

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WITNESS:		Direct	Redirect
Cross	Recross		
FELICIA DANTZLER	17	34	26 --
MARK BRASHEARS	36		42
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1 P-R-O-C-E-E-D-I-N-G-S

2 3:10 p.m.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 we're back on the record.

5 Good afternoon, everyone, and welcome
6 to our afternoon session of the ABC Board. I do
7 apologize to the general public.

8 Our afternoon schedule was supposed to
9 start at 1:30. I know it is 3:10. However, our
10 morning session ran much longer than we had
11 anticipated. And, so I do apologize for the
12 delay for our reconvening this afternoon.

13 Again, welcome to the afternoon
14 session of the ABC Board. My name is Donovan
15 Anderson, I am Chairman of the Board.

16 Joining us this afternoon are five of
17 the Board members. We have Mr. James Short, Mr.
18 Bobby Cato, Ms. Rafi Crockett, Ms. Jeni Hansen,
19 Mr. Edward Grandis.

20 The Board has six members in
21 attendance this afternoon to conduct business,
22 and we do have a quorum to conduct business.

23 Before we get underway with this
24 afternoon's calendar I need to make a few
25 instructions very clear, so that the conduct of

1 these hearings is understood by everyone.

2 We have I believe, four cases on our
3 calendar this afternoon. Once your case is
4 called, I will take a moment for our IT
5 specialist to elevate the rights of each party,
6 to enable their camera and microphone.

7 Then and only then, will you have the
8 ability to enable your equipment.

9 If your case is not being heard, you
10 will remain mute and your camera will be
11 disabled.

12 At the conclusion of each case, the
13 parties will have the option to leave. If the
14 party chooses to stay, all cameras and
15 microphones for the concluded case, will be
16 disabled.

17 Should you have any questions or
18 require technical assistance during the hearing,
19 please submit them using the question and answer
20 feature.

21 Our first case this afternoon is case,
22 is a show cause hearing, case number 21-CMP-
23 00062, Empire Lounge, License No. 110702.

24 Ms. Fashbaugh, can you please elevate
25 the rights of the parties in this case, please?

1 MS. FASHBAUGH: Stand by.

2 James Jordan, your rights have been
3 elevated.

4 Richard Bianco, your rights have been
5 elevated.

6 Felicia Dantzler, your rights have
7 been elevated.

8 That is all, Mr. Chair.

9 CHAIRPERSON ANDERSON: Thank you.

10 Mr. Bianco, do we have all the parties
11 on your side? Are they elevated?

12 MR. BIANCO: Yes, it's just going to me
13 today, Mr. Chairman.

14 CHAIRPERSON ANDERSON: All right, thank
15 you.

16 All right, good afternoon everyone.

17 Welcome to the, our afternoon schedule and I
18 again I, let me apologize to the parties.

19 I know this hearing was scheduled for
20 1:30. It is clearly not 1:30, but we, our
21 morning calendar ran much longer than we had
22 anticipated. So, I do apologize for the delay.

23 All right, so let's have the parties
24 introduce themselves for the record. Let's start
25 with the government, please.

1 MR. JORDAN: Good afternoon, Mr.
2 Chairperson. James Jordan on behalf of the
3 District. It's J-A-M-E-S J-O-R-D-A-N.

4 CHAIRPERSON ANDERSON: And, Mr. Jordan,
5 if this matter goes to a hearing, do you have a
6 witness today?

7 MR. JORDAN: Yes, Mr. Chairperson. In
8 fact, I have two witnesses. Investigator
9 Dantzler and Investigator Brashears, I believe
10 should be waiting.

11 CHAIRPERSON ANDERSON: I don't see
12 Investigator Brashears, so I'll ask if
13 Investigator Brashears is, that his rights be
14 elevated, please.

15 Ms. Dantzler, can you please spell and
16 state your name for the record, please?

17 INVESTIGATOR DANTZLER: (No audible
18 response.)

19 CHAIRPERSON ANDERSON: You're on mute,
20 Ms. Dantzler.

21 INVESTIGATOR DANTZLER: Good afternoon,
22 my name is Felicia Dantzler, ABRA investigator.

23 My name phonetically is F like Frank,
24 E-L-I-C-I-A, D like dance, D like David, A-N T
25 like time, Z like zebra, L-E-R.

1 CHAIRPERSON ANDERSON: Good afternoon,
2 Ms. Dantzler.

3 Ms. Dantzler, Mr. Brashears, can you
4 please spell and state your name for the record,
5 please?

6 INVESTIGATOR BRASHEARS: Yes, sir. My
7 name is Mark Brashears, that's M-A-R-K, last name
8 is B-R-A-S-H-E-A-R-S.

9 CHAIRPERSON ANDERSON: Good afternoon,
10 Mr. Brashears.

11 Mr. Bianco, can you please spell and
12 state your name for the record, please?

13 MR. BIANCO: Sure. Richard Bianco, R-
14 I-C-H-A-R-D B-I-A-N-C-O.

15 CHAIRPERSON ANDERSON: Good afternoon,
16 Mr. Bianco.

17 As I stated before, I don't see you
18 have any witnesses so let me find out from the
19 government.

20 Mr. Jordan, are there preliminary
21 matters in this case?

22 MR. JORDAN: No, Mr. Chairperson, no
23 preliminary matters.

24 CHAIRPERSON ANDERSON: And, I guess the
25 government, I know that the government has the

1 burden to prove.

2 So Mr. Bianco, as an attorney we're
3 aware that an attorney cannot testify at a
4 hearing.

5 So, how do you, how do you plan to,
6 excuse me, how do you plan to defend your client,
7 sir?

8 MR. BIANCO: Our defense in this case
9 is consisting of essentially legal argument, with
10 respect to interpretation of the zoning code.

11 As the Board is aware, there is a
12 component of 25-725 that requires certain zoning,
13 and that's where our argument goes.

14 CHAIRPERSON ANDERSON: All right, Mr.
15 Bianco, you don't need to go through that. I was
16 just trying to get some clarification so you can
17 do that at later on.

18 I just wanted to get some
19 clarification how this matter is going to
20 proceed. As stated before, we are aware that the
21 burden is on the government to prove, and the
22 licensee doesn't have to do anything.

23 The licensee can just stand and sit
24 back, and if the government has not met its
25 burden, then the licensee of course, can argue

1 that the case should be dismissed because the
2 government has not met its burden.

3 I was just trying to ask for, for
4 clarification.

5 Okay, we're fine then.

6 Does the government wish to make an
7 opening statement?

8 MR. JORDAN: Yes, Mr. Chairperson.

9 CHAIRPERSON ANDERSON: Yes, sir.

10 MR. JORDAN: All right, good afternoon,
11 Mr. Chairperson and Board members.

12 We are here today in the show cause
13 matter of Empire D.C., LLC, trading as Empire
14 Lounge.

15 The show cause notice issued in this
16 matter concerns the charge that the licensee
17 played music at such an intensity, that it was
18 heard in a premises outside of the licensed
19 establishment, in violation of D.C. Code Section
20 25-725(a).

21 The District has the burden of proving
22 by substantial evidence, that the establishment
23 violated D.C. Code Section 25-725.

24 That standard is set by this Board's
25 regulations, specifically 23 DCMR, Section

1 1711.6.

2 The facts will establish that on
3 Saturday, October 30, 2021, Alcoholic Beverage
4 Regulation Administration Investigators Felicia
5 Dantzler and Mark Brashears, visited the
6 establishment, and determined that it played
7 music with such intensity, that it could be heard
8 outside.

9 At approximately 12:26 a.m.,
10 Supervisory Investigator Brashears, received a
11 complaint through the ABRA hotline concerning
12 noise coming from the establishment.

13 He forwarded that complaint to Lead
14 Investigator Dantzler, who that morning was
15 working on the noise task force.

16 The investigators verified that the
17 noise was audible outside of the establishment.
18 Investigator Dantzler then contacted the
19 complainant, and asked to verify if the music was
20 audible within the home.

21 Dantzler entered the home, ensured all
22 windows were closed, and verified she could hear
23 music. She then called Investigator Brashears
24 located still near the establishment, to confirm
25 the music.

1 Investigator Dantzler then discussed
2 the complaint with the establishment's owner.

3 After Investigator Dantzler discussed
4 with the owner, Investigator Brashears confirmed
5 that the establishment is located in an Arts 2
6 zoned district.

7 Under D.C. Code Section 725(b),
8 establishments located in either a commercial or
9 manufacturing district, are exempt from a noise
10 violation enforcement.

11 According to the District of Columbia
12 Municipal Regulations, Arts 2 district is a
13 special purposes zone, created to emphasize
14 residential development.

15 In this agency's interpretation of
16 D.C. Code Section 725(b), Arts 2 is neither a
17 commercial, nor a manufacturing district.

18 As the District of Columbia Court of
19 Appeals stated, in the District of Columbia
20 Department of the Environment vs. East Capitol
21 Exxon, agencies are entitled to deference in the
22 interpretation of the statutes they administer.

23 At the end of this hearing, the
24 District requests that the Board apply penalty
25 consistent with D.C. Code Section 25-830.

1 Thank you.

2 CHAIRPERSON ANDERSON: Good afternoon.

3 Mr. Bianco, do you wish to make an opening
4 statement or do you defer until you present your
5 case, sir?

6 MR. BIANCO: I would like to make a
7 brief opening statement, and with sensitivity to
8 the Board's schedule today, I will cut right to
9 the chase.

10 Even if we assume that the government
11 can make its burden on the practical elements of
12 noise, their case fails on the zoning element.

13 Arts 2 is unquestionably a commercial
14 zone, and to aid in the presentation of our case,
15 we have two exhibits that are part of the law and
16 public record, that we'll be asking the Board to
17 take judicial notice of.

18 Specifically, the 2016 Zoning Atlas,
19 which is referenced in the text of 25-725; and,
20 second, the committee report on the ABC
21 Procedural and Technical Amendment Act of 2020.

22 And, what that document does is it
23 explains the most recent change to 25-725. This
24 particular address, and this particular
25 residence, has always been and remains in a

1 commercial zone.

2 The change of the nomenclature in 2016
3 by the Zoning Board, does not impact the usage or
4 boundaries of this particular zone.

5 The agency's interpretation of 25-725,
6 and the associated zoning regulations, is
7 inconsistent and incorrect.

8 Based on that, they are not entitled
9 to the deference afforded by the Court of
10 Appeals, which is a general statement where the
11 agency applies its regulations consistently.

12 They have not done so here, and the
13 evidence at the end of this hearing will show
14 that.

15 Thank you.

16 CHAIRPERSON ANDERSON: So let me ask
17 you a question, counsel.

18 MR. BIANCO: Yes?

19 CHAIRPERSON ANDERSON: Is your client
20 contesting the fact that the complaint, the noise
21 complaint, that there was a noise complaint?

22 The purpose of this case is that there
23 was a complaint that was filed by, by the
24 community. That ABRA went, did an investigation,
25 and confirmed that the noise was coming from,

1 from this licensee.

2 Is that being contested?

3 MR. BIANCO: Not at all.

4 CHAIRPERSON ANDERSON: So, what's being
5 contested? It's the application of the law to
6 these, to this application of the law because
7 factually, so we don't need to have testimony
8 because factually, I'm asking --

9 (Simultaneous speaking.)

10 MR. BIANCO: Yes.

11 CHAIRPERSON ANDERSON: -- factually,
12 what the government asserts is correct.

13 That there was a legitimate noise
14 complaint that was filed, and that it, that the
15 agency went, it investigated, it was
16 investigated, and that it was confirmed.

17 MR. BIANCO: Well, what I would say is
18 as to those practical elements of the noise
19 complaint, and the investigation of the noise
20 complaint, and the substantiation of the noise
21 complaint, we have no dispute.

22 I think where we have an issue that
23 may require some testimony, is on the issue of
24 whether an Arts 2 zone, or I'm sorry, the
25 agency's interpretation of whether an Arts 2 zone

1 is commercial.

2 And, my, just to sort of pull back the
3 curtain, my planned cross-examination was where
4 does this determination come from? Is it part of
5 a written policy? Is it common knowledge? Who
6 makes the determination?

7 All of these things, I think factually
8 bear on the interpretation of the statute.

9 CHAIRPERSON ANDERSON: And, Mr. Jordan,
10 and I, with where we are I'm not sure, I'm asking
11 you. Because as I said before, it doesn't make
12 sense for us to have testimony on, it's the
13 interpretation.

14 So, I'm not going to tell you how to.
15 Well, you know what it is, this is what I'm going
16 to do. Present your case because this might be a
17 case, this might be a case that depending
18 whatever decision the Board makes, this is a case
19 that might be, could be appealed.

20 So, therefore, I want to make sure
21 that we have a proper administrative record.

22 So, let's, I'll have you present your
23 case, sir, in the way you planned to present your
24 case. Keeping in mind the argument that's been
25 made by, by counsel.

1 All right, do you have a witness, sir?

2 MR. JORDAN: Yes, Mr. Chairperson. The
3 District calls Lead Investigator Felicia
4 Dantzler.

5 CHAIRPERSON ANDERSON: Ms. Dantzler,
6 can you raise your right hand, please?

7 Do you swear or affirm to tell the
8 truth, and nothing but the truth?

9 INVESTIGATOR DANTZLER: I affirm.

10 CHAIRPERSON ANDERSON: Thank you. Your
11 witness, sir.

12 MR. JORDAN: Thank you.

13 Investigator Dantzler, could you
14 please state and spell your name?

15 INVESTIGATOR DANTZLER: Felicia
16 Dantzler, F like Frank, E-L-I-C-I-A D like David,
17 A-N T like time, Z like zebra, L-E-R.

18 DIRECT EXAMINATION

19 BY MR. JORDAN:

20 Q And, where are you currently employed?

21 A The Alcoholic Beverage Regulation
22 Administration.

23 Q And, what's your position at this
24 administration?

25 A Lead Investigator.

1 Q And, how long have you been a lead
2 investigator?

3 A Three years.

4 Q And, what are your duties and
5 responsibilities in that position?

6 A I investigate establishments that sell
7 alcoholic beverages, and I conduct regulatory
8 inspections of said establishments.

9 Q And, where were you assigned on
10 October 30, 2021?

11 A I was assigned to work the ABRA noise
12 task force.

13 Q Could you explain what this task force
14 is?

15 A The task force, generally it runs from
16 April through October of that particular year.
17 The investigator is assigned, an investigator
18 from the Department of Consumer and Regulatory
19 Affairs, who is experienced with a noise meter.

20 And, we have a determined list of
21 establishments that we visit. And, we also
22 respond to calls that come into our hot phone for
23 noise violations.

24 Q Okay, and are you familiar with Empire
25 Lounge?

1 A Yes.

2 Q How are you familiar with the
3 establishment?

4 A I have conducted several
5 investigations involving the establishment, or
6 had to deliver some sort of legal notification.
7 And, I also had to go to the establishment for
8 noise matters.

9 Q And, on October 30, did you have cause
10 to visit Empire Lounge?

11 A Yes.

12 Q And, why did you visit Empire Lounge?

13 A My supervisor Mark Brashears,
14 telephoned me to state that a noise complaint had
15 come in.

16 Q And, how did the agency receive this
17 complaint?

18 A Through the cell phone, the hot phone
19 that the supervisors carry.

20 Q Okay, and after you were informed of
21 the complaint, what were your actions?

22 A Prior to going to the establishment,
23 S.I. Brashears provided me with the complainant's
24 address.

25 And, so I looked up the complainant's

1 address, to ensure that the complainant was in a
2 zone that gives standing for us to regulate.

3 Q And, why did you ensure the zoning of
4 this establishment?

5 A I had to ensure that the complainant
6 resided, or in a zone that would allow that
7 person to have standing.

8 So, if the complainant resided in
9 commercial or a manufacture zone, that would
10 exclude them from, from me enforcing the
11 complaint.

12 Q Okay. And, after verifying the zoning
13 of this complainant, what were your next actions?

14 A I made my way to Empire Lounge, and
15 arrived maybe approximately 20 or so minutes
16 later.

17 Q Okay, and did you meet with anyone
18 there?

19 A Yes. I met with S.I. Brashears. I
20 was in the company of Christopher Peters, who was
21 the DCRA investigator who was assisting me that
22 night.

23 Q Okay. And, once you met with
24 Investigator Brashears, did you do anything to
25 determine whether noise was emanating in the

1 area?

2 A Yes. When Investigator Peters and
3 myself arrived, we saw S.I. Brashears was
4 standing a few doors away from Empire.

5 And, then I asked him where the
6 complainant reside, which he told me it was
7 behind Empire Lounge.

8 And, so we went to the rear of the
9 establishment and from there, we could, I could
10 hear some bass coming from the rear of the
11 establishment.

12 Q And, how did you verify that that was
13 the rear of the establishment?

14 A The establishment's address, the
15 numeric, so on the back door.

16 Q Okay. And, so once you verified that
17 was the establishment, what did you do next?

18 A I then asked S.I. Brashears for a
19 contact number for the complainant. And, then
20 called the complainant and identified myself, and
21 asked if he was still willing to have an ABRA
22 investigator enter his home to see if music could
23 be heard within his residence.

24 Q And, did you enter the complainant's
25 home?

1 A Yes. Prior to going, I asked S.I.
2 Brashears if he could remain in the alley, so I
3 can communicate with him once I was inside the
4 complainant's home.

5 Q And, within the home, what were your
6 steps to determine whether music was heard?

7 A So, the complainant met us like in the
8 downstairs area outside his home. And, he
9 welcomed us inside. The lights were on in the
10 front room, and I also noticed a light on in a
11 rear room. There was a female sitting on the
12 couch.

13 But there was really no, no sound in
14 the front area, but I was distracted because I
15 saw something from the corner of my eye, and I
16 noticed that was the television that was on.

17 But I didn't hear any volume from the
18 television.

19 Q And, were any windows open?

20 A No. The complainant asked
21 Investigator Peters and myself to follow him to a
22 rear room, which ended up being a bedroom.

23 And, standing, as I was standing near
24 the bed and the window, I can hear some bass,
25 some thumping inside his home.

1 Q Okay, and did you do anything to
2 verify that that was the same noise you heard
3 emanating from Empire Lounge?

4 A Yes. Prior to calling S.I. Brashears,
5 I asked the owner if the, the complainant, if the
6 window was open. And, he stated that it was not.

7 And, I asked him to verify, and he
8 just like automatically moved his hand and moved
9 back the window covering. And, I can see that
10 the window was closed.

11 So, at that time, I then called S.I.
12 Brashears asking of him was he still in the rear,
13 which he confirmed he was. And, I asked him, I
14 asked him did he, I hear thumping, is that what
15 he hears, kind of like some beats, you know,
16 moving.

17 Q Uh huh.

18 A Some bass moving. And, he heard the
19 same sounds that I heard inside the residence.

20 Q And, would that substantiate the noise
21 complaint?

22 A (No audible response.)

23 Q So, what did you do afterwards?

24 A I advised the complainant that the
25 violation was established, and that I would

1 create a report. And, advised the owner once I
2 left his home.

3 MR. JORDAN: Okay. And, Mr.
4 Chairperson, permission to share my screen?

5 CHAIRPERSON ANDERSON: Ms. Fashbaugh,
6 can you please allow Mr. Jordan to share his
7 screen, please?

8 MR. JORDAN: Investigator Dantzler, I'm
9 going to show you what is marked as Government
10 Exhibit A.

11 And, Mr. Chairperson, at this time the
12 District would like to confirm that what has been
13 marked as Government Exhibit A, is in evidence as
14 under 17 DCMR Section 1713.10?

15 CHAIRPERSON ANDERSON: Yes, Mr. Jordan,
16 it is not on the Board's record but it is in the,
17 it is in evidence.

18 Thank you.

19 (Whereupon, the above-
20 referred to document was
21 received into evidence as
22 Government Exhibit No. A.)

23 MR. JORDAN: Thank you, Mr.
24 Chairperson.

25 Investigator Dantzler, can you

1 identify what this is, please?

2 INVESTIGATOR DANTZLER: Yes, that is my
3 investigative report that I authored.

4 MR. JORDAN: And, are there any
5 attachments to this report?

6 INVESTIGATOR DANTZLER: There's a
7 zoning report.

8 BY MR. JORDAN:

9 Q And, did you add this to the report?

10 A I did. S.I. Brashears took the zoning
11 report from the, took the zoning map from the
12 zoning website and provided it to me for the
13 report.

14 Q Okay. I'll stop sharing my screen.

15 Investigator Dantzler, at any point
16 while you were investigating this noise
17 complaint, did the music ebb, or seem to stop?

18 A I can't say that it did or did not.
19 Once I established the violation, I just returned
20 to the front of the establishment and made my
21 identity known.

22 And, asked to speak with the ABC
23 manager and owner. The owner stepped out, and I
24 advised him of the violation.

25 Q Okay.

1 MR. JORDAN: No further questions, Mr.
2 Chairperson.

3 CHAIRPERSON ANDERSON: Mr. Bianco?

4 MR. BIANCO: Yes. Good afternoon,
5 Investigator Dantzler.

6 So, I understand from your testimony
7 and your report, that on Saturday, October 30,
8 you looked at the zoning Atlases to determine
9 that the complainant resides in an Arts 2 zone,
10 is that correct?

11 INVESTIGATOR DANTZLER: Not quite. I
12 went to the zoning website and put in the
13 address. And, it came, in the box it tells you
14 on the left-hand side of the zoning page that I
15 looked at, it advised me which zone it was in.

16 CROSS-EXAMINATION

17 BY MR. BIANCO:

18 Q Okay. And, that's how you determined
19 it was in an Arts 2 zone?

20 A Yes, sir.

21 Q Okay. And, I believe I heard you
22 testify that your understanding of the statute,
23 is that 25-725 does not apply to a residence
24 located in a commercial or manufacturing zone.

25 Is that an accurate recitation of your

1 testimony?

2 A I'm not certain if I stated residence,
3 but my understanding of, if the complainant isn't
4 in that commercial or manufacture area, if they
5 were in that commercial or manufacturing area,
6 they had no standing to complain.

7 Q Okay. And, on page 2 of your report,
8 you indicate on Saturday, October 30, a review of
9 the zoning map by S.I. Brashears, listed both
10 Empire Lounge, and the complainant's residence in
11 an Arts 2 zone.

12 And, was it your testimony that that
13 determination was made before you went out and
14 investigated the complaint?

15 A Yes. Those are two different actions,
16 actually. So, the first action I did prior to
17 going to the establishment, is when I looked up
18 the information on my phone.

19 The second action came after, well
20 during my crafting of my report, which was like a
21 week or so later.

22 Q Okay, so here where it says on
23 Saturday, October 30, 2021, which is the same day
24 as the complaint, a review of the D.C. zoning map
25 by S.I. Brashears, listed both Empire Lounge, and

1 the complainant's residence in an Arts 2 zone.

2 Was that the search that you conducted
3 on the day of the complaint, or was that
4 referring to the search that Investigator
5 Brashears did a week later?

6 A That's S.I. Brashears' actions. I
7 just looked, I didn't, I never looked at the
8 location of the establishment's zone.

9 Q Okay. So, that October 30 date is
10 actually, it should actually read that it's
11 approximately a week later when S.I. Brashears
12 conducted that search.

13 Is that correct?

14 A No, sir. What S.I. Brashears did on
15 that night, I have no knowledge of what he did
16 prior to me getting there.

17 Q Okay. But, so what I'm driving at is
18 what you, I'm going to read this sentence and you
19 can tell me what you mean by it.

20 It says, on Saturday, October 30,
21 2021, a review of the D.C. zoning map by S.I.
22 Brashears, listed both Empire Lounge and the
23 complainant's residence in an Arts 2 zone.

24 Could you please tell me when that
25 search was conducted by S.I. Brashears?

1 A You would have to ask S.I. Brashears
2 that question.

3 Q Very well.

4 So, how did you determine on the day
5 of the complaint, that Arts 2 is not a commercial
6 zone?

7 A Because it doesn't state commercial
8 zone, and it didn't state manufacturer's zone.
9 It would either be a C or an M, sorry --

10 (Simultaneous speaking.)

11 Q Okay.

12 A I'm sorry I'm in a room, the lights
13 went out. My apologies.

14 Q Okay, so it's your testimony that
15 because the zone is not named commercial, and
16 then a zone number, it doesn't qualify as a
17 commercial zone.

18 Is that a correct understanding?

19 A Yes, sir.

20 Q Okay. And, does the agency have a
21 written policy on which zones qualify as
22 commercial and manufacturing, versus other types
23 of zones?

24 A I haven't seen one.

25 Q Okay. Is there some type of an

1 unwritten or verbal policy to that effect?

2 A No, we go by the statute that we
3 follow, that talks about referring to the D.C.
4 zoning map for assistance.

5 Q Okay, so, and who, who makes the
6 determination whether a zone qualifies as
7 commercial or not?

8 Is that a determination made by the
9 individual investigator, or somebody else within
10 the agency?

11 A The D.C. Department of Zoning does.

12 Q I understand that the D.C. Department
13 of Zoning publishes the different zones, but when
14 you receive a complaint to the agency under 25-
15 725, who within the agency decides whether or not
16 that particular zone qualifies as commercial?

17 Is the determination made by the
18 individual investigator who fields the complaint,
19 or by somebody else within the agency?

20 A I can't say what others do, but when
21 I get complaints, I run the address. When
22 there's a complainant, I run the address to see
23 if they have standing.

24 And, if they have standing, then I
25 take the steps that I did with Empire. And, if

1 they don't have standing, then I just make a
2 notification to the establishment that hey, you
3 got a complaint, if you can turn down the music,
4 that would be nice.

5 Q Okay.

6 A But they're not, they don't have to.

7 Q Okay. So, when you receive a
8 complaint, you make a determination as to whether
9 or not the zone qualifies as commercial.

10 And, after you make that
11 determination, do you have to seek anybody else's
12 approval of that determination, or is it within
13 your discretion?

14 A The approval comes through the D.C.
15 zoning map.

16 Q Okay. But you don't have to ask
17 somebody within the agency, if your determination
18 is a correct one?

19 A Correct.

20 Q Okay. And, do you give any
21 consideration to how the Zoning Board -- strike
22 that.

23 How do you treat mixed use zones, for
24 the purpose of determining whether or not it's
25 commercial?

1 A I don't read the definitions of the
2 codes, I just look to see what, what their code
3 is.

4 So, I don't go into the definition.

5 Q I understand. So the determination is
6 based on how the zone is named by the Zoning
7 Commission, correct?

8 A Yes, sir.

9 Q Okay, great.

10 MR. BIANCO: Thank you very much
11 Investigator, I appreciate your testimony.

12 INVESTIGATOR DANTZLER: Yes, sir,
13 you're welcome.

14 CHAIRPERSON ANDERSON: Any questions by
15 the Board members?

16 MEMBER GRANDIS: Mr. Chairman?

17 CHAIRPERSON ANDERSON: Yes, Mr.
18 Grandis?

19 MEMBER GRANDIS: Hi Investigator, thank
20 you for being here today, and your testimony on
21 this matter.

22 When the noise complaint was received
23 by you, after you received that noise complaint,
24 when was your first time that you went into
25 Empire?

1 INVESTIGATOR DANTZLER: I got to Empire
2 around I think it was 2:50, I believe, or 1:50.
3 I'll have to look at my report that I authored.

4 But I know it took me around 20
5 minutes. Spoke with Investigator Brashears, so I
6 was probably inside the establishment, I mean
7 inside the home within two, two and a half
8 minutes.

9 MEMBER GRANDIS: Okay, so just so I
10 understand the timeline. Upon receiving the
11 complaint, when you went to that location, you
12 went to visit the complainant, correct?

13 INVESTIGATOR DANTZLER: Yes.

14 MEMBER GRANDIS: Okay, and then you
15 also stood in the alley at some point?

16 INVESTIGATOR DANTZLER: Yes.

17 MEMBER GRANDIS: Okay. Did you go into
18 Empire prior to writing up the violation, or
19 after writing up the violation?

20 INVESTIGATOR DANTZLER: After.

21 MEMBER GRANDIS: So, is it procedures
22 by our investigators that when there is a noise
23 complaint, that one of the investigators would be
24 going inside the licensee, while the other was
25 either in an alley, or in the complainant's

1 apartment?

2 INVESTIGATOR DANTZLER: It actually
3 varies whether the investigator who's staying at
4 the establishment, if they go inside.

5 MEMBER GRANDIS: Okay, and to your
6 knowledge and I think, I think your report had an
7 indication of other licensees nearby.

8 Were you able to determine if any
9 establishment nearby also was having music
10 played?

11 INVESTIGATOR DANTZLER: That wasn't my
12 focus. Empire was the only establishment I was
13 focused on.

14 Although 9th Street is always
15 bustling, you know, you hear music. The oddest
16 thing is that you can go to the rear of the
17 establishment and it's quiet.

18 So, it was easy to determine where the
19 sound is coming.

20 MEMBER GRANDIS: Okay, so thank you
21 very much.

22 Thank you for that.

23 CHAIRPERSON ANDERSON: Any other
24 questions, any other Board members?

25 (No audible response.)

1 CHAIRPERSON ANDERSON: Mr. Bianco, any
2 followup based on the questions that was asked by
3 the Board?

4 MR. BIANCO: No, Mr. Chair.

5 CHAIRPERSON ANDERSON: Mr. Jordan, any
6 redirect?

7 MR. JORDAN: Some redirect, Mr. Chair.

8 Investigator Dantzler, just to
9 confirm, prior to investigating Empire Lounge,
10 you did determine what zone they were in?

11 INVESTIGATOR DANTZLER: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. JORDAN:

14 Q And, after the investigation occurred,
15 supervisory investigator Brashears also
16 investigated the zoning of Empire Lounge?

17 A I don't know when you say
18 investigated, I don't, I'm not clear what other
19 steps S.I. Brashears took, but I do know that he
20 presented me with the zoning map.

21 Q Exactly that.

22 MR. JORDAN: No further questions, Mr.
23 Chair.

24 CHAIRPERSON ANDERSON: Thank you, Ms.
25 Dantzler, for your testimony. You're free to go.

1 Mr. Jordan, do you have another
2 witness?

3 MR. JORDAN: Yes, Mr. Chair. The
4 District calls Supervisory Investigator Mark
5 Brashears.

6 CHAIRPERSON ANDERSON: Supervisor
7 Investigator Mr. Brashears, can you please raise
8 your right hand, please?

9 Do you swear or affirm to tell the
10 truth and nothing but the truth?

11 INVESTIGATOR BRASHEARS: I swear.

12 CHAIRPERSON ANDERSON: Okay, your
13 witness.

14 MR. JORDAN: Thank you, Mr. Chair.

15 Investigator Brashears, could you
16 please state and spell your name for the record?

17 INVESTIGATOR BRASHEARS: First name is
18 Mark, M-A-R-K, last name is Brashears, B-R-A-S-H-
19 E-A-R-S.

20 DIRECT EXAMINATION

21 BY MR. JORDAN:

22 Q And, where are you currently employed?

23 A The Alcoholic Beverage Regulation
24 Administration.

25 Q And, what's your position there?

1 A Supervisory Investigator.

2 Q And, how long have you been a
3 supervisory investigator?

4 A Over three years.

5 Q And, what responsibilities do you have
6 in that position?

7 A I basically supervisor a team of five
8 investigators, whose job it is to go out and
9 conduct inspections and investigations of ABC
10 licensed establishments throughout the District
11 of Columbia.

12 Q Okay, and are you familiar with Empire
13 Lounge?

14 A I am.

15 Q How are you familiar with it?

16 A In addition to, you know, routine
17 visits to 9th Street and being familiar with the
18 establishment, I received a noise complaint on
19 Saturday, October 30.

20 Q And, what's the normal procedure to go
21 through once you've received a noise complaint?

22 A On this instance, we had the noise
23 task force operating, so I reached out to Lead
24 Investigator Dantzler. She was assigned to the
25 noise task force.

1 But due to atmospheric conditions that
2 evening, it had been raining off and on, the DCRA
3 inspector assigned to the noise task force could
4 not use his noise meter.

5 So at that point, I realized we would
6 have to substantiate it by going into the
7 residence. So, I told her that I would meet her
8 over there.

9 Q Okay, and so once Investigator
10 Dantzler arrived, what were your next steps to
11 substantiate the noise complaint?

12 A We, myself, Investigator Dantzler and
13 the DCRA inspector, basically walked the alley
14 and pinpointed that the music and the bass that
15 we were hearing, was coming from the back of
16 Empire Lounge.

17 Q And, how did you know that that was
18 Empire Lounge?

19 A The establishment's address is written
20 on the rear door.

21 Q And, so once you identified the noise
22 came from Empire Lounge, what were your next
23 steps?

24 A I gave the contact information of the
25 complainant to Investigator Dantzler. She made

1 contact with him, and L.I. Dantzler and the DCRA
2 inspector visited the complainant's home.

3 Q And, what did you do while the two,
4 Investigator Dantzler and Inspector Peters, were
5 in the complainant's home?

6 A I stayed in the alley directly behind
7 the establishment, Empire Lounge.

8 Q And, while you were there, did the
9 music seem to flow, or change volume?

10 A No.

11 Q And, did Investigator Dantzler contact
12 you from the complainant's home?

13 A She called me via telephone, yes, sir.

14 Q And, what did you do with, on that
15 call?

16 A She asked me to describe what I was
17 hearing, so I basically mimicked the, the beat
18 and the lyrics that I could hear.

19 And, she substantiated that she was
20 hearing the same beat inside of the complainant's
21 residence.

22 Q And, so once the complaint had been
23 substantiated, what were your next steps?

24 A After that, Investigator Dantzler and
25 the DCRA Inspector Peters, visited the

1 establishment to notify the establishment of the
2 complaint.

3 Q And, did you further investigate the
4 establishment?

5 (Pause.)

6 A (No audible response.)

7 CHAIRPERSON ANDERSON: Mr. Brashears
8 has been, I think he's frozen.

9 (Pause.)

10 CHAIRPERSON ANDERSON: Mr. Brashears,
11 can you hear us?

12 INVESTIGATOR BRASHEARS: I apologize.
13 It seems that the connection is cutting in and
14 out.

15 CHAIRPERSON ANDERSON: Yes, sir, there
16 was a question they need to repeat.

17 Repeat the question, please, Mr.
18 Jordan.

19 MR. JORDAN: Investigator Brashears,
20 did you investigate the establishment further
21 after Investigator Dantzler made contact?

22 INVESTIGATOR BRASHEARS: I'm sorry, Mr.
23 Jordan, it's coming through garbled.

24 BY MR. JORDAN:

25 Q Rephrase. Investigator Brashears, did

1 you investigate the establishment's zoning?

2 A Yes, I did.

3 Q And, what did you determine the zone
4 for the establishment was?

5 A So, I'm somewhat familiar with the
6 area, but, you know, prior to going over I looked
7 up the zoning.

8 And, later in the evening, actually
9 you know, printed the map that I provided to L.I.
10 Dantzler.

11 But what I determined, basically
12 looking at the zoning it was listed as an Arts 2
13 designation.

14 Q Okay.

15 MR. JORDAN: And, Mr. Chairperson, I'll
16 now share my screen.

17 CHAIRPERSON ANDERSON: Do you still
18 have the ability?

19 MR. JORDAN: Yes, Mr. Chairperson.

20 Investigator Brashears, let me know if
21 you can see what I'm currently displaying.

22 INVESTIGATOR BRASHEARS: I can see it.

23 BY MR. JORDAN:

24 Q Is this the zoning map that you looked
25 up?

1 A Yes, sir, it is.

2 Q And, can you identify the
3 establishment on this map?

4 A It is the darker shaded grayish blue
5 square with the dot in the middle.

6 Q Is this a correct kind of square?

7 A Yes.

8 Q Okay. And, what, does this map
9 display the zone that the establishment is in?

10 A It does.

11 Q And, what zone is that?

12 A It's Arts 2.

13 Q All right, thank you. I'll stop
14 sharing.

15 MR. JORDAN: No further questions at
16 this time, Mr. Chairperson.

17 CHAIRPERSON ANDERSON: Thank you.

18 Your witness, Mr. Bianco.

19 MR. BIANCO: Thank you.

20 Investigator Brashears, you were here
21 for Investigator Dantzler's testimony, correct?

22 INVESTIGATOR BRASHEARS: I was.

23 CROSS-EXAMINATION

24 BY MR. BIANCO:

25 Q Okay, and it was her testimony that

1 the determination of whether a particular zone
2 qualifies as commercial, is based on the name of
3 the zone.

4 Is that your understanding of how that
5 determination is made?

6 A So, basically we go off of 25-725,
7 where it talks about the commercial and
8 manufacturing zones. As she said, basically
9 individuals living in those zones would not have
10 standing.

11 So, based on that, any C1, 2, 3, or 4,
12 or M-class of zone would not have the ability to
13 make a complaint. I mean they could, but they
14 wouldn't have standing based on where they, where
15 they reside.

16 Q Okay, so the agency's position, and I
17 just want to make sure I have the testimony
18 correct. The agency's position is any zone that
19 is not labeled C1, C2, C3, C4, CM, or M, does not
20 qualify for this exemption.

21 Is that correct?

22 A Those are the exempt, yes, sir.

23 Q Okay. Would it surprise you to learn
24 that those zones that were just listed, no longer
25 exist?

1 A I would not be aware of that, sir.

2 Q Okay. For purposes of -- strike that,
3 never mind.

4 MR. BIANCO: I have no further
5 questions. Thank you very much.

6 CHAIRPERSON ANDERSON: Any questions
7 for the witness?

8 (No audible response.)

9 CHAIRPERSON ANDERSON: Any redirect,
10 Mr. Jordan?

11 MR. JORDAN: No redirect, Chairperson.

12 CHAIRPERSON ANDERSON: Thank you, Mr.
13 Brashears for your testimony.

14 All right, Mr. Jordan, do you have
15 another witness?

16 MR. JORDAN: No further witnesses, Mr.
17 Chairperson.

18 CHAIRPERSON ANDERSON: Do you rest,
19 sir?

20 MR. JORDAN: Yes.

21 CHAIRPERSON ANDERSON: Mr. Bianco?

22 MR. BIANCO: Mr. Chair, I don't have
23 any witnesses. We did submit two exhibits that
24 are public record, and I think actually part of
25 the law.

1 CHAIRPERSON ANDERSON: What are the
2 documents that you --

3 MR. BIANCO: Sure. Exhibit No. 1 is
4 the 2016 zoning Atlas map of this particular
5 location.

6 And, if it helps the Board, I intend
7 to submit written findings of fact and
8 conclusions of law, which will refer to the
9 documents, and give the Board the opportunity to
10 consider them more fully.

11 So, Exhibit No. 1 is just a print out
12 of the zoning map from 2016, which is prior to
13 the zoning change.

14 And, Exhibit No. 2 is just the
15 committee report from the 2020 amendment to the
16 ABC Act, which is called the Technical and
17 Clarifying Amendment of 2019.

18 And, it is as published by the
19 council. The Committee on Economic Development.
20 Which again, we intend to simply refer to in our
21 proposed findings of fact and conclusions of law.

22 I don't think either of those two
23 things are terribly controversial.

24 CHAIRPERSON ANDERSON: Mr. Jordan?

25 MR. JORDAN: No objections to the

1 exhibits, Mr. Chairperson.

2 CHAIRPERSON ANDERSON: So moved.

3 I guess you've further, you stated
4 that you're going to do findings of fact and
5 conclusion of law, so I assume you would, you are
6 going to explain to the Board why is the, what
7 the relevancy of the committee report to what we
8 have to, to determine today.

9 All right, anything else you want to
10 say, sir?

11 MR. BIANCO: Nothing else from the
12 respondent in this case.

13 I know the last time we did one of
14 these, the Board wanted to hear a brief oral
15 closing. I'm glad to do that if the Board
16 prefers, but don't really feel terribly moved to.

17 CHAIRPERSON ANDERSON: Do you rest
18 then, I guess on, you're going to do some of the
19 other submissions and so do you rest?

20 MR. BIANCO: Yes.

21 CHAIRPERSON ANDERSON: Mr. Jordan, do
22 you wish to make a closing statement?

23 MR. JORDAN: Yes, Mr. Chairperson.

24 CHAIRPERSON ANDERSON: Go ahead.

25 Go ahead, sir.

1 MR. JORDAN: Mr. Chairperson and
2 members of the Board, the District has met its
3 burden under 23 DCMR, Section 1711.6, and has
4 proven by substantial evidence, that the licensee
5 played music heard within a neighboring home, in
6 violation of D.C. Code Section 25-725(a).

7 You heard from both Lead Investigator
8 Dantzler, and Supervisory Investigator Brashears,
9 who verified the complaint on October 30, 2021.

10 The investigators identified Empire
11 Lounge as the source of music within the
12 neighborhood.

13 Investigator Dantzler then visited the
14 complainant's home, while Investigator Brashears
15 remained outside. Once Investigator Dantzler
16 confirmed that no windows were open, she
17 contacted Investigator Brashears to verify the
18 noise heard.

19 Both Investigator Dantzler and
20 Brashears confirmed that they heard the same
21 bass, the same lyrics, and the same music
22 emanating from Empire Lounge in the complainant's
23 home.

24 Testimony also demonstrated that the
25 investigators informed the establishment their

1 music was audible outside of the establishment.

2 Investigator Brashears then confirmed
3 the establishment's zoning. Empire Lounge is
4 located in a special use zone designated Arts 2.

5 According to zoning regulations
6 specifically 11-K DCMR Section 800.3, the purpose
7 of Arts 2 zone is to permit medium density mixed-
8 use development, with an emphasis on residential
9 development.

10 This area is an intended residential
11 zone. Not commercial or manufacturing.

12 An agency's interpretation of the
13 statute it enforces, is entitled to deference as
14 the D.C. Court of Appeals held in The District of
15 Columbia Department of the Environment vs. East
16 Capitol Exxon.

17 Here, the agency has enforced the
18 statute to prevent noise emanations in
19 residential districts.

20 Unless that interpretation is
21 unreasonable or inconsistent, it is entitled to
22 deference.

23 The District has therefore, proven the
24 charge in the notice to show cause, that the
25 establishment emanated music audible in a

1 neighboring home.

2 The District recommends that the Board
3 apply a penalty consistent with D.C. Code Section
4 25-830.

5 Thank you.

6 CHAIRPERSON ANDERSON: Thank you, Mr.
7 Jordan.

8 I need to ask you this, Mr. Bianco, so
9 you can, do you want to make a closing statement
10 or not?

11 MR. BIANCO: Yes, I will. I'll make a
12 brief one --

13 CHAIRPERSON ANDERSON: All right.

14 MR. BIANCO: -- just to give the Board
15 some guidance as to where we're going.

16 Our argument in this case is that an
17 Arts 2 zone is commercial. The government
18 cannot, and has not shown that it isn't. And,
19 the basis for this statement is two-fold.

20 One, Arts 2 allows for commercial
21 uses. There was a comprehensive overhaul of the
22 zoning code in 2016. And, in that overhaul the
23 Zoning Commission created dozens of zones
24 substantially all of them, every single one,
25 allows some type of residential use with the

1 exception of some special waterfront zones and
2 manufacturing zones.

3 But the opposite is not true. A
4 number of residential zones are exclusively zoned
5 for residential, and no commercial uses. Those
6 are the zones that this law was intended to
7 protect.

8 Second, the legislative history of 25-
9 725 supports our position. As I mentioned, the
10 zoning code was overhauled in 2016, and in that
11 redrafting, the zones C1 through C5, CM and M,
12 were completely eliminated.

13 The uses are still there, they just
14 changed the names. So as it stands today as we
15 sit here, zero zones in the District of Columbia
16 are called or named commercial. None.

17 Under the old code, the property at
18 issue here where the residents, as well as the
19 establishment is located, was labeled Arts C2.

20 Following the 2016 amendment given the
21 change of the zoning nomenclature, the zone was
22 renamed to simply Arts 2, as the C2 designation
23 was eliminated.

24 The boundaries have not changed, the
25 uses have not changed.

1 Now under the prior version of 25-725
2 that was in effect under the old zoning pre-2016,
3 C1 through C4, CM and M, were specifically
4 exempted. And, this property lied, lied within a
5 C2.

6 The revisions to 25-725 as the
7 committee report will demonstrate, was a
8 technical and clarifying amendment. It was not a
9 substantive amendment changing the law, or its
10 interpretation.

11 However, notwithstanding the change in
12 both the zoning law and 25-725, the agency is not
13 interpreting the law properly. They are still
14 interpreting the law using the old code, that no
15 longer exists.

16 The government can't even present a
17 straight-face argument that this is somehow
18 consistent.

19 The government can't make its burden
20 in this case based on the evidence presented,
21 that this property does not lie within a
22 commercial zone.

23 We look forward to hashing this out
24 more clearly in our proposed findings of fact and
25 conclusions of law, for the Board's

1 consideration.

2 And, as a practical matter, I think
3 it's important to note here, that this isn't for
4 us about a \$350.00 secondary tier violation.

5 This case is the third case based on
6 the same complainant, and it is going to keep
7 happening, and happening, and happening, unless
8 we have a ruling with respect to this zoning
9 issue. Which is why it is incredibly important
10 to my client.

11 We have this situation here that we
12 run into repeatedly on 9th Street, because people
13 moving to a place that they consider to have
14 nuisance uses, and then subsequently complaining
15 about it repeatedly.

16 And, we think in this particular case
17 it is very, very clear that 25-725 does not
18 apply. And, we hope the Board comes to that
19 conclusion.

20 (Pause.)

21 CHAIRPERSON ANDERSON: Thank you, Mr.
22 Bianco.

23 The record is now closed and as stated
24 by counsel, it's the applicant, I'm sorry, the
25 licensee's position that they are going to file

1 proposed findings of fact and conclusion of law.

2 Is that correct, Mr. Bianco?

3 MR. BIANCO: Yes, sir, that is correct.

4 CHAIRPERSON ANDERSON: And, Mr. Jordan?

5 MR. JORDAN: Yes, Mr. Chairperson.

6 CHAIRPERSON ANDERSON: Ninety days from
7 the receipt of the proposed findings of facts and
8 conclusion of law, the Board will issue a
9 decision.

10 The proposed findings and conclusion
11 of law, are due to the Board 30 days after
12 receipt of the transcript.

13 The transcript will be emailed to the
14 parties within the, within the next three weeks.

15 If they change their mind about the
16 filing, they should inform the opposing party,
17 and the Board.

18 All right, so hold on for a minute.

19 Give me a minute, please.

20 (Pause.)

21 CHAIRPERSON ANDERSON: As Chairperson
22 of the Alcoholic Beverage Control Board for the
23 District of Columbia, and in accordance with D.C.
24 Official Code Section 2-575 of the Open Meetings
25 Act, I move that ABC Board hold a closed meeting

1 for the purpose of seeking, for the purpose of
2 seeking legal advice from our counsel.

3 On Case No. 21-CMP-00062, Empire
4 Lounge, pursuant to D.C. Official Code Section 2-
5 575(b)(4)(a), of the Open Meetings Act, and
6 deliberating on Case No. 21-CMP-00062, Empire
7 Lounge, for the reasons cited in D.C. Official
8 Code, Section 2-575(b)(13) of the Open Meetings
9 Act.

10 Is there a second?

11 DDD: Ms. Crockett seconds.

12 CHAIRPERSON ANDERSON: Ms. Crockett has
13 seconded the motion. I will now take a roll call
14 vote on the motion on the floor now that it has
15 been second.

16 Mr. Short?

17 MEMBER SHORT: Mr. Short, I agree.

18 CHAIRPERSON ANDERSON: Mr. Cato?

19 MEMBER CATO: Bobby Cato, I agree.

20 CHAIRPERSON ANDERSON: Ms. Crockett?

21 MEMBER CROCKETT: Rafi Crockett, I
22 agree.

23 CHAIRPERSON ANDERSON: Mr. Hansen?

24 MEMBER HANSEN: Jeni Hansen, I agree.

25 CHAIRPERSON ANDERSON: Mr. Grandis?

1 MEMBER GRANDIS: Edward Grandis, I
2 agree.

3 CHAIRPERSON ANDERSON: And, Mr.
4 Anderson, I agree.

5 As it appears that the motion has
6 passed 6:0:0, I hereby give notice that ABC Board
7 will recess these proceedings to hold a closed
8 meeting, pursuant to Section 2-575 of the Open
9 Meetings Act.

10 Again, I would like to thank the
11 parties for their presentation today, and we are
12 adjourned as far as this case is concerned.

13 Thank you very much and have a great
14 day.

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

16 MR. JORDAN: Thank you, Mr. Chair.

17 CHAIRPERSON ANDERSON: You're welcome,
18 you're welcome.

19 (Whereupon, the above-entitled matter
20 went off the record at 4:10 p.m.)

21

22

23

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