

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:                   :  
   :  
 DMT Group, LLC,                    :  
 t/a Barcode                         :  
 110117th Street NW                : Protest  
 Retailer CT - ANC 2C               : Hearing  
 License #115593                    :  
 Case # 23-PRO-00014               :  
   :  
 (Substantial Change -               :  
 Expansion, Increase in             :  
 Occupancy from 149 to             :  
 361, Sidewalk from 40 to         :  
 62)                                   :  
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Wednesday  
 May 3, 2023

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

PRESENT:

DONOVAN W. ANDERSON, Chairperson  
 BOBBY CATO, JR., Member  
 RAFI ALIYA CROCKETT, Member  
 EDWARD S. GRANDIS, Member  
 JENI HANSEN, Member  
 JAMES SHORT, JR., Member

ALSO PRESENT:

DEREGE HAILEGORGHIS, Applicant  
 MARISSA HARTMAN, Witness  
 STEPHEN O'BRIEN, Applicant's Counsel  
 JOSE ORELLANA, DC ABCA Staff  
 INVESTIGATOR VANESSA PLEITEZ, DC ABCA  
 MICHAEL SHANKLE, ANC 2C  
 ETHAN VALASKOVIC, Witness  
 KERRY VERDI, Protestant's Counsel

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

2 3:17 p.m.

3 CHAIRPERSON ANDERSON: And so the last  
4 case on our calendar is a protest hearing, Case No.  
5 23-PRO-00014, Barcode, License No. 115593. Mr.  
6 Orellana, can you please elevate the licensee and the  
7 protestors in this case, please?

8 JOSE ORELLANA: Mr. O'Brien, your access  
9 has been elevated. Kerry Verdi, your access has been  
10 elevated. Marisa Hartman, your access has been  
11 elevated. Michael Shankle, your access has been  
12 elevated. Susan Valaskovic, your access has been  
13 elevated. And Investigator Vanessa Pleitez, your  
14 access has been elevated. That appears to be all,  
15 Chairman.

16 CHAIRPERSON ANDERSON: Thank you. Could I  
17 have everyone be on camera, please? Let me have the  
18 parties, we need to do some stuff for the record. Mr.  
19 O'Brien, can you please spell and state your name for  
20 the record, please?

21 MR. O'BRIEN: Yes, Mr. Chair, Stephen S-T-  
22 E-P-H-E-N O-'-B-R-I-E-N, and with me is my colleague,  
23 Manalle Mahmoud, M-A-N-A-L-L-E M-A-H-M-O-U-D. I am  
24 looking for our clients.

25 CHAIRPERSON ANDERSON: What's your client's

1 name, Mr. O'Brien, so I can have out IT Specialist  
2 look for that person?

3 MR. O'BRIEN: The client in principal is  
4 Dee, that is D-E-E Hailegorghis, H-A-I-L-E-G-O-R-G-H-  
5 I-S, and our witness is Ashleigh Spiller, A-S-H-L-E-I-  
6 G-H S-P-I-L-L-E-R.

7 CHAIRPERSON ANDERSON: I see that Mr.  
8 Hailegorghis is on our line, so can you turn your  
9 camera on, sir? Can you please spell and state and  
10 your name for the record? You're on mute, sir. You  
11 need to unmute yourself. Yes, sir, please spell and  
12 state your name for the record, please.

13 MR. HAILEGORGHIS: Yes, last name is  
14 Hailegorghis, H-A-I-L-E-G-O-R-G-H-I-S, first name D-E-  
15 R-E-G-E.

16 CHAIRPERSON ANDERSON: And you are, sir?  
17 What's the relation to this establishment?

18 MR. HAILEGORGHIS: I'm a part of the owner.

19 CHAIRPERSON ANDERSON: Thank you. So let's  
20 start with the ANC. Can we have the ANC representative  
21 identify themselves for the record?

22 MR. SHANKLE: Sorry, I was on mute. Hi, I  
23 am Michael Shankle, M-I-C-H-A-E-L last name Shankle S-  
24 H-A-N-K-L-E. I'm the Chair of ANC 2C.

25 CHAIRPERSON ANDERSON: Thank you, sir. And

1 let's see, we have the Dupont Circle, is it Dupont  
2 Circle Association? I'm sorry, let's have Ms. Verdi,  
3 can you introduce yourself for the record, please, and  
4 tell me who you represent?

5 MS. VERDI: Thank you. Good afternoon,  
6 Chairman and the Board members. I'm Kerry Verdi, K-E-  
7 R-R-Y last name V-E-R-D-I. I am the representative of  
8 the protesting group of five or more, and have also  
9 been authorized today to represent the DCC, the Dupont  
10 Circle Citizens Association, should this move forward  
11 to protest. I have three witnesses who are also here,  
12 present on the screen. You will see Marisa Hartman,  
13 Susan Valaskovic, and with her is Gil Livingston.

14 CHAIRPERSON ANDERSON: So this matter is  
15 being protested by the ANC, a group of five or more,  
16 and the Dupont Circle Association, is that correct?

17 MS. VERDI: That is correct.

18 CHAIRPERSON ANDERSON: All right. Good  
19 afternoon everyone again. Sorry for the delay. This  
20 matter is a protest hearing, and this matter today is  
21 a protest hearing. Are there any preliminary matters  
22 that need to be addressed by the Board prior to us  
23 starting this hearing? I believe that a motion was  
24 filed by the protestors. Maybe you can just let us  
25 know the nature of your motion.

1 MS. VERDI: Thank you. Again, this is Kerry  
2 Verdi on behalf of the protestants. We did move, and I  
3 understand that we moved late according to 23 DCMR §  
4 1705, but we moved for an emergency continuance and  
5 believe that the continuance should be granted, both  
6 in the interests of justice and for cause, because we  
7 moved as soon as we uncovered that an issue existed  
8 with the placard and with the representations that had  
9 been made throughout this process.

10 The placard was posted on December 16,  
11 2022, and it advertised that the nature of the  
12 substantial change was, and it says "a request to  
13 expand the premises into contiguous space, increasing  
14 the total occupancy load of the interior from 149 to  
15 361 and the sidewalk café capacity from 40 to 62. The  
16 two issues on the placard were to 1) increase the  
17 occupancy by 212 based on the Applicant's expansion  
18 into contiguous space, and 2) an increase in occupancy  
19 of the sidewalk café.

20 What the placard does not indicate and was  
21 not indicated at any time throughout the mediation or  
22 to the investigator was that what was actually being  
23 sought was a three-fold substantial change. The first  
24 being an increase in the existing capacity in the  
25 existing space from 149 to 268, which is increase of

1 119, plus an additional 93 individuals for the  
2 contiguous space.

3 Because this issue was never made clear on  
4 the placard or during the protest process, it was  
5 neither addressed by the investigator—which is  
6 certainly not the investigator's fault, as it appears  
7 that the Applicant hid this issue throughout this  
8 entire process. At the mediation, which was a lengthy  
9 mediation, they never indicated that they were seeking  
10 to increase the current occupancy load.

11 Our entire discussion focused on the  
12 contiguous space, saying they explained—and this is  
13 where I believe there was a slight of hand—our  
14 occupancy numbers come from square footage all set in  
15 the context of the contiguous space. Then the  
16 Applicant's counsel wrote a letter to the investigator  
17 in which he stated the substantial change proceeding,  
18 the Licensee is seeking only to add to its premise's  
19 contiguous space and to extend its present sidewalk  
20 café to in front of the expansion space.

21 That's the same two issues that are on the  
22 placard, the same two issues that were raised at the  
23 mediation. He never says oh, and we plan to increase  
24 the current capacity by 119. Now another reason I  
25 believe this was obfuscated is that in the statement

1 made to the investigator, they specifically addressed  
2 the increased occupancy space of the sidewalk café,  
3 stating that the sidewalk café has an authorized  
4 capacity of 40, and the requested approval will  
5 increase that capacity to 60.

6 Of course, that increase will require  
7 separate approval from the public space committee of  
8 the Department of Transportation. Never in their  
9 statement to the investigator do they say that they  
10 are seeking to increase the current occupancy of 149  
11 to 268, which would also require separate approval.  
12 Only in settlement discussions on Monday did we learn  
13 of this, at approximately 4:30 Monday afternoon. Our  
14 motion was filed before 9:00 a.m. Tuesday morning.

15 Now in their opposition, Mr. O'Brien said  
16 that we should have known this because in their PIF  
17 they state that there were three issues, and one of  
18 them was to increase total occupancy in existing  
19 premises from 149 to 268. That was in the PIF;  
20 however, given the context of all of our discussions,  
21 we believe this to be a typo because the plans that  
22 are attached clearly identify the new additional  
23 occupancy, the proposed revised patio occupancy.

24 They never at any point say proposed  
25 additional occupancy for the additional space.

1 Further, we at settlement, and Mr. O'Brien noted this  
2 in his opposition, have had ongoing settlement  
3 negotiations for the past few weeks. We did have some  
4 trouble getting them started, but once we did, we have  
5 had settlement negotiations.

6 In that context we had agreed at one point  
7 to say we will agree to the expansion in the  
8 contiguous space provided that it is only used for  
9 pre-booked special events, which is what had been  
10 relayed to us at the mediation and also to the  
11 investigator. They backed away from that, saying no,  
12 we don't want to have to agree that we would only use  
13 it for that space. So then when looking at the PIF, it  
14 seemed to us they were making an argument in the  
15 alternative.

16 One, the increased space where they say  
17 that they would use it only for private events booked  
18 in advance, and the alternative, we thought, was to  
19 just increase the space and hopefully ABCA won't  
20 require us to use it for pre-booked space, or for pre-  
21 booked events, excuse me. So I think it is clear from  
22 this record that they have attempted to hide this  
23 third change that they are seeking throughout the  
24 entire process.

25 Now that puts you, the Board members, in



1 an untenable position of potentially having to rule on  
2 a protest when your investigator was not afforded the  
3 opportunity to investigate and report on a substantial  
4 change of increasing existing space size from 149 to  
5 increase it by another 119 people. Also, protestants  
6 are not supposed to learn of issues in the PIF.  
7 They're supposed to be clearly posted on the placard,  
8 and certainly explained to the protestants throughout  
9 the process.

10 Again, this motion was filed immediately  
11 upon learning of the issue. It was not for delay or  
12 any other reason. The Applicant should not be awarded  
13 for hiding this issue, and ABCA should not be placed  
14 in a position of ruling on a protest without giving  
15 its investigator the opportunity to investigate and  
16 report on the occupancy issue.

17 So for these reasons, we believe in the  
18 interests of justice and we've demonstrated good  
19 cause, to continue the protest hearing to allow for  
20 the establishment to be re-placarded, to allow the  
21 investigator to re-investigate, and to give the  
22 parties an opportunity to mediate with all issues in  
23 front of them to see if a resolution can be reached.  
24 For that reason, on behalf of the Protestants, we ask  
25 that a continuance be granted.

1 CHAIRPERSON ANDERSON: Mr. O'Brien?

2 MR. O'BRIEN: Now that the Protestants were  
3 confused, I consider it very unfortunate to hear  
4 allegations of hiding, sleight of hand, and hiding.  
5 The substantial change was initiated by letter to the  
6 Board of September 20, 2022, almost six months ago. We  
7 said in the letter, and the Board has the letter, that  
8 we seek expansion to the contiguous space and an  
9 increase in capacity from the present 149 to 361. That  
10 is true. That is true then and it's true today. That  
11 is what we request.

12 Now I'm asking Ms. Mahmoud to put up on  
13 the screen the drawing that accompanied the September  
14 20, 2022 letter.

15 CHAIRPERSON ANDERSON: You want to show us  
16 a drawing, sir? All right, go ahead.

17 MR. O'BRIEN: Okay. This was the drawing  
18 accompanying the request. The yellow is the expansion  
19 space, the balance is the existing space. I don't know  
20 if the Board can read on the screen, but it's clearly  
21 stated that we want the existing space to have 268  
22 occupants, and I'm saying aside versus the present  
23 141. Ms. Verdi's arithmetic is correct, so a 119  
24 increase in the existing space.

25 If we scroll down a little bit, an

1 additional 93 in the expansion space, which comes to  
2 an increase of 268 plus 93 equals 361. That's what we  
3 requested. That's what's in the placard. Now what the  
4 Protestants did not understand, apparently, was that  
5 the increase to a maximum of 371 came from two  
6 sources. One is the increase in the existing interior,  
7 and the second is the expansion space, but the total  
8 is 361. That's all we're requesting and that's been on  
9 the table for six months. With respect to the placard,  
10 that's what's in the placard and the placard's  
11 correct, 149 to 361.

12 Now as far as timeliness goes, we did last  
13 Wednesday file our respective PIFs. In our opposition  
14 to the motion we highlighted three components, expand  
15 to contiguous space, 93. Number two in the PIF, to  
16 increase total occupancy in existing premises from 149  
17 to 268. Now I'm not challenging that the Protestants  
18 were confused, but they have known for a week or they  
19 have been educated for a week as to their confusion,  
20 yet they filed a motion for continuance on the day  
21 before the hearing.

22 So in sum, the motion for continuance is  
23 not well-founded in that what we're requesting has  
24 been on the table for six months and it's untimely  
25 since they have known since a week ago that they were

1 confused. They were educated a week ago. That's why  
2 the motion for continuance should be denied.

3 CHAIRPERSON ANDERSON: You can close your  
4 screen, Ms. Mahmoud. You can close the screen, please.  
5 Ms. Verdi, do you have—I have some questions I'm going  
6 to ask, but do you have a response?

7 MS. VERDI: I do. Thank you, Mr. Chairman.  
8 First of all, going back to the letter, that's the  
9 first time we've heard the letter read. The letter  
10 again, the letter that was sent by the Applicant, does  
11 not make this issue clear to ABCA at all. It says that  
12 they seek an expansion to contiguous space from 149 to  
13 361. That is very different than Applicant seeks to  
14 expand to 93 in contiguous space and increase its  
15 current occupancy by 119.

16 The reason this is so important is that at  
17 mediation, in their statement to the investigator, at  
18 meetings with ABRA, I'm sorry, the ANC, they always  
19 represented that the contiguous space would only be  
20 used for pre-booked private events. So the focus of  
21 the settlement attempts, the focus of preparing for  
22 the protest was focused on what it appeared to be from  
23 the placard and from the letter that was sent to ABCA,  
24 as well as what they said to the investigator, which  
25 was only two issues.

1           One of which was the expansion into the  
2 contiguous space was would we agree to a contiguous  
3 space expansion that was only going to be used for  
4 pre-booked private events? That's very different than  
5 an expansion of the club size as a whole, because they  
6 had also said to the investigator—now they've backed  
7 away from that, but did tell the investigator that  
8 there would be no overflow from Barcode to this  
9 private event space.

10           By now saying hey, everyone knew we wanted  
11 361, it was nothing more than hiding this issue  
12 because the way it was written was seeking an  
13 expansion to contiguous space. They told the  
14 investigator that there were only two issues that they  
15 sought to address, and it was expansion to the  
16 contiguous space and expansion of the outdoor café.  
17 They've never made clear that they were also—there's  
18 nowhere anywhere in the paperwork that says our  
19 original Certificate of Occupancy is 149 and we are  
20 seeking to change that Certificate of Occupancy from  
21 149 to 268.

22           I think it's an imperative issue that the  
23 investigator have the time to look at that issue, and  
24 it certainly has a very different bearing on peace,  
25 noise, quiet and parking when you're talking about

1 additional people simply in the club versus additional  
2 people in a pre-booked private event space.

3 CHAIRPERSON ANDERSON: Yes, Mr. O'Brien?

4 MR. O'BRIEN: I'm going to ask Ms. Mahmoud  
5 to put back up the drawing. The yellow denotes the  
6 expansion space relative to the existing space handily  
7 is more than twice the expansion space. It's obvious  
8 that the 149 to 361, an additional 268, cannot come  
9 from the expansion space only. I would ask the Board  
10 to ask Counsel how long Protestants have had this  
11 drawing. I believe it'd be many months. It was  
12 submitted as part of the original substantial change  
13 request.

14 MS. VERDI: We received this drawing with  
15 the PIF on Wednesday. I would also note that even in  
16 Investigator Pleitez's report, she notes that the  
17 expansion space appears to be smaller than the current  
18 space. I believe that there was, if it wasn't a slight  
19 of hand, it wasn't obfuscation, I think there has at  
20 least, at a minimum, been confusion as to what has  
21 been sought and what is being requested, and that  
22 there should be time to allow this third issue to be  
23 properly investigated and vetted before a protest.

24 MR. O'BRIEN: Mr. Chair, 361 equals 361. If  
25 Protestants were confused regarding which areas

1 contributed to the 361, it doesn't change the fact  
2 that the Protestants have always understood since Day  
3 1 from the placard that we wish to go to 361.

4 CHAIRPERSON ANDERSON: Let me ask a  
5 question before—Mr. O'Brien, what are the Applicant's  
6 actual plans for the change of occupancy?

7 MR. O'BRIEN: They are depicted on the  
8 drawing. The exiting space is 4,500 feet, but the  
9 present owners inherited when they acquired the  
10 business, a capacity of 149. As depicted on the  
11 drawing filed, they wish to go from 149 to 268.  
12 Another element of this is to expand into contiguous  
13 vacant space, and that will support another 93. They  
14 want to go from in existing space 149 to 268—is that  
15 right, 268? Plus add another 93, and that's how we get  
16 to 361, which has always been the number on the table.

17 CHAIRPERSON ANDERSON: Just for  
18 clarification, and then the Protestants can respond,  
19 so what's the existing space of 90—I'm sorry, the  
20 contiguous space, the expansion of, the 93, is that—  
21 how will that space be utilized?

22 MR. O'BRIEN: That's—the space will be  
23 utilized as private event space for private parties.  
24 The Licensee is—constantly receives requests for  
25 booking private events, but given its limited capacity

1 presently from the existing space, it cannot  
2 accommodate them. There will be no flow between the  
3 private event space and the principal premises,  
4 meaning people can't go back and forth wandering. The  
5 private event space will only be used when private  
6 events are booked. It will not be used for overflow on  
7 a busy night.

8 CHAIRPERSON ANDERSON: I'm going to ask  
9 this question of both parties. Mr. O'Brien, have you  
10 read the protest report that was filed by the  
11 investigator?

12 MR. O'BRIEN: Yes, I have.

13 CHAIRPERSON ANDERSON: Now is the protest  
14 report correct or incorrect regarding your client's  
15 plans?

16 MR. O'BRIEN: I did not perceive any  
17 inaccuracy. Mr. Chair, are you referring to any  
18 particular section of the protest?

19 CHAIRPERSON ANDERSON: No, I'm just asking  
20 generally, I'm just trying to get some clarification.  
21 One of the things that the Protestants are asking for  
22 is for us to go back and they're asking for a  
23 postponement for us to go back and for the  
24 investigator to go do an additional investigation. I'm  
25 just trying to just get some things on the record so



1 the Board can make an informed decision on what it is  
2 that we're going to do.

3 MR. O'BRIEN: Yes, well, I recognize that  
4 the Protestants want to dial back to zero a matter  
5 that's pending for three months, I'm sorry, six  
6 months, and may be pending for another three months  
7 for the Board to render a decision. They want to dial  
8 back to zero and start all over again. But the protest  
9 report is accurate in this sense. I'm looking at Page  
10 2 at the bottom where Investigator Pleitez quotes  
11 Counsel for Protestants as stating as you know Barcode  
12 has applied for a substantial license change that  
13 would increase its internal occupancy from 149 to 361.

14 CHAIRPERSON ANDERSON: Which is-

15 MR. O'BRIEN: That's the statement of my  
16 opponent, and that statement is accurate.

17 MS. VERDI: If I may-sorry, sorry.

18 CHAIRPERSON ANDERSON: Ms. Verdi, hold on,  
19 hold on.

20 MR. O'BRIEN: I'm not aware of any  
21 inaccuracy in the protest report, is the best answer I  
22 can give you, Mr. Chair.

23 CHAIRPERSON ANDERSON: So the protest  
24 report says that the change is asking for an  
25 additional 212. Is that correct? I guess that's what

1 I'm-

2 MR. O'BRIEN: I'm sorry. Say that again,  
3 sir?

4 CHAIRPERSON ANDERSON: That you're asking  
5 for an increase of occupancy of 212. Is that what the  
6 protest report states? Is that what it states?

7 MR. O'BRIEN: Well, it states what I just  
8 read, which is the investigator's quotation of Ms.  
9 Verdi's representation. I'm trying to find—I don't  
10 know where the protest report states that the increase  
11 in capacity is from 149 to 361.

12 CHAIRPERSON ANDERSON: I guess what I'm  
13 trying to find out, you're asking for an occupancy  
14 level of—to increase it from 149 to 361, which is an  
15 increase of 212. Is that correct?

16 MR. O'BRIEN: That is correct.

17 CHAIRPERSON ANDERSON: All right. I guess  
18 as far as the Protestant is concerned, is the report  
19 incorrect?

20 MR. O'BRIEN: No, I don't believe the—

21 CHAIRPERSON ANDERSON: I'm asking the  
22 Protestant. You have said that it isn't, so I'm asking  
23 them. I'm trying to get the position of the  
24 Protestant.

25 MS. VERDI: And the position of the

1 Protestants is that it is, not through any fault of  
2 the investigator. But because of this statement made  
3 by Mr. O'Brien on Page 4, that in this substantial  
4 change proceeding, the Licensee seeks only, and I'm  
5 putting the emphasis on only, only to add to its  
6 premise's contiguous space and to extend its present  
7 sidewalk café to in front of that expansion space.  
8 That's two things it seeks. Those are the only two  
9 things it says that they are—that the Licensee is  
10 seeking.

11 That leads to the conclusion, because  
12 there were no drawings, there are no numbers, that the  
13 additional occupancy is in the contiguous space, which  
14 is consistent with what the placard says. The entirety  
15 of the discussions and even what Mr. O'Brien says in  
16 his statement to the investigator is that the  
17 contiguous space will be used for private events.

18 Where the report is, and I don't know that  
19 the proper word is inaccurate, but is that it is  
20 incomplete in that because Mr. O'Brien said those were  
21 the only two issues being sought in the substantial  
22 change, when in fact there was a third issue, which is  
23 increasing their Certificate of Occupancy, which is  
24 increasing the space in the current club.

25 It changes the whole nature of the protest

1 because the contiguous space is only supposed to be  
2 seated private events, which is very different than  
3 oh, plus we're going to add 119 to Barcode's existing  
4 operation.

5 CHAIRPERSON ANDERSON: So to the  
6 Protestants, the contiguous space that would be  
7 utilized for private events would have an occupancy of  
8 212, which is larger than the establishment itself?

9 MS. VERDI: That's what we understood at  
10 the time. We did not have these drawings. Mr. O'Brien  
11 did not provide them to us, so that had been our  
12 understanding throughout the course of our  
13 negotiations and discussions with the Applicant.

14 MR. O'BRIEN: Mr. Chair?

15 CHAIRPERSON ANDERSON: Yes, Mr. O'Brien?

16 MR. O'BRIEN: The Protestants have  
17 understood that this proceeding was an increase of  
18 212. What they're confused about, or previously what  
19 they were confused about, and I don't question their  
20 good faith even though mine's been questioned, is they  
21 thought the entire 212 was coming from the expansion  
22 space instead of being spread across the two spaces.  
23 But they still understood that it was 212 more  
24 persons.

25 The placard said request to expand the

1 premises into contiguous space, increasing the total  
2 occupancy load from 149 to 361. The placard is  
3 correct.

4 CHAIRPERSON ANDERSON: I'm listening to  
5 you. I'm listening—oh you're done?

6 MR. O'BRIEN: Yes, sir.

7 CHAIRPERSON ANDERSON: Ms. Verdi, if the  
8 Board was to grant the continuance, what specific  
9 things do you believe that you would add to your PIF  
10 in response to this new allegation?

11 MS. VERDI: What would add to our PIF,  
12 there would be a very different way that we would  
13 address, obviously—and I think there would be  
14 additional investigation of the overcrowding of the  
15 current space. I think we would need to determine,  
16 because based on the investigation I've done so far,  
17 the plans are not in conformity with the International  
18 Building Code to allow for the increase in capacity  
19 that they are asking for in the current space.

20 There would be differences in how we would  
21 address the current space, how it's treated now, the  
22 occupancy levels now versus private event space.

23 CHAIRPERSON ANDERSON: No, but I'm asking  
24 you what information—I'm not speaking about this  
25 matter, today this matter is not going to be settled.

1 We're going to have a hearing, so what additional  
2 information do you believe that you're going to put in  
3 your PIF? That's what I'm trying to find out, because  
4 I'm trying to figure out what would change. What  
5 additional dimension that you're going to add in your  
6 PIF that is not currently there?

7 MS. VERDI: I would expect to add certainly  
8 additional exhibits. Also we made some calls about  
9 specific witnesses that we would've called that I  
10 think that would change given that the nature of the  
11 substantial change is very different. We were talking  
12 about additional event space. Now when we're talking  
13 about the club I think we would have different  
14 witnesses and additional exhibits.

15 CHAIRPERSON ANDERSON: Any questions by any  
16 Board members? You have a question, Mr. Short? Go  
17 ahead, sir.

18 MEMBER SHORT: I'd just like to ask this  
19 question. The plans that were shared on the screen  
20 earlier, were they stamped by an engineer or someone  
21 from the Protestant just asked, from the Building Code  
22 Administration? How did the plans come about? Who drew  
23 those plans up and were they approved by any city  
24 officials? And second question would be was there any  
25 new space involved? So we're going to double the

1 numbers in the same space, and if it's not signed off  
2 by the building section of the city and by an  
3 engineer, I wonder how that's going to work out.

4 CHAIRPERSON ANDERSON: Just for some  
5 clarification and then you can answer Mr. Short, there  
6 are two spaces, right? I think there's agreement  
7 between the parties that there are two spaces.

8 MEMBER SHORT: Yeah, sidewalk café on the L  
9 Street side and then the original interior. We're very  
10 familiar with it, Mr. Chair. I think you've been on  
11 the Board long enough to know we've had Barcode before  
12 us on several occasions and basically have dealt with  
13 a lot of overcrowding. If they haven't added any new  
14 space, we're going to make—I don't know. I'd like to  
15 know who signed off on it and who put the plans  
16 together for the Applicant. Were they stamped by any  
17 city government officials?

18 CHAIRPERSON ANDERSON: Okay, thank you Mr.  
19 Short. There's no misunderstanding with the parties.  
20 There is a new space, okay? There is a new space that  
21 was presented that they're assuming a new space.

22 MEMBER SHORT: Can we see the drawings  
23 again, Mr. Chair? Can you point those out to me? Can  
24 we see the drawings again and you show me where the  
25 new space is, because maybe I missed that?

1 CHAIRPERSON ANDERSON: Mr. Short—

2 MR. O'BRIEN: Yeah, we'll put it back up.

3 MEMBER SHORT: Thank you.

4 CHAIRPERSON ANDERSON: Can you point out  
5 where is the current—explain to us what we're looking  
6 at, please.

7 MR. O'BRIEN: All right, the expansion  
8 space, the new space is highlighted in yellow. Below  
9 it is the existing space, which is—

10 MEMBER SHORT: Can I ask a question, sir?  
11 Can I ask a question?

12 MR. O'BRIEN: Yes, Chief, sure.

13 MEMBER SHORT: Thank you. Isn't the yellow  
14 space backed right up to L Street where the old  
15 sidewalk café was? Is that correct?

16 MR. O'BRIEN: No, sir. L Street runs along  
17 the right side. It runs vertically along the right  
18 side of the drawing.

19 MEMBER SHORT: Okay, because I don't see  
20 any arrows showing north, south, east or west, so I'm—

21 MR. O'BRIEN: Yeah, so L Street is—Ms.  
22 Mahmoud is running the cursor showing where L Street  
23 is.

24 MEMBER SHORT: Okay, well Mr. O'Brien, I  
25 know you know pretty much about drawings and a lot of



1 things. You've been in this business a long time.  
2 Normally drawings would show the streets, it would be  
3 a north, south, east, west. It would show where the  
4 existing sidewalk café is versus the new space or  
5 whatever. Where the cursor is now, arrow is, that's L  
6 Street, correct?

7 MR. O'BRIEN: Where the cursor is now is L  
8 Street. Then-

9 MEMBER SHORT: Right, that's where the  
10 sidewalk café is.

11 MR. O'BRIEN: No, that's where the street  
12 is. The sidewalk café, if you look at the top, it says  
13 sidewalk café expansion.

14 MEMBER SHORT: I got it.

15 MR. O'BRIEN: That's in red.

16 MEMBER SHORT: Right.

17 MR. O'BRIEN: And then below that is the  
18 existing sidewalk café.

19 MEMBER SHORT: Okay, so currently what is  
20 in that space now where the red box is?

21 MR. O'BRIEN: Well, the red box is an open  
22 sidewalk. The yellow is a former dry cleaner that  
23 became available, and that's what caused-it's vacant  
24 now and that's what caused the submission of this  
25 request.

1                   MEMBER SHORT: Mr. O'Brien, that's the  
2 first I've heard about a new property or an additional  
3 property, because that's the reason why I was asking  
4 that question, and I think you know where I was going  
5 with that, with the questioning. So if the L Street  
6 side and the red line is where the street is, so how  
7 much space are you adding in that red box? How much  
8 square footage is that?

9                   MR. O'BRIEN: The red box is sidewalk  
10 space.

11                   MEMBER SHORT: How much space is that?

12                   MR. O'BRIEN: It's enough—

13                   MEMBER SHORT: How many square feet?

14                   MR. O'BRIEN: I don't know that number off  
15 the top of my head. Well, wait a minute, it's probably  
16 in the legend right here. Proposed revised—Ms.  
17 Mahmoud, can you read this right here?

18                   MEMBER SHORT: Mr. O'Brien, while you're  
19 looking to get someone to read that, again, where are  
20 the stamps from any building, any engineer? Who did  
21 the plans for you?

22                   MR. O'BRIEN: Okay, an architectural firm  
23 called 2 Scale, and the company's name is the Arabic  
24 Numeral 2 and then the word Scale, 2 Scale.

25                   MEMBER SHORT: Okay, I understand. Don't

1 they normally have a stamp that they put on all their  
2 projects, because I see where it says at the bottom—  
3 come up a little more where it says preliminary, so  
4 this is not the final plan. Not for construction,  
5 preliminary, not for construction.

6 MR. O'BRIEN: Yes.

7 MEMBER SHORT: So that, it's no stamps.

8 It's preliminary, not for construction. What does that  
9 mean?

10 MR. O'BRIEN: Okay, two things are required  
11 in order to complete this project. Number one is  
12 approved building plans. Number two is ABC Board  
13 approval.

14 MEMBER SHORT: Well, the Board doesn't  
15 normally give out space or numbers until we get it  
16 from DCRA, isn't that correct?

17 MR. O'BRIEN: Well, as far as Certificate  
18 of Occupancy goes, yes. I can apply for 2,000, but if  
19 a Certificate of Occupancy is for 200, I get 200.

20 MEMBER SHORT: My point exactly. My point  
21 exactly.

22 MR. O'BRIEN: But the practice—it's a  
23 chicken and egg problem, which comes first? We're not  
24 going to go ahead and incur the expense of  
25 construction drawings, go all the way through DCRA

1 stamps and all, and then turn around and request from  
2 ABC Board the authority and then have it protested and  
3 perhaps denied. So we--

4 MEMBER SHORT: So I--

5 MR. O'BRIEN: --we come to the ABC Board  
6 with the concept.

7 MEMBER SHORT: Okay, great. So you want the  
8 ABC Board to approve the numbers before the building  
9 code people do. Is that what you're asking?

10 MR. O'BRIEN: App--

11 MEMBER SHORT: That's not the chicken nor  
12 the egg. The normal procedure has been, since I've  
13 been on this board, is we don't give approval of  
14 something, especially with numbers, until we hear from  
15 the building code construction, or now they call it  
16 the building--whatever the new name is. But at any  
17 rate--

18 MR. O'BRIEN: Yeah, Department of  
19 Buildings.

20 MEMBER SHORT: --we normally like to see  
21 plans that have been stamped by an engineer and  
22 approved for such numbers in such space. Thank you  
23 very much. That's all I have, Mr. Chair. Thank you,  
24 Mr. O'Brien.

25 MR. O'BRIEN: Can I respond, Chief Short?

1 MEMBER SHORT: Yes, sir.

2 MR. O'BRIEN: Okay, every application comes  
3 in with drawings. That's the applicant's estimate of  
4 what they can do. But once again, if I go out and  
5 apply for 200, however eventually the building  
6 department only applies for 149, then I get a license  
7 for 149. But that is a very common practice. No one  
8 would go ahead and spend the many, many thousands of  
9 dollars to do construction plans, go through the  
10 Department of Buildings, and only then go to ABC and  
11 say can we approve this at the risk, of course, of  
12 being denied.

13 So the Board's regulations, 405.1,  
14 authorize the Board to go ahead and approve an  
15 application before a Certificate of Occupancy issues.

16 MEMBER SHORT: Mr. O'Brien?

17 MR. O'BRIEN: Yes.

18 MEMBER SHORT: Just being very truthful  
19 with you, I respect you highly, and you know I do  
20 because I've been knowing you a lot of years.

21 MR. O'BRIEN: Thank you, Chief.

22 MEMBER SHORT: What I'm asking is, is this  
23 the normal procedure to double or triple occupancy  
24 based on plans that say not for construction or  
25 preliminary? Is that normal, is that-preliminary plans

1 are normally sent before this Board, or zoning or  
2 anyone else? Preliminary plans?

3 MR. O'BRIEN: Yes, it is the normal, that's  
4 what 405.1 does. There's two steps, approval and  
5 license issuance.

6 MEMBER SHORT: Okay.

7 MR. O'BRIEN: The approval is the approval  
8 of a request, but the license issuance requires a  
9 conforming Certificate of Occupancy. This is the  
10 normal procedure.

11 MEMBER SHORT: Okay, well, I understand  
12 that. So I guess what I'm trying to get in my head  
13 now, wrap my head around now, Mr. Chairman, is what  
14 are the—because I haven't heard the Protestants say  
15 they are against this. They simply say they want to  
16 get all of the, again chickens and eggs lined up,  
17 prior to this Board approving those kinds of numbers  
18 with plans that have not been approved by anyone other  
19 than the Applicant.

20 CHAIRPERSON ANDERSON: That's not the  
21 issue, Mr. Short.

22 MEMBER SHORT: Okay.

23 CHAIRPERSON ANDERSON: This is the issue.  
24 This is where we are right now.

25 MEMBER SHORT: Go ahead.

1                   CHAIRPERSON ANDERSON: The Protestants is  
2 asking for us to continue the hearing and the reason  
3 why the Protestants are asking us to continue the  
4 hearing, it was based on their misunderstanding of how  
5 the increased occupancy, what the increased occupancy.  
6 The Protestants are stating that they understand the  
7 substantial change and that you want to increase your  
8 occupancy from 149 to 361. However, we were under the  
9 understanding that the increase in your occupancy  
10 would come from you acquiring another space, that you  
11 were not asking us to increase the occupancy of your  
12 current space and also to add a separate space.

13                   That is the issue here, whether or not—so  
14 I don't think there's any disagreement. I don't think  
15 the Protestants are disagreeing with whether or not  
16 they can expand or not. They're just saying that our  
17 understanding was that yes, you wanted a change, but  
18 we thought that the change that you were asking for  
19 was just into a contiguous space, and that the  
20 contiguous space would increase your occupancy, not  
21 that you're asking for two things, to increase your  
22 current occupancy and also to get a new space.

23                   That's the issue that the Board needs to  
24 decide. At this juncture, the Board is not, and this  
25 is, we're arguing a motion right now, so we're not

1 into the merits of the case, whether or not it's  
2 appropriate or not. It's just the Protestants are  
3 saying from their view, they don't believe it's right  
4 for us to move forward with a hearing based on this  
5 new information. Let me ask a question to you, Mr.  
6 O'Brien. The Protestants are stating that at a  
7 minimum, that they misunderstood what was being  
8 requested.

9           They went through mediation, they went  
10 through settlement. Do you believe if we were to issue  
11 a continuance that—could this matter be settled or a  
12 settlement closed? If this matter is not going to  
13 settle, we're going to go to a hearing, based on  
14 where—I'm asking you from your perspective based on  
15 where the Protestants are telling you their  
16 misunderstanding of how they think that this space was  
17 going to be utilized.

18           Do you believe that this case, if we were  
19 to continue the case, that this matter could be  
20 settled? Or we're just going to push the can down the  
21 road and we're going to have a hearing in, I guess the  
22 Protestants are saying no earlier than June 14th.

23           MR. O'BRIEN: I don't know where that date  
24 comes from.

25           CHAIRPERSON ANDERSON: I'm just saying



1 that's what they threw out, yes. If we're going to  
2 have a hearing, even if postponed we're not going to  
3 have a hearing June 14th based on our calendar. I'm  
4 just saying that's not a date.

5 MR. O'BRIEN: I believe that we exchanged  
6 multiple settlement proposals. I thought we got close,  
7 but ultimately we didn't get there. I don't see a  
8 reversal of that by a continuance.

9 CHAIRPERSON ANDERSON: All right. I'm going  
10 to go into executive session, but any final—Ms. Verdi,  
11 you made the motion so any final arguments you want to  
12 make before I'm going to go into executive session so  
13 we can decide whether or not we're going to grant or  
14 deny the motion.

15 MS. VERDI: Actually three points that I'd  
16 like to make. The first follows up on the point where  
17 you previously asked me how would our PIF change. I  
18 think that Mr. Short made an extremely good point when  
19 he said Barcode has been before you a number of times  
20 already on overcrowding issues. Now because we did not  
21 believe that the current space was at issue here,  
22 those issues, overcrowding that has already existed in  
23 the existing space, would certainly be something that  
24 we would add to our PIF and add to our exhibit list.

25 Second, I knew there was another place in

1 the investigator's report that I wanted to highlight  
2 for the Board that I think shows—I don't want to  
3 ascribe ill will to Mr. O'Brien. I think that we have  
4 worked very collegially, but I think just maybe  
5 perhaps it's been the wording, whatever that has  
6 caused confusion, but not just to me.

7 Because if you read, it's on Page 7 of the  
8 investigator's report under Building Interior, she  
9 states that the inside of the premises contains one  
10 large bar, a small bar, two restrooms with multiple  
11 stalls, and a kitchen and office located at the back  
12 of the establishment. The substantial change  
13 application requests to add a separate space that will  
14 not be a part of the existing space.

15 The added space is located directly next  
16 door to the establishment and appears to be  
17 significantly smaller than the existing space. Reading  
18 that again, I think, shows confusion or at least that  
19 nobody was focusing during this process on that the  
20 additional 119 people would be in the existing space.  
21 Everything was focused on what was going to be in the  
22 expansion space.

23 Finally, I think that Mr. Short raised a  
24 number of other issues that certainly show that  
25 additional time is necessary from these plans. They

1 don't add additional bathrooms, which are required  
2 under the code. But there are things— when you asked  
3 Mr. O'Brien could this be settled, we've only been  
4 working on settlement for maybe two weeks because  
5 there were personal matters that prevented the back  
6 and forth prior to that.

7           Once we started, I actually think that the  
8 groups made substantial progress. But once we learned  
9 of this new issue, we had no choice but to immediately  
10 come and seek a continuance and haven't had the  
11 opportunity to continue discussions and a mediation  
12 with Ms. Fletcher again. All of the things that I  
13 think could be beneficial now that these issues have  
14 been fully fleshed out and there's much more  
15 transparency in this process than there had been.

16           So we continue to ask for a continuance  
17 and believe that we have demonstrated cause for the  
18 continuance at this point.

19           CHAIRPERSON ANDERSON: Mr. O'Brien?

20           MR. O'BRIEN: I want to address that  
21 Barcode has been before you in the past.

22           CHAIRPERSON ANDERSON: Mr. O'Brien, I just  
23 want to clarify for the record, that is not, at least  
24 for me as one Board member, that is not relevant  
25 because maybe part of the issue that they were

1 overcrowded for 149, and that's one of the reasons  
2 you're asking for a larger space. But it's not that  
3 important to me, but you can go ahead, sir.

4 MR. O'BRIEN: Yeah, I don't want to leave  
5 it hanging out there for the Board members when  
6 they're considering the protest hearing on its merits.  
7 I don't want this to be in the back of the mind.  
8 Barcode has existed for quite some time. Current  
9 ownership acquired it in 2019, and the only violations  
10 since current ownership acquired it were COVID  
11 restriction violations.

12 Other than COVID restriction violations,  
13 their record is clear. The protest is peace, order and  
14 quiet or residential parking needs. It doesn't matter  
15 where the 212 comes from, whether it comes from only  
16 the new space, only the existing space or, as is in  
17 fact, the common space, it's 361 is 361. That's the  
18 number the Board evaluates in the context of will this  
19 impact peace, order and quiet? Will this impact  
20 residential parking needs? Doesn't matter which door  
21 they come out of. Thank you.

22 CHAIRPERSON ANDERSON: Thank you. All  
23 right.

24 MEMBER GRANDIS: Mr. Chairman?

25 CHAIRPERSON ANDERSON: Yes, Mr. Grandis? Go

1 ahead, sir.

2 MEMBER GRANDIS: Thank you. Mr. O'Brien?

3 MR. O'BRIEN: Yes, sir. I cannot hear Mr.  
4 Grandis.

5 MEMBER GRANDIS: Yes. I think all the Board  
6 members and I'm sure the Protestants have all read the  
7 materials that you have presented on behalf of your  
8 client. What I'm challenged by right now, because  
9 we're going to go into deliberations—

10 CHAIRPERSON ANDERSON: Just on the motion,  
11 just on the motion. That's all—

12 MEMBER GRANDIS: Right, exactly, but I want  
13 clarification to give the Applicant an opportunity to  
14 show me where, because what we have on the placard and  
15 what has been presented through documents, and what's  
16 in the report from the investigator clearly states  
17 that your client is looking for a substantial change  
18 regarding the new building, the acquired building and  
19 additional seating for outside sidewalk café.

20 I hear what you're telling us, but it's  
21 not in any of the materials other than the substantial  
22 change is for the additional space and for additional  
23 sidewalk seating. I just want to make sure that I'm  
24 correct in understanding that, because that's how I  
25 see the materials.

1 MR. O'BRIEN: I would invite your  
2 attention, Mr. Grandis, to the placard notice. Nature  
3 of substantial change, request to expand the premises  
4 into contiguous space, increasing the total occupancy  
5 load—and I emphasize the word total—of the interior  
6 from 149 to 361. Now Counsel says that she read that  
7 as meaning that the entire additional 212 would come  
8 from the expansion space, but it doesn't say that.

9 MEMBER GRANDIS: Thank you.

10 MR. O'BRIEN: Okay.

11 MEMBER GRANDIS: Yeah, thank you. Thank  
12 you, Mr. Chairman.

13 CHAIRPERSON ANDERSON: Okay, thank you. All  
14 right. As Chairperson of the Alcoholic Beverage &  
15 Cannabis Board for the District of Columbia and in  
16 accordance with DC Official Code § 2575 of the Open  
17 Meetings Act, I move that ABC Board hold a closed  
18 meeting for the purpose of seeking legal advice from  
19 our counsel on Case No. 23-PRO-00014, Barcode,  
20 pursuant to DC Official Code § 2575(B) or (A) of the  
21 Open Meetings Act, and deliberate upon Case No. 23-  
22 PRO-00014, Barcode, for the reasons cited in DC  
23 Official Code § 2575(B)(13) of the Open Meetings Act.  
24 Is there a second?

25 MEMBER SHORT: Mr. Short, I second.

1 CHAIRPERSON ANDERSON: Mr. Short has second  
2 the motion. We'll now have a roll call vote. Mr.  
3 Short?

4 MEMBER SHORT: Mr. Short, I agree.

5 CHAIRPERSON ANDERSON: Mr. Cato?

6 MEMBER CATO: I agree.

7 CHAIRPERSON ANDERSON: Ms. Hansen?

8 MEMBER HANSEN: (No audible response)

9 CHAIRPERSON ANDERSON: Mr. Grandis?

10 MEMBER GRANDIS: Edward Grandis, I agree.

11 CHAIRPERSON ANDERSON: Mr. Anderson, I  
12 agree. The matter passes 5-0-0. I'll ask that, folks,  
13 we're going to go into Executive Session. We are going  
14 to log off, but I'm asking all members not—I'm asking  
15 the other parties not to log off. You can mute your  
16 line and turn your camera off, and we'll come back on.  
17 We will rejoin you as soon as possible, okay? Thank  
18 you.

19 MR. O'BRIEN: Thank you.

20 CHAIRPERSON ANDERSON: Executive Session,  
21 please.

22 (Whereupon, the above-entitled matter went  
23 off the record at 4:21 p.m. and resumed at 4:38 p.m.)

24 CHAIRPERSON ANDERSON: All right, we're  
25 back on the record. The motion on the table is that

1 the Protestants had requested that the ABC Board grant  
2 a continuance, an emergency continuance. The  
3 Protestants stated that there was—they stated that the  
4 placarding was misleading. The Protestants—we don't  
5 believe that, the Protestant does not have standing to  
6 request that the Board re-placard the matter.

7 The case report, the report that's written  
8 on behalf of the Board, it's not the parties.

9 Therefore, no party has standing to request that we  
10 re-investigate the matter. The parties are welcome to  
11 add additional evidence challenging anything in the  
12 report or addressing matters not raised in the report.  
13 As everyone is aware, mediation is voluntary, so the  
14 Board can't order the parties to go to additional  
15 mediation if it's not determined that, if both parties  
16 do not want to attend mediation.

17 Regarding the occupancy, we believe that  
18 it's 212. That is what the Licensee is asking for, the  
19 Applicant is asking for, an increase of 212. We  
20 believe that the consideration of the 212 is di  
21 minimis and it does not significantly on the  
22 appropriateness grounds as far as the impact of  
23 additional people on the premises and the surrounding  
24 community. With that said, I make a motion that we  
25 deny the motion. Is there a second?



1 MEMBER SHORT: Mr. Short, I second.

2 CHAIRPERSON ANDERSON: Mr. Short has second

3 the motion. We will have a roll call vote. Mr. Short?

4 MEMBER SHORT: Mr. Short, I agree.

5 CHAIRPERSON ANDERSON: Mr. Cato?

6 MEMBER CATO: Bobby Cato, I agree.

7 CHAIRPERSON ANDERSON: Ms. Hansen?

8 MEMBER HANSEN: (No audible response)

9 CHAIRPERSON ANDERSON: Mr. Grandis?

10 MEMBER GRANDIS: Edward Grandis, I agree.

11 CHAIRPERSON ANDERSON: And Mr. Anderson, I

12 agree. The matter passed 4-1, and so therefore we're

13 going to deny the motion and we're going to move

14 forward with the protest hearing today. If the

15 parties, if they mutually request a continuance, the

16 Board will consider that if both parties request a

17 mutual, a joint motion to continue the hearing. But if

18 not, we will do, we will start our hearing today.

19 If the parties need a couple minutes, it's

20 4:41. We can start the hearing at 4:50 if the parties

21 want a couple of minutes before we start, or we can

22 start right now.

23 MR. O'BRIEN: Can we have 10 minutes, Mr.

24 Chair?

25 CHAIRPERSON ANDERSON: All right. It's

1 4:42, 5:00.

2 MR. O'BRIEN: 5:00? Okay.

3 CHAIRPERSON ANDERSON: At 5:00.

4 MR. O'BRIEN: Kerry, I'll call you.

5 CHAIRPERSON ANDERSON: At 5:00, so do not  
6 log off. Just turn your camera off, go on mute until  
7 5:00. All right.

8 MS. VERDI: Thank you, Mr. Chairman.

9 MR. O'BRIEN: Okay, see you at 5:00, Mr.  
10 Chair.

11 (Whereupon, the above-entitled matter went  
12 off the record at 4:42 p.m. and resumed at 5:16 p.m.)

13 CHAIRPERSON ANDERSON: All right, we're  
14 back on the record. All right, where we were, we're  
15 back on the record, so where we were before, I  
16 suggested that if the parties mutually requested a  
17 continuance, the Board would favorably consider that.  
18 So where are we?

19 MR. O'BRIEN: Ms. Verdi and I believe that  
20 a brief continuance well might result in a resolution.  
21 We can't accomplish it today. Ms. Verdi's got multiple  
22 clients and she has to canvass them. We've talked to  
23 the Board's general counsel and all the parties and  
24 witnesses are available on May 22nd, 23rd—correction  
25 23rd. Your general counsel indicated that there might

1 be a possibility that a quorum could be mustered on  
2 that date.

3 CHAIRPERSON ANDERSON: And what time is  
4 being proposed?

5 MR. O'BRIEN: I believe it—

6 MS. VERDI: It was 10:30 a.m.

7 CHAIRPERSON ANDERSON: 10:30?

8 MR. O'BRIEN: We can be flexible on the  
9 23rd.

10 CHAIRPERSON ANDERSON: All right. Being a  
11 joint motion to continue, I then make a motion that we  
12 continue this hearing to the 23rd. Is there a second?

13 MEMBER GRANDIS: Ed Grandis will second.

14 CHAIRPERSON ANDERSON: Mr. Grandis has  
15 second the motion. We'll now have a roll call vote.  
16 Mr. Short?

17 MEMBER SHORT: I agree.

18 CHAIRPERSON ANDERSON: Mr. Cato?

19 MEMBER CATO: Bobby Cato, I agree.

20 CHAIRPERSON ANDERSON: Ms. Hansen?

21 MEMBER HANSEN: (No audible response)

22 CHAIRPERSON ANDERSON: Mr. Grandis?

23 MEMBER GRANDIS: (No audible response)

24 CHAIRPERSON ANDERSON: And Mr. Anderson, I  
25 agree. The matter passes 5-0-0. I just want to let the

1 parties know there are now five members of the Board.  
2 As of today the Board only has five members, but in  
3 order for meetings to occur we only need three. Three  
4 is a quorum, so we have more than a quorum to move  
5 forward until we have had some—there are now  
6 officially two openings on the Board, so we will have  
7 five members here.

8 So that might be—anyway, all right, so  
9 this matter then is continued to May 23rd, and I  
10 believe that our general counsel will speak to the  
11 parties whether or not this matter will be at 10:30 or  
12 at 1:30. But the Board is available for us to have  
13 this hearing on the 23rd. All right, I would like to  
14 thank—

15 MR. O'BRIEN: Thank you for your  
16 indulgence.

17 CHAIRPERSON ANDERSON: You're welcome. I do  
18 hope that—the Board supports settlement. I'm not  
19 saying that this matter must be settled, but the Board  
20 supports settlement if matters can be settled, because  
21 at the end of the day this is a license that is in a  
22 location because it's not a new license. And so  
23 whatever decision that we make, the parties have to  
24 mutually coexist, so we're hoping that they can  
25 coexist through a meeting of the minds rather than for

1 the Board to make a decision.

2 If the Board has to make a decision it  
3 will make a decision, but we prefer if the parties can  
4 settle matters, because at least at the end of the day  
5 both sides will leave happy because there's a give and  
6 take. But when the Board makes a decision, one side  
7 might be happy and the other side is unhappy. So if it  
8 can be—if not we will see you on the 23rd. All right,  
9 thank you very much. Have a great day, and hopefully  
10 you have a fruitful negotiation. Okay, all right.

11 MR. O'BRIEN: Thank you very much.

12 CHAIRPERSON ANDERSON: Thank you.

13 MS. VERDI: Thank you.

14 CHAIRPERSON ANDERSON: I believe now we're  
15 at the end of the day, so let me close our hearing for  
16 the day, or our calendar for the day, I'm sorry. All  
17 right, as Chairperson of the Alcoholic Beverage &  
18 Cannabis Board for the District of Columbia, and in  
19 accordance with Title 3, Chapter 405, Office of Open  
20 Government, I move that ABC Board hold a closed  
21 meeting on May 4, 2023 for the purpose of discussing  
22 and hearing reports concerning ongoing or planned  
23 investigations of alleged civil or criminal misconduct  
24 or violations of law or regulations, and seeking legal  
25 advice from our counsel in the Board's investigative

1 agenda, legal agenda and licensing agenda for May 4,  
2 2023 as published in DC Register on April 28, 2023. Is  
3 there a second?

4 Mr. Short has second the motion. I will now take a  
5 roll call vote on the motion before us now that it has  
6 been second. Mr. Short?

7 MEMBER SHORT: Mr. Short, I agree.

8 CHAIRPERSON ANDERSON: Mr. Cato?

9 MEMBER CATO: Bobby Cato, I agree.

10 CHAIRPERSON ANDERSON: Ms. Hansen?

11 MEMBER HANSEN: (No audible response)

12 CHAIRPERSON ANDERSON: Mr. Grandis?

13 MEMBER GRANDIS: Edward Grandis, I agree.

14 CHAIRPERSON ANDERSON: And Mr. Anderson, I  
15 agree.

16 As it appears that the motion has passed,  
17 I hereby give notice that ABC Board will hold this  
18 closed meeting pursuant to the Open Meetings Act.  
19 Notice will also be posted on the ABC Board hearing  
20 bulletin board, placed on electronic calendar and  
21 ABCA's website, and published in the DC Register in as  
22 timely manner as practical.

23 We're adjourned for the day. Thank you  
24 very much for your active participation today. I now  
25 ask all Board members to return to Executive Session

1 for further action.

2 Thank you very much. Have a great day.

3 (Whereupon, the above-entitled matter went  
4 off the record at 5:22 p.m.)

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This is to certify that the foregoing transcript

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was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



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Court Reporter

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