</p> <p>20 MR. SANDS: No, that's correct. And maybe</p> <p>21 it's because we took care of the problem ourselves.</p> <p>22 MR. JONES: And how did you do that?</p>	301	<p>1 special relationship, but we've been there for 30</p> <p>2 years, so we know -- you know, we know the police on</p> <p>3 the beat, so to speak. You know, we've gotten -- we do</p> <p>4 that for our own -- you know, it's just good business</p> <p>5 to do that.</p> <p>6 MR. JONES: Okay, so it's conceivable that</p> <p>7 another business in the area could do the same thing</p> <p>8 that you did?</p> <p>9 MR. SANDS: Certainly.</p> <p>10 MR. JONES: To address a similar problem?</p> <p>11 MR. SANDS: Certainly.</p> <p>12 MR. JONES: Okay. Thank you. Thank you,</p> <p>13 Madam Chair.</p> <p>14 CHAIRPERSON MILLER: Okay. Yes, Mr. Nophlin?</p> <p>15 MR. NOPHLIN: Yeah, I'd like to extend the</p> <p>16 conversation the board member just asked. Is your</p> <p>17 contention the reason why you're protesting this is</p> <p>18 because it's in competition with your business? Is</p> <p>19 that your major concern?</p> <p>20 MR. SANDS: Is that my major concern?</p> <p>21 MR. NOPHLIN: Yes.</p> <p>22 MR. SANDS: No. I think, you know, to be --</p>

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302	<p>1 I'm equally concerned for the other, you know, for the 2 other reasons that I enumerated. Of course I -- you 3 know, it'd be foolish to say that, you know, that I 4 want another licensee within a block of me, what 5 business would want to do that. But I really feel very 6 strongly about this other issue of the proliferation of 7 these kinds of stores. And I know we've got six Wal- 8 Mart stores coming into the District, we have Costco 9 opening up in the District, we have all of these 10 proliferation of all of these stores in the District 11 and it's, you know, yes, it'll hurt me, but we'll get 12 by. We're -- but it hurts an awful lot of the people 13 who I know for many years who have -- who've had to 14 close up their businesses because, you know, they just 15 couldn't compete with all the other available stores 16 around them. 17 MR. NOPHLIN: So, the issue around 18 residential parking and vertical (sic) safety and 19 parking does that bother your business? 20 MR. SANDS: Oh, yes. Yeah, parking is a very 21 big issue for us, but -- you know, on Connecticut 22 Avenue. We're fortunate in that we have a parking lot,</p>	304	<p>1 problem, but you took care of it? 2 MR. SANDS: No, we do. We have a continuing 3 problem. We're right next -- if you're familiar with 4 where our store is, there's that little area, that 5 Windham Place which goes nowhere goes into the park and 6 the homeless and vagrant, whatever term you want, I 7 don't want to use the wrong term, whatever the right 8 term is, they live in that area, in that wooded area 9 right next to our store. So, they come during the day, 10 they come in the evening, I mean, there are various 11 times. 12 But, they're in there -- primarily they're in 13 there -- they're in the area because of that wooded 14 area, so they're there. They're on Connecticut Avenue 15 often. 16 CHAIRPERSON MILLER: Do they frequent your 17 store? 18 MR. SANDS: Occasionally, not often. Not -- 19 no, I wouldn't say they do. They're more -- they're 20 outside the store either asking the customers who are 21 coming in or asking the customers who are going out. 22 Funny, one -- years ago -- we sell bread in the store</p>
303	<p>1 I think we're one of the very few stores up and down 2 Connecticut and we have to have a full time person on 3 our parking lot to monitor the parking because people 4 will pull into our lot to park and go to the other 5 businesses in the area and that hurts, you know, when 6 our customers want to come there. So, yes, the parking 7 -- parking is a very big issue. 8 MR. NOPHLIN: That's all I have. Thank you, 9 Madam Chair. 10 CHAIRPERSON MILLER: Okay. I just have a 11 couple of quick ones. The panhandling and loitering 12 problem, did it get worse when Giant got its liquor 13 license? 14 MR. SANDS: Did it get worse when? 15 CHAIRPERSON MILLER: When Giant got its 16 liquor license? 17 MR. SANDS: I can't honestly say. I'm sorry, 18 I -- 19 CHAIRPERSON MILLER: That's okay. 20 MR. SANDS: -- can't honestly say. 21 CHAIRPERSON MILLER: And you don't have a 22 problem now, though. Is that correct? You had a</p>	305	<p>1 and we can't -- after, you know, we can't use it the 2 next day, so one -- several years ago there was some -- 3 a homeless person outside, you know, sitting or 4 whatever and after we closed, we took it outside and 5 gave it to him. He laughed at me and threw it away. 6 So, that's not what he was interested in. 7 CHAIRPERSON MILLER: All right. Okay. 8 That's it for my questions. Anybody else? 9 Mr. O'Brien? 10 MR. O'BRIEN: Resulting from the Board's 11 questions. 12 MS. PERRY: And I have one. 13 CHAIRPERSON MILLER: Okay. Go ahead. 14 MS. PERRY: Do I go first or you? 15 CHAIRPERSON MILLER: No, I was saying -- 16 MR. O'BRIEN: I think the chair is saying 17 your time is up. 18 CHAIRPERSON MILLER: You used your five 19 minutes. 20 MR. O'BRIEN: Mr. Sands -- 21 CHAIRPERSON MILLER: Let's do Mr. O'Brien 22 first.</p>

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306	<p>1 MR. O'BRIEN: -- do I infer correctly then 2 that your store is not the cause of the panhandling and 3 loitering problem you've described? 4 MR. SANDS: Well, it is the cause in the 5 sense that we have the people walking in and out and 6 the customers are there, so they're -- they come in 7 front of the store, you know, because of the traffic, 8 the customer traffic. 9 MR. O'BRIEN: Well, I'm going to make, I 10 think, a highly educated guess that they are not 11 attracted by the nature of the operation of your store. 12 Would you agree with that? 13 MR. SANDS: You're problem right. 14 MR. O'BRIEN: Okay. And your store I know to 15 be run in a very responsible manner. Would you agree? 16 MR. SANDS: I certainly would. 17 MR. O'BRIEN: Okay. Then you would have to 18 agree, would you not, that if Walgreen's ran its store 19 in a responsible manner, that Walgreen's would not 20 encourage or generate panhandling or loitering? 21 MR. SANDS: Well, they wouldn't because of 22 the - - you know, because they ran the store in a</p>	308	<p>1 MR. SANDS: Yes. 2 MR. O'BRIEN: What is the cross street there? 3 MR. SANDS: It's Windham. 4 MR. O'BRIEN: Windham Place. Is it not 5 correct that on many occasions traffic will back up on 6 Connecticut Avenue waiting to make a right turn to get 7 into your parking lot? 8 MR. SANDS: It will happen on occasion, sure. 9 MR. O'BRIEN: Okay. Thank you. 10 CHAIRPERSON MILLER: Okay. I guess we're 11 finished with this witness. I was just going to say, 12 Ms. Perry, you have five minutes for the next witness. 13 MR. SANDS: Can I leave -- 14 MS. PERRY: I can't get in -- 15 CHAIRPERSON MILLER: What? 16 MR. SANDS: -- can I leave these copies here? 17 CHAIRPERSON MILLER: Yeah, leave them with 18 Ms. Perry. 19 MR. SANDS: Excuse me? 20 CHAIRPERSON MILLER: You can leave them with 21 Commissioner Perry. 22 MS. PERRY: You have to leave them with me.</p>
307	<p>1 responsible manner, but if they have traffic -- foot 2 traffic going in and out of the store, that's -- that 3 will generate the kind of people and the kind of 4 problem that we're talking about. 5 MR. O'BRIEN: How so? 6 MR. SANDS: Just by the nature of -- because 7 these people are in the area and they go -- they 8 gravitate to the places that have the most foot 9 traffic. So, by their nature, Walgreen's, CVS, Giant, I 10 mean, we're not the only ones, I'm not here to tell you 11 that we're the only ones, but I do believe that any 12 other successful or well run or whatever term you want 13 to use, store, will have a similar problem. 14 MR. O'BRIEN: Through no fault of that 15 successful, well run store? 16 MR. SANDS: Well, it's their fault for 17 running a good store. 18 MR. O'BRIEN: Just like it's your fault? 19 MR. SANDS: It's our fault in running a good 20 store. 21 MR. O'BRIEN: All right. The other is your 22 parking lot is to the north side of your store.</p>	309	<p>1 MR. SANDS: Oh, they have to be left with 2 you? 3 MS. PERRY: That's what she's saying. 4 CHAIRPERSON MILLER: The copies of the 5 testimony? 6 MS. PERRY: This is a copy of the testimony. 7 MR. SANDS: A copy of the testimony. 8 (Pause in proceedings.) 9 MR. O'BRIEN: I want to make -- the record 10 needs to be clear that written submissions are not 11 evidence in this case, only testimony. 12 CHAIRPERSON MILLER: Yes. We -- and we 13 didn't mark it as an exhibit or anything. 14 MR. O'BRIEN: Okay. 15 CHAIRPERSON MILLER: That -- we'll have the 16 transcript. Okay. Do you object to that? I think she 17 just passed it in for the convenience of the Board, but 18 the official transcript is the testimony. 19 MR. O'BRIEN: It's the transcript and the 20 exhibits that have been introduced. 21 CHAIRPERSON MILLER: Correct. 22 MR. O'BRIEN: That's the evidence.</p>

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<p style="text-align: right;">310</p> <p>1 CHAIRPERSON MILLER: That's the evidence,                  2 correct.                  3 MS. PERRY: So, do I have to introduce his                  4 testimony?                  5 CHAIRPERSON MILLER: No, it's in the record.                  6 MS. PERRY: Oh, it's in the record.                  7 CHAIRPERSON MILLER: And then we're just                  8 saying the official testimony is being transcribed by                  9 the court reporter, so that's what's the evidence.                  10 MS. PERRY: But what about exhibits?                  11 CHAIRPERSON MILLER: Exhibits you -- at the                  12 end of your case you can ask that your exhibits be                  13 admitted into evidence.                  14 MS. PERRY: Including his testimony?                  15 MR. ALBERTI: Do you want to enter that into                  16 evidence?                  17 CHAIRPERSON MILLER: We don't need that into                  18 -- we don't need that, it's in evidence.                  19 MS. PERRY: Oh, okay.                  20 CHAIRPERSON MILLER: The court reporter's                  21 transcribing it.                  22 MS. PERRY: I -- whatever.</p>	<p style="text-align: right;">312</p> <p>1 CHAIRPERSON MILLER: Okay. Thank you.                  2 Proceed.                  3 MS. PERRY: Would you please tell your name                  4 and your location and --                  5 MR. GARG: Veneet Garg, owner of Van Ness                  6 Wines and Liquors, 4201 Connecticut Avenue.                  7 MR. ALBERTI: Last name again, I'm sorry.                  8 MR. GARG: Garg, G-A-R-G.                  9 MR. O'BRIEN: I didn't catch the first name.                  10 CHAIRPERSON MILLER: Right. Let --                  11 MR. GARG: It's Veneet. V-E-N-E-E-T, Edward,                  12 Edward, Tom.                  13 MR. O'BRIEN: Thank you.                  14 MR. GARG: No problem.                  15 CHAIRPERSON MILLER: Thank you.                  16 MS. PERRY: Veneet, would you please proceed                  17 to tell the Board how this license will affect you and                  18 whether you've had panhandlers at your store, et                  19 cetera, or people loitering.                  20 MR. GARG: There is a bit of a loitering                  21 issue, panhandling. Our business, of course, would be                  22 negatively affected, small family owned business,</p>
<p style="text-align: right;">311</p> <p>1 CHAIRPERSON MILLER: That's why we just                  2 collected it separately.                  3 MR. O'BRIEN: My point is, if there's                  4 something in the written that was not in the testimony --                  5 CHAIRPERSON MILLER: That's right.                  6 MR. O'BRIEN: -- that thing that was in the                  7 written is ignored, it's not evidence.                  8 CHAIRPERSON MILLER: Correct. The official                  9 testimony is what the court reporter has taken.                  10 MS. PERRY: Then I think I need to get it                  11 back to ask that it be admitted at the end of the                  12 hearing. No? Okay.                  13 CHAIRPERSON MILLER: No, the testimony is                  14 what's been transcribed by the court reporter. I                  15 thought that was just for convenience to have.                  16 All right. You have one more witness.                  17 MR. GARG: Good evening.                  18 CHAIRPERSON MILLER: Would -- good evening.                  19 Would you -- I want to swear you in. Do you swear to                  20 tell the truth, the whole truth and nothing but the                  21 truth?                  22 MR. GARG: Yes, ma'am.</p>	<p style="text-align: right;">313</p> <p>1 support my wife and three children and my elderly                  2 parents with this business. Another competitor in that                  3 two block radius would be tough, tough for us to                  4 maintain.                  5 MS. PERRY: Did you come to our ANC meeting                  6 to present testimony that night?                  7 MR. GARG: Yes, ma'am.                  8 MS. PERRY: Was Aaron Bernstein also there                  9 from Calvert Woodley?                  10 MR. GARG: Yes, ma'am.                  11 MS. PERRY: Did the subject of panhandling                  12 come up with Mr. Bernstein?                  13 MR. GARG: Yes, ma'am.                  14 MS. PERRY: So, it did not come up with Mr.                  15 Sands?                  16 MR. GARG: No, ma'am.                  17 MS. PERRY: Okay. And it did come up with                  18 you also, our concerns about the loitering and the                  19 homeless and whatever?                  20 MR. GARG: Yes, ma'am.                  21 MS. PERRY: Okay. Do you think you could                  22 stay in business with another -- the issuance of a</p>

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<p style="text-align: right;">314</p> <p>1 license to Giant hurt your business severely?  2 MR. GARG: Very much so.  3 MS. PERRY: And do you think another license  4 would almost put you out of business?  5 MR. GARG: I would like to think no, but it's  6 very possible, yes. It would be tough. It would be  7 tough to maintain. We already compete with Calvert  8 Woodley, Giant, those are two of the biggest retailers  9 in the city. Walgreen's would be -- could be the nail  10 in the coffin.  11 MS. PERRY: And I guess do you feel we have  12 enough liquor licenses? How long have you been in your  13 store?  14 MR. GARG: Six years.  15 MS. PERRY: Do you feel that there's enough --  16 MR. O'BRIEN: Objection to what he feels.  17 MS. PERRY: Do you believe that there are  18 enough licenses in --  19 MR. O'BRIEN: Same objection --  20 CHAIRPERSON MILLER: I'm sorry, what's the  21 objection?  22 MR. O'BRIEN: -- to what he -- well, the</p>	<p style="text-align: right;">316</p> <p>1 MS. PERRY: Have you been into Walgreen's?  2 MR. GARG: Yes, ma'am.  3 MS. PERRY: When you go into Walgreen's do  4 you think of it as a supermarket, a grocery store or as  5 a pharmacy? I mean --  6 MR. GARG: A drugstore.  7 MR. O'BRIEN: Objection. This is asking for  8 opinions, it's not asking for facts.  9 CHAIRPERSON MILLER: Okay.  10 MS. PERRY: Okay. Well, what is your opinion  11 of the Walgreen's store?  12 MR. GARG: It's a drugstore.  13 CHAIRPERSON MILLER: Let me tell you, you're --  14 MS. PERRY: My time is up?  15 CHAIRPERSON MILLER: -- within your last  16 minute, so.  17 MS. PERRY: That's it. I have no more  18 questions.  19 CHAIRPERSON MILLER: That's it? Okay. All  20 right.  21 Mr. O'Brien, do you have cross?  22 MR. O'BRIEN: Yeah. Has the ANC ever</p>
<p style="text-align: right;">315</p> <p>1 question's been rephrased. It first was, does he feel.  2 The next question says, does he believe. I mean, I  3 certainly have no problem with the witness testifying  4 to facts, but opinions and beliefs are not --  5 CHAIRPERSON MILLER: How about his opinion?  6 MS. PERRY: What is your -- are there enough  7 -- how did you say I should phrase it, Steve? Are  8 there enough -- how do you feel about --  9 CHAIRPERSON MILLER: No, I said maybe you  10 should ask him if it's his -- what's his opinion with  11 respect to --  12 MS. PERRY: Okay. What is your opinion with  13 respect to the number of licenses in the immediate  14 vicinity of your store?  15 MR. GARG: Somewhat saturated. We have three  16 in a two block radius, maybe not even two blocks, about  17 a block and a half. Two with liquor, three, of course,  18 we beer and wine. It's a small neighborhood, I don't  19 know if it's necessary to add another.  20 MS. PERRY: Are you aware that Direct Due  21 Domain is a new one coming into that same block?  22 MR. GARG: No ma'am, I was not aware.</p>	<p style="text-align: right;">317</p> <p>1 complained to you about the loiterers and the  2 panhandlers out in front of your store?  3 MR. GARG: Yes, sir.  4 MR. O'BRIEN: The ANC has complained.  5 MR. GARG: No, no. The ANC has complained?  6 MR. O'BRIEN: Yes. Has the ANC said to you --  7 MS. PERRY: I think he means me.  8 MR. O'BRIEN: -- your store -- excuse me.  9 Has your -- has the ANC ever come to you or any  10 neighbors and says, "Your store's attracting loiters  11 and panhandlers?"  12 MR. GARG: Any neighbor?  13 MR. O'BRIEN: Yeah.  14 MR. GARG: Yeah. Yes, sir.  15 MR. O'BRIEN: Okay. And what is it that your  16 store is doing to attract loiterers and panhandlers?  17 MR. GARG: Selling alcohol, perhaps.  18 MR. O'BRIEN: Are you selling alcohol to  19 loiterers and panhandlers?  20 MR. GARG: No, sir.  21 MR. O'BRIEN: Well, then why is it the -- to  22 your knowledge, that there are loiterers and</p>

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318	<p>1 panhandlers out in front of your store?  2 MR. GARG: I couldn't answer that question.  3 MR. O'BRIEN: Do you run your store in a  4 responsible manner?  5 MR. GARG: Of course.  6 MR. O'BRIEN: Okay. Is it something that  7 you're doing that's causing that problem?  8 MR. GARG: No, I would just say -- I would  9 think that loiterers and panhandlers tend to be  10 attracted to alcohol. I mean, if you drive around town  11 you see more loiterers and panhandlers in front of  12 places that sell alcohol than --  13 MR. O'BRIEN: Did you ever consider stop --  14 stopping selling alcohol to help out with the loitering  15 and panhandling problem?  16 MR. GARG: No sir, I have not.  17 MR. O'BRIEN: Why not?  18 MR. GARG: I wouldn't be able to support my  19 family.  20 MR. O'BRIEN: Um hmm. Those are my  21 questions.  22 CHAIRPERSON MILLER: Any Board questions?</p>	320	<p>1 a direct complaint to me about my personal store, but  2 you never approached me personally and said, "Your  3 store attracts panhandlers."  4 MS. PERRY: No. But we have -- the issue of  5 loiterers, panhandlers in that area --  6 MR. GARG: Right. In that area.  7 MS. PERRY: -- has been raised.  8 MR. GARG: It has been discussed. Yes.  9 MS. PERRY: Thank you.  10 CHAIRPERSON MILLER: I'm sorry, I just want  11 to ask a question --  12 MR. GARG: Sure.  13 CHAIRPERSON MILLER: -- I don't know if it's  14 been asked. But, did the panhandling and loitering  15 problem increase when Giant got its liquor license?  16 MR. GARG: To be honest with you I couldn't  17 answer that fairly because since I've been there the  18 Giant had just gotten their license.  19 CHAIRPERSON MILLER: Oh, okay. Right.  20 MR. GARG: So, it's kind of hard for me to  21 say.  22 CHAIRPERSON MILLER: Right. Okay. Well, did</p>
319	<p>1 MR. ALBERTI: Mr. Garg?  2 MR. GARG: Yes, sir.  3 MR. ALBERTI: Has the ANC ever complained to  4 you about loiterers and panhandlers at your --  5 MR. GARG: No, sir.  6 MR. ALBERTI: Has the ANC ever protested your  7 license?  8 MR. GARG: Not to my knowledge, sir.  9 MR. ALBERTI: Thank you.  10 MS. PERRY: When they say ANC I think they  11 mean me.  12 CHAIRPERSON MILLER: Commissioner Perry, I  13 don't think you went right to the limit so if you have --  14 MR. ALBERTI: She has -- she actually has a  15 minute and a half.  16 CHAIRPERSON MILLER: Yeah, do you have any --  17 MR. ALBERTI: You have one and a half  18 minutes.  19 MS. PERRY: I believe you earlier stated that  20 at the ANC meeting we talked about the issue of  21 panhandling and loitering?  22 MR. GARG: Yes, ma'am. I didn't take that as</p>	321	<p>1 it -- and you wouldn't know whether it increased when  2 you got there either, right, because you weren't --  3 MR. GARG: And I just -- I only know of the  4 six years that I've been there.  5 CHAIRPERSON MILLER: Right.  6 MR. GARG: And the Giant has had their  7 license during that time.  8 CHAIRPERSON MILLER: All right. Any other  9 Board questions?  10 MR. NOPHLIN: Excuse me, real quick. If I  11 could -- where's your business located?  12 MR. GARG: Corner of Connecticut and Van  13 Ness, near the Bank of America, 4201.  14 MR. NOPHLIN: Is it on -- there are -- other  15 -- same side that UDC is on or the other side?  16 MR. GARG: Opposite side. Directly across  17 the street.  18 MR. NOPHLIN: Okay. Thank you. Thank you,  19 Madam Chair.  20 CHAIRPERSON MILLER: Okay, any other  21 questions based on the Boards?  22 (No audible response.)</p>

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<p style="text-align: right;">322</p> <p>1 CHAIRPERSON MILLER: Okay, then thank you                  2 very much.                  3 MR. GARG: Thank you.                  4 CHAIRPERSON MILLER: And so Commissioner                  5 Perry, I guess at this point if you would like to move                  6 any of the evidence into the record.                  7 MS. PERRY: I would, but I would like                  8 permission to enter it into -- bring it back to the                  9 Board because these are our only copies. We didn't                  10 have time to -- we weren't sure we would even go forth                  11 today.                  12 CHAIRPERSON MILLER: Of what?                  13 MR. GARG: Am I free to go, ma'am? I'm                  14 sorry.                  15 CHAIRPERSON MILLER: Yes, you are.                  16 MR. GARG: Okay. Hungry. Dinner. So you                  17 guys.                  18 MS. PERRY: Can I put -- do I enter this into                  19 the record now?                  20 CHAIRPERSON MILLER: Now's the time for --                  21 yes.                  22 MS. PERRY: I'd like to enter this Diabetes</p>	<p style="text-align: right;">324</p> <p>1 magazine?                  2 MR. O'BRIEN: I'm sorry?                  3 CHAIRPERSON MILLER: Same with the magazine,                  4 Number 3?                  5 MR. O'BRIEN: Number 3, no objection.                  6 CHAIRPERSON MILLER: Okay. So, if I recall,                  7 Number 1 was like a photo.                  8 MS. PERRY: Oh, that's true.                  9 CHAIRPERSON MILLER: Okay, what is that?                  10 MS. PERRY: Let me find it again. It was a                  11 picture of the front of the store.                  12 CHAIRPERSON MILLER: Oh, the sign. Okay.                  13 (Board and staff confer.)                  14 MS. PERRY: I have to be honest that we were                  15 not prepared for this hearing.                  16 MR. ALBERTI: Did you have a picture of                  17 something related to the Walgreen's?                  18 MS. PERRY: It's a sign. Yes, I'm looking                  19 for it on my -- in my mess.                  20 CHAIRPERSON MILLER: All right.                  21 MR. O'BRIEN: There it is.                  22 MS. PERRY: Here it is.</p>
<p style="text-align: right;">323</p> <p>1 and You magazine that we talked about. It was meat --                  2 (Board members confer.)                  3 MS. PERRY: I would also like to enter --                  4 CHAIRPERSON MILLER: Wait. Okay, let's do it                  5 systematically, though.                  6 MR. O'BRIEN: The magazine, Madam Chair, was                  7 Protestant's Number 3, as I recall.                  8 MR. ALBERTI: What was Protestant's Number 1,                  9 first of all? Let's just do it systematically, as the                  10 Board -- as the Chair suggested.                  11 MR. O'BRIEN: I don't remember. Number 2 was                  12 the --                  13 MR. ALBERTI: Well, that's for Ms. Perry to --                  14 MS. PERRY: I don't remember, to be honest,                  15 because I was not keeping track.                  16 CHAIRPERSON MILLER: Okay. All right, I'm                  17 just going to go backwards for a second. Number 2 was                  18 -- were the brochures.                  19 MR. O'BRIEN: No objection.                  20 CHAIRPERSON MILLER: What?                  21 MR. O'BRIEN: No objection.                  22 CHAIRPERSON MILLER: Yeah. Okay. Or to the</p>	<p style="text-align: right;">325</p> <p>1 CHAIRPERSON MILLER: Okay, what is that?                  2 MS. PERRY: It's a picture of the front of                  3 Walgreen's with a banner saying, "Visit our                  4 Immunization Center."                  5 MR. O'BRIEN: No objection.                  6 CHAIRPERSON MILLER: Okay.                  7 MS. PERRY: "No appointment needed."                  8 MR. O'BRIEN: Still no objection.                  9 CHAIRPERSON MILLER: Okay. All right.                  10 Number 4, is this a picture about --                  11 MR. ALBERTI: I think that that's what it                  12 was?                  13 CHAIRPERSON MILLER: -- Walgreen's services?                  14 Is that what you're referring to?                  15 MS. PERRY: This was a Walgreen's magazine                  16 is Number 4.                  17 CHAIRPERSON MILLER: We got that. That's                  18 Number 3.                  19 MR. O'BRIEN: No, that's Number 3, that's                  20 already in.                  21 MS. PERRY: Oh, Walgreen's services, yes.                  22 That is right here. This says "Walgreen's. Find a</p>

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326	<p>1 Walgreen's near you." It shows 4225 Connecticut 2 Avenue. 3 MR. O'BRIEN: No objection. 4 CHAIRPERSON MILLER: What is it, though? 5 MS. PERRY: This -- 6 MR. O'BRIEN: It's a printout from the 7 Internet. 8 CHAIRPERSON MILLER: Internet. 9 MS. PERRY: This is --- 10 CHAIRPERSON MILLER: That's what I thought. 11 Okay, their website? 12 MS. PERRY: -- the printout from the Internet 13 that shows Walgreen's classifies themselves as a 14 convenience store. 15 CHAIRPERSON MILLER: Is that Walgreen's -- 16 from Walgreen's website? 17 MS. PERRY: Yes, it is. 18 CHAIRPERSON MILLER: Okay. That's 4. 19 MS. PERRY: And it was testified to that. I 20 think our next exhibit would be testimony of Brian 21 Lederer. 22 MR. O'BRIEN: No, that's not an exhibit.</p>	328	<p>1 decision. 2 MS. PERRY: Okay. 3 CHAIRPERSON MILLER: That's all -- I -- those 4 are other documents that I recall you referring to. I 5 don't know if you have anything else. 6 MS. PERRY: I referred to the Lexus -- I 7 referred to the Upper Georgia Avenue Planning Committee 8 report. 9 MR. O'BRIEN: Case. 10 MS. PERRY: Case. 11 CHAIRPERSON MILLER: The case. 12 MS. PERRY: But, these are things that I 13 guess you can just take notice of? 14 CHAIRPERSON MILLER: That's correct. 15 MS. PERRY: And I think they that's my 16 exhibits. The only other thing I have, and we did not 17 play today, this is the pharmacy ad. I don't know what 18 this is, so. I've already entered into the record -- he 19 was doing the same Internet thing that I have entered 20 into the record from the webpage. 21 CHAIRPERSON MILLER: Right. 22 MS. PERRY: This is the -- an ad that</p>
327	<p>1 CHAIRPERSON MILLER: Right, that's not an 2 exhibit. 3 MS. PERRY: That's not an exhibit? Okay. 4 CHAIRPERSON MILLER: We have his testimony as 5 transcribed by the court reporter. 6 MS. PERRY: Okay. Then I believe that's 7 probably my only exhibits. 8 (Board members confer.) 9 MS. PERRY: Or can I enter into it -- yeah, 10 but wait, they're not letting me enter it. 11 MR. LEDERER: No, the attachments. 12 MS. PERRY: They're not -- you can't enter 13 it. They just said that. I can't even enter Brian's. 14 (Whispered conversation.) 15 CHAIRPERSON MILLER: Okay. Commissioner 16 Perry? 17 MS. PERRY: Yes. 18 CHAIRPERSON MILLER: This is -- if I recall 19 you had documents, I think, of the legislation relating 20 to the grocery store issue and we can take judicial 21 notice of that and the committee reports, that's all in 22 the public realm and the same with the Board's</p>	329	<p>1 Walgreen's runs on the regular commercials on the TV 2 showing that it's called "Meet Your Pharmacist." And 3 it doesn't, it talks about pharmacies, but we did not 4 show it today so I'm not going to enter it into the 5 record. 6 MR. ALBERTI: Ms. Perry, Ms. Jenkins is 7 there, would you give her the exhibits? 8 MS. JENKINS: We recorded these four, so if 9 you'll give them to me I'll make certain they get into 10 the file. 11 MS. PERRY: Okay. Here's the first picture. 12 MS. JENKINS: Very good. So, this is 13 Protestant's 1. Right? The banner. 14 MS. PERRY: Yeah. 15 MS. JENKINS: Correct. 16 MS. PERRY: Here is the brochures. 17 MS. JENKINS: Okay, very good. 18 MS. PERRY: I don't know how many copies you 19 want of them. 20 MS. JENKINS: One. 21 MS. PERRY: Okay. And here's the -- you've 22 got that one, okay. And Number 3 was this magazine.</p>

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<p style="text-align: right;">330</p> <p>1 MS. JENKINS: The magazine. Correct.</p> <p>2 MS. PERRY: Showing meat, food and poultry.</p> <p>3 MR. ALBERTI: Mr. O'Brien, I'm going to ask</p> <p>4 while this is going -- it's okay, continue Ms. Perry.</p> <p>5 MS. PERRY: No, we're done. This is Number</p> <p>6 4, that's the website.</p> <p>7 MS. JENKINS: Perfect.</p> <p>8 MR. ALBERTI: I'm just going to -- do you</p> <p>9 want copies of any of these exhibits? And if so, we</p> <p>10 will arrange to get them to you.</p> <p>11 MR. O'BRIEN: If I need copies I will get</p> <p>12 them from board staff at a future date.</p> <p>13 MR. ALBERTI: Great. Thank you very much.</p> <p>14 MR. O'BRIEN: Thanks.</p> <p>15 MS. PERRY: I think that's it.</p> <p>16 MR. ALBERTI: Just to make it clear that --</p> <p>17 thank you.</p> <p>18 CHAIRPERSON MILLER: Okay. So, that does it</p> <p>19 with your exhibits. Right? There's been no objection,</p> <p>20 so Protestant's Exhibits are all admitted into the</p> <p>21 record.</p> <p>22 MR. O'BRIEN: 1 through 4.</p>	<p style="text-align: right;">332</p> <p>1 max.</p> <p>2 MR. ALBERTI: Great.</p> <p>3 MR. O'BRIEN: I have a three question</p> <p>4 rebuttal case.</p> <p>5 CHAIRPERSON MILLER: Oh, you have a rebuttal</p> <p>6 case?</p> <p>7 MR. O'BRIEN: Yes, three questions.</p> <p>8 CHAIRPERSON MILLER: Okay. Sorry.</p> <p>9 MR. O'BRIEN: Mr. Conner, please resume</p> <p>10 (inaudible).</p> <p>11 CHAIRPERSON MILLER: I forgot about that.</p> <p>12 MR. O'BRIEN: Oh, you can't hear?</p> <p>13 MR. CONNER: I actually couldn't hear, so if</p> <p>14 it's --</p> <p>15 MR. O'BRIEN: Would it be better if he stayed</p> <p>16 here?</p> <p>17 COURT REPORTER: Yes.</p> <p>18 MR. O'BRIEN: Okay. Recall Mr. Conner who's</p> <p>19 already been sworn.</p> <p>20 Mr. Conner, the video that you narrated</p> <p>21 today, which is our Exhibit Number 3, did that video</p> <p>22 depict a typical food display at Walgreen's or did you</p>
<p style="text-align: right;">331</p> <p>1 CHAIRPERSON MILLER: Pardon?</p> <p>2 MR. O'BRIEN: 1 through 4.</p> <p>3 CHAIRPERSON MILLER: 1 through 4, that's what</p> <p>4 I have. Right.</p> <p>5 (Protestant's Exhibit Numbers 1 through 4</p> <p>6 admitted into the evidence.)</p> <p>7 MR. O'BRIEN: Has Ms. Perry either rested or</p> <p>8 about to rest?</p> <p>9 MS. PERRY: I don't know, do I get a closing</p> <p>10 statement? I'm not sure where I'm -- where this all</p> <p>11 comes.</p> <p>12 CHAIRPERSON MILLER: Yeah, you rest with your</p> <p>13 case. You have no more witnesses, you've put your</p> <p>14 documents -- exhibits into the record, they've been</p> <p>15 admitted. So, that -- you should rest your case at</p> <p>16 this point. You have closing. Then you'll have</p> <p>17 closing.</p> <p>18 MS. PERRY: Then I'll guess I rest my case.</p> <p>19 CHAIRPERSON MILLER: Okay.</p> <p>20 MR. ALBERTI: And Madam Chair, how long are</p> <p>21 we going to give each side for closing?</p> <p>22 CHAIRPERSON MILLER: I had said five minutes,</p>	<p style="text-align: right;">333</p> <p>1 stock up and create a unusual situation for purposes of</p> <p>2 the video?</p> <p>3 MR. LEDERER: No, that is a typical day of</p> <p>4 what the store should look like.</p> <p>5 MS. PERRY: Isn't that leading, like you</p> <p>6 always accuse me of?</p> <p>7 CHAIRPERSON MILLER: Ms. Perry.</p> <p>8 MR. ALBERTI: Do you have an objection?</p> <p>9 MS. PERRY: I do have an objection.</p> <p>10 CHAIRPERSON MILLER: Objection. Leading</p> <p>11 question?</p> <p>12 MR. O'BRIEN: I'll rephrase.</p> <p>13 CHAIRPERSON MILLER: Okay.</p> <p>14 MR. O'BRIEN: Does the video fairly and</p> <p>15 accurately depict a typical, every day food offering</p> <p>16 display at --</p> <p>17 UNIDENTIFIED MALE: That's also a leading</p> <p>18 question.</p> <p>19 MR. O'BRIEN: -- the Walgreen's store?</p> <p>20 MR. LEDERER: Yes, it does.</p> <p>21 MR. O'BRIEN: Okay. Number two, Exhibit</p> <p>22 Number 4, our Exhibit Number 4 was the diagram of the</p>

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334	<p>1 floor. Without reference to the colors for the moment, 2 does the layout of the floor, including the shelving, 3 fairly and accurately depict the store as it is today? 4 MR. LEDERER: Yes. 5 MR. O'BRIEN: Now, last question. You 6 testified that the blue in Exhibit Number 4 was food 7 items and that the red was beverage items, obviously 8 non-alcoholic beverages, because you don't have a 9 license. Okay, was that testimony correct? 10 MR. LEDERER: No, it was not. 11 MR. O'BRIEN: All right. Would you tell the 12 Board what red and blue relate to. 13 MR. LEDERER: Right. This was a different 14 diagram from what I saw previously. Blue is all the 15 consumables in this one that they brought in, the red 16 is the area where, if the license was granted, that 17 would depict the amount of linear footage that the 18 alcohol would be. 19 MR. O'BRIEN: So, it's -- all the red on that 20 is -- no, I don't want to lead. 21 MR. LEDERER: Okay, I can take that. 22 MR. O'BRIEN: Go ahead.</p>	336	<p>1 computers that will show me the in stock conditions on 2 a daily basis, since everything is scanned in and 3 accounted for, and scanned out through the register. 4 So, I have a perpetual inventory going on in the store. 5 MS. PERRY: Do you monitor that on a daily 6 basis? 7 MR. LEDERER: I look at the outs in a store 8 on a daily basis. 9 MS. PERRY: You said you look at the "outs"? 10 MR. LEDERER: Correct. 11 MS. PERRY: What about the ins? 12 MR. LEDERER: Well, if there's no outs then 13 the ins are in. 14 MS. PERRY: Okay. So -- but you would have 15 to admit that you don't sell any hot food? 16 MR. O'BRIEN: Objection. Scope. 17 CHAIRPERSON MILLER: Yes, I agree. 18 MS. PERRY: Okay. Then I'll forget -- I'll 19 just stop here. 20 CHAIRPERSON MILLER: Okay. Board questions? 21 MR. O'BRIEN: That's the end of my rebuttal 22 case, subject to any Board questions.</p>
335	<p>1 MR. LEDERER: Yeah. Currently all the red 2 and blue is currently consumable food and beverages, 3 inclusive. This particular diagram was another one 4 that was I guess produced from our corporate office 5 that if the depict -- if we did get the license, the 6 small percentage of linear feet that would be consumed 7 by alcoholic beverages and in the current locations. 8 So, red would be alcoholic beverages, if the license 9 was granted. 10 MR. O'BRIEN: Thank you. Those are my 11 questions. 12 CHAIRPERSON MILLER: Okay. Commissioner 13 Perry, do you have any cross? 14 MS. PERRY: No. Yeah, maybe one. How often 15 are you in the store, this particular store? 16 MR. LEDERER: That could vary. Sometimes two 17 or three times a month, sometimes once a month. 18 MS. PERRY: So, you don't actually see what's 19 delivered to the store on a daily basis or what's in 20 the store on a daily basis? 21 MR. LEDERER: I don't physically see what's 22 delivered to the store on a daily basis. I do have</p>	337	<p>1 CHAIRPERSON MILLER: Board questions? I just 2 -- could you remind me, Mr. Conner, the day -- the date 3 -- when that video was taken? 4 MR. LEDERER: I can't -- roughly I think it 5 was the middle of April. It might have been April 6 18th, I remember that on my calendar to be there, but I 7 can't say if that's the exact date that I filmed the 8 video. 9 CHAIRPERSON MILLER: Okay. It's probably in 10 the record, but I just wanted to get that in my mind. 11 All right. 12 No further questions, then thank you very 13 much. We can turn to closing arguments, I believe. 14 Mr. O'Brien. 15 MR. O'BRIEN: The sole issue here is the 16 appropriateness, "here" meaning in this proceeding is 17 the appropriateness, whether this establishment, if 18 granted a license, would somehow exacerbate or create 19 problems with respect to peace, order and quiet, 20 residential parking needs, vehicular and pedestrian 21 safety. 22 I think the first one I would make, just to</p>

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338	<p>1 get it out of the way and also make sure I don't forget 2 it, is that the last two witnesses candidly admitted 3 that they were here because they don't want the 4 competition. The Court of Appeals, and I can supply a 5 cite later, has made it clear, competition is not a 6 cognizable factor upon which the Board may make a 7 decision. The Board may not say, "We're not going to 8 grant a license to B, because that's going to hurt 9 License A," and that's what the two competing store 10 owners where here to testify to, so I don't think we 11 need to spend anymore time on that. 12       The evidence here shows the store exists now. 13 The store is not going away. To the extent that -- the 14 question the becomes, to what extent has it been 15 demonstrated that granting a license to the store will 16 make problems worse. And I don't believe there's been 17 any evidence to suggest to the Board that it will. 18 Instead, what the evidence suggested is when -- and I 19 thank Commissioner Perry for her candor, is when 20 complaints were lodged with the store, corrective 21 action was taken. 22       The -- and it seems to me the complaints</p>	340	<p>1 there's going to be vehicular, pedestrian -- that 2 pedestrians are going to be run down, it's all idle 3 speculation. 4       And based on the record evidence, there's no 5 reason for the Board to conclude other than it would be 6 appropriate to grant the license to Walgreen's. 7       CHAIRPERSON MILLER: Thank you. Commissioner 8 Perry. 9       MS. PERRY: First of all, I'd like to say 10 that I love the way Mr. O'Brien translates what I said. 11 Yes, we complained to Walgreen's. Yes, they have tried 12 to take some corrective action. Has it totally worked? 13 No. Do we still have trucks blocking the alley? Yes. 14 Do we still have them parking on Van Ness property? 15 Yes. Do they still have trouble negotiating the 16 loading dock, with the beep, beep, beeps all the time? 17 Yes. 18       But most importantly, we do again want to 19 raise our objection. But the reason we are -- the 20 whole issue here is not whether the store meets the -- 21 is a good neighbor or anything else. The -- this store 22 has 20,000 square feet, of which by their own fact --</p>
339	<p>1 basically have been about trucks in the alley. But 2 corrective action has been taken. The store manager 3 showed you the photo that said no vendors -- we won't 4 accept deliveries from vendors unless they come to the 5 back door and we can see their trucks. That was his 6 testimony. That's not been refuted. 7       To the extent there's a panhandling problem, 8 Mr. Sands says it arises from a wooded area to the rear 9 or near his store, a block away from this store. But 10 there's no reason to believe that panhandlers are going 11 to descend upon the neighborhood or battalions of 12 reinforcements of panhandlers are going to show up 13 because Walgreen's is granted a beer and wine license. 14       Mr. Conner's testimony is that the typical 15 store, I believe he said three to five percent of sales 16 will be beer and wine. And the reason that -- well, I 17 (inaudible) reason. 18       So, the bottom line is the -- it has been 19 demonstrated the store is responsibly run, it's got 20 more than adequate parking, that garage has never been 21 full, according to the testimony. They have more than 22 adequate parking. We heard no evidence suggesting that</p>	341	<p>1 their own fact finding says there are virtually 1,700 2 square feet of what they call food and bottled -- non- 3 alcoholic beverages. 4       MR. LEDERER: Consumable. Consumable. 5       MS. PERRY: Most of how to are basically 6 snacks, cold sandwiches, pre-packaged foods. The 7 council created -- this store -- the council -- let me 8 just -- we weren't prepared for this today. 9       D.C. Code 25-331 generally permits a grocery 10 store to receive an alcohol license, despite the 11 moratorium on new Class B licenses. The provision was 12 done through emergency legislation in the Year 2000 and 13 it was basically done -- the emergency declaration was 14 to allow the Whole Foods on P Street to sell beer and 15 wine. 16       The documents and the committee reports all 17 refer to full service grocery stores, supermarkets, 18 they do not refer to drugstores. Over the course of 19 the years the council has hold -- held many hearings on 20 changing ABRA's regulations. It has never come before 21 the council to allow drugstores or pharmacies to sell 22 groceries -- or become full service grocery stores.</p>

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342	<p>1 Walgreen's is primarily a drugstore, a 2 pharmacy. The top half -- in fact, if you want to 3 divide the floors and just say each one of them is 4 9,000 square feet, half of the top floor is a makeup 5 section, their Look Boutique. The other side is a Take 6 Care Clinic and pharmacy. 7 In the bottom half of the store there's 8 basically a limited selection of what I call snacks or 9 fast food, mostly donuts and cupcakes and whatever, a 10 few sandwiches and loads of nuts. That is more of a 11 convenience store. You run in to get a quick sandwich, 12 because you didn't cook dinner or you're running late 13 from the Metro, or you want a donut or a quick snack. 14 Walgreen's, in order for it to be classified 15 as a full service grocery store it has to be their 16 primary business. Walgreen's primary business, and we 17 testified today through it, is not that of a grocery 18 store, it is that of a drugstore. And with their new 19 acquisitions they are becoming more into the makeup 20 department. 21 In their federal filings, to be eligible for 22 it to be a grocery store the primary business and</p>	344	<p>1 have had an opportunity to have a postponement so we 2 could properly present evidence today. 3 CHAIRPERSON MILLER: Okay. Thank you. Does 4 that conclude your closing? 5 MS. PERRY: I guess, because I wasn't 6 prepared to open or close. 7 CHAIRPERSON MILLER: Well, you did it. And I 8 would ask you -- I missed what you were referring to, 9 were you -- when you were giving a definition of 10 grocery store, where you -- what, the encyclopedia? 11 What was it? 12 MS. PERRY: I have two sources. One was from 13 Wikipedia under supermarket. I have an one here from 14 the Encyclopedia Britannica. And I have the definition 15 of primary from the Webster's Unabridged Dictionary, 16 the one that the courts use. 17 CHAIRPERSON MILLER: What? 18 MS. PERRY: It's the one that the courts use 19 when they don't know how to define a term or what a 20 term is defined as. 21 CHAIRPERSON MILLER: That was for primary or 22 supermarket?</p>
343	<p>1 purpose of the store must be the sale of a full range 2 of fresh, canned and frozen food items. They have less 3 than 8.5 percent of their store is basically groceries. 4 The rest is magazines, newspapers, they have seasonable 5 -- what do you call it, seasonal items in the store, 6 and by that I mean a lot of school supplies now. In 7 the summer they have soil and other items in that 8 section and the pool noodles, et cetera. They -- on 9 the ground floor, as much space that is dedicated to 10 food is also dedicated to other items. 11 We turn to the encyclopedia and the 12 Britannica says, "A supermarket sells meat, fresh 13 produce, dairy," not just canned goods and cold 14 sandwiches and a few packages of frozen dinners. 15 The only way, to my knowledge, that this 16 license could be granted is if this Board decides that 17 Walgreen's has now become not a drugstore, but a full 18 service grocery store and we contend that it is not. 19 And I once again want to reiterate that we 20 really should have had time to prepare for this hearing 21 and that since we never saw anything entered into the 22 record, including the video, until tonight, we should</p>	345	<p>1 MS. PERRY: Primary. And I also have one for 2 supermarket, if I could find it. 3 CHAIRPERSON MILLER: That's -- 4 MS. PERRY: If I remember to bring it. 5 CHAIRPERSON MILLER: It's in the transcript 6 then. Okay, so that concludes closing statements. 7 And what I said at the beginning of the 8 hearing was after we got through this whole hearing, I 9 know you have, Ms. Perry, said, throughout the hearing, 10 that you feel that you were prejudiced in some sort by 11 our not continuing the hearing. 12 And so at this point I want to ask you, is 13 there some evidence that you want to put into the 14 record and for the Board to entertain whether or not it 15 would allow you to put it into the record, that is 16 related to not continuing the hearing, that you 17 couldn't have prepared beforehand? 18 MS. PERRY: Yes, there is. We did not have 19 an opportunity to see any of the documents that were -- 20 and we were told that by Mr. Hager (ph), and I have his 21 email here, that he would provide them to us. We -- 22 CHAIRPERSON MILLER: I don't know what you're</p>

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346	<p>1 referring to.</p> <p>2 MS. PERRY: In the transcript of your fact</p> <p>3 finding it referred to the video, it referred to a 75</p> <p>4 page document that was submitted into evidence, it</p> <p>5 referred to a list of 2,000 consumable goods that were</p> <p>6 entered into the record and there were other things.</p> <p>7 CHAIRPERSON MILLER: That the document</p> <p>8 referred to?</p> <p>9 MS. PERRY: These are documents and exhibits</p> <p>10 that were put into the record the day of -- it's in</p> <p>11 that fact finding transcript. I don't remember all of</p> <p>12 what's in it off the top of my head. But we had</p> <p>13 requested copies of those items.</p> <p>14 CHAIRPERSON MILLER: From whom?</p> <p>15 MS. PERRY: From ABRA. And I have an email</p> <p>16 here from Mr. Hager saying he would make them for me,</p> <p>17 but it would take some time. And we did that the</p> <p>18 minute we got the copy of the transcript. And if I can</p> <p>19 find it --</p> <p>20 CHAIRPERSON MILLER: That was July 30th?</p> <p>21 MS. PERRY: No, we never got -- we did not</p> <p>22 get the transcript, the decision -- we did not get the</p>	348	<p>1 MS. PERRY: Well, I would have liked to have</p> <p>2 had time. Mr. Bernstein who -- Mr. Sands was here</p> <p>3 today, he's not somebody who was ever in the store on a</p> <p>4 daily basis. I never even met him until two minutes</p> <p>5 ago and questions were being asked of him, as to</p> <p>6 whether the ANC complained, it would not have been to</p> <p>7 him.</p> <p>8 But we would have liked to have put into the</p> <p>9 record that their Take Care Clinic, and I'm waiting for</p> <p>10 the thing, and that the Walgreen's Take Care Clinic is</p> <p>11 not licensed. They do not have a certificate of need</p> <p>12 from the Board of Health and that they're preparing one</p> <p>13 now.</p> <p>14 There's a whole bunch of little things that</p> <p>15 you do when you know that you're going to have a</p> <p>16 hearing, including proper testimony. We came here</p> <p>17 totally not knowing of the fact finding of the grocery</p> <p>18 store, of anything.</p> <p>19 CHAIRPERSON MILLER: Okay --</p> <p>20 MS. PERRY: And, you know, you don't --</p> <p>21 whereas the applicant knew, we didn't even get the</p> <p>22 inspector's report or the -- all of the exhibits</p>
347	<p>1 decision that Walgreen's -- the Board was considering</p> <p>2 making Walgreen's a full service grocery store until</p> <p>3 August the 2nd.</p> <p>4 CHAIRPERSON MILLER: Okay. So, my question</p> <p>5 is what --</p> <p>6 MS. PERRY: Less than five or six days before</p> <p>7 this hearing.</p> <p>8 CHAIRPERSON MILLER: After this hearing, what</p> <p>9 evidence, if any --</p> <p>10 MS. PERRY: We would like to make our -- we</p> <p>11 would have liked to have made our own video. We would</p> <p>12 have liked to have come prepared to discuss --</p> <p>13 CHAIRPERSON MILLER: Your own video of what?</p> <p>14 MS. PERRY: Of Walgreen's, of what's actually</p> <p>15 in there, to refute what we saw tonight. Something</p> <p>16 that was not stages and when it wasn't known that a</p> <p>17 camera was going to be present. We would have liked to</p> <p>18 have produced real evidence as to whether they classify</p> <p>19 as a convenience store or a grocery store with</p> <p>20 documents supermarkets --</p> <p>21 CHAIRPERSON MILLER: I'm -- well, Ms. Perry,</p> <p>22 what real evidence?</p>	349	<p>1 attached to it until Monday of this week. And we still</p> <p>2 don't have all of the attachments. I think we were</p> <p>3 severely prejudiced by not having time to prepare for a</p> <p>4 case and trying to, last minute, scramble to find out</p> <p>5 what the council did. Or, looking at Lexus Nexus cases</p> <p>6 to try and find what Mr. O'Brien was referring to. I</p> <p>7 think it really does hurt.</p> <p>8 CHAIRPERSON MILLER: Okay. It's getting late</p> <p>9 and I --</p> <p>10 MS. PERRY: Even to do our own --</p> <p>11 CHAIRPERSON MILLER: Ms. Perry --</p> <p>12 MS. PERRY: -- diagram of the store we were</p> <p>13 not able to have time to do it.</p> <p>14 CHAIRPERSON MILLER: Okay. I'm going to say</p> <p>15 this and see because I think it's probably the</p> <p>16 consensus of the Board, but they can disagree if --</p> <p>17 certainly should disagree if they want to.</p> <p>18 As far as making your own video, I asked Mr.</p> <p>19 Lederer why he didn't take pictures and he had an</p> <p>20 opportunity to do that and he said he preferred to do</p> <p>21 the narration. So that I think that you were not</p> <p>22 prejudiced that way by his -- by your not having an</p>

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350	<p>1 opportunity to make a -- 2 MS. PERRY: But, that's Mr. Lederer's 3 opinion. 4 CHAIRPERSON MILLER: -- Ms. Perry, okay, 5 that's fine. I'm giving you my opinion -- 6 (Whispered conversation.) 7 CHAIRPERSON MILLER: -- and if the rest of 8 the Board members feel differently, they can address 9 that. 10 I really didn't hear any other evidence that 11 you wanted to put I. I only heard complaints about not 12 getting some documents. 13 MS. PERRY: We would have liked to have had 14 the police reports of the incidents in the area, of the 15 traffic and pedestrian safety issues. There was a 16 recently done a Connecticut Avenue pedestrian study. 17 CHAIRPERSON MILLER: Okay -- 18 MS. PERRY: I mean, there are a whole bunch 19 of issues that we might have liked to have brought up 20 tonight, had we had time to prepare. And when I say 21 time to prepare, we were -- we only learned of this 22 grocery store exemption this week, basically.</p>	352	<p>1 point, because I haven't heard a good reason why 2 evidence couldn't have been put in in a timely manner. 3 And what's left is proposed -- is proposed findings of 4 facts and conclusions of law and whether or not the 5 parties want to submit those or waive those. 6 MS. PERRY: I have to -- I'm going to once 7 again object. We did not have time to prepare for the 8 grocery store argument. Not -- we didn't even have 9 four or five days and we could have prepared and we 10 could have entered into the record real evidence that 11 this is not a grocery store. 12 MR. LEDERER: And including photographs, 13 video. 14 MS. PERRY: Including photographs and other 15 things. 16 CHAIRPERSON MILLER: All right -- 17 MS. PERRY: I can't speak for why Mr. -- you 18 know, Mr. Lederer didn't want to take pictures, but the 19 ANC was a different animal. 20 CHAIRPERSON MILLER: Well, he's your witness. 21 So -- 22 MS. PERRY: He's my witness, but, you know,</p>
351	<p>1 CHAIRPERSON MILLER: Right. I appreciate 2 that. And -- 3 MS. PERRY: And the store could not get a 4 license unless it was a grocery store, full service 5 grocery store. 6 CHAIRPERSON MILLER: Okay. The MPD reports, 7 they do go to the Appropriateness Standard and you've 8 been on notice at least since July, as far as I know, 9 if not way before then -- 10 MR. O'BRIEN: June 5. 11 CHAIRPERSON MILLER: -- that that was an 12 issue in the case. So, I don't believe that anything 13 related to the fact finding hearing delayed your 14 getting those reports for the hearing. 15 Do Board members have any other reaction? 16 MR. ALBERTI: I agree. 17 MR. NOPHLIN: I agree. 18 CHAIRPERSON MILLER: Okay. All right, so 19 then -- 20 (Whispered conversation.) 21 CHAIRPERSON MILLER: -- the last thing is 22 that I will close the record on the evidence at this</p>	353	<p>1 we did this -- he did this and he -- 2 CHAIRPERSON MILLER: Okay. And if you choose 3 to -- 4 MR. LEDERER: Because I didn't want the 5 police to come. 6 CHAIRPERSON MILLER: -- submit proposed 7 findings of fact and conclusions of law, you can 8 address legal arguments in that filing. 9 (Whispered conversation.) 10 CHAIRPERSON MILLER: They would be due within 11 30 days. 12 MS. PERRY: Thirty days? Okay. 13 CHAIRPERSON MILLER: Um hmm. 14 MR. O'BRIEN: Thirty days of -- 15 CHAIRPERSON MILLER: Of today. 16 MR. O'BRIEN: -- well, we don't know -- 17 CHAIRPERSON MILLER: Oh, of the transcript 18 being available. I'm sorry. I thank you very much, 19 it's late. Yes, within 30 days from when you get the 20 transcript. 21 MS. PERRY: And is the -- is that 30 calendar 22 days or business days?</p>

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<p style="text-align: right;">354</p> <p>1 MS. PERRY: Okay.</p> <p>2 MR. O'BRIEN: And will staff notify us when</p> <p>3 the transcript is available? Ms. Jenkins says yes.</p> <p>4 CHAIRPERSON MILLER: Yes. Do you choose to</p> <p>5 avail yourselves of that opportunity?</p> <p>6 MS. PERRY: Yes.</p> <p>7 CHAIRPERSON MILLER: Yes. Okay. The</p> <p>8 Protestant does. Does the Applicant?</p> <p>9 MR. O'BRIEN: Well, since the Protestant does</p> <p>10 I don't think I have to. I may or may not, but I'm</p> <p>11 certainly preserving.</p> <p>12 CHAIRPERSON MILLER: Okay. Good. Okay.</p> <p>13 Then schedule will be that when the transcript becomes</p> <p>14 available, legal staff will contact the parties, and</p> <p>15 once the parties get the transcripts, you'll have 30</p> <p>16 days to submit the proposed findings of fact and</p> <p>17 conclusions of law. And at that point, once those are</p> <p>18 filed with the Board, the Board will render a decision</p> <p>19 on the case within 90 days.</p> <p>20 MS. PERRY: Within what?</p> <p>21 CHAIRPERSON MILLER: Hmm?</p> <p>22 MR. LEDERER: Ninety days.</p>	<p style="text-align: right;">356</p> <p>1 left is I'm going to --</p> <p>2 MR. LEDERER: This is the ABC Board. Yeah.</p> <p>3 CHAIRPERSON MILLER: -- read just the</p> <p>4 instructions for closed meeting.</p> <p>5 MS. PERRY: If it's somewhere, I can read it.</p> <p>6 CHAIRPERSON MILLER: Well, no, I need to do</p> <p>7 it for the Board to do any deliberation in closed</p> <p>8 meeting on this case. So, I'll do that right now.</p> <p>9 MR. ALBERTI: Do you have it?</p> <p>10 CHAIRPERSON MILLER: I have it. What's the</p> <p>11 case number? Here it is. Okay. As chairperson of the</p> <p>12 Alcoholic Beverage Control Board for the District of</p> <p>13 Columbia, in accordance with Section 405 of the Open</p> <p>14 Meetings Amendment Act of 2010, I move that the ABC</p> <p>15 Board hold a closed meeting for the purpose of seeking</p> <p>16 legal advice from our counsel on Case Number 12-PRO-</p> <p>17 00013, Walgreen 11408, per Section 405(b)4 of the Open</p> <p>18 Meetings Amendment Act of 2010, and deliberating upon</p> <p>19 this case for the reasons cited in Section 405(b)13 of</p> <p>20 the Open Meetings Amendment Act of 2010. Is there a</p> <p>21 second?</p> <p>22 MR. ALBERTI: Second.</p>
<p style="text-align: right;">355</p> <p>1 MS. PERRY: Ninety days, I couldn't hear what</p> <p>2 you said.</p> <p>3 CHAIRPERSON MILLER: Ninety days after we</p> <p>4 receive that. Okay?</p> <p>5 MS. PERRY: Is that hearing, when you make</p> <p>6 your decision, open to us?</p> <p>7 MR. O'BRIEN: No, it comes out in writing.</p> <p>8 CHAIRPERSON MILLER: I can't answer that</p> <p>9 question right now. All I can say is we will issue a</p> <p>10 decision -- a written decision within 90 days.</p> <p>11 MS. PERRY: Okay. I'm just asking because</p> <p>12 we've never done this.</p> <p>13 CHAIRPERSON MILLER: Okay. Okay. You've</p> <p>14 never done?</p> <p>15 MS. PERRY: We've never had a protest</p> <p>16 hearing.</p> <p>17 CHAIRPERSON MILLER: Never done a protest?</p> <p>18 MS. PERRY: In are ANC at all.</p> <p>19 CHAIRPERSON MILLER: Okay.</p> <p>20 MS. PERRY: We've always been -- managed to</p> <p>21 work with our establishments.</p> <p>22 CHAIRPERSON MILLER: Okay. So, all that's</p>	<p style="text-align: right;">357</p> <p>1 CHAIRPERSON MILLER: And I'll take a roll</p> <p>2 call on this motion before us, now that it's been</p> <p>3 seconded. Mr. Nophlin?</p> <p>4 MR. NOPHLIN: I agree.</p> <p>5 CHAIRPERSON MILLER: Mr. Brooks?</p> <p>6 MR. BROOKS: I agree.</p> <p>7 CHAIRPERSON MILLER: Mr. Alberti?</p> <p>8 MR. ALBERTI: I agree.</p> <p>9 CHAIRPERSON MILLER: Ms. Miller agrees.</p> <p>10 Mr. Jones?</p> <p>11 MR. JONES: I agree.</p> <p>12 CHAIRPERSON MILLER: The motion passes by a</p> <p>13 vote of five, zero, zero.</p> <p>14 I hereby give notice that the ABC Board will</p> <p>15 hold a closed meeting in the ABC Board conference room</p> <p>16 upon receipt of the proposed findings of fact and</p> <p>17 conclusions of law, 30 days after the transcript is</p> <p>18 available. Okay? And then issue an order within 90</p> <p>19 days after that. So that concludes this hearing.</p> <p>20 MR. O'BRIEN: Thank you.</p> <p>21 CHAIRPERSON MILLER: Thank you very much.</p> <p>22 Have a good night.</p>

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1 MR. ALBERTI: Thank you everyone.

2 MR. KIM: Thank you.

3 CHAIRPERSON MILLER: And that concludes our  
4 cases for the afternoon session, right? And we'll  
5 return to do our agenda.

6 MS. PERRY: Thank you.

7 CHAIRPERSON MILLER: Tonight.

8 MR. ALBERTI: No, one more order of business.

9 CHAIRPERSON MILLER: It will be quick.

10 MS. PERRY: Thank you for your time.

11 CHAIRPERSON MILLER: Thank you. If you have  
12 any questions afterwards, feel free to ask the staff.

13 (WHEREUPON, the hearing was concluded.)

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