

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE CONTROL BOARD
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 MEETING

IN THE MATTER OF: :

Ching, LLC, t/a Uproar :
 1336 U Street, NW :
 License # 92012 :
 Retailer CT - ANC 1B :
 Case # 19-PRO-00138, :
 Case # 20-PRO-00005 :
 : Protest Hearing

(Application to Renew :
 License and Substantial :
 Change - Request to :
 Expand to the Rooftop :
 Summer Garden, :
 Increasing the Total :
 Occupancy Load from :
 74 to 200) :

Thursday
 February 11, 2021

The Alcoholic Beverage Control Board
 met via WebEx videoconference, Chairperson
 Donovan W. Anderson presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
 BOBBY CATO, JR., Member
 RAFI ALIYA CROCKETT, Member
 JENI HANSEN, Member
 JAMES SHORT, JR., Member
 REMA WAHABZADAH, Member

ALSO PRESENT:

SIMONE ANDREWS, DC ABRA Staff
GEORGE GARCIA, DC ABRA Investigator
LARRY HANDERHAN, ANC 1B
THOMAS MARTIN, Licensee's Counsel
CHRISTOPHER THORNTON, Witness for Licensee
TAMMY TRUONG, Licensee

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| Witness | Direct | Cross | Redirect | Recross |
|-----------------|--------|-------|----------|---------|
| George Garcia | 11 | 32 | -- | -- |
| Tammy Truong | 41 | 52 | -- | -- |
| Chris Thornton | 84 | -- | -- | -- |
| Larry Handerhan | 25 | 29 | -- | -- |

E-X-H-I-B-I-T-S

Investigator

| Exhibit No's. | Document | ID'd | Rec'd |
|---------------|---------------------------------------|------|-------|
| 1 | Charging document | 33 | -- |
| 7 | Photo of exterior of establishment | 21 | -- |
| 24 | Photo of wall of exterior rooftop | 22 | -- |
| 25 | photo of exterior summer garden | 22 | -- |
| 26 | photo of exterior rooftop deck | 22 | -- |
| 27 | photo of exterior rooftop deck | 22 | -- |
| 28 | Copy of ABRA license | 30 | -- |

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

2 4:31 p.m.

3 CHAIRPERSON ANDERSON: All right. The
4 next case on our calendar is case -- it's a
5 protest hearing and, give me a minute please.
6 Protest Hearing Case Number 19-PRO-00138 and 20-
7 PRO-00005, Uproar, License Number 92012.

8 Ms. Andrews, can you please elevate
9 the rights of the Protestants and the Licensee,
10 please?

11 MS. ANDREWS: Sure, standby.
12 Commissioner Handerhan, your rights have been
13 elevated.

14 COMMISSIONER HANDERHAN: Thank you so
15 much. I'm here.

16 MS. ANDREWS: Ms. Truong, your rights
17 have been elevated. Mr. Martin, your rights have
18 been elevated. Investigator Garcia, your rights
19 have been elevated. That's it.

20 CHAIRPERSON ANDERSON: Is that
21 everyone, Ms. Andrews, or are there more people?

22 MS. ANDREWS: That's all, Mr. Chair.

23 CHAIRPERSON ANDERSON: Oh, I was
24 waiting. I wasn't sure that everyone was -- All
25 right. I apologize. All right, this is a

1 protest hearing that was, I apologize for the
2 delay, but we had a 1:30 protest and that went
3 through, that actually went through about 4:15.

4 And I did place a message in the chat
5 and I think that I actually did a good job in the
6 type of figuring out what time the hearing was
7 over. I said that it was going to be over; we
8 should start this one at 4:15, 4:20. And now we
9 took a ten-minute break and so it's 4:34.

10 So what I'm going to do is I'm going
11 to have everyone identify themselves for the
12 record, we will -- I'm going to have everyone
13 identify themselves for the record. And we will
14 start with the Licensee please.

15 MR. MARTIN: Good afternoon, Mr.
16 Chairman, my name is Thomas Martin. I am the
17 attorney representing Uproar. I'm joined by two
18 potential witnesses.

19 CHAIRPERSON ANDERSON: And can you
20 call them and then they can identify themselves
21 please?

22 MR. MARTIN: Yes. Ms. Tammy Truong.

23 MS. TRUONG: My name is Tammy Truong
24 and I am the owner of Uproar.

25 CHAIRPERSON ANDERSON: I can't hear

1 Ms. Truong, so I need you to get closer and I
2 also need you to spell your name please.

3 MS. TRUONG: My name is Tammy Truong.
4 That's T-A-M-M-Y, last name is T-R-U-O-N-G, and I
5 am the owner of Uproar.

6 CHAIRPERSON ANDERSON: And who is the
7 other witness, sir?

8 MR. MARTIN: Mr. Thornton.

9 MR. THORNTON: Christopher Thornton,
10 T-H-O-R-N-T-O-N.

11 CHAIRPERSON ANDERSON: Let's start
12 with the Protestant.

13 COMMISSIONER HANDERHAN: Hi, Larry
14 Handerhan, last name spelled H-A-N-D-E-R-H-A-N.
15 And I'm representing ANC 1B.

16 CHAIRPERSON ANDERSON: Good afternoon.
17 Who's with you, Mr. Handerhan?

18 COMMISSIONER HANDERHAN: You know, I
19 had a witness on the list, but I'll be
20 representing ANC 1B today.

21 CHAIRPERSON ANDERSON: Just you're the
22 only witness?

23 COMMISSIONER HANDERHAN: Yes.

24 CHAIRPERSON ANDERSON: All right.
25 This was actually two -- I'm sorry, Mr. Garcia.

1 INVESTIGATOR GARCIA: Yes. This is
2 George Garcia for ABRA.

3 CHAIRPERSON ANDERSON: All right.
4 Thank you. All right, this was two protest --
5 there were two protest hearings that were
6 combined. One protest hearing was the renewal of
7 the license. And the second one was a
8 substantial change. Is the ANC contesting the
9 renewal of the license?

10 COMMISSIONER HANDERHAN: So, thank
11 you, sir. Was that for the ANC, I'm sorry?

12 CHAIRPERSON ANDERSON: Yes, I'm asking
13 are you, because if you're not contesting the
14 renewal of the license then, I'm trying to find
15 out are we having a hearing on the renewal of the
16 license and also substantial change? Or can we
17 have agreement that the license can renew and
18 then we can spend the rest of this hearing about
19 the substantial change?

20 COMMISSIONER HANDERHAN: Yes, that
21 would absolutely work for me. We started this a
22 long time ago, but I think the substantial change
23 is really what we want to focus on. We're not
24 contesting the renewal.

25 CHAIRPERSON ANDERSON: All right. So

1 it's my understanding, and I want the record to
2 reflect, that the ANC has stated that they are
3 not contesting the renewal of the license. So
4 would the ANC then drop its protest on the
5 renewal of the license?

6 COMMISSIONER HANDERHAN: Yes.

7 CHAIRPERSON ANDERSON: All right. And
8 I feel that you're not going to have a problem
9 with that, Mr. Martin?

10 MR. MARTIN: We have no problem with
11 that, Mr. Chairman.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you. And thank you, Mr. Handerhan. I mean
14 I'm just -- I'm not trifling about that. I
15 appreciate the fact, because I'll try to make
16 sure that we focus what the issues are.

17 COMMISSIONER HANDERHAN: I appreciate
18 that. I appreciate that, sir.

19 CHAIRPERSON ANDERSON: All right.
20 Thank you. So the Protestant has dropped its
21 protest of the renewal of the license. So
22 because that has been dropped we will move
23 forward. The Agency will follow its proper
24 procedures to renew the license. And I don't
25 believe that, since there is no protest, the

1 protest has been dropped, that by operation of
2 law we can move on there, all right.

3 So the main issue is then the
4 substantial change. So what we will do -- all
5 right. So this is the way this process will
6 work, we'll start off, and I've already done
7 that, I've asked for preliminary matters and I
8 guess there's a preliminary matter that was
9 addressed.

10 So how this hearing on the substantial
11 change will operate is that the Applicant will
12 have five minutes to make an opening statement.
13 The Protestant will then have five minutes to
14 make an opening statement.

15 After the Applicant and the Protestant
16 has made their opening statement then the Board
17 will call its witness. After the Board, the
18 called witness will testify. The Board will ask
19 questions of its witness. Once the Board has
20 asked questions of its witness then the Applicant
21 will put on its case in chief.

22 After the Applicant has put on its
23 case in chief, and that the Protestant will have
24 an opportunity to cross-examine, then the
25 Protestant will put on its case in chief. The

1 Applicant will have an opportunity to cross-
2 examine the protestant and the Board then will
3 ask questions.

4 After the Applicant has rested, the
5 Protestant will then have an opportunity to
6 present its case. Once the Protestant have
7 presented its case, with cross-examination, then
8 if there are any rebuttal witnesses then we can
9 call rebuttal witness.

10 Then we'll do closing. And the
11 Applicant will do a closing statement, five
12 minutes. Protestant will do a closing statement,
13 five minutes. And then I will have procedures to
14 ask other questions.

15 Each side will have one hour to
16 present your case and so therefore please be
17 reminded that within the hour, if you cross-
18 examine during the cross-examination of the other
19 witness, that's taking away from your time.

20 So just be mindful that we have an
21 hour, so this matter will probably last, we're
22 going to be here for a couple hours because since
23 the Board goes first. And so the more questions
24 that we ask then that will determine how long the
25 Board, how long that case will last.

1 All right, so the Board will call its
2 first witness. And the Board will call Mr.
3 George Garcia. Mr. Garcia, can you raise your
4 right hand please? DO you swear or affirm to
5 tell the truth and nothing but the truth? I
6 cannot hear you, Mr. Garcia.

7 INVESTIGATOR GARCIA: I do.

8 DIRECT EXAMINATION

9 CHAIRPERSON ANDERSON: Thank you, Mr.
10 Garcia. Can you state and spell your name for
11 the record please?

12 INVESTIGATOR GARCIA: George, G-E-O-R-
13 G-E, Garcia, G-A-R-C-I-A.

14 CHAIRPERSON ANDERSON: And, Mr.
15 Garcia, where are you currently employed?

16 INVESTIGATOR GARCIA: At the Alcoholic
17 Beverage Regulation Administration.

18 CHAIRPERSON ANDERSON: How long have
19 you been employed by the Agency?

20 INVESTIGATOR GARCIA: It will be two
21 years on February 19th of 2021.

22 CHAIRPERSON ANDERSON: And what is
23 your role at the Agency, sir?

24 INVESTIGATOR GARCIA: I am an
25 investigator.

1 CHAIRPERSON ANDERSON: And what is it
2 that an investigator do for the Agency?

3 INVESTIGATOR GARCIA: We conduct
4 inspections and investigations of ABC licensed
5 establishments in the District of Columbia.

6 CHAIRPERSON ANDERSON: Now, are you
7 familiar with this establishment Uproar?

8 INVESTIGATOR GARCIA: Yes, I am.

9 CHAIRPERSON ANDERSON: And how are you
10 familiar with this establishment?

11 INVESTIGATOR GARCIA: I was assigned
12 a protest investigation for the establishment.

13 CHAIRPERSON ANDERSON: All right. I
14 know that -- and so did there come a time that
15 you wrote a report on this establishment, your
16 findings?

17 INVESTIGATOR GARCIA: Yes. Yes.

18 CHAIRPERSON ANDERSON: And let me ask
19 this, so did you investigate both the renewal and
20 the substantial change?

21 INVESTIGATOR GARCIA: Correct, I did.

22 CHAIRPERSON ANDERSON: All right.
23 Well, as you heard earlier, that the ANC is no
24 longer challenging the renewal, that they are
25 only challenging the substantial change. So

1 therefore when the questions that I'm going to
2 ask and when going through your report I then
3 would like you to more expound on that portion of
4 your report that talks about the substantial
5 change. Okay?

6 INVESTIGATOR GARCIA: Okay.

7 CHAIRPERSON ANDERSON: All right. So
8 you said that you did write a report for this
9 matter, is that correct?

10 INVESTIGATOR GARCIA: Correct.

11 CHAIRPERSON ANDERSON: And I would
12 like you to share your screen with us. So I will
13 ask Ms. Andrews, can you please give him the
14 ability to share his screen please?

15 MS. ANDREWS: Sure. Stand by. Mr.
16 Garcia, you now have the rights to share your
17 screen.

18 INVESTIGATOR GARCIA: Thank you.

19 CHAIRPERSON ANDERSON: I would also
20 ask all the parties if you're not speaking please
21 mute your phones please. Okay?

22 All right, Mr. Garcia, who did you
23 speak to regarding the substantial change
24 application? Did you have an opportunity to both
25 the Protestant and the Licensee and his or her

1 representatives?

2 INVESTIGATOR GARCIA: Yes, I have. I
3 did speak to the owner along with an ABC manager
4 of the establishment.

5 CHAIRPERSON ANDERSON: And so can you
6 tell us what information, if any, were you able
7 to gather as a result of your investigation?

8 INVESTIGATOR GARCIA: Well, I did
9 speak, for the ANC representative it was
10 different, Anita, give me one minute. Ms. Norman
11 was originally the Protestant representative for
12 the ANC. And I did speak to her and she did
13 provide me with evidence as to the different
14 reasoning and concerns with the establishment's
15 substantial change. And I did speak --

16 CHAIRPERSON ANDERSON: So what did --
17 I'm sorry. Go ahead. I'm sorry.

18 INVESTIGATOR GARCIA: No, go ahead.

19 CHAIRPERSON ANDERSON: No, I'm saying
20 what information did she share with you?

21 INVESTIGATOR GARCIA: The owner?

22 CHAIRPERSON ANDERSON: You said you
23 spoke to Ms. Norman.

24 INVESTIGATOR GARCIA: Oh yes. She
25 said that her concerns were based on that the

1 establishment had previous damages to their
2 rooftop and that their rooftop in 2013 had
3 collapsed at one point and that the safety of
4 patrons were being questioned.

5 CHAIRPERSON ANDERSON: All right. Did
6 you speak to the ownership regarding the
7 substantial change application?

8 INVESTIGATOR GARCIA: I did. And on
9 March 11th of 2020 I interviewed the owner Tammy
10 Truong. And, who stated that the primary issues
11 with the establishment was the roof deck
12 collapsing. Well, not collapsing, she described
13 it as shifting, which that issue was resolved.
14 She said that the roof deck was fixed by
15 contractor the following business day.

16 CHAIRPERSON ANDERSON: So what
17 information were you able to find out?

18 INVESTIGATOR GARCIA: On the roof, I
19 haven't been able to really confirm whether there
20 was an actual collapse of the deck. I just was
21 able to confirm that there was a fix to the roof
22 deck and that the establishment had been closed
23 down or cited by DCRA because of these issues.

24 And that the establishment were able
25 to operate the following business day after the

1 owner Tammy stated that the contractors had fixed
2 it, fixed the issues related to the roof deck.

3 CHAIRPERSON ANDERSON: All right. So
4 what I'm going to do, and I know that because
5 we're shifting gear a little bit. So just tell
6 me what other information were you able to find
7 about this establishment?

8 I mean, just go through your report as
9 you normally would with another court case
10 hearing. Just tell me what information you were
11 able to find on this establishment.

12 INVESTIGATOR GARCIA: Okay. So
13 originally I interviewed the ANC representative
14 Anita Norman, who stated that the issues of the
15 ANC, the main concern, were for the safety of the
16 patrons visiting the establishment.

17 She said that the roof had a serious
18 collapse in the summer of 2013 and that the
19 ability to keep patrons safe were in question at
20 the establishment.

21 So I monitored the establishment about
22 18 times between the dates of February 27th of
23 2019 to December 30th of 2020, but there were no
24 ABRA violations found within either times, within
25 either visits of mine to the establishment.

1 And I know a lot of the concerns for
2 the establishment, the protest issues, the formal
3 complaints, were that it would impact real
4 property values, have an effect on peace, order
5 and quiet, to include noise and litter
6 provisioning. And also effect residential
7 parking means and vehicular and pedestrian
8 safety.

9 So for any of the times that I've
10 monitored the establishment, I didn't observe any
11 trash, parking or loitering issues at the
12 establishment during, before or after the
13 operations, the establishment's hours of
14 operation.

15 Due to the pandemic the establishment
16 was frequently closed after March, between March
17 and April of 2020, but the establishment had no
18 Mayor's order violations within their history.

19 CHAIRPERSON ANDERSON: All right. Let
20 me ask a question. I'm going to change up a
21 little bit, I apologize for that. So tell me,
22 what other establishments are within the vicinity
23 of the Uproar?

24 INVESTIGATOR GARCIA: Okay. So there
25 are 42 Agency establishments. Give me one

1 minute. Okay. So there are 42 ABC
2 establishments within 1,200 feet of Uproar. And
3 --

4 CHAIRPERSON ANDERSON: And now do you
5 know, as far as the substantial change that I
6 think they're asking for, what is that, from your
7 perspective of substantial change, what is it
8 that the establishment is asking for?

9 INVESTIGATOR GARCIA: To increase the
10 occupancy.

11 CHAIRPERSON ANDERSON: From what to
12 what? Do you know?

13 INVESTIGATOR GARCIA: I'm not entirely
14 sure of the numbers, of what numbers they're
15 increasing their occupancy by. But I know that
16 currently, give me one minute.

17 Just for the record, sir, an
18 inspection, because I conducted a regulatory
19 inspection of the establishment, on there I noted
20 and documented the establishment's occupancy,
21 current occupancy of each floor which I felt, on
22 my personal opinion, was a little short of what
23 they can have.

24 Actually I don't have the regulatory
25 inspection at hand. I'm sorry.

1 CHAIRPERSON ANDERSON: All right. Now
2 was this the occupancy for the entire building or
3 the occupancy for the rooftop? Which one was it
4 that they're asking for?

5 INVESTIGATOR GARCIA: Just for the
6 rooftop, from my understanding. The rooftop was
7 approximately anywhere between 30 to 40 people,
8 their currently occupancy.

9 CHAIRPERSON ANDERSON: All right.
10 And, this might take a couple of minutes to look
11 at that, the other establishments that are in the
12 vicinity, do they have, how many other
13 establishments are you aware that the have
14 rooftop -- rooftop access, if you're able to
15 answer that question.

16 INVESTIGATOR GARCIA: So 14 out of the
17 42 ABC establishments within 1,200 feet, 14 have
18 summer gardens.

19 CHAIRPERSON ANDERSON: Okay. All
20 right, what were the nature of your conversation
21 with the Licensee regarding the substantial
22 change application?

23 INVESTIGATOR GARCIA: It was just in
24 reference to the occupancy. How they've been
25 having issues with DCRA and being able to

1 increase their occupancy, because they felt like
2 the occupancy was very low from what they had.
3 So I did let the Licensee know that ABRA only
4 issues an occupancy if it's approved by DCRA.

5 So whatever the occupancy, the
6 certificate of occupancy says is exactly what
7 ABRA is going to approve them for and nothing
8 more. So I did advise her that she need to
9 update her certificate of occupancy, just to make
10 sure and be able to get a substantial change.

11 CHAIRPERSON ANDERSON: Now, sir, did
12 the establishment ever provide you with an
13 updated certificate of occupancy?

14 INVESTIGATOR GARCIA: No.

15 CHAIRPERSON ANDERSON: All right. Can
16 you describe this establishment Uproar for us?

17 INVESTIGATOR GARCIA: So Exhibit 7 is
18 a photo of the outside of the establishment.

19 (Whereupon, the above-referred to
20 document was marked as Investigator Exhibit 7 for
21 identification.)

22 INVESTIGATOR GARCIA: The white
23 building with the front wooding, 639.

24 CHAIRPERSON ANDERSON: Hold on a
25 minute, let me try and see this. All right. Can

1 you describe the building? Describe what is in
2 Exhibit 7 please.

3 INVESTIGATOR GARCIA: Okay. So in
4 Exhibit 7 it's just the front of the
5 establishment, the exterior. It's a white
6 building, just detailing the address and
7 documenting that this is the outside and exterior
8 of the establishment.

9 CHAIRPERSON ANDERSON: Now, do you
10 have any other pictures in your exhibit that
11 would show us the rooftop?

12 INVESTIGATOR GARCIA: Yes, I do.

13 CHAIRPERSON ANDERSON: And what
14 exhibit is that?

15 INVESTIGATOR GARCIA: Exhibits 23 --

16 CHAIRPERSON ANDERSON: The --

17 INVESTIGATOR GARCIA: No, I'm sorry.
18 I'm sorry. That's Exhibit 25.

19 CHAIRPERSON ANDERSON: So are you --

20 INVESTIGATOR GARCIA: Yes, Exhibit 25
21 is a photograph of the exterior summer garden,
22 facing the street level. So I'm taking the
23 photo, my back is toward the establishment and
24 I'm taking the photo toward the street. So you
25 can see the next building across the street.

1 (Whereupon, the above-referred to
2 document was marked as Investigator Exhibit 25
3 for identification.)

4 CHAIRPERSON ANDERSON: Is that the
5 only photograph that you have of the exterior?

6 INVESTIGATOR GARCIA: No. Exhibit 24
7 is also a picture of the wall of the exterior
8 rooftop deck.

9 (Whereupon, the above-referred to
10 document was marked as Investigator Exhibit 24
11 for identification.)

12 CHAIRPERSON ANDERSON: Okay. Do you
13 know when --

14 INVESTIGATOR GARCIA: And then
15 exhibit, I'm sorry. There's more.

16 CHAIRPERSON ANDERSON: Go ahead. I'm
17 sorry.

18 INVESTIGATOR GARCIA: Exhibits 26 and
19 27 are also photographs of the exterior of the
20 rooftop deck.

21 (Whereupon, the above-referred to
22 documents were marked as Investigator Exhibits 26
23 and 27 for identification.)

24 CHAIRPERSON ANDERSON: Okay. Is that
25 the extent of the exhibits?

1 INVESTIGATOR GARCIA: Yes, that's the
2 extent of the rooftop, the roof deck exhibits.

3 CHAIRPERSON ANDERSON: Now, do you
4 know what are the hours for the summer garden?

5 INVESTIGATOR GARCIA: Yes. Okay. So
6 the hours for the summer garden are Sunday, the
7 hours of operation are 6:00 a.m. to 2:00 a.m.
8 And for -- I'm sorry, that's 8:00 a.m. to 2:00
9 a.m. from Sunday to Thursday. And then on Friday
10 it's 8:00 a.m. to 3:00 a.m. That's for Friday
11 and Saturday.

12 CHAIRPERSON ANDERSON: What about
13 calls for service, were you able to find any
14 information regarding this establishment?

15 INVESTIGATOR GARCIA: Calls for
16 service, give me one minute. Okay. So on
17 Tuesday, March 20th I requested crime service for
18 639 to 641 Florida Avenue Northwest for the dates
19 of March 2019 to March of 2020.

20 And there were approximately 25 calls
21 for service to the address. However, none of the
22 calls required ABRA's attention or resulted in
23 any ABRA violations. I also noted that there
24 were no, the ABRA records revealed that there
25 were no history of complaints as it was related

1 to noise for that address either.

2 CHAIRPERSON ANDERSON: Now, did you
3 have an opportunity to speak to the current, Mr.
4 Handerhan who is the current ANC commissioner
5 regarding this protest?

6 INVESTIGATOR GARCIA: No, I have not.

7 CHAIRPERSON ANDERSON: Is there
8 anything else that you want to add?

9 INVESTIGATOR GARCIA: No.

10 CHAIRPERSON ANDERSON: All right.
11 Thank you. You can close your screen. Are there
12 any questions of Mr. Garcia by any Board members?

13 MEMBER SHORT: Mr. Short. I'd like to
14 speak, Mr. Chair.

15 CHAIRPERSON ANDERSON: Yes, Mr. Short.

16 MEMBER SHORT: Good afternoon, Mr.
17 Garcia, or Investigator.

18 INVESTIGATOR GARCIA: Good afternoon,
19 Member Short.

20 MEMBER SHORT: Okay. I'm just kind of
21 curious about the roof collapse and the repairs
22 and DCRA's report on the collapse. Were you able
23 to get any of that for the record for ABRA?

24 INVESTIGATOR GARCIA: I did not
25 obtain, I wasn't able to obtain the DCRA report

1 on their behalf.

2 MEMBER SHORT: So what year was the
3 collapse?

4 INVESTIGATOR GARCIA: The summer of
5 2017.

6 MEMBER SHORT: And what was the
7 occupancy during that period of time? What was
8 the occupancy for the rooftop when it collapsed?

9 INVESTIGATOR GARCIA: The occupancy,
10 one minute. The occupancy was the same.

11 MEMBER SHORT: Seventy, is that
12 correct?

13 INVESTIGATOR GARCIA: Give me one
14 minute, let me just confirm that.

15 MEMBER SHORT: Thank you.

16 INVESTIGATOR GARCIA: Correct.

17 MEMBER SHORT: Okay. So it was 70
18 when they had the collapse or failure of the
19 building to withstand the 70 people on the top,
20 is that correct?

21 INVESTIGATOR GARCIA: Yes. You said
22 70 total occupancy for the summer garden?

23 MEMBER SHORT: For the rooftop.

24 INVESTIGATOR GARCIA: Yes.

25 MEMBER SHORT: And so I just need to

1 ask you this question, were you a little curious
2 that they had a collapse on that rooftop and now
3 they want to put 200 people up there. Did that
4 come to your mind that maybe the building
5 couldn't stand that kind of weight?

6 INVESTIGATOR GARCIA: I was curious
7 about it, but I'm not really knowledgeable on how
8 occupancy, not occupancy, but how much a certain
9 building can hold. So I wasn't putting an input
10 onto it.

11 I was just giving DCRA the correct
12 information that they needed on ABRA's part that
13 they can inform me. But at that part, I hadn't
14 got the information that I needed to put in my
15 report.

16 MEMBER SHORT: Okay. Now your
17 testimony was also that you said in your personal
18 opinion you think they can get more people up
19 there, is that correct?

20 INVESTIGATOR GARCIA: Yes.

21 MEMBER SHORT: Well, --

22 INVESTIGATOR GARCIA: Because the
23 summer, the rooftop deck is one portion of the
24 establishment and then it branches out to another
25 side inside the establishment. So it's pretty

1 long in my opinion. So --

2 MEMBER SHORT: Okay. Well, let me ask
3 you this, forgive me for cutting you off. But so
4 if 70 people caused the collapse in 2014, what
5 has changed to make them consider the --

6 CHAIRPERSON ANDERSON: It was '17. It
7 was 2017 is my understanding.

8 MEMBER SHORT: Well, I'm looking at
9 some information that was sent to me. What is
10 the current level for the rooftop?

11 INVESTIGATOR GARCIA: I'm sorry, the
12 current what?

13 MEMBER SHORT: The current capacity
14 for the rooftop?

15 INVESTIGATOR GARCIA: Ninety-nine.

16 MEMBER SHORT: Currently.

17 INVESTIGATOR GARCIA: Ninety-nine.

18 MEMBER SHORT: Okay. And so what
19 investigation, if any, did you do when they
20 asked, because you also testified that DCRA would
21 not give them a C of O, certificate of occupancy,
22 for 200, is that correct?

23 INVESTIGATOR GARCIA: I'm not sure if
24 it wasn't given to them, it was never provided to
25 me. I'm not sure if they were issued a new

1 certificate of occupancy, because the current
2 occupancy at the time of my visit for the
3 regulatory inspection didn't allow them that
4 much.

5 MEMBER SHORT: How much did it allow,
6 the one that you're familiar with?

7 INVESTIGATOR GARCIA: The one that I
8 am familiar with. On the first floor it was 30,
9 on the second --

10 MEMBER SHORT: No, no. Please forgive
11 me, I'm talking about the rooftop. Just the
12 rooftop. The capacity for the rooftop.

13 INVESTIGATOR GARCIA: For the capacity
14 for the rooftop it was between 30 to 40 people at
15 that time.

16 MEMBER SHORT: So that --

17 INVESTIGATOR GARCIA: At the time of
18 the regulatory inspection.

19 MEMBER SHORT: So that's all it can
20 have up there legally now, correct?

21 INVESTIGATOR GARCIA: I'm not sure
22 what they have now at this point. I'm not sure
23 if they obtained a new certificate of occupancy.

24 MEMBER SHORT: Okay. But give me the
25 number again, when you did your regulatory

1 inspection, what was the capacity that you saw
2 for certificate of occupancy?

3 INVESTIGATOR GARCIA: Thirty to 40.

4 MEMBER SHORT: And what date was that?

5 INVESTIGATOR GARCIA: It was March
6 11th, I'm sorry. March 6th of 2020.

7 MEMBER SHORT: Okay. And you did
8 inform them that you as an ABRA person could not
9 up that number on any of our licenses until they
10 went back to DCRA and got the number changed on
11 the certificate of occupancy, is that correct?

12 INVESTIGATOR GARCIA: Correct.

13 MEMBER SHORT: Okay. Thank you.

14 That's a very excellent report you did. And
15 thanks for those excellent answers. Thank you,
16 sir.

17 INVESTIGATOR GARCIA: Thank you.

18 MEMBER SHORT: That's all I have, Mr.
19 Chair.

20 CHAIRPERSON ANDERSON: Mr. Garcia, I'm
21 sorry. I need you to go to Exhibit 28.

22 INVESTIGATOR GARCIA: Mm-hmm.

23 CHAIRPERSON ANDERSON: What's Exhibit
24 28?

25 INVESTIGATOR GARCIA: 28 is a photo,

1 a copy of the establishment's liquor license.

2 (Whereupon, the above-referred to
3 document was marked as Investigator Exhibit 28
4 for identification.)

5 CHAIRPERSON ANDERSON: So what's the
6 capacity for the summer garden on Exhibit 28?

7 INVESTIGATOR GARCIA: At that time it
8 was 99.

9 CHAIRPERSON ANDERSON: So I'm curious,
10 I don't understand numbers. You said to Mr.
11 Short 30 or 40. So I'm trying to figure out
12 where do those numbers come from?

13 INVESTIGATOR GARCIA: Those numbers
14 were on the certificate of occupancy.

15 CHAIRPERSON ANDERSON: For what date?
16 For what date?

17 INVESTIGATOR GARCIA: I'm sorry, what
18 do you mean by what date?

19 CHAIRPERSON ANDERSON: No, you're
20 saying what certificate of occupancy. On Exhibit
21 28, Exhibit 28 says, this certificate, that the
22 total capacity is 99.

23 INVESTIGATOR GARCIA: That's correct.

24 CHAIRPERSON ANDERSON: And what is,
25 I'm sorry, what again is Exhibit 28?

1 INVESTIGATOR GARCIA: Exhibit 28 is a
2 copy of the ABRA license.

3 CHAIRPERSON ANDERSON: And what date
4 was this?

5 INVESTIGATOR GARCIA: March 12th of
6 2020.

7 CHAIRPERSON ANDERSON: And this
8 document, that's what's issued by ABRA, says 99.
9 I'm just trying to get these numbers straight
10 from our testimony, because I don't know, is
11 there a document in the record that verifies when
12 you said, you said that you thought that the
13 summer garden was 30 or 40. Is there any
14 documents in the record that supports that?

15 INVESTIGATOR GARCIA: There should be,
16 my regulatory inspection in that PDF file. But
17 it doesn't happen to be there. So I'm actually,
18 it's not in the PDF file. But a regulatory
19 inspection was conducted.

20 CHAIRPERSON ANDERSON: Is there any
21 mention in your report about the occupancy of the
22 summer garden? You said that your regulatory
23 inspection is not there. But I'm saying are
24 there any, is there any mention anywhere in your
25 report about the occupancy of the summer garden?

1 INVESTIGATOR GARCIA: Give me one
2 minute. No. Not in my report. It was detailed
3 in my regulatory inspection.

4 CHAIRPERSON ANDERSON: But your
5 regulatory inspection is not attached to this
6 report that's disclosed for this hearing today,
7 is that correct?

8 INVESTIGATOR GARCIA: Correct.

9 CHAIRPERSON ANDERSON: All right. Are
10 there any questions by any Board members? Do you
11 have a question, Ms. Crockett? Are you were just
12 moving your hand. No? Okay. All right. Mr.
13 Martin, do you have any questions for the
14 Investigator?

15 MR. MARTIN: I do. Thank you, Mr.
16 Chairman.

17 CROSS-EXAMINATION

18 MR. MARTIN: Mr. Garcia, I want to ask
19 you about something you testified to. Mr.
20 Garcia, did you say that when you talked with
21 Commissioner Norman she had concerns about
22 safety?

23 INVESTIGATOR GARCIA: Correct.

24 MR. MARTIN: Directing your attention
25 to your report, Pages 21 and 22, we can start

1 with Page 21. Do you see it there, transmittal
2 of commission of actions to ABRA? Exhibit 1.

3 INVESTIGATOR GARCIA: Yes.

4 MR. MARTIN: This is the charging
5 document that the ANC issues for these matters,
6 correct?

7 (Whereupon, the above-referred to
8 document was marked as Investigator Exhibit 1 for
9 identification.)

10 INVESTIGATOR GARCIA: Correct.

11 MR. MARTIN: Looking in the, you see
12 midway, not even midway down the page, there's an
13 X. It says protest based on the effect on real
14 property values, effect on peace, order and
15 quiet, including the noise and litter provisions
16 and the effect upon residential parking needs and
17 vehicular/pedestrian safety.

18 INVESTIGATOR GARCIA: Correct.

19 MR. MARTIN: Very well. You would
20 agree there that there's no mention of concerns
21 about a roof deck?

22 INVESTIGATOR GARCIA: Correct.

23 MR. MARTIN: You'd agree that there is
24 no mention of concern about the safety of
25 patrons?

1 INVESTIGATOR GARCIA: Correct.

2 MR. MARTIN: So you would agree then
3 that, at least at the outset of this, those
4 alleged concerns of Ms. Norman were not in the
5 charging document, correct?

6 INVESTIGATOR GARCIA: Yes, it's not in
7 the charging document.

8 MR. MARTIN: And then directing your
9 attention to, within your exhibit, Page 17. Are
10 you there, Mr. Garcia?

11 INVESTIGATOR GARCIA: Yes, I am.

12 MR. MARTIN: Looking at these, on Page
13 17 you investigated whether there was noise heard
14 in residential areas, correct?

15 INVESTIGATOR GARCIA: Correct.

16 MR. MARTIN: And you found no
17 violations, correct?

18 INVESTIGATOR GARCIA: Correct.

19 MR. MARTIN: And you found no
20 loitering, correct?

21 INVESTIGATOR GARCIA: Correct.

22 MR. MARTIN: And, Section C, you did
23 not observe any criminal activity or identify any
24 ABRA violations at Uproar, correct?

25 INVESTIGATOR GARCIA: I did not.

1 Correct.

2 MR. MARTIN: Very well. And, looking
3 at the records search, you found there is no
4 history of complaints as it relates to noise at
5 Uproar, correct?

6 INVESTIGATOR GARCIA: Correct.

7 MR. MARTIN: So you found no violation
8 at uproar based on what was mentioned in the
9 charging document, correct?

10 INVESTIGATOR GARCIA: Correct.

11 MR. MARTIN: Now, you had stated that
12 the occupancy you observed there seemed a little
13 short of what could have been expected. Is that
14 a fair statement? Is that what you testified to?

15 INVESTIGATOR GARCIA: Correct.

16 MR. MARTIN: And what did you base
17 that statement upon?

18 INVESTIGATOR GARCIA: Just a visual.

19 MR. MARTIN: Okay. Have you been in
20 other establishments for comparison?

21 INVESTIGATOR GARCIA: Yes, I have.

22 MR. MARTIN: Okay. And did your
23 experience in other establishments play any role
24 in making the assessment that you did?

25 INVESTIGATOR GARCIA: I'm sorry, can

1 you say that again.

2 MR. MARTIN: Sure. I'll restate the
3 question. In other establishments of similar
4 size, did they appear to have the same occupancy
5 levels as at Uproar?

6 INVESTIGATOR GARCIA: I can't recall.

7 MR. MARTIN: Very well. I have no
8 other questions.

9 CHAIRPERSON ANDERSON: Mr. Handerhan,
10 do you have questions that you want to ask Mr.
11 Garcia?

12 COMMISSIONER HANDERHAN: Mr. Garcia,
13 thank you so much for your report and your
14 presentation. I'm just curious if you're
15 familiar with, you note in your report that there
16 are a number of other establishments within
17 immediate vicinity of Uproar that have summer
18 gardens. Are you familiar with the size of any
19 of those summer gardens?

20 INVESTIGATOR GARCIA: Not that I can
21 recall.

22 COMMISSIONER HANDERHAN: Okay. Do you
23 know if those summer gardens have settlement
24 agreements?

25 INVESTIGATOR GARCIA: Give me one

1 minute. I can let you know that out of the 42
2 establishments within 1,200 feet of the
3 establishment, 19 of which have settlement
4 agreements. I can't recall, I'm not sure how
5 many have rooftop decks or summer gardens.

6 COMMISSIONER HANDERHAN: Okay. No
7 further questions. Thank you.

8 CHAIRPERSON ANDERSON: All right.
9 Thank you. I'm thinking. I'm trying to figure
10 if I have any other questions I want to ask this
11 witness before I dismiss him. Mr. Garcia, just
12 one last, when did you write your report? When
13 did you write this report?

14 INVESTIGATOR GARCIA: March of, give
15 me one minute, it was submitted December of 2020.

16 CHAIRPERSON ANDERSON: In December?
17 All right. All right. Mr. Garcia, thank you
18 very much for your testimony today. All right.

19 INVESTIGATOR GARCIA: Thank you.

20 CHAIRPERSON ANDERSON: Mr. Martin, do
21 you have a witness you want to call?

22 MR. MARTIN: Yes. But at this time
23 we'd move that this body might consider judgment
24 as a matter of law. Mr. Chairman, here we have a
25 case where the charging document failed to give

1 notice of any safety issues concerning the
2 rooftop deck.

3 And, with Mr. Garcia's clear
4 testimony, he has found after investigating the
5 things alleged in the charging document that none
6 of them were substantiated. Accordingly, we'd
7 ask that you find for Uproar and that the protest
8 be dismissed.

9 CHAIRPERSON ANDERSON: All right. Mr.
10 Handerhan, I mean, do you have a response you
11 want to make before I weigh in?

12 COMMISSIONER HANDERHAN: Sure. Thank
13 you. You know, as I'm sure the Board knows that
14 ANC's are limited to what we're allowed to select
15 for a protest. And so we can't just, you know,
16 pick anything that we would want to focus on.

17 What we're focused on is the noise
18 element, which is peace and quiet. And that's,
19 again, why we're here and why we're concerned
20 about the substantial change request to the size
21 of the summer garden.

22 CHAIRPERSON ANDERSON: All right. Mr.
23 Martin, maybe I'm confused why we're here today.
24 Okay? And so if I'm confused maybe you can
25 educate me why we're here today.

1 When this hearing started we had two
2 protests. One protest was on the renewal of the
3 license. And the parties agreed that the ANC was
4 not challenging the renewal so the license is
5 being renewed.

6 But there is another protest that all
7 the parties agreed that there's a protest. And
8 what was that protest? The protest is
9 substantial change. Your client requested from
10 this Agency for a substantial change. And it's
11 my assumption the substantial change was to
12 increase the occupancy of the rooftop, is that
13 right?

14 And so therefore, once an ABC
15 establishment requests a substantial change, if
16 it's deemed a substantial change by the Board, it
17 is subject to protest. The ANC has protested it.
18 I don't think there's any confusion on anyone's
19 part that the ANC has contested that substantial
20 change.

21 The burden is on you, sir, to come to
22 the Board, put evidence to say why the Agency
23 should approve your substantial change. Now,
24 because you go first you have the burden. You
25 haven't presented any information. I can't make

1 a determination.

2 I mean, all I have here is you put in
3 an application. You put in an application for
4 substantial change. I've not heard any evidence.
5 I mean, the Board sends its investigators to go
6 out and to investigate it. There's not a
7 charging document per se, for us to say because
8 it's not in the charging document and so
9 therefore they are not sustaining their burden.

10 You now, after your present your
11 evidence why the Board should, why you believe
12 that the Board should approve the substantial
13 change, after the ANC has presented its
14 information in closing, if you want to make that
15 argument. But that's not an argument to make at
16 this time. I've not heard anything.

17 So I'm going to, basically I'm going
18 to not deny your motion because it's an improper
19 motion to make, because you have requested, your
20 client has requested something from this Board
21 and you have not presented any information to the
22 Board to state why this Board, why this Agency
23 should approve your substantial change
24 applications. Okay?

25 MR. MARTIN: Very well. Very well.

1 We call Ms. Truong.

2 CHAIRPERSON ANDERSON: All right. Ms.
3 Truong, can you raise your right hand please. Do
4 you swear or affirm to the tell the truth and
5 nothing but the truth?

6 MS. TRUONG: I do.

7 CHAIRPERSON ANDERSON: You need to get
8 closer to the microphone, ma'am, I can't hear
9 you. You need to speak up, bring the microphone
10 closer to you so we can hear you. Okay?

11 MS. TRUONG: All right.

12 CHAIRPERSON ANDERSON: Thank you.
13 Your witness.

14 MR. MARTIN: Thank you.

15 DIRECT EXAMINATION

16 MR. MARTIN: Ms. Truong, can you state
17 for the, well are you familiar with -- Ms.
18 Truong, what is the, can you describe your
19 current certificate of occupancy for Uproar?

20 MS. TRUONG: I currently have one
21 certificate --

22 CHAIRPERSON ANDERSON: Ms. Truong, get
23 closer to the microphone please. Or turn the
24 volume of the microphone up. Your voice is too
25 low. I need to hear, we have a court reporter

1 who has to transcribe everything that you're
2 saying. So please speak up, ma'am.

3 MS. TRUONG: Okay. My current
4 certificate of occupancy states that I have a
5 total of 267 as follows, 21 seats -- I'm going to
6 let him read it.

7 MR. THORNTON: May I read to you the
8 current certificate --

9 CHAIRPERSON ANDERSON: Sir, Mr.
10 Thornton, you can't speak, sir. You're not --
11 hold on. Mr. Thornton, no. No. No. You can't
12 show her anything. You can't talk to her. She's
13 the only one who is testifying. So what I'm
14 asking you to do, sir, can you kind of move away
15 a little bit out of camera range.

16 So you're the one, Ms. Truong, you are
17 the witness. You're supposed to testify from
18 your personal knowledge. If you don't have the
19 knowledge then you can't answer the questions.
20 So I don't need you to look at him. He can't
21 feed you any information, ma'am.

22 I need you to testify, your attorney
23 is asking you a question and I need from your own
24 recollection -- ma'am, I don't know where you're
25 looking. Look in the camera at us, ma'am. I'm

1 looking at you, when I see you looking to the
2 side that tells me that someone is giving you
3 information.

4 So I need you to look squarely ahead
5 in the camera and when Mr. Martin asks you a
6 question you look at it. Unless he refers you to
7 some specific document, you shouldn't any
8 document in front of you to look at. Okay? So
9 if a document that's disclosed and he refers you
10 to a specific document, that's when I need you.

11 So I need you to, if he did not refer
12 you to any document then you need to move the
13 document away. You sit, look in the camera and
14 talk to us. And I don't want you, ma'am, I don't
15 want you to the side, look at someone else,
16 because that tells me that someone beside you is
17 giving you information.

18 If we were not doing this hearing
19 virtually you'd be sitting in a witness box in
20 front of me and I'll be looking directly at you
21 and that's what I want to do to. We're doing it
22 virtually.

23 So I need to look at you directly.
24 You need to look directly at the camera so I know
25 that you are talking to us and you're not getting

1 any information from anyone that's beside you.

2 Okay? Do we understand each other?

3 MS. TRUONG: Understood.

4 CHAIRPERSON ANDERSON: Thank you. Mr.
5 Martin, what's the question you're asking this
6 witness?

7 MR. MARTIN: Thank you. Ms. Truong,
8 what is the current occupancy of your current
9 certificate of occupancy?

10 MS. TRUONG: It's 267.

11 MR. MARTIN: And of those 267 how many
12 are allowed on the roof?

13 MS. TRUONG: 200.

14 MR. MARTIN: And when was that
15 Certificate of Occupancy issued to Uproar?

16 MS. TRUONG: September 7, 2017.

17 MR. MARTIN: Understood. You, were
18 you present for the testimony of Mr. Garcia?

19 MS. TRUONG: I was, yes.

20 MR. MARTIN: And did you hear his
21 testimony about your Certificate of Occupancy?

22 MS. TRUONG: Yes.

23 MR. MARTIN: How is it that your
24 current Certificate of Occupancy was issued in
25 2017, but the one referenced by Mr. Garcia as

1 Exhibit, one moment. The one referenced by Mr.
2 Garcia was issued in 20, just give me one second,
3 in 2020, on March 12, 2020. Or rather, the ABRA
4 license he was referencing was issued March 12,
5 2020.

6 MS. TRUONG: So, I have, I've been
7 issued two Certificate of Occupancy. The reason
8 for this is because of the Covenant Agreement
9 that conjoins two buildings. I was issued two,
10 one for the building for 639, and one says for
11 641.

12 So, for the rooftop extension it's a
13 different certificate that labels that I'm
14 allowed to have 200. And my other certificates
15 were labeled for 639, that I'm allowed to have 34
16 on the second floor. And license on the first
17 floor is I believe 27.

18 So, this is the confusion between the
19 two Certificate of Occupancy licenses. So, when
20 we have inspectors come in and look, they're
21 confused by the two. But this is how we were
22 issued the Certificate of Occupancy. I, at that
23 time I had two.

24 MR. MARTIN: Okay. There was
25 reference to, in Mr. Garcia's testimony there was

1 reference to a incident on your roof in the
2 summer of 2017. Are you familiar with what he
3 was talking about?

4 MS. TRUONG: Yes.

5 MR. MARTIN: Okay. What was he
6 talking about?

7 MS. TRUONG: He was asking more
8 information, more detail about it. And I said
9 that it was, the situation was resolved. We, it
10 happened on June 12th, 2017. And we had a
11 structural engineer come in to resolve it, and
12 address it with DCRA. And then next day we were
13 allowed to open again. And it was a simple
14 improper installation by the contractor on the
15 Simpson Brackets.

16 MR. MARTIN: Okay.

17 MS. TRUONG: And it wasn't a collapse.
18 And it was on the building of 641 where the
19 construction was done. So, I think by evacuation
20 people misunderstood that the whole building, the
21 whole roof shifted.

22 MR. MARTIN: Okay. When, at the time
23 of that, the shift you described, how long was
24 Uproar closed?

25 MS. TRUONG: We were not closed any

1 day. We were open by the next day.

2 MR. MARTIN: Okay.

3 MS. TRUONG: An emergency meeting with
4 the DCRA and the Fire Marshall. And Jay here is,
5 he was part of that, to meet down at the DCRA to
6 resolve issues that morning at 9:00 a.m. with the
7 landlords also.

8 MR. MARTIN: Very well. And since the
9 incident in 2017 have there been any similar
10 shifts or collapses, or other structural issues
11 with the roof?

12 MS. TRUONG: No.

13 MR. MARTIN: And has Uproar been shut
14 down by ABRA at any time for, any time since the
15 collapse for any unsafe structures having to do
16 with the roof?

17 MS. TRUONG: No.

18 MR. MARTIN: Okay. Just for the
19 record, why did Uproar seek a substantial change
20 in this matter?

21 MS. TRUONG: So, let me begin, I
22 submitted a substantial change, or increase in
23 2017, the beginning of 2017. And I was approved.
24 At that time we were in the process of submitting
25 our BZA for extension of the rooftop.

1 And I went back to talk to Mr. Michael
2 Stewart, who was my assigned license ABRA
3 specialist. And I specified that I did not know
4 the total occupancy, because we didn't know how
5 the BZA would calculate the numbers. And he
6 understood.

7 And he issued me a letter that he
8 understands my situation. And it's confirmed
9 that I was approved, and that he, it was safe to
10 -- Approval was waiting, pending on when my
11 Certificate of Occupancy was issued.

12 So, whenever I obtained my Certificate
13 of Occupancy, I just turn it in, and then the
14 final numbers will be issued for the liquor
15 license.

16 So, when I submitted my, when, once I
17 obtained my occupancy license, and when I
18 submitted it to ABRA, and I just took, it was Jay
19 who went and submitted for me. But when he
20 submitted they issued, ABRA issued a license.

21 And when he brought it back to me I
22 realized the occupancy numbers that is on the
23 ABRA license did not match the Certificate of
24 Occupancy at all. And it still has the same old
25 number from my previous, which is capacity of

1 101. It was never corrected.

2 And I went back a week later and
3 addressed it to the license specialist. And they
4 told me, it's okay. As long as you have your
5 Certificate of Occupancy it will reflect it, no
6 problem. And to me it just didn't make sense.
7 But I, they gave me the assurance that that was
8 not a problem.

9 So, I figure maybe when I go and renew
10 my license, or when I go pay my fees I'll bring
11 it up again. I did it three times. And I was
12 told three times that you're okay, until I had an
13 inspector come in, and they wanted to cite me.

14 And they were confused by the two
15 Certificate of Occupancy, with the liquor license
16 that it was previously, with the same capacity
17 not showing, and reflecting what my Certificate
18 of Occupancy that allows 200 on the roof.

19 So, I went back to my specialist. Her
20 name was Ms. Karen Jackson. I brought her the
21 issues, what, I want this to be corrected and
22 fixed. And she started to draw numbers. And she
23 said, well, I can only give you up to 99. We
24 went from 99 to 199.

25 And then after that she said, we can't

1 issue you another one. You're going to have to
2 submit a letter with, asking the Board to
3 increase the number. Then I can change it.

4 But I told Ms. Karen, ma'am, it should
5 have been corrected from day one. So, the moment
6 that I submitted in September 7, 2017, that
7 should have been the time that you corrected it.
8 Why are you making me submit a letter requesting
9 the Board to increase the substantial change?

10 And she said it was a mistake. And I
11 can't correct it. Maybe she can interject on
12 what had occurred. But that's the reason why I
13 submitted the letter, I, because of the mishap
14 and the misunderstanding.

15 But my original substantial
16 application I submitted was back in May 29th in
17 2016. It was approved, I believe it was approved
18 on March 28, 2017, pending waiting on my
19 Certificate of Occupancy. That was done way back
20 then.

21 But upon issuing the license this is
22 the problem that I have. It was improperly
23 issued. And I have a receipt and a certificate
24 that has been issued three times, with three
25 different numbers.

1 And the last one I have for the
2 license is issued at 199 for the rooftop. And if
3 I wanted to increase it I have to, I guess you
4 guys put it on a different tier. Because once it
5 pass over 200, or something, it's a different
6 tier of payment.

7 And I told Ms. Jackson I didn't care
8 about payment. I just want it to be correct. I
9 want it to be done with what is, near as my
10 application and my documents.

11 MR. MARTIN: Very well.

12 MS. TRUONG: So, this has been a
13 problem since 2017 that I've been trying to get
14 corrected.

15 MR. MARTIN: Understood. Is there
16 anything you'd like to add to your testimony?

17 MS. TRUONG: No.

18 MR. MARTIN: Very well. No other
19 questions.

20 CHAIRPERSON ANDERSON: Mr. Handerhan,
21 your, you can ask your questions, please.

22 CROSS EXAMINATION

23 COMMISSIONER HANDERHAN: Hi, Ms.
24 Truong. Thank you so much for being here today.
25 I know we haven't gotten a chance to meet. But I

1 am a big fan of Uproar. And I'm looking forward
2 to resolving this issue.

3 So, you know, the ANC is, so as you,
4 as we talked about earlier today, you know, we've
5 dropped the interest in, you know, protesting the
6 renewals of your license. I think that Uproar is
7 a really important institution.

8 I think what we're concerned about is
9 noise. So, can you just talk to me a little bit
10 about what you think the projected impact between
11 taking the size of the roof deck that you
12 currently have to the 199 or 200? I'm still not
13 totally sure what you think that impact will be.

14 MS. TRUONG: So, if you're talking
15 about impact, we, I have been operating at 200 on
16 the rooftop for the last four years. So, because
17 I was told from ABRA that I have two Certificate
18 of Occupancy.

19 That's what I need to operate on, not
20 so much the liquor license that was issued,
21 because the Certificate of Occupancy trumped my
22 liquor license. So, I've been operating for the
23 last four years 200 on the roof, as which is
24 stated on my Certificate of Occupancy.

25 So, as far as like when you're saying

1 impact, we have a lot of customers that live
2 within the neighborhood. We are sensitive, and
3 we want to work with our neighbors.

4 What I can tell you, what we do is,
5 one, we do not have our speakers out on the deck.
6 We, myself and my security, we do sound meter
7 checks every other hour. We walk around the
8 neighborhood, one to two blocks, to make sure
9 there's no conversation noise to, noise that was
10 coming from us that projects and travels through
11 the house.

12 So, we do our due diligence. And we
13 make sure that when people leave, they leave
14 safely. They jump to Uber out front. And
15 everybody goes home happy.

16 Now, as far as like the impact, I'm
17 not sure. Because there are other businesses
18 around me. We're on an industrial zone. And
19 next door to me is a nightclub. And their
20 rooftop is what is called a skydome rooftop.
21 There are flaps on the top of the roof, so it
22 actually opens up like a butterfly.

23 So, when noise comes up it just
24 spreads all around and lands wherever, I don't
25 know, 200 feet away. But for us, we are mindful

1 of the community. And if we get a complaint we
2 immediately address the issue.

3 COMMISSIONER HANDERHAN: Okay. Thank
4 you. So, you mentioned, so, does Uproar have a
5 settlement agreement right now?

6 MS. TRUONG: We do not.

7 COMMISSIONER HANDERHAN: Okay. Do you
8 know if, sorry, are you familiar with the details
9 of the settlement agreement at Flash?

10 MS. TRUONG: I'm not familiar at all.

11 COMMISSIONER HANDERHAN: Okay. So,
12 are you aware of the conversations that Mr.
13 Martin and I have been having around a settlement
14 agreement for Uproar to, in the past five weeks,
15 since I've been a Commissioner?

16 CHAIRPERSON ANDERSON: I'm going to,
17 and Mr. Martin, this is, you're an attorney, so
18 you need to object to this, sir. This is not me
19 supposed to interject. You're supposed to object
20 to this.

21 And the reason why I'm objecting, we
22 cannot discuss settlement discussions at these
23 hearings. We cannot discuss what occurred in
24 mediation, and what discussions that parties had
25 as settlement. That's the only, that's why I'm

1 interjecting. Because that is improper.

2 And so, that is up to you, Mr. Martin,
3 to object to that line of questioning. So, you
4 cannot ask at these hearings, we cannot have
5 conversations about what happened at mediation,
6 or what happened during settlement discussions.
7 Okay?

8 MR. MARTIN: Yes. We object for the
9 record. Thank you.

10 COMMISSIONER HANDERHAN: Yes. Thank
11 you, Judge. Sorry. I'm five weeks into being an
12 ANC. So, I am learning.

13 CHAIRPERSON ANDERSON: I'm fine. And
14 I'm an attorney. And I'm hard on attorneys. I
15 am more, I give more flexibility to people who
16 are non-attorneys. And that's one of the reasons
17 why I called out Mr. Martin.

18 Because as an attorney there are just
19 certain things that I expect from attorneys. I'm
20 not saying he's not doing it. I'm just saying,
21 that's why I did that.

22 So, when lay people ask these
23 questions I will make sure that I point out to
24 lay folks that you cannot discuss mediation
25 discussions at mediations. And you cannot

1 discuss settlement discussions at hearings,
2 because they're all confidential. And that's
3 all, that's the only reason why I'm doing that.
4 Okay, sir?

5 COMMISSIONER HANDERHAN: All right.
6 Okay. Thank you for that clarification. Do you
7 have, can you describe a little bit more about
8 the noise mitigation that you currently have in
9 place, Ms. Truong?

10 MS. TRUONG: I don't understand your
11 question. The noise mitigation?

12 COMMISSIONER HANDERHAN: Sure. So,
13 you had talked about the speakers.

14 MS. TRUONG: Oh, yes. We do not have
15 speakers on the outside deck. We have partial of
16 the roof. It's enclosed. So, we have music
17 playing on the back end of it.

18 And around the back of our site it's
19 all cinderblock. And it's all enclosed. So,
20 it's a barrier that protects any noise behind us,
21 to the east of us, and the west of us. And
22 behind us is the parking lot and Howard Hospital.

23 So, we do walk around to, with sound
24 meters to make sure that we do not generate any
25 more than 50 to 60 decibels on sound that

1 projects around the neighborhood.

2 COMMISSIONER HANDERHAN: Okay, great.
3 Would you describe the type of live entertainment
4 that you have on the rooftop, please?

5 MS. TRUONG: So, we have like a DJ.
6 I have an endorsement for live entertainment
7 since 2014. So, we have DJs on there. And
8 sometimes we have a fundraiser event when someone
9 needs a microphone just to speak. But then in
10 the back end, and our speakers are elevated off
11 the ground from, protecting from any vibrations.

12 And occasionally we'll play, what we
13 have is like a karaoke video playing JukeVision
14 that you can choose your music. So that if we
15 don't have a DJ it's played through the TV.

16 COMMISSIONER HANDERHAN: Okay, great.
17 And you sometimes project, is it true, sometimes
18 project like TV shows that are shown to --

19 MS. TRUONG: That is correct.
20 Sometimes we have movie nights on Wednesdays or
21 Tuesday. And if we have someone that needs to do
22 a presentation, or a fundraiser we'll put it on
23 the projector, and it bounces off the wall of
24 Flash, the nightclub next door to us, that have a
25 great big white wall. So, we just use their wall

1 for the projection.

2 COMMISSIONER HANDERHAN: Okay. Thank
3 you. I just wanted to establish some of that.
4 So, can you clarify, do, are you seeking the
5 substantial, so, talking about the substantial
6 change, can you clarify? It's for 199 or 200
7 total?

8 MS. TRUONG: So, to, in a nutshell, in
9 a lot, in a nutshell it should have always been
10 200 on the roof. And from day one when I
11 submitted, when I turned in my Certificate of
12 Occupancy.

13 What Ms. Karen Jackson did was, she
14 issue at 199. Because there is a threshold. If
15 you go over 200 it puts you in a different tier
16 of payment for ABRA. And that's why she couldn't
17 make it over 200.

18 So, the question is, why is it not
19 issued properly in the first place, the 2017?
20 So, for me to submit this letter, that was a
21 recommendation by Ms. Jackson, to write a letter.

22 And she sat there and scribbled all
23 the numbers for me, to state how it needs to
24 read, so that the Board can see it and correct
25 it, instead of her correcting it.

1 COMMISSIONER HANDERHAN: So, I'm
2 having a little trouble following. And that
3 might be because I'm really new. So, is that an
4 ABRA correction that needs to be made?

5 MS. TRUONG: That is correct.

6 COMMISSIONER HANDERHAN: Okay. So,
7 I'd like to also ask you about some of the
8 neighboring jurisdictions, and if you're aware of
9 any other establishment in the corridor that has
10 a 200 person capacity, or 199 person capacity,
11 without a settlement agreement?

12 MS. TRUONG: I do not know.

13 COMMISSIONER HANDERHAN: Okay. I went
14 and, so, you're requesting the substantial change
15 to 200 for the roof. Can you talk a little bit
16 about the capacity inside?

17 MS. TRUONG: I don't know what to
18 discuss. I mean, I'm here to, I don't that this
19 interjected to ABRA to show them like the
20 backtracks that I have to do to verify the
21 current, which I shouldn't even have to be just
22 escalated to this point.

23 But as far as my, the rooftop I'm
24 allowed to have 200 upstairs. On the second
25 floor I'm allowed to have 40, which my

1 Certificate of Occupancy right now is 267.

2 So, part of like the confusion for Mr.
3 Karen was, I brought her my two certificates.
4 And she said, I can't issue you two license. I
5 said, well, I think you should just combine the
6 numbers. She said, well, I can't do that either.

7 So, I had to go back to DCRA to try to
8 ask them, how do you help me fix this? And
9 they're like, no, this is how it's issued. So,
10 it was just back and forth.

11 And we finally, our last time, when I
12 had to meet with Ms. Anita for our mediation, we
13 finally said, what, I met with Ms. Karen Jackson
14 right after. And I said, what does it take for
15 you to help us fix it?

16 And so, we came to the conclusion, she
17 said, if you can down to DCRA and have that
18 corrected to 156, I'll issue the license. My
19 last license actually shows 267 total.

20 So, I have four license issued in
21 different numbers. But my last one, my liquor
22 license is issued 267. And then had emailed my
23 lawyer and said, I have to withdraw that last
24 license, is because until you submit to get a
25 substantial approval from the Board, then I can

1 reissue you the correct number.

2 COMMISSIONER HANDERHAN: Okay.

3 MS. TRUONG: And which even state, I
4 paid \$900. She demanded \$900. I paid \$900 on
5 that day, October 1st. And I requested a refund.
6 And I still haven't got a refund.

7 COMMISSIONER HANDERHAN: Okay. Thank
8 you. I still remain a little confused. And it
9 sounds like you might as well, around the actual
10 occupancy, that whole thing, request about a
11 substantial change, what is existing and, you
12 know, what that impact might be on the community.
13 And so --

14 MS. TRUONG: It's not really
15 confusing. It is very simple. My application
16 was approved in, back in 2017. I come in to
17 ABRA. I submit my Certificate of Occupancy.

18 That's when ABRA should issue the
19 license with the correct number that mirrors my
20 Certificate of Occupancy. That never happened.
21 And it has been a battle for me for the last four
22 years to try to get it correct.

23 And this was the last resort that Ms.
24 Jackson recommended me to do, was to submit a
25 letter to request for increase of substantial

1 change, which I didn't really to have to do in
2 the first place.

3 COMMISSIONER HANDERHAN: Got it. So,
4 I do think that's a little confusing. But thank
5 you. And I appreciate the history there.
6 Because I know there is a lot of history with the
7 capacity. And I have no further questions.

8 CHAIRPERSON ANDERSON: All right.
9 Okay, Ms. Truong, I'm confused. And I'm going to
10 tell you why I'm confused. And maybe you can
11 clarify.

12 Did you see, have you seen a copy of
13 the report that Mr. Garcia just testified, the
14 protest report?

15 MS. TRUONG: From Mr. Garcia?

16 CHAIRPERSON ANDERSON: Yes. The
17 report that the Board wrote, that Mr. Garcia
18 wrote. Was that shared with you? Do you have a
19 copy of that, Mr. Martin?

20 MS. TRUONG: No, I don't.

21 CHAIRPERSON ANDERSON: Mr. Martin, do
22 you have a copy?

23 MR. MARTIN: I do.

24 CHAIRPERSON ANDERSON: Do you have the
25 ability to share your screen with us if you have

1 that? Do you have that document online?

2 MR. MARTIN: No, I don't. I don't
3 have mine.

4 CHAIRPERSON ANDERSON: Is Mr. Garcia
5 still online?

6 MS. ANDREWS: No, he's not.

7 CHAIRPERSON ANDERSON: This is one of
8 the problems when we do this thing, when we do
9 this virtually. The problem that I'm having is
10 that Exhibit 28 that Mr. Garcia testified on
11 before is your license. Okay? And it's the
12 license that was issued on March 12, 2020. And
13 it was, it expired on September 30th, 2022.
14 That's the license that I'm looking at.

15 MS. TRUONG: Okay.

16 CHAIRPERSON ANDERSON: And that
17 license says that your summer garden total
18 occupancy is 99. That is Exhibit 28.

19 MS. TRUONG: Yes.

20 CHAIRPERSON ANDERSON: So, what
21 document, what license are you talking about that
22 says another number? I don't know what, I mean,
23 in the parties' disclosure, Mr. Martin, did you
24 disclose a copy of her license that has different
25 numbers? I'm just, I mean, I'm confused.

1 The only document that I have in front
2 of me, which is the only document, is that it
3 says, I have your license in front of me. And
4 maybe it's another license.

5 The license that I have it says,
6 Uproar 639 to 641 Florida Avenue. It has your
7 license number. And license number is 092012.
8 And I guess, let me look to see if that's the
9 correct license that's attached to this case.

10 MS. TRUONG: I'm not sure if you're
11 able to --

12 CHAIRPERSON ANDERSON: Hold on.

13 MS. TRUONG: But up here, see that
14 number? I don't know if you can see it.

15 CHAIRPERSON ANDERSON: And so, what's
16 the date on this document?

17 MS. TRUONG: This is February 12th,
18 2020. And the capacity is 267. And my summer
19 garden is 200.

20 CHAIRPERSON ANDERSON: So, that's
21 February 2020. That's February 2020. Is that
22 correct?

23 MS. TRUONG: February 2020. And the
24 --

25 CHAIRPERSON ANDERSON: And when does

1 that license expire?

2 MS. TRUONG: September 30th, 2022.

3 CHAIRPERSON ANDERSON: And what is
4 your license number? What's the licensed number
5 that's listed on that document?

6 MS. TRUONG: 092012. I can show you
7 three more license in a different number.

8 CHAIRPERSON ANDERSON: What other
9 license do you have, ma'am?

10 MS. TRUONG: Okay. So, this one
11 saying, this was issue April 10th, 2018. And it
12 says my capacity is 101, and my summer garden is
13 74. And my next one was issue September 7th,
14 2017, a capacity of 101 with a summer garden of
15 74. I have another one issue October 1st, 2019
16 for a capacity of 199, and my summer garden at
17 99.

18 CHAIRPERSON ANDERSON: I'm sorry.
19 What's the date of this one?

20 MS. TRUONG: This one is dated October
21 1st, 2019.

22 CHAIRPERSON ANDERSON: And when, but,
23 when does this license expire? When, on this
24 certificate of, when does this one say that it
25 expires?

1 MS. TRUONG: September 30th, 2022.
2 They all have the same expiration date. But the
3 certificate, when it's issued is different dates.
4 And the one I just shared with you on the placard
5 that I have, this one was issue February 12th,
6 2020, capacity of 267, and my summer garden 200.
7 So --

8 CHAIRPERSON ANDERSON: Now --
9 (Simultaneous speaking.)

10 MS. TRUONG: -- issue in four years.

11 CHAIRPERSON ANDERSON: But what, do
12 you have one that's dated March 2020? Mr. Martin
13 can you look at, Mr. Martin, can you look at
14 Exhibit 28 for me, please?

15 MR. MARTIN: Yes. I've got it in
16 front of me now.

17 CHAIRPERSON ANDERSON: And what is
18 Exhibit 28, since you have it in front of you?

19 MR. MARTIN: It says, that is the ABRA
20 license for Uproar.

21 CHAIRPERSON ANDERSON: Do you have a
22 license, ma'am, that's dated after March 2020?

23 MS. TRUONG: After?

24 CHAIRPERSON ANDERSON: Ms. Truong,
25 after March, are all the license you have, are

1 they, do you have a license that's dated after
2 March 2020?

3 MS. TRUONG: Yes, I do.

4 CHAIRPERSON ANDERSON: Which one?
5 What's the date of that document?

6 MS. TRUONG: So, this one's February.
7 Okay. February 12th, 2020 that was issued.

8 CHAIRPERSON ANDERSON: But the, so,
9 you do not have a license dated March, you don't
10 have a license dated March 2020?

11 MS. TRUONG: I do not.

12 CHAIRPERSON ANDERSON: Which is the
13 latest, which, the document that was disclosed in
14 Mr. Garcia's report --

15 MS. TRUONG: Sir, if you can read that
16 date again? I'm 100 percent sure Mr. Garcia did
17 not see any license that's --

18 CHAIRPERSON ANDERSON: I just asked
19 you a question. The document that was disclosed
20 in Mr. Garcia's report, I asked you, I, it's
21 Exhibit 28. Exhibit 28, let me go back to
22 Exhibit 28.

23 MS. TRUONG: Let me see if we have it.

24 CHAIRPERSON ANDERSON: Exhibit 28 that
25 was disclosed by the Agency is your license

1 that's dated March 12, 2020. It has Uproar, the
2 ABRA license is 092012, which you confirmed.

3 It says that the capacity is 166. And
4 it says that your summer garden capacity is 99.
5 And this is a document that's dated March 2020.
6 And your expiration date September, 9/30/2022.

7 So, all the other documents that you
8 have, I don't know where, because you're saying
9 you have a document, you're looking at a license
10 that was issued that has, that was dated in
11 February, and one in November.

12 But I don't know where the error, I
13 don't know where, I don't what error. But the
14 only thing, the only document that I have in
15 front of me is Exhibit 28. And Exhibit 28 states
16 that the occupancy of the summer garden is 99.
17 So, I, so when did you file the substantial
18 change application?

19 MS. TRUONG: So, that's substantial
20 was back in 2016.

21 CHAIRPERSON ANDERSON: No, I'm sorry.
22 The hearing that we have today, there are two
23 protests. The protest is on the renewal of your
24 license and the substantial change application.
25 When did you file the substantial change

1 application?

2 MS. TRUONG: I filed it in 2016.

3 CHAIRPERSON ANDERSON: Ma'am, if you
4 filed this application in 2016 we would not be
5 having a hearing on this. Tell me why.

6 MS. TRUONG: So, this one was October
7 1st, October 1st of 2020.

8 CHAIRPERSON ANDERSON: So, October 1st
9 of 2020 was when the placard was out to say that
10 you requested a substantial change. And the
11 substantial change from what? From what numbers
12 to what numbers? Your card, your Certificate of
13 Occupancy that you have, what is the number on
14 the Certificate of Occupancy that you got from
15 DCRA?

16 MS. TRUONG: The Certificate of
17 Occupancy I have is 267.

18 CHAIRPERSON ANDERSON: And when was
19 that Certificate of Occupancy issued? When was
20 this issued by DCRA?

21 MS. TRUONG: September 7th, 2017.

22 CHAIRPERSON ANDERSON: I'm sorry.

23 MS. TRUONG: September 7th, 2017.

24 CHAIRPERSON ANDERSON: It says 267.

25 And what was the occupancy for, where was the

1 occupancy for the summer garden?

2 MS. TRUONG: It's September 7, 2017.

3 CHAIRPERSON ANDERSON: No. I'm
4 saying, did DCRA issue a Certificate of Occupancy
5 that says that you can have 267 people in your
6 summer garden?

7 MS. TRUONG: Yes, sir. September 7,
8 2017.

9 CHAIRPERSON ANDERSON: So, what was
10 the Certificate of Occupancy for the entire
11 establishment?

12 MS. TRUONG: So --

13 MR. THORNTON: Can I interject
14 somewhere, please?

15 CHAIRPERSON ANDERSON: No, sorry. You
16 cannot interject. You're not, sir, you cannot
17 interject. You're not a witness. You're not
18 testifying. You're not under oath. If Mr.
19 Martin wants you to testify he will call you as a
20 witness, sir.

21 So no, you cannot interject. Ms.
22 Truong is the only person who is a witness.
23 She's under oath. And she's being cross examined
24 by the Board, sir.

25 MS. TRUONG: So, my --

1 CHAIRPERSON ANDERSON: And please, I'm
2 not going to, I'm sorry. I am not going to point
3 this out to you again, sir. You cannot
4 interject. You cannot show her anything. You
5 cannot speak to her. Your attorney will give
6 you, will call you if he wants you to testify,
7 sir.

8 MS. TRUONG: Okay. So, my first
9 certificate that was issued by DCRA once I
10 finished the BZA process was September 7, 2017.
11 I was issue where my certificate reads that as
12 639-641 Florida Avenue. And it states, for
13 rooftop with a occupancy of 200 in 2017.

14 I went back to DCRA to see if they can
15 correct it to help ABRA collaborate the numbers
16 together. And they were able to issue me one
17 license certificate with a total number, so it's
18 not confusing, with a total of 267, with 200
19 being on the roof and 29 on the first floor, and
20 38 on the second floor.

21 CHAIRPERSON ANDERSON: And when was
22 this Certificate of Occupancy issued?

23 MS. TRUONG: September 7, 2017.

24 CHAIRPERSON ANDERSON: No. I thought
25 you said you went back to DCRA --

1 MS. TRUONG: I went back. Yes. So,
2 I went back in October 1st, the same -- I'm
3 sorry, when was mediation? Mediation, when was
4 that? Mediation, I believe mediation on February
5 the 3rd, 2020. After a meeting with Ms. Anita I
6 met with Ms. Karen Jackson.

7 CHAIRPERSON ANDERSON: Yes, I know.
8 But I'm, you said that you went back to DCRA for
9 them to give you one Certificate of Occupancy so
10 it will correct the numbers.

11 MS. TRUONG: Yes.

12 CHAIRPERSON ANDERSON: So, did DCRA
13 issue a Certificate of Occupancy after September
14 7, 2017?

15 MS. TRUONG: They did, yes. They did.

16 CHAIRPERSON ANDERSON: And when was
17 that issued, and what does it say? What does it
18 state?

19 MS. TRUONG: It states 267, with 200
20 on the roof, 29 on the first floor, and 38 on the
21 second floor.

22 CHAIRPERSON ANDERSON: And when was
23 this issued?

24 MS. TRUONG: This was -- I know that
25 we went there October 1st, 2020, the same day

1 that I submit this one.

2 CHAIRPERSON ANDERSON: And when was
3 that?

4 MS. TRUONG: In 2020.

5 CHAIRPERSON ANDERSON: So, you went
6 back to DCRA in October of 2020?

7 MS. TRUONG: Yes.

8 CHAIRPERSON ANDERSON: And DCRA issued
9 a Certificate of Occupancy that says that the
10 total occupancy of the summer garden is what
11 number now?

12 MS. TRUONG: 267.

13 CHAIRPERSON ANDERSON: 267.

14 MS. TRUONG: And what they did was,
15 they took my Certificate of Occupancy for the
16 building 639 and for the building 641, and
17 conjoined it to make it more readable for fire
18 marshals, for ABRA, for everyone. Instead of
19 having two certificates that's confusing.

20 CHAIRPERSON ANDERSON: And so you took
21 this, so you took this new Certificate of
22 Occupancy back to ABRA. And you asked them to
23 change your license, because your license states
24 what number?

25 MS. TRUONG: No. It's not stating the

1 numbers. It's just, I have two certificate. And
2 I expressed to them how hard it was for me to
3 explain this when I have inspections, or even
4 trying to obtain the correct number on my liquor
5 license. And so, they had to take it upon
6 themselves to see if it could be done, where they
7 can conjoin the two together and issue me one
8 certificate.

9 CHAIRPERSON ANDERSON: I just want to,
10 let me ask you a question, ma'am. What are you
11 hours on your license?

12 MS. TRUONG: My hours?

13 CHAIRPERSON ANDERSON: What are the
14 hours of operation. What are your hours to sell
15 alcohol? Is there, what are your hours of
16 operation on your license?

17 MS. TRUONG: My operations is 8:00
18 a.m. to 3:00 a.m. And the only days it change is
19 on Sunday, which is 8:00 a.m. to 2:00 a.m.

20 CHAIRPERSON ANDERSON: So, suppose
21 DCRA telling you that you can operate from 8:00
22 a.m. to 5:00 a.m., which, what time will you
23 operate? Your ABRA license told you you can
24 operate from 8:00 a.m. to 3:00 a.m. But you went
25 to DCRA, and DCRA told you that you operate from

1 8:00 a.m. to 5:00 a.m. What time would you
2 operate until?

3 MS. TRUONG: Three?

4 CHAIRPERSON ANDERSON: Why would you
5 operate until 3:00 a.m.? Why not 5:00 a.m.?

6 MS. TRUONG: Because I am abiding by
7 the liquor law, not by -- We're talking about
8 occupancy. You're talking about liquor sales.

9 CHAIRPERSON ANDERSON: No, ma'am. I'm
10 asking you, listen, answer the question that I
11 asked you. So, aren't you aware, isn't it
12 correct that you're supposed to abide by the
13 numbers on your ABC license, not by what, not the
14 numbers on your Certificate of Occupancy, but the
15 numbers that, on your license? Isn't that
16 correct?

17 MS. TRUONG: That is correct. And
18 when I submit for my increase of substantial
19 change in 2016 that was the time where it should
20 have mirror or reflect my Certificate of
21 Occupancy and my approved application in 2017.

22 CHAIRPERSON ANDERSON: But the thing
23 that still confused me, where if you applied for
24 a substantial change in 2016, you never got the
25 license until September 2017.

1 So therefore, ABRA couldn't give you
2 a number, ABRA could not have given you the 267
3 on your license until at least after September of
4 2017, when you had a Certificate of Occupancy
5 from DCRA that said 267. So, I got --

6 MS. TRUONG: Yes, sir.

7 CHAIRPERSON ANDERSON: I don't
8 understand your, you're talking about 2016.

9 MS. TRUONG: I submitted to increase
10 in 2016. And in 2017 I went through the BZA
11 process to expand the roof. And I went back to
12 Mr., I believe his name is Michael Stewart. And
13 I showed him the schematics of the building, and
14 what we were doing.

15 He gave me a letter, approval that he
16 understands the situation. And it was pending
17 space on when I, my Certificate of Occupancy was
18 going to be issued. And it will reflect on that
19 number. But my application was approved back in
20 2016.

21 CHAIRPERSON ANDERSON: But when did
22 you take the Certificate of Occupancy back to
23 ABRA? When you were issued this, you applied in
24 2016. You said that Mr. Stewart stated that, he
25 wrote you a letter. He couldn't approve the

1 number until you got a Certificate of Occupancy.
2 So, when did you take this Certificate of
3 Occupancy and provide it back, and provided it to
4 ABRA?

5 MS. TRUONG: September 7, 2017. The
6 same day that my certificate was issued I brought
7 it to ABRA.

8 CHAIRPERSON ANDERSON: And --

9 MS. TRUONG: My approval letter was
10 March 2017, I'm sorry, March 28, 2017, from Mr.
11 Michael Stewart.

12 CHAIRPERSON ANDERSON: And that
13 license says how many?

14 MS. TRUONG: (Audio interference.)
15 I'm sorry?

16 CHAIRPERSON ANDERSON: You're breaking
17 up, ma'am. And that license says how many?

18 MS. TRUONG: It didn't say how many.
19 It was an approval letter that he, I asked him
20 that I wanted a letter to make sure that I have
21 something to show for. And he presented me an
22 approval letter that says, your substantial
23 increase has been approved. And it is specific
24 Certificate of Occupancy is issued.

25 CHAIRPERSON ANDERSON: But you --

1 MS. TRUONG: March 28, 2017.

2 CHAIRPERSON ANDERSON: All right. I
3 don't know, their numbers, I don't, unfortunately
4 because we're doing this here in virtual the
5 only, and I see that you show a license that you
6 have in your hand that was issued on, I think in
7 February of 2020.

8 On the Board's document today, Exhibit
9 28, and it's the only document that -- Let me
10 ask, Mr. Thomas, did you disclose any of these
11 documents in the, for today, a copy of her
12 current license?

13 MR. MARTIN: We, it was actually in
14 the, is in the exhibits, the one that was
15 referenced by Ms. Truong, in the September 7,
16 2017 license, showing the occupancy of 200. That
17 is in the exhibits.

18 CHAIRPERSON ANDERSON: But I can't,
19 and I'm sorry, I don't, I'm frustrated, okay.
20 I'm frustrated in the sense that I'm doing a
21 hearing. I'm doing it virtual. And I have in
22 front of me the disclosed document, which is an
23 ABRA license.

24 It states that it was issued March
25 12th, 2020. It expires September 30th, 2022.

1 And it clearly says that the total occupancy for
2 the summer garden is 92. That's the only
3 document, I'm sorry, 99. That's the only
4 document that's in the record.

5 And I don't know where the discrepancy
6 is. And that's the frustration I'm having.
7 Because the only document that, the only ABRA
8 document that I have disclosed in the record, it
9 is, it's not consistent with the documents that
10 you have there.

11 MR. MARTIN: Very well. What we've
12 asked for is leave to file supplemental
13 production, to make sure that these documents
14 you're concerned about that we've been discussing
15 are in the record.

16 CHAIRPERSON ANDERSON: Well, I mean,
17 I guess, you don't have to do a supplemental.
18 Because they're ABRA's records. So, we have
19 them. If we were not doing this hearing
20 virtually today I would take a break and have
21 ABRA produce its records. So therefore, I can
22 look at our records to see what our records
23 state.

24 Because as I said before, the only
25 document that's in the record, that's the latest

1 license. And the latest license was issued March
2 2020. All the other licenses that are being
3 discussed today were issued before March 2020.

4 And the last license that I have that
5 was issued March 2020, which is, which you're
6 paying based on the numbers, the money that you
7 pay for your license is based, I'm sorry, the
8 numbers, what you pay, your renewal fee is based
9 on the numbers. And so, what you're paying,
10 based on what I have here is that you're paying
11 for a total occupancy of 99. And --

12 MR. MARTIN: Mr. Donaldson --

13 CHAIRPERSON ANDERSON: I'm aware that
14 a Certificate of Occupancy, the Certificate of
15 Occupancy and the license doesn't necessarily, it
16 doesn't necessarily match up. You can --

17 MR. MARTIN: Sir, we'd like to, after
18 the testimony, after Ms. Truong's finished with
19 her testimony we'd like to put on Mr. Thornton.
20 Because we believe he'll be able to explain
21 where, some of the confusion.

22 CHAIRPERSON ANDERSON: Sure. That's
23 fine. All right. Any other questions by any
24 other Board Members? I'm sorry. But I, the
25 information that I have in front of me is not,

1 it's not consistent. And I'm frustrated because
2 I'm going this hearing virtually.

3 And I can't ask, I cannot get into
4 ABRA's records to see, I'm just, and maybe, I
5 need to see if there's a rebuttal written, if I
6 can call it from ABRA, who can testify about
7 what's going on.

8 And maybe I need to have ABRA, maybe
9 I'm going to call a rebuttal witness so I can get
10 some clarification from the Agency, to bring some
11 clarification on this issue. All right. So, I
12 don't have any other questions. Does any of the
13 Board Members have any other questions for the
14 witness?

15 MS. TRUONG: Could I make a comment?

16 CHAIRPERSON ANDERSON: I'm sorry,
17 who's -- No, ma'am, you can't, not at this
18 juncture. And because see, I'm an attorney, I
19 can't afford for you to make a comment, because
20 you might say something you're not supposed to
21 say.

22 So, any other questions by any of the
23 Board Members? Mr. Handerhan, do you have any,
24 Handerhan, I'm sorry. Do you have any questions
25 to ask her, based on the questions that I just

1 asked?

2 COMMISSIONER HANDERHAN: No, no.

3 Thank you.

4 CHAIRPERSON ANDERSON: Mr. Martin,
5 it's your witness. You have the last bunch of
6 questions. Are there any questions that you want
7 to ask her?

8 MR. MARTIN: Yes. Thank you. Ms.
9 Truong, a moment ago was there something that you
10 wanted to add?

11 MS. TRUONG: Well, I just wanted to
12 express, I feel your frustration. You can see on
13 my part, I have four different license. I don't
14 own the printing machine. This is issue and
15 sented to me as four different numbers.

16 I've been trying to, from day one to
17 present my Certificate of Occupancy with the
18 letter of approval from Mr. Michael Stewart. And
19 every time I bring down I was pushed away, said
20 you're fine.

21 So, I've done every part to show
22 grace. I've done every party to get this
23 corrected from day one. And now we come to this
24 part. So, I appreciate your time in listening.
25 And I'm sorry for the confusion.

1 But you can only understand from my
2 part, to operate as a business entity, sitting on
3 edge not knowing which document is accurate, and
4 you're following by procedure and by ABRA's code.

5 To hold me in responsibility that I'm
6 not confident in showing all my application, I
7 have been showing all my application. I've been
8 showing my documents from day one. No one will
9 pay attention and listen to it.

10 MR. MARTIN: One final question, Ms.
11 Truong. How much has Uproar paid for ABRA
12 licensing?

13 MS. TRUONG: For this recent one was
14 \$900 dollars.

15 MR. MARTIN: Okay.

16 MS. TRUONG: This recent one, because
17 Ms. Jackson said I had to make the extra fee.

18 MR. MARTIN: Understood.

19 MS. TRUONG: I haven't, and we'll
20 return it. When I redact and I say, well, if
21 you're going to make me go through this process
22 instead of correcting it, I want my \$900 dollars
23 back. I haven't received it.

24 MR. MARTIN: Okay. I have no other
25 questions. We call --

1 CHAIRPERSON ANDERSON: Yes. Hold on,
2 please. Hold on. I'm sorry. I'm sorry. I'm
3 getting some information. And it's just, I don't
4 like the information I'm getting. Okay. Who's
5 your next witness.

6 MR. MARTIN: Mr. Thornton.

7 CHAIRPERSON ANDERSON: Can you raise
8 your right hand, please, Mr. Thornton? Do you
9 swear or affirm to tell the truth and nothing but
10 the truth?

11 MR. THORNTON: So help me, God, I do.

12 CHAIRPERSON ANDERSON: Now you can
13 speak, sir. All right. Your witness.

14 DIRECT EXAMINATION

15 MR. MARTIN: Sure. Very briefly, Mr.
16 Thornton, how are you associated with Uproar?

17 MR. THORNTON: I'm married to the
18 owner.

19 MR. MARTIN: And do you have any part
20 in its operation?

21 MR. THORNTON: I guess I would be the
22 guy that does the maintenance. And I'm not
23 really part of nightly, you know, the
24 establishment during the night.

25 I help run the business during the

1 day. And I do all the maintenance, and oversaw
2 all the construction issues with the business.

3 MR. MARTIN: And you, have you heard
4 the testimony regarding the licensing that's just
5 taken place.

6 MR. THORNTON: Yes, sir, I have. It's
7 been very confusing from the beginning.

8 MR. MARTIN: Are you able to shed any
9 light on sorting out this confusion?

10 MR. THORNTON: I hope. I believe I
11 can, yes.

12 MR. MARTIN: And how?

13 MR. THORNTON: So, if we start back,
14 when we originally were issued, when we expanded.
15 So, the issue comes with DCRA. And we occupy two
16 buildings, 639 Florida Avenue, 641 Florida
17 Avenue.

18 You have to apply for and have a
19 covenant to cross party lines and easements. So,
20 when they did that, originally DCRA could not
21 figure out how to issue one Certificate of
22 Occupancy. So, what they did was, and it makes
23 no sense, the rooftop is the only level that
24 crosses from 639 to 641.

25 So, they gave a certificate stating

1 the rooftop. And it had the 200, and it had X
2 amount of seating. They gave a second
3 certificate for 639 that had, and may I read the
4 certificate? May I look and read it?

5 CHAIRPERSON ANDERSON: Yes. Go ahead.
6 Go ahead.

7 MR. THORNTON: Okay. So, it
8 originally stated for 639, okay, only 639, full
9 service restaurant and bar with a maximum
10 occupancy load of 267. Twenty-one, let me back
11 up. It didn't say 267. I'm reading from the
12 current one.

13 The original one had 21 seats and 29
14 occupants on the first floor, 29 seats and 38
15 occupants on the second floor. The summer
16 rooftop garden Certificate of Occupancy was 74
17 seats, with an occupant load of 200.

18 So, Ms. Truong took those CFOs to
19 ABRA. We have all these different licensing
20 because every time she went there, there was
21 confusion. They wrote a license for this amount.

22 They couldn't grasp that it's one
23 location with two Certificate of Occupancy. So,
24 when we were in mediation with, you have to, I
25 can't think of her name, the ANC lady.

1 MR. MARTIN: Was it Ms. Norman?

2 MR. THORNTON: Ms. Norman. When we
3 were there in mediation, and we had come to a
4 settlement on a, we had all agreed on the, what's
5 the agreement, Mr. Martin?

6 MR. MARTIN: Are you referring to a
7 settlement agreement?

8 MR. THORNTON: We had agreed on a
9 settlement agreement. And at that point you were
10 to draft it and send it back for her, for all
11 parties to sign. On that date, following our
12 mediation we met with Ms. Jackson.

13 Ms. Jackson asked, said, this
14 confusion of two CFOs must be rectified. She
15 called down to DCRA, talked to somebody. And
16 they said they would work on it. I went to DCRA
17 that same day, and I spoke --

18 I'm going to switch computers, because
19 this computer's dying. That's why you hear the
20 echo, okay. So, I (audio interference), with
21 DCRA (audio interference) issue to (audio
22 interference). I believe his name, if you give
23 me one second I'll tell you.

24 MR. MARTIN: Are you there? Are you
25 there, Mr. Thornton?

1 CHAIRPERSON ANDERSON: I think he said
2 that this, the computer was dying and (audio
3 interference) his computer.

4 MR. MARTIN: Should we, if he doesn't
5 come on in the next several seconds could we be
6 allowed a very brief recess, so that I can try to
7 get him back on? Or --

8 CHAIRPERSON ANDERSON: Yes. We can,
9 we'll go off the record for, it's 6:26 p.m., and
10 we'll go off the record for ten minutes.

11 (Whereupon, the above-entitled matter
12 went off the record at 6:26 p.m. and resumed at
13 6:42 p.m.)

14 CHAIRPERSON ANDERSON: We're under
15 oath, so we can go back. Go ahead, Mr. Martin.
16 You can continue asking questions. Go ahead.

17 MR. MARTIN: Thanks, Barrett. Are we
18 back -- We're back on the record?

19 CHAIRPERSON ANDERSON: Yes, we're --
20 I'm sorry. Yes, we're back on the record. Go
21 ahead.

22 MR. MARTIN: Very well. And witness,
23 just for the record, could you state your name?

24 MR. THORNTON: Christopher J.
25 Thornton, T-H-O-R-N-T-O-N.

1 MR. MARTIN: Alright. Thank you, Mr.
2 Thornton. You were testifying a moment ago, I
3 believe.

4 MR. THORNTON: I was. So I wanted to
5 -- I just want to go back. So we were dealing
6 with two Certificate of Occupancies; one that was
7 639/641, Summer Garden. Then we had the second
8 Certificate of Occupancy that was 639 first and
9 second floor. We had a meeting -- or arbitration
10 down there with you guys for the settlement
11 agreement, I believe was the one, February 11th,
12 2020. During that meeting we -- Like I said, we
13 had resolved and come to an agreement on a
14 settlement agreement with the ANC. It was to be
15 drafted by Mr. Martin and submitted.

16 After that hearing, Ms. Jackson asked
17 us to stay by to work on this licensing issue.
18 Myself and Mrs. Truong stayed and worked with
19 her. So her remedy was I had to get one
20 Certificate of Occupancy to make this go away.
21 The confusion had gone on long enough. So I went
22 on the 12th of February of 2020 down to DCRA,
23 requested -- took both certificates. Explained
24 what the issue was with the alcohol license. And
25 said we had to rectify this.

1 They went and spoke with Jeff Reiss
2 who I believe is the number two man that does the
3 -- over inspections in DCRA down there. He came
4 back and told them to issue one Certificate of
5 Occupancy. So that is where -- and I forget --
6 Forgive me, the gentleman who's running the
7 meeting, the confusion comes on the Certificate
8 of Occupancy date. Even though he changed it to
9 one C of O on February 12th, 2020, they (audio
10 interference) the original issuing date of 09-07-
11 2017 on the Certificate of Occupancy. So that is
12 why there's that confusion between the dates on
13 the C of O.

14 So I have the C of O and I'm going to
15 read it to you again that's issued for technical
16 issues, the date of issue on the document is 09-
17 07-2017. However, it was produced in reality on
18 February 12th, 2020. And how this reads is "Full
19 service restaurant and bar with the maximum
20 occupancy flow of 267 as follows: Twenty-one
21 seats and 29 occupants on the first floor.
22 Twenty-nine seats and 38 occupants on the second
23 floor. And a rooftop bar with 74 seats and a
24 occupant load of 200."

25 I brought this Certificate of

1 Occupancy on February 12th, 2020 down to your
2 office and I waited in the little waiting area.
3 And I met with Ms. Jackson and I gave it to her.
4 She produced the license that states -- I don't
5 know if I'm allowed to read, but I'm reading the
6 license. She produced the license issued
7 February 12th, 2020. ABRA License 092012,
8 License Class Tavern-C. Capacity 267 to match
9 the Certificate of Occupancy.

10 I have a receipt where I paid the
11 Office of the Finance and Treasury \$900 to go to
12 the next class license. So I have my license. I
13 think all is well and good. Somewhere during our
14 -- when Mr. Martin was drafting our letter of --
15 our settlement agreement, the ANC lady had an
16 issue again and she backed out. When she backed
17 out -- and I hate to -- And I want to back up.
18 Everybody at ABRA has gone out of their way to
19 try to help us through this crazy confusion. So
20 I do not -- when I say here, I do not want to be
21 putting someone -- like I'm putting them under
22 their bus or jeopardizing their job. I honestly
23 believe -- Because I'm a government employee.
24 I'm retired 28.5 years from you all down there --
25 that they're doing the best they could. And it

1 wasn't an intentional confusion. Okay?

2 So she issued me the license. When
3 the ANC objected to Mr. Martin for whatever
4 reason, I guess she said, oh my gosh, I shouldn't
5 have issued the license because they didn't agree
6 -- they didn't come to settlement. She called
7 Ms. Truong -- and this is where you see the
8 license that is in the record. She calls Ms.
9 Truong and says I shouldn't have issued you that
10 license. So Ms. Truong said well, I want my
11 money back. The conversation was -- because I'm
12 there -- I don't need to refund you the money
13 because this is all going to get worked out.
14 You're going to get your license. Just hold on.

15 We're going back to February of 2020,
16 okay? So I know what happened. Ms. Jackson
17 produced the license you see in the record that
18 Mr. -- the investigator has that he produced in
19 his report. Never sent us a copy of that
20 license. We don't have it. We only have the
21 license that was issued on February 12th of 2020.
22 She did not send that to us. That is why you see
23 the license that goes back to numbers that don't
24 even match any of my Certificate of Occupancies.
25 That is why the young man -- the investigator is

1 very confused.

2 On August 9th, 2019, investigators
3 come out to the establishment and they looked at
4 the alcohol license. And they went to Ms. Truong
5 and said what are you doing? You have too many
6 people. You're not supposed to be here. She
7 produced her C of O at that time, 2019. They were
8 like well, we're confused. We don't understand.
9 She says, I know. She showed them the letter
10 dated March 28, 2017 from Mr. Michael Stewart,
11 Licensing Specialist, stating that our license
12 was approved. I knew one of the investigators --
13 they called me -- from a prior experience. I
14 explained to them what was going on. And they
15 said it was too confusing.

16 So this has been going on for over
17 four years with the license at issue. And I know
18 everybody's going -- you said -- well, you were
19 questioning because I'm listening. You were
20 questioning Ms. Truong on what the Certificate of
21 Occupancy says to our alcohol license. And would
22 she operate under these hours or would she have
23 this amount of people? But that lady was doing -
24 - She was following the direction she was given
25 by people at ABRA, from Mr. Stewart. When the

1 investigators would come in and they would be
2 confused, nobody -- if we were trying to get
3 over, we would never have issued -- I would never
4 have given you \$900. I would have -- and I would
5 have never asked for some substantial change. I
6 would have just kept going the way I was going.

7 But we have done everything humanly
8 possible to correct it. And I will do so going
9 forward with you gentlemen and ladies. Whatever
10 it is we need to clarify this, we will do --
11 We'll give you. I'll bring you everything I've
12 got. I've got notes that Ms. Jackson wrote on
13 doing her mathematical figures on the back of a
14 piece of paper. I've got it. So that's how we
15 get to the license issue.

16 May I go back to the settlement
17 agreement or do I need to be asked a question
18 before I testify about that?

19 CHAIRPERSON ANDERSON: There is no
20 pending question, so is there another question
21 you want to ask, Mr. Martin?

22 MR. MARTIN: There is not, Your Honor
23 -- Mr. Chairman.

24 CHAIRPERSON ANDERSON: Alright, thank
25 you. Mr. Handerhan, are there any questions you

1 want to ask Mr. Thornton?

2 COMMISSIONER HANDERHAN: No questions
3 for Mr. Thornton. Thank you.

4 CHAIRPERSON ANDERSON: Alright. Mr.
5 Thornton --

6 MR. THORNTON: Yes, sir.

7 CHAIRPERSON ANDERSON: -- you stated
8 that in February of 2020 was when DCRA issued the
9 corrected Certificate of Occupancy. Is that
10 correct, sir?

11 MR. THORNTON: That is correct, sir.

12 CHAIRPERSON ANDERSON: And is it also
13 your testimony that in February of 2020, that's
14 when you brought the corrected Certificate of
15 Occupancy to ABRA. Is that correct?

16 MR. THORNTON: That is a partial
17 correct statement the way you're phrasing it.

18 CHAIRPERSON ANDERSON: Sir, you
19 testified to say that you brought the corrected
20 certificate -- it was issued February 2020. That
21 is when you brought it to ABRA and that's when
22 you met with Ms. Jackson. And Ms. Jackson issued
23 a license that issued -- that now had the correct
24 numbers. Is that correct?

25 MR. THORNTON: So I testified that I

1 had two Certificate of Occupancies that I brought
2 to Ms. Jackson. I had one for 639/641, Summer
3 Garden Rooftop. I had one for the first and
4 second floor, 639. Ms. Jackson and ABRA has had
5 them since 2017.

6 CHAIRPERSON ANDERSON: That's not the
7 question I asked you, sir. I asked you --

8 (Simultaneous speaking.)

9 CHAIRPERSON ANDERSON: Listen to the
10 question, Mr. Thornton. The question is that you
11 stated there was an issue with the Certificate of
12 Occupancy. You went back to DCRA. It was
13 corrected in February of 2020. And when it was
14 corrected in February of 2020, that is when you
15 brought it to ABRA. Isn't that correct?

16 MR. THORNTON: That is correct. That
17 is when they combined it to one document, instead
18 of two.

19 CHAIRPERSON ANDERSON: Fine. Fine.
20 So that's when you brought it to ABRA. And you
21 also stated when you brought it to ABRA in
22 February of 2020, that is when Ms. Jackson issued
23 -- you're saying that Ms. Jackson issued a new
24 license. Is that your testimony, sir?

25 MR. THORNTON: It is.

1 CHAIRPERSON ANDERSON: So if you did
2 not bring the document to the ABRA in February of
3 2020, how then was ABRA responsible for a
4 different Certificate of Occupancy for 200 if you
5 never gave it to us until February of 2020?

6 MR. THORNTON: Once again, sir, you
7 had two Certificate of Occupancies for Ching LLC
8 operating as Uproar. Okay? ABRA had both
9 documents. Ms. Jackson could not understand or
10 how to wrap her head around two Certificate of
11 Occupancies for one alcohol license. She said it
12 can't be, although I can bring you multiple
13 licenses that she had issued. She told me could
14 I please work with DCRA to have one document --
15 one certificate for both buildings, not two. So
16 the Certificate of Occupancy is no different than
17 two documents, sir. It says 639/641. So they
18 just took and put the addresses on one piece of
19 paper instead of having two pieces of paper. And
20 that made the confusion go away for Ms. Jackson
21 by having one piece of paper. Does that make any
22 -- am I explaining it?

23 CHAIRPERSON ANDERSON: And the one
24 piece of paper that you had said that the
25 capacity for the Summer Garden was 200. Isn't

1 that correct?

2 MR. THORNTON: It did. And the one
3 prior to that was 200.

4 CHAIRPERSON ANDERSON: Right. So for
5 the Certificate of Occupancy that you provided to
6 ABRA in February of 2020 said that the occupancy
7 load for the Summer Garden was 200.

8 MR. THORNTON: Yes, sir.

9 CHAIRPERSON ANDERSON: Alright. Now
10 you're saying that Ms. Jackson issued a license
11 in February of 2020 for -- what is that occupancy
12 -- what is the Summer Garden occupancy said on
13 that license?

14 MR. THORNTON: So this license is --

15 CHAIRPERSON ANDERSON: The one issued
16 in February of 2020.

17 MR. THORNTON: February the 12th,
18 2020, ABRA License 092012, total capacity 200
19 Summer Garden.

20 CHAIRPERSON ANDERSON: Alright.
21 Alright. Now Exhibit 28, which was the ABRA
22 license that was issued in March of 2020, do you
23 not see that one?

24 MR. THORNTON: Sir, I have never seen
25 that until today when Mr. Garcia -- Investigator

1 Garcia produced it in his report. What I'm
2 trying to tell you is when the negotiations broke
3 down on the settlement agreement, Ms. Jackson
4 realized she shouldn't have issued me that
5 license in February and she re-wrote a license
6 with numbers that I don't even know where they
7 come from and she never forwarded me that
8 license. I don't have it. It's not on my board.
9 It's not anywhere in my building, sir. I don't
10 have it.

11 CHAIRPERSON ANDERSON: Alright. Let
12 me ask you another question. You said you had a
13 license from December of, I think, 2019. Do you
14 have -- prior to the license that you have that
15 was issued February of 2020, what license did you
16 have? What's the date on the license that you
17 have?

18 MR. THORNTON: If you can indulge me,
19 I have many that are in many different piles.
20 You've got to give me a second to put them in one
21 pile.

22 CHAIRPERSON ANDERSON: Right. So
23 prior to the license that was issued in February
24 of 2020, the license that you had prior to that,
25 what was the date on that license?

1 MR. THORNTON: Well I have one October
2 1st, 2019, capacity of 199. I have one September
3 7, 2017, 101. I have one April 10th, 2018, 101.
4 So what I'm --

5 CHAIRPERSON ANDERSON: Alright. So
6 this is the question I'm asking you, sir. For
7 the license that was issued October 1st, 2019,
8 what was the occupancy for the Summer Garden?

9 MR. THORNTON: Of 2019?

10 CHAIRPERSON ANDERSON: Yes. October
11 1st, 2019.

12 MR. THORNTON: This one says 99.

13 CHAIRPERSON ANDERSON: On the license
14 that you had that was issued July 2017, what was
15 the occupancy of the Summer Garden?

16 MR. THORNTON: So I have one in
17 October. I have September. That was 74.

18 CHAIRPERSON ANDERSON: And what about
19 2018, what was the occupancy of the Summer
20 Garden?

21 MR. THORNTON: Seventy-four.

22 CHAIRPERSON ANDERSON: Seventy-four,
23 alright. So on October the 1st, 2019, the
24 occupancy of the Summer Garden was 99. And it
25 did not change until -- isn't it correct that the

1 99 did not change until you met with Ms. Jackson
2 in February of 2020, isn't that correct, when you
3 brought her the new Certificate of Occupancy?

4 MR. THORNTON: That is correct.

5 CHAIRPERSON ANDERSON: And she
6 increased it to 200. Isn't that correct?

7 MR. THORNTON: That is correct.

8 CHAIRPERSON ANDERSON: And isn't it
9 also correct that she told you that she made an
10 error and that she should not have increased it
11 to 200. That's why she reduced it to 99 and told
12 you that you had to file a request for
13 substantial change to increase the numbers from
14 99 to 200.

15 MR. THORNTON: That is incorrect.
16 That is not what she told us.

17 CHAIRPERSON ANDERSON: Well let me ask
18 you a question, sir. The request that's been
19 made today -- the substantial change application,
20 aren't you requesting that we increase your
21 Summer Garden occupancy to 200? Isn't that what
22 -- Isn't that what's been requested? The 200
23 that's on your Certificate of Occupancy?

24 MR. THORNTON: Yeah. Yes, sir.

25 CHAIRPERSON ANDERSON: And isn't it

1 correct that prior to Ms. Jackson making the
2 change in February of 2019 that the occupancy
3 load for the Summer Garden was 99?

4 MR. THORNTON: Yes, with --

5 CHAIRPERSON ANDERSON: Alright.

6 MR. THORNTON: But it has an
7 explanation.

8 CHAIRPERSON ANDERSON: Sir. Sir.

9 MR. THORNTON: But you're leaving out
10 facts. You're leaving out facts.

11 CHAIRPERSON ANDERSON: Mr. Thornton --
12 Mr. Thornton, you testified that the Certificate
13 of Occupancy that was issued on October 1st,
14 2019, was 99. That's what you testified. You
15 also testified that in February of 2020, you
16 brought a new Certificate of Occupancy from DCRA
17 that increased the load to 200. Isn't that
18 correct?

19 MR. THORNTON: That is correct.

20 CHAIRPERSON ANDERSON: And Ms. Jackson
21 issued a license in February of 2020 that
22 increased it to 200.

23 MR. THORNTON: That is correct.

24 CHAIRPERSON ANDERSON: But at some
25 point, someone told you that you had to file a

1 substantial change to move it from 99 to 200.
2 And that's why we're here today. Isn't that
3 correct?

4 MR. THORNTON: Not totally true. No,
5 sir.

6 CHAIRPERSON ANDERSON: So why are we
7 here? So why the substantial change application
8 that you filed, sir, in your view?

9 MR. THORNTON: Okay.

10 CHAIRPERSON ANDERSON: Hold on. Hold
11 on, Mr. Thornton.

12 MR. THORNTON: Yes.

13 CHAIRPERSON ANDERSON: Hold on, Mr.
14 Thornton. The purpose of this hearing is a
15 substantial change application. Are we on board?

16 MR. THORNTON: Yes, sir.

17 CHAIRPERSON ANDERSON: So what is your
18 substantial change application that we're here
19 today for?

20 MR. THORNTON: We are here for the
21 200. My only thing is -- All I'm trying to say
22 to you, sir, is yes. You have my testimony
23 correct, but you're leaving out part of the
24 story. You're making it sound like I have been
25 operating illegally up until February 12th of

1 2020. And I can bring you letters from Mr.
2 Stewart telling me that I'm approved and I can
3 operate under my substantial change that I asked
4 for back in 2016, 2017. Okay? I have a letter
5 from him on March 29th, 2017 telling me I was
6 approved. I understand I don't have a license.
7 I understand that and I'm not arguing you that.
8 But what I am trying to say to you is when you
9 have people that are telling you to operate until
10 it all gets figured out because they don't
11 understand Certificate of Occupancies, but go
12 ahead and conduct your business. We're telling
13 you to work -- we're telling you to operate. And
14 I'm doing that on good faith. That is my
15 testimony I'm putting in here.

16 In addition to my license being issued
17 in February of 2020. I at no time operated under
18 what ABRA's going to say was illegally, having
19 too many people. I followed the direction of
20 those at ABRA. And I can tell you, sir, and if
21 you -- I don't know if this is the place to give
22 it, but I can tell you where I work my integrity
23 is -- you know, I'm not going to give up my
24 integrity, my security clearance for a bar.

25 I have no reason to lie to anybody --

1 to mislead anybody about anything. And that's
2 why I wanted to make it very clear that I was not
3 trying to say that anybody at ABRA had done
4 something wrong or that they shouldn't. There
5 has been a complete confusion on Certificate of
6 Occupancies from Day one. And that's all I'm
7 trying to say. I don't want you to mix my words
8 that I operated illegally, I operated without a
9 license, I was doing things that I shouldn't have
10 done when I was following directions of members
11 from the Alcohol Board.

12 CHAIRPERSON ANDERSON: Let me ask you
13 another question, Mr. Thornton.

14 MR. THORNTON: Yes.

15 CHAIRPERSON ANDERSON: When did ABRA
16 issue a license to your establishment?

17 MR. THORNTON: Originally I think our
18 first license --

19 CHAIRPERSON ANDERSON: No, I'm saying
20 why did they -- Why did you apply to ABRA for a
21 license?

22 MR. THORNTON: To sell alcohol, sir.

23 CHAIRPERSON ANDERSON: Alright. And
24 on your license, who established what time your
25 operate? Is that ABRA or some other agency?

1 MR. THORNTON: So no, my operation
2 hours are -- I don't know if that would be from
3 DCRA what time I can operate. You would tell me
4 what time I can sell alcohol. I could
5 technically be open, but not sell alcohol under
6 different hours.

7 CHAIRPERSON ANDERSON: But doesn't
8 your license tell you what time you can operate
9 and what time you can sell alcohol. Isn't that
10 correct?

11 MR. THORNTON: It tells me what time
12 I can sell alcohol. That is correct.

13 CHAIRPERSON ANDERSON: So you're the
14 license doesn't also tell you what time you can
15 operate?

16 MR. THORNTON: I'm reading it. It
17 does say hours of operation. It does.

18 CHAIRPERSON ANDERSON: Alright. So if
19 your license tell you what your operation hours
20 are and also tells you what time you can sell
21 alcohol, if someone else tells you that you can
22 operate for hours that's not on your license, can
23 you do that?

24 MR. THORNTON: If it's in a letter
25 from -- and signed by a member of ABRA, the

1 Licensing Division Specialists, then I believe I
2 could. You all have issued me special operating
3 hours on different events. You've sent us
4 certificates allowing us to operate.

5 CHAIRPERSON ANDERSON: So you're
6 saying to me that you have your license and your
7 license says one specific time and because you
8 might have some other letter that -- that's not a
9 part of your license, but it says something else,
10 you're going to go with what's on the letter.
11 You're not going to go with what's on your
12 license?

13 MR. THORNTON: What would you do, sir?
14 (Simultaneous speaking.)

15 MR. THORNTON: No, I'm asking you.
16 What would you do? You're me. You're trying to
17 do everything you can under the law and people
18 from your agency is telling me to do A,B,C, and
19 D. What would you do?

20 CHAIRPERSON ANDERSON: All I'm asking
21 you, sir -- I'm just asking you, what is it that
22 your license says specifically? That's the only
23 question I'm asking you. It's not what I would
24 do. I'm asking you what it is your license
25 states, sir?

1 MR. THORNTON: My license states my
2 hours of operation, Sunday are from 8:00 p.m. to
3 2:00 a.m. for sales, 6:00 p.m. to 2:00 a.m. for
4 entertainment.

5 CHAIRPERSON ANDERSON: And your
6 license -- And your license also stated prior to
7 Ms. Jackson making that change in February of
8 2020, that the occupancy for the Summer Garden
9 was 99. Isn't that correct?

10 MR. THORNTON: It depends on which
11 license you're referring to.

12 CHAIRPERSON ANDERSON: Alright. I
13 don't have any other questions. Do any of the
14 board members have any other questions? Mr.
15 Handerhan, do you have any questions you want to
16 ask him based on the questions I asked?

17 COMMISSIONER HANDERHAN: No. Thank
18 you, sir.

19 CHAIRPERSON ANDERSON: Mr. Martin, do
20 you have any questions you want to ask?

21 MR. MARTIN: I do not.

22 CHAIRPERSON ANDERSON: Alright. Thank
23 you, Mr. Thornton. Thank you very much for your
24 testimony.

25 Alright, Mr. Martin, do you have any

1 other witnesses?

2 MR. MARTIN: We do not.

3 CHAIRPERSON ANDERSON: Do you rest?

4 MR. MARTIN: We do.

5 CHAIRPERSON ANDERSON: Alright, Mr.

6 Handerhan, do you have any witnesses or you're

7 the only one that's going to testify, sir?

8 COMMISSIONER HANDERHAN: Nope. I'll
9 be the only one testifying.

10 CHAIRPERSON ANDERSON: Can you raise
11 your right hand please? Do you swear or affirm
12 to tell the truth and nothing but the truth?

13 COMMISSIONER HANDERHAN: I do.

14 CHAIRPERSON ANDERSON: Thank you. Go
15 ahead, sir.

16 DIRECT TESTIMONY - PROTESTANT

17 COMMISSIONER HANDERHAN: So thank you
18 so much for your time today. I know this has
19 been long. I thought it might be helpful to just
20 zoom out a little bit, you know, and remind folks
21 why we're here. I want to start by saying, you
22 know, 1B is incredibly supportive of businesses
23 on the U Street Corridor. We're really happy to
24 have Uproar in our family. And you know, as a
25 gay man myself I just want -- I think it's really

1 important to say that there are not enough LGBT
2 or queer spaces in the city. And I'm thankful to
3 Ms. Truong and her operation for providing that.

4 As we demonstrated, you know, this has
5 been a long, multi-year process. I've been the
6 ANC Commissioner for five weeks. And I was
7 really hoping to kind of reset the dynamics here.
8 I think at the end of the day, we want this
9 establishment to operate. We want to be able to
10 agree to a roof expansion. And we really got
11 hung up on exactly what the conversation was
12 today, which is it's been incredibly difficult to
13 get a consistent answer on what I think is --
14 what feels to me as someone totally new to this,
15 pretty basic information with which to build
16 trust and you know, operate in the way that a lot
17 of businesses on the U Street corridor with roof
18 decks operate.

19 What I mean by that is an agreement
20 around noise, you know, 200 people is pretty
21 large. I live pretty close to the establishment
22 myself and I know that, that's what makes my
23 neighborhood so great. And I think we have a ton
24 of examples from the businesses on the U Street
25 Corridor for what it means to come together in

1 partnership and say look, we want you to do you.
2 We want you to be able to make money, especially
3 in the pandemic. We also want to do it in a way
4 that neighbors aren't disturbed. So that's
5 really why the ANC is here.

6 You know, going back to 2017, which I
7 don't want to re-litigate too much, but you know,
8 there was a summary order asking Uproar to enter
9 into a settlement agreement -- community
10 agreement. That's our goal to come out, to just
11 have some expectations around noise. I really
12 think in the short time that I have been talking
13 to Uproar's representatives, the inability to get
14 agreement on pretty basic facts is really -- I
15 think has been a challenge. I don't think it is
16 going to be a challenge, you know, in perpetuity.
17 And I think that and hope that we can get to an
18 agreement so ABRA cannot just stay open, but
19 expand. And do it in a way that won't impact the
20 neighbors. My understanding was that the
21 establishment was operating at 94 or 99 people on
22 the roof deck. And I just want to make sure that
23 if that doubles in size, we have some protections
24 for the neighbors.

25 So I guess kind of in closing, I

1 really --

2 CHAIRPERSON ANDERSON: We're not
3 closing it. I mean this --

4 (Audio interference.)

5 CHAIRPERSON ANDERSON: This is you
6 testifying and then Mr. Martin is going to have
7 an opportunity to ask you some questions.

8 COMMISSIONER HANDERHAN: Yup, yup,
9 yup, yup. So you know, I wanted to cite that
10 there have been a number of issues that were
11 flagged in the report about -- in Investigator
12 Garcia's report about the different C of O's.
13 And the zoning inspection, which asks for
14 different things. I think we can agree that -- I
15 feel caught in the middle between some of the
16 factors here. And you know, I'm looking forward
17 to being a good neighbor with Uproar and really,
18 you know, keeping the safety of our residents
19 front and center.

20 I know that the protest is around the
21 noise issues and the impact in the immediate
22 environment and that's why we're here. So I am
23 happy to, you know, give back some time,
24 recognizing how late it has gotten and answer any
25 questions Mr. Martin might have.

1 CHAIRPERSON ANDERSON: Your witness,
2 Mr. Martin.

3 MR. MARTIN: Thank you. Mr.
4 Handerhan, is it your testimony that noise is the
5 ANCs main concern?

6 COMMISSIONER HANDERHAN: So there have
7 been many things flagged over the three years
8 that this case is going on -- or has been going
9 on. When I think about why we're here and what
10 we're kind of authorized to talk about, it's the
11 establishment of peace, order, and quiet.

12 CROSS EXAMINATION - LICENSEE

13 MR. MARTIN: Okay. Do you have -- You
14 read Mr. Garcia's report. Correct?

15 COMMISSIONER HANDERHAN: I did.

16 MR. MARTIN: Okay. And you agree that
17 there wasn't a finding of any noise concerns with
18 respect to residential areas?

19 COMMISSIONER HANDERHAN: Yeah, there
20 was ambient -- my understanding is that there
21 were ambient noise in the neighborhood, but no
22 violations.

23 MR. MARTIN: Okay.

24 COMMISSIONER HANDERHAN: Are you
25 asking about a specific capacity level that the

1 bar is operating at?

2 MR. MARTIN: No, I was asking about
3 noise levels.

4 COMMISSIONER HANDERHAN: Okay.

5 MR. MARTIN: Okay. I don't have any
6 other questions.

7 CHAIRPERSON ANDERSON: Alright, thank
8 you. Mr. Handerhan, this is an issue that the
9 Board is supposed to determine today. The
10 Certificate of Occupancy says 99. The
11 substantial change says 200. Is there a number
12 that you can live with? What is that you want
13 the Board to do, 99, 200, 50? What is it that
14 the Board -- What is it that the Board should --
15 What we're asking is you're ANC, so I'm asking
16 you.

17 COMMISSIONER HANDERHAN: Yeah.

18 CHAIRPERSON ANDERSON: We can't hear
19 you, sir.

20 COMMISSIONER HANDERHAN: Sorry about
21 that. Yeah, I think that the expansion of the
22 roof deck to 200 with a settlement agreement
23 would be just fine.

24 CHAIRPERSON ANDERSON: There's no
25 settlement agreement here, sir. This is -- the

1 parties could have settled it. You're now asking
2 the Board to make a decision. And the Board is
3 going to make a decision today -- I'm sorry, the
4 Board will issue a decision post-hearing based on
5 the testimony that was gathered today. There's a
6 substantial change application. Their C of O
7 says it's -- I'm sorry, their license says 99.
8 And we're here today because they're asking to
9 increase that to 200.

10 COMMISSIONER HANDERHAN: Right. I
11 thought I could ask -- agree to 200 and request a
12 community agreement or settlement agreement.
13 You're telling me that, that may not -- that may
14 be inappropriate. I'm so sorry about that. You
15 know, we had proposed to split the difference at
16 150, so that's an option that we've proposed in
17 the past. With noise controls, we'd be fine with
18 200.

19 CHAIRPERSON ANDERSON: Thank you. Any
20 other questions by any of the board members? Mr.
21 Martin, any questions for him based on the
22 questions that were asked?

23 MR. MARTIN: Did I hear you correctly
24 that the ANC would be amenable to 200, you said
25 with noise -- did you put a qualifier on the 200?

1 COMMISSIONER HANDERHAN: Yes, the
2 qualifier on the 200 is a community agreement or
3 a settlement agreement. I want to be careful
4 because I don't know if this is an appropriate
5 place to say that. But that's important to the
6 community and you know, a large part of this
7 (audio interference) in the past. And has been
8 asked for and we were so close.

9 MR. MARTIN: I have no other
10 questions.

11 CHAIRPERSON ANDERSON: Thank you. Mr.
12 Handerhan, do you rest? Do you have anything
13 else --

14 COMMISSIONER HANDERHAN: Yes.

15 CHAIRPERSON ANDERSON: You have no
16 other witnesses to call.

17 COMMISSIONER HANDERHAN: We rest.

18 CHAIRPERSON ANDERSON: Alright. It's
19 time for closing. Do you want to -- Do you guys
20 want a five minute -- Are you ready, Mr. Martin?
21 Since you go first, are you ready for closing or
22 you need a couple minutes?

23 MR. MARTIN: Just one -- The body's
24 indulgence for just one second please.

25 CHAIRPERSON ANDERSON: It's 7:21.

1 We'll be off the record until 7:25.

2 MR. MARTIN: Thank you, sir.

3 (Whereupon, the above-entitled matter
4 went off the record at 7:21 p.m. and resumed at
5 7:29 p.m.)

6 CHAIRPERSON ANDERSON: Alright, Mr.
7 Martin, your closing. What is it that you want
8 the Agency -- What is it that you want the Agency
9 to do, sir?

10 MR. MARTIN: I was very
11 encouraged by Mr. Handerhan's testimony there at
12 the end and his signaling an openness to 200 with
13 regulations that could be amenable to both
14 parties. Where I thought that there might not be
15 the opportunity for an agreement, I think that
16 the door is open. And I would hope that there
17 would be a similar interest from the ANC. Now I
18 realize we are very late. This is not a normal
19 closing.

20 (Simultaneous speaking.)

21 CHAIRPERSON ANDERSON: Hold on one
22 minute. Hold on, Mr. Martin. If you two decide
23 that you want to settle this, it's not late. You
24 can withdraw. The ANC can withdraw the protest.
25 And the ANC can withdraw -- the ANC can withdraw

1 the protest. And you said that you're going to
2 settle it. And we'll issue -- We will issue your
3 substantial change based on -- based on your
4 settlement agreement.

5 MR. MARTIN: We would be amenable to
6 that. Thank you for giving us that opportunity.

7 COMMISSIONER HANDERHAN: So I guess my
8 concern is that we -- you know, I requested a
9 continuance to keep talking a week ago. We've
10 been going through this for a long time. So I
11 just think, you know --

12 CHAIRPERSON ANDERSON: You tell me
13 what you want. You either do it that way. He'll
14 give closing. I'll give closing. And the Board
15 can make a decision. I'm giving you the last
16 opportunity. I'm giving you the last
17 opportunity. So we've been here for I think a
18 significant amount of time. The Board will make
19 a decision. But if the parties don't want the
20 Board to make a decision and if you guys can
21 decide or if you can -- or better yet, you can
22 say these are the terms. Okay, you can grant
23 this -- you can grant the substantial change and
24 these are the terms. We'll put in a board order
25 and that's it. We can do that also.

1 MR. MARTIN: I don't think -- I can't
2 speak for the ANC, but from our perspective, we
3 don't have a problem with that. We just need a
4 little bit of time to get the language exact.

5 CHAIRPERSON ANDERSON: How much do you
6 need? It's 7:32.

7 MR. MARTIN: We've got the parties
8 here. Is it possible to have 15 minutes?

9 CHAIRPERSON ANDERSON: Alright. The
10 Board will -- It's 7:32. We're off the record.

11 (Whereupon, the above-entitled matter
12 went off the record at 7:32 p.m. and resumed at
13 8:04 p.m.)

14 CHAIRPERSON ANDERSON: Alright, we're
15 back on the record. We had gone off the record
16 to see if the parties, although we're at the end
17 of the hearing -- we're at closing, to see if the
18 parties want the Board to come up to a consent
19 agreement. So they will let us know what the
20 terms are. And the ABC Board would memorialize
21 this in an order. So are the parties at that
22 stage or are we do closing for the Board to make
23 a decision?

24 MR. MARTIN: No, Mr. Chairman. The
25 parties were able to agree and the language can

1 be read into the record by Mr. Handerhan.

2 CHAIRPERSON ANDERSON: Okay, go ahead.
3 What is the agreement?

4 COMMISSIONER HANDERHAN: Would it be
5 easier if I shared my screen or --

6 CHAIRPERSON ANDERSON: That would
7 work.

8 COMMISSIONER HANDERHAN: Okay. I
9 don't have the capabilities to do that.

10 CHAIRPERSON ANDERSON: Ms. Andrews,
11 can you please give Mr. Handerhan the ability to
12 share his screen please?

13 MS. ANDREWS: Sure. Stand by.

14 CHAIRPERSON ANDERSON: I'm always
15 leery when people want to share their screen to
16 say I hope you know what you're sharing. So I
17 just want to -- that's something that I realize.
18 Okay.

19 COMMISSIONER HANDERHAN: Can you see
20 a Word Document?

21 CHAIRPERSON ANDERSON: Yeah, we can
22 see a Word Document.

23 COMMISSIONER HANDERHAN: Okay. So the
24 ANC agrees to withdraw the protest to the
25 substantial change if this settlement agreement

1 is entered into the record. I think I might just
2 flag the highlights, rather than read the whole
3 document if that works for you. Sir?

4 CHAIRPERSON ANDERSON: What are the
5 highlights?

6 COMMISSIONER HANDERHAN: Yep, so
7 noise. The language we just agreed to had, you
8 know, a number of standing things around the --
9 things the bar already does like keeping the
10 speakers elevated and off the floor. No speakers
11 on the sidewalk patio area. And really focusing
12 on, you know, a situation in which they will
13 reduce the capacity for a period of 30 days if
14 there are two or more violations of noise, which
15 is Section 25, 725 of the Civil Penalty Code,
16 that are attributed to the outdoor hours and
17 operation of the rooftop after 11:00 p.m. on
18 Sunday through Thursday or after midnight Friday
19 through Saturday.

20 That's really the key point and then
21 I will flag the other main issue, which is
22 agreement on capacity. Which is the licensee
23 shall at all times adhere to its occupancy limit
24 as specified in its correct Certificate of
25 Occupancy permit, which shall remain posted in

1 public view at all times. That will enable the
2 establishment to, you know, have clarify after
3 this hearing on what the actual occupancy will be
4 for the roof and go up to that minus the clause
5 up there.

6 MR. MARTIN: And just briefly along
7 the lines, my clients asked me to remind this
8 body that it had paid the \$900 fee and had not
9 been -- that had not been refunded. And they
10 wanted the Board to know that and have that on
11 the record.

12 CHAIRPERSON ANDERSON: Well I don't
13 know anything about -- I don't know -- The Board
14 is not aware about this \$900 fee. The Board is
15 not aware of what the fee is for -- I guess I
16 don't know if you pay the fee by occupancy. I
17 mean I think the bottom line is that if you had -
18 - I don't know if you had an occupancy of 200 --
19 and I can't address that issue, but I don't know
20 what the fee is supposed to be. But they had a
21 license that said that they could have 900 -- I'm
22 sorry, so that could have 200 people. So if they
23 paid a license fee --

24 Did they pay for 200 or did they pay
25 for 99? So I don't know. So of course, you can

1 always put in a request to the Agency for a
2 refund in fees. I'm not sure if the Agency is
3 going to do that. But you can always put a
4 request -- you can always put a request to the
5 Agency for a refund and the Board will make a
6 determination whether or not -- it's my
7 understanding, routinely the Board doesn't refund
8 -- the Agency doesn't refund fees. So I can't
9 respond to that.

10 MR. THORNTON: Well that's incredible.
11 All I can say is that's incredible.

12 CHAIRPERSON ANDERSON: Sir. Sir.
13 Sir.

14 MR. THORNTON: I'm sorry. No, sir.
15 That's incredible.

16 CHAIRPERSON ANDERSON: I'm just saying
17 that -- I'm saying that --

18 MR. THORNTON: That is incredible that
19 you're telling me you're going to charge me an
20 additional \$900.

21 MR. MARTIN: Mr. Thornton, please --
22 We're almost through.

23 CHAIRPERSON ANDERSON: Alright.
24 Alright, so the parties -- This is a settlement
25 agreement that's been presented, so the ANC will

1 withdraw its protest because the parties are
2 providing the Board with a settlement agreement.
3 So what's I'll ask you to do is to email this
4 agreement to Ms. April Randall as what's normally
5 done. And the Board will review the settlement
6 agreement and we -- if there are changes that the
7 Board believes that are not -- the Agency
8 believes that are not enforceable, the Board will
9 get back to the parties. But the Board will vote
10 to adopt this settlement agreement once legal has
11 had an opportunity to review it.

12 COMMISSIONER HANDERHAN: Understood.

13 CHAIRPERSON ANDERSON: Which is the
14 normal -- which is the normal procedure that we
15 do when there's a settlement agreement between
16 the ANC and the Licensee. The settlement
17 agreement is brought to the Agency for legal.
18 The Legal Office will review it for legal
19 sufficiency. And once it's legally sufficient,
20 then it will be brought to the Board for its
21 final consent. And that's all we'll do.

22 Although this came -- you can close
23 the screen, but please make sure that -- When
24 will you -- Will you email this to Ms. Randall
25 immediately? Is it signed? Is it signed by both

1 parties?

2 MR. MARTIN: No. We didn't have to
3 sign, so what we did was on the same email
4 change, we consented, you know, in writing in the
5 email chain. And once we speak with Ms. Randall,
6 we're happy to affix signatures.

7 CHAIRPERSON ANDERSON: Okay, fine. So
8 do that. Email that to Ms. Randall to say that
9 this is the agreement that both sides have agreed
10 to. And we will -- in due course, we'll make a
11 decision. Although it took us several hours to
12 come to this end, but as I've always stated and
13 which is what I try to do when we have our
14 protest hearing status -- I've always stated to
15 the parties I prefer if you have settlement
16 because that -- when these matters are settled.
17 Because at the end of the day, this is your
18 community and I want both parties to leave and
19 they're happy. When the ABC Board makes a
20 decision, one side is going to be happy and the
21 other side is going to be unhappy. So I'm glad
22 that both sides were able to come to a settlement
23 agreement.

24 Unfortunately it took us an entire
25 hearing to do this and I prefer that we do not --

1 I prefer that doesn't happen. I prefer that the
2 parties try to settle these matters up-front.
3 But since I am the chair, my position at any
4 point that parties want to settle these matters,
5 I prefer that they're settled because at least
6 both sides walk away from the table and they're
7 happy with the results that were made. So again,
8 thank you very much for your presentation today
9 and have a good day.

10 Before I sign off, Mr. Handerhan and
11 I probably butchered your name the entire hearing
12 today --

13 COMMISSIONER HANDERHAN: No problem,
14 sir.

15 CHAIRPERSON ANDERSON: -- and this is
16 no reflection on you, but you stated that you're
17 a new ANC Commissioner. The ABC Board is having
18 -- the Agency is having training next week. The
19 18th, they're having four trainings next week.

20 COMMISSIONER HANDERHAN: I signed up
21 for one -- I signed up for one on the 18th.

22 CHAIRPERSON ANDERSON: Well I'm very
23 glad that you did. And this is no reflection --
24 this is just an FYI. This is just an FYI to say
25 that we're having trainings for new ANC

1 Commissioners, that you will understand that
2 you'll be able to participate and see the
3 process. So thank you for the service that
4 you're giving to the residents of the District of
5 Columbia.

6 Mr. Martin, if I was hard on you, I'm
7 hard on all attorneys because as an attorney
8 myself, myself and Mr. Wahabzadah, we're
9 attorneys. Out of all the members who
10 participated today, myself and Mr. Wahabzadah are
11 the two attorneys that are on the Board who
12 participated in this hearing today. And I have
13 other -- I have higher expectations for
14 attorneys, so I'll be nice with the non-
15 attorneys. So if you believe I'm picking on you,
16 I pick on all attorneys because I have
17 expectations on all attorneys when they provide -
18 - And I expect that attorneys have expectations
19 of me in a sense that challenge me in rulings
20 that I make and decisions that I make.

21 Anyway, I want to thank both parties
22 for their participation today. And our selenium
23 brings this hearing to an end. As Chairperson of
24 the Alcoholic Beverage Control Board for the
25 District of Columbia in accordance with Title 3,

1 Chapter 405 Office of Open Government, I move
2 that ABC Board hold a closed meeting on February
3 24th, 2021 for the purpose of discussing and
4 hearing reports concerning ongoing or planned
5 investigations of alleged criminal or civil
6 misconduct or violations of law or regulations
7 and seeking legal advice from our legal counsel
8 on the Board's investigative agenda, legal
9 agenda, licensing agenda for February 24th, 2021
10 as published in the D.C. Register on February
11 12th, 2021. Is there a second?

12 MEMBER CROCKETT: Ms. Crockett
13 seconds.

14 CHAIRPERSON ANDERSON: Ms. Crockett
15 has seconded the motion. I will now take a roll
16 call vote on the motion that's been properly
17 seconded by Ms. Crockett. Mr. Short?

18 MEMBER SHORT: Mr. Short, I agree.

19 CHAIRPERSON ANDERSON: Mr. Cato?

20 MEMBER CATO: Bobby Cato, I agree.

21 CHAIRPERSON ANDERSON: Ms. Wahabzadah?

22 MEMBER WAHABZADAH: Rema Wahabzadah,
23 I agree.

24 CHAIRPERSON ANDERSON: Ms. Crockett?

25 MEMBER CROCKETT: Rafi Crockett, I

1 agree.

2 CHAIRPERSON ANDERSON: Ms. Hansen?

3 MEMBER HANSEN: Jeni Hansen, I agree.

4 CHAIRPERSON ANDERSON: And Mr.

5 Anderson, I agree. As it appears -- As it
6 appears that the motion has passed 6-0-0, I
7 hereby give notice that the ABC Board will hold
8 the aforementioned closed meeting. Pursuant to
9 the Open Meetings Act, notice will also be posted
10 on the ABC Board Hearing Room bulletin board,
11 placed on electronic calendar in ABRAs website,
12 and published in the DC Register in as timely a
13 manner as practical. We are adjourned for the
14 day. Thank you very much. And I now direct the
15 Board to return to Executive Session. Thank you.
16 Have a great day. Bye-bye.

17 (Whereupon, the above-entitled matter
18 went off the record at 8:16 p.m.)

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| A | | |
|--------------------------------|--------------------------------|--------------------------------|
| A,B,C 107:18 | addressed 9:9 49:3 | 45:14,15 46:13 59:24 |
| a.m 23:7,7,8,9,10,10 | addresses 97:18 | 59:25 88:6 91:5 |
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This is to certify that the foregoing transcript

In the matter of: Uproar

Before: DCABRA

Date: 02-11-21

Place: teleconference

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