

DISTRICT OF COLUMBIA
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 ALCOHOLIC BEVERAGE AND CANNABIS BOARD
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 MEETING

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 IN THE MATTER OF: :
 :
 Iraklion, LLC :
 t/a Iraklion :
 1412 I Street NW : Protest Hearing
 Retailer CN - ANC 2C :
 License No. 116082 :
 Case #23-PRO-00078 :
 :
 (Transfer of License :
 to New Location) :
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Wednesday
 March 6, 2024

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

PRESENT:

DONOVAN W. ANDERSON, Chairperson
 SILAS GRANT, JR., Member
 JAMES SHORT, JR., Member

ALSO PRESENT:

JOSE ORELLANA, DC ABCA Staff
 JOHN FIORITO, Applicant
 RICHARD BIANCO, Applicant Counsel
 D'JUAN O'DONALD, JPMorgan
 JESSICA FARMER, JPMorgan
 ASHLEY WILTSHIRE, Seven Building Associates
 TED BROWNFIELD, 15th and H Street Associates
 LYLE BLANCHARD, Group of 5+
 SPENCER RITCHIE, Group of 5+
 TERRY LYNCH, Protestant
 JOHN BRANCH, 2nd District Commander
 TREVOR HEWICK, Witness

C-O-N-T-E-N-T-S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
D'Juan O'Donald	8	35		
Terry Lynch	59	71		82
Ted Brownfield	83	101	109	
John Branch	112	127		
Trevor Hewick	138	199		
John Fiorito	204			

EXHIBIT NO. MARK RECD

Protestant

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Group of Five or More

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

2 1:33 p.m.

3 CHAIRPERSON ANDERSON: Good afternoon.

4 We're back on the record. Good afternoon,
5 everyone. And welcome to the afternoon session
6 of the ABC Board. My name is Donovan Anderson.
7 I'm Chairman of the Board.

8 Joining here this afternoon are two
9 other Board Members, Mr. James Short and Mr.
10 Silas Grant. The Board has three members for the
11 conduct of business this afternoon. And that
12 constitutes a quorum.

13 If you have any questions or any
14 concerns this afternoon with IT issues, please
15 address those in the chat.

16 And we have one case this afternoon.
17 It's a continuation. And so the case I will be
18 calling is Case number 23-PRO-00078, Iraklion,
19 License number 116082. Good morning Mr.
20 Orellana. Can you please elevate the parties in
21 this case?

22 MR. ORELLANA: Good afternoon.

23 Jessica Farmer, your access has been elevated.

24 Don Fiorito, your access has been elevated.

25 Lauren, your access has been elevated. Mr.

1 Blanchard, your access has been elevated.

2 Richard Bianco, your access has been
3 elevated. Spencer B. Ritchie, Esq., your access
4 has been elevated. And Terry Lynch, your access
5 has been elevated. There's also Christopher
6 Cohen, your access has been elevated. That is
7 all, Chair.

8 CHAIRPERSON ANDERSON: Thank you, sir.
9 I would like all the attorneys to turn their
10 cameras on, please. All right. This is a
11 continuation of the protest hearing that was
12 started two weeks ago.

13 And the licensee had presented his
14 case. So we are about to start the Protestant's
15 presentation. And prior to start the Protestant's
16 case in chief, Mr. Bianco, it's my understanding,
17 or I saw that you had filed a motion.

18 Is that a motion that's still active?
19 I know that the Protestant had not responded.
20 But is it a motion that the Board needs to make a
21 determination on?

22 MR. BIANCO: So I'm hoping not
23 actually. Since I filed the motion I've had
24 occasion to speak with Protestant's counsel. And
25 I now understand that what's being proposed is

1 that Mr. Ritchie will be appearing in place of
2 Ms. Smith, who is not available today for reasons
3 that have been disclosed to me, but I don't
4 necessarily need to put on the record.

5 And so, I do not object to Mr.
6 Ritchie, I guess filling the shoes of Ms. Smith.
7 So, you know, provided that's the case, then I
8 don't have a problem.

9 If there was some notion, or there was
10 going to be some major change on the side of the
11 Protestants where he was going to be coming in
12 and standing as lead counsel, I think then I
13 would have a problem. But provided that it's
14 going to be in the same capacity as the attorney
15 they're losing, I'm okay with it.

16 CHAIRPERSON ANDERSON: All right.
17 Thank you. So you're withdrawing your motion?

18 MR. BIANCO: Provided that we have
19 from Protestants that representation that Mr.
20 Ritchie is filling the shoes of Ms. Smith who is
21 unavailable.

22 CHAIRPERSON ANDERSON: Mr. Blanchard,
23 do you -- I'm sorry. Who is she, who's, what's
24 it, which, Mr. Blanchard, is Mr. Ritchie on your
25 team? Or is Mr. Ritchie with Ms. Farmer?

1 MR. BLANCHARD: Good afternoon, Mr.
2 Anderson. Yes. Mr. Ritchie is an attorney in my
3 firm. He's on my team replacing Alexandria
4 Smith. Ms. Smith, her mother is on her deathbed
5 essentially. And cannot be here today.

6 CHAIRPERSON ANDERSON: So, I don't
7 have a problem with the substitution. So I
8 believe that what counsel has stated. He doesn't
9 have an objection. And so, we'll move on.

10 All right. This is, as I previously
11 advised the parties two weeks ago, it is my
12 intent that this hearing will be over at 5
13 o'clock today. That's what I want everyone to
14 shoot toward.

15 So therefore, I want everyone to shoot
16 for us to, we're going to complete this case
17 today, okay. No matter how long it takes, this
18 case will be completed today.

19 However, I'm hoping we can conclude it
20 by 5 o'clock. But all right. So, the only
21 other, only thing we're going to do, I will take
22 a break every two hours.

23 So, I will look to see where we are.
24 And in approximately every two hours I'll try to
25 take a break. So, I mean, if one needs to use

1 the restroom, or whatever they need to do. So
2 that's what I'm going to do.

3 We're all attorneys. I do not, the
4 Board does not require redundant or repetitive
5 testimony. So let's call our witnesses. Let's
6 get to the point, the point that needs to be
7 made. And let's move on.

8 And, all right. So, who's the first
9 witness we're calling?

10 MS. FARMER: The first witness for
11 today is going to be D'Juan O'Donald of JPMorgan.

12 CHAIRPERSON ANDERSON: All right.
13 D'Juan O'Donald from JP. I'm sorry.

14 MS. FARMER: He is present with me
15 here. So we're going to switch out, Mr. Cohen,
16 and just get Mr. Cohen to be granted access to
17 share his screen. He is going to be the one who
18 shares ours today.

19 CHAIRPERSON ANDERSON: Okay, that's
20 fine. Mr. Orellana. So access has been granted.
21 So, Mr., is it O'Donald? You said Mr. O'Donald?

22 MS. FARMER: Yes.

23 CHAIRPERSON ANDERSON: All right. Mr.
24 O'Donald, you're far away for me, sir. But I
25 understand how we're trying to have this done.

1 But can you raise your right hand, please, sir?

2 WHEREUPON,

3 D'JUAN O'DONALD

4 was called for examination by Counsel for the
5 Protestants and, having first been duly sworn,
6 was examined and testified as follows.

7 CHAIRPERSON ANDERSON: Thank you.

8 Your witness.

9 DIRECT EXAMINATION

10 BY MS. FARMER:

11 Q Thank you. Mr. O'Donald, could you
12 please state your name for the record?

13 A D'Juan O'Donald.

14 Q And are you currently employed by the
15 Protestant, JPMorgan?

16 A Yes.

17 Q What is your job title?

18 A Executive Director.

19 Q And what are some of your job
20 responsibilities?

21 A Assessing, analyzing, sourcing,
22 closing on real estate transactions,
23 commercially, globally, as well as disposing,
24 selling, and distributing redevelopments.

25 Q And do any of your job

1 responsibilities involve property in the District
2 of Columbia?

3 A Yes.

4 Q Where are JPMorgan's headquarters
5 located within Washington, D.C.?

6 A JPMorgan's Mid Atlantic Headquarters
7 Regional Bases are located at 875 15th Street,
8 Northwest, between, or the corner of 15th Street
9 and I Street.

10 Q When did JPMorgan purchase that
11 building?

12 A Approximately May of 2018.

13 Q And can you tell me a little bit about
14 the building?

15 A Sure. It's a 12 story building. It
16 has a below grade. There are a number of
17 conferencing facilities and community centers at
18 the ground floor and throughout the building.

19 There's a terrace, a outdoor terrace
20 on the 11th floor. And there's also a pretty
21 expansive rooftop penthouse area that oversees
22 unobstructed to the Washington Monument.

23 Q Do you know why JPMorgan chose this
24 particular location for its D.C. office?

25 A Yes. It was a time where JPMorgan had

1 at least two separate locations, located sort of
2 in the central business district area at 800
3 Connecticut, and another at 601 Pennsylvania,
4 which is closer to the Capitol building.

5 The goal was to consolidate the
6 employee base under one roof. And so purchasing
7 this asset was the culmination of those efforts
8 and strategy.

9 Q Approximately how many employees are
10 located in the D.C. office?

11 A Approximately range over 600 people.

12 Q Okay. And can you explain a little
13 bit for the Board the proximity to the
14 Applicant's proposed location to the JPMorgan
15 building?

16 A Sure. It is located, connected to an
17 alleyway directly behind our building, through a
18 loading dock area, which I believe is less than
19 ten or 12 feet, potentially (audio interference).

20 Q Now, I'm going to show our first
21 exhibit here. This is a photograph that was
22 included in Exhibit 10 of the pick. But we will
23 call it Protestant's 1, I suppose. Could you
24 tell me what we're looking at here?

25 (Whereupon, the above-referred to

1 document was marked as Protestant Exhibit 1 for
2 identification.)

3 MR. O'DONALD: Sure. So we are
4 located off of the 11th floor terrace, looking
5 eastward behind the building to some of the
6 neighboring properties, including which below
7 appears to be the building in question.

8 BY MS. FARMER:

9 Q Okay. So, and I just want to clarify
10 for the record here. The building that appears
11 to be much lower than the other buildings? Is
12 that what you're referring to?

13 A That's correct.

14 Q Okay. And that's the proposed site of
15 the Applicant's location?

16 A Yes. That's my understanding.

17 Q And do all of the terraces overlook
18 the Applicant's rooftop?

19 A Each, so there's one terrace on the
20 11th floor that wraps around the building, that
21 you're able to see the building in question.
22 There's a penthouse rooftop open area that you
23 can also see, look to the neighboring building in
24 question.

25 MS. FARMER: Okay. I will now move to

1 admit Protestant's 1.

2 CHAIRPERSON ANDERSON: I'm sorry.
3 Just to -- All right. So what if you -- All
4 right. Let me do it this way.

5 MS. FARMER: Sure.

6 CHAIRPERSON ANDERSON: Saying that
7 just to keep the record, so at least we will know
8 where the documents are. So you're saying that
9 was initially Exhibit 10?

10 MS. FARMER: That's correct.

11 CHAIRPERSON ANDERSON: So why don't we
12 just have it at, as Exhibit 10. So when, if, for
13 anyone who, if they're going through your
14 exhibits that's in the record, then it's easier
15 to identify what the document was. All right.

16 MR. BIANCO: Mr. Anderson, I have a,
17 just a point of clarification.

18 CHAIRPERSON ANDERSON: What is that?

19 MR. BIANCO: Exhibit 10 to the PIP is
20 a series of 15 or 20 photos.

21 CHAIRPERSON ANDERSON: All right.

22 MR. BIANCO: Are all of them being
23 moved in, or just this one?

24 CHAIRPERSON ANDERSON: That's what I'm
25 -- Hold on a minute, because I'm looking for the

1 documents. That's what, I'm here, so I'm
2 actually looking for the documents at the same
3 time to see if I have them.

4 So, is this a separate document? Or
5 --

6 MS. FARMER: So, this is one photo of
7 the many that were included in Exhibit 10. I do
8 not plan to belabor and go through all 20 or so
9 of the photos. There were only a handful that we
10 plan to use with this witness.

11 CHAIRPERSON ANDERSON: Are you, I'm
12 sorry. All right. All right. Well, you know
13 what, let's go to Exhibit 1. And specifically
14 for the record tell us what Exhibit 1 is again,
15 just to clarify the record.

16 MS. FARMER: Exhibit 1 is one photo
17 out of the composite Exhibit 10 from JPMorgan's
18 PIP.

19 CHAIRPERSON ANDERSON: And what is the
20 specific photo from Exhibit 10? What is the
21 specific photo you're moving into the record?

22 MS. FARMER: So, this is a photograph
23 that is from Protestant JPMorgan's terrace that
24 overlooks the Applicant's proposed site.

25 CHAIRPERSON ANDERSON: All right.

1 Okay. Any objection, Mr. Bianco?

2 MR. BIANCO: No objection.

3 CHAIRPERSON ANDERSON: So moved. So,
4 I just want to make sure that if someone reads
5 the transcript then they'll know exactly what is
6 it, the document that we just moved into
7 evidence. Okay. Go ahead.

8 (Whereupon, the above-referred to
9 document was received into evidence as
10 Protestant Exhibit 1.)

11 BY MS. FARMER:

12 Q Understood. Mr. O'Donald, is there
13 any limitation on who has access from JPMorgan to
14 this terrace space?

15 A So, for the 11th floor terrace, which
16 sits off of a JPMorgan accessible floor there are
17 certain employees who do have access, and that
18 can also actually be reserved for events and the
19 like.

20 Q And then, what about the rooftop?

21 A The rooftop is accessible to all
22 tenants and employees of companies who lease
23 space in, or own space in the building, which are
24 a few firms outside of JPMorgan. And there is
25 fully accessible rooftop access, which again can

1 also be reserved for private use and events.

2 Q How many current tenants does JPMorgan
3 have in this building?

4 A So JP, just for clarification,
5 JPMorgan's business lines and/or tenants that sit
6 outside of JPMorgan's company?

7 Q Correct?

8 A So there are a number of JPMorgan
9 businesses that are housed within this location.
10 And there's also three other tenants that lease
11 space in the building outside of JPMorgan.

12 Q Is the building currently fully
13 leased?

14 A The building is majority leased at
15 this stage by other tenants, and occupied in the
16 remainder of the spaces, generally occupied by
17 JPMorgan.

18 Q Are there any restrictions on the
19 hours that employees or tenants may access this
20 JPMorgan building?

21 A No. There's secured turnstiles which
22 control access at the lobby level. And as long
23 as you, an employee or a tenant has a key card
24 they can access the building 24 hours a day, any
25 day of the week.

1 Q And if we could put up the second
2 exhibit, Mr. Cohen? All right. I will just
3 state for the record that this is another photo
4 that was included as part of Exhibit 10 to
5 JPMorgan's PIP. And I will mark this as Exhibit
6 2 for right now. Mr. O'Donald, could you tell me
7 what this is a photo of?

8 (Whereupon, the above-referred to
9 document was marked as Protestant Exhibit 2 for
10 identification.)

11 MR. O'DONALD: Yes. This is still on
12 the 11th floor terrace. It's a separate section
13 closer to the 15th Street side, but again still
14 facing eastward towards the back of the building,
15 or beyond the alleyway as well, to the I guess
16 right side of us, which is technically south.
17 Yes.

18 MS. FARMER: Right. And I would now
19 move Exhibit 2 into evidence.

20 CHAIRPERSON ANDERSON: Mr. Bianco.

21 MR. BIANCO: No objection.

22 CHAIRPERSON ANDERSON: Without
23 objection.

24 (Whereupon, the above-referred to
25 document was received into evidence as

1 Protestant Exhibit 2.)

2 MS. FARMER: All right. And now, if
3 I could put up our Exhibit 3, which we can, this
4 one may be a little easier. And I will do
5 whatever you'd prefer, Mr. Chairman. This was
6 Exhibit 9 in our PIP. And this is a single page
7 document.

8 (Whereupon, the above-referred to
9 document was marked as Protestant Exhibit 3 for
10 identification.)

11 CHAIRPERSON ANDERSON: Do you have any
12 testimony? So why don't you have some testimony.
13 Then once you try to move it in evidence, then
14 we'll just get some clarification.

15 BY MS. FARMER:

16 Q Understood. Could you take a look at
17 this document, and let me know what this
18 represents?

19 A Yes. This is an aerial view above the
20 Bowen Building, as well as the premises in
21 question, which depicts 15th Street to the west,
22 I Street to the north, I believe 14th Street to
23 the east, and shows an arrow through Zei Alley,
24 which is an artery through, from 14th through
25 15th, to pass through our completely freestanding

1 building.

2 Q And you just mentioned the building
3 though. Is that the JPMorgan building?

4 A That's correct.

5 Q Okay. And here there are, there's a
6 teal section that says abutting property. Is
7 that the Bowen Building that you were
8 referencing?

9 A That's correct.

10 Q And then in orange there's a section
11 that says premises. Is that the proposed
12 location for this nightclub?

13 A To my understanding, yes.

14 Q Do you know if the traffic in Zei
15 Alley runs one way or two ways?

16 A I believe there is no one way traffic
17 guidance. Therefore, cars (audio interference)
18 can travel both ways through the alley.

19 Q And you mentioned loading access.
20 Where does JPMorgan do loading? Is it in this
21 Zei Alley?

22 A Off of Zei Alley. That's correct.

23 Q Do you, does JPMorgan essentially have
24 to use Zei Alley to enter its parking garage?

25 A It potentially could, yes. The

1 parking garage is located off of I Street.
2 However, there's nothing that precludes a
3 employee or someone accessing the garage to enter
4 from a different street or access area.

5 MS. FARMER: I would now move in our
6 PIP Exhibit 9 to evidence.

7 CHAIRPERSON ANDERSON: Mr. Bianco.

8 MR. BIANCO: NO objection.

9 CHAIRPERSON ANDERSON: Without
10 objection.

11 (Whereupon, the above-referred to
12 document was received into evidence as
13 Protestant Exhibit 3.)

14 BY MS. FARMER:

15 Q Thank you. I want to ask a couple
16 more questions. How many, do you know
17 approximately how many parking spots there are in
18 the garage?

19 A Approximately 100 or so.

20 Q And is the garage open to the public?

21 A Currently at this stage the garage is
22 generally used for monthly workers and visitors
23 of tenants or -- of the building or (audio
24 interference).

25 Q Does JPMorgan owned the alleyway that

1 we just saw in Exhibit 9?

2 A Yes.

3 Q Okay. And does it have a public use
4 easement?

5 A Yes.

6 Q Okay. I want to draw your attention,
7 this is going to be another photo that was
8 included in our PIP. Exhibit, what was Exhibit
9 5.

10 CHAIRPERSON ANDERSON: Are we supposed
11 to be looking at Exhibit 5?

12 MS. FARMER: Yes. He's apologized.
13 He's putting it up.

14 CHAIRPERSON ANDERSON: Okay. Okay.
15 All right.

16 MS. FARMER: All right. All right.
17 This is another photo here. And can you explain
18 a little bit about what we're looking at here in
19 what is, I believe we're on Exhibit 4. Sorry, I
20 misspoke when I said five. I think we're
21 actually at four.

22 (Whereupon, the above-referred to
23 document was marked as Protestant Exhibit 4 for
24 identification.)

25 MR. O'DONALD: Sure. So we're again

1 looking at an aerial over the top of the building
2 in question, 1412 I Street. To the right appears
3 to be Zei Alley, with access through to 14th
4 Street looking eastward.

5 BY MS. FARMER:

6 Q Okay. And are we looking at the
7 rooftop of the proposed Applicant's location?

8 A Yes.

9 Q And this alleyway to the right that
10 you indicated, it appears that there are travel
11 lanes that could go in two directions. Is that
12 fair to say?

13 A That's correct.

14 Q Do you know the width of that alley?

15 A I believe it varies. My understanding
16 is it's up to 20 feet, but could be closer to
17 ten.

18 MS. FARMER: Okay. And I am going to
19 move Exhibit 4 into evidence at this time.

20 CHAIRPERSON ANDERSON: Mr. Bianco.

21 MR. BIANCO: No objection.

22 CHAIRPERSON ANDERSON: Without
23 objection.

24 (Whereupon, the above-referred to
25 document was received into evidence as

1 Protestant Exhibit 4.)

2 MS. FARMER: All right. Now, moving
3 along I want to show as Exhibit 5 JPMorgan's
4 protest in this case if I can. And if we go to
5 the second page, is that your signature?

6 (Whereupon, the above-referred to
7 document was marked as Protestant Exhibit 5 for
8 identification.)

9 MR. O'DONALD: Yes.

10 BY MS. FARMER:

11 Q All right. And JPMorgan is protesting
12 the Applicant's proposed use of the nightclub
13 with new dancing and performances on three bases.
14 Is that right?

15 A That's correct.

16 Q Okay. So for the first basis it
17 indicates that JPMorgan is protesting because it
18 will have a negative impact on its real property
19 value of its property located at 875 15th Street.
20 Do you see that?

21 A Yes.

22 Q What is the basis for JPMorgan's
23 argument that it will impact its real property
24 values?

25 MR. BIANCO: I'm going to object at

1 this point. The witness, Mr. O'Donald, has not
2 been identified as an expert witness. His CV has
3 not been provided as per the regulations. So I
4 object to him giving any opinion testimony on
5 value.

6 MS. FARMER: He's not giving an opinion
7 on value. He's explaining the basis of
8 JPMorgan's protest as someone who works for the
9 Protestant, and who assisted with preparation of
10 the protest.

11 CHAIRPERSON ANDERSON: I'm going to
12 overrule the objection. I mean, the protest
13 letter was written by Mr. O'Donald. So I don't,
14 I think it's fair for him to tell us why is it
15 that JPMorgan is protesting this transfer. So,
16 I'm overruling the objection.

17 MR. O'DONALD: Yes. So property
18 values, among many attributes, have contributed
19 items such as quality of the asset itself,
20 quality of the surrounding immediate
21 neighborhood.

22 There are certain things such as crime
23 statistics and incidents which speak to again the
24 quality of the neighborhood, that the more
25 negative feedback or happenings that occur will

1 drive potential tenants from their not leasing
2 the building, which drives potential rates, which
3 also drives what we call net operating income to
4 our bottom line, which is a function of how value
5 is created, or calculated, excuse me.

6 And our opinion is that, my opinion is
7 that more sort of --

8 MR. BIANCO: Objection. I renew my
9 objection to opinion testimony. He can say why
10 he brought the protest. But his opinion on value
11 isn't appropriate from a fact witness.

12 CHAIRPERSON ANDERSON: I'm going to
13 sustain the objection. Because of course
14 although we're not, this isn't a court of law,
15 and the rules, we don't strictly apply by the
16 rules of evidence in these administrative
17 hearings.

18 But since the witness has not been
19 offered as an expert, I mean, I don't, he should
20 not be giving opinion testimony. So I agree with
21 that. So I'm going to sustain the objection on
22 that.

23 I think you can generally talk about,
24 sir, why is it that you, JPMorgan decided to
25 protest it. But if you're going to give opinion

1 testimony then we need to have you as an expert.

2 MS. FARMER: I think it may be helpful
3 if I ask a clean question for the record.

4 CHAIRPERSON ANDERSON: That's fine.

5 BY MS. FARMER:

6 Q Okay. Mr. O'Donald, is there any
7 historic designation to the building?

8 A My understanding is the building sits
9 on the Historic Review Board's register.

10 Q And does JPMorgan lease the building
11 to any retail tenants?

12 A Currently at this stage, no.

13 Q Does it have any intention to?

14 A At this stage we are continuing to
15 analyze that possibility, if it makes sense for
16 the current market perspective.

17 Q Does, I want to move on. Does
18 JPMorgan have any concern about the use of the
19 shared alley?

20 A Yes.

21 Q And what is that?

22 A That from a perspective of vehicles
23 disrupting peace, order, vehicular safety,
24 traffic. Negative things may occur, and creates
25 a lot of unwanted or unneeded liability, given

1 that we own the alley. Or the firm owns the
2 alley. JPMorgan owns the alley.

3 Q Does JPMorgan have any concerns with
4 noise and litter from the proposed establishment?

5 A Yes.

6 Q What are those?

7 A That, again speaking to what we
8 described earlier, potential negative value
9 proposition. The lower the quality of the asset
10 and/or surrounding area could also degrade value.

11 Q And does JPMorgan have any concern
12 that use of the outdoor spaces by the Applicant
13 (audio interference) JPMorgan's building.

14 A Yes.

15 Q How so?

16 A Unwanted or higher noise levels could
17 disturb and disrupt.

18 CHAIRPERSON ANDERSON: Hold on. Hold
19 on one minute, Mr. O'Donald. Mr. Orellana, can
20 you please mute Mr. Lynch. And just mute his
21 phone. If he needs to testify you can elevate
22 him at that time.

23 All right. And I'm asking everyone,
24 if you're not speaking, to mute your line. If
25 not I will have, and better yet, yes, go ahead.

1 I apologize, sir.

2 MR. O'DONALD: Sure. So unwanted
3 noise levels could disrupt employees and tenants
4 enjoying space and/or working and/or hosting
5 guests either inside of the building or one of
6 the outdoor spaces like the 11th floor terrace
7 and the open rooftop.

8 BY MS. FARMER:

9 Q And you also began to mention that you
10 had concerns about the use of this alley. Are
11 there any concerns with, particular to vehicular
12 or pedestrian safety?

13 A Yes.

14 Q And what are those?

15 A That given the width of the alleyways,
16 they aren't public access streets. And so, the
17 ability for cars traversing in opposite
18 directions and/or pedestrians being in such a
19 tight space could cause, again accidents or
20 unwanted liability in an area connected to or
21 (audio interference) JPMorgan offices.

22 Q Now, I want to show you another
23 exhibit here. Could you, we're going to do it on
24 this. Could you tell me what this is a photo of?

25 A Yes. So this is the alleyway

1 perpendicular to Zei Alley, which to the left
2 shows a loading dock for JPMorgan. And to the
3 right here you get the brick building being the
4 premises in question, with looking directly
5 through to I Street ahead where cars are on the
6 public street passing.

7 (Whereupon, the above-referred to
8 document was marked as Protestant Exhibit 6 for
9 identification.)

10 BY MS. FARMER:

11 Q So, if we're looking at this, the
12 garage that we can see vehicles in, is that
13 JPMorgan's garage?

14 A Not garage, but loading dock area.

15 Q Okay. And then there --

16 MR. BIANCO: I'm sorry. What are we
17 looking at? I looked in Exhibit 10. I don't see
18 it there. What, can you point me to where we are
19 here?

20 MS. FARMER: Sure. So this is
21 actually a photograph that was in our opposition
22 to the motion to dismiss our protest, about how
23 we are an abutting property owner.

24 CHAIRPERSON ANDERSON: But is this a
25 document that is, is this a document that was

1 included in your PIP?

2 MS. FARMER: Do you know, Chris?

3 MR. COHEN: Yes. It's Exhibit 4.

4 MS. FARMER: It was Exhibit 4 in our
5 PIP.

6 CHAIRPERSON ANDERSON: Thank you.

7 BY MS. FARMER:

8 Q Yes. So if, you see that there's a
9 building that has what appears to be like a
10 bumper or some sort of protection around the
11 building if we're looking straight ahead?

12 A Yes.

13 Q Do you know what building that is?

14 A I do not.

15 Q And where would the Applicant's
16 building be with respect to this photo? Can we
17 see it here?

18 A Yes. Immediately to the right of the
19 brick building, closest to (audio interference).

20 Q So, the brick building before we get
21 to the building with the bumper?

22 A Yes.

23 MS. FARMER: Okay. I would move
24 Exhibit 4 from our PIP, Exhibit 5 to this hearing
25 into evidence at this time.

1 CHAIRPERSON ANDERSON: Mr. Bianco.

2 MR. BIANCO: I think it's already in
3 the record. But to the extent they want to move
4 it separately I have no objection.

5 CHAIRPERSON ANDERSON: Without
6 objection.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Protestant Exhibit 6.)

10 MS. FARMER: Okay. And then I believe
11 this is going to be our final exhibit, if we can
12 put up what has been marked as Exhibit, what
13 number, all right, Exhibit 15 from our PIP. And
14 I'll give you a chance to look at this. All
15 right. Mr. O'Donald, are you familiar with this
16 letter?

17 (Whereupon, the above-referred to
18 document was marked as Protestant Exhibit 7 for
19 identification.)

20 MR. O'DONALD: Yes.

21 BY MS. FARMER:

22 Q And did JPMorgan reach out to their
23 Council Member regarding this application?

24 A Yes.

25 Q And who was that Council Member?

1 A Brooke Pinto.

2 Q And why did you contact Council Member
3 Pinto.

4 A With concerns over the protest.

5 Q And did Council Member Pinto provide
6 JPMorgan with a copy of the letter that she wrote
7 to the Board?

8 A I believe so, yes.

9 Q Okay. Is that what we're looking at?

10 A Yes.

11 MS. FARMER: Okay. I would move
12 Exhibit 16 into evidence at this time?

13 MR. BIANCO: I think I previously
14 objected to this exhibit when proffered by the
15 ANC. I'm again going to object to it on several
16 grounds. And I'd like to make my record on that
17 point.

18 Number 1, it is hearsay from a witness
19 that is not here, not available, can't be cross
20 examined.

21 Number 2, the first two paragraphs of
22 the letter discuss zoning issues that frankly is
23 an incorrect opinion of the law, but also not
24 before this Board, as well as private agreements
25 between parties that are the subject of Superior

1 Court litigation, likewise not before this Board.

2 And third, the final aspect to the
3 letter does not object in any way to this
4 application, but merely implores the Board to
5 look into or carefully evaluate, to use the terms
6 of the letter, the effect of this establishment.

7 So for those, based on those three
8 things I would also object on the grounds of
9 relevance. It's neither here nor there. The
10 only objections in this letter are based on
11 issues that are not before the Board.

12 If Council Member Pinto has an issue
13 with the zoning, that should be brought up with
14 BZA or with the Department of Buildings.

15 CHAIRPERSON ANDERSON: This is a
16 letter, Mr. Bianco, that was sent to the Board.
17 This is a letter that was on the Board's public
18 calendar as an FYI. And so the Board
19 acknowledged the receipt of the letter from the
20 Council Member.

21 So for what it's worth, as I stated
22 before, it was a letter sent to the Board. And
23 the Board acknowledged on its public, on our
24 legal agenda after the letter was submitted that
25 we were in receipt of the letter. And it was an

1 FYI.

2 So I, for whatever it's worth, which
3 it doesn't necessarily have that much value to
4 the Board, I'm going to allow it in evidence.
5 But just because, as I stated, it's a letter to
6 the Board. And we have acknowledged it on our
7 legal agenda that we are in receipt of the Board.

8 And it was just an FYI to the Board.
9 And so we will, it can stay in evidence as an
10 FYI. As we have, to acknowledge that we have
11 received it from the Council Member. Okay.

12 (Whereupon, the above-referred to
13 document was received into evidence as
14 Protestant Exhibit 7.)

15 MR. BIANCO: Thank you, Mr. Chair.

16 MS. FARMER: Thank you. And I would
17 just note that the section that I was going to
18 focus on is about the impact of vehicular traffic
19 in the alley.

20 So did you, did someone from JPMorgan
21 discuss their concerns about the vehicular
22 traffic in the alley with Council Member Pinto?

23 MR. BIANCO: Objection. Hearsay.

24 MS. FARMER: He's a witness for
25 JPMorgan.

1 CHAIRPERSON ANDERSON: Ms. Farmer,
2 this is a general letter that was submitted to
3 the Board. I mean, as I stated before, it was
4 sent to the Board.

5 And as we have always done when we
6 receive letters from Council Members we
7 acknowledge it on our legal agenda that we have
8 received it. And as an FYI. So the Board does
9 not take any correspondence we receive as a
10 factual. It is just an FYI.

11 So, I'm not sure. Unless this witness
12 wrote this letter and supplied that information,
13 I don't think we need to further explore the
14 contents of the correspondence.

15 MS. FARMER: Understood. I have I
16 believe one final question here. Mr. O'Donald,
17 were you present for the testimony from the
18 Applicant about how they planned to queue
19 pedestrians prior to entry into the proposed
20 nightclub?

21 MR. O'DONALD: Yes.

22 BY MS. FARMER:

23 Q And does JPMorgan have any concerns
24 about pedestrians queuing in the alleyway?

25 A Yes.

1 Q What are they?

2 A That again without proper protocols we
3 have not seen or to be able to understand yet, in
4 a non-public area with the lighting issues and
5 not adequate space for vehicles as well as
6 pedestrians to pass and/or (audio interference).
7 Again it could create unwanted, unnecessary
8 liability and/or issues, injuries, et cetera.

9 MS. FARMER: Understood. No further
10 questions. Thank you.

11 CHAIRPERSON ANDERSON: Mr. Bianco.

12 CROSS EXAMINATION

13 BY MR. BIANCO:

14 Q Yes, sir. Okay, Mr. O'Donald, so you
15 testified that this property was purchased in May
16 of '18, the JPMorgan property was purchased in
17 May of '18. Is that correct?

18 A That's correct.

19 Q Okay. Did you work on the
20 transaction?

21 A Yes, I did.

22 Q And what was your role in working on
23 the transaction?

24 MS. FARMER: Objection. This is
25 outside of the scope of direct.

1 CHAIRPERSON ANDERSON: I'm going to
2 overrule the objection. I just think that it's a
3 fair -- He's just asking the witness to further
4 explain his position. So I'm going to overrule
5 the objection.

6 MR. O'DONALD: So I was --

7 CHAIRPERSON ANDERSON: You can answer.

8 MR. O'DONALD: Oh, sorry.

9 CHAIRPERSON ANDERSON: Go ahead. So
10 I was saying you could answer the question, sir.

11 MR. O'DONALD: Okay. Great. I was
12 responsible for locating, analyzing, negotiating,
13 and closing the transaction.

14 BY MR. BIANCO:

15 Q Okay. And as part of your analysis
16 did you consider neighboring retail uses?

17 A As part of my analysis did we consider
18 neighboring retail uses? Yes.

19 Q Okay. To what extent did you consider
20 the proximate nightclubs to the property?

21 A We are aware, were aware that there
22 were nightclubs already existing and operating
23 within the local neighborhood and area.

24 Q Okay. And even in light of those
25 nightclubs existing and operating you opted to go

1 forward with the purchase, correct?

2 A Correct.

3 Q And did that affect the purchase price
4 in any way?

5 A Yes. It was a factor, like many
6 others, in the purchase price of the asset.

7 Q Okay. Did you reduce the purchase
8 price when you discovered the neighboring
9 nightclub uses?

10 A That was part of the original
11 analysis. So, it was included in the price.

12 Q And in your testimony you talked about
13 your concerns for noise escape from the proposed
14 nightclub, correct?

15 A Yes.

16 Q And you were here for Mr. Lee's
17 testimony about intended noise mitigation
18 measures, correct?

19 A Yes.

20 Q And do you have any information that
21 would suggest those measures are inappropriate?

22 A I don't necessarily have information
23 that would suggest those measures are
24 appropriate.

25 Q Okay. And so, in, what did you

1 consider in determining that noise escape from
2 the premises is potentially problematic?

3 A The fact that there was, as mentioned
4 just previously today, potential queuing and
5 loitering outside of the building. It was also a
6 rooftop gardens which we utilize and occupy on
7 top of the building. And we have not seen a plan
8 that could take two experts to further understand
9 if some of our concerns will be addressed.

10 Q Okay. So you considered your lay
11 experience in making the determination that noise
12 is potentially a problem? Is that fair to say?

13 MS. FARMER: Objection.
14 Argumentative.

15 MR. BIANCO: It's cross examination.

16 MS. FARMER: I understand that I have
17 not offered him as a witness. And it was an
18 argumentative question.

19 CHAIRPERSON ANDERSON: All right.

20 MS. FARMER: As an expert witness.

21 CHAIRPERSON ANDERSON: I'm going to
22 overrule the objection. It's cross examination.
23 I don't, I'm not necessarily in agreement. So
24 let's -- okay. If you answer the question --
25 sir, answer the question if you can.

1 MR. O'DONALD: Can you repeat the
2 question?

3 BY MR. BIANCO:

4 Q Sure. Is it fair to say that your
5 concern about noise is based on your experience
6 as a lay person?

7 A My concern about noise is based on not
8 only my experience but also conversations
9 internally with security and intelligence, and
10 property management, and other people in my
11 organization that weighed in on potential issues
12 due to noise.

13 Q And you also just mentioned in your
14 testimony that you haven't seen any type of plan
15 with request to noise mitigation measures. Is
16 that an accurate recollection?

17 A I mentioned we had not seen a plan
18 that would allow us to understand that the noise,
19 potential noise issues could be addressed, yes.

20 Q Did you ever ask for one?

21 MS. FARMER: Objection. This, first
22 of all, the Applicant has the burden of proof
23 here, not Protestant. The Applicant has the
24 responsibility to show that this is an
25 appropriate use. We have shared, and I will

1 state for the record that we shared everything
2 included in the PIP with our clients.

3 CHAIRPERSON ANDERSON: It's an
4 objection. I think it's fair. The question is
5 said, have you asked. You're protesting the
6 granting of this license.

7 And I think the question is that have
8 you asked the Applicant for their noise
9 mitigation strategy, what noise mitigation, if
10 the Protestant is stating that I'm concerned
11 about noise.

12 And I know that there was at least a
13 mediation. Is this a question that was asked?
14 So, I think let's, I'm going to overrule the
15 objection. It's a fair question to ask.

16 MS. FARMER: The, I just want to state
17 for the record, what happened at the mediation is
18 not admissible in a protest hearing.

19 CHAIRPERSON ANDERSON: That's not what
20 I'm saying. I'm saying there was a, I am just
21 saying that the question is that have you, the
22 question that was asked is, did the Protestant
23 ever requested any type --

24 Since the Protestant is concerned
25 about noise, is this an issue that was ever

1 addressed? And I said, I know there was a
2 mediation. I'm not asking what was discussed.

3 I said, so my assumption is that if
4 this is a concern that the Protestant had, then
5 you would have requested from the Applicant how
6 you're going to, if we're going to be impacted by
7 noise, how are you going to mediate it.

8 And so maybe they provided the
9 response and the Protestant was not happy with
10 what was put in place. And so therefore, that's
11 why they're moving forward with the protest, to
12 say that we are concerned about noise.

13 So I think it's a fair question to
14 ask. And so, that's the reason why I'm
15 overruling the objection. And so, the witness
16 can answer the question if he can.

17 MR. O'DONALD: Yes. I do believe we
18 did ask for additional detail around operations
19 for the building and the club in question.

20 BY MR. BIANCO:

21 Q Who did you ask?

22 A Directly myself I did not ask. But as
23 part of our conversations we had asked for
24 additional plans or information around the
25 operation.

1 Q Okay. Who's the person that asked in
2 your organization for additional information?

3 A I believe counsel.

4 Q Okay. And do you know who counsel
5 asked?

6 MS. FARMER: I'm going to ask to the
7 extent that we're getting into attorney/client
8 privilege information here.

9 MR. BIANCO: This is a question about
10 who counsel supposedly contacted. I mean, she
11 could proffer on the record that she did not
12 request such information, and I'll move on.

13 MS. FARMER: Mr. Bianco, I'm not a
14 witness. You're asking what counsel has told
15 their client. That is an inappropriate line of
16 question.

17 MR. BIANCO: I'm asking what counsel
18 communicated with opposing counsel.

19 CHAIRPERSON ANDERSON: All right. I
20 don't, we shouldn't be having conversation about
21 what was communicated between counsel. The
22 question is that did this witness discussed it
23 with the Applicant? The witness can answer the
24 question yes or no.

25 Whether or not what information was

1 shared between counsel, that is not relevant
2 here. So, the question is for this witness. If
3 the witness says I don't know, or yes
4 conversations was held, then let's move on from
5 there.

6 But regarding conversations were held
7 with what counsel, that is, that's not
8 information that I need to hear. So let's move
9 on from there. If the witness can answer the
10 question, the original question, answer the
11 question. If not, let's move on.

12 MR. O'DONALD: Answer the question
13 again?

14 CHAIRPERSON ANDERSON: I'm just saying
15 I, there was question about communication with
16 counsel. But I'm saying that is, that I'm going
17 to sustain that portion of the objection. So is
18 there another question you wish to ask, Mr.
19 Bianco?

20 MR. BIANCO: Sure. Have you ever seen
21 any written communications from anyone on the
22 Protestant's side requesting additional
23 information about noise mitigation from the
24 Applicant's side?

25 MS. FARMER: I'm going to object once

1 again, to the extent that it calls for anything
2 that's privileged. You can answer to the extent
3 that it was not privileged.

4 CHAIRPERSON ANDERSON: I think the
5 question is that I don't know what is a general
6 question. Have you seen anything? And the
7 witness can testify, yes I've seen, no I've not
8 seen.

9 It's not, I don't think the question,
10 it was have you seen anything, any specific
11 attorney/client communication. It's a question,
12 have you seen? Yes or no. I think that's a
13 question that the witness can testify.

14 So I'm going to overrule the
15 objection. If the witness can answer the
16 question, he can answer the question. If not, if
17 he has not seen, then the witness can say, no
18 I've not seen.

19 MR. O'DONALD: I do not recall,
20 unfortunately.

21 CHAIRPERSON ANDERSON: Another
22 question, Mr. Bianco.

23 BY MR. BIANCO:

24 Q Yes. You gave some testimony about
25 the garage located in your building on the alley.

1 Do you recall that?

2 A Yes.

3 Q Okay. Now, does JPMorgan run that
4 garage? Or is it contracted out to a third
5 party?

6 A So, just to be clear, the garage is
7 located off I Street. And you access it through
8 the alley. What was the question in the past,
9 was the car sitting in the loading dock area?

10 So are you describing the loading dock
11 area or the actual garage? Because I don't
12 believe we saw pictures of the garage earlier.

13 Q I'm referring to the garage that you
14 testified could accommodate approximately 100
15 cars.

16 A Okay. Yes. So we contract a third
17 party to manage. But it's completely owned,
18 obviously, by JPMorgan.

19 Q Okay. And are there any limitations
20 on the hours of operation of that garage?

21 A Not, it's controlled access before and
22 after hours. So that's the only limitation. And
23 we also close it off to public outside of
24 reserved guests who are entering the building,
25 approved guests, and/or monthly pass holders.

1 Q And is there, is the contractor
2 restricted in any way as to whether or not
3 they're allowed to offer daily parking?

4 A Currently we, the contractor does not
5 offer, it's restricted from offering daily
6 parking for the public.

7 Q Are they restricted in any other way
8 from offering parking to folks outside of monthly
9 parkers and tenants of the building?

10 A They are restricted outside of those
11 two elements you mentions. But just allowing for
12 approved guests or passes that generally are
13 guests of tenants or employees in the building.

14 Q Bear with me for just a moment.
15 Okay. So in your testimony you had some
16 discussion of leasing space in the building. Are
17 you involved in those leasing transactions?

18 A Yes. I have involvement.

19 Q Okay. Are there any representations
20 or warranties in the leases, that you're aware
21 of, with respect to uses of neighboring
22 properties.

23 MS. FARMER: Objection. This is far
24 off the scope of direct at this point. And it's
25 getting into JPMorgan's contract with people who

1 are not parties to this.

2 MR. BIANCO: They opened the door by
3 asking about the leases in the property. And the
4 issues with neighboring uses.

5 MS. FARMER: All I asked him was if
6 the building was fully occupied with respect to
7 any issue with respect to property value. I did
8 not ask if they had contracts with those people,
9 or who they were with.

10 CHAIRPERSON ANDERSON: Where are we
11 going with this, Mr. Bianco? Where are we going
12 with this? As I stated, I want this hearing to
13 move along. I want information that's relevant,
14 that's going to help to support. So where are we
15 going?

16 MR. BIANCO: So where we're going is
17 to the extent that JPMorgan is claiming that
18 neighboring uses are impacting either their
19 ability to lease or leasing values, we're
20 entitled to explore that. If that's not their
21 position then I'm very happy to move on.

22 CHAIRPERSON ANDERSON: Do you have a
23 response, Ms. Farmer?

24 MS. FARMER: Yes. I mean, that wasn't
25 the question. The question was, what kind of

1 limitations do you have in a contractual document
2 that is not before this witness at this hearing.

3 CHAIRPERSON ANDERSON: Let's, all
4 right. I'm going to sustain the objection.
5 Let's move on.

6 MR. BIANCO: So, Mr. O'Donald, other
7 than the license at issue here, since 2018 has
8 JPMorgan protested any other nightclub licenses?

9 MS. FARMER: Objection. Relevance.

10 CHAIRPERSON ANDERSON: I'm going to
11 overrule the objection. Without a, this is, it
12 is relevant. So the witness can answer the
13 question if he can.

14 MR. O'DONALD: Yes. In 2020 I believe
15 there was another similar request for a liquor
16 license from either the exact same or a related
17 entity that we protested.

18 MR. BIANCO: Okay. So other than two
19 license applications by this entity at this
20 property, has JPMorgan protested any other ABC
21 licenses?

22 MR. O'DONALD: To my knowledge I don't
23 believe so.

24 MR. BIANCO: Brief indulgence. I just
25 want to see if I have anything else, Mr. Chair.

1 Thank you, Mr. O'Donald, nothing further at this
2 time.

3 CHAIRPERSON ANDERSON: Thank you. Any
4 questions by any Board Members? Go ahead, Mr.
5 Short.

6 MEMBER SHORT: Thank you, Mr.
7 Chairman. Good afternoon, Mr. O'Donald.

8 MR. O'DONALD: Good afternoon, Mr.
9 Short.

10 MEMBER SHORT: As the property manager
11 for this property of JPMorgan, how many buildings
12 exactly does JPMorgan have adjacent or abutting
13 this alley?

14 MR. O'DONALD: How many properties
15 does JPMorgan own abutting the property in
16 question? One.

17 MEMBER SHORT: Yes.

18 MR. O'DONALD: One. The Bowen
19 Building 879 15th Street, Northwest.

20 MEMBER SHORT: What is the total
21 occupancy of that building when it's fully
22 operational?

23 MR. O'DONALD: So, occupancy, not in
24 terms of percentage, but numbers? People you
25 mean?

1 MEMBER SHORT: Yes.

2 MR. O'DONALD: I believe upwards of
3 1,000 or so, if not more.

4 MEMBER SHORT: 1,000 people. How many
5 exits and egress does JPMorgan have from that
6 building adjacent to that? Exits and egress,
7 front and rear, and sides, as many that take you
8 to the outside?

9 MR. O'DONALD: Sure. At least four to
10 my knowledge.

11 MEMBER SHORT: Front, rear, side?

12 MR. O'DONALD: Call them out for you?
13 There are two rear, again I'm thinking, you know,
14 loading and double doors. Two front, with also
15 revolving door and I believe another to the north
16 off of I.

17 MEMBER SHORT: The frontage is on what
18 street?

19 MR. O'DONALD: Frontage is on 15th
20 Street, Northwest.

21 MEMBER SHORT: So Heaven forbid, if
22 there's a fire or a bombing incident, or whatever
23 on 15th Street, that means everybody's got to
24 come out of the rear, correct?

25 MR. O'DONALD: I --

1 MEMBER SHORT: If the front, if 15th
2 Street becomes involved in an emergency and you
3 cannot use --

4 MR. O'DONALD: Sure.

5 MEMBER SHORT: -- the exits on the
6 front, how will the people get out, 1,000 people
7 get out of the building?

8 MR. O'DONALD: Sure. Through the rear
9 and/or side, yes. Yes.

10 MEMBER SHORT: And where would that
11 lead them to, coming from the rear or side?

12 MR. O'DONALD: It would lead them to
13 the alleyway directly in back of the building,
14 which abuts the building in question.

15 MEMBER SHORT: Okay. And they're
16 asking for 1,200 people in that new location,
17 correct?

18 MR. O'DONALD: That's my
19 understanding, yes.

20 MEMBER SHORT: So how wide is the
21 alley again?

22 MR. O'DONALD: It varies between ten
23 to 20 feet, depending on where you are along the
24 alleyway.

25 MEMBER SHORT: I know you're not a

1 public safety official. And I know by being a
2 building person in real estate for this type of
3 commercial properties you'd have to have a good
4 idea of assuring people when they purchase
5 property or rent property in that building that
6 they could get out safely, so you're saying there
7 are only two ways out the rear to the alley?

8 MR. O'DONALD: That's my
9 understanding, yes.

10 MEMBER SHORT: Okay. Have, since
11 you've been leasing this building for JPMorgan
12 have there been any incidents of emergency types
13 in the building, to your knowledge?

14 MR. O'DONALD: Not to my knowledge,
15 outside of drills, not actual emergencies, to my
16 knowledge.

17 MEMBER SHORT: And how have the drills
18 gone?

19 MR. O'DONALD: I believe well.

20 MEMBER SHORT: Okay. Now again this
21 goes back to your real estate past. And the
22 question was asked of you, how many other
23 nightclubs have you protested. Do you have any
24 idea how many nightclubs are in the general
25 vicinity, within 100 feet of your building?

1 MR. O'DONALD: I believe at least one,
2 possibly two.

3 MEMBER SHORT: Do any of those exit of
4 egress into the alley?

5 MR. O'DONALD: Not into the alley in
6 question in the back of Bowen, between our
7 building and the abutting properties.

8 MEMBER SHORT: So if there is an
9 emergency in one of the other buildings abutting
10 the alley, and they have to evacuate, how many,
11 do you have any idea how many exits or egress are
12 on the other buildings in the alley?

13 MR. O'DONALD: I am not familiar with
14 the exits from the other buildings in the
15 alleyway, unfortunately.

16 MEMBER SHORT: Okay. We've had some
17 talk about the loading dock. So that means that
18 there are trucks delivering, or picking up, or
19 dropping off in your loading dock. How busy is
20 the loading dock?

21 MR. O'DONALD: Accessed daily before
22 and after business hours pretty, and during
23 business hours pretty frequently.

24 MEMBER SHORT: So would the Applicant
25 for this license, ABC license, would that inflict

1 any adverse, adversity to your delivery and pick
2 up in your, from that particular loading dock?

3 MR. O'DONALD: Our understanding is
4 that yes, given the proposed hours of operation
5 being most of the day and after business hours,
6 yes, that could cause an issue.

7 MEMBER SHORT: Where does, or where do
8 the trash pickups occur for your building, for
9 JPMorgan?

10 MR. O'DONALD: Along the alley, and
11 along Zei Alley in the back of our building, near
12 the loading dock.

13 MEMBER SHORT: How many other
14 businesses use that alley for trash delivery or
15 trash pickup?

16 MR. O'DONALD: Unfortunately I'm not
17 100 percent sure, given that there are three
18 buildings, four buildings along the alleyway.
19 However, trucks, you know, it doesn't preclude
20 because you can traverse between 14th, 15th, and
21 I Street. Even trucks that do not necessarily
22 have pickups could still use it as a shortcut in
23 and around that area.

24 MEMBER SHORT: Have you seen trucks in
25 and out of that alley?

1 MR. O'DONALD: Yes.

2 MEMBER SHORT: And which side?

3 Interesting. What's the largest truck you've
4 seen?

5 MR. O'DONALD: A dumpster and/or
6 delivery truck that was over the normal size of
7 width of a car, beyond let's say, you know, the
8 typical six to seven feet for cars. Well beyond
9 that for a dumpster truck and/or delivery truck.

10 MEMBER SHORT: There have been
11 testimony by a Fire Department person at the last
12 hearing we had. And the question I asked that
13 person was, could a fire truck possibly navigate
14 the alley?

15 And which he answered, he didn't think
16 so. Or if it did it would not be conducive for
17 people evacuating from your building at the same
18 time the emergency vehicles are trying to get
19 there.

20 But here's a question I'd like to ask
21 you. You say you have the fire drills. So you
22 have a fire plan for the building, correct?

23 MR. O'DONALD: That's correct.

24 MEMBER SHORT: And so, how often, and
25 who's responsible for the drills in your

1 building?

2 MR. O'DONALD: A property manager on
3 site.

4 MEMBER SHORT: Okay. Well, I guess
5 the question, the basic question I'm trying to
6 get to is the safety or lack of. How will that
7 club impact the safety or non safety of that
8 alley if this license is granted?

9 MR. O'DONALD: Based on potential
10 issues from overloading that alley with a
11 combination of cars, trucks, and people, it could
12 be a negative impact in the event of something
13 material either happening, or even not, with our
14 building.

15 MEMBER SHORT: Thank you very much for
16 your testimony. That's all I have, Mr. Chair.

17 CHAIRPERSON ANDERSON: Thank you, Mr.
18 Short. Any other questions by any other Board
19 Members? I just want to ask one question. Mr.
20 O'Donald, what do you consider business hours for
21 the bank?

22 MR. O'DONALD: So, because this is a
23 office building, and not a retail branch, our
24 business hours, and we're also a global company,
25 the largest financial institution in the world,

1 our business hours really range based on the
2 types of businesses that we are connecting to.

3 Therefore, if it's East Coast time it
4 could be 7:00 in the morning Eastern Time through
5 early evening. However if it's APAC, or excuse
6 me, Asia Pacific, or Europe, or Africa, it could
7 span around the clock.

8 CHAIRPERSON ANDERSON: I, you talk,
9 you've been talking about business hours. I'm
10 just trying to get an understanding of what you
11 consider business hours. That's the only reason
12 I'm asking the question.

13 Because you have stated business
14 hours. So, I'm just trying to, just to get from
15 you what is considered, what the bank considered
16 business hours. So if you're saying that's 24/7
17 then that's fine.

18 All right. I don't have any further
19 questions. Mr. Bianco, do you have any questions
20 based on the questions that were asked by the
21 Board?

22 MR. BIANCO: No.

23 CHAIRPERSON ANDERSON: Ms. Farmer, do
24 you have any redirect?

25 MS. FARMER: I do not.

1 CHAIRPERSON ANDERSON: Thank you. Mr.
2 O'Donald, thank you very much for your testimony.
3 Have a great day. Do we have another witness?
4 Do we have another witness? Who's called in?
5 Who's the next witness?

6 MR. BLANCHARD: Yes, Mr. Anderson.
7 I'd like to call Terry Lynch, Terrence Lynch.

8 CHAIRPERSON ANDERSON: Mr. Orellana,
9 can you please elevate Mr. Lynch?

10 MR. ORELLANA: Terry Lynch, your
11 access has been elevated.

12 MR. LYNCH: Thank you. Can you hear
13 me okay?

14 CHAIRPERSON ANDERSON: Yes, sir. Now
15 I can't see you, Mr. Lynch.

16 MR. LYNCH: I will see if we can get
17 that back. I'm trying. All right, can you see
18 me now?

19 CHAIRPERSON ANDERSON: Yes, I can.
20 Just pull your camera down a little bit so your
21 face, your entire face is in.

22 Can you raise your right hand, sir?

23 MR. LYNCH: Yes, sir.

24 WHEREUPON,

25 TERRY LYNCH

1 was called as a witness by Counsel for the
2 Protestant and, having been first duly sworn, was
3 examined and testified as follows:

4 CHAIRPERSON ANDERSON: Your witness.

5 DIRECT EXAMINATION

6 BY MR. BLANCHARD:

7 Q Good afternoon, Mr. Lynch. Would you
8 please state your name for the record?

9 A Terrance Justin Lynch.

10 Q And what is your profession, and where
11 are you employed?

12 A I'm the Executive Director at the
13 Downtown Cluster of Congregations, the
14 administrator, it's a coalition of 40 different
15 congregations here in the City.

16 My office is, where I've worked, are
17 basically two blocks from the proposed site. My
18 offices are in the New York Avenue Presbyterian
19 at 1313 New York Avenue, Northwest.

20 Q Thank you. And did you work with the
21 Franklin Square Association, and what did your
22 work entail?

23 A I did. That was -- challenging my
24 memory a little bit, it's over 30 years ago, I
25 worked with Art Schultz. Franklin Square area at

1 that time as I recall, had a lot of adult
2 oriented businesses, movie theaters, et cetera.

3 And we were hoping to try and
4 revitalize the area, so my coalition of
5 congregations worked with each other to expand
6 resources, but also worked with other community
7 groups, civic groups, business groups, et cetera,
8 to try and improve safety, improve vitality.

9 So as I recall, we worked with the
10 Franklin Square Association to try and improve
11 the vitality of the different mixes of uses in
12 the Franklin Square area. It was a night and day
13 situation from where we are today.

14 Q Thank you. And are you familiar with
15 the former Zei Club?

16 A I am. The former Zei Club as I
17 recall, operated at this location in the early
18 1990s.

19 Q Okay. Was there any violence
20 associated with the former Zei Club?

21 A Violence, as I recall, and again, this
22 is 30 years ago, as I recall, we had a number of
23 incidents outside of the Club, I couldn't tell
24 you about anything in the Club. As I recall, I
25 had thought we had had a fatal shooting or

1 accident related to people who had been patrons
2 of the Club on 14th Street.

3 But as I recall, there were
4 disruptions, maybe not in the Club, but from
5 people exiting the Club or accessing the Club, in
6 the vicinity of it in many cases. I don't have
7 specifics at this point, I didn't keep a track
8 record of it, but as I recall we had incidents
9 around the Zei Club, yes.

10 Q All right. Thank you. And what
11 actions have you taken to raise awareness about
12 the safety impacts of the proposed nightclub?

13 A I wrote a letter to the ANC expressing
14 concern. My concern really is both the location
15 and the size. The location, by being located in
16 an alley, it's like a hidden, it's a hidden
17 location. And the alley is accessed, it's a tiny
18 alley accessed from three ways. And the size, at
19 1,200, a liquor licensed establishment in an
20 alley of that size is going to be a significant
21 safety vehicular challenge to the surrounding
22 neighbors.

23 Last year, my agency's been mostly
24 focused on trying to mitigate the balance that
25 the City's been suffering from the last couple

1 years. Last year we had, as unfortunately we all
2 know, homicides were up 30 percent, carjackings
3 up 100 percent, car thefts up 100 percent, and
4 unfortunately, our Metro Police Department is at
5 a 50-year low of staffing.

6 So my thought is, adding a club of
7 1,200 seats in an alley is going to add a
8 tremendous burden of safety effort on an already
9 overstretched Metropolitan Police Department in
10 that, given the location in the, the uniquely, in
11 my opinion, uniquely bad location for such an
12 establishment.

13 MR. BLANCHARD: Thank you. Mr.
14 Anderson, would you ask your technical staff to
15 allow Mr. Ritchie, grant him authorization to
16 raise up an exhibit, Exhibit 13 of the Group of
17 Five exhibits filed with ICTIF?

18 (Whereupon, the above-referred to
19 document was marked as Group of Five Exhibit 13
20 for identification.)

21 CHAIRPERSON ANDERSON: Yes. Mr.
22 Orellana, can you give Mr. Ritchie permission to
23 share his screen? Thank you.

24 BY MR. BLANCHARD:

25 Q Mr. Lynch, can you see this exhibit?

1 Do you recognize this?

2 A I believe it's the email I sent to the
3 ANC. My eyesight's not as good as it used to be,
4 I got to enlarge it. I believe it's the
5 correspondence I sent to the ANC. Yes, that's
6 what it is.

7 MR. BLANCHARD: I move to enter
8 Exhibit 13 into the record.

9 CHAIRPERSON ANDERSON: Mister?

10 MR. BIANCO: So I object, and I object
11 on grounds of relevance. This witness is here to
12 testify. A letter that he sent in April of 2023
13 in which he speculates about issues that he has
14 not been identified as an expert, either in
15 public safety or anything else to address, is
16 inappropriate and prejudicial to my client.

17 It also doesn't add anything to the
18 Protestant's case, and is repetitive of the
19 testimony that he has already given.

20 MR. BLANCHARD: I would assert, Mr.
21 Chair, that this, Mr. Lynch wrote this letter.
22 He is testifying only on his experience, not as
23 an expert, and it is relevant to the case. It is
24 not, if it's just an email, it's really not, it's
25 probative value outweighs any prejudice to the

1 Applicant.

2 MR. BIANCO: I'd also just like to
3 note, the date of the letter, April 12, 2023,
4 predates the Application, so I don't know, which
5 was July of '23. So I don't know how that has
6 any bearing on the particular case we're here for
7 today.

8 CHAIRPERSON ANDERSON: All right. All
9 right. I have not seen the letter in front of
10 me, and so, and I, Mr. Lynch has testified. Now
11 how is this letter germane to the Board granting
12 or denying this liquor license.

13 Because I don't know, let's, I don't
14 know what, because as Mr., I was about to allow
15 the document in. But since Mr. Bianco pointed
16 out that this letter was written in April of '23,
17 prior to the filing of this Complaint, the Public
18 Notice, how is this letter relevant to this
19 hearing today?

20 MR. BLANCHARD: If you would allow me
21 to ask him a follow-up question.

22 BY MR. BLANCHARD:

23 Q Mr. Lynch, when you wrote this letter,
24 this email to the ANC, were you aware that the
25 application was coming before the ANC?

1 A That was why I wrote it. It was my
2 understanding that the ANC was considering an
3 application, this application, whether to support
4 it or not support it at the time, which is why I
5 wrote to the ANC prior to their making any
6 decision about whether they should support it or
7 not.

8 CHAIRPERSON ANDERSON: Let, why don't
9 we have Mr. Lynch testify about the letter, the
10 contents of the letter. Once he testifies,
11 because I don't know what this letter's about,
12 and Mr. Bianco is saying that it's before.

13 So why don't we just let's have him
14 testify since this is a letter he wrote, about
15 the letter. Once he has testified, then you can
16 move to admit it and I will have another ruling
17 on that.

18 Because I am, I don't have, based on
19 what counsel stated about he said that it was
20 written prior to the filing of this application,
21 sir. And I don't know that, although I'm trying
22 to look at the placard notice was dated, it was
23 August of '23.

24 So let's have some more testimony, Mr.
25 Blanchard, regarding the letter. And then let's,

1 if you want to admit this email, let's raise it
2 at a later point.

3 You can, I mean of course you can use
4 this letter to refresh the witness's
5 recollection. But let's revisit it later on,
6 after he further testifies about the letter.

7 MR. BLANCHARD: All right.

8 BY MR. BLANCHARD:

9 Q Mr. Lynch, would you please review the
10 letter and then tell the Board any concerns you
11 may have that were in your letter that you
12 haven't already testified to a few minutes ago.

13 CHAIRPERSON ANDERSON: Let me ask a
14 question, Mr. Blanchard. And I think let's
15 establish this before, because Mr., and I just
16 want the record to be clear. Counsel stated that
17 this is before the placard notice was issued.

18 And I'm looking at the placard notice,
19 and I see the placard notice was dated August 18,
20 2023, and it appears the letter is written April
21 of '23. So maybe we can start there, why did he
22 write this letter? Okay.

23 Because of the letter is written
24 before the placard, so if the letter was written
25 before the placard, then it's not addressing,

1 then I would say it's not relevant. But can we
2 have the witness testify about the letter, why is
3 it that this letter was written?

4 BY MR. BLANCHARD:

5 Q Mr. Lynch, would you please look at
6 the top of the letter and tell us the date you
7 sent your letter to the ANC?

8 A I believe I sent it to the ANC on
9 April 12, 2023, with the understanding that the
10 ANC was to be considering a transfer of license
11 to this location.

12 Q Let me try again, Mr. Lynch. Can you
13 --

14 A Excuse me. I may have miswrote. I
15 think it was on 9/12, September 12th, not April
16 12th. I may have, my guess is, I believe I sent
17 that on September 12th, not April 12th. I might
18 have typed in April instead of September for some
19 reason, I make mistakes.

20 Q We all make mistakes when we type
21 emails. Thank you, Mr. Lynch. So just to
22 confirm, you are saying that the was sent in
23 September after the August placarding date?

24 MR. BIANCO: I'm going to object as
25 asked and answered, and it mischaracterizes the

1 testimony in which Mr. Lynch stated he didn't
2 know for sure when it was sent.

3 CHAIRPERSON ANDERSON: I think the
4 bottom line is that we can always provide a
5 witness, their own correspondence, to refresh
6 their recollection. And this is an email that he
7 sent, and so, I don't see, he can testify about
8 his email and when the email was sent.

9 I think the bottom line is that, I can
10 hardly see the first line of the email, but it
11 appears to me that this email is about this
12 application. So if the email is -- I'm sorry,
13 was this Mr. Ritchie?

14 Mr. Ritchie, can you please magnify
15 this, so at least I can see what this letter is
16 about, since I don't believe I have it in front
17 of me. I'm trying to read, the magnification is
18 not happening.

19 Can someone tell me what is the first
20 paragraph of this letter? So what's the first
21 paragraph?

22 BY MR. BLANCHARD:

23 Q Mr. Lynch, would you read the first
24 paragraph of the email?

25 A Yes. First paragraph is Dear

1 Commissioners, I am writing to express my strong
2 opposition to the application for a transfer of
3 license for the intended use of a nightclub at
4 1412 I Street, Northwest.

5 CHAIRPERSON ANDERSON: All right.
6 Fine. What is it that the witness wants to
7 testify to? I don't, this is a letter that is on
8 point, although the date, the date is irrelevant.
9 This is a letter that was written clearly to
10 address the situation at hand.

11 So I'm going to allow this document in
12 evidence, so whatever the witness needs to
13 testify, he can go ahead and testify, over the
14 objection of counsel. So let's move on.

15 (Whereupon, the above-referred to
16 document was received into evidence as Protestant
17 Exhibit 13.)

18 BY MR. BLANCHARD:

19 Q I think, Mr. Lynch, you've testified
20 already, but if you look at the letter and if
21 there's anything you did not cover from your
22 email, that you want to share with the Board,
23 sure?

24 A I think I expressed both the location
25 and the size. Location it's A, the use is hidden

1 in an alley, in my opinion. Obviously, difficult
2 to access. I have been actually trying to get
3 Department of Public Works to do better parking
4 enforcement in that and other alleys in downtown.
5 I go by that alley maybe twice a day. There are
6 cars parked in that alley now.

7 I've asked that signs be stated no,
8 and I objected to, there's a trailer parked in
9 the alley. My big concern was safety vehicles
10 accessing, if they needed to access the rear of
11 that alley, could a fire truck get through, could
12 an ambulance get through.

13 I don't think they could, given the
14 parking, the illegal, I think it's illegal
15 parking, that's already occurring there. So that
16 was one of my concerns.

17 The other was the size, adding 1,200
18 potential patrons of a liquor license
19 establishment.

20 I know the City is having tremendous
21 difficulty with clubs in U Street, Adams Morgan
22 Club where I live, elsewhere. And it just seems
23 to me we are overstressing our safety and
24 emergency staffing if you add an establishment of
25 this size in that type of location.

1 That was the purpose of my letter to
2 the ANC, which I do believe I sent in September,
3 that this would be an inappropriate use at that
4 site and make things more difficult at a time
5 when the Mayor and Police Chief have stated
6 clearly we have a crime emergency situation, a
7 safety emergency situation in the City.

8 We need to be doing all we can to
9 lessen the burden, not increase it on our public
10 safety staff.

11 MR. BLANCHARD: Thank you, Mr. Lynch.
12 No further questions.

13 CHAIRPERSON ANDERSON: Can you please
14 close the screen? Mr. Bianco, do you have any
15 questions?

16 MR. BIANCO: Yes, I do.

17 CROSS-EXAMINATION

18 BY MR. BIANCO:

19 Q So, Mr. Lynch, the Downtown Cluster of
20 Congregations that you represent, what area does
21 that organization cover?

22 A Our membership has actually expanded
23 over the years because congregations are facing a
24 lot of the same challenges. Initially, when we
25 started, we were dealing with just, let's say

1 homeless issues in the heart of the downtown.

2 But over time, a number of the issues
3 that are relevant to our congregations, be it
4 public health, public safety, youth activities,
5 we're no longer limited to the downtown area, but
6 have expanded Citywide. So our membership now,
7 includes congregations from wards across the
8 City.

9 Q Okay. So how long have you been there
10 at the Downtown Cluster of Congregations?

11 A I almost hate to tell you, 39 years.

12 Q Okay. And in your 39 years, has the
13 Downtown Cluster protested any other license
14 applications because they were situated in an
15 alley?

16 A I'm not familiar with, well, maybe
17 there was one on the green, I'm not familiar with
18 others that were located in the alleys. This is
19 the first one in some time that I'm aware of
20 applying for a new license in an alley.

21 Q Okay. And did you, when formulating
22 your objections as to the location of this
23 establishment, did you do anything to ascertain
24 whether there were other licensees located in
25 alleys?

1 A I did not.

2 Q And, I'm not, I apologize, I'm not
3 familiar with your particular organization.

4 A Right.

5 Q It sounds to me like it is a religious
6 organization of some kind. Is that fair?

7 A It's a coalition of congregations,
8 yes, sir.

9 Q Okay.

10 A And we try to, basically, we try to
11 identify what resources our members have. Some
12 may have volunteer, some may have space, some may
13 have financial assets, and we try to figure out
14 how can we coordinate those to meet community
15 needs.

16 And then also, how can we join with
17 other groups that are trying to address community
18 needs, such as public safety, affordable housing.
19 Can we work with other groups in the community
20 successfully to address needs in the community.

21 Q Great. Sounds like it's a lot of
22 valuable work that you do. Specifically with
23 respect to this establishment, does the
24 organization have any position that it takes on
25 nude dancing establishments?

1 A Not really. Our, no, none, I don't,
2 no, none at the moment. I would say adult uses,
3 I wouldn't say that per se, no.

4 Q Okay. Did you --

5 A Some of our member congregations may,
6 some of our faith denominations may. But we as a
7 whole, I don't, we don't have a position, per se.

8 Q Okay. And did any of those
9 congregations who may have such an objection
10 weigh in in this particular case?

11 A No, not that I know of. I'm not sure
12 how familiar they are with that application. We
13 are coming out of COVID, a lot of our
14 congregations are working, frankly, just to
15 survive in a changing city.

16 A lot of our congregations are how
17 they manage aging buildings, aging membership,
18 coming out of COVID. So I'm not sure how many of
19 our members were, are engaged with specific
20 license applications.

21 Q Okay. Did you inform them of this
22 application before writing the ANC?

23 A I did with the officers. I alerted my
24 officers and they were concerned about the size
25 and the location.

1 Q Okay.

2 A Our executive committee.

3 Q Okay. But not the nude dancing aspect
4 of it?

5 A No. I think I said it was an adult
6 club, I may have said that it was an adult club,
7 a gentleman's club, I may have said that. But I
8 don't think I, I didn't red flag it as an adult
9 club, it was the size, the liquor license of
10 1,200, or 1,200 seating capacity, as I recall.

11 Q I understand completely, Mr. Lynch.
12 Thank you. So if the club had a lower occupancy,
13 would that assuage your concerns?

14 A It would certainly help. But let me
15 just say a liquor license club in any alley, just
16 in my sense of operations, we've had
17 unfortunately, you know, some tragic homicides
18 along U Street, and Adams Morgan and elsewhere; I
19 believe associated with people either coming
20 from, often from clubs.

21 And so being located in an alley
22 versus being in an open location, I would be
23 much, I would feel much less concern if it was a
24 smaller club and if it was directly street
25 frontage. That would help. But at this time,

1 given the City's overall situation, I'm not even
2 sure I could be supportive of, you know, a
3 several hundred seat club of some sort. It's
4 hard to say.

5 Q And that concern is based on, if I
6 understand your testimony correctly, that concern
7 is based on the uptick in violence in recent
8 years, and NPD's low level of staffing. Did I
9 get that right?

10 A Those are definitely two direct
11 factors. We've had last, we've had tragic events
12 I know in Adams Morgan along U Street. And the
13 Police Chief, it's my understanding, the Chief
14 says she needs at least 400 more officers, she
15 would like to get to a staffing of, I think, 4 to
16 600 more officers than she currently has.

17 Q So based on those objections, would it
18 be fair to say then, you would oppose any night
19 club of a thousand of or more people?

20 A If it was hidden in an alley like
21 this, most likely, most likely I would raise
22 that. But that's conjecture. I'm not sure if
23 another license application of that size is
24 currently pending, is there? I don't know.

25 Q Well, I can't testify unfortunately.

1 So I have to rely on the information that you
2 have. And if you don't have information, then
3 we'll just move on from there.

4 A Okay.

5 Q So you gave some testimony about a
6 prior night club use of this particular property
7 called the Zei Club, right?

8 A I believe it was the Zei Club. And I
9 believe it operated at that location in the early
10 1990s, as I recall.

11 Q Right. So the incident of violence
12 that you discussed occurred approximately 30
13 years ago. Right?

14 A As I recall, yes. I am not familiar
15 with it being in, I don't think it was operated
16 as a liquor license establishment in 25 years or
17 so, I don't think. I don't think there's been a
18 liquor license establishment there in about 25
19 years.

20 Q And given your familiarity with the
21 area, are you aware at that time if there were
22 any other clubs operating in Zei Alley?

23 A I have a vague remembrance of, I
24 believe there was a club across from the Zei Club
25 in the basement. But it's a vague remembrance.

1 Q Okay. Was that called the Spy Club?

2 A I don't recall.

3 Q And do you know if there any other
4 establishments in that alley at that time?

5 A Not that I, not that I'm fully aware
6 of.

7 Q Okay. And if I recall your testimony
8 correctly, the incident of violence that you were
9 talking about occurred outside and not inside of
10 the club? Right?

11 A As I recall it occurred on 14th
12 Street.

13 Q Okay.

14 A I thought there was press around it as
15 I recall. But again, I can always be wrong, but
16 as I recall there was a, I thought it was a
17 shooting related to who knows what exactly at
18 this point. It would be conjecture, because I
19 don't have an exact remembrance.

20 Q Okay. And it was your testimony, was
21 it not, that the area was a night and day
22 difference from how it looks today? Is that
23 correct?

24 A I would say so. It was, back then
25 there was unfortunately a lot of prostitution, a

1 lot more loitering, not that we don't still have
2 problems now. And actually, something of a
3 resurgence, I think there is now some more drug
4 activity in there than there had been over a
5 number of years ago.

6 I'm very concerned about cars
7 illegally parked. I've been pushing PPW to do
8 better enforcement around the illegal parking
9 that I think is occurring there now, in the 900
10 block of 14th Street, and in the alleys off of
11 14th Street. So I've been pushing. So I think
12 we've been actually going backwards a little bit
13 in terms of safety over the last couple of years.

14 Q Right. And are you familiar with
15 Platinum Nightclub at 9th and F?

16 A Platinum, is it currently operating?
17 I'm not familiar with it over the last number of
18 years.

19 MR. BLANCHARD: Objection. Relevance.

20 MR. LYNCH: I might a number of years
21 ago, but I'm not familiar with it currently.

22 CHAIRPERSON ANDERSON: Let's move on,
23 the witness said he's not familiar with that
24 establishment, so let's move on.

25 MR. BIANCO: Very well, I don't have

1 any further questions.

2 CHAIRPERSON ANDERSON: Any questions
3 by any Board Members? Go ahead, Mr. Short.

4 MR. LYNCH: Good afternoon.

5 MEMBER SHORT: 1313 New York Avenue,
6 Northwest. And that's the Presbyterian Church,
7 they aren't there at night.

8 MR. LYNCH: I'm having a little
9 difficulty hearing from you, but yes, my offices
10 are located in the New York Avenue Presbyterian
11 Church.

12 MEMBER SHORT: That's the same church
13 where our 16th President, President Abraham
14 Lincoln used to work in, is that correct?

15 MR. LYNCH: That is correct, sir.

16 MEMBER SHORT: Thank you.

17 MR. LYNCH: You know your history.

18 MEMBER SHORT: Yes. How long have you
19 been in that area?

20 MR. LYNCH: You're making me age
21 myself again, sir. I've been in this building,
22 I'm the longest consistent, active tenant in the
23 building. My offices have been in this building
24 for 39 years. I was employed in 1985 and I've
25 been the executive director since 1985.

1 MEMBER SHORT: All right. Mr. Lynch,
2 you are very familiar with a lot of the
3 properties down in that area? Is that correct?

4 MR. LYNCH: I have to say I am.

5 MEMBER SHORT: Since the COVID, there
6 are a lot of vacant buildings, vacant properties,
7 along K Street in that downtown area? Is that
8 correct?

9 MR. LYNCH: Yes, vacant properties
10 have increased significantly, yes, sir.

11 MEMBER SHORT: So it would not be hard
12 for a licensee, if they wanted to get a club not
13 in an alley but on one of the main streets, K
14 Street, 14th Street, 15th Street, there are
15 properties that are available for that, would you
16 say yes or no?

17 MR. LYNCH: I believe that to be the
18 case. But, again, I'm not into, I don't do
19 leasing, but I believe that would be the case.

20 MEMBER SHORT: All right. Thank you
21 very much. That's all I have, Mr. Chair.

22 CHAIRPERSON ANDERSON: Any other
23 questions by any other Board Members?

24 MEMBER GRANT: No questions.

25 CHAIRPERSON ANDERSON: Mr. Bianco, any

1 questions of the witness based on the questions
2 that were asked by the Board?

3 MR. BIANCO: Sure, just one.

4 RECROSS-EXAMINATION

5 BY MR. BIANCO:

6 Q So Mr. Short just asked you about the
7 availability of other properties. Do you happen
8 to be familiar with the requirements for, the
9 distance requirements for placement of nude
10 dancing establishments?

11 A I used to, as I recall, they used to
12 have be like a 1,000 feet from this or that,
13 youth or other programs, from schools, or a
14 congregation. But I have not updated myself on
15 what the current restrictions are.

16 Q Right. I appreciate that, thank you.
17 So fair to say that you don't know if any of the
18 vacant properties you were referring to, could
19 house the Applicant at issue here? Correct?

20 A Correct, sir.

21 Q Thank you.

22 A Thank you.

23 CHAIRPERSON ANDERSON: Any other
24 questions, sir?

25 MR. BLANCHARD: No, no redirect.

1 CHAIRPERSON ANDERSON: All right. Mr.
2 Lynch, thank you very much for your testimony,
3 you are free to go.

4 MR. LYNCH: Thank you all for your
5 service, thank you.

6 CHAIRPERSON ANDERSON: Do we have
7 another witness?

8 MR. BLANCHARD: Yes. I would like to
9 Mr. Ted Brownfield.

10 CHAIRPERSON ANDERSON: Mr. Ted, okay.
11 Mr. Ted Brownfield, Mr. Brownfield, can you raise
12 your right hand, please?

13 WHEREUPON,

14 TED BROWNFIELD
15 was called as a witness by Counsel for the
16 Protestant and, having been first duly sworn, was
17 examined and testified as follows:

18 CHAIRPERSON ANDERSON: Thank you.
19 Your witness.

20 DIRECT EXAMINATION

21 BY MR. BLANCHARD:

22 Q Mr. Brownfield, please state your name
23 for the Board.

24 A Ted Brownfield, B-R-O-W-N-F-I-E-L-D.

25 Q And what is your profession and where

1 are you employed?

2 A I'm a property manager at the Woodward
3 Building at 7733 15th Street, Northwest, in
4 Washington, D.C.

5 Q How long have you worked in that
6 position?

7 A Since 2007 when the building was re-
8 opened as an apartment building.

9 CHAIRPERSON ANDERSON: Pardon me, Mr.
10 Blanchard. You're, I think maybe you need to
11 move the microphone away from your paperwork.
12 There is a lot of noise in the background, so
13 when you are turning your page, the microphone is
14 picking that up, okay. Thanks.

15 MR. BLANCHARD: I apologize. Thank
16 you.

17 BY MR. BLANCHARD:

18 Q And how long have you worked in this
19 profession, Mr. Brownfield?

20 A Approximately 23 years.

21 Q Thank you. And what is your current
22 title?

23 A Property Manager and Chief Operations
24 Officer with SJG Property.

25 Q And does that include the Woodward

1 Building?

2 A It does.

3 Q And what is your role with the
4 Woodward Building?

5 A I'm responsible for all aspects of
6 leasing, marketing, maintenance, and operations
7 of the building.

8 Q And what is the address of the
9 Woodward Building? Where is it located in
10 proximity to the proposed nightclub?

11 A So it's at 733 15th Street, Northwest,
12 on the corner of 15th and H Streets. And it's
13 approximately between 250 and 300 feet from 1412
14 I Street.

15 MR. BLANCHARD: Mr. Ritchie, would you
16 raise Protestant's Exhibit No. 12? Thank you.
17 Maybe if you could just increase the size just a
18 little bit, make it easier for everyone.

19 (Whereupon, the above-referred to
20 document was marked as Group of Five Exhibit 12
21 for identification.)

22 BY MR. BLANCHARD:

23 Q Mr. Brownfield, do you recognize
24 Protestant's Group of Five Exhibit No. 12?

25 A I do.

1 Q And what is it?

2 A It is a map showing starting with 1412
3 I Street located, and then the surrounding
4 properties. I believe 733 15th Street is the,
5 just on the other side of H Street.

6 Q Okay. And did you create this map?

7 A I believe so, yes.

8 MR. BLANCHARD: I move to enter
9 Exhibit 12 into the record.

10 MR. BIANCO: No objection.

11 CHAIRPERSON ANDERSON: Without
12 objection.

13 (Whereupon, the above-referred to
14 document was received into evidence as Protestant
15 Exhibit 12.)

16 BY MR. BLANCHARD:

17 Q And please tell us where the Woodward
18 Building is shown on this map?

19 A So it's labeled as 733 15th in red.

20 MR. BLANCHARD: If you can reduce it
21 a little bit.

22 MR. BROWNFIELD: And it's just on the
23 corner of H Street and 15th Street running north
24 to south.

25 BY MR. BLANCHARD:

1 Q Thank you. How many apartment units
2 are in the Woodward Building and is it fully
3 leased?

4 A There are 189 apartments in the
5 building. And we're approximately 95, or between
6 93 and 95 percent leased.

7 Q Thank you, is there another
8 residential apartment building in the surrounding
9 neighborhood, and where is that located?

10 A So there is an apartment building and
11 then McPherson Square that, oh, the Camden, I
12 believe, Grand Park. And then there is a
13 proposed building just next to it that's labeled,
14 not this, 1425 NY, short for New York, that's
15 going to be opening, I believe in the summer of
16 2025. It has about 250 units, I think 243, I
17 think is the precise number.

18 Q Thank you. And how did you get that
19 information?

20 A Well, that would be a competitor of
21 ours, and I've seen their website.

22 Q Okay. Thank you. Were you ever
23 involved with the former Zei Nightclub, and what
24 capacity, if any?

25 A No, I was not involved. I've heard

1 stories.

2 Q Was there violence as far as you know,
3 associated with the Nightclub?

4 MR. BIANCO: Objection. Hearsay.
5 He's not testifying, he wouldn't be testifying
6 from his personal knowledge.

7 CHAIRPERSON ANDERSON: Sustained. You
8 need to give a little bit more basis, Mr.
9 Blanchard, I mean, he testified that he's not
10 necessarily familiar with the area. So maybe if
11 you give more background information.

12 MR. BLANCHARD: Hold on, let me ask a
13 question first.

14 CHAIRPERSON ANDERSON: All right, it's
15 okay. Go ahead, sir.

16 BY MR. BLANCHARD:

17 Q Based on your experience, are you
18 aware of any incidents with the former Zei
19 Nightclub?

20 MR. BIANCO: Same objection.

21 CHAIRPERSON ANDERSON: Hold on, hold
22 on a minute. An objection is raised, Mr.
23 Blanchard.

24 MR. BLANCHARD: I couldn't hear the
25 objection.

1 CHAIRPERSON ANDERSON: He said the
2 same objection.

3 MR. BIANCO: I said the same
4 objection, which is this witness is not
5 testifying from his personal knowledge. He
6 stated that he didn't know anything about it,
7 that he had only heard stories.

8 BY MR. BLANCHARD:

9 Q Mr. Brownfield, have you had any
10 experience with Zei Nightclub from anyone else?

11 MR. BIANCO: Objection. Asked and
12 answered. Hearsay.

13 CHAIRPERSON ANDERSON: Hold on, all
14 right. I'm going to sustain the objection. I
15 think the witness has testified that he does not
16 have any direct knowledge of the Zei Nightclub.
17 So if he doesn't have any direct knowledge, I'm
18 not sure if he's testifying that he's familiar.
19 I'm not quite sure what's the basis of his
20 testimony then about this establishment.

21 BY MR. BLANCHARD:

22 Q Are you familiar with the alley system
23 around the proposed nightclub?

24 A I am.

25 Q And what's the basis of your

1 familiarity?

2 A I worked down here, since 2007, I
3 frequently walk down the alley to sometimes get
4 to the Metro, there was a restaurant that I used
5 to frequent at the other end of the alley where
6 it met 14th Street, just at the top of the
7 escalators for the McPherson Square Metro, and
8 just walking around the neighborhood in general.

9 Q And did you document alley traffic?

10 A I did. I took some photos showing how
11 narrow the alley is, how difficult it is for more
12 than one car or truck to pass down the alley at
13 the same time, especially if there are any sort
14 of pedestrians present.

15 MR. BLANCHARD: Mr. Ritchie, would you
16 raise Protestant's Exhibit No. 1? No, go to the
17 first photo, please, yes.

18 (Whereupon, the above-referred to
19 document was marked as Group of Five Exhibit 1
20 for identification.)

21 BY MR. BLANCHARD:

22 Q Mr. Brownfield, is this one of the
23 photos you are familiar with?

24 A Yes.

25 Q And why are you familiar with it?

1 A I took that photo.

2 Q And what does this photo show?

3 A Two service vehicles of some sort
4 trying to go in opposite directions down Zei
5 Alley at the same time.

6 Q And how about the next photo, what
7 does that show?

8 A It looks like some sort of delivery
9 person trying to get between a truck and a car
10 that are both parked in the alley at the same
11 time.

12 MR. BLANCHARD: And the last photo,
13 Mr. Ritchie, yes.

14 BY MR. BLANCHARD:

15 Q What is this photo show?

16 A It looks like the corner of the 1412
17 I Street building if you're coming from 15th
18 Street. It shows cars parked in the alley,
19 making it hard for anyone to get by. Looks like
20 there's a corner guard, like maybe that building
21 is frequently hit by cars and trucks trying to
22 navigate the alley.

23 Q And how wide would you say the alley
24 is there?

25 A Depends on which alley, I guess. Zei

1 Alley looks like it's approximately 20 feet,
2 maybe less with the bumper guard there. And then
3 the alley to the left is much narrower, I'd say
4 around 10 feet.

5 MR. BLANCHARD: We'd like to move
6 those three photos, the first, second, and fifth.

7 CHAIRPERSON ANDERSON: Mr. Bianco?

8 MR. BIANCO: No objection. I just
9 want to make sure which ones you're talking
10 about. Okay. So the first is the one with the
11 two trucks passing?

12 MR. BLANCHARD: Correct.

13 MR. BIANCO: Second one is a truck and
14 a car and a delivery --

15 MR. BLANCHARD: Correct.

16 MR. BIANCO: And then five is, it
17 looks like a green tractor/trailer and a woman on
18 the right hand side in a red jacket?

19 MR. BLANCHARD: No, the one beyond
20 that, the one right after that. It's like a
21 manlift equipment and a panel van and a pickup
22 truck, if you blow up. Mr. Ritchie, I don't know
23 if you can expand that photo so that, yeah, there
24 we go.

25 MR. BIANCO: I didn't see the manlift

1 before. Okay. I see. Yeah, I have no objection
2 to that, that's perfectly fine.

3 CHAIRPERSON ANDERSON: Without
4 objection.

5 (Whereupon, the above-referred to
6 document was received into evidence as Group of
7 Five Exhibit 1.)

8 MR. BLANCHARD: Thank you.

9 BY MR. BLANCHARD:

10 Q Based on your prior experience, Mr.
11 Brownfield, what concerns do you have about the
12 proposed nightclub?

13 A I have several things, both from an
14 operational standpoint of our apartment building
15 and leasing and marketing of the building. I've
16 got concerns with the traffic, the number of
17 parking spaces that clubgoers will potentially
18 take up for our residents and their guests
19 downtown, as well as customers of our retail
20 establishments.

21 We've lost a lot of street parking
22 downtown because of bike lanes and buses over the
23 years. And it's gotten more and more difficult
24 for anyone to be able to visit the building
25 downtown, especially on nights and weekends.

1 A lot of the garages in the area are
2 closed after 7, 8 p.m. on the weekdays, and
3 closed entirely on the weekends. You know, the
4 garage directly next to this club is closed at
5 night and weekends.

6 And so it's difficult for, whether
7 it's food delivery drivers or guests of our
8 tenants, or customers for our retailers, there's
9 not a lot of places to park on the street anymore
10 and the garages are closed.

11 And that's going to, the number of
12 people going to this club would potentially
13 severely limit many parking spaces are left once
14 the clubgoers can park there. We've also had
15 problems with parking from clubgoers in the past.
16 We have a garage in our building. And we, when
17 we first opened, we had it open in the evenings.

18 And because of the number of issues we
19 had, including people just leaving their car and
20 blocking the garage entrance, becoming
21 belligerent with our valets after a night of
22 drinking, and coming back to get their car, we've
23 just opted to close our garage at night as well,
24 even though that's a loss of money to us.

25 Q Thank you. And what actions have you

1 taken to raise awareness about the safety impacts
2 of the proposed nightclub?

3 A I sent a letter to the ANC outlining
4 some of my concerns.

5 MR. BLANCHARD: Mr. Ritchie, would you
6 raise Exhibit 10, please? And if you could
7 enlarge it?

8 (Whereupon, the above-referred to
9 document was marked as Group of Five Exhibit 10
10 for identification.)

11 BY MR. BLANCHARD:

12 Q Mr. Brownfield, do you recognize this
13 letter?

14 A I do.

15 Q And what is it?

16 A A letter that I wrote to Becky
17 Strauss, another member of the ANC, outlining
18 some of my concerns with the nightclub.

19 MR. BIANCO: Mr. Chair, I'm going to
20 object at this point. This exhibit had been
21 previously tendered by counsel and I objected to
22 it. I'm going to renew and add on to my
23 objection.

24 One, the date of this letter is
25 January 3, 2024, which is actually after the

1 originally scheduled protest hearing date by
2 approximately a month. So it could not have
3 weighed into the ANC's decision making process.

4 Second, and perhaps more importantly,
5 this letter contains statements that are
6 attributed to people who are unidentified,
7 speculation, opinion, and it amounts to
8 essentially, a brief by Mr. Brownfield, who is
9 here to testify as one of the Group of Five, so
10 if it's their desire to submit a brief, they
11 certainly can.

12 But it doesn't contain any factual
13 accounts. And given the timing of it, it has no
14 relevance here.

15 BY MR. BLANCHARD:

16 Q Mr. Brownfield, you signed this
17 letter, is that correct?

18 A Yes.

19 Q And why did you send it to the ANC on
20 January --

21 CHAIRPERSON ANDERSON: Here, let me.
22 Why was this letter, okay, because this is in the
23 middle of litigation. This is in the middle of
24 litigation, so what's the purpose of this letter?

25 MR. BROWNFIELD: Just to outline my

1 concerns about the building and to document it.

2 BY MR. BLANCHARD:

3 Q And, Mr. Brownfield, was the ANC hold
4 additional meetings on this license?

5 A I believe so.

6 CHAIRPERSON ANDERSON: I -- all right.
7 This hearing was scheduled for December, I think
8 the hearing was initially scheduled for maybe
9 December, I believe. And I think we postponed
10 this hearing to February because of the
11 unavailability of counsel.

12 So I'm not quite sure why it's that
13 we're going to have a letter dated January 23,
14 2024, to the ANC in the middle of litigation.
15 And I mean, is Woodward Management, Woodward
16 Building, are they one of the protesting?

17 MR. BLANCHARD: Yes, they are. They
18 are one of the Group of Five, and Mr. Brownfield
19 is their representative.

20 CHAIRPERSON ANDERSON: I mean, I think
21 that he can testify about why they're protesting
22 this license, but I mean, I'm concerned that a
23 letter written to the ANC in the middle of the
24 litigation.

25 And I can't read the letter, but it's

1 a letter that was written in the middle of when
2 this case started to the ANC, so I'm not quite
3 sure the relevancy of this letter that was
4 written in the middle of litigation.

5 So I mean, I'm not going to allow this
6 document into evidence. But the witness can
7 testify about why is it that they're protesting
8 this application. But the letter itself, that's
9 written January 23, 2024, in the middle of
10 litigation. I'm not quite sure, I'm not going to
11 admit the letter itself, but the witness can
12 testify about why is it that they're protesting
13 this application.

14 BY MR. BLANCHARD:

15 Q Mr. Brownfield, do you know what the
16 capacity was of the previous nightclub at this
17 location?

18 A I believe it was around 600 people, if
19 I'm not mistaken.

20 Q And what is, from your perspective as
21 a representative of the Woodward Building, what
22 is problematic about the proposed nightclub?

23 A The size of it is a problem, the
24 location in an alley that is hidden from public
25 view is concerning from a safety standpoint,

1 potential crime standpoint, noise is a concern
2 from a club of this size.

3 As a residential building downtown,
4 we're often forgotten about from a noise
5 standpoint. A loud noise downtown is more than
6 you would find in most residential neighborhoods.
7 And yet, our tenants, you know, they want a good
8 night's sleep just like anybody else.

9 And I'm concerned about them being
10 disturbed by noise from traffic, patrons exiting
11 the club late at night, broken bottles, fights.
12 The type of thing I've seen at lots and lots of
13 nightclubs around apartment buildings that I've
14 managed.

15 Q Thank you. Have any of your tenants
16 come from other areas of the city?

17 A Yes. We've got tenants from all over,
18 from out of town, but also from other parts of
19 the City. We have a lot of people who like our
20 building because it's close to their office. We
21 have a lot of professionals who work there, they
22 work long hours and they want a quiet place to
23 come home and sleep at night.

24 We've gotten some people from the
25 Gallery Place neighborhoods who are fed up with

1 the crime and problems that they've seen in that
2 part of town. And they expressly have told us
3 that they moved to our building in order to get
4 away from that. And we don't want to see that
5 sort of thing happen in our neighborhood.

6 Q Thank you. Bear with me for one
7 minute, I want to go back, I want to go back to
8 the map exhibit for a minute, one moment. That
9 is Exhibit 12.

10 And Mr. Brownfield, from your
11 experience, what is the policing of the area near
12 your building now and what concerns do you have
13 going forward?

14 A I mean, the police are doing a great
15 job with what they have. I'm in contact with
16 members of the police force who have expressed
17 some frustrations with being understaffed and
18 having less manpower to do the job that they had
19 previously had, you know, that they previously
20 had to work with. But other than that, I mean,
21 the policing seems to be fine.

22 My concern is when this club with
23 1,200 some odd people that's out early in the
24 morning, 3 or 4 o'clock in the morning, and they
25 may try to clear the alley. And that's just

1 going to push those people, that noise, those
2 disturbances towards us and towards the
3 surrounding properties.

4 Q Thank you. And one last question.
5 The Applicant's witnesses at the last portion of
6 this hearing, testified about reaching out to
7 people in the neighborhood about the club, has
8 Mr. Fiorito contacted you at all?

9 A No, not that I'm aware of.

10 Q So you haven't seen any, other than
11 what was discussed at the hearing, at the last
12 hearing, about security or noise abatement, you
13 haven't been given anything from the Applicant?

14 A No.

15 MR. BLANCHARD: Thank you. That's all
16 my questions.

17 CHAIRPERSON ANDERSON: Thank you.
18 Close your screen, please. Mr. Bianco, any
19 questions?

20 MR. BIANCO: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. BIANCO:

23 Q Okay. Mr. Brownfield, so you
24 testified about your concerns about proximity of
25 your building to this particular nightclub as

1 related to noise and traffic and safety.

2 Correct?

3 CHAIRPERSON ANDERSON: Sir? Mr.
4 Brownfield, you need to look at us and respond to
5 the question that's been asked by counsel, sir.

6 MR. BROWNFIELD: Yes, that's correct.

7 BY MR. BIANCO:

8 Q Okay. And I believe you also
9 testified that you've had folks move into your
10 building from Gallery Place because they wanted
11 to be in a place that's quieter, is that an
12 accurate recollection of your testimony?

13 A It wasn't so much quieter, as they
14 expressed concern over the crime in the Gallery
15 Place area and that it had gotten worse since
16 they had moved there.

17 Q Okay. Are you familiar with an
18 establishment called Sachi Nightclub?

19 A Yeah.

20 Q And where is that located?

21 A It's located in a building that's just
22 adjacent to ours.

23 Q Does it share --

24 A Inside of a building next to ours.

25 Q Okay. And is that a building that you

1 own?

2 A It is not.

3 Q And does the building share a common
4 wall or is there space in between the buildings?

5 A The building shares a common wall, I
6 don't know that the nightclub does. But I'm not
7 a hundred percent certain.

8 Q And have you ever protested that
9 particular nightclub?

10 A I have not protested that nightclub.
11 When they're renewal came up, it was during COVID
12 and it was missed or we probably would have
13 protested they're renewal had we known about it.

14 Q Now I believe you testified that the
15 building was, that you operated the building
16 since it was converted back to a residential use
17 in 2007, right?

18 A I'm sorry, I missed the first part of
19 your question?

20 Q Sure. If I recall your testimony
21 correctly, you've operated the building since
22 2007, when it was re-opened as a residential
23 property?

24 A Yes, that's correct.

25 Q Okay. And was Sachi Nightclub there

1 at the time?

2 A No, I don't believe so.

3 Q Okay. Did you protest it when it was
4 a new application?

5 A We did not, I did not.

6 Q Did you ever protest any of the
7 renewals for that nightclub?

8 A I don't know. I don't know how many
9 renewals there've been or when.

10 Q Do you recall ever protesting Sachi
11 Nightclub?

12 A No. I do not recall ever protesting
13 their renewal.

14 Q And there is another licensee located
15 within your building. Is that correct?

16 A Nightclub licensee?

17 Q No, no. A licensee, an alcohol
18 licensee?

19 A An alcohol license?

20 Q Yes?

21 A Yes, a restaurant.

22 Q Okay. What restaurant is that?

23 A Cheesecake Factory.

24 Q And do you know what the occupancy is
25 of Cheesecake Factory?

1 A I don't know off the top of my head.
2 I'd guess, I don't know, 300 or so.

3 Q And you gave some testimony about your
4 concern regarding noise from the Applicant's
5 proposed establishment. Now there are buildings
6 between your property and the proposed licensee.
7 Right?

8 A Yes.

9 Q So is your concern about noise
10 emanating from the establishment, or about
11 patrons exiting the area?

12 A Both.

13 Q So were you present for Mr. Lee's
14 testimony last time when he discussed noise
15 mitigation measures?

16 A Yes.

17 Q And do you have any information to
18 suggest that those intended noise mitigation
19 measures would be insufficient?

20 A Previous experience with having bars
21 and nightclubs around buildings that I've managed
22 is that the plan is great when everything is
23 going according to plan, but it doesn't always
24 work that way.

25 Q Okay. So you gave some testimony

1 about the parking lot in your building. How many
2 spaces are in that parking lot?

3 A So it can hold approximately 100 cars
4 at full occupancy.

5 Q And are those spaces allocated for
6 residents or is the garage open to the public?

7 A Both. We do allow non-residents to
8 park there, but it's also for residents.

9 Q Now you gave some testimony about the
10 alley and you identified some photographs that
11 you took there. Do you recall that?

12 A Yes.

13 Q And the photographs you showed were
14 all taken from daylight hours. Correct?

15 A Correct.

16 Q Okay. Have you been in the alley in
17 the evening?

18 A I have.

19 Q And have you been in the alley during
20 times when a nightclub would typically operate?

21 A Not that alley, but alleys nearby,
22 yes.

23 Q So would it be fair to say that there
24 would be significantly less traffic in the alley
25 from let's say 10 p.m. until 3 a.m.?

1 A Not with a 1,200 person nightclub
2 operating there, I think there potentially could
3 be a lot more.

4 Q Right. But right now, between 10 p.m.
5 and 3 a.m., fair to say that there is less
6 traffic in the alley than during the day when you
7 took photographs?

8 A I don't know if that's necessarily
9 true, a lot of service trucks and things come in
10 in the evening. I think that alley gets a lot of
11 traffic at all hours of the day.

12 Q Bear with me for one second, I need to
13 check and see if I have, what else I have.

14 Okay. All right. Mr. Brownfield, you
15 gave some testimony in response to Mr.
16 Blanchard's questions about not being given
17 anything from Mr. Fiorito. Do you remember that
18 testimony?

19 A Yes.

20 Q Did you ask for anything from Mr.
21 Fiorito?

22 A I'm sorry, I couldn't hear the first
23 part of your question.

24 Q Did you ask Mr. Fiorito for any
25 information?

1 A I asked the ABCA for information, not
2 John Fiorito.

3 Q Okay. And by ABCA you are meaning the
4 Agency? Right?

5 A Correct.

6 Q And what did you ask for specifically?

7 A I did ask for the application and I
8 believe I asked for a security plan, but I'm not
9 a hundred percent certain.

10 Q And did you receive that information
11 from the Agency?

12 A Yes.

13 Q So fair to say that all of the
14 information you asked for, you received?

15 A I think generally, but it didn't go
16 into great specifics about the actual location.
17 It was more of a template responses.

18 Q Did you follow up and ask for
19 additional information then?

20 A I don't recall.

21 MR. BIANCO: Thank you very much, Mr.
22 Brownfield, I appreciate your testimony. The
23 Board may have some questions for you.

24 MR. BROWNFIELD: Thank you.

25 CHAIRPERSON ANDERSON: Any questions

1 by the Board members?

2 MEMBER GRANT: Not from me.

3 CHAIRPERSON ANDERSON: Any redirect?

4 MR. BLANCHARD: Yes, just a few
5 questions, Mr. Anderson, Chairman Anderson.

6 REDIRECT EXAMINATION

7 BY MR. BLANCHARD:

8 Q Mr. Brownfield, you testified about
9 the Sachi Nightclub. Do you know what the
10 capacity of Sachi is?

11 A I don't know exactly. It's much
12 lower, like 200, I think it's like 200 or so
13 people, but I'm not a hundred percent certain.
14 And also, they're closed all week long, they only
15 open two days out of the week.

16 Q Thank you. And then the Cheesecake
17 Factory tenant, what time do they close?

18 A I want to say around 10, I think 10
19 p.m.

20 Q 10 p.m. Thank you. And then you
21 testified that in your experience that noise
22 mitigation doesn't always work the way the plan
23 is, what did you mean by that?

24 A I mean, doors get propped open or it
25 doesn't necessarily carry over to what's

1 happening directly outside of the establishment.
2 Whether it's unruly customers who have left the
3 establishment and are in the alley or close by
4 making noise. Or you know, there's just a lot of
5 different circumstances that come into play.

6 Our building, for example, is a
7 historic building, we have historic windows that
8 we were not allowed to remove. They don't allow
9 for as much noise mediation as contemporary
10 windows might, so it's, I'm a little bit more
11 sensitive about noise outside than other people
12 might be.

13 And I managed buildings in the E
14 Street corridor, Logan Circle. And you know, the
15 operators of the clubs change, the managers
16 change, and with them, you know, things don't
17 always get followed exactly the plan, even with
18 the best of intentions. And I've just had a lot
19 problems.

20 Q Thank you. And then finally, on
21 information from Mr. Fiorito, or the lack
22 thereof, did you participate in the mediation?

23 A I did not.

24 Q And why was that?

25 A I was not asked to be involved in the

1 mediation.

2 MR. BLANCHARD: Thank you. No further
3 questions.

4 CHAIRPERSON ANDERSON: All right.
5 Thank you, Mr. Brownfield, thank you very much
6 for your testimony today, you are free to go.

7 All right. It's 3:53, we are going to
8 take a 10-minute break. Well, I'll say I would
9 like everyone to be back at 4:05, so we will be
10 back on the record at five minutes after four.
11 Thank you.

12 (Whereupon, the above-entitled matter
13 went off the record at 3:53 p.m. and resumed at
14 4:05 p.m.)

15 CHAIRPERSON ANDERSON: We're back on
16 the record. Just some housekeeping, how many
17 more witnesses do you have, Mr. Blanchard?

18 MR. BLANCHARD: I have three more
19 witnesses.

20 CHAIRPERSON ANDERSON: You have three
21 more witnesses. Ms. Farmer, do you have any
22 other witnesses? All right so three more
23 witnesses. I stated that I wanted to end this by
24 five o'clock today. It doesn't appear we are
25 going to end it by five o'clock, but we are

1 ending this case today.

2 So I just want everyone to be mindful
3 of the time. So therefore, I'm not trying to
4 rush anyone along, but I just want to advise
5 folks that we're going to go beyond five. But I
6 just want to make sure that we keep this, we
7 moved orderly through the day and so we'll try to
8 move forward quickly with the remaining
9 witnesses. All right. So who's the next
10 witness?

11 MR. BLANCHARD: I'm calling John
12 Branch.

13 CHAIRPERSON ANDERSON: Mr. Branch, can
14 you raise your right hand, please?

15 WHEREUPON,

16 JOHN BRANCH

17 was called as a witness by Counsel for the
18 Protestant and, having been first duly sworn, was
19 examined and testified as follows:

20 CHAIRPERSON ANDERSON: Thank you, sir.
21 Your witness.

22 MR. BLANCHARD: Thank you.

23 DIRECT EXAMINATION

24 BY MR. BLANCHARD:

25 Q Mr. Branch, would you state your name

1 for the record?

2 A Yes, my name is John Branch, that's B-
3 R-A-N-C-H.

4 Q Thank you. And what is your most
5 recent employment?

6 A I was employed with the Metropolitan
7 Police Department, I was the Commander of the
8 Second District.

9 Q Thank you. And when did you leave
10 MPD?

11 A I left MPD December 30th of 2023.

12 Q Thank you.

13 MR. BLANCHARD: Going to Mr. Ritchie,
14 I ask Mr. Ritchie to raise Exhibit No. 3,
15 Protestant's Exhibit No. 3. And if you could
16 blow it up?

17 (Whereupon, the above-referred to
18 document was marked as Group of Five Exhibit 3
19 for identification.)

20 BY MR. BLANCHARD:

21 Q Mr. Branch, do you recognize this?

22 A I do. It's my resume. It gives a
23 brief description of my career, and some of the
24 assignments and training that I received while a
25 member of Metropolitan Police Department.

1 Q And is this a true and accurate copy?

2 A It is.

3 MR. BLANCHARD: I would move Exhibit
4 3 into evidence.

5 CHAIRPERSON ANDERSON: Mr. Bianco?

6 MR. BIANCO: I don't, I mean, I guess
7 I would object, but because, on relevance, but
8 because Mr. Branch was not identified on the PITH
9 as an expert witness, but rather a fact witness.
10 So I mean, if he's going to testify as an expert,
11 I'd object. But if this is for purpose of
12 factual testimony, then I will not.

13 CHAIRPERSON ANDERSON: This is his
14 resume, hold on, hold on, hold on.

15 MR. BLANCHARD: I'm sorry, go ahead.

16 CHAIRPERSON ANDERSON: Is the
17 Commander being put on as an expert?

18 MR. BLANCHARD: No, he is not.

19 CHAIRPERSON ANDERSON: All right. All
20 right, this is his resume, and so without
21 objection, we will move his resume into evidence.
22 All right.

23 (Whereupon, the above-referred to
24 document was received into evidence as Group of
25 Five Exhibit 3.)

1 BY MR. BLANCHARD:

2 Q Can you describe where you began your
3 career?

4 A Yes, I began my career in the Fourth
5 District as an officer.

6 Q And what did you do after that?

7 A While I was an officer in the Fourth
8 District in patrol, I then went to the Fourth
9 District Gun Unit. I, after that, I went to the
10 Narcotics and Special Investigations Unit, in the
11 first Gun Unit, Citywide Gun Unit. After that, I
12 went to the Emergency Response Team, was a
13 Capitol officer and a sniper.

14 Q And what did you do after that?

15 A After that, I went to the Helicopter
16 Unit as a helicopter pilot. I was then promoted
17 to a sergeant, went to the Fourth District as a
18 sergeant, went to the Vice Unit, the Crowd
19 Suppression Team, went back to the Emergency
20 Response Team as a sergeant, tactical sergeant,
21 and also as a helicopter pilot.

22 Q And were you promoted?

23 A Yes, I was. I was promoted from the
24 Helicopter Unit and Emergency Response as a
25 sergeant, I was acting in dual capacity there, to

1 a lieutenant in the Seventh District. While I
2 worked there, I was in charge of the Crowd
3 Suppression Team in the Seventh District, also
4 worked the nights. I was then promoted to
5 captain in 2018. I went to the Sixth District, I
6 worked the Summer Crowd Initiative. And then I
7 was transferred to the Narcotics and Special
8 Investigation Division again after that.

9 Q And then, after the Capitol riot,
10 where were you assigned?

11 A Yes, after the Capitol riot, the Chief
12 moved me back to the Special Operation Division
13 to take over that position there. And then after
14 that, in 2021, I was promoted to Commander and
15 was assigned to the Seventh District. And then
16 in March of 2023, I was assigned to the Second
17 District as the Commander.

18 Q Thank you. Commander Branch, based on
19 your experience with MPD, what impact do
20 nightclubs have on the surrounding community?

21 A Impact, used to, a lot of the
22 individuals, I notice the complainants in a lot
23 of robberies are the result of the nightlife
24 activity. When I was commander of the Seventh
25 District, usually around 2:30 or so in the

1 morning, may have had an occasional shooting, but
2 things got kind of quiet.

3 I was shocked actually when I got here
4 to the Second District, that I would have
5 robberies up until 4:00, 4:30, 5:00 o'clock in
6 the morning. Of course there's noise issues,
7 trash issues, you know, disorderly you know,
8 fights, and things of that nature.

9 MR. BLANCHARD: And Mr. Ritchie, would
10 you raise Exhibit 4?

11 (Whereupon, the above-referred to
12 document was marked as Group of Five Exhibit 4
13 for identification.)

14 BY MR. BLANCHARD:

15 Q I'm showing you what's marked as
16 Exhibit 4, Mr. Branch. Do you recognize this?

17 A I do.

18 Q And what is it?

19 A Yes, it's a brief report describing
20 the incident with an individual which was shot
21 inside of a parking lot, right there in the 700
22 block of N Street.

23 Q Thank you. And what nightclub was
24 this?

25 A Don't know specifically, but I believe

1 it's associated with Abigail Nightclub. There
2 was some type of dispute that carried out into
3 the street and actually into the parking lot.
4 And it was clearly on video and the complainant
5 was shot in the eye.

6 Q All right. In your experience with
7 MPD, is it common for crime or violence to take
8 place after a nightclub closes?

9 A It is. Usually a crime is taking
10 place after the clubs, usually when individuals
11 are inside of a club, they're drinking, having a
12 good time, they're meeting different women.
13 Sometimes they're engaged in verbal disputes or
14 other types of altercations which carry out into
15 the street.

16 We don't really see much gun violence
17 inside the clubs, because the clubs usually
18 restrict firearms from coming inside. But they
19 do keep the weapons inside of their vehicles.

20 And we've recovered actually quite a
21 few weapons here in the Second District, outside
22 the clubs, checking the vehicles and finding guns
23 in plain view to be used later on.

24 Q And how about crime inside the clubs,
25 is that common?

1 A It is, but usually disputes and fights
2 and what have you, stabbings sometimes.

3 Q All right. And Commander Branch, are
4 you familiar with where the proposed nightclub is
5 located?

6 A I am.

7 Q And where is it?

8 A It's located right between 14th and
9 15th, and Zei Alley.

10 Q All right. And are you aware of any
11 criminal activity in the alley?

12 A Not specifically, no.

13 Q Is there anything about the alley that
14 would give you concern?

15 A Well, what gives me concern about the
16 alley, is it relates to opening a club there,
17 particularly of this size, but honestly of any
18 size or any other business where there's, would
19 attract a large volume of people, it's just the
20 nature of the entrances and exits into the alley
21 or roadway.

22 When you have a situation like that,
23 you put a lot of people into a situation where
24 you can cause some harm. We specifically try to
25 delineate or try to separate pedestrians from

1 traffic and that's why we have streets and stop
2 signs and traffic signals, what have you, curbs.
3 But when you have a large volume of people
4 congregating in an alley, it's my belief, and my
5 opinion for sure, that --

6 MR. BIANCO: Stop, I'm going to object
7 to any opinion testimony, this is not an expert
8 witness.

9 CHAIRPERSON ANDERSON: You said your
10 belief, so why don't you, you can talk about your
11 beliefs, sir, not your opinion, all right.

12 COMMANDER BRANCH: Okay. It's a fact
13 actually, from my experience on the job that when
14 you have large numbers of people, you have to
15 shut that area off to vehicular traffic, because
16 vehicles can be used as weapons.

17 If there is any type of incident
18 inside that alley, any spontaneous act of
19 violence, not just a shooting, people have a
20 natural tendency of fight or flight. So people
21 are going to run, and they're going to stampede.

22 And we have that large numbers of
23 people confined in a tight alley, people would
24 definitely get trampled. Also, you have to think
25 about with vehicular traffic, if you have someone

1 even sitting in their vehicle, this has happened,
2 when people hear gunshots, what do they do, they
3 take off, they accelerate, they try to get away
4 from the violence. Of course, they're going to
5 hit people. I mean, they're not, you know,
6 they're trying to exit the area as quickly as
7 they can. So it's just dangerous for that.

8 Also, you have to think about when you
9 have the confines of an alley, if there was a
10 shooting, where are people going to run? You
11 know, and have one place to go, you know. And
12 it's, you don't have the open area that people
13 can disburse as readily as you do in an area on
14 the street or on the sidewalk, what have you.

15 Just the confines of that alley
16 creates a very hazardous situation. If there's a
17 shooting, bullets ricocheting off those hard
18 surfaces, off the walls, off the pavement,
19 there's going to be multiple injuries.

20 And speaking as someone who has been
21 a resident of this City, grew up in the Seventh
22 District through high school, worked in the Gun
23 Unit throughout the years, recovered a number of
24 weapons.

25 The quality of weapons that we're

1 recovering now are far better than we did in the
2 early '90s. They're readily available online,
3 you can make your own guns, guns, bottle tops,
4 sixes, military style weapons. And a use of a
5 weapon like that, just one incident alone, in an
6 alley packed with people, that's calling for
7 disaster.

8 BY MR. BLANCHARD:

9 Q And, Mr. Branch, were you present, did
10 you hear the testimony from the Applicant's
11 witnesses, Mr. Reese and Mr. Massey about the use
12 of reimbursable details?

13 A I did.

14 Q And what is a reimbursable detail?

15 A A reimbursable detail is basically
16 off-duty officers who work in a part-time
17 capacity for experience different locations.

18 Q And based on your experience, what's
19 the current availability of reimbursable details?

20 A At the Agency, we're stretched
21 extremely thin. We're having issues with
22 manpower, as the Commander of the Second
23 District. We're having issues of filling the
24 reimbursable details that we've had.

25 The mandatory reimbursable details

1 that are the clubs. In fact my Chief Shop
2 Steward, a Sergeant with the union raised the
3 question or brought up to my attention --

4 MR. BIANCO: I'm going to object.
5 That is hearsay testimony from Sergeants who are
6 not witnesses in this case.

7 CHAIRPERSON ANDERSON: I mean, he's
8 testifying as the former Commander, I mean, I,
9 he's the Commander, I don't see any reason why he
10 can't testify about what his officers have stated
11 to him, he was a Commander, so I'm going to
12 overrule the objection. I'm going to overrule
13 the objection.

14 He's the Commander of the Second
15 District, and he's just talking about information
16 that was brought to him by his, the people who
17 were under his command.

18 MR. BIANCO: He is testifying as to
19 that, and he's testifying as to that for the
20 truth of the matter that's being asserted, which
21 is inappropriate, especially without
22 corroborating evidence that would make it
23 reliable and admissible.

24 So he's testifying about it to
25 demonstrate his belief, I mean, that's one thing.

1 But he's testifying about it as if it's fact, and
2 it's not. Something that's been put forward by a
3 third-party that's not before the Board and
4 reliability can't be determined.

5 CHAIRPERSON ANDERSON: I hear you, Mr.
6 Bianco, but remember this is an Administrative
7 Hearing, and we do not strictly abide by the
8 Rules of Evidence as we do in a court of law. So
9 in this, for what it's worth, in this
10 Administrative Hearing, I will allow him to
11 testify.

12 COMMANDER BRANCH: Well, it's a fact
13 that I was also concerned about the officers'
14 safety, that we were not able to fill all of the
15 positions at those clubs. And we had some
16 officers working alone, with some officers on
17 duty in close proximity. But not the required
18 two officers mandatory for those establishments.
19 So it was definitely a concern of mine as well.

20 BY MR. BLANCHARD:

21 Q Thank you. Mr. Branch, are you
22 familiar with a recent notice of proposed
23 rulemaking for the North Shaw Moratorium that the
24 Board published in the D.C. Register?

25 A I read about it briefly.

1 Q And was there a comment by an MPD
2 Captain about reimbursable details?

3 MR. BIANCO: I'm going to, hang on.
4 I'm going to object.

5 CHAIRPERSON ANDERSON: And I'm going
6 to --

7 MR. BLANCHARD: I'm just going to ask
8 the Board to take judicial notice of a document
9 published in the D.C. Register to the general
10 public available to everyone.

11 CHAIRPERSON ANDERSON: Okay, fine.
12 Let's move on, I'm -- I agree with you, Mr.
13 Bianco. All right, go ahead.

14 COMMANDER BRANCH: Can I just state in
15 regards to the reimbursable details as well, I'm
16 --

17 CHAIRPERSON ANDERSON: I'm sorry, hold
18 on. Mr. Branch, there's no question pending, so
19 wait until Mr. Blanchard has another question for
20 you.

21 BY MR. BLANCHARD:

22 Q What do you think of the proposed
23 location of the night club?

24 A I just think it's a poor location.
25 Like I said, all the exits and entrances are from

1 an alley or roadway. It's just a bad location
2 for a nightclub with people who are going to be
3 drinking, partying, celebrating, exiting,
4 congregating inside an alley. I just think it's
5 a bad location.

6 CHAIRPERSON ANDERSON: Let's hold on,
7 hold on one minute please, hold on.

8 MR. BLANCHARD: I can't hear anything.

9 CHAIRPERSON ANDERSON: Mr. Blanchard,
10 I believe that we're hearing the siren from your
11 end, sir, that's why I'm waiting for the
12 emergency vehicle to move on. You are, I'm
13 wearing headphones, so and there's no noise
14 coming from my area, so all the noise is coming
15 from your area, sir. So I'm waiting for that
16 noise to dissipate before we can move on. So go
17 ahead, please.

18 BY MR. BLANCHARD:

19 Q Okay. Final question, so, Mr. Branch,
20 in your experience would a club in this location
21 disturb the peace, order, and quiet of the
22 community?

23 MR. BIANCO: I'm going to object.
24 He's calling for an opinion on the ultimate issue
25 with this witness is not competent to give

1 testimony based on the evidence on the record.

2 CHAIRPERSON ANDERSON: I'm in
3 agreement, so sustained. He's not an expert. If
4 you present him as an expert, then of course, he
5 can give his opinion. So he cannot give his
6 opinion.

7 MR. BLANCHARD: I wasn't asking for
8 his opinion, just his belief.

9 CHAIRPERSON ANDERSON: How is he going
10 to answer a question, just belief, I'm just
11 curious. Maybe you need to ask the question a
12 different way. See if you can find a, I've
13 sustained the objection, so maybe you need to
14 rephrase the question in another way, sir.

15 MR. BLANCHARD: I think he's already
16 answered it. So I'm going to stop there, and I
17 have no further questions.

18 CHAIRMAN ANDERSON: All right. Close
19 the screen, I always ask folks to close the
20 screen because I want to see people when they are
21 testifying and look at them and when we share the
22 screen, I can't see the folks who are testifying,
23 that's one of the reasons I always ask folks to
24 close the screen. Mr. Bianco, your witness.

25 CROSS-EXAMINATION

1 BY MR. BIANCO:

2 Q Yes, Commander Branch, good afternoon.

3 A Good afternoon, sir.

4 Q I listened to your extensive
5 experience, and as I was listening, I wasn't
6 clear on exactly how long you were in 2D?

7 A I was in 2D for approximately eight
8 months.

9 Q Okay. And 2D is the police district
10 in which this particular establishment is
11 located. Right?

12 A That's correct.

13 Q Okay. And so the majority of your
14 experience with MPD was in 7D, right?

15 A Are you referring to as a commander?

16 Q No, I'm referring to your experience
17 in general?

18 A In general, well, I believe maybe
19 Special Operations Division.

20 Q Okay. Now you gave some testimony
21 about the impact of nightclubs on the community
22 in terms of crime. Correct?

23 A Correct.

24 Q And is it fair to say that your
25 position is nightclubs either attract or cause

1 additional criminal activity?

2 A Well, it's my position that when
3 people are out at late hours like that, that
4 unfortunately, suspects are preying on citizens
5 exiting these late night establishments to rob
6 them, that's correct.

7 Q Okay. And you're familiar with the
8 particular area that we're dealing with in this
9 case? Correct?

10 A Somewhat familiar.

11 Q And there are a number of nightclubs
12 within 1,200 feet of this particular location?
13 Correct?

14 A I'm not sure exact distance, but there
15 is some clubs on the Connecticut Avenue corridor.

16 Q Okay. And are you aware that there
17 are, in fact, seven nightclubs within 1,200 feet
18 of this particular establishment?

19 A Not specific numbers of nightclubs,
20 but there are a few, yes.

21 Q You gave testimony about your safety
22 concerns based on this establishment being
23 situated in an alley? Right?

24 A Yes.

25 Q Okay. And I believe one of the things

1 you testified about, and please correct me if I'm
2 wrong, that you recommended that the alley should
3 be shut off to traffic. Is that something that
4 you recommended?

5 A Yes.

6 Q Okay. So if this particular
7 establishment was able to do that, that assuage
8 some of your concerns? Right?

9 A As far as vehicular accidents, it
10 would, but not as far as shooting incidents.
11 When you have large numbers of people
12 congregating in a confined space, if there was a
13 shooting, it's still exhibits the same hazard,
14 you know. But from vehicular traffic, it
15 definitely poses a better safety response to
16 that, for sure.

17 Q Okay. And your testimony about, I'm
18 sorry, strike that. I want to stay with the
19 positioning in the alley, let's stay with that
20 issue because you raised another point there.

21 So moving on from vehicular, you gave
22 some testimony about how it's problematic for an
23 establishment to empty out into an alley because
24 of people running in an emergency, violence
25 outside of the establishment, close proximity of

1 the masonry walls causing bullets to ricochet.

2 Those are some of the concerns you
3 raised about the positioning of this
4 establishment in an alley. Correct?

5 A That's correct.

6 Q Okay. And those concerns would be
7 true of any establishment that's located in an
8 alley, correct?

9 A Any establishment that has such large
10 number of people where it's alcohol is being
11 served, where it's potential violence, that's
12 correct.

13 Q Okay.

14 A Of course, it goes up, you know, with
15 alcohol. Of course, there's the propensity for
16 violence and danger goes up with the element of
17 alcohol involved, for sure.

18 Q Right. So leaving the issue of the
19 size of the establishment aside for a moment, the
20 challenges that I specifically asked you about is
21 people running in an emergency, violence outside
22 of the establishment, bullets ricocheting off of
23 close proximity walls. Those are problems with
24 alley establishments regardless of occupancy?
25 True?

1 A It could be, but I don't of any
2 establishment's inside of an alley.

3 Q So you're not aware whether or not
4 there are other establishments that open onto the
5 alley? Is that your testimony?

6 A I don't know of any establishment
7 where the main entrance and exits to all of the
8 entrances and exits actually go out into an alley
9 and that there's alcohol or a club that's
10 associated with that for sure. I'm not aware of
11 that.

12 Q Are you familiar with the area in Shaw
13 known as Blagden Alley?

14 A Blagden, I'm sorry, what was it?

15 Q The area in Shaw, known as Blagden
16 Alley?

17 A I've heard of it, but I'm not that
18 familiar with that, no.

19 Q Bear with me for a moment, I want to
20 see what else I may need to cover, okay, yes.

21 So you gave some testimony about the
22 availability of reimbursable detail, correct?

23 A Yes, I did.

24 Q And I don't want to put words in your
25 mouth, but I recall that testimony to be that due

1 to historically low staffing levels, it's hard
2 for you to provide reimbursable duty officers.
3 Is that fair to say?

4 A Yes, staffing shortages has made it
5 difficult.

6 Q But that's a relatively recent
7 phenomenon, is it not?

8 A Well, it's gotten worse over the
9 years, for sure, due to the, you know, resources.
10 Like I said, it's been, it's gotten worse.

11 Q But especially in the last year,
12 right?

13 A Probably, last three years, after Mr.
14 Floyd's death.

15 Q And that's Citywide, that's not just
16 specific to this particular neighborhood?

17 A Citywide and nationwide as well, yes.

18 Q And the same can be said for the
19 uptick in crimes of violence, correct?

20 A As far as the increase, as far as
21 recently, yes.

22 MR. BIANCO: Thank you very much,
23 Commander. I appreciate your testimony. I don't
24 have anything further for you.

25 COMMANDER BRANCH: Thank you, sir. I

1 appreciate you.

2 CHAIRPERSON ANDERSON: Any questions
3 by any of the Board members? Go ahead Mr. Short.

4 MEMBER SHORT: Commander, thank you
5 for your service.

6 COMMANDER BRANCH: Appreciate it.

7 MEMBER SHORT: And your service to the
8 District of Columbia.

9 This address, 1412 I Street, how close
10 is it in proximity to the White House itself
11 where the President lives?

12 COMMANDER BRANCH: Well, the White
13 House is located on 16th Street, so I guess
14 approximately two blocks or so, a block maybe.

15 MEMBER SHORT: Now another question.
16 There is a nightclub in Georgetown called Blues
17 Alley, are you familiar with it, a jazz club?

18 COMMANDER BRANCH: Yes, I am.

19 MEMBER SHORT: And the clientele that
20 goes in and out of Blues Alley, which has been
21 there for over thirty-something years, maybe
22 forty years. Do you have any problems at Blues
23 Alley?

24 COMMANDER BRANCH: I haven't had any
25 or heard of any incidents there, no.

1 MEMBER SHORT: Is that maybe because
2 of the clientele?

3 COMMANDER BRANCH: Possibly.

4 MEMBER SHORT: Do you think the same
5 clientele will be going to this Applicant's club,
6 once they put a club there at 1412 I Street?

7 COMMANDER BRANCH: I don't believe so.

8 MEMBER SHORT: And do you think 1,200
9 people, which I don't they will get it, or
10 whomever gets the business deal, but at any rate,
11 you're talking about 1,200 people drinking
12 alcohol, you mentioned that earlier in your
13 testimony.

14 In your testimony, with clientele that
15 go to those types of nightclubs, drinking
16 alcohol, and now we know there's a lot of smoking
17 of hookah pipes going on in these clubs also.
18 Correct?

19 COMMANDER BRANCH: Yes, sir.

20 MEMBER SHORT: And so when you talk
21 about the clientele who go to nightclubs,
22 drinking and smoking, and you talk about 1,200
23 people, there's not going to be a lot of orderly
24 anything done if there's an emergency? Is that
25 true?

1 COMMANDER BRANCH: I agree, sir.

2 MEMBER SHORT: Thank you very much for
3 your testimony. Thank you very much for your
4 service. Mr. Chairman, that's all I have.

5 COMMANDER BRANCH: Thank you, sir, I
6 appreciate you.

7 CHAIRPERSON ANDERSON: Any other
8 questions by any other Board Members?

9 MEMBER GRANT: I just have one
10 question.

11 CHAIRPERSON ANDERSON: Go ahead, Mr.
12 Grant.

13 MEMBER GRANT: With respect to
14 clientele in that discussion that my fellow Board
15 Member brought up, in your testimony you talked a
16 bit about the concern around patrons being
17 victims of crimes from people that may be preying
18 on them who are not attendees of the venue.

19 In your estimation, are you more
20 concerned about the clientele of people attending
21 the events or is it more of a priority to focus
22 on the people who may be preying on those who are
23 in the event?

24 COMMANDER BRANCH: Yes, I believe
25 both. I mean, unfortunately, that area is close

1 to the Third District. That's why we do have the
2 increase in crime there, that's closer, the First
3 District and the Third District. So I think the
4 proximity of the location as far as, you know,
5 14th Street, which is the direct route to the
6 Third District.

7 So people, I've noticed that most of
8 the, well, just about all of them, of the
9 suspects that commit those violent acts, are
10 coming from other Districts from the Second
11 District, meaning the Seventh District, the Fifth
12 District, the Fourth District, the Third
13 District, the First District, what have you. So
14 yes, I'm kind of concerned about both.

15 MEMBER GRANT: Okay. Thank you, Mr.
16 Chair, and thank you for your testimony as well.

17 CHAIRPERSON ANDERSON: Thank you, Mr.
18 Grant.

19 COMMANDER BRANCH: Thank you, sir.

20 CHAIRPERSON ANDERSON: Mr. Bianco, any
21 questions based on the questions asked by the
22 Board?

23 MR. BIANCO: No, sir.

24 CHAIRPERSON ANDERSON: Mr. Blanchard,
25 any redirect?

1 MR. BLANCHARD: No redirect.

2 CHAIRPERSON ANDERSON: Mr. Branch,
3 thank you very much for your testimony today,
4 have a great day.

5 COMMANDER BRANCH: Thank you, sir. I
6 appreciate you, have a great day.

7 CHAIRPERSON ANDERSON: All right.
8 Thank you, and bye-bye. Do you have another
9 witness?

10 MR. BLANCHARD: Yes, I call Trevor
11 Hewick to the stand.

12 CHAIRPERSON ANDERSON: Mr. Hewick, can
13 you raise your right hand, please?

14 WHEREUPON,

15 TREVOR HEWICK

16 was called as a witness by Counsel for the
17 Protestant and, having been first duly sworn, was
18 examined and testified as follows:

19 CHAIRPERSON ANDERSON: Your witness,
20 sir.

21 DIRECT EXAMINATION

22 BY MR. BLANCHARD:

23 Q Mr. Hewick, would you state your name
24 for the Board, please?

25 A My name is Trevor Hewick. Trevor is

1 spelled T-R-E-V-O-R; Hewick is spelled H-E-W-I-C-
2 K.

3 Q Mr. Hewick, what is your profession?

4 A Owner of Protocol Security Agency. I
5 conduct private investigations, security guard
6 services. I also do consulting and expert
7 witness testimony on use of force, police
8 procedures, practices, nightclub security, and
9 I'm an adjunct professor at the Community College
10 of Baltimore County and a associate professor at
11 Notre Dame of University of Maryland, teaching
12 criminology and criminal justice studies.

13 Q Thank you. And what is your
14 educational background?

15 A I have a bachelor's degree in criminal
16 justice. I minored in business management, and I
17 have a master's degree in management and criminal
18 justice.

19 MR. BIANCO: Mr. Chair, to streamline
20 things, I will stipulate to this witness as an
21 expert and the admissibility of his resume and we
22 can move on.

23 CHAIRPERSON ANDERSON: And he's an
24 expert in what, what is the area of expertise?

25 BY MR. BLANCHARD:

1 Q Mr. Hewick, have you ever been
2 qualified as an expert witness?

3 CHAIRPERSON ANDERSON: Hold on, hold
4 on. Mr. Blanchard?

5 MR. BLANCHARD: Yes, sir.

6 CHAIRPERSON ANDERSON: Mr. Bianco is
7 agreeing to him being an expert, I just need to
8 get some clarification in what area are you
9 trying to have him qualified as an expert. And
10 so we can just, he's going to be, there's no
11 disagreement, I just want to know what his
12 expertise is, just tell me and we can move on.

13 MR. BLANCHARD: His expertise is in
14 violent crime investigation and crime scene
15 reconstruction, structuring security risk
16 assessment plans, creating day-to-day operational
17 and physical security plans, and is a consultant
18 and instructor for unarmed security training.

19 MR. HEWICK: And nightclub security.

20 MR. BLANCHARD: And nightclub
21 security.

22 CHAIRPERSON ANDERSON: I don't believe
23 that Mr. Bianco is objecting, so you can give
24 your expertise on nightclub security, so go
25 ahead, sir, you can ask, go ahead.

1 MR. BLANCHARD: All right, thank you.
2 I would like to, Mr. Ritchie, if you could move
3 Exhibit 2 up, just to get it in the record.

4 (Whereupon, the above-referred to
5 document was marked as Group of Five Exhibit 2
6 for identification.)

7 CHAIRPERSON ANDERSON: Exhibit 2,
8 what's Exhibit 2?

9 MR. BLANCHARD: Exhibit 2 is his CV,
10 Mr. Hewick's CV.

11 CHAIRPERSON ANDERSON: And I don't --
12 do you have no objection Mr. Bianco?

13 MR. BIANCO: No objection.

14 CHAIRPERSON ANDERSON: No objection,
15 without objection.

16 (Whereupon, the above-referred to
17 document was received into evidence as Group of
18 Five Exhibit 2.)

19 BY MR. BLANCHARD:

20 Q Mr. Hewick, can you describe your, go
21 over a lot of things here.

22 As it pertains to your expertise in,
23 hold on one moment, use of force issues for
24 security personnel, have you provided any
25 training on these issues to the ABCA Board?

1 A Well, I did for ABRA, and that's when
2 they had, the hearings at 941 North Capitol
3 Street, so that was in March of 2006. And then I
4 did a use of force continue wheel, June of 2006.

5 Q And do you have experience working
6 with nightclubs on security issues?

7 A Yes, sir. I've dealt with the mass
8 shooting at Dream Club in 2004. I dealt with
9 Club U, when an notice to show cause for a
10 stabbing murder, numerous fights, and the eve of
11 Valentine's Day, there was a total of three
12 murders Club U was charged with. I dealt with
13 Club 55, a nude dancing club, they're one of my
14 clients.

15 Oh, let me start with, I actually
16 worked for a law firm, it was Brown, Wilmont &
17 Bagwell. The nightclubs would hire that law
18 firm, and then that law firm took on my services.
19 So Club 55 was on K Street, Northeast, I dealt
20 with a shooting inside Club 55.

21 And that was a nude dancing and I
22 continued to work with D.C. Tunnel, that the
23 shooting outside of D.C. Tunnel. And I dealt
24 with Tacoma Tavern in the Fourth District, and
25 that had to do with disorderly fighting,

1 neighborhood complaints.

2 And in all those, we structured day-
3 to-day operational and security plans. And I
4 gave testimony, I was recognized as an expert
5 witness in the murders and fights for Club U in
6 June of 2006 in front of the Board.

7 And then I was recognized as an expert
8 witness for the shooting inside Club 55 on K
9 Street by the Board when I gave testimony.

10 Q And specifically with Club U, can you
11 summarize some of the issues they have at that
12 nightclub that might be --

13 MR. BIANCO: I'm going to object to
14 testimony about nine-year-old stabbings.

15 CHAIRPERSON ANDERSON: Sustained. I
16 think that I need this witness to testify about
17 current, it's not relevant for us to hear about
18 what happened at Club U over 20 years ago, this
19 City has changed significantly over 20 years ago.
20 So I think what will help us make a decision, we
21 need to have information current, about current
22 trends about these type of issues.

23 MR. BLANCHARD: Okay, that's fine,
24 that's fine.

25 BY MR. BLANCHARD:

1 Q Mr. Hewick, with respect to
2 reimbursable details, secondary employment, and
3 club zones, what can you tell the Board about
4 these that are not available for nude dancing
5 establishments?

6 A Well, just like the Chairman was
7 saying, it's evolved over the years. But for
8 nude dancing, reimbursable details will not be
9 given out for nightclubs with nude dancing.
10 Secondary employment from Metropolitan Police
11 Department officers will not be given out to ABC
12 establishments with nude dancing.

13 And if it happens to be part of a club
14 zone, which is separate from reimbursable details
15 and secondary employment, that's got to be on the
16 basis of the commander and other nightclub
17 establishments and restaurants have to be
18 involved with that.

19 So they can't single out the
20 employment of MPD personnel for nude dancing
21 establishments, so they won't accept a duty of
22 care for that.

23 Q Thank you. Did our office contact you
24 and ask you to review materials in this matter?

25 A Yes.

1 Q And what were you asked to do with
2 respect to those materials?

3 A Well, I reviewed the materials, and I
4 went out to the scene of 1412 I Street. I walked
5 the community, I took photographs, talked to
6 private security, I talked to citizens, I talked
7 to delivery personnel, just to get a feel of what
8 was going on with that community and the location
9 for this club.

10 Q And where is the proposed club
11 located?

12 A Well, the proposed club is in an
13 alley. It's bordered by Zei Alley that runs
14 south and north, north and south. And then the
15 east alley and the west alley that run south to
16 north on I Street.

17 So there is no public sidewalk or
18 public street. This building is surrounded by
19 three alleys and then the back is a gated
20 entrance for whatever service for 1412 I Street.

21 Q And why is this location problematic?

22 A It's definitely problematic because
23 it's in a public alleyway. And the Metropolitan
24 Police Department, and I get this through the
25 Security Officer's Management Branch, will not

1 accept the duty of care for this establishment
2 because those are public alleys where you have
3 traffic. And they don't want to put their
4 officers at risk when the only thing there is
5 those public alleys.

6 Q What kind of threats do you see there?

7 A If I was associated with it, I can
8 tell you working for Club 55, that I'm aware of
9 their business plans, and what the nude dancing
10 attracts. The ladies, I'm not condemning the
11 ladies, that lifestyle brings a whole different
12 crime to wherever nude dancing would be.

13 It brings the prostitution, it brings
14 the drugs, the patrons become targets, they
15 become victims, there are predators out there
16 around these nude dancing establishments. As
17 much as my owners at Club 55 try to deal with
18 that, there is a specific and a special type of
19 violence that comes with nude dancing.

20 Q So what is your belief about
21 foreseeability?

22 A Oh, crime is foreseeable in that area.
23 It's going to be the same type of crime, robbery,
24 it's going to be additional stuff because you're
25 going to have the prostitution, you're going to

1 have sex in the alleys, you're going to have
2 drugs in the alleys. Again, these predators look
3 for victims.

4 And it makes it difficult,
5 specifically in those, the three alleys, because
6 it can't be seen from the streets, where you have
7 cubbyholes to hide in. Where people will secret
8 themselves, conduct these illegal activities, and
9 then go their merry way.

10 And you can expand that more than
11 1,200 feet. I'd say a good two blocks, because
12 this crime will travel two blocks. Because of
13 the parking situation, people have to park and
14 they get there, and so that's the idea of crime
15 foreseeable will extend further than 1,200 feet.

16 And this is just my experience based
17 on working for Club 55 and nude dancing. I mean,
18 I love the owners, they are great people, their
19 license is in safekeeping. I'm just telling you
20 how that operation works and what goes on.

21 Q And is there a special use of the
22 alley?

23 A Okay. Special, you can't have special
24 use of a public alley. You can have special use
25 of a sidewalk or a front entrance, like most of

1 these clubs in that --

2 MR. BIANCO: I'm going to object.

3 CHAIRPERSON ANDERSON: What is your
4 objection?

5 MR. BIANCO: As beyond the scope of
6 the witness's proffered expertise, we're talking
7 about now land use and not nightclub security.

8 CHAIRPERSON ANDERSON: All right.

9 MR. BLANCHARD: We are not talking
10 about land use.

11 CHAIRPERSON ANDERSON: All right.

12 MR. BLANCHARD: This is in respect to
13 police enforcement.

14 CHAIRPERSON ANDERSON: All right. I'm
15 going to overrule the objection at this juncture.
16 But let's hear what the witness is testifying.

17 MR. HEWICK: Mr. Chairman, I have to
18 go by the rule of law, and I pay attention to the
19 rule of law as far as when D.C. Superior Court,
20 Appellate Court rules on a lot of your hearings,
21 which I actually uphold a lot, so I learn from
22 that.

23 And the Novak case was actually a rule
24 of law for the Fourth Circuit Federal Court which
25 encompasses D.C., and Maryland, and Virginia.

1 And in that --

2 MR. BLANCHARD: D.C. --

3 MR. HEWICK: Fourth Circuit.

4 MR. BLANCHARD: Yes, no.

5 MR. BIANCO: Again, object on scope.

6 He's not an attorney and he's citing Fourth

7 Circuit precedent which is not in any way

8 applicable here.

9 CHAIRPERSON ANDERSON: All right.

10 Let's move this along. So I'm overruling the

11 objection at the moment. Let's move along, let's

12 move this along.

13 MR. HEWICK: All right, Mr. Chairman,
14 the reason I brought that up is because --

15 BY MR. BLANCHARD:

16 Q Mr. Hewick, why did you bring that up?

17 A Thank you, I'm sorry. I brought it up

18 because the cases deal with special use and

19 exclusive use and those are the standards set up

20 for Washington, D.C. So when you talk about

21 special use, there are conditions put on a

22 license that ABRA agrees to and the licensee

23 agrees to like a sidewalk.

24 Set up your borders, your lines, have

25 your barrier, you can have special use of that

1 sidewalk because it's open to the public, it's
2 open to the street, pedestrians share it. So
3 that is a special use and the court recognizes
4 that.

5 And the court also recognizes
6 exclusive. Exclusive is when the lessee leases
7 the property and then they can have more control
8 of what's done.

9 Q Are you referring to private property
10 in that?

11 A Yes, private property that gets
12 leased. In the case 1412 I Street, there is no
13 private property that can be leased to the club
14 owners.

15 So the exclusive use is out of the
16 question because at least one of the alleys is
17 owned by JPMorgan, so they can't have exclusive
18 use of that public alley. So the court
19 distinguishes that. The reason I brought that up
20 is because that's what I have to go by.

21 Q Mr. Hewick, will MPD not assist clubs
22 that utilize substantial special use in public
23 alleys?

24 A Well, the court ruled because of the
25 Novak case at 1412 I Street --

1 Q Mr. Hewick, we have up on the screen,
2 Protestant's Exhibit --

3 MR. BLANCHARD: You might want to
4 expand that, please, Mr. Ritchie? And Exhibit 6?
5 Exhibit 6. Just expand the first page.

6 (Whereupon, the above-referred to
7 document was marked as Group of Five Exhibit 6
8 for identification.)

9 BY MR. BLANCHARD:

10 Q Is there a standard duty of care for
11 nightclubs?

12 A Yes. And that was the ruling by
13 Attorney General Garland, he was the circuit,
14 District Court judge at that time. And he ruled
15 that there was a duty of care that was accepted
16 by that club, that they couldn't carry out the
17 duty of care because they didn't have control of
18 the public alleyway.

19 Q And Mr. Hewick, is this a fair and
20 accurate copy of the Novak decision?

21 A Will you show me the first page? What
22 exhibit is this?

23 Q It's Exhibit 6, Protestant's Exhibit
24 6. I would ask the Board to take judicial notice
25 of this decision.

1 MR. BIANCO: So, Mr. Anderson, this is
2 argument. It's not appropriate for a witness who
3 is not an attorney to testify about the
4 negligence standard for licensed establishments,
5 there's no measure of qualification or expertise
6 that this witness has on that subject.

7 I would also note that this is a 2009
8 decision and the standard being put on the record
9 by the non-expert witness is the previous
10 standard prior to the Dram Shop legislation,
11 which is going to be applicable prospectively.
12 It has nothing to do with this particular
13 establishment.

14 Prior to that legislation, maybe
15 there's an argument, but it's certainly not
16 evidence. And it's completely irrelevant here.

17 CHAIRPERSON ANDERSON: I'm curious
18 where we're going with this.

19 MR. BLANCHARD: Mr. Anderson, the Dram
20 Shop Law might have been passed by the City
21 Council, it has not been signed by the Mayor, it
22 has not gone to Congress for a Congressional
23 review period, so it is not law.

24 CHAIRPERSON ANDERSON: Yes, but I
25 know, but why are we, I think this is more, if

1 you want to make an argument, if at closing
2 arguments, you could make this as closing
3 argument, but I don't think is something that I,
4 at least, it's not helpful to the Board to make a
5 decision.

6 This is more appropriate for arguments
7 that if the attorneys want to make arguments, but
8 in the sense of testimony by a witness, this is
9 not helpful. I mean we can state to say what the
10 standard is and whether or not we can issue this
11 license and but, so I'm going to sustain the
12 objection, let's move this along, please.

13 BY MR. BLANCHARD:

14 Q So, Mr. Hewick, can a club use a
15 reimbursable detail?

16 MR. BIANCO: Objection. Asked and
17 answered.

18 CHAIRPERSON ANDERSON: I will allow
19 him to answer the question, this is easy, yes or
20 no.

21 MR. HEDWICK: Well, a club can use
22 reimbursable details, I'm just telling you
23 nightclubs with nude dancing can't use
24 reimbursable details.

25 BY MR. BLANCHARD:

1 Q What are the other options for
2 security?

3 A The other options beside in the
4 security, you can't have, you have to have a
5 piece of property. Because when we went looking
6 for properties for Club 55, we wanted a piece of
7 land that could be like a parking lot or land in
8 front of the entrance that was away from the
9 sidewalk and away from the street and away from
10 family neighborhoods and communities, something
11 isolated.

12 So Club 55 could hire their own
13 commissioned special police officers to police
14 the front entrance of the parking lot or the
15 opened area where they could conduct business for
16 lining up patrons.

17 And then as they enter or leave the
18 club, the armed security could see that they
19 peacefully leave the premises of the leased
20 property for the club, so that would be an
21 option. And that's why we looked for those
22 places for Club 55.

23 Q Is there a national standard for
24 safety and security?

25 A Yes, there is. ASIS International has

1 set standards, there's threat group analysis that
2 set up standards. That's what I took in college.
3 And that's one of the standards is to have the
4 ingress and the egress has to be a major concern,
5 coming in and coming out.

6 And if you're going to have, you know,
7 commissioned security, it has to be on the leased
8 property or owned property by the club. And
9 those are national standards set up.

10 You can't have armed guards in a
11 public alleyway, and you can't have armed guards
12 on a public sidewalk or street that are employed
13 by any nightclub, never.

14 Q And why is that?

15 A Because they don't have the authority
16 to take action. The SOMV Branch will not give
17 out licenses to commissioned, armed special
18 security officers on public space or where they
19 have to come out in public space.

20 They will get authority to be on the
21 property itself. Be it in the club, or again,
22 like a parking lot that they've leased out or
23 they own. Something that somebody, they won't,
24 they can't give out licenses to armed
25 commissioned police to walk up and down the

1 sidewalk. That's a police officer's job, they
2 will not that.

3 Q And what about non-police?

4 A Oh, as far as civilians?

5 Q Yes?

6 A Well, Chief Lanier put out, and Chief
7 Lanier wanted all, which I agree, all security
8 personnel, whether you call them bouncers or
9 whatever, that they should be licensed as special
10 police officers.

11 They don't have to be commissioned,
12 they don't have to be armed, but they should be
13 licensed and work under an agency. The same
14 problem with that is that they are a private
15 entity, and they don't have any authority to come
16 out to a public sidewalk or a public street and
17 move people on.

18 Q So they cannot protect -- can they
19 protect patrons outside?

20 A They cannot accept duty of care. The
21 public duty of care is by the police department.
22 If they accept the duty of care, then they open
23 up themselves for liability. They can only act
24 as a citizen if they take any type of action as
25 far as protecting a patron or protecting a

1 citizen. They would have to act as a private
2 citizen to do that.

3 Q Have you had a chance to, well, did
4 you hear the testimony of the Applicant's
5 security witnesses, Mr. Reese and Mr. Massey?

6 A Listen, I love Mike Reese, he's been
7 removed many years, I have a lot of respect for
8 him. He's wrong about the reimbursable details,
9 things have changed in ten years. We're down 500
10 officers.

11 Chief Smith, Mayor Bowser, they want
12 to get up to 4,200, we're at 3,600. Mr. Massey,
13 I think he just gave you template information, I
14 saw what he wrote. That is not a national
15 standard, it wouldn't be accepted by ASIS or the
16 Threat Analysis Group. It just --

17 Q What's your overall opinion of the
18 security plan?

19 A Well, that wasn't even a security
20 plan, as far as I'm concerned. It doesn't, it
21 doesn't talk about the assets, which is the
22 business of the nightclub. It doesn't talk about
23 the threats. It did mention some of the crime, I
24 think the crime is wrong.

25 It didn't talk about conceptual

1 problems, threats that might happen, which should
2 include the community. But it didn't talk about
3 crime generators in these conceptuais, it didn't
4 talk about crime attractors.

5 Nude dancing is a crime attractor,
6 along with the other nightclubs. And it didn't
7 talk about the crime enablers. Because I know
8 nothing about the management of this nightclub,
9 and I didn't hear any testimony to that.

10 Those are just part of the things that you
11 look at when you do a threat analysis or risk
12 assessment that you have.

13 Q What is a security risk assessment,
14 Mr. Hewick?

15 A That's when you look at the assets,
16 you look at the threats, you look at the
17 vulnerabilities, and you come up with an
18 assessment to mitigate all of the aspects. Your
19 vulnerabilities have to deal with operational,
20 which would be day-to-day, and then the physical.

21 And in law that we've dealt with over
22 the years, have got the physical aspect down as
23 far as cameras, the egress, ingress, all that's
24 important, getting in a building, getting out of
25 the building, lining up, IDing people.

1 I'm sorry I'm rushing this, because I
2 know I'm on a time limit here. But you have to
3 coordinate all that and it's a holistic approach
4 to really finding out what the business is like,
5 what the business plan is, how are you going to
6 operate this. And it's just not about collecting
7 cash, selling liquor, and putting on
8 entertainment.

9 Because the, I mean, Club U, we had
10 different, we had different dance floors and we
11 had different, we had pool tables, so we had
12 different assets involved.

13 And it's sad that, you know, there's
14 this assault with gun shot in the club. But we
15 complied with what ABRA wanted. Dream complied
16 with what ABRA wanted. So most of these clubs
17 comply. I just don't see this occurring here,
18 not based on what they presented.

19 Q So based on your experience, if the
20 Board were to grant this license, would the
21 public be impacted?

22 A Oh, yes. The public would be very,
23 this would be bad for the public, the community,
24 surrounding community.

25 Q In what way?

1 A The violence associated with it, the
2 people coming in and out, the vehicle traffic
3 coming in and out, the one, the pedestrian
4 traffic.

5 The one thing about the girls, again
6 I'm not condemning them, but you have to keep
7 rotating the girls just to keep it interesting,
8 so you're going to get different clientele coming
9 into that, coming into that specific community.

10 And it's not going to stop at two
11 o'clock and three o'clock, it's going to
12 continue, they're going to find their little
13 shell. So the girls keep coming, the different
14 girls keep coming, and it's just going to attract
15 an unruly crowd that you don't want in that
16 community. I got nothing against the nude
17 dancing, I mean, they're good clients of mine.

18 I've dealt with nude dancing on
19 Georgia Avenue for my whole patrol career in 4D.
20 I'm just telling you for this establishment in
21 this alleyway, in this specific alleyway, it just
22 can't work, it cannot work.

23 Q So is your major concern location or
24 something else?

25 A No, it's location, it's definitely

1 location. You can set up a nightclub with nude
2 dancing someplace else. If you're out in the
3 Warehouse District, like we were looking at,
4 Queens, Chapel great, 24th Place great, West
5 Virginia Avenue great, away from the community,
6 it's the location because it's alleys.

7 Q And then Mr. Hewick, did you hear
8 testimony about the use of Ubers?

9 A Oh, that's unrealistic.

10 Q Why is that?

11 A You're not going to get 65 Ubers to
12 come and stay.

13 MR. BIANCO: I'm going to object to
14 the extent that the witness is leading into now
15 transportation issues for which he is not
16 qualified as an expert. That doesn't have
17 anything to do with nightclub security.

18 CHAIRPERSON ANDERSON: Sustained,
19 let's move on, please.

20 MR. BLANCHARD: All right. Mr.
21 Hewick, as far as the safety of the nightclub
22 when patrons leave at the end of the night, what
23 are your concerns?

24 MR. HEWICK: Huge concerns, goes back
25 to Novak, liquor involved, the entertainment

1 involved, and, again, it is not just the nude
2 dancing, but the liquor, the disorderly unruly
3 behavior. There is going to be fights coming out
4 in those alleyways the police are never going to
5 see, and it is just going to go out into the --
6 to the street and sidewalk.

7 MR. BLANCHARD: What about -- do you
8 have concerns with queuing of patrons to get in
9 the alley -- I mean get into the establishment?

10 MR. HEWICK: Yes, I heard about that.
11 I cannot have queuing in a public alleyway,
12 because you do not have special use for a public
13 alleyway. I know ABRA gives special use
14 conditions -- conditional stuff on the license
15 because they want to see an orderly line to get
16 into the club. I get that, not an issue, but it
17 is on a shared sidewalk that is in front of the
18 building and it is monitored by everybody. You
19 cannot do that in a public alley. I have never
20 seen that done in a public alley.

21 MR. BLANCHARD: Why is that?

22 MR. HEWICK: Because they do not have
23 exclusive use to it, it is a public alley. It is
24 not staged to line up people there, because you
25 cannot enforce disorderly behavior, you cannot

1 enforce it.

2 MR. BLANCHARD: Thank you, Mr. Hewick.

3 CHAIRMAN ANDERSON: That's it. Mr.
4 Bianco, do you have any questions, sir?

5 MR. BIANCO: I sure do. I sure do.
6 So, Mr. Hewick, I just want to make sure I
7 understand your testimony correctly that nude
8 establishments are not eligible to participate in
9 the RDO program, is that correct?

10 MR. HEWICK: That and the secondary
11 employment.

12 MR. BIANCO: Okay. What is your basis
13 for that statement?

14 MR. HEWICK: I have been involved with
15 the police department, the police union, and the
16 police lodge, and I stay in constant contact with
17 the lieutenant in charge of the Special
18 Operations Management Branch. That is my basis.

19 MR. BIANCO: So is there --

20 MR. HEWICK: I am still heavily
21 involved with the police officer.

22 MR. BIANCO: Okay, so is there a
23 policy or a regulation that states that
24 somewhere?

25 MR. HEWICK: No, it is not policy. I

1 have always had contact with the last -- I do not
2 have direct contact with this new chief of
3 policy, but from Ramsey, to Chief Lanier, to
4 Chief Newsom, to Chief Conti, will not happen.
5 Maybe Chief Smith will allow it to happen, but,
6 no, there is not a policy set.

7 MR. BIANCO: Okay. So are you
8 familiar with MPD's general order with respect to
9 the reimbursable details for ABC establishments?

10 MR. HEWICK: Yes.

11 MR. BIANCO: Okay. Does it state
12 anywhere in that document that RDO is not
13 available for nude dancing establishments?

14 MR. HEWICK: It does not say that.

15 MR. BIANCO: I mean, I got to ask you,
16 because I represent ABC establishments for a
17 living, did you look at any of the nine operating
18 nude dancing establishments to see if they have
19 reimbursable detail presently?

20 MR. HEWICK: I do not know about the
21 nine that you are talking about, I just know from
22 the Special Officer's Management Branch they will
23 not assign specific officers as a reimbursable
24 detail to a nightclub establishment with nude
25 dancing. It has to be part of a club zone, and

1 that is where the commander set that up. Do not
2 confuse club zone with reimbursable details and
3 secondary employment. Club zones is set by the
4 commanders.

5 MR. BIANCO: So then the answer to my
6 question is you did not look at whether any of
7 the existing nude dancing establishments have
8 reimbursable detail.

9 MR. HEWICK: Oh, did I go out and
10 look? No, sir, I did not.

11 MR. BIANCO: Okay. Did you check any
12 ABC Board orders to determine whether the ABC
13 Board has required RDO for nude dancing
14 establishments?

15 MR. HEWICK: Well, I am glad you
16 brought that up, because they can require it, and
17 in the regulations they say may, okay? I do not
18 think the Board has the authority to tell a
19 nightclub that they shall have reimbursable
20 detail.

21 MR. BIANCO: So what your testimony
22 is, I just want to make sure I got that clear, is
23 the Board does not have the authority to require
24 RDO for a nightclub.

25 MR. HEWICK: Did not say that. The

1 wording is may. The ABRA Board, excuse me, ABCA
2 Board just like the ABRA Board does have the
3 authority to put a condition of a reimbursable
4 detail and terminology is may not shall, okay?
5 It is a big difference.

6 MR. BIANCO: So if the Board were to
7 do that in the form of either a condition or a
8 settlement agreement it is your understanding
9 that MPD would then provide reimbursable detail
10 to a nude dancing establishment.

11 MR. HEWICK: No, they would not. I am
12 only going by D.C. Code, Mr. Bianco, not trying
13 to argue with you.

14 MR. BIANCO: Give me a citation. What
15 is the D.C. Code that you are going by?

16 MR. HEWICK: I can go back to my
17 computer and look it right up.

18 MR. BIANCO: Please do. Can we go off
19 the record for a moment?

20 CHAIRPERSON ANDERSON: I'm sorry, this
21 is not relevant for the Board to make a decision.
22 Let's move on from here. I do not need anyone to
23 -- I do not need a witness to quote the D.C.
24 Code. The Board had its legal staff who can
25 provide that, and I believe that both we have

1 competent counsel who can provide that too, and I
2 am -- my assumption is that we are going to have
3 both findings of fact and conclusion of law, so
4 if that is necessary I think that would be the
5 appropriate place to put that. So let's move on.

6 MR. BIANCO: Okay. So, Mr. Hewick,
7 you testified that nude dancing establishments
8 draw a criminal element that will be detrimental
9 to the neighborhood. Did I understand that
10 testimony correctly?

11 MR. HEWICK: Yes, sir. It is a much
12 different criminal element.

13 MR. BIANCO: If I further understood
14 your testimony, and please correct me if I am
15 wrong, the basis for your statement that these
16 nude dancing establishments draw a criminal
17 element is your experience with Club 55.

18 MR. HEWICK: Yes, my experience with
19 Club 55, and what ABRA was concerned about when
20 they went through that shooting and when they
21 were attempting to find another location, because
22 they took over the building for the stadium, that
23 what it was. So there were certain requirements
24 ABRA wanted us to look at, to fulfill for the new
25 site.

1 MR. BIANCO: Okay. When was that,
2 that Club 55 situation?

3 MR. HEWICK: It would have been 2007
4 that they were shut down, not because of ABRA but
5 because of the stadium, and I believe the
6 shooting took place in 2006, the shooting took in
7 March of 2006.

8 MR. BIANCO: Okay. Did you review any
9 data other than your experience at Club 55 that
10 supports the notion that nude dancing
11 establishments have more criminal activity?

12 MR. HEWICK: Okay, I am not saying
13 they have more criminal activity. I am trying to
14 tell you there is a different criminal activity
15 that the girls bring, and it is not the girl's --
16 well, maybe not all the girl's fault, it is just
17 a different type of criminal activity that comes
18 there. As far as statistics, MPD is not going to
19 -- they are not going to keep stats on a John
20 that gets ripped off, or a prostitute
21 prostituting. They are not keeping stats like
22 that. They are not going to be part one offense
23 or part two offences, so statistically you are
24 not going to have that. I just have that for
25 first-hand experience dealing with Club 55.

1 MR. BIANCO: Okay. But you did not,
2 for example, pull the MPD run sheets for the
3 existing new dancing establishments did you?

4 MR. HEWICK: Oh, did not, no, sir.
5 No, sir.

6 MR. BIANCO: You did not pull the ABRA
7 investigative histories to show what violations
8 occurred at existing nude dancing establishments,
9 correct?

10 MR. HEWICK: Did not, sir.

11 MR. BIANCO: Okay. Now I want to just
12 go into very briefly your analysis of the proffer
13 security plan for this establishment. I
14 understood your testimony that a security
15 assessment had to encompass a number of different
16 things, including the practices and procedures as
17 well as the physical aspects of the business and
18 the property, is that correct?

19 MR. HEWICK: Yes, sir.

20 MR. BIANCO: Okay. So -- and I do not
21 know whether you know this or not or if I am
22 giving you new information, but this property is
23 not yet built out for nightclub use. Assuming
24 that is true, wouldn't they wait to do a security
25 assessment until the build out plan is complete?

1 MR. HEWICK: I missed that question
2 because somebody called, Mr. Bianco, I am so
3 sorry.

4 MR. BIANCO: Yes, no problem. I will
5 restate it, and I will try to be a little bit
6 more succinct about it anyway. So this property
7 is not yet built out for nightclub use. Given
8 your testimony that a security assessment has to
9 take into consideration not only the practices
10 and procedures but the physical layout. At this
11 point it would not even be possible to conduct
12 that assessment, is that fair to say?

13 MR. HEWICK: The physical aspect of a
14 vulnerability is not a major concern right now,
15 so I get you.

16 MR. BIANCO: Yes.

17 MR. HEWICK: ABCA has the authority to
18 recommend how many cameras -- they need a feel
19 for the ingress, egress, I get that. So the
20 physical attributes could come later after the
21 build out. I am more concerned about the fire
22 escapes, well, lack of, or the egress from the
23 property. It is the operational stuff and the
24 vulnerabilities that were covered. I would still
25 like to have some aspect of the operational, the

1 day-to-day occurrences of this club based on the
2 assets that they would have in support, and based
3 on the treat analysis, which is part of the
4 methodology and the risk assessment. So it is
5 more the operational than the physical aspect.

6 MR. BIANCO: Understood completely.
7 So fair to say that it would be appropriate to
8 evolve the security as the business moves closer
9 to opening, specifically with respect to
10 confirming the total occupancy of the
11 establishment, which they do not currently know.
12 Is that a fair statement?

13 MR. HEWICK: That is a fair statement.
14 My only objection is I have seen where they
15 require some aspect of a business plan because of
16 the sale of the food and the other aspects of
17 entertainment, and how many floors, so that would
18 go more to the operational aspect, but I get what
19 you are saying about the physical, yes.

20 MR. BIANCO: When you reviewed the
21 security plan that was submitted with the
22 application did you review that for compliance
23 with ABCA requirements, or did you review that
24 for -- compare that against the national standard
25 for security plans for nightclubs?

1 MR. HEWICK: I was comparing it
2 against the national standards, and I also looked
3 at what ABCA requires, and you know what, they
4 were hitting the stuff for ID. I do not know how
5 they could explain egress and ingress, but they
6 had some explanation there. They had a question
7 of lining which they answer to. So they just
8 answered the basic requirements that ABRA would
9 have required. It did not talk about really the
10 pedestrian and traffic flow through the
11 alleyways, or how they would handle that. So it
12 is incomplete in that sense.

13 MR. BIANCO: Okay. Great. Let me
14 just check my notes very quickly. I ask for the
15 Board's indulgence. I want to see if I have any
16 additional questions for you.

17 Okay, Mr. Hewick. I just have one
18 more question. Do you have any professional
19 licensing in the District of Columbia?

20 MR. HEWICK: No. I gave up my
21 security guard agency license and my private
22 detective agency license.

23 MR. BIANCO: Okay. Mr. Chair, it is
24 not a question for this particular witness, but
25 it is for the purpose of completing the record, I

1 would ask that the Board take judicial notice of
2 its own order in the matter of Voyager 888 LLC,
3 trading as Assets. I apologize, I do not have
4 the order number on my screen. It was on or
5 about October 29th, 2020, and the proffer to go
6 along with that would be that the Board accepted
7 a settlement agreement requiring RDO for a new
8 dancing establishment.

9 CHAIRPERSON ANDERSON: The Board will
10 take judicial notice of its own orders, and, I
11 mean, whatever decision we make of course the
12 Board is going to look at what we have ordered in
13 situated cases. So we will take notice of our
14 own order. Thank you. Is that it, Mr. Bianco?

15 MR. BIANCO: I do not have any other
16 questions at this time. Thank you, Mr. Anderson.

17 CHAIRPERSON ANDERSON: Thank you. Any
18 questions by the Board Members? Yes, Mr. Short.

19 MEMBER SHORT: Mr. Hewick, thank you
20 for explanations and testimony. Currently what
21 is the status of nude dancing law in the District
22 of Columbia. As was mentioned Assets we know,
23 and maybe a couple more, nude dancing locations
24 in Washington D.C. now that have ABC license?

25 MR. HEWICK: Mr. Short, I can only

1 testify to what we were doing with Club 55,
2 because ABRA was requiring certain things and
3 that is why I was going to the rule of law.
4 There are going to be conditions that ABCA would
5 apply to the license, and then we would apply any
6 specially used and extreme use, but because of
7 the nude dancing dealing with the community and
8 trying to get extreme exclusive use to have
9 private security to help out with the egress and
10 the ingress and disorderly or unruly behavior of
11 the crowd in front of the club that is why we
12 look for those to answer questions just like this
13 in case of any challenges. So I take the rule of
14 law and then we apply the rule of law in
15 obtaining an application for a permit.

16 MEMBER SHORT: Well we all know that
17 the District of Columbia has to get everything it
18 does approved by the U.S. Congress.

19 MR. HEWICK: Yes.

20 MEMBER SHORT: Currently I know,
21 again, we do have some nude licenses in the
22 District of Columbia that have ABC license or
23 permission. So is that now moot that the
24 District government is taking the cover off, and
25 that nude dancing is allowed everywhere in the

1 District of Columbia?

2 MR. HEWICK: No, Mr. Short, it is not
3 nude. The law firm I thought we were dealing
4 with the liability issues that a nightclub with
5 nude dancing would go through, and those were
6 some of the avenues that we were looking at that
7 could answer to the liability issues and would
8 answer to the welfare of the community and the
9 neighborhood. That is something we were applying
10 to Club 55, so we would not have major disputes
11 like we are going on now. So it not nude, sir.

12 MEMBER SHORT: Okay. All right. One
13 last question, are you familiar with the nuisance
14 laws of the District of Columbia?

15 (Simultaneous speaking.)

16 MR. HEWICK: I policed for 22 years,
17 but I retired in '99 so I am not familiar with
18 the new nuisance laws, no, sir, I am not.

19 MEMBER SHORT: Okay. Well there are
20 actually new. I will just simply say this, Club
21 U was closed down under the nuisance laws. Do
22 you know that? Do you remember that?

23 MR. HEWICK: Well, it was -- Club U,
24 and you and I are telling our age now, --

25 MEMBER SHORT: Yes.

1 MR. HEWICK: -- at the Reeves Center
2 there were other issues with that and the D.C.
3 government, and I do not think a lot of people
4 know that. Club U, and, again, I love the
5 Lavelle, anyway they were having disagreements
6 with D.C. property management on the lease of the
7 building, and that is where the exclusive use
8 came in for the lobby of the Reeves Center, and
9 then the exclusive use of the garage and they
10 were in a -- I mean, do you want me to go on? I
11 mean, I do not know if you are aware --

12 MEMBER SHORT: No, no, no, you do not
13 have to. What I am trying to do for the second
14 time, what I was trying to do, especially when
15 you mentioned Club 55, which was right off of M
16 Street near the Navy yard, is that the Club 55
17 you were speaking of?

18 MR. HEWICK: Yes, K Street, North,
19 yes.

20 MEMBER SHORT: Yes, off of K Street,
21 but right off of M Street, Second Street,
22 Southwest, but at any rate all of those places
23 are now closed, and now there is a revised or
24 revision being, I guess, added to the city to
25 bring nude dancing back. What do you think

1 bringing nude dancing back to D.C. is going to do
2 for the -- in light of your testimony today, what
3 do you think nude dancing is going to do for the
4 business section -- business downtown,
5 Washington, D.C.?

6 MR. BIANCO: I am going to object. It
7 is beyond the scope of this witness's expertise.

8 CHAIRPERSON ANDERSON: All right.
9 Sustained. The witness cannot answer that
10 question it is beyond -- that is not something
11 that this witness can answer, can respond to.

12 MEMBER SHORT: That is all I have at
13 this time, Mr. Chair. Thank you very much for
14 your testimony, Mr. Hewick, and --

15 (Simultaneous speaking.)

16 MR. HEWICK: Thank you for your
17 service at the fire department, appreciate it.

18 CHAIRPERSON ANDERSON: Any other
19 questions by any other Board members? Go ahead,
20 Mr. Grant.

21 MEMBER GRANT: Beyond your experience
22 working in situations where you are responding to
23 issues at establishments with the new
24 stipulation, are there any other ways that you
25 are currently keeping up with the current trends

1 of what is happening in those specific
2 establishments, even beyond this jurisdiction?

3 MR. HEWICK: Okay, beyond, yes. I
4 actually have a liquor store and provide security
5 guard services out in Maryland, so I have to stay
6 on top of that. I have one nightclub
7 establishment in the District of Columbia, so I
8 get all your news letters that come in. I have
9 to stay on top of that. The real big thing
10 though is I read the D.C. Superior Court
11 Appellate decisions where the petitioners whoever
12 appeal directly to D.C. Superior Court. So I
13 stay on top of that, because I have to conduct
14 training and have a better understanding of what
15 is going on, so I have to use the rule of law to
16 make policy and to deal with training, and with
17 that comes supervision. So that is how I stay on
18 top of it.

19 MEMBER GRANT: Thank you. That is my
20 only question.

21 CHAIRPERSON ANDERSON: Mr. Bianco, any
22 questions based on the questions that were asked
23 by the Board?

24 MR. BIANCO: No, sir.

25 CHAIRPERSON ANDERSON: Mr. Blanchard,

1 any redirect?

2 MR. BLANCHARD: Just one redirect.
3 Mr. Hewick, you were asked about the security
4 plan. Does the security plan handle incidents of
5 violence that spill outside of the nightclub into
6 the alley to your recollection?

7 MR. HEWICK: No, I remember it. It
8 does answer to it, and there is where we get into
9 the problem as far as being in a public alleyway
10 or sidewalk, security hands are tied, but they do
11 answer and that is one of the requirements that
12 ABCA does ask.

13 MR. HENDERSON: What do you mean by
14 hands are tied?

15 MR. HEWICK: They are just civilians,
16 and in this case a lot of the security personnel
17 are just civilians they are not even licensed by
18 SOMB of the Metropolitan Police Department, so
19 they are just civilians. Once they leave that
20 front entrance or that property that they have,
21 the lessor is renting, they are civilians they
22 cannot take action, and if they do they are doing
23 it as public citizens. They cannot accept that
24 duty of care for the nightclub.

25 MR. BLANCHARD: By take action do you

1 mean what?

2 MR. HEWICK: Physically put their
3 hands on somebody, breaking up a fight, a knife
4 fight. I mean, those are the type of issues we
5 have with Club U and a lot of these clubs. They
6 cannot put their hands on these patrons or other
7 citizens. They have to be acting as private
8 citizens.

9 MR. BLANCHARD: Thank you. No further
10 questions. Thank you, Mr. Hewick.

11 CHAIRPERSON ANDERSON: Mr. Hewick,
12 thank you for your testimony. You are free to
13 go.

14 MR. HEWICK: Thank you, Chairman
15 Anderson, thank you, Board, appreciate it. Mr.
16 Bianco, thank you, sir.

17 CHAIRPERSON ANDERSON: You said, Mr.
18 Blanchard, you have one additional witness.

19 MR. BLANCHARD: One last witness, yes.

20 CHAIRPERSON ANDERSON: Who is that
21 witness?

22 MR. BLANCHARD: That is Ashley
23 Wiltshire.

24 MR. BIANCO: So, Mr. Chair, before we
25 get started, I am not necessarily objecting, I

1 may be. Ms. Wiltshire, is my understanding, is
2 part of the same ownership group as Mr.
3 Brownfield, so I have a concern that this
4 testimony is going to be repetitive. Is there a
5 proffer as to how it is going to be -- what
6 additional information is the witness going to
7 add that we have not already heard from
8 Brownfield?

9 CHAIRPERSON ANDERSON: Hold on, has
10 this witness been identified on the PIP?

11 MR. BIANCO: Yes.

12 MR. BLANCHARD: Yes.

13 CHAIRPERSON ANDERSON: All right.
14 Then you can object to it if you believe it is
15 asked and answered. I am going to allow the
16 witness to testify. You can object and I will
17 rule on the objection, but I am not going to
18 blanket. This is someone who has been identified
19 on the PIP, it is the last witness, and so I am
20 not just going to -- I am not going to limit her
21 testimony, but, again, as a learned attorney I
22 will listen to your objections and I will make
23 appropriate action. So, ma'am, can you raise
24 your right hand. Do you swear or affirm to tell
25 the truth and nothing but truth?

1 MS. WILTSHIRE: I do.

2 CHAIRPERSON ANDERSON: Thank you.

3 MR. BLANCHARD: Ms. Wiltshire, will
4 you state your name for the Board, please?

5 MS. WILTSHIRE: Ashley Wiltshire, W-I-
6 L-T-S-H-I-R-E.

7 MR. BLANCHARD: What is your
8 profession?

9 MS. WILTSHIRE: In the real estate
10 business, both commercial and mixed use
11 residential.

12 MR. BLANCHARD: How long have you
13 worked in this profession, and where are you
14 employed?

15 MS. WILTSHIRE: I have been in the
16 profession for 30 years and I work at FJG
17 Property.

18 MR. BLANCHARD: Does your work include
19 the Southern Building?

20 MS. WILTSHIRE: Yes, I am a general
21 manager of the Southern Building Associates LLC,
22 which owns 805 15th Street, Northwest.

23 MR. BLANCHARD: Thank you. We have
24 already pointed that out on the map, so I will not
25 go into that again. Have you ever been involved

1 with the former Z Club, and if so in what
2 capacity?

3 MS. WILTSHIRE: Yes, an affiliate of
4 the organization with the owner of the Z Club and
5 the landlord of the Z Club.

6 MR. BLANCHARD: Was there violence
7 associated with the patrons of the Z Club?

8 MS. WILTSHIRE: Yes, absolutely. There
9 was significant violence both -- there was a lot
10 of fighting both inside the club and outside the
11 club, and there were shootings. We have holes in
12 the sides of our buildings to show that from the
13 times of the Z Club.

14 MR. BLANCHARD: Was it possible to
15 control the violence?

16 MS. WILTSHIRE: No, it was not, and
17 there has been some discussion of the Novak case,
18 and that case talks a lot about the security
19 detail that existed there, there were 17, security
20 personnel there, including two MPD off duty
21 officers, and even with 17 security with half the
22 amount of patrons as being discussed here, there
23 was an occupancy of about 600 there, these
24 security personnel testified in the case that
25 there was violence every two weeks, approximately

1 every two weeks, that occurred at this site.

2 MR. BLANCHARD: When you sold the
3 building did you take any steps to try and prevent
4 violence in the future?

5 MS. WILTSHIRE: Yes, we did. We placed
6 a restrictive covenant on the property --

7 MR. BIANCO: I am going to object.
8 This has been ruled on multiple times by the
9 Board. The issue is not before the Board. It is
10 not appropriate for testimony. It is the subject
11 of a civil action the D.C. Superior Court is going
12 to decide.

13 (Simultaneous speaking.)

14 MR. BLANCHARD: We are not asking about
15 the details of the covenant. I'm sorry, Mr.
16 Anderson, go ahead.

17 CHAIRPERSON ANDERSON: I was going to
18 sustain the objection. This is not within the
19 purview of this Board. If this is another -- if
20 it is within -- if it is under litigation or if
21 it's in front of the Agency to rule, fine, but
22 whether or not there is or is not a covenant that
23 is not our issue to rule on at this juncture, so
24 it is not relevant to the Board to elicit
25 testimony on that specific issue.

1 MR. BLANCHARD: Mr. Anderson, I would
2 disagree. The relevance is that this was an
3 action taken to try and control violence.

4 CHAIRPERSON ANDERSON: But --

5 MR. BLANCHARD: But it is not a real
6 estate issue.

7 CHAIRPERSON ANDERSON: But, okay, sir.
8 All right, so there is a covenant, so what. There
9 is nothing this Board can do about it. That is
10 not our issue, so --

11 MR. BLANCHARD: I do not have an
12 additional question on this issue I am just
13 making, or attempting to make that one point.

14 CHAIRPERSON ANDERSON: Okay, that's
15 fine.

16 MR. BLANCHARD: All right. Returning
17 to the Southern Building, what is the capacity of
18 the building, and is it leased?

19 MS. WILTSHIRE: It is a 200 thousand
20 square foot building. It is not fully leased. It
21 has vacancy currently.

22 MR. BLANCHARD: What is your
23 understanding of the other group of five
24 Protestant buildings?

25 MS. WILTSHIRE: The buildings in the

1 surrounding alleyway have vacancy of between 15
2 and 50 percent in those buildings.

3 MR. BLANCHARD: All right, and based on
4 your prior experience what concerns do you have
5 about the proposed nightclub on the operations of
6 the Southern Building generally and specifically?

7 MS. WILTSHIRE: There is a number of
8 concerns, as has been noted and talked about. Our
9 loading area, as well as a number of the other
10 buildings' loading areas, their only access is
11 through that alley. That loading dock is used for
12 a number of purposes, and not only during the day,
13 it is deliveries, it is trash pick-ups, it is
14 construction activity which often happens at
15 night, it is move in and move outs. We have an
16 8,000 square foot restaurant, that is where their
17 trash and their deliveries occur as well.
18 Restaurants, as you know, often have these
19 deliveries and pickups, again, late in the
20 evening, early in the morning when they are not
21 operating. In addition, this alleyway is used --
22 our bike pedestrians, our bikers, come in and out
23 through the doorway in that alley, and we have a
24 lot of tenants and other pedestrians that access
25 our retail spaces there that use that alley to get

1 to the metro, so that alley is used on a regular
2 basis. As you can see from Exhibit -- in the
3 photograph in Exhibit 1, that alley is very, very
4 busy. You even saw a man lift that was trying to
5 repair the side of one of the buildings, and there
6 are five buildings, I believe on that alley that
7 have similar needs in that alleyway.

8 MR. BLANCHARD: Thank you. Based on
9 your prior experience, what concerns do you have
10 about the proposed nightclub on your ability to
11 market tenant spaces in the Southern Building?

12 MS. WILTSHIRE: Yes, I mean, it is a
13 significant --

14 MR. BIANCO: I am going to object.

15 CHAIRPERSON ANDERSON: Hold on. What
16 is the nature of the objection?

17 MR. BIANCO: So I am going to object to
18 the extent that this witness has not been
19 qualified as an expert, and having her testify on
20 issues related to valuation of the property,
21 rentability of the property is not appropriate.

22 MR. BLANCHARD: I am not asking her to
23 value the building. It is within her normal
24 experience as building manager to know whether
25 their tenant spaces can be marketed or not.

1 MR. BIANCO: Well, I think there is a
2 couple of different issues here. I think whether
3 there are spaces that can be marketed, okay, fine,
4 fair game, but if the intended testimony is that
5 she is not going to be able to rent spaces based
6 on the nature of a business that wades into expert
7 testimony. It is her opinion, which maybe she
8 would be competent to give if she was so
9 identified in her qualifications provided.

10 CHAIRPERSON ANDERSON: All right. Is
11 this a -- is she being presented as an expert
12 witness to give her opinion?

13 MR. BLANCHARD: We did not bring her
14 resume with us, so, no, but she certainly has 30
15 years of experience, so without objection I would
16 like to qualify Ms. Wiltshire as an expert.

17 MR. BIANCO: I definitely object. We
18 have not been provided with her qualifications
19 other than her say so. We have no idea what they
20 are. If she was going to testify as an expert as
21 to rentability she needed to be disclosed as such
22 on the PIP and she was not. She cannot testify to
23 these issues. It is pretty straightforward.

24 CHAIRPERSON ANDERSON: I am going to
25 sustain the objection since she was not proffered

1 as an expert, so if you want to present her as an
2 expert the parties have been aware all the
3 witnesses been going on for a couple of weeks now,
4 and I think at this late juncture if you are
5 presenting a witness as an expert and you did not
6 disclose her resume I think it is --

7 MR. BLANCHARD: That is fine. I will
8 withdraw the qualification.

9 CHAIRPERSON ANDERSON: All right. So
10 I --

11 (Simultaneous speaking.)

12 CHAIRPERSON ANDERSON: Go ahead.

13 MR. BLANCHARD: Ms. Wiltshire, do you
14 have any other -- any tenants that want to move
15 into the building from another sub-market?

16 MS. WILTSHIRE: We have had increase
17 from other tenants that are coming from places
18 where there is more crime, for example, Gallery
19 Place, that are actually willing to leave their
20 leases two years early, especially most recently
21 due to the shooting that occurred recently near
22 there, and we do have tenants that have come to us
23 because they want to move farther west due to
24 violence.

25 MR. BLANCHARD: Ms. Wiltshire, are

1 there other hotel rooms within the immediate
2 neighborhood that you are aware of?

3 MS. WILTSHIRE: Yes, at the end of the
4 alley there is the Sofitel Hotel, which is 235
5 rooms on one end of the alley on 15th Street, and
6 there is a 300 hotel rooms at the other end of the
7 alley at the Hilton Garden Inn, the alley dead
8 ends to both of these buildings on either side.

9 MR. BLANCHARD: Thank you. How many
10 residential units are in the neighborhood?

11 MS. WILTSHIRE: When 1425 delivers
12 there will be 500 residential units, and I do
13 think given the density of hotel and residential
14 right there, and given the state of the office
15 market that there will be conversions of office
16 buildings that would be desired to occur, but I do
17 think this use will eliminate that ability to
18 convert any of those buildings into -- from office
19 to residential given some of the testimony that
20 has occurred about some of the security measures
21 as well as the ride sharing 65 percent of patrons,
22 it was testified to, would be using ride share
23 with 1200 patrons at this club would equate to 780
24 Ubers showing up at 4:00 in the morning to pick up
25 the patrons, and bright lights, which was

1 testified to for security along the alley, as well
2 as the general noise that will occur when you exit
3 that many people down an alley and into the
4 neighborhood. I just think these uses become no
5 longer viable.

6 MR. BLANCHARD: Thank you.

7 (Simultaneous speaking.)

8 CHAIRPERSON ANDERSON: Hold on one
9 minute, Mr. Blanchard. The witness testified --
10 she testified -- I am not quite sure what the
11 nature of the objection is, so let's move on. You
12 -- all right, let's move on. Mr. Bianco, if you
13 are going to testify listen to the question.
14 Listen to the question, you object, --

15 MR. BIANCO: Well hang on -- hang on,
16 Mr. Anderson. So I understand that, but when the
17 question is what is your reaction to something,
18 and then the witness spins off into opinion
19 testimony, the question is not necessarily
20 objectionable given the breadth of it, but when
21 the witness starts putting words in people's
22 mouths and starts giving opinions as to
23 convertibility of commercial property to
24 residential that would be appropriate for an
25 expert witness, there is not necessarily an

1 opportunity to object to a question. The question
2 is objectionable. Well, I think what I would --
3 my request would be to strike the opinion
4 testimony that was outside of the scope of the
5 question.

6 CHAIRPERSON ANDERSON: All right. All
7 right, this is not an expert witness. The witness
8 should testify, and please do not give opinion
9 testimony, ma'am, because you are not presented an
10 expert, okay? You are a fact witness to testify,
11 but -- so I am just -- the questions that are
12 being asked I am just directing the witness not to
13 give opinions because you have not been qualified
14 as an expert to give opinions, okay? All right,
15 let's move on.

16 MS. WILTSHIRE: Okay.

17 CHAIRPERSON ANDERSON: Hold on a
18 minute. Are you there, Mr. Bianco? Mr. Bianco?

19 MR. BIANCO: Yes, sir, I am here I just
20 dropped off the camera for a moment.

21 CHAIRPERSON ANDERSON: All right.
22 Okay. Go ahead. Go ahead, Mr. Blanchard.

23 MR. BLANCHARD: What actions have you
24 taken to raise awareness about safety impacts of
25 the proposed nightclub? Did you contact any

1 community groups or others?

2 MS. WILTSHIRE: I'm sorry, yes. I
3 contacted Brook Pinto's office.

4 CHAIRPERSON ANDERSON: Hold on, hold
5 on, hold on. Ms. Wilshire, one of the unfortunate
6 things is when you are sitting next to your
7 attorney -- this is what I need from you ma'am.
8 I need your undivided attention. I need you to
9 look in the camera at me. I do not need you to
10 look to the left to the right, because you can be
11 accused of someone giving you information. So I
12 need you to be looking at me.

13 MS. WILTSHIRE: Okay.

14 CHAIRPERSON ANDERSON: All right. So
15 let's get that clear for you. So now you can
16 answer the question, ma'am, but I need your
17 attention.

18 MS. WILTSHIRE: Okay.

19 BY MR. BLANCHARD:

20 Q So, Ms. Wiltshire, did you take any
21 actions to raise awareness about the security
22 impacts of the proposed nightclub?

23 A Yes.

24 Q All right. And what did you do?

25 A I contacted Brooke Pinto's office.

1 Q And do you recognize Protestants Group
2 of Five's Exhibit 7?

3 (Whereupon, the above-referred to
4 document was marked as Group of Five Exhibit 7 for
5 identification.)

6 A I do.

7 Q What is it?

8 A It's an email that I sent to her
9 office, outlining the concerns that we had about
10 the proposed club at 1412 I Street.

11 Q And when did you send that?

12 A September 16th.

13 Q Thank you.

14 A 2000 -- sorry, '23.

15 Q '23. Thank you. And did anyone else
16 from the Group of Five request assistance from
17 Council Member Pinto?

18 A Yes. The owners of 1425 New York
19 Avenue, Robert Abbott -- Apt, sorry.

20 MR. BLANCHARD: So I'd like to move
21 Exhibit 7 into the record.

22 MR. BIANCO: So I can't for some reason
23 locate that in my exhibit packet. So if I could
24 have the courts indulge me while I try to find it.

25 CHAIRPERSON ANDERSON: Hold on. One

1 minute.

2 MR. BLANCHARD: That's Exhibit 7 in the
3 Group of Five -- Seven -- Group of Five or more,
4 in their exhibit list.

5 MR. BIANCO: So I would object to this
6 email on multiple grounds. One, it's repetitive
7 of Mr. Brownfield's testimony and the exhibit that
8 he attempted to submit into evidence. It
9 essentially consists of Ms. Wiltshire's argument
10 to a Council Member as to why she doesn't think
11 this club should be here. Ms. Wiltshire is here.
12 She's represented by counsel.

13 If she wants to present legal argument,
14 that is her right and it doesn't make it evidence
15 and it doesn't make it appropriate to put into
16 evidence her email argument. They'll have ample
17 opportunity. And it also, the document
18 internally, contains hearsay and that statements
19 are attributed to unidentified individuals,
20 speculation, and information that would be beyond
21 the scope of her capacity as a lay witness. We've
22 been over this, these same grounds, from the same
23 company.

24 CHAIRPERSON ANDERSON: And I am going
25 to overrule the objection and the difference with

1 this case. This is a letter that was written
2 September 16, 2023. This is after -- I believe
3 this is after this matter was placarded, and she
4 is a protester and this is a letter that was
5 generated to the Council Member to state what is
6 their concerns regarding this establishment.

7 The last case that we talked about, the
8 last email, was an email that was generated in the
9 middle of litigation, I think that was in January
10 24th. January 24th, which was in the middle --
11 January 24th, which is in the middle of this
12 litigation, and so therefore I ruled that that --
13 I was not going to allow that document in. But
14 this is a document that was -- this is an email
15 that the witness generated, this email, and this
16 is in September 16th. And this is -- they're
17 given their reason why they -- why they oppose the
18 granting of this license, and this is an -- she is
19 also testifying to her concern as a protester. So
20 I'm overruling the objection and I will allow this
21 document in evidence that the Board will take to
22 -- will give it whatever way they can do. All
23 right. So let's move on.

24 MR. BLANCHARD: Thank you.

25 CHAIRPERSON ANDERSON: What exhibit is

1 this again? I'm sorry. This is exhibit what?

2 MR. BLANCHARD: This is Exhibit 7.

3 CHAIRPERSON ANDERSON: Okay. All
4 right.

5 MR. BLANCHARD: The Group of Five's PIP
6 filing.

7 CHAIRPERSON ANDERSON: All right. So
8 I'm moving Exhibit 7 in evidence off the objection
9 of the Applicant.

10 (Whereupon, the above-referred to
11 document was received into evidence as Group of
12 Five Exhibit 7.)

13 CHAIRPERSON ANDERSON: Let's move on.

14 BY MR. BLANCHARD:

15 Q Ms. Wiltshire, are the restaurants and
16 retailers in your neighborhood around the southern
17 building struggling?

18 A Yes.

19 Q And why is that?

20 MR. BIANCO: Objection. Foundation.

21 CHAIRPERSON ANDERSON: And sustained.

22 I -- that is -- I -- that is not relevant to our
23 issue that -- and I mean, we are aware that based
24 on the impact of COVID, that the restaurant
25 industry in D.C. is struggling. We're aware of

1 that. I'm not -- that doesn't -- that has no
2 impact on this, the issue on whether or not we
3 should or shouldn't grant this license. So let us
4 -- let's move on from there, please.

5 MR. BLANCHARD: All right.

6 BY MR. BLANCHARD:

7 Q With respect to crime, what concerns do
8 you have about a nightclub in this location?

9 A We have historical knowledge that has
10 occurred from a nightclub that was previously
11 there, which caused a lot of violence in the
12 neighborhood, caused a lot of problems for us in
13 our -- on our buildings and the surrounding
14 neighborhood. And we have significant concerns
15 about it, not only for our office tenants, not
16 only for our retail tenants, for the general
17 public who use that alley to go to the metro, and
18 for the entire surrounding neighborhood. Every
19 building on that block and in the surrounding
20 blocks, the hotel, we have significant security
21 concerns given the history we have with a
22 nightclub in that exact same location.

23 Q Thank you. And Mr. Fiorito testified
24 at the previous hearing that he wanted to work
25 with neighbors nearby. Has he ever reached out to

1 you to discuss the club or its operations?

2 A Never.

3 Q Thank you, Ms. Wiltshire.

4 A Thank you.

5 CHAIRPERSON ANDERSON: Mr. Bianco?

6 CROSS-EXAMINATION

7 BY MR. BIANCO:

8 Q Yes. So you testified one of the
9 reasons for your concern is that you have
10 historical knowledge of a nightclub at that
11 particular location, correct?

12 A Correct.

13 Q And the experience that you're
14 referring to is 30 years ago, correct?

15 A No. I believe the nightclub actually
16 closed in the early 2000s, so it'd be about 20
17 years ago.

18 Q About 20 years ago. Okay. Thank you,
19 I appreciate that. And you additionally discussed
20 your concerns about a nightclub at this particular
21 building, but there are five in immediate
22 proximity to your buildings here, correct?

23 A I was referring to the nightclub that
24 was in the alley at 1412 I Street, and I was
25 referring to the violence.

1 Q Okay. I appreciate that clarification,
2 thank you. I'm moving on from the violence and
3 asking you about your concern about a nightclub at
4 this particular location.

5 A Okay.

6 Q And what I'm asking you is whether
7 you're aware that there are five nightclubs in
8 immediate proximity to your buildings.

9 A I'm not aware of any near -- anywhere
10 near the proximity of what -- of this, the one
11 that's being proposed.

12 Q Okay. So are you familiar with Sachi
13 Nightclub?

14 A I am.

15 Q Okay. And that abuts your building at
16 733 15th Street NW, correct?

17 A I actually think it's two doors down.

18 Q And how about Opera Ultra Nightclub,
19 are you familiar with that?

20 A I'm somewhat familiar about that. It's
21 around the block. It's not that close to us, and
22 it's not in the alley.

23 Q Right. That's at the corner of 14th
24 and I, correct?

25 A It goes on to I Street. I don't know

1 much about the operations or the capacity.

2 Q Okay. And the Park at 14th, are you
3 familiar with that establishment?

4 A I'm somewhat familiar. I believe now
5 it's no longer a nightclub, it actually operates
6 more of a restaurant. As a restaurant.

7 Q And have you ever brought protests
8 against any of those nightclubs?

9 A I do believe we brought a protest, I
10 believe against Park.

11 Q And when was that?

12 A I don't recall.

13 Q Were you ever contacted by Paul Cohen
14 with respect to this property? I'm sorry, let me
15 rephrase that. Were you ever contacted by Paul
16 Cohen to discuss the Applicant's intended
17 operations?

18 A For this application?

19 Q Correct.

20 MR. BLANCHARD: That's beyond the scope
21 of the direct. Objection.

22 MR. BIANCO: I don't think it is. I
23 think there was testimony that the Applicant never
24 reached out to talk to her, and this information
25 directly contradicts that.

1 CHAIRPERSON ANDERSON: I'm going to
2 overrule the objection. If the witness can answer
3 the question, answer -- please answer the
4 question.

5 MS. WILTSHIRE: For this application,
6 no, I do not believe I was contacted by Mr. Cohen.

7 BY MR. BIANCO:

8 Q But you do believe that for the
9 previous application by this Applicant at the same
10 location, you were contacted?

11 A I don't know that the Applicant was the
12 same.

13 Q But you were contacted to discuss a new
14 dancing establishment at this location in a prior
15 application. Am I understanding that correctly?

16 A I honestly don't recall. I know Mr.
17 Cohen from -- previously from the Z Club, but I
18 don't recall a conversation with him.

19 MR. BIANCO: Okay. Good. I don't have
20 anything further. Thank you very much.

21 CHAIRPERSON ANDERSON: Any questions by
22 the Board members? Any redirect, Mr. Blanchard?

23 MR. BLANCHARD: No redirect.

24 CHAIRPERSON ANDERSON: Ms. Wiltshire,
25 thank you very much for your testimony. Have a

1 great day.

2 MS. WILTSHIRE: Thank you.

3 CHAIRPERSON ANDERSON: Does the
4 Protestant -- does the Protestants rest?

5 MR. BLANCHARD: Yes. I don't know if
6 Ms. --

7 CHAIRPERSON ANDERSON: Ms. Farmer --
8 Ms. Farmer stated that she had no witness. So you
9 were the only one who had a witness. So unless
10 something changed since this case --

11 MR. BLANCHARD: No. And in that case,
12 we rest.

13 CHAIRPERSON ANDERSON: All right.
14 Thank you. So the Protestants have rested. Does
15 the Applicant have any rebuttal witness they wish
16 to call?

17 MR. BIANCO: Yes, just one. We're
18 going to call John -- recall John Fiorito.

19 CHAIRPERSON ANDERSON: All right.
20 Where's Mr. Fiorito? You're still under oath, Mr.
21 Fiorito. So keep that in mind. All right. Go
22 ahead, sir.

23 WHEREUPON,

24 JOHN FIORITO

25 was called as a witness by Counsel for the

1 Applicant and, having been previously duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BIANCO:

5 Q Okay. Mr. Fiorito, you were here
6 throughout the proceedings today, correct?

7 A Yes, I was.

8 Q And you heard the Protestants'
9 testimony about communications from you to them.
10 Do you recall that testimony?

11 A Yes, I do.

12 Q Can you please describe for the Board
13 the sequence of events related to your -- your
14 communication with the Protestants?

15 A Are you referring to my comment making
16 that we wanted to reach out to everyone when we
17 got going with this project and that I would make
18 my number available?

19 Q Correct.

20 A Okay. Yes, I did say that. After the
21 license is transferred I stated we wanted to be
22 good neighbors and that we would gladly give our
23 numbers out, and I did have on the prior license
24 application, not this one where we were starting,
25 I believe it was a year or whatever the prior time

1 the license was applied for.

2 I had a relationship with Paul Cohen
3 and I reached out to Mr. Cohen about getting in
4 touch with Ashley Gerstenfeld, which her name
5 obviously I guess she's married now, so she has a
6 different name. And he said that he would give
7 her a call and try to get a meeting so that we
8 could talk and give her the proposed information,
9 because I knew there was some issues that she had
10 had with the space and she stated to me that she
11 refused to take his call and that he couldn't get
12 me in. So that was my attempt to try to go --

13 MR. BLANCHARD: I'm going to object to
14 hearsay. I'm going to object based on hearsay.
15 Mr. Cohen hasn't testified. We don't -- we don't
16 know what he said or did not say.

17 MR. BIANCO: So, yeah, I'll --

18 CHAIRPERSON ANDERSON: Go ahead.

19 MR. BIANCO: -- move on from there.

20 CHAIRPERSON ANDERSON: Okay.

21 MR. BIANCO: I mean, yeah.

22 BY MR. BIANCO:

23 Q Okay. So Mr. Fiorito, did any of the
24 Protestants ever ask you for additional
25 information?

1 A No.

2 Q And then they asked you for security
3 information?

4 A No.

5 Q Did any express concerns to you about
6 what needed to happen to make this property safe?

7 A No.

8 Q Did, to your knowledge, anybody asked
9 for your number to follow up with you?

10 A No. We attempted during the ANC, when
11 we met with the Board, the ANC Board, and tried to
12 discuss things with them, but they refused to
13 speak to us during that Board hearing. We tried
14 to talk to them and they were not very receptive
15 to want to negotiate or talk to us.

16 Q Okay. So John, I don't -- I assume
17 you're referring to the ANC meeting, but in the
18 event that you're talking about the mediation, we
19 can't go into that.

20 A Oh, sorry.

21 Q Okay. But outside of the context of
22 the mediation, did anyone from the ANC contact you
23 about this operation?

24 A No.

25 Q And had they contacted you, what might

1 you have done?

2 A I would have immediately wanted to hear
3 the --

4 MR. BLANCHARD: Objection.
5 Speculation.

6 CHAIRPERSON ANDERSON: I'm sorry?

7 MR. BLANCHARD: Speculation.

8 MR. BIANCO: He can speculate as to his
9 -- intended actions.

10 MR. BLANCHARD: Testimony is
11 speculative.

12 CHAIRPERSON ANDERSON: All right. This
13 is --

14 MR. BLANCHARD: We don't know what, you
15 know --

16 CHAIRPERSON ANDERSON: All right. This
17 is rebuttal.

18 MR. BLANCHARD: You haven't stated what
19 -- yeah.

20 CHAIRPERSON ANDERSON: All right. This
21 is rebuttal. I don't know what is it, so Mr. --
22 all right. Mr. Bianco, you call this as a
23 rebuttal witness, so I don't need someone to
24 speculate about what would have happened. It's
25 either I -- the purpose of this witness is to

1 rebut testimony that's contrary to what was
2 previously testified. So that's where -- that's
3 where we need to be. So if the questions you're
4 asking, if it's not specifically rebutting the
5 testament that was made by some witness, then I
6 don't need to hear that. Okay? So --

7 MR. BIANCO: Very well. Yeah, I mean,
8 the -- so I think we're done here. Because the
9 purpose of the testimony was to rebut Mr.
10 O'Donald's testimony that someone had reached out
11 to Mr. Fiorito, so. The testimony is there, and
12 I don't have any further questions of this
13 witness.

14 CHAIRPERSON ANDERSON: All right. Mr.
15 Blanchard, do you have any question of this
16 witness? Yes or no? I didn't hear you sir.

17 MR. BLANCHARD: I'm sorry, that's a no.

18 CHAIRPERSON ANDERSON: All right.
19 Thank you. All right. Any questions by the
20 Board? All right. Thank you, sir, for your --
21 for your testimony. You're free to go. Is this
22 the extent of the Applicant's rebuttal witness?

23 MR. BIANCO: We have no further
24 witnesses.

25 CHAIRPERSON ANDERSON: Mr. Blanchard,

1 do you have a rebuttal witness that you wish to
2 call, sir?

3 MR. BLANCHARD: No, I do not.

4 CHAIRPERSON ANDERSON: All right.
5 Thank you. All right. So we are now -- so the
6 Applicant -- the Applicant rests. I'm sorry,
7 another Applicant rests and the Protestant has
8 rest. All right. This is an opportunity for
9 closing. Now, I'm going to take a break before
10 closing. I just want to get some -- so, Ms.
11 Farmer, and I think I'd allow that, do you plan to
12 make a closing statement?

13 MS. FARMER: I believe we are going to
14 do one closing statement that will be done by Mr.
15 Blanchard.

16 CHAIRPERSON ANDERSON: Okay. All
17 right. So that's fine. So Mr. Blanchard, we do,
18 if you guys have five minutes to do, and Mr.
19 Bianco has five minutes to do. It's 6:04, I'm
20 going to take another break. So it's -- we'll
21 take a break until 6:15. Okay. 6:15, we'll come
22 back on the record at 6:15, we'll do close and I
23 will wrap this case up. All right. So we're off
24 the record until 6:15. Thank you.

25 (Whereupon, the above-entitled matter

1 went off the record at 6:05 p.m. and resumed at
2 6:16 p.m.)

3 CHAIRPERSON ANDERSON: We're back on the
4 record. So we have -- we have closing. This is
5 -- I'm going to ask all the parties to
6 specifically -- this is a protest hearing on
7 whether or not the Board should issue this
8 transfer application. So what I'm asking the
9 parties to do in closing, you have five minutes.
10 Each party -- each side will have five minutes.
11 Is to be specific what it is that you're asking
12 the Board to do. All right. So the Applicant
13 goes first, and so -- hold on one minute, please.
14 The Applicant goes first, and Mr. Bianco, you have
15 five minutes, sir.

16 MR. BIANCO: Mr. Chair and members of
17 the Board, I appreciate your accommodation as we
18 moved through this process, and thank you for
19 listening. So my view of this, and I know the
20 Board sees me a lot, is that this case turned
21 pretty quickly from where we started to where we
22 are. I think when we started here, we had a group
23 of Protestants that wanted to combat the concept
24 of new dancing near their buildings. When that
25 possibility evaporated based on facts, they

1 pivoted to location and occupancy issues.

2 It's understandable, because unlike
3 typical cases where we're dealing with whether an
4 establishment is appropriate for a specific area,
5 here we have the law. And what I'm talking about
6 is the council's law -- is the District of
7 Columbia law passed by the council requiring that
8 establishments with new dancing license only be
9 transferred to the central business district,
10 among other distance requirements that are fairly
11 onerous.

12 So the notion that the CBD is somehow
13 a residential refuge that's in need of protection
14 just doesn't jive with what the law actually says,
15 and that's not something typically we have in
16 license applications. Again, at the outset of
17 this case, JPMorgan's protest was that, hey,
18 there's not enough information here about the
19 operations for the application to go forward.
20 Indeed, it was the entire focus of their opening
21 statement.

22 The Board quickly and correctly
23 squashed that notion, as it isn't an appropriate
24 grounds for protest, and the expectation that
25 Applicants are to spend enormous sums of money on

1 build-out and leasing before securing a license is
2 inappropriate, and it's just not how the agency
3 conducts its licensing process. So we're left
4 with the Applicants not liking the location or
5 occupancy of the establishment. Starting with
6 occupancy, of course it's relevant, but to the
7 extent that it impacts alcohol sales, service, and
8 consumption.

9 As much as the Protestants want it to
10 be, this Board doesn't regulate occupancy. This
11 Board doesn't regulate means of egress. This
12 board doesn't regulate evacuation plans and other
13 requirements for operating an establishment
14 safely. Sure, the Applicant applied for occupancy
15 of \$1,200, but to quote Mr. Short, I don't think
16 they're actually going to get it. And I think
17 that's a point well taken. Will it be \$1,200?
18 Possibly. But that's going to depend on what the
19 Department of Buildings and D.C. Fire and EMS
20 determine it can safely be based on the factors
21 that have been argued before this board.

22 Factors like the location, where the
23 egresses empty out to, how many egresses there
24 are, how big they are. All of the things the DOB
25 considers in issuing certificates of occupancy and

1 all the things that Fire EMS consider in approving
2 a location for a particular occupancy level.

3 Further, given the size of this location, we're
4 looking at a public call process, which gives the
5 public the additional opportunity to weigh in on
6 such factors before the actual appropriate agency.

7 So hanging their hat on occupancy that
8 has not yet been finalized is not appropriate to
9 defeat our application in this case. The
10 Protestants here are complaining about occupancy
11 and location, but they're not asking for anything.
12 They're just saying no. And that's been the case
13 throughout this entire process, starting with the
14 ANC meeting and statements of Commissioner
15 Strauss, that there's nothing we can do to gain
16 support for a new dancing establishment. And we
17 think that's what their decision is based on. The
18 rest is pretext.

19 I've been doing this for a pretty long
20 time and the Board has seen me regularly. And
21 some of the cases I'm involved in have new
22 nightclub licenses. And when we're dealing with
23 nightclubs, it's a hot button issue. When we're
24 dealing with taverns, it's less of a hot button
25 issue. And when we're dealing with new dancing

1 establishments, it's something that attracts a
2 great deal of public attention. So where are all
3 the people? Where are they? Where are the people
4 that care about this and object to it? They don't
5 exist.

6 We had an ANC meeting. Nobody showed
7 up. There were two public comments. One of them
8 from one of the Protestants who's here today.
9 There's no public outcry here because this is the
10 central business district. This is not a
11 residential neighborhood. What we have here are
12 a group of Protestants consisting of real estate
13 developers and an investment bank.

14 I mean, I'm happy that I've stayed
15 around long enough to experience the -- getting
16 the dirty end of the morality stick shaken at me
17 by an investment bank and real estate developers,
18 but let's be real. These aren't citizens. These
19 aren't people whose lives are going to be impacted
20 on a day-to-day basis. These are people who worry
21 about their bottom line.

22 As I said at the outset of this case,
23 as much as the Protestants want to make this about
24 something else, it's about peace, order, quiet,
25 vehicular and pedestrian safety, parking and real

1 estate values. That's it. That's it. It's not
2 a referendum on nightclubs. It's not a referendum
3 on the appropriate of new dancing establishments.
4 It's not a zoning hearing and it doesn't call for
5 the Board to make determinations about those
6 things. Those are the decisions that are within
7 the purview of different agencies.

8 It's akin to a new application in that
9 the Board has to speculate on the appropriate
10 standards. There is no operating history. What
11 happened in this building 30 years ago when this
12 was a very different neighborhood has nothing to
13 do with today, has less than nothing to do with
14 today. And even the Protestants own witnesses
15 acknowledge how different the neighborhood was in
16 the 1990s versus how it looks today.

17 We put on security experts, put on
18 safety experts, put our FMS expert, we put on our
19 operational people. We put on our soundproofing
20 expert. All we have to testify to are their
21 plans. And as I indicated at the outset, that's
22 a double-edged sword. It helps in that plans can
23 be changed and modified to fit the concerns of the
24 community and to fit the concerns of the Board.
25 And across all of our witnesses, despite their

1 level of expertise, they all acknowledge that
2 based on the build out, based on modifications,
3 based on neighborhood considerations, these plans
4 can change, and should.

5 Our Applicant is committed to following
6 the advice of the top-level experts they have
7 brought on board. And as far as the Protestants
8 not having enough information, I think that is a
9 bit surprising because they never asked for any.
10 They never wanted to work with us. They never --

11 MR. BLANCHARD: Time, Mr. Chair.

12 CHAIRPERSON ANDERSON: All right. Mr.
13 Blanchard, please. Mr. Bianco, I gave you five
14 minutes. I need you to wrap up, sir. Come on.

15 MR. BIANCO: I'm wrapping up right now.
16 And that is very unusual in this process where
17 Protestants want nothing. They just want us to go
18 away. That's not what the application process
19 contemplates. That's not what is appropriate.
20 And after consideration of all the evidence, we
21 have more than met our burden to show that this
22 particular establishment is appropriate for this
23 particular space. Thank you very much.

24 CHAIRPERSON ANDERSON: Thank you, Mr.
25 Bianco, and, Mr. Blanchard, I will give you equal

1 time, but that doesn't mean that you need to --
2 all right. You can do your closing.

3 MR. BLANCHARD: No, I understand.

4 CHAIRPERSON ANDERSON: I'm sorry. We --

5 MS. FARMER: If I can just interject
6 for one moment, we're still going to join the
7 closing of Mr. Blanchard. But I do need to state
8 for the record that I think it is wholly
9 inappropriate that in the closing he was casting
10 aspersions on an investment bank. What -- that
11 was completely outside of the scope --

12 CHAIRPERSON ANDERSON: Ms. Farmer, this
13 is -- we have a closing and I think that we are
14 all -- we've had a professional hearing today. I
15 mean, over these past two days. And so let us end
16 it on this -- on this juncture. Now, you had
17 stated that Mr. Blanchard is going to do the
18 closing, because I was going to give you an
19 opportunity, but you said no. So Mr. Blanchard
20 will do the closing. And these are attorneys,
21 and, you know, as attorneys, we know what
22 attorneys do. And so, we'll -- all right. So
23 we'll do that. So, Mr. Blanchard, your closing.

24 MR. BLANCHARD: Thank you, Chairman
25 Anderson and members of the Board. The Board must

1 deny this license because the Applicant has failed
2 completely to show the nightclub with or without
3 new dancing endorsement is appropriate for this
4 location. Mr. Bianco just was going on about the
5 building code and the fire code and a public call
6 hearing. We're not here to talk about zoning or
7 any of those issues. We're here to talk about
8 appropriateness.

9 The Board has three appropriateness
10 standards. The Protestants can face as objections
11 to why a license should be issued, and that's what
12 exactly we're doing. The Applicant's witness
13 testimony was less than credible due to their less
14 than recent experience. You heard testimony from
15 Ms. Wiltshire, Mr. Brownfield and Mr. O'Donald
16 that a club at this location will adversely impact
17 property values at their buildings.

18 2024 is a very different market than
19 the 2020 sale that Mr. Schneider spoke about, and
20 his example was across K Street, not in the middle
21 of an alley. So this really is about not
22 occupancy, but location, location, location. You
23 heard testimony from -- and evidence from
24 Commissioner Strauss, Ms. Wiltshire, Mr.
25 Brownfield and Mr. Lynch about the history of

1 violence at the previous nightclub at this
2 location, which is a strong factor in determining
3 the adverse impact on peace, order and quiet at
4 this location.

5 Additionally, you heard from Mr. Lynch
6 about the problems that new dancing had on the
7 neighborhood, granted years ago, but we don't want
8 it to come back. It can be easily inferred that
9 this will occur again when an establishment with
10 new dancing endorsement is allowed to operate at
11 this location.

12 You heard from Commissioner Strauss,
13 Ms. Wiltshire, Mr. Brownfield, Mr. O'Donald that
14 pedestrians and vehicles need to access the alley
15 system around 1412 I Street building around the
16 clock. And it will be impeded and blocked by
17 nightclub patrons due to the narrow public and
18 private alleys that will prevent passersby,
19 deliveries and maintenance workers, trash
20 collecting and emergency response teams from being
21 able to use the alley when all the patrons either
22 are lining up and blocking the alley in a queue to
23 get in, or exiting at the end of the day.

24 You heard from MPD -- former MPD
25 Commander John Branch, that in his experience, the

1 location of the nightclub is fundamentally unsafe.
2 All it takes is one violent person going into the
3 alley or coming out of the nightclub or otherwise,
4 to harm another person with an automobile, knife
5 or gun.

6 The use of violence in D.C. has grown
7 astronomically over the past couple of decades.
8 The nature of current weapons to hold many, many
9 more rounds of ammunition with higher calibers,
10 ghost guns and automatic weapons make the
11 possibility of multiple injuries and loss of life
12 increase substantially. Especially when there's
13 a group of patrons or a crowd with them in the
14 narrow alleys around 1412 I Street Northwest.

15 The hard surfaces of the brick walls
16 make ricocheting bullets, a reality that is
17 already shown by the bullet marks on the brick
18 walls of these same buildings from incidents
19 related to the former nightclub 20 years ago.
20 Also, patrons, jealous boyfriends and others who
21 do not bring weapons into an establishment, they
22 keep them in their cars. We heard testimony from
23 Mr. Branch about that. And then they bring them
24 back when they get excited and escalating the
25 violence.

1 Finally, you heard from Mr. Hewick that
2 the prior incidents at this location make crime
3 foreseeable if a nightclub were to open. The
4 foreseeability of crime here at this location and
5 the violence place a duty of care on the nightclub
6 owner and operator. Because the Court in Novak
7 established rule of law concerning substantial
8 special use of the alley, MPD cannot provide
9 officers here for reimbursable detail.

10 It cannot allow its officers to work a
11 second job at security at this location and cannot
12 authorize the use of commissioned special police
13 officers at this location. Further, there is no
14 outdoor space on private property or even a public
15 sidewalk where the establishment can try and
16 ensure the care and safety of its patrons with
17 queuing to get into the nightclub or for exiting
18 and dispersing from the nightclub. No security
19 plan can be implemented regardless to provide
20 adequate safety in these alleys.

21 The Applicant wanted the board to take
22 judicial notice of the Court's decision and
23 assets, formerly the Royal Palace, and I want to
24 discuss that location completely. It's on the --
25 it's at the intersection of Florida Avenue and

1 Connecticut Avenue. Wide open areas, plenty of
2 area for the police to come and help mitigate any
3 violence that occurs. Not the same case at all
4 with this narrow alley system.

5 For these reasons, for any of these
6 reasons, the Board has power under the statute of
7 regulations to deny the license application. The
8 added factor of nude dancing endorsement just
9 amplifies the safety issues. There is a strong
10 public policy and district law for limiting the
11 number of nude dancing establishments. It is well
12 established that nude dancing creates an
13 environment where the use of drugs and
14 prostitution increase.

15 Placing these additional issues at play
16 in a location in an alley system away from public
17 sight and control is a recipe for more trouble,
18 especially with all the emotions and this
19 diminished judgment of people who have had a few
20 drinks at closing time.

21 Based on the totality of these adverse
22 impacts to the property values, pedestrian and
23 vehicular safety and most importantly peace, order
24 and quiet, we assert that the Applicant has failed
25 to meet its burden to demonstrate that its

1 establishment has proposed or even whatever
2 security plan they come up with is not appropriate
3 for this location, whether the nightclub includes
4 nude dancing or not.

5 Therefore, we request that the Board
6 deny the transfer of the liquor license to this
7 location and proactively prevent another serious
8 incident or incidents from occurring at this
9 specific location with its history of violence.

10 We don't want that to happen in the future and
11 that's why the Protestants do not want the license
12 issued. Thank you very much. I cannot hear you.

13 CHAIRPERSON ANDERSON: That's one of the
14 reasons why I never mute myself, but as you
15 noticed, I was sneezing earlier. So I did, I muted
16 myself. I apologize. All right. I want to thank
17 the parties for the presentation over two days of
18 hearing. I did alert the parties two weeks ago
19 that I wanted this hearing to be over at 5 o'clock
20 and it's over at 6:35, so I would say that it's
21 over at 5 o'clock. So I appreciate the parties.

22 I'm trying to meet a timeline in
23 presenting the case and I just want to thank the
24 parties for doing that. The record is now closed
25 and I'm asking this question that I believe I know

1 what the answer is going to be. Do the parties
2 wish to file proposed findings of fact and
3 conclusion of law or waive their right to do so?

4 MR. BLANCHARD: I'll let Mr. Bianco
5 answer first.

6 MR. BIANCO: Well, I mean, I don't want
7 to, but if the Protestants are, then I will as
8 well.

9 MR. BLANCHARD: Yes, we do, Mr.
10 Anderson. We want to file proposed order once the
11 transcripts become available.

12 CHAIRPERSON ANDERSON: All right. So
13 the Board will issue a decision within 75 days.
14 This is basically what happens. If a party
15 chooses -- since the parties have chosen to file
16 proposed findings of fact and conclusion of law,
17 then the decisions will be issued 90 -- 75 days
18 from when the Board receives proposed findings of
19 fact and conclusion of law. The transcript -- the
20 transcript will be emailed to the parties in
21 approximately three weeks, and so the proposed
22 findings of fact and conclusion of law are due to
23 the Board 30 days upon receipt of the transcript.

24 The parties are, if they change their
25 mind, they can advise the Board that they -- that

1 they will change their mind. But again, as I said
2 before, the transcript will be available
3 approximately three weeks and then proposed
4 findings of fact and conclusion of law are due to
5 the Board 30 days after the transcript becomes
6 available, and then 75 days after that period, we
7 will issue a decision. All right. So hold on.

8 As chairperson of the Alcoholic
9 Beverage and Cannabis Board for the District of
10 Columbia and in accordance with D.C. Official Code
11 Section 2575 of the Open Meetings Act, I move that
12 ABC Board hold a closed meeting for the purpose of
13 seeking legal advice from our counsel on Case No.
14 23-PRO-00078 Iraklion, pursuant to D.C. Official
15 Code Section 2575(b)4a of the Open Meetings Act
16 and deliberating upon Case No. 23-PRO-00078
17 Iraklion, for the reasons cited in D.C. Official
18 Code Section 2575(b)13 of the Open Meetings Act,
19 is there a second?

20 MEMBER GRANT: I second the motion.

21 CHAIRPERSON ANDERSON: Mr. Grant has
22 second the motion. We'll now -- I will now take
23 a roll call vote on the motion before us now that
24 has been second. Mr. Short?

25 MEMBER SHORT: Short, I agree.

1 CHAIRPERSON ANDERSON: Mr. Grant?

2 MEMBER GRANT: Mr. Grant, I agree.

3 CHAIRPERSON ANDERSON: And Mr.

4 Anderson, I agree. As the motion has passed, I
5 hereby give notice that ABC Board will recess its
6 proceedings to hold a closed meeting pursuant to
7 Section 2575 of the Open Meetings Act. Let me
8 close the record for the -- let me close the
9 record for the day. So bear with me a couple more
10 minutes please.

11 As Chairperson of the Alcoholic
12 Beverage and Cannabis Board for the District of
13 Columbia and in accordance with Title III, Chapter
14 405, Office of Open Government, I move that ABC
15 Board hold a closed meeting on March 13th for the
16 purpose of discussing and hearing reports
17 concerning ongoing or planned investigations of
18 alleged criminal or civil misconduct or violations
19 of law or regulations and seeking legal advice
20 from our legal counsel on the Board's
21 investigative agenda, legal agenda, and licensing
22 agenda for March 13th as published in the D.C.
23 Register on March 8th. Is there a second?

24 MEMBER SHORT: Short, I second.

25 CHAIRPERSON ANDERSON: Mr. Short has

1 second the motion. I will now take a roll call
2 vote on the motion before us now that it's been
3 properly second. Mr. Short?

4 MEMBER SHORT: Short, I agree.

5 CHAIRPERSON ANDERSON: Mr. Grant?

6 MEMBER GRANT: Mr. Grant, I agree.

7 CHAIRPERSON ANDERSON: And Mr.

8 Anderson, I agree. As it appears that the motion
9 has passed, I hereby give notice that ABC Board
10 will hold this closed meeting. Pursuant to the
11 Open Meetings Act, notice will also be posted on
12 the ABC Board, Hearing Room Bulletin Board, placed
13 on electronic calendar on ABCA's website, and
14 published in the D.C. Register in as timely a
15 manner as practical. The Board is now adjourned
16 for the day. Thank you.

17 I want to thank the members of the
18 public. I want to thank the attorneys, and I
19 would also like to thank the board members who
20 actively participate in this hearing today. I now
21 request that all board members return to executive
22 session for further action. Thank you very much.
23 We are adjourned. Have a great day.

24 (Whereupon, the above-entitled matter
25 went off the record at 6:41 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Iraklion

Before: DC ABCA

Date: 03-06-24

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