

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

2 1:34 p.m.

3 CHAIRPERSON ANDERSON: The last case
4 in our calendar this afternoon is Protest case
5 number 23-PRO-00094, Marte Bar and Lounge,
6 license number 125774.

7 Good afternoon, Mr. Orellana. Can you
8 please elevate the rights of the protestants
9 and the licensees and their witnesses in this
10 case?

11 MR. ORELLANA: Aman George, your
12 access has been elevated. Anthony Pirrotti,
13 your excess has been elevated. Brenda, your
14 access has been elevated. And Misraj Bekele-
15 Kerr, your access has been elevated. That is
16 all, Chairman.

17 CHAIRPERSON ANDERSON: Thank you. So
18 where's counsel?

19 MR. ORELLANA: She's trying to connect
20 as we speak. There she is.

21 CHAIRPERSON ANDERSON: All right,
22 fine. Okay. So, good afternoon, everyone.
23 This is the continuation of the Marte Bar and
24 Lounge. We started this protest hearing on a
25 substantial change. I think that the request

1 was for the hours and to get an entertainment
2 endorsement, I believe. Yes, that's what this
3 case is about. This case commenced on May 15,
4 and based on time constraints, we were unable
5 to complete this case on the 15th. It is the
6 board's intent to complete this case today, and
7 I'm putting everyone on notice that the board
8 intends that this case should be over by 4:00
9 p.m. today so I believe that we have more than
10 enough time to have the witnesses testify.

11 I believe, just a minute, Mr. George.

12 I believe from the representation that we had
13 last week is that I think the applicant has one
14 additional witness, and then the ANC will
15 present its case and call its witness. All
16 right, Mr. George, you had raised your hand,
17 sir.

18 MR. GEORGE: Yeah. Two things. One,
19 I would also love to be done by 4:00 p.m.
20 today. I just wanted to flag. We intend to
21 have three witnesses, one of whom will be
22 testifying through an interpreter. So our
23 three witness presentation, I hope it can go
24 quickly. My experience from last time was it
25 does go kind of slowly. So we will certainly

1 do our best to not delay with irrelevant
2 testimony. But that's what I expect.

3 The second thing I wanted to ask you,
4 actually, two other questions I have for you.
5 One is you mentioned last week that if there
6 were modifications to the renewal, that's
7 something that we could request.

8 CHAIRPERSON ANDERSON: There's no
9 renewal, sir. There's no renewal.

10 MR. GEORGE: I'm sorry, modifications
11 to the application. That's something that we
12 could request?

13 CHAIRPERSON ANDERSON: In your
14 closing, sir, or in your presentation of the
15 case you can be specific what it is that you're
16 asking the board to do. So you could state
17 that if the board was to grant what's been
18 requested, we're asking for the board to grant,
19 offer these, attach these stipulations to the
20 license, and so you need to present in the
21 presentation of your case. Then you need to
22 present testimony why is it that, what is it
23 for what you're asking and why the board should
24 request that.

25 So at the end of the presentation, I'm

1 going to ask the licensee to be specific what
2 it is that they are asking when you do your
3 closing. I'm going to ask the licensee to be
4 specific what it is that they're asking the
5 board for. And I'll also ask you to be
6 specific what is it that you are also asking
7 the board to do. Okay?

8 MR. GEORGE: So it's in the closing
9 that is kind of appropriate for that.

10 CHAIRPERSON ANDERSON: That's when you
11 do that. But at the same time, you can, in the
12 witnesses that you're calling, you can try to
13 prove that point by their tests that why is it
14 that what you're going to ask for is
15 appropriate? Because of course, the burden is
16 on the licensee, but whatever decision that's
17 been made, it has to be supported by the law.
18 Okay?

19 MR. GEORGE: And then the last
20 question I had was I had one additional exhibit
21 that I was hoping we could have available for
22 our hearing today. I think, looking at ABCA's
23 code book, I could imagine three different
24 reasons for letting this one in. One is that
25 it's largely going to be used for impeachment.

1 It's also readily available to the general
2 public. It's an ABCA document from your
3 website or alternatively, you could just take
4 judicial notice of it. It's ABCA's calendar
5 for extended hours from 2023.

6 CHAIRPERSON ANDERSON: Okay, we can
7 take traditional notice of our calendar from
8 2023, but what's the purpose of that document?

9 MR. GEORGE: It came up last week that
10 there were noise complaints on a particular day
11 last year.

12 CHAIRPERSON ANDERSON: I think on the
13 31st, well, I think it was, it wasn't
14 necessarily, yeah, on the 31st. And I think
15 the argument with that they were open for
16 extended hours past their regular scheduled
17 hours. And I think their assertion was that
18 maybe if that was so, it was extended hours.
19 So I think that --

20 MR. GEORGE: Right. There were no
21 extended hours that day, according to --

22 MS. KERR: If I may?

23 CHAIRPERSON ANDERSON: That's
24 something that you need to provide testimony on
25 evidence on if you're bringing up this

1 allegation. You can present that.

2 MR. GEORGE: I just wanted to know if
3 I can use that document. I'm happy to elicit
4 that through testimony.

5 CHAIRPERSON ANDERSON: Okay, fine.
6 We can do that. That's ABCA's extended hour
7 schedule. Okay, I'm sorry, you were saying --,
8 Mr. George, when you place stuff in the chat, I
9 don't know what is in the chat. So therefore
10 don't place anything in the chat. You need to
11 bring in the evidence because placing in the
12 chat is not in the evidence, sir. So if you
13 want to bring something, you have to make a
14 motion and bring it as part of your testimony
15 or a document. Yes.

16 MR. GEORGE: You said you would take -
17 -

18 CHAIRPERSON ANDERSON: I'm coming to
19 you, Ms. Kerr. Yeah, if you're saying that you
20 want ABCA's extended hours for '23. We have a
21 calendar of extended hours, but I think part of
22 it is that we have extended hours, but I don't
23 know whether or not this licensee has applied
24 and is participating in extended hours. I
25 don't know that.

1 MR. GEORGE: Okay, what I'm asking is
2 whether you can take judicial notice of ABCA's
3 calendar from 2023, which did not include that
4 date.

5 CHAIRPERSON ANDERSON: Okay, we can do
6 that.

7 MR. GEORGE: What's the best way for
8 me -- you said putting it in the chat is not
9 work?

10 CHAIRPERSON ANDERSON: No. So you
11 could say that you want to bring this document
12 in. Let me do it this way. Why don't you, you
13 said you want to use it as impeachment, so when
14 that time comes, you can refer to the document
15 to say that you want to utilize the document
16 for impeachment purposes and so we can have
17 testimony on it. Okay?

18 MR. GEORGE: Sure.

19 CHAIRPERSON ANDERSON: All right. Ms.
20 Kerr, you were raising your hand earlier,
21 ma'am. What's going on?

22 MS. KERR: I'll save my comments for,
23 and my objections for when we get to that
24 place.

25 CHAIRPERSON ANDERSON: Okay, that's

1 fine. All right. So I stated before, this is
2 a continuation of our hearing on May 15th. And
3 what I'll just ask Ms. Kerr, just identify
4 yourself for the record and the role that you
5 play here.

6 MS. KERR: My name is Roxan Kerr and
7 I'm counsel for the applicant, Marte Bar and
8 Lounge. Thank you.

9 CHAIRPERSON ANDERSON: Thank you. I
10 apologize, ma'am. Mr. George, identify
11 yourself for the record, please, sir.

12 MR. GEORGE: My name is Aman George.
13 I'm the Commissioner for District 4D06 for the
14 protestant ANC 48.

15 CHAIRPERSON ANDERSON: All right,
16 fine. And then if anyone else testified, we'll
17 have them test. All right, so, Ms. Kerr, I
18 believe you say you have one more witness, is
19 that correct?

20 MS. KERR: That's correct.

21 CHAIRPERSON ANDERSON: And who's that
22 witness, ma'am?

23 MS. KERR: Karl Kerr.

24 CHAIRPERSON ANDERSON: Mr. Kerr, can
25 you raise your right hand, please? Do you

1 swear or affirm to tell the truth and nothing
2 but the truth.

3 MR. KERR: I do.

4 The witness was called to testify,
5 duly sworn, and provided the following
6 testimony:

7 CHAIRPERSON ANDERSON: All right,
8 thank you. You can have him identify himself
9 as a record, ma'am.

10 MR. KERR: My name is Karl Kerr. I'm
11 a husband to Misraj Bekele-Kerr, who is the
12 owner of Marte Bar and Lounge.

13 MS. KERR: Mr. Kerr, please --

14 CHAIRPERSON ANDERSON: Hold on, Ms.
15 Kerr. I saw someone place something in the
16 chat. We don't need to elevate anyone as
17 currently. If anyone has been called as a
18 witness, that person can be. But I see that
19 it's done. But in the future, we don't need to
20 elevate anyone until they're called as a
21 witness, and so then we can elevate them. All
22 right. I'm sorry. So go ahead. I apologize,
23 Mr. Kerr.

24 MR. KERR: Yes, I was finished. Karl
25 Kerr, husband to Misraj Bekele-Kerr, who was

1 the owner of Marte Bar and Lounge.

2 CHAIRPERSON ANDERSON: Go ahead.

3 MS. KERR: Before I continue, at this
4 time, I'd like to ask for, we impose the rule
5 of witnesses and that there's any witnesses
6 going to testify today that they be removed
7 from the hearing until their turn to testify.

8 CHAIRPERSON ANDERSON: I think one of
9 the unfortunate thing with that, Ms. Kerr, is
10 that we don't necessarily have, well, part of
11 the problem is that even if I remove this
12 person from being online, this is a public
13 hearing. And so the person can log into the
14 hearing and listen and pay attention to
15 everything that's been said. And that's not
16 something that I can prevent. So I hear what
17 you're saying, but for all practical impact,
18 this same person can log in on YouTube and
19 listen to everything that's going on. So I
20 know what you're trying to do, but there's no
21 way to police this hearing from that
22 perspective, because whoever we're removing,
23 they can easily log into YouTube and still do
24 what you're asking us to do.

25 MS. KERR: Okay, well, I want to, of

1 course, state the objection for the record and
2 to state that we all operate under good faith
3 and I would imagine that they wouldn't go on
4 YouTube if they're operating under good faith.

5 But I would like to, again, object to their
6 presence and I'm asking for the pool of
7 witnesses.

8 CHAIRPERSON ANDERSON: And who is
9 that, ma'am?

10 MS. KERR: I'm sorry?

11 CHAIRPERSON ANDERSON: Who are you
12 asking for us not to -- who?

13 MS. KERR: Brenda Cruz. And if Mr.
14 Chen is here, then I'd like the two of them
15 removed until it's time for them to testify. I
16 believe Mr. Pirrotti is going to testify.
17 However, he is one of the commissioners, and so
18 I think we'd be fine with him remaining.

19 CHAIRPERSON ANDERSON: All right, so
20 I'll ask that. Mr. George, any objection?

21 MR. GEORGE: Yeah, I do have an
22 objection just because it was fairly
23 technically complicated for me to coordinate
24 with the interpreter to get them into this
25 hearing in the first place.

1 CHAIRPERSON ANDERSON: Well, I mean,
2 they're still going to be at the, they're still
3 going to --

4 MR. GEORGE: Well, in order to listen
5 along, they'll need to log in through a
6 different platform. I don't see the purpose
7 of, they're not going to be here to be
8 disruptive. They're welcome to listen along.

9 MS. KERR: But that's the point is
10 that they're not supposed to listen along.

11 MR. GEORGE: I don't -- It's --

12 CHAIRPERSON ANDERSON: Who's the
13 interpreter for?

14 MR. GEORGE: Mr. Chen, one of our
15 witnesses.

16 CHAIRPERSON ANDERSON: So where's Mr.
17 Chen?

18 MR. GEORGE: The interpreter is logged
19 on and I think interpreting for him.

20 CHAIRPERSON ANDERSON: But Mr. Chen is
21 not logged on.

22 MR. GEORGE: The interpreter is logged
23 on and interpreting for him.

24 CHAIRPERSON ANDERSON: So Mr. Chen is
25 not himself, is not logged on. Is that

1 correct? I'm sorry, you can unmute. You're on
2 mute, ma'am. Where is she? I can see. I hear
3 you. Yes, ma'am.

4 THE INTERPRETER: Yeah, I'm the
5 interpreter. I'm Ni. Mr. Chen is online with
6 my cell phone. He cannot get in. He cannot
7 log in. Although I sent him a link, he cannot.
8 He still cannot. He said he can do it via
9 video, audio.

10 CHAIRPERSON ANDERSON: All right, so
11 that's not an issue right now so the
12 interpreter can stay on. Please do not
13 interpret for Mr. Chen. When it's time for him
14 to testify, I will talk to our IT person to see
15 how we can get him to log on. We'll have our IT
16 person send him the link.

17 THE INTERPRETER: (Foreign language
18 spoken.)

19 CHAIRPERSON ANDERSON: Yes. Mr.
20 George?

21 MR. GEORGE: Nothing, no.

22 CHAIRPERSON ANDERSON: There's no
23 issue because the interpreter can stay on if
24 there's an issue, but she's doing no
25 interpretation for Mr. Cheng.

1 MR. GEORGE: Yes.

2 CHAIRPERSON ANDERSON: All right, we
3 have. Who is Brenda?

4 MR. KERR: Brenda Cruz.

5 CHAIRPERSON ANDERSON: I'm sorry?

6 MR. GEORGE: She's one of our
7 witnesses.

8 CHAIRPERSON ANDERSON: All right, so
9 I'm going to ask Mr. Orellana, can you please
10 remove her until she's ready to testify then
11 we'll, okay, fine. And who is Commissioner
12 Courniotes? I'm sorry.

13 COMMISSIONER COURNIOTES: I'm a
14 commissioner and Ms. Kerr stated that Anthony
15 Pirrotti who is also a commissioner, I'm a
16 witness as well, but I'm also a commissioner.

17 CHAIRPERSON ANDERSON: So you're
18 saying that you don't want her to be there,
19 ma'am?

20 MS. KERR: Are you speaking to me?
21 Ms. Kerr?

22 CHAIRPERSON ANDERSON: Yes, Ms. Kerr.
23 Yes.

24 MS. KERR: I said that Mr. Pirrotti
25 was a commissioner, and I believe Ms.

1 Courniotes is a commissioner as well, so I
2 didn't really object to them. But if their
3 role is strictly as witnesses, then they should
4 be removed as well.

5 CHAIRPERSON ANDERSON: All right, so
6 we'll have.

7 COMMISSIONER COURNIOTES: Well, it's
8 not strictly to be a witness. We're also
9 commissioners, so I agree with your initial
10 thought, Ms. Kerr.

11 MS. KERR: I'm fine with that.

12 CHAIRPERSON ANDERSON: You're fine
13 with what, ma'am?

14 MS. KERR: With Mr. Pirrotti and Ms.
15 Courniotes participating, since they are
16 commissioners and I'm assuming they have a role
17 beyond being a witness.

18 CHAIRPERSON ANDERSON: Okay, that's
19 fine. All right. So let's go with it. We're
20 going to finish this here. And so, therefore,
21 let's do your first witness, ma'am. Go ahead.

22 DIRECT EXAMINATION

23 MS. KERR: Thank you. Um, Mr. Kerr,
24 can you spell your name for the record?

25 MR. KERR: K-A-R-L Kerr K-E-R-R.

1 MS. KERR: And where do you live?

2 MR. KERR: 36 Dawn View Court, Silver
3 Spring, Maryland, 20904.

4 MS. KERR: And, sir, what is your
5 educational background, starting with
6 elementary school?

7 MR. KERR: Elementary school is PS 32.

8 MS. KERR: And where is that located?

9 CHAIRPERSON ANDERSON: Why do we go
10 back to elementary school? That's irrelevant.

11 MS. KERR: Well, I'm a litigator so
12 we're just setting the scene, sir, if you can
13 just indulge me for two minutes?

14 CHAIRPERSON ANDERSON: All right,
15 ma'am, go ahead.

16 MS. KERR: Thank you.

17 MR. KERR: And the junior high school
18 IS 32 and high school is Aviation High School.

19 And all of that is in New York. And then
20 College of Aeronautics. And also military
21 school with the Navy. And also the College La
22 Guardia Airport, New York. College of
23 Aeronautics.

24 MS. KERR: Thank you. And you
25 mentioned you were in the Navy, is that right?

1 MR. KERR: That's correct.

2 MS. KERR: And how many years were you
3 in the Navy?

4 MR. KERR: I served for five years. I
5 enlisted for four. I graduated from school
6 valedictorian, so they promoted me three ranks,
7 but I had to give them an extra year, so I did
8 five years.

9 MS. KERR: And were you honorably
10 discharged?

11 MR. KERR: Yes.

12 MS. KERR: And what did you do after
13 the Navy?

14 MR. KERR: I worked for Knorr Brakes.
15 That is a company that manufactures braking
16 system for trains. And then I've worked with
17 Amtrak for 20 years now, August will be 21
18 years.

19 MS. KERR: And are you still at
20 Amtrak?

21 MR. KERR: Yes, I am.

22 MS. KERR: And what's your current
23 position?

24 MR. KERR: I'm the manager for the
25 mechanical department, for the Amtrak

1 mechanical department.

2 MS. KERR: Okay. And do you know
3 Marte Kerr?

4 MR. KERR: Yes.

5 MS. KERR: And how do you know her?

6 MR. KERR: We met here in DC and been
7 married for 17 years.

8 MS. KERR: Okay. And what, if
9 anything, is your role at Marte Bar and Lounge?

10 MR. KERR: So my role is I maintain
11 the building, make sure the surrounding common
12 areas are kept neat and clean, especially the
13 back, because you don't want anything that
14 attracts rodents. Maintain the facility, fix
15 anything minor that needs to be fixed, or work
16 with the contractors that might come in and do
17 work. Make sure the bills are paid, taxes are
18 paid, and assist whatever way she needs me to
19 assist her.

20 MS. KERR: Now, are you an owner of
21 Marte Bar and Lounge?

22 MR. KERR: No, my wife is the sole
23 owner.

24 MS. KERR: Okay. Are you aware of the
25 day to day operations of Marte Bar and Lounge?

1 MR. KERR: Absolutely.

2 MS. KERR: And how often are you
3 there?

4 MR. KERR: I'm there at least five
5 days a week. Normally, I go in the morning and
6 check on everything, make sure everything's
7 good to go for her, and then we coordinate if
8 she needs me to go buy supplies or anything
9 like that, then I'll go and drop it off and
10 make sure it's ready for her to go so when her
11 and her employees get there, they could go to
12 work.

13 MS. KERR: Okay. And do you do
14 anything pertaining to the music at the bar?

15 MR. KERR: Yes, I was actually a DJ
16 and a promoter back in New York between I was
17 18 to about 29 until I went to the military.
18 And me, along with the sound technician,
19 decided what the sound system was that would be
20 adequate for the space.

21 MS. KERR: And do you do anything with
22 the selection of the music?

23 MR. KERR: The selection is mostly
24 picked by mostly Misraj, but also myself as
25 well. But we make the playlists to put on the

1 computer so it could play continuously without
2 anyone have to go and operate the device.

3 MS. KERR: And how many speakers does
4 Marte Bar and Lounge have?

5 MR. KERR: The bar has two speakers
6 which are mounted to the wall, and one sub-
7 woofer that is designed to play the bass that's
8 located on the floor.

9 MS. KERR: Okay. At this time, I
10 would like to show our Exhibit 7 to the witness
11 so everyone can start preparing to see that.

12 CHAIRPERSON ANDERSON: Mr. Orellana,
13 can you please allow Ms. Kerr to share her
14 screen?

15 MR. ORELLANA: Access has been
16 granted.

17 MS. KERR: Great. So let's do this.
18 Share the screen. Share. I'm showing you
19 what's been marked as Applicant's Exhibit 7.
20 Do you see that?

21 MR. KERR: Yes, I do.

22 MS. KERR: Do you recognize, you can
23 scroll through the pictures and let me know if
24 you recognize these pictures.

25 MR. KERR: Yes, I recognize those

1 pictures.

2 CHAIRPERSON ANDERSON: Is there a
3 question? Ms. Kerr, are you there?

4 MS. KERR: I am. I'm asking if he
5 recognized the pictures.

6 CHAIRPERSON ANDERSON: He answered
7 your question.

8 MR. KERR: Yes, I do recognize the
9 pictures, yes.

10 MS. KERR: Okay. And are they an
11 accurate depiction of Marte Bar and Lounge?

12 MR. KERR: Yes, they are.

13 MS. KERR: I'd like to offer those
14 pictures into evidence.

15 CHAIRPERSON ANDERSON: Any objection,
16 Mr. George? Without objection, Exhibit 7 is
17 admitted.

18 (Whereupon, the above-referred to
19 document was marked as Applicant's Exhibit No.
20 7 for identification.)

21 MS. KERR: So I'd like to walk through
22 these pictures with you. You mentioned that
23 there's two speakers. Is that correct?

24 MR. KERR: Yes.

25 MS. KERR: Do you see any of the

1 speakers in this picture that's up here now?

2 MR. KERR: Towards the back of the
3 establishment, that little door is towards the
4 kitchen, towards the back. And then one of the
5 speakers are currently mounted on a stand that
6 would be next to what would be the DJ booth
7 when we do indeed, if we do indeed are able to
8 get a DJ.

9 MS. KERR: Now, did you put that DJ
10 booth there?

11 MR. KERR: No, that DJ booth was there
12 when we purchased the establishment.

13 MS. KERR: And so currently, what do
14 you use that DJ booth for, if anything?

15 MR. KERR: It's used to set the
16 computer which holds the playlist that plays
17 the music.

18 MS. KERR: And I'm going to the next
19 picture. Do you see any speakers in this
20 picture?

21 MR. KERR: So in this picture, you're
22 standing towards the back, looking towards the
23 front.

24 MS. KERR: Is this the front door
25 here?

1 MR. KERR: That is the front door.
2 And then next to that, next to your left, it's
3 a little blue light. That would be another
4 speaker that's currently mounted to a stand as
5 well.

6 MS. KERR: And was this speaker always
7 in this location?

8 MR. KERR: No, the speaker was mounted
9 to the upper left, where that little
10 rectangular block is. That's the mounting --

11 MS. KERR: Do you see the mounts?

12 MR. KERR: Yes.

13 MS. KERR: Okay, so continue.

14 MR. KERR: The mount of the speaker,
15 that's where it was before it was asked to be
16 moved by the ANC.

17 MS. KERR: Okay.

18 MR. KERR: ABRA supervisor.

19 MS. KERR: Okay. And what is this
20 picture of?

21 MR. KERR: This picture is a section,
22 if you go back to the first picture of the
23 outside, is that lighted area there, that's
24 that little section that actually protrudes
25 outside the structure itself. And it's a

1 little seating area for the customers.

2 MS. KERR: And so this is the speaker
3 that you were showing in the other picture?

4 MR. KERR: Yes. And that speaker,
5 before it was permanently mounted to that mount
6 we showed before and then it was requested by
7 the ANC in that meeting we had for it to be
8 taken down off of the wall because it was
9 causing the vibration going upstairs.

10 MS. KERR: Okay. And what is this a
11 picture of?

12 MR. KERR: That's a picture of the
13 bar, the TV monitors that we use to show
14 sporting events or music videos that are
15 playing for the customers' pleasure.

16 MS. KERR: Okay. And what is this?

17 MR. KERR: That is a DJ booth we
18 mentioned in the previous picture and the
19 speakers mounted on the stand right behind it.

20 MS. KERR: And what is that on the DJ
21 booth?

22 MR. KERR: That is the computer.

23 MS. KERR: And is that what you use to
24 set the tracks for what plays?

25 MR. KERR: The playlist for whatever

1 Misraj or the bartender decides they want to
2 play.

3 MS. KERR: Okay. And what is this?

4 MR. KERR: That's the bathroom areas
5 to the left, towards the kitchen area.

6 MS. KERR: And are there any speakers
7 in this area?

8 MR. KERR: No. There are only two
9 speakers are the two speakers we just spoke
10 about.

11 MS. KERR: And what is this area?

12 MR. KERR: That's outside of the
13 backyard, and that's the grease trap container.

14 MS. KERR: And are there any speakers
15 out here?

16 MR. KERR: No, there are no speakers
17 outside.

18 MS. KERR: Okay, thank you. And so we
19 can take that off the screen. And so how do
20 you decide how many speakers to place in Marte
21 Bar and Lounge?

22 MR. KERR: So, actually, the sound
23 engineer actually wanted to put more speakers
24 to be placed in there. And I thought for the
25 space, the two was adequate with the one sub-

1 woofers would be adequate for the space, because
2 we just want the background music. That way we
3 could play the music and the customers would
4 still be able to talk and it's just to set the
5 mood and ambiance of the space. So we didn't
6 want any big loudspeakers in there. And we
7 took in consideration there was a tenant up
8 there, and I didn't want too much of a sound to
9 be in there.

10 MS. KERR: And are you the person that
11 set the volume of the music at Marte Bar and
12 Lounge?

13 MR. KERR: Yes, we set it but
14 initially, when the first call, Ms. Cruz called
15 and she complained to the DC Noise Violation or
16 Noise Protection and a young man came out. He
17 had a noise meter, and he was standing outside
18 the door. And I went to greet him and asked
19 what he was doing. He said he had a complaint
20 and he was checking to see if we were in
21 violation.

22 MS. KERR: Let me stop you there for a
23 moment. So the person who came was not from
24 ABCA?

25 MR. KERR: No. Was not from ABRA? It

1 wasn't from the police department. The first
2 person came out was from DC Noise Prevention or
3 something like that.

4 MS. KERR: Okay. And continue. And
5 you met him outside.

6 MR. KERR: So he said, the noise
7 volume was good. He didn't have a problem. He
8 didn't have any violation. And I asked him
9 what was the limit, and he asked me to go ahead
10 and turn the music up. And he stood outside
11 until he could hear the music and the sound
12 coming out. And then he's the one that
13 recommended to set it at that level. If we set
14 it at that level, we would not be in violation
15 with his department.

16 MS. KERR: And to be clear, you said
17 he had a noise meter, a decibel reader?

18 MR. KERR: Decibel reader. Yes.

19 MS. KERR: And explain again, you said
20 that he asked you to go inside.

21 MR. KERR: Yes.

22 MS. KERR: And to continue turning it
23 up so that he can make an assessment of whether
24 that music or noise was above the required
25 legal limit. Is that right?

1 MR. KERR: Yes.

2 MS. KERR: And then at some point, he
3 asked you to stop turning it up, is that right?

4 MR. KERR: Yes. He came and said,
5 that level is good. As long as you're not
6 above that, you're within the law. And he also
7 explained that to Ms. Cruz, even when she asked
8 to come up. And he said, that law doesn't
9 apply to her because she actually shared the
10 same address as the establishment. He was not
11 able to come up there and do a decibel reading
12 because they shared the same address as the
13 space.

14 MS. KERR: Thank you. And do you
15 always play the music at that volume that he
16 said not to go above?

17 MR. KERR: We never go above that.
18 And quite frankly, we always played very low
19 because in the beginning, my wife and Ms. Cruz
20 had conversations, and whenever she thought the
21 music was loud, she would definitely turn it
22 down. And if we don't have any customers, we
23 play it at a minimum volume. And then towards
24 the weekend, or once the customers come, we'll
25 turn it up enough, but just enough to where if

1 their conversation or they're watching a game
2 or whatever, it's not drowning the music, the
3 music out. And most of the time, we don't have
4 a lot of people so most of the time, the music
5 is at a low level.

6 MS. KERR: And if you play at a high
7 level with no customers, have you made any
8 observations?

9 MR. KERR: Well, if we're playing it
10 at a loud level and there are no customers, all
11 that sound is bouncing around, and it's
12 uncomfortable for us, too. We don't turn it up
13 just to turn it up.

14 MS. KERR: So Ms. Kerr testified that
15 she entered into a residential lease for the
16 upstairs unit. Do you remember that?

17 MR. KERR: Repeat that.

18 MS. KERR: Ms. Kerr testified, your
19 wife, that she entered into a residential lease
20 upstairs. Do you remember that?

21 MR. KERR: Yes, I do.

22 MS. KERR: Why did you decide to enter
23 into that residential lease?

24 MR. KERR: Because we did take
25 exception. We didn't take exception. Excuse

1 me. We did empathize with the ANC's request
2 that, it was disturbing them, and she said she
3 couldn't sleep at night. And then we didn't
4 want them to fear that another tenant would
5 come in and then it would cause the same
6 disturbance to that tenant. And so, in us,
7 quite frankly, for the landlord's sake, for our
8 sake, for the business and everything, we
9 thought it was the best decision to just take
10 the space to avoid any more disturbance of any
11 tenant that might come there.

12 MS. KERR: Did ABCA ever come out to
13 investigate any noise complaints?

14 MR. KERR: Yes, absolutely.

15 MS. KERR: And to your knowledge, did
16 any of them find a noise violation?

17 MR. KERR: No, every time they came
18 out, they said they have a complaint. And then
19 when they come in, most of the time, they said
20 the music is not even that loud, but she's
21 stating that she can't sleep. And then they
22 would request for them that we turn it down,
23 and I would ask them, is there a violation?
24 They said no. And they would just say for me,
25 could you please just turn it down a little

1 bit? And I would let them know there is no
2 violation. But for you, and I want that you to
3 state that if you have to make any notation of
4 this visit, that we are willing to cooperate
5 for your sake.

6 MS. KERR: You mentioned that she was
7 complaining. Who is the she that you're
8 referring to?

9 MR. KERR: Excuse me. That's Ms.
10 Cruz. She would call and complain that we're
11 playing the music excessively loud. And when
12 they would come, they would go back and report
13 to her that the music is not loud and they
14 didn't have any violation. And she would state
15 that we turn it down when they come, and once
16 they leave, we turn it back up.

17 MS. KERR: Now, is that true?

18 MR. KERR: That cannot be true because
19 we don't know when they're going to come. They
20 just pop up. We have no idea when they're
21 going to come. We don't have nobody posted
22 outside looking when they're coming. We don't
23 know. Normally, we're playing the music, and
24 they just pop up. And 100% of the time, they
25 say the music is within tolerance and there's

1 no violation. And a lot of them are very nice,
2 and they apologize for coming out, but they say
3 they're just doing their job, and we tell them
4 we understand. And we normally take their card
5 and notate when they come.

6 MS. KERR: Are all the visits
7 pleasant?

8 MR. KERR: No. Most of the inspectors
9 are very pleasant. They come in, they ask for
10 the owner or ask for the manager, and then they
11 said they got a complaint. And normally, they
12 take us to the side.

13 But some of them are very unpleasant.
14 Some of them come in and they ask to turn the
15 lights on, turn the music off, and take the
16 license off of the wall. They want to see it.
17 And they walk around with cameras, and they
18 make a big spectacle. And most times, it scare
19 off about 70% of the customers because they
20 don't know what's going on.

21 MS. KERR: And do they leave?

22 MR. KERR: Absolutely, they leave, and
23 a lot of them don't come back.

24 MS. KERR: And so at some point, did
25 you and Ms. Cruz have any meetings?

1 MR. KERR: We've had a meeting at
2 first with the landlord and Ms. Cruz and her
3 husband.

4 MS. KERR: And was anyone else present
5 at that first meeting?

6 MR. KERR: The first meeting? No,
7 there was no one else. It was just the
8 landlord, Ms. Cruz, her husband, and me and my
9 wife.

10 MS. KERR: And do you recall the date
11 of that meeting?

12 MR. KERR: I can't recall offhand, but
13 I believe it might have been in September. I
14 can't remember.

15 MS. KERR: But it was pretty close to
16 when you first opened?

17 MR. KERR: Yes.

18 MS. KERR: Okay. And what happened at
19 that meeting?

20 MR. KERR: She kept on calling us and
21 calling the landlord and complaining, and we
22 tried to accommodate because the sub-woofer
23 that plays the bass, because they were
24 complaining about the bass. And during that
25 time, when she started complaining to my wife,

1 we turned the sub-woofer all the way down to
2 level one or none, and she would still
3 complain.

4 And then I think the time when we
5 asked for the meeting, it was a Saturday, about
6 6:00 p.m. and we had some residents from the
7 community. It was a lady, 60 years old, and
8 she had a birthday party. And all her guests
9 were about 50 and above. And it was about 7:00
10 on a Saturday. And she called, complaining
11 about the music. And I remember one particular
12 unpleasant inspector came and disrupted the
13 event. And everyone was upset and everything.

14 And we told Sharma. And because of that
15 reason, we decided it's time to have a meeting.

16 MS. KERR: Okay. And so that was the
17 reason why you guys had your first meeting?

18 MR. KERR: Yes.

19 MS. KERR: Okay.

20 MR. KERR: I realized this was getting
21 out of hand, and she needed to be a part of it.

22 MS. KERR: I see. And what happened
23 at that meeting?

24 MR. KERR: So we spoke, and they asked
25 to move the bass.

1 MS. KERR: When you say they, you're
2 referring to Ms. Cruz and her husband?

3 MR. KERR: Ms. Cruz and her husband
4 request that we lower the music and lower the
5 bass. And I told them that we can't lower it
6 anymore. It's off most of the time. And then
7 they asked for us to move the sub-woofer to the
8 other side of the room. And we wanted to
9 oblige them, so we did. And then he promised
10 if we move that sub-woofer to the other side of
11 the room, because it was under their bedroom,
12 that they wouldn't call anymore, so we did.

13 MS. KERR: And when you say they ask
14 you to move it, who specifically asked you to
15 move it?

16 MR. KERR: Ms. Cruz's husband. I
17 can't remember his name, but he specifically
18 asked if we could just move that.

19 MS. KERR: And I'm going to show you
20 what's marked as Exhibit 8. Can we give
21 permission to share that?

22 CHAIRPERSON ANDERSON: I think you
23 should still have it, ma'am.

24 MS. KERR: Do you share? Okay, I'm
25 showing you what's been marked as Applicant's

1 Exhibit 8. Let me just scroll through the
2 pictures. Do you recognize these pictures?

3 MR. KERR: Yes, I recognize those
4 pictures.

5 MS. KERR: Did you take these
6 pictures?

7 MR. KERR: Yes, I did.

8 MS. KERR: And are they a true copy of
9 the pictures that you took of Marte's Bar and
10 Lounge?

11 MR. KERR: Yes, it is.

12 MS. KERR: Okay, so I am showing you,
13 I'm scrolling down to the fourth. I'd like to
14 offer these pictures into evidence as
15 Applicant's Exhibit 8.

16 CHAIRPERSON ANDERSON: Mr. George?

17 MR. GEORGE: No objection.

18 CHAIRPERSON ANDERSON: Without
19 objection.

20 (Whereupon, the above-referred to
21 document was marked as Applicant's Exhibit No.
22 8 for identification.)

23 MS. KERR: Thank you. So you
24 mentioned in your testimony that you had a sub-
25 woofer.

1 MR. KERR: Yes.

2 MS. KERR: Is this the sub-woofer?

3 MR. KERR: Yes, that is the sub-
4 woofer.

5 MS. KERR: And where in the bar is
6 this located when you walk in?

7 MR. KERR: You're standing by the
8 front door, it's to the right, about halfway
9 into the establishment.

10 MS. KERR: Is it past the bar?

11 MR. KERR: No, it's right where the
12 bar starts. And it's opposite side of the bar.

13 MS. KERR: So it's on the right-hand
14 side of the bar, is that right?

15 MR. KERR: Yes.

16 MS. KERR: And did you put these words
17 over it?

18 MR. KERR: Yes, I did. Because that's
19 where it was located initially.

20 MS. KERR: Before the meeting that you
21 had that you're talking about?

22 MR. KERR: Before the meeting we had
23 with, um, Ms. Cruz and, um, Ms. Sharma, who's
24 the landlord.

25 MS. KERR: Okay. And the next

1 picture. What is this picture showing?

2 MR. KERR: The picture is where we
3 moved it after the meeting on the other side of
4 the room.

5 MS. KERR: And now, is this next to
6 the bar?

7 MR. KERR: Yes.

8 MS. KERR: Okay. And now I see that
9 the picture, it says after but there's no sub-
10 woofer there. Is that right?

11 MR. KERR: Yes.

12 MS. KERR: And what is this next
13 picture?

14 MR. KERR: So we moved it. And of
15 course, she still kept on complaining because I
16 thought it wasn't going to make a difference
17 because the thing is normally at a very, very
18 low level or off. So we didn't want to now
19 cause a disturbance to the abutting neighbor,
20 which is Mr. Chen because it wasn't making a
21 difference. So we moved it back because she
22 kept on calling and it didn't make a
23 difference.

24 MS. KERR: Understood. And did you
25 guys have occasion to have another meeting with

1 Ms. Cruz?

2 MR. KERR: Yes, because the phone
3 calls kept coming. The ABRA inspectors kept
4 coming, God bless them. And then we decide,
5 and my wife and Ms. Cruz kept on calling the
6 landlord. And actually, the ABRA inspector,
7 the supervisor, came out because some of the
8 inspectors, made a spectacle and was causing an
9 issue. And we called ABRA to complain about
10 some of the inspectors and he came out to talk
11 with us.

12 MS. KERR: He the supervisor?

13 MR. KERR: The ABRA supervisor, Mr.
14 Earl Johnson. And he said he empathized with
15 us and he also empathized with the lady
16 upstairs. But it's a lot of back and forth
17 with us and Ms. Cruz and it seems to him that
18 it's a landlord issue.

19 MS. KERR: So let me stop you there.

20 MR. KERR: Yes.

21 MS. KERR: Did you ever receive a
22 complaint from the other tenants upstairs in
23 the same building as you, Marte's Bar and
24 Lounge?

25 MR. KERR: That tenant moved in about

1 August. And up until, we have never had a
2 complaint from her.

3 MS. KERR: And at this point, did you
4 ever have a complaint from Mr. Chen?

5 MR. KERR: At this point, no, we've
6 never had a complaint from Mr. Chen.

7 MS. KERR: Okay. So let's go back to
8 the meeting. So, there was a second meeting.
9 Who was present at the meeting?

10 MR. KERR: So it was late in the
11 evening, and so it was ABRA supervisor Mr. Earl
12 Johnson. It was myself, my wife. It was the
13 ANC and Ms. Cruz.

14 MS. KERR: Okay. And what happened at
15 that meeting?

16 MR. KERR: At that meeting, the ABRA
17 supervisor says we need to have a meeting with
18 everybody because it seems to be a back and
19 forth and Ms. Sharma need to be a part of it,
20 the ANC need to be a part of it. And then we
21 need to turn the music up to the level we
22 normally play it. And then we need to go
23 upstairs and see what we could do to alleviate
24 the issue with Ms. Cruz.

25 MS. KERR: And did you guys go

1 upstairs?

2 MR. KERR: We didn't go upstairs then.
3 We went upstairs when we had the third meeting
4 with the ANC.

5 MS. KERR: And so let's stick with the
6 second meeting. So, this second meeting, what
7 else happened at this meeting?

8 MR. KERR: The ANC was there and they
9 were stating that it was an issue with the
10 children not sleeping.

11 MS. KERR: Who from the ANC was
12 present?

13 MR. KERR: The ANC was present.

14 MS. KERR: Who?

15 MR. KERR: Mr. Pirrotti. I believe
16 Ms. Courniotes, I hope I'm not pronouncing her
17 name wrong. And it was another commissioner as
18 well. I don't remember the name of that
19 commissioner.

20 MS. KERR: Okay, and continue. What
21 happened at the meeting?

22 MR. KERR: And we discussed several
23 things to move. And then nothing really got
24 resolved there until we had the third meeting.

25 MS. KERR: Okay, so let's stop right

1 there. So, at the second meeting, did you move
2 any speakers or any sub woofers because of that
3 second meeting?

4 MR. KERR: No, we did not.

5 MS. KERR: Okay.

6 MR. KERR: We told them we moved it on
7 the other side and it didn't make a difference.

8 She was still complaining, even though they
9 said they wouldn't. And they were stating that
10 we should turn the music down at a certain
11 point in the evening or at night so they could
12 sleep, which is, for us, most of the customers
13 -- because our revenue is generated between
14 11:00 p.m. and 1:30 a.m. or 2:30 a.m. on the
15 weekends. And we said if we turn the music
16 off, we would lose a lot of customers, and we
17 couldn't stay competitive with all the other
18 establishments in the area.

19 MS. KERR: Understood. And at some
20 point, there was a third meeting.

21 MR. KERR: Yes.

22 MS. KERR: Now, were you obligated to
23 go to these meetings?

24 MR. KERR: No.

25 MS. KERR: So then why did you guys

1 continue to have these meetings?

2 MR. KERR: Because we consistently,
3 throughout this process, was trying to find a
4 solution, trying to work with Ms. Cruz, trying
5 to come to a compromise. But we felt like the
6 ANC and Ms. Cruz didn't want to hear anything.

7 MR. GEORGE: I object.

8 CHAIRPERSON ANDERSON: Sir, you can't
9 object to the answer, sir. You can object to a
10 question.

11 MR. GEORGE: Can I object to the
12 question?

13 CHAIRPERSON ANDERSON: It's too late,
14 sir. When the question is asked, you need to
15 raise an objection. The witness is in the
16 middle of his answer. You cannot object. All
17 right? So you have to object to the question.

18 And so what I'll just say, Ms. Kerr, please
19 ask the questions. And Mr. Kerr, you need to
20 respond to your answers need to be responsive
21 to the questions that are being asked. Go
22 ahead.

23 MR. KERR: Not a problem.

24 MS. KERR: And so at some point, did
25 you move the speakers from off the wall?

1 MR. KERR: So after --

2 MR. KERR: Objection.

3 CHAIRPERSON ANDERSON: Hold on. Mr.
4 Kerr.

5 MR. KERR: Yes.

6 CHAIRPERSON ANDERSON: He has an
7 objection. You need to stay quiet until I make
8 a ruling on the objection. What is the nature
9 of your objection, sir?

10 MR. GEORGE: I think this line of
11 questioning is getting into actions taken
12 during settlement discussions.

13 MS. KERR: These questions have to do
14 with the steps they took to mitigate the issues
15 that were being complained about. And there's
16 no settlement agreement. And I didn't say
17 anything about settlement.

18 MR. GEORGE: These were actions
19 specifically taken, I think your line of
20 question made it clear, this is in response to
21 ANC requests during our discussions with the
22 bar, right?

23 MS. KERR: That's not true. I never
24 said anything about settlement discussions with
25 the ANC.

1 MR. GEORGE: You have to say the magic
2 word settlement for it to be --

3 CHAIRPERSON ANDERSON: Hold on. Okay,
4 I'm going to overrule the objection. Sir, all
5 I'm hearing is that these are actions. That
6 there was a complaint that was brought by the
7 tenant and the applicant is trying to address
8 the complaints. There's nothing been asked
9 about that there was a protest hearing and that
10 we had a mediation and these are the
11 concessions that were raised at a mediation.
12 Okay? I'm not hearing that. So I'm going to
13 overrule the objection and the witness can
14 answer the question.

15 MS. KERR: Thank you. Mr. Kerr, at
16 some point, did you move the speakers from off
17 the wall?

18 MR. KERR: Yes, after the third
19 meeting.

20 MS. KERR: And why did you move the
21 speakers off the wall?

22 MR. KERR: Because the ANC, along with
23 the ABRA supervisor and myself, they requested
24 that I turn the music up to the level that we
25 normally play the music, which I did. And then

1 we all went upstairs and --

2 MS. KERR: Let me stop you there.

3 Now, is this the third meeting you're referring
4 to?

5 MR. KERR: This is the third meeting,
6 yes.

7 MS. KERR: Okay. And let me stop you
8 again. Who was present at this third meeting?

9 MR. KERR: Mr. Pirrotti, Ms.
10 Courniotes, another gentleman from the ANC,
11 myself, my wife and --

12 MS. KERR: Was the landlord present?

13 MR. KERR: Ms. Sharma, the landlord.
14 No, her son was. Her son was representing on
15 her behalf. He was there.

16 MS. KERR: And was the ABRA supervisor
17 present?

18 MR. KERR: Yes, he was. Mr. Johnson.
19 Earl Johnson was present.

20 MS. KERR: Thank you. And you
21 testified that they asked you to turn the music
22 up to where you normally play it. Is that
23 correct?

24 MR. KERR: Yes, we did.

25 MS. KERR: And then they also said,

1 let's go upstairs to Ms. Cruz's apartment to
2 listen?

3 MR. KERR: Yes.

4 MS. KERR: And did you guys go
5 upstairs?

6 MR. KERR: We did. And I think Ms.
7 Courniotes said it was definitely too loud.

8 MS. KERR: Let me. I'm asking you a
9 specific question. Who went upstairs?

10 MR. KERR: Ms. Courniotes, I believe
11 Mr. Pirrotti as well, Mr. Earl Johnson, the
12 ABRA supervisor, myself and, Ms. Sharma, the
13 landlord's son. We all went upstairs.

14 MS. KERR: And did Ms. Cruz go
15 upstairs as well?

16 MR. KERR: She was already up there.
17 She stayed up there.

18 MS. KERR: Okay, and what happened
19 when you went upstairs?

20 MR. KERR: So, half of the party said
21 it was too loud, and half of them said it
22 wasn't that bad. And Ms. Cruz responded,
23 that's because we play it louder than that.

24 MS. KERR: Okay. And then did you all
25 go back downstairs?

1 MR. KERR: So, Mr. Johnson asked me to
2 turn it up to the level that the noise
3 violation people said to turn it up to, to that
4 level. And I went back downstairs and turned
5 it up to that level.

6 MS. KERR: And then what happened?

7 MR. KERR: And then they said they
8 could see how it would keep them from not
9 sleeping.

10 MS. KERR: When you went upstairs,
11 what was the layout of Ms. Cruz's apartment?

12 MR. KERR: So, when you go inside,
13 it's a hallway, a staircase that go upstairs,
14 and then there's a hallway that leads to both
15 the units. And her place is located to the
16 left, and there's a wall and then the daycare
17 center, which is the other building.

18 MS. KERR: Okay, so let me ask you
19 this. The little window alcove, where you
20 showed us where that speaker was?

21 MR. KERR: Yes.

22 MS. KERR: For instance, you can see
23 this picture that's in Exhibit 8 right now.
24 Can you still see that?

25 MR. KERR: Yes, I can still see that.

1 MS. KERR: What room in Ms. Cruz's
2 former apartment is right above this speaker?

3 MR. KERR: That speaker was mounted
4 directly under the children's room.

5 MS. KERR: Okay. And then the other
6 speaker over by the DJ booth, do you recall
7 where that speaker, whose room was over that
8 speaker?

9 MR. KERR: That speaker would probably
10 be right at the end of the unit and it was
11 probably towards the living room.

12 MS. KERR: Okay. And then the bass,
13 the sub-woofer that you showed us in the
14 initial location, where would that sub-woofer
15 be?

16 MR. KERR: That one is located, they
17 stated, under their bedroom, under Mr. and Mrs.
18 Cruz's bedroom.

19 MS. KERR: Okay. And so, continue.
20 So you turned it up to the level where the
21 inspector told you that that was right before
22 you got to the illegal decibels, correct?

23 MR. KERR: Yes.

24 MS. KERR: And then what happened?

25 MR. KERR: I can't remember the other

1 commissioner and Mr. Johnson said the vibration
2 is probably coming from the speakers being
3 mounted to the wall. And they requested that
4 we take the speakers down and mount them on a
5 stand to alleviate the vibration, because we
6 all believe that that's what's causing the
7 vibration. It wasn't so much a sub-woofer.

8 MS. KERR: And so when the inspector
9 supervisor made that request, and I believe you
10 said another ANC person agreed with that
11 request?

12 MR. KERR: Yes.

13 MS. KERR: Did you in fact remove the
14 speakers from the wall?

15 MR. KERR: I did tell him I don't mind
16 moving it, but I did mention to him, moving
17 into that little section, it would be right at
18 the glass window, where now it would probably
19 alleviate the issue with Ms. Cruz, but it would
20 probably create noise outside of the
21 establishment.

22 MS. KERR: So let me have you look at
23 Exhibit 8 again. This where you have before?

24 CHAIRPERSON ANDERSON: Yes.

25 MS. KERR: Explain to the board what

1 this is.

2 MR. KERR: It's a mounting bracket for
3 the speaker and that's where the speaker was
4 mounted, because I couldn't mount it in the
5 corner without putting that bracket. And then
6 it was mounted on the front face of that
7 bracket, the speaker was.

8 MS. KERR: Okay, so the speaker was on
9 this bracket.

10 MR. KERR: Yes.

11 MS. KERR: And this is the speaker
12 that you testified was below the children's
13 bedroom?

14 MR. KERR: Yes.

15 MS. KERR: Okay. And then I'm showing
16 you the next picture. Explain this picture to
17 the board.

18 MR. KERR: So they asked if we could
19 move the speaker away from the bedroom. And at
20 first they said maybe over the front door, but
21 I was concerned with noise, a lot of noise when
22 people are going in and out. And Mr. Johnson
23 recommended, since this section is actually
24 outside of the structure and away from the
25 apartment, that it might be a good idea to

1 place it there. So that's what we decided.

2 MS. KERR: So let me ask you this. So
3 when you say this is outside, so this little
4 where you see the cursor, this little alcove
5 here. Does the children's room, it's not over
6 that alcove, is that right?

7 MR. KERR: No, that's actually
8 outside, if you want to say it would be outside
9 of the structure of the building.

10 MS. KERR: So this wall that you see
11 here, do you see the cursor?

12 MR. KERR: Yes.

13 MS. KERR: This wall is where the
14 children's room would stop, is that right?

15 MR. KERR: Yes, yes.

16 MS. KERR: And over here in this
17 little corner, that was where the speaker,
18 well, let's look --

19 MR. KERR: Speaker was mounted. Yes.

20 MS. KERR: Right. So this wall that
21 we see here, that's where the children's room
22 ends.

23 MR. KERR: Yes.

24 MS. KERR: Okay. And then this little
25 space that we're looking at is outside of the

1 main structure.

2 MR. KERR: Yes.

3 MS. KERR: Okay. And explain this to
4 the board.

5 MR. KERR: So that's the speaker
6 that's by the DJ booth and that one was mounted
7 by the walls, where those little holes in the
8 walls was. The bracket was mounted to that
9 wall.

10 MS. KERR: And so you removed the
11 bracket?

12 MR. KERR: And so we removed the
13 bracket and the speaker from the wall and
14 placed it on that stand.

15 MS. KERR: Okay. And is this where
16 you placed it?

17 MR. KERR: Yes.

18 MS. KERR: Now, did you always have
19 these stands?

20 MR. KERR: No, I had to actually go
21 and purchase those stands, and I had to get
22 wires for the other speaker that's in the front
23 because the cables were too short, and I had to
24 get the sound technician to rerun wires to go
25 all the way to the end, and I had to buy all of

1 that and as well, pay the technician to run
2 those wires again.

3 MS. KERR: And did anyone reimburse
4 you for that additional payment?

5 MR. KERR: No. No. That came out of
6 the bar's expense.

7 MS. KERR: And we already talked about
8 the sub-woofer, and the sub-woofer is still in
9 the same location.

10 MR. KERR: Still in that same
11 position.

12 MS. KERR: And while we have these
13 pictures up, you were present for testimony
14 where I think it's Inspector Ruiz testified
15 that the inspector who wrote the report heard
16 music outside of the bar on the sidewalk. Do
17 you recall that testimony?

18 MR. KERR: Yes, I recall that
19 testimony.

20 MS. KERR: Now, how do you explain
21 that if that, in fact, happened?

22 MR. KERR: It was due to us moving
23 that speaker, because those black walls are
24 actually glass. And moving the speaker to that
25 location is now causing sound to escape from

1 the establishment.

2 MS. KERR: Now, you've been outside
3 while there's music outside Marte's Bar and
4 Lounge, right?

5 MR. KERR: Yes.

6 MS. KERR: Have you heard music
7 outside there?

8 MR. KERR: No. Because even when they
9 were there, the music was loud. Since we put
10 it there and when the inspectors came out to do
11 their report, they did mention they hear it,
12 and we heard it vaguely, and they explained it
13 should be no sound coming outside. But yes.

14 MS. KERR: When you raised your
15 concern regarding putting the speakers there to
16 the inspector supervisor, did he say anything
17 in response?

18 MR. KERR: He said, if it is, we'll
19 try to address that later. But for now, we're
20 trying to make sure these children can sleep.

21 MS. KERR: When you say if it is, what
22 is it is that you're talking about?

23 MR. KERR: If the sound is escaping
24 and being heard outside of the establishment,
25 then we can address that later. But for now,

1 we need to alleviate the sound and the
2 vibration going into the children's room.

3 MS. KERR: And have you moved this
4 speaker from this location?

5 MR. KERR: No, I haven't moved it back
6 as of yet, but I plan to.

7 MS. KERR: And why haven't you moved
8 it?

9 MR. KERR: I was waiting till these
10 proceedings are finished.

11 MS. KERR: Okay. And after you move
12 the speakers off the wall, what, if anything,
13 was the result of that?

14 MR. KERR: So we all agreed that we
15 would all come back a week later, after I've
16 made these changes, and then we would turn the
17 music up again to the same level. And then
18 we'd see if it made a significant difference.

19 MS. KERR: And did it?

20 MR. KERR: So myself and Mr. Pirrotti
21 met a week later and we turned the music up.
22 And also Ms. Sharma, the landlord's son came
23 and we turned the music up to that level and
24 went upstairs.

25 MS. KERR: And what, if anything, was

1 the result?

2 MR. KERR: And Mr. Pirrotti, along
3 with Ms. Cruz, agreed that moving the speaker
4 in that location made a significant difference.

5 He said it was still some sounds still coming
6 in, but it made a huge difference as far as the
7 vibration. And he thanked me for compromising
8 and trying to work with them to resolve it.

9 MS. KERR: And did that stop the noise
10 complaints from Ms. Cruz?

11 MR. KERR: It stopped it for about two
12 weeks and that was due to cause the month of
13 December was very slow. And as we stated, when
14 there's no customers or little customers, we
15 don't turn the music up. And being that the
16 speakers moved and the noise of that and the
17 volume was at a very low level, she didn't made
18 any complaints for about two, three weeks. But
19 once the holiday picked up and the customers
20 started coming, the calls kept coming as well.

21 MS. KERR: Okay. And did you guys
22 have occasion to have another meeting?

23 MR. KERR: No. Only the meetings
24 that, um, Mr. George is talking about. The
25 mediation hearings. That's it.

1 MS. KERR: Well, they weren't
2 mediation hearings, were they?

3 MR. KERR: No. But we didn't have
4 another meeting after Mr. Pirrotti came out and
5 checked on the speakers, see if it made a
6 difference.

7 MS. KERR: Do you recall having a
8 meeting through Zoom?

9 MR. KERR: The only meeting I remember
10 having after that is the one at the first
11 mediation hearing.

12 MS. KERR: At any point did you have a
13 meeting outside of the mediation hearing with
14 Mr. Aman George present?

15 MR. KERR: I'm sorry, I can't remember
16 that we did.

17 MS. KERR: Okay. I have nothing
18 further.

19 CHAIRPERSON ANDERSON: Thank you. Can
20 you close your screen, ma'am? Ms. Kerr, can
21 you close your screen?

22 MS. KERR: I heard you. I'm trying
23 to. Give me one moment.

24 CHAIRPERSON ANDERSON: It shouldn't
25 take this long, ma'am.

1 MS. KERR: It shouldn't if I knew what
2 I was doing, sir, but this is not my forte.
3 Stop. Okay, there we go.

4 CHAIRPERSON ANDERSON: Mr. George, you
5 have any questions for the witness?

6 CROSS-EXAMINATION

7 MR. GEORGE: I do, yes. Thank you.
8 Mr. Kerr, have you ever met the other tenant
9 who lives upstairs?

10 MR. KERR: No, I have not.

11 MR. GEORGE: Can you describe the
12 soundproofing at the bar?

13 MR. KERR: So, the soundproofing, when
14 we were doing a light renovation and they were
15 running the cables for the sound system as well
16 as the security system, I did notice an
17 underlayment on the ceiling, and the sound
18 engineer said it was soundproofing. It was
19 right under the ceiling, under the floor from
20 Ms. Cruz. And it's covered by the ceiling
21 panels in the bar. But it's there, I saw it.

22 MR. GEORGE: Do you have any
23 familiarity with soundproofing and have a view
24 as to whether that sort of soundproofing is
25 adequate?

1 MR. KERR: I'm not an expert, so I
2 can't say whether it's adequate or not.

3 MR. GEORGE: You described some--

4 MR. KERR: And also --

5 CHAIRPERSON ANDERSON: Sir, there's no
6 question. Sir, is there another question?

7 MR. KERR: Sharma.

8 MR. GEORGE: Can you describe some
9 instances in which ABCA came out in response to
10 noise complaints, and they asked you to turn
11 the volume down below the legal limit in order
12 to provide Ms. Cruz's family some relief? Is
13 that right?

14 MR. KERR: That's incorrect. They
15 didn't tell me to turn it down because it was
16 within the level. He actually told me to turn
17 it up to the level so I can set it to that
18 level to know not to pass that.

19 MR. GEORGE: I'm sorry, I thought that
20 I heard that there were instances, I remember
21 the instance that you're talking about where
22 somebody took measurements. But I'm asking
23 about, I thought that you mentioned some
24 instances in which, in response to noise
25 complaints, ABCA investigators came to Marte.

1 They agreed with you that the noise levels were
2 not exceeding the violation threshold, but they
3 asked you to turn it down in order to do a
4 favor to Ms. Cruz.

5 MR. KERR: That was to do a favor to
6 them.

7 MR. GEORGE: Well, in order to do the
8 favor to them of reducing the volume for Ms.
9 Cruz. Is that right?

10 MR. KERR: Yes. Some of them even
11 stated that it was not loud, in their opinion,
12 but they would still ask me to turn it down so
13 Ms. Cruz could see that they did come and talk
14 to us and we turned it down.

15 MR. GEORGE: And in those instances,
16 do you remember whether turning it down was
17 sufficient that Ms. Cruz wasn't complaining
18 anymore?

19 MR. KERR: I don't know, because they
20 don't let us know of is if it's sufficient for
21 her. But she normally says when they go up
22 there and they tell her, because they tell us
23 when they go up there and they tell her that
24 there's no violation and the music is not loud,
25 she replies that we turn it back up after they

1 leave.

2 MR. GEORGE: And is that right?

3 MR. KERR: That is incorrect because
4 we don't turn it down when they come as far as
5 to the level she's complaining about because
6 most of the time the level is low. They're on
7 weekends, if it's late and they say it's a
8 little late, can you turn it down a little bit?
9 And we gladly turn it down. But it is what it
10 is.

11 MR. GEORGE: So they would ask you to
12 turn it down and you would turn it down as a
13 favor to ABCA even though that was not the
14 level that you were legally required to come
15 down to.

16 MR. KERR: Again, yes, because we
17 asked them, is there a violation? They said
18 no. Is the music too loud? No.

19 MR. GEORGE: Yeah. I'm not asking
20 whether there's a violation.

21 MR. KERR: We turn it down. They
22 always ask us to turn it down a little bit.
23 Even if it's very low, they'll ask us to turn
24 it down.

25 MR. GEORGE: And after you turn it

1 down, when ABCA came to request it, on later
2 days, would you turn it back up past the point
3 that you had turned it down to?

4 MR. KERR: We never turn it back up.

5 MR. GEORGE: I don't mean the same
6 day, I mean on later days.

7 MR. KERR: We don't turn it up. If we
8 have a large crowd or we have a good capacity
9 that we turn it up where it's comfortable, then
10 they would come. There are nights when they've
11 come and we turn it down and she still
12 complained and they come back and we haven't
13 turned it back up. She's called on multiple
14 times. She's called all departments, police
15 department, every agency and they come and they
16 said it's within limit and they apologize and
17 said it's not loud. Most of the time, like the
18 police department, they'll come and say it's
19 not loud and then they just leave. They don't
20 even ask us to turn it down because I really
21 apologize for coming out sometimes. They said
22 if they're called, they have to come out.

23 MR. GEORGE: I wanted to clarify. You
24 said that at the volume level that you normally
25 play it at when the bar is busy. That's a

1 volume level that you find uncomfortable when
2 the bar is not full, is that right?

3 MR. KERR: Yes, because we don't just
4 play the music loud sitting in an empty space.

5 MR. GEORGE: Does Marte Bar ever stay
6 open past its ABCA hours, past its legal
7 operating hours?

8 MR. KERR: She never does. And even
9 if I'm not there, normally, I'll monitor the
10 cameras and I'll call her about 1:15 a.m. or
11 2:15 a.m. on the weekends if I see she's still
12 busy and I let her know it's time to wind it
13 down. I monitor it, she monitor it. The
14 managers know to monitor it. If we know that
15 ABRA's constantly coming out, why would we risk
16 it? Yeah, we don't. Excuse me. We never go
17 past it.

18 MR. GEORGE: Are you aware of a noise
19 complaint on October 31, 2023, at 4:30 a.m. in
20 the morning?

21 MR. KERR: No, I don't recall. They
22 come in at 4:30 a.m. in the morning for
23 complaints because we're not open at 4:30 a.m.
24 in the morning.

25 MR. GEORGE: Permission to share my

1 screen. I wanted to pull up the ABCA protest
2 report.

3 CHAIRPERSON ANDERSON: What's in the -
4 - all right. Go ahead.

5 MR. GEORGE: Are you able to see my
6 screen?

7 CHAIRPERSON ANDERSON: No, sir. Yes,
8 sir. Go ahead.

9 MR. GEORGE: Great. Mr. Kerr, are you
10 able to see this line here that shows MPD
11 receiving a noise complaint at 4:29 a.m. in the
12 morning on October 31st?

13 MR. KERR: I see that, yes. I see
14 that.

15 MR. GEORGE: Are you familiar with
16 that noise complaint?

17 MR. KERR: No, I'm not.

18 MR. GEORGE: I'm going to stop
19 sharing. And I guess my question is why would
20 Marte have received a noise complaint at 4:30
21 a.m. in the morning if it's not open at 4:30
22 a.m. in the morning?

23 MR. KERR: I can't answer that
24 question.

25 MS. KERR: Objection.

1 CHAIRPERSON ANDERSON: Sustained.
2 Let's move on. The witness has testified that
3 he's not aware of it. I don't understand why
4 you're going to ask him why. So let's move on.
5 Sustained. Let's move on.

6 MR. GEORGE: Mr. Kerr, on October
7 31st, 2023, was Marte operating under extended
8 hours?

9 MR. KERR: I can't recall that,
10 because normally we have the calendar as well,
11 and we always look when those holiday weekends
12 are. And if it's not a holiday weekend, we
13 normally close at 2:30 a.m. on Friday and
14 Saturday, and on Sunday we close at 1:30 a.m.
15 If it's a holiday weekend, if we don't know for
16 sure if the holiday weekend end on Sunday or
17 Monday, we normally close early just so there's
18 no mistake on that last day.

19 MR. GEORGE: I'd like to share my
20 screen and pull up the ABCA 2023 Extended Hours
21 Schedule.

22 MS. KERR: I object.

23 CHAIRPERSON ANDERSON: Why are we
24 going here? The witness has stated that you
25 gave him the 31st. He said that he's not aware

1 they're not open. So, I mean, why are we even
2 going here, sir?

3 MR. GEORGE: If we're all willing to
4 stipulate that there was a noise complaint
5 received on that date three hours after the bar
6 closed, I don't have to introduce this.

7 CHAIRPERSON ANDERSON: The document
8 speaks for itself. In our report, it says that
9 there was a noise complaint at 4:30 a.m.,
10 whatever time it was. That's what a document
11 says. You asked the witness, the witness said
12 he's not aware of it.

13 MR. GEORGE: That's right but --

14 CHAIRPERSON ANDERSON: There's nowhere
15 for us to go on this.

16 MR. GEORGE: When I asked this
17 question last week, Ms. Kerr said that it might
18 have been because they were operating under
19 extended hours. I want to be clear that they
20 were not operating under extended hours. I
21 don't see any reason to keep that out of the
22 record.

23 CHAIRPERSON ANDERSON: Whether that
24 there's a noise complaint or not, it wasn't
25 substantiated. So I don't know. There's a

1 complaint. There is nothing on the record to
2 say that it was substantiated. And I think a
3 lot of times, we're spending a whole lot of
4 time talking about noise complaint, and none of
5 the complaints have ever been substantiated.
6 So there's none of the complaints to say that
7 they have ever been cited by any agency to say
8 that they're doing anything that's not within
9 the law. So why are we spending all this time
10 on noise complaint where all of the complaints
11 that have ever been raised, every time an
12 investigator has appeared, there's never been a
13 violation. There's never even been a warning
14 issued. So I'm not quite sure why we're
15 spending all this time on noise complaints that
16 not one has been substantiated, and there is no
17 violation by any agency that you're bringing
18 forth.

19 MR. GEORGE: Does MPD substantiate
20 noise complaints?

21 CHAIRPERSON ANDERSON: Someone would
22 cite. I don't know, sir. I'm just saying
23 there is nothing in the record. There is
24 nothing in the record that anyone has produced
25 to say that any time a noise violation has been

1 raised by anyone in the establishment that it
2 has been substantiated, because I'm being told
3 that the ABRA investigators have been there.
4 There's nothing in the investigative history to
5 say that we've ever issued a violation. I'm
6 also told that from, the department of the DCRA
7 that there was someone who showed up with the
8 noise meter. And you have not provided us to
9 say that when that person showed up, that there
10 was some violation.

11 MR. GEORGE: So if I may, I think that
12 you're conflating two issues here. One is
13 whether they have exceeded noise requirements.

14 I'm not making a point about noise
15 requirements. I'm not making a point here that
16 they should have been operating below 65
17 decibels. I'm pointing out, I'm using this to
18 make the point that they were operating past
19 extended hours.

20 CHAIRPERSON ANDERSON: But they have
21 not been -- you're making an allegation, sir,
22 and you can always make allegations. But if
23 our investigator went there and determines that
24 they were operating over the hours, then we
25 would have cited a violation. So it's the same

1 type of issue, sir.

2 MR. GEORGE: It wasn't reported to you
3 all. It was reported to MPD.

4 CHAIRPERSON ANDERSON: Then MPD would
5 have contacted us and we would have shown up
6 and cited them.

7 MR. GEORGE: I guess, the list of MPD
8 complaints is in the ABCA protest report. You
9 all find it relevant enough to introduce into
10 the record so I don't understand why it's
11 irrelevant for me to point to the protest
12 report that you all wrote and submitted to the
13 record to make this point.

14 CHAIRPERSON ANDERSON: All right. As
15 part of the investigators, we always ask for
16 complaints from the command center.

17 MR. GEORGE: Why don't you only ask
18 for substantiated complaints?

19 CHAIRPERSON ANDERSON: We ask for
20 complaints, sir. A noise complaint is only
21 substantiated if we have issued a violation.
22 Okay. And there's no violation.

23 Let's move on. We're spending a whole
24 lot of time on in talking about noise
25 violations, that not one violation has been

1 substantiated. So I'm not quite sure why this
2 is relevant to the board. So your issue
3 regarding whether an advocate is relevant,
4 let's move on from there.

5 MR. GEORGE: I understand that you're
6 not going to let me introduce this. I
7 understand. Thank you.

8 CHAIRPERSON ANDERSON: All right.
9 It's part of the record. You can argue later
10 on, sir. You have asked the witness, the
11 witness cannot verify what is it you're trying
12 to state. Okay. That's why we went down this.

13 He stated that I'm not aware of it, so I'm not
14 aware of the fact that a noise violation or if
15 anyone contacted us at 4:00 a.m. in the morning
16 about a noise violation. So he said that he's
17 not aware. So there's nowhere to go with this.

18 Okay?

19 MR. GEORGE: Yeah. I have no further
20 questions.

21 CHAIRPERSON ANDERSON: Any questions
22 by any board members? Go ahead, Mr. Short.

23 MR. SHORT: Good afternoon, Mr. Kerr.

24 MR. KERR: How you doing?

25 MR. SHORT: Great. When you and your

1 wife purchased this business, how many speakers
2 were there?

3 MR. KERR: There were two speakers of
4 the same size. It was just lesser quality, so
5 we replaced them with better quality that's
6 more durable and long lasting.

7 MR. SHORT: Were there any woofer
8 bass?

9 MR. KERR: No, there was not a sub-
10 woofer there.

11 MR. SHORT: Now, you mentioned that
12 the very first time you ever talked to someone,
13 you say you don't know who they were, or do you
14 know who they were, who told you that they had
15 an instrument to measure the noise?

16 MR. KERR: Yes.

17 MR. SHORT: Did you get any
18 identification from this person?

19 MR. KERR: I did. I believe it's in
20 my counsel's report. Initial letter that she
21 responded to the ANC. His credentials are in
22 that response letter. But off-hand, I can't
23 remember.

24 MR. SHORT: You can't remember the
25 person's name?

1 MR. KERR: No.

2 MR. SHORT: And they told you what
3 acceptable rate you could play your speakers
4 at, correct?

5 MR. KERR: The legal limit that I must
6 not pass. Yes.

7 MR. SHORT: But yet still they didn't,
8 did they show you government ID?

9 MR. KERR: Yes, they showed me his
10 identification and everything. He showed his
11 credentials. Yes, he did.

12 MR. SHORT: Do you remember our last
13 hearing? There was a document that was
14 introduced about the new lease that you have in
15 the residential section above your business?

16 MR. KERR: Yes, I remember.

17 MR. SHORT: Do you remember that the
18 landlord, in that document said that, yes,
19 there was still noise coming upstairs. There
20 was still interference coming upstairs. But
21 anybody renting that place would just have to
22 deal with it. Is that correct?

23 MR. KERR: I don't understand the
24 question. What was the question? Repeat the
25 question, please.

1 MR. SHORT: Again, your landlord
2 testified, and there was a document, a rental
3 agreement, that apparently you or your wife
4 signed for the residential portion of the
5 building above your business.

6 MR. KERR: Yes. Yes.

7 MR. SHORT: Do you remember any
8 portion of that document stating that there was
9 still noise coming from the club up above the
10 kitchen area and that there was still smoke and
11 everything coming upstairs through the floor
12 and that anybody moving there renting that
13 space wouldn't complain?

14 MR. KERR: Nobody there renting that
15 space, the one we rented or the one behind us,
16 because it's two units. No one complained. No
17 one else complained to us.

18 MR. SHORT: I understand what you're
19 saying. I won't beat the dead horse. But the
20 bottom line is that document clearly stated
21 that the landlord said there was no real
22 separation between downstairs and upstairs in
23 the residential, especially over the kitchen
24 area. That was introduced into the record last
25 time. But anyway, you don't remember that or

1 do you remember that?

2 MR. KERR: In the lease document, it
3 states that there might be noise or smoke or
4 scents coming from the business, because it is
5 a bar and lounge and it, I can't remember
6 exactly what it stated, but it said that they
7 understand that moving into this residence, you
8 might experience --

9 MR. SHORT: Experience noise in that
10 whenever going on down in the bar coming
11 upstairs.

12 MR. KERR: Yes.

13 MR. SHORT: But anyway, I'm glad that
14 you remember that. And thank you for your
15 excellent memory. That's all I have, Mr.
16 Chair.

17 CHAIRPERSON ANDERSON: Thank you, Mr.
18 Short. Any other questions by any other board
19 members? Mr. George, any question of the
20 witness based on the question that was asked by
21 the board? Ms. Kerr, any redirect?

22 REDIRECT EXAMINATION

23 MS. KERR: I did have a couple
24 questions. Mr. Kerr, has Marte Bar and Lounge
25 ever been cited by the MPD for any reason?

1 MR. KERR: No, they have not.

2 MS. KERR: Has Marte Bar and Lounge
3 been cited by any other District of Columbia
4 government agency for any reason?

5 MR. KERR: No, they have not. No, we
6 have not.

7 MS. KERR: I have nothing further.

8 CHAIRPERSON ANDERSON: Thank you.
9 Thank you for your testimony, sir. You rest?

10 MS. KERR: Yes, thank you.

11 CHAIRPERSON ANDERSON: Who is the
12 ANC's first witness?

13 MR. GEORGE: That will be Mr. Chen.

14 CHAIRPERSON ANDERSON: All right. Mr.
15 Orellana, how can we get Mr. Chen on the line,
16 sir?

17 MS. KERR: If I may, before we get him
18 on the line?

19 CHAIRPERSON ANDERSON: Yes, ma'am.

20 MS. KERR: At this time, I'd like to
21 object to Mr. Chen and Brenda Cruz's testimony.

22 CHAIRPERSON ANDERSON: What's the
23 nature of your objection?

24 MS. KERR: Because my understanding is
25 that they intend to testify about noise that

1 they experience in their respective apartments.

2 And as the board knows, that noise is exempt
3 from section 25-725. So to the extent that
4 that's all they intend to testify about, I do
5 believe it's a waste of the board's time and
6 everybody else's to hear about this noise.

7 CHAIRPERSON ANDERSON: Mr. George?

8 MR. GEORGE: Two things. Mr. Chen
9 does not live in the same building. He lives
10 next door. But also, again, that our commission
11 wishes to ensure peace, order and quiet for
12 constituents, including the ones who live in
13 the same building as the bar itself. And we
14 believe that their testimony is relevant to
15 understanding the commission's protests in this
16 case.

17 CHAIRPERSON ANDERSON: So where does
18 Mr. Chen live?

19 MR. GEORGE: Mr. Chen lives north of
20 Marte bar. He's next door neighbor to the
21 north.

22 CHAIRPERSON ANDERSON: Is he an
23 abutting property?

24 MR. GEORGE: Yes.

25 CHAIRPERSON ANDERSON: For what it's

1 worth, we can have some limited testimony from
2 Mr. Chen. I'm curious to see where he's going.

3 Ms. Kerr, you can raise objections if you
4 believe the questions are objectionable, and I
5 will entertain them at that time. Let me just
6 find out what's where we are and your --

7 MR. GEORGE: I will say Ms. Kerr is
8 right about what we intend to testify about.
9 If you want to resolve the objection about
10 whether Mr. Chen and Ms. Cruz can testify about
11 noise in their residences, I think it's worth
12 addressing ahead of time.

13 CHAIRPERSON ANDERSON: All right.
14 This is what I'm going to do. I'm going to go
15 off the record, but give me a minute, please.
16 I need to do something to go off the record.

17 As chairperson of the Alcoholic
18 Beverage and Cannabis Board for the District of
19 Columbia, in accordance with DC Official Code
20 section 25-75 of the Open Meetings Act, I move
21 that ABCA Board hold a closed meeting for the
22 purpose of seeking legal advice from our
23 counsel on case number 23-PRO-00094, Marte Bar
24 and Lounge, pursuant to DC Official Code
25 Section 25-75(b)(4)(a) of the Open Meetings

1 Act. Is there a second?

2 MR. SHORT: Short. A second.

3 CHAIRPERSON ANDERSON: Mr. Short, has
4 seconded the motion. We'll have a roll call
5 vote. Mr. Short?

6 MR. SHORT: Short and I agree.

7 CHAIRPERSON ANDERSON: Mr. Grant?

8 MR. GRANT: I agree.

9 CHAIRPERSON ANDERSON: Mr. Anderson, I
10 agree. The board is going to go off the record
11 for a couple of minutes. We're going to sign
12 off. You please all stay online. I need to
13 consult with our legal counsel and I will come
14 back and address it and I will address the
15 objection that was raised. I'm asking all board
16 members to return to executive session. We
17 will be back. Thank you.

18 MS. KERR: Thank you.

19 (Whereupon, the above-entitled matter
20 went off the record at 3:05 p.m. and resumed at
21 3:11 p.m.)

22 CHAIRPERSON ANDERSON: We're back on
23 the record. There was an objection. Ms. Kerr,
24 what was the nature of your objection, ma'am?

25 MS. KERR: My objection was relevance.

1 That the noise that is emanating from Marte Bar
2 and Lounge into an abutting property, or a
3 property that is in the same building as Marte
4 Bar and Lounge, that's exempt from the ABCA
5 noise regulation 25-725 and so therefore, any
6 testimony related to that is irrelevant.

7 CHAIRPERSON ANDERSON: Mr. George, you
8 said you have two witnesses, and who are the
9 witnesses who are going to testify, sir?

10 MR. GEORGE: I think Ms. Kerr was
11 objecting to two of my witnesses.

12 CHAIRPERSON ANDERSON: Right.

13 MR. GEORGE: I was going to have Mr.
14 Chen an abutting neighbor testify, Ms. Cruz,
15 the former neighbor in the same building
16 testify, as well as one or both of Commissioner
17 Pirrotti or Commissioner Courniotes.

18 CHAIRPERSON ANDERSON: And they're
19 testifying about, what was the nature of their
20 testimony, sir?

21 MR. GEORGE: The primary nature of the
22 testimony of all of those witnesses, I think
23 there are probably a few questions that warrant
24 about this, but the primary nature of that
25 testimony is about noise in those places.

1 CHAIRPERSON ANDERSON: So I'm going to
2 sustain the objection and not allow the
3 witnesses testify pursuant to --

4 MR. GEORGE: Sorry, just to clarify,
5 can you make the ruling that they can't testify
6 about noise? I think I may want to ask them
7 about some other things relevant to other parts
8 of testimony.

9 CHAIRPERSON ANDERSON: That's what I'm
10 saying. They cannot testify regarding noise
11 pursuant to 25-725(b)(1). This is a mixed-use
12 zone and ABRA does not have any jurisdiction
13 over potential noise violations in these zones.

14 And I think as was testified by all the
15 parties, ABRA has been there to the
16 establishment several times and there's been no
17 sustainable noise violation. The testimony has
18 also been that DCRA has also been at the
19 establishment. And so noise, that has not been
20 sustained so there's been no noise violation
21 and so therefore I'm sustaining the objection.

22 There will be no testimony from any witness
23 further regarding noise violations.

24 Now if Mr. Chen wants to testify, I'm
25 not sure what it is that Mr. Chen will then be

1 testifying. Can you provide a proffer office
2 testimony then, sir? Meaning that what does he
3 want to testify about?

4 MR. GEORGE: I understand. I'm just
5 checking my notes. Give me one second.

6 THE INTERPRETER: I'm just --

7 MR. CHEN: (Foreign language spoken.)

8 CHAIRPERSON ANDERSON: Hold on. I'm
9 sorry. Hold on. Ma'am. Ma'am. Ma'am. He
10 cannot speak. Ma'am, can you please mute your
11 line? He cannot speak.

12 THE INTERPRETER: Okay.

13 CHAIRPERSON ANDERSON: It's Mr. George
14 who can speak.

15 THE INTERPRETER: Okay.

16 CHAIRPERSON ANDERSON: He cannot speak
17 until I tell him he can speak.

18 THE INTERPRETER: Okay. Okay.

19 CHAIRPERSON ANDERSON: Mr. George?

20 MR. GEORGE: I was not going to have
21 Mr. Chen testify about anything besides noise
22 from the establishment.

23 CHAIRPERSON ANDERSON: So let me have
24 the interpreter, Miss Ni Wang. The
25 interpreter, can you come online, please?

1 THE INTERPRETER: Yes.

2 CHAIRPERSON ANDERSON: Can you please
3 spell and state your name for the record,
4 ma'am?

5 THE INTERPRETER: Ni. Ni Wang. N-I N
6 as in Nancy I as India Wong W-A-N-G.

7 CHAIRPERSON ANDERSON: And you are
8 what type of interpreter, please?

9 THE INTERPRETER: Mandarin.

10 CHAIRPERSON ANDERSON: All right. You
11 can let Mr. Chen know that based on the
12 objection raised by the attorney, he will not
13 be allowed to testify today. Okay? Thank you.

14 THE INTERPRETER: Okay. (Foreign
15 language spoken.)

16 CHAIRPERSON ANDERSON: All right.
17 Thank you, ma'am.

18 THE INTERPRETER: Yeah. Thank you.

19 CHAIRPERSON ANDERSON: All right. Bye.
20 Mr. George. Now what are other witness were
21 you planning to call?

22 MR. GEORGE: I was planning to call
23 Ms. Brenda Cruz.

24 CHAIRPERSON ANDERSON: And Ms. Cruz.
25 This is the same. And Ms. Cruz will be

1 testifying again about the noise. That's the
2 same. And she's no longer living there, but
3 she'll be testifying about the noise that she
4 experienced while she lived there. Is that
5 correct?

6 MR. GEORGE: That was going to be the
7 primary nature of her testimony? That's right.
8 I was also going to have her testify about
9 another issue, which was whether there had ever
10 been noise complaints from the other tenant in
11 the building.

12 CHAIRPERSON ANDERSON: That's not
13 relevant. I mean, that's the same issue. So
14 that's not relevant. So the same objection.
15 So Ms. Cruz is not able to testify. That's not
16 relevant.

17 MR. GEORGE: Just to clarify that,
18 it's ABCA's position that the ANC's authority
19 about peace, order and quiet in our community
20 is limited to ABCA noise regulations?

21 CHAIRPERSON ANDERSON: You are based
22 on 25-725(b)(1), you live in a mixed zone.

23 MR. GEORGE: I understand that. That
24 is the standard for noise violations?

25 CHAIRPERSON ANDERSON: Right. And so

1 that is basically what the board, any decision
2 that the board is going to make, it has to be
3 based on the law and the statute. And based on
4 the statute, because it's a mixed-use zone, the
5 board does not have any jurisdiction over noise
6 complaints. And that's one of the reasons why
7 the numerous investigators who have come to the
8 establishment, all that they have done, they
9 have said, from what you have testified to, is
10 that as a courtesy to the tenant, the
11 investigator has asked them to turn the music
12 down, but no infraction has been sustained
13 based on the regulations 25-725(b)(1).

14 MR. GEORGE: I understand. I just
15 want to clarify that the legal position of ABCA
16 is that the peace, order and quiet standard,
17 when it comes to noise, is entirely coextensive
18 with 25-725.

19 CHAIRPERSON ANDERSON: Because it has
20 to be a residential zone. The statute is clear
21 to say that if you live in a commercial zone, I
22 believe a commercial zone or a mixed-use. So
23 the statute is very clear where we can enforce
24 noise violations. Unfortunately, this is like,
25 we had numerous cases on 9th street and we had

1 to inform the parties on 9th street that
2 because of the regulations, we cannot enforce
3 our noise regulations in that area based on
4 zoning, unless there's some change into the law
5 that gives us authority to regulate these
6 areas.

7 MR. GEORGE: I understand. I
8 understand your position.

9 CHAIRPERSON ANDERSON: Who is the
10 third witness where you plan to call?

11 MR. GEORGE: I was planning to call
12 either Commissioner Pirrotti or Commissioner
13 Cournotes.

14 CHAIRPERSON ANDERSON: What is the
15 nature of their testimony?

16 MR. GEORGE: Give me one second,
17 sorry. I just want to -- I don't see how their
18 testimony can be about things other than noise
19 emanating from the bar. That's the core of
20 this case.

21 CHAIRPERSON ANDERSON: And based on
22 25-725(b)(1), testimony from witnesses
23 regarding noise in a mixed-use zone, is not
24 relevant to this area. It's not relevant for
25 this agency to make a decision.

1 MR. GEORGE: I understand.

2 MS. KERR: If I may, Mr. Anderson?

3 CHAIRPERSON ANDERSON: Yes, ma'am.

4 MS. KERR: I just want to ask if the
5 board can inquire of counsel if there's any
6 other testimony these witnesses have to offer
7 besides noise emanating from upstairs above
8 Marte Bar and Lounge or from the abutting
9 property where Mr. Chen is.

10 CHAIRPERSON ANDERSON: I think the
11 question that's been answered, ma'am.

12 MS. KERR: Okay, thank you, sir.

13 CHAIRPERSON ANDERSON: By 25-725(b).
14 And we can basically 725(b) and whatever
15 section 12345. Yes. Do you have a witness to
16 testify, sir, who will testify about anything
17 else? Why the ANC believes that the board
18 should not consider this substantial change
19 based on its protest?

20 MR. GEORGE: I do not. I just want to
21 make clear in the record that we disagree with
22 the legal interpretation that you have embraced
23 here. But if that's clear, then I don't have
24 any other witnesses to call.

25 CHAIRPERSON ANDERSON: All right. So

1 for the record, it you're -- no Miss. No,
2 Commissioner, you cannot speak. You can only
3 speak through Mr. George. And so therefore, if
4 you have a question, you can call Mr. George
5 and he can ask whatever question that you need
6 to ask, Commissioner. So Mr. George, I think
7 Commissioner Courniotes, I apologize, I might
8 pronounce her name incorrectly. She had raised
9 her hand and I believe that she had a question.

10 So I'll take a moment for her to raise her
11 question through you and if you want to raise
12 her position, you can raise that, but she
13 cannot speak.

14 MR. GEORGE: Give us one second to
15 confirm if need be.

16 CHAIRPERSON ANDERSON: Sure. And the
17 reason why I'm doing, only the attorneys can
18 speak through at this juncture. Witnesses
19 cannot speak. Only the attorneys can speak. So
20 that's one of the reasons why I've made that
21 call.

22 MR. GEORGE: I don't think
23 Commissioner Courniotes need to ask anything.
24 I think we're good.

25 CHAIRPERSON ANDERSON: All right, so

1 you have no witnesses. So you rest?

2 MR. GEORGE: Yes.

3 CHAIRPERSON ANDERSON: So what we're
4 going to do, we'll go off the record for ten
5 minutes and so we can have, I'm sorry, Ms.
6 Kerr, do you have any rebuttal witness you want
7 to wish to call?

8 MS. KERR: No, sir.

9 CHAIRPERSON ANDERSON: All right, so
10 we're going to get off the record for ten
11 minutes and then we can do, we'll do closing.
12 So it's 3:25 p.m. We're off the record until
13 3:35 p.m. and then the parties should be
14 prepared to do closing. And then in closing, I
15 need each party to specifically state what it
16 is that they're asking the board to do. And
17 the burden is on the applicant to prove that
18 what is they are asking for that's appropriate
19 for the area. Okay? So, Mr. George, the
20 burden is always on the applicant to prove that
21 what they're requesting is appropriate for the
22 area in question, sir. Okay? So we're off the
23 record till 3:35 p.m. All right.

24 (Whereupon, the above-entitled matter
25 went off the record at 3:25 p.m. and resumed at

1 3:35 p.m.)

2 CHAIRPERSON ANDERSON: So at this
3 juncture, we're ready for closing arguments, so
4 we'll start with the applicant.

5 APPLICANT'S CLOSING STATEMENT

6 MS. KERR: Thank you. Marte Bar and
7 Lounge has applied to this board to change its
8 current closing hours by 30 minutes, as well as
9 for a live entertainment endorsement. The ANC
10 has objected to Marte Bar and Lounge's
11 application and filed a protest against the
12 application, arguing specifically that Marte
13 Bar and Lounge has and would have a negative
14 impact on the peace, quiet and order of the
15 neighborhood.

16 In these types of protest cases, Marte
17 Bar and Lounge, as the applicant, has the
18 burden of proving, using substantial evidence,
19 that the license it seeks is appropriate for
20 the locality, section or portion of the
21 District of Columbia where it is located. In
22 most cases, the board may only grant the
23 application if the request will not have an
24 adverse impact on the peace, order and quiet,
25 residential parking and vehicular and

1 pedestrian safety and real property values of
2 the area located within twelve hundred feet of
3 the establishment. In determining
4 appropriateness, the board is charged with
5 considering the effect of the establishment on
6 peace, order and quiet, including the noise and
7 litter provisions set forth in sections 25-725
8 and 25-726. The board is instructed to
9 consider noise, rowdiness, loitering, litter
10 and criminal activity.

11 However, in cases like these, like
12 this one that we have here, where the
13 protestant raises only the adverse impact it
14 believes the applicant will have on the peace,
15 order and quiet of the neighborhood, the board
16 is only required to produce findings of facts
17 and conclusions of law on that issue only, and
18 the board is well within its discretion to find
19 all other factors in the applicant's favor.

20 Here, a review of the record as a
21 whole supports the position that Marte's Bar
22 and Lounge does not and will not have an
23 adverse impact on peace, order and quiet of the
24 neighborhood. First, it should not be
25 understated that despite having undergone 14

1 visits and inspections from the ABCA to
2 investigate noise complaints, none of the noise
3 complaints have been substantiated. And it
4 wasn't substantiated just because Ms. Cruz or
5 the person calling lived upstairs or was
6 abutting the property. Remember, when the
7 inspectors come out, they have the right to
8 charge or to cite them for any violation that
9 they observe. So the inspectors, when they
10 came out, found no violations and the noise
11 complaints were not substantiated.

12 Since being open from August 2023 to
13 the present, Marte Bar and Lounge has never
14 received a citation or a fine from any District
15 of Columbia Agency for noise or anything else,
16 including the MPD, including the Department of
17 Buildings or DCRA, if that's who came out.

18 Marte Bar and Lounge provided
19 substantial evidence of its efforts to mitigate
20 the noise issue complained of by its neighbors,
21 even though those neighbors abutted the
22 property or lived above them in the same
23 building. From turning down the volume when
24 Ms. Cruz called or texted them, to numerous
25 meetings with Ms. Cruz and the landlord, from

1 turning down the sub-woofer to almost zero to
2 moving the speaker off the wall and onto a
3 speaker stand and putting it in a different
4 location, from meeting with Ms. Cruz and the
5 ANC to renting the property above them to make
6 sure the same kind of noise complaint does not
7 occur in the future, it cannot be said that
8 Marte Bar and Lounge did not take substantial
9 steps to try to mitigate any issues that they
10 were made aware of.

11 The evidence shows that Marte Bar and
12 Lounge seeks to extend its closing time by 30
13 minutes and the live entertainment endorsement,
14 in Mr. Kerr's own words, to stay competitive
15 with the other bars and lounges in the District
16 of Columbia. And to be clear, there used to be
17 a bar on the same block as Marte Bar and Lounge
18 was the testimony by Ms. Shorter, who had a
19 live entertainment endorsement. But that
20 particular establishment is no longer and now
21 there's no one on that bar that has a live
22 entertainment endorsement from the ABCA.

23 Specifically, Marte Bar and Lounge
24 seeks the live entertainment endorsement so
25 that it can have a DJ for weekends, holidays,

1 special events, special gatherings, birthday
2 parties for its customers. And those requests
3 have already been made and they have lost
4 business, Ms. Shorter testified that she took
5 her business elsewhere because they did not
6 have the ability to have a DJ for birthday
7 parties.

8 Ms. Misraj Kerr made clear that the
9 current business plan does not contemplate
10 having a DJ every night because Marte's Bar and
11 Lounge doesn't have a dance floor and the music
12 in the establishment is for background music to
13 enhance the customers' experience while eating,
14 drinking and talking.

15 The evidence also showed, particularly
16 through Ms. Wanda Shorter's testimony, that was
17 the customer who testified on Marte Bar and
18 Lounge behalf, that she frequents the
19 establishment twice a week, sometimes more.
20 And in the time that she's been there, on cross
21 examination, it came out that she's there from
22 sometimes whatever time. And she made clear
23 that sometimes she's there as late as 1:30 a.m.
24 and that the music is played at a level where
25 the customers do not have to yell when talking

1 to each other.

2 Finally, the evidence presented today
3 shows that the ANC had nothing to support its
4 protest except complaints from two neighbors.
5 One neighbor was in the same building as Marte
6 Bar and Lounge and the other neighbor abuts
7 Marte's Bar and Lounge.

8 The ANC provided no evidence to
9 support its position that Marte Bar and Lounge
10 has and would have an adverse impact on peace,
11 order and quiet in the neighborhood. They
12 presented no evidence that besides any abutting
13 or resident in the same neighborhood, that
14 anybody else was affected or is in a worse
15 shape because Marte Bar and Lounge is there.
16 No evidence of that nature was ever provided.
17 They provided no evidence that there was music
18 being played to harass anyone or to be spiteful
19 or mean or vengeful. There was no evidence of
20 that sort presented.

21 And to be clear, the board, Marte Bar
22 and Lounge agrees with the board's position
23 that Ms. Cruz and Mr. Chen and no one else
24 needs to testify regarding noise emanating from
25 Marte Bar and Lounge into an abutting residence

1 or a residence in the same building. And
2 that's specifically because that noise is
3 specifically exempt from the noise, sound or
4 music discussed in section 25-725, again,
5 because they lived upstairs or they lived in an
6 abutting residence.

7 The ANC provided no evidence that
8 Marte Bar and Lounge violated the noise level
9 requirement of Chapter 27 of Title 20, and
10 that's regarding decibel limits. No one
11 presented any evidence of any decibel reading
12 showing any noise above the required decibel
13 limits. The only mention of decibel readings
14 was offered by Mr. Kerr, who testified that an
15 inspector worked with him to determine the
16 limit where he should play the music without
17 going over the District of Columbia decibel
18 limit.

19 The ANC presented no evidence to
20 contradict Mr. Kerr's testimony. There is no
21 evidence that Marte Bar and Lounge violated any
22 disorderly conduct law and it cannot be said
23 that a business, simply by conducting its
24 business in due course, doing regular business
25 activities, is violating the noise provision in

1 any disorderly conduct statute.

2 I want to highlight for the board two
3 ABCA orders that we believe is instructive in
4 this matter. The first is in the matter of
5 Southeast Restaurant Group, LLC, and that's
6 Order Number 2023-359, where the board approved
7 the application of the Southeast Restaurant
8 Group to renew a retailer's class CT license.
9 The second case is in the matter of NOAA
10 Limited Liability Company Order Number 2023-
11 508, where the board, in approving the
12 application for substantial change, articulated
13 the same legal standard regarding the
14 applicant's burden of proof and the evidence
15 the board must consider as it did in Southeast
16 Restaurant Group.

17 The facts of Southeast Restaurant
18 Group are very similar to the facts of Marte
19 Bar and Lounge. At the end of the protest
20 hearing, the board reasoned, and I quote, the
21 board recognizes the hardship faced by the
22 abutting property owners in this case, but is
23 persuaded that the specific noise at issue,
24 namely noise emanating from a licensed
25 establishment into residences located in the

1 same building, does not rise to the level of an
2 appropriateness violation. The applicant's
3 business model does not focus on providing loud
4 music or entertainment on a regular basis and
5 there is no evidence of amplified music played
6 at an unreasonable or excessive level. The
7 noise at issue is emanating from and into
8 locations exempt from consideration under
9 Section 25-725, namely an exempt mixed-use zone
10 and from within the same building. There is no
11 evidence of a decibel violation under Chapter
12 27 and there is no evidence that the applicant
13 is engaging in unreasonable noise-making
14 activity or otherwise intending to annoy or
15 harass residents in violation of the disorderly
16 conduct law.

17 In this case, as in the above case,
18 Marte Bar and Lounge's business model does not
19 focus on playing loud music for dance purposes
20 or for concerts. Instead, the music is for
21 background purposes to enhance the customer's
22 enjoyment while eating, drinking and talking to
23 each other. There is no evidence that Marte
24 Bar and Lounge was playing loud music at
25 excessive levels. The ABCA investigated 14

1 times found no violations. To be clear, again,
2 Ms. Shorter testified that even in the late
3 night, the music is such that she can talk to
4 friends, family and other patrons without
5 yelling. Her testimony is uncontroverted.

6 Next, the noise emanating from Marte
7 Bar and Lounge into neighbors in the same
8 building or abutting Marte Bar and Lounge.
9 Again, the noise emanating from Marte Bar and
10 Lounge into the neighbors in the same building
11 or abutting Marte Bar and Lounge is exempt from
12 the statute as stated earlier. The ANC
13 provided no decibel reading to support any
14 position that the music is being played too
15 loud in violation of Chapter 27.

16 And finally, there's no evidence that
17 Marte Bar and Lounge is playing the music to
18 harass neighbors. To the contrary, Marte Bar
19 and Lounge tried to mitigate the noise issues
20 complained of to no avail, and the board is
21 allowed to use these efforts to mitigate the
22 noise issue in its analysis of whether Marte
23 Bar and Lounge is appropriate for the location
24 and/or will have an adverse impact on peace,
25 order and quiet.

1 The same set of facts found in the
2 Southeast Restaurant Group matter are true in
3 this case and the same result is warranted.
4 The board should approve Marte Bar and Lounge's
5 application without conditions.

6 And then I want to finally bring to
7 the board's attention the board need not accept
8 the ANC's position regarding this application.

9 The District of Columbia Court of Appeals has
10 clarified in more than one case that the board
11 need only give great weight to the ANC's views.

12 The Court of Appeals explained that great
13 weight means the board must elaborate with
14 precision its response to the ANC issues and
15 concerns. The board must make explicit
16 reference to each ANC issue and concern, as
17 well as specific findings and conclusions with
18 respect to each.

19 The Court of Appeals has also held
20 that the board meets the statutory requirement
21 of great weight to the ANC when it addresses
22 each of the concerns raised by the ANC by
23 specifically discussing each concern, by citing
24 evidence and other findings in a reasonable
25 manner, and by explaining why it rejected the

1 ANC's recommendations. A full review of the
2 record will bring the board to the conclusion
3 that it should reject the ANC's recommendations
4 and approve Marte Bar and Lounge's application
5 without conditions. Thank you.

6 CHAIRPERSON ANDERSON: Thank you, Mr.
7 George?

8 ANC CLOSING STATEMENT

9 MR. GEORGE: Thank you. Title 20 of
10 the DC Code, Section 2700.1, says it is the
11 declared public policy of the District that
12 every person is entitled to ambient noise
13 levels that are not detrimental to life, health
14 and enjoyment of his or her property. ANC 4D
15 initiated this protest because we had heard
16 from multiple residents that the applicant's
17 operations did so operate to the detriment of
18 their life, health and enjoyment of their
19 property, although we understand that ABCA has
20 chosen to entirely exclude all of that
21 evidence.

22 To take issue with a couple of
23 conclusions offered by the applicant here.
24 While the applicant suggests that volume and
25 the bar is simply kept at a level to facilitate

1 conversation, we believe that that is
2 contravened in the record by Mr. Kerr's
3 testimony that that volume level is
4 uncomfortable to be around when the bar is not
5 full. We would also note that this
6 establishment, as ABCA's Investigator Ruiz
7 testified, was already found to be hosting a DJ
8 without a valid entertainment endorsement
9 during a visit last year.

10 MS. KERR: I object. Objection.

11 CHAIRPERSON ANDERSON: No, no, no. So
12 don't object. Go ahead, Mr. George.

13 MR. GEORGE: ANC 4D strongly believes
14 that Marte Bar's operations are a disruption to
15 peace, order and quiet for their neighbors and
16 for our constituents. One of our constituents
17 is a daycare who abuts the property to the
18 south, as noted in the ABCA Inspector's Report.

19 We would ask that at a minimum, if ABCA
20 accepts the live entertainment endorsement,
21 that it limit the live entertainment
22 endorsement to operating after 5:00 p.m. on
23 weekdays in order to ensure that the children
24 in the daycare abutting the institution are not
25 disrupted from their sleep.

1 We encourage ABCA to reject the
2 application as inconsistent with peace, order
3 and quiet in our neighborhood. Thank you.

4 CHAIRPERSON ANDERSON: Thank you, Mr.
5 George. Do the parties wish to propose
6 findings and fact and conclusions of law
7 meaning that, you don't have to do that.
8 That's just if you believe that you want to
9 write a legal brief to say these are the facts.

10 This is what the law states. It's not
11 required for the parties to do that so both
12 parties can agree not to do that because it's
13 not required. It's just an offer.

14 MS. KERR: Do we have to do it
15 together?

16 CHAIRPERSON ANDERSON: Well, that's up
17 to you, ma'am. You can say, that's not
18 something that I want to do for them and the
19 board will make a decision on what's presented
20 today.

21 MS. KERR: We would like to write
22 that.

23 CHAIRPERSON ANDERSON: Hold on, Ms.
24 Kerr. Maybe you don't understand. All right,
25 this is the process. Okay? The board can make

1 a decision based on what's presented today. In
2 having proposed findings of fact and
3 conclusions of law, what would occur is that
4 you wait for the transcript. The transcript
5 will be issued in three weeks. And you read
6 the transcript and you will say, this is what
7 the evidence that was presented. You're not
8 making any new arguments. And this is what the
9 law is. And what this actually is going to do
10 is going to postpone when the board will issue
11 a decision.

12 MS. KERR: Oh.

13 CHAIRPERSON ANDERSON: Yeah, that's, I
14 just want to point out to you, because the
15 board would not make a decision until the
16 transcript is available in three weeks, and
17 then you'll have 30 days to write the response,
18 and then the board would issue its decision 90
19 days after that.

20 MS. KERR: I see. So we'll waive
21 that.

22 CHAIRPERSON ANDERSON: I wasn't trying
23 to talk you out of it. I was just trying to
24 explain to you. This is not --

25 MS. KERR: I understand.

1 CHAIRPERSON ANDERSON: It's not a
2 requirement. I'm not quite sure why even
3 protest hearings we do this, but in reading the
4 instructions, that's what it says so I have to
5 provide that and just explain to the parties
6 what it means. All right.

7 So let me read some statements and
8 then we can close the record. I apologize. As
9 chairperson of the Alcoholic Beverages and
10 Cannabis Board for the District of Columbia, in
11 accordance with DC Official Code Section 25-75
12 of the Open Meetings Act, I move that ABCA
13 Board hold a closed meeting for the purpose of
14 seeking legal advice from our counsel on case
15 number 23-PRO-00094 Marte Bar and Lounge,
16 pursuant to DC Official Code Section 25-
17 75(b)(4)(a) of the Open Meetings Act, and
18 deliberating upon case number 23-PRO-00094
19 Marte Bar and Lounge for the reason cited in DC
20 Official Code Section 25-75(b)(13) the Open
21 Meetings Act. Is there a second motion?

22 MR. GRANT: Second.

23 MR. SHORT: Second.

24 CHAIRPERSON ANDERSON: Mr. Grant and
25 Mr. Short has second the motion. I will now

1 take a roll call vote on the motion for us now
2 that it's been seconded. Mr. Short?

3 MR. SHORT: Short. I agree.

4 MR. GRANT: Mr. Grant. I agree.

5 CHAIRPERSON ANDERSON: And Mr.
6 Anderson, I agree. So it appears that the
7 motion has passed. I hereby give notice that
8 ABCA Board will recess these proceedings to
9 hold a closed meeting pursuant to Section 25-75
10 of the Open Meetings Act. Thank you everyone
11 for their presentation today. The board will
12 issue a decision within 90 days. Thank you.
13 Have a great day.

14 MS. KERR: Thank you. Have a great
15 day.

16 CHAIRPERSON ANDERSON: Thank you.
17 You're welcome. All right.

18 (Whereupon, the above-entitled matter
19 went off the record at 3:58 p.m.)
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In the matter of: Marte Bar & Lounge

Before: DC ABCA

Date: 05-22-24

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