

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:
Greenleaf Buzzard, LLC t/a :
Buzzard Point Fish House : Protest
2100 2nd Street SW : Hearing
Retailer CR - ANC 6D :
License No. 111655 :
Case #18-PRO-00083 :
(Application for New :
License) :

Wednesday,
April 3, 2019

The Alcoholic Beverage Control Board
met in the Alcoholic Beverage Control Hearing
Room, Reeves Building, 2000 14th Street, NW,
Suite 400S, Washington, D.C. 20009, Chairperson
Donovan W. Anderson, presiding.

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
NICK ALBERTI, Member
BOBBY CATO, JR., Member
MIKE SILVERSTEIN, Member
JAMES SHORT, Member
REMA WAHABZADAH, Member

ALSO PRESENT:

GREGORY CASTEN, APPLICANT

DR. CORALIE FARLEE, ANC 6D

ANTHONY DALE, ANC 6D

ANTHONY HOWZE, INVESTIGATOR, DC ABRA

ANDREW KLINE, LICENSEE COUNSEL

ANDY LITSKY, ANC 6D

SIDON YOHANNES, LICENSEE COUNSEL

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

2 1:39 p.m.

3 CHAIRPERSON ANDERSON: And so now, the
4 next case on our calendar is Case No. 18-PRO-
5 00083, Buzzard Point Fish House, License No.
6 111655. This is an application for a new license.

7 Will the parties please approach and
8 identify themselves for the record, please?

9 MR. KLINE: Good afternoon. Andrew
10 Kline here on behalf of the applicant.

11 CHAIRPERSON ANDERSON: Good afternoon,
12 Mr. Kline.

13 MS. YOHANNES: Sidon Yohannes on
14 behalf of the applicant.

15 CHAIRPERSON ANDERSON: Good afternoon,
16 Ms. Yohannes.

17 MR. CASTEN: Gregory Casten, the
18 applicant.

19 CHAIRPERSON ANDERSON: I'm sorry, your
20 last name, sir?

21 MR. CASTEN: C-A-S-T-E-N.

22 CHAIRPERSON ANDERSON: Mr. Gasten,

1 good afternoon.

2 MR. CASTEN: Casten with a C.

3 CHAIRPERSON ANDERSON: Good afternoon,
4 sir. There is a sign-in sheet, everyone, please
5 sign-in. Yes?

6 DR. FARLEE: Coralie Farlee, Chair,
7 ABC Committee, ANC 6D.

8 CHAIRPERSON ANDERSON: Good afternoon,
9 Ms. Farlee.

10 MR. LITSKY: Andy Litsky. I'm Vice
11 Chair of ANC 6D.

12 CHAIRPERSON ANDERSON: Good afternoon,
13 Mr. Litsky.

14 MR. LITSKY: Good afternoon.

15 CHAIRPERSON ANDERSON: All right.
16 This is a Show Cause Hearing. Are there any
17 preliminary matters that we need to address?

18 MR. KLINE: Yes, Mr. Chairman, there
19 is a pending Motion to Dismiss and I believe
20 there was an opposition that was just handed to
21 me as I walked in the room that has been filed by
22 the ANC.

1 The Motion to Dismiss is premised on
2 the proposition that those that appear before the
3 Board on behalf of really anybody, or any agency,
4 have to be formally designated.

5 And in this case, Dr. Farlee, who I
6 certainly commend her work over the years and I
7 have worked with her successfully many, many
8 times and I take nothing away from that, but in
9 this case, she was not so formally designated.
10 She was not formally designated to appear on
11 behalf of the ANC at the Roll Call Hearing. And
12 at the Roll Call Hearing and the Status Hearing.

13 And it has been the Board's position
14 under those circumstances, I believe, that when
15 parties are not authorized, that the party is
16 dismissed.

17 Now, in this case, based upon the
18 opposition that was just handed to me, the ANC
19 relies on a resolution. Well, they rely on two
20 resolutions. They rely on a resolution from
21 2015, which authorizes Dr. Farlee, and they rely
22 on one from December -- February 9th, I believe,

1 which is after the date of both the Roll Call and
2 the status conference.

3 Now, their position with respect to
4 the 2015 resolution is that her appointment on
5 behalf of the ANC, and I say this slowly because
6 it is so preposterous to me, I can't even wrap my
7 arms around it, that her appointment on behalf of
8 the ANC, continues until such time as she resigns
9 or is removed.

10 Now, what that would mean -- well,
11 before I get to that, you will note and I presume
12 you have it in front of you or counsel has it,
13 the person that signed the letter that reflects
14 the resolution authorizing her is Roger Moffatt.
15 Roger Moffatt, I don't think has been on that ANC
16 for quite some time.

17 MR. LITSKY: No.

18 MR. KLINE: But if you take that
19 position to its logical conclusion, what that
20 means is that if the ANC completely turned over
21 and every member resigned or lost their election,
22 then the person that was designated in 2015 would

1 continue until such time as they resign or are
2 removed. Now, that can't possibly be.

3 ANCs like, we will go all the way down
4 the line, Congress, Councilmembers, and other
5 elected representatives or advisors have specific
6 terms. And when those terms are over, what they
7 have done -- it doesn't continue in perpetuity at
8 that point. You can't appoint people to
9 represent an ANC in the future when the entire
10 body turns over or can turn over every two years.

11 There would need to be an
12 authorization by the ANC. It would be as if the
13 chair of the ANC would continue for every two
14 year term until such time as they were removed.
15 And I know several of you have worked on the ANCs
16 and that's not the way this works.

17 So we would submit that without a
18 clearly designated representative on behalf of
19 the ANC, then the ANC was not present for either
20 the status conference or the Roll Call and as the
21 motion was made, at the status conference, the
22 ANC should be dismissed.

1 The ANC-6D even says in their
2 pleadings "The ABC Board will have to decide at
3 the April 3 Protest Hearing for the application
4 of Buzzard Point Fish House whether the ANC's
5 resolution from 2015 should still apply in the
6 present matter four years later."

7 Indeed, that's what you have to
8 decide. Thank you.

9 MR. LITSKY: Do we have an opportunity
10 to respond?

11 CHAIRPERSON ANDERSON: Mr. Litsky?
12 Yes, yes, sir.

13 MR. LITSKY: Thank you, Mr. Chairman.

14 DR. FARLEE: Let me say --

15 CHAIRPERSON ANDERSON: Hold on. Hold
16 on a minute, Dr. Farlee.

17 DR. FARLEE: Yes.

18 CHAIRPERSON ANDERSON: Since -- and
19 the reason why I'm going to tell you not to speak
20 is because he is from the ANC. So he needs to
21 speak and then we will see where we go from
22 there. So that's why I'm going to have the ANC

1 speak first --

2 MR. LITSKY: I appreciate that.

3 CHAIRPERSON ANDERSON: -- because
4 somebody will say that you can't speak and so I
5 need to have something from -- since we have the
6 vice chair of the ANC here, then let me hear.

7 MR. LITSKY: And I am representing the
8 ANC. The representation comes through in
9 addition to the fact that the chair is now
10 working full-time. We had an administrative
11 meeting on Monday night and everybody agreed that
12 I would be delivering the comments and points
13 from the ANC in support of our opposition.

14 In terms of -- I appreciate Mr.
15 Kline's interpretation of the manner in which our
16 ANC does our business, I have been on the ANC for
17 20 years, that ANC for 20 years. It has been
18 both in Ward 2 and now in Ward 6.

19 I have during those 20 years been
20 chair for seven of them and vice chair for five
21 of them. I'm pretty clear about what our process
22 is and the collegial manner in which our ANC has

1 operated from the get-go.

2 I think you will also have in -- at
3 the table letters that come from -- the original
4 letter from Commissioner Moffatt, who was chair
5 at the time, and only on January 3rd stepped away
6 from the ANC.

7 Another letter from myself, who took
8 over as chair from Commissioner Moffatt, another
9 letter from Commissioner Fascett, no longer on
10 the ANC, but who was also chair of the ANC and a
11 letter from our current Chair, Gail Fast. Each
12 of those letters are stating that it was always
13 our decision that we would continue with the fact
14 that we would have -- we had a willing, able and
15 very professional person to be able to represent
16 us at such hearings under the direction of the
17 ANC and under the -- at the supervision of the
18 chair. And so -- and this continued throughout.

19 Never in the five years that
20 apparently we are talking about have -- four
21 years that we are talking about had anybody ever
22 raised an objection until now. We have been a

1 very collegial body and we always work these
2 things out amongst ourselves.

3 The fact that one of our own
4 commissioners would raise this issue, a brand new
5 commissioner at that who has no history with an
6 understanding of how our ANC has operated, is
7 difficult to buy into.

8 But I certainly would help -- hope and
9 our ANC would certainly hope that we would now be
10 given the opportunity to testify at this hearing
11 and present the conclusions that we have reached
12 as part of our deliberation to put in front of
13 you, so that you can make a clear understanding,
14 based upon our concerns.

15 I don't want a legal tactic and the
16 interpretation of how our ANC does our business,
17 because I know there are at least two
18 commissioners, two Board Members up here who have
19 served as chairs of their own ANC and understands
20 what the processes are. That I just hope that we
21 will be given an opportunity to provide great
22 weight, because it was a unanimous conclusion of

1 our ANC to do that. And to use a legal
2 technicality just seems off.

3 MR. KLINE: Mr. Chair, if I may?

4 CHAIRPERSON ANDERSON: Yes, Mr. Kline.

5 MR. KLINE: Yeah. I'm sorry a legal
6 technicality process is what it is all about.
7 And Mr. Litsky says it was always our decision
8 that Dr. Farlee be the rep.

9 Well, there is a way that an ANC acts.
10 There is a way that bodies act. They just don't
11 will it. The way they do it is they have a duly
12 called meeting and they take a vote and if the
13 vote passes, that's what happened.

14 This illustrates what we are dealing
15 with. You heard the concern. The new
16 commissioner is rocking the boat. Someone is
17 upsetting our cabal. This is the way we do
18 things. And it doesn't matter what the form or
19 the process is, we have our group and we have our
20 people and they have been in place and they
21 should be in place in perpetuity.

22 That's not how this process works.

1 That's not how the ANC process works. The ANC
2 process works every two years there is an
3 election and then there is an organizational
4 meeting. A couple of you have experienced it.
5 And at that organizational meeting, decisions are
6 made in terms of who the officers are and how are
7 those decisions made? They are made at a duly
8 called meeting with a vote of the commissioners.

9 And you know, this whole notion that
10 people are on committees, and I have my own issue
11 with committees and its subsidiary issue here is
12 the Congress of the United States does not
13 delegate authority to people who have not been
14 elected by the citizens of the United States.

15 Now, we have seen that all over town.
16 And that's not the central issue here, but it
17 seems to me that there needs to be some process
18 with respect to a group that is entitled to great
19 weight under the statute, as Mr. Litsky claims
20 that's to which they are entitled, and it's not
21 much, it's simply that you follow the rules. You
22 have a meeting and you go through some process.

1 And without that, everything breaks
2 down. Then we have, you know, the same group in
3 power. It's like well, that's the way we have
4 always done it. And there may be a new
5 commissioner, but, you know, he is upsetting
6 everything. We can't have that.

7 Now, I'm also advised that Dr. Farlee
8 was the SMD member from the same District that
9 the new commissioner is from and that she
10 resigned from that post and only was subsequently
11 reappointed as an at-large member.

12 So in terms of the Moffatt Resolution
13 in 2015, it talks about her being a member of the
14 committee and chair and what have you, well,
15 there was a break in that. That didn't continue.
16 But I don't think that's determinative.

17 I think what is determinative is the
18 current ANC, the people that were elected in
19 November of 2018, they decide who represents the
20 commission. And they do that from time to time
21 at duly called meetings with notice to the
22 public. That's the way it works.

1 MR. LITSKY: If I can just respond to
2 that? And then hopefully we can --

3 CHAIRPERSON ANDERSON: Yes, we are
4 going to move on in a couple of minutes.

5 MR. LITSKY: Right. First of all, I
6 would like to state that there is no cabal on
7 behalf of the commissioners at ANC-6D. We do get
8 along. We get along well with our new
9 commissioners as well.

10 This -- the situation that we are
11 talking about was something that the entire ANC
12 had agreed was going to occur from year-to-year
13 and from chair-to-chair. Dr. Farlee never
14 resigned her seat, never resigned her seat. She
15 was not reappointed by Mr. Dale, but she was
16 given a position of an at-large member to fill
17 when another at-large member had left.

18 And so there was never a break in her
19 service since we acted upon her putting -- what
20 makes a difference in this particular case, there
21 was never a break in her service at all and she
22 did not resign from the committee during that

1 period of time. She had continuous service at
2 the direction and served at the precise direction
3 of the chair and at the advice of the commission.

4 So when those of us who work and have
5 to, you know, go to a business every day, have an
6 opportunity to have somebody go to a Status
7 Hearing and show up on our behalf, that's the
8 only way that we can be represented when we give
9 them the authorization to do that, which we have
10 done.

11 She wasn't voting on our behalf. She
12 was expressing the intent that she was told to
13 express on behalf of the ANC when we sent her
14 here. And that's what we continue to do. You
15 will see that if we are talking about throwing
16 into, you know, the hopper, the notion that her
17 participation on the ANC over the course of these
18 four years should not be -- should be ignored,
19 then it seems to me that the instances where she
20 has participated before this Board and before
21 ABRA during the course of those years where we
22 have had 70 brand new licenses at the ANC, on

1 Capitol Hill, at the Riverfront or at The Wharf
2 and then Southwest and now on Buzzard Point,
3 would throw that into question.

4 You know, there is no way that we can
5 possibly handle that unless what we do is
6 exercise what we decided and there were no
7 attorneys on the ANC at that time, our own stare
8 decisis, and I'm not an attorney. We made a
9 decision. We carried forth that decision from
10 chair to chair to chair with no objection from
11 either the representatives who served at the
12 appointment of the ANC commissioners on the ABC
13 Committee itself or the elected ANC
14 commissioners. We depended upon Dr. Farlee to
15 carry out the will of the ANC at these hearings.

16 This is only, I would also point out,
17 the second time, the third time in my 20 years
18 that we have gone to a full Protest Hearing and
19 that's why I'm here. Whenever we have a full
20 Protest Hearing, trust me, we show up.

21 So I really hope that we will be able
22 to continue to express the concerns of the ANC at

1 this hearing and we will go to a hearing and get
2 the facts out, get the facts out which concern us
3 so greatly.

4 DR. FARLEE: May I speak?

5 CHAIRPERSON ANDERSON: Yes. Yes,
6 ma'am, go ahead. Ms. Farlee.

7 DR. FARLEE: I'm so glad I'm so super
8 whatever efficient, wonderful that I agreed to be
9 disappeared, but anyway, in the letter by Gail
10 Fast to you --

11 CHAIRPERSON ANDERSON: What letter is
12 that, ma'am?

13 DR. FARLEE: It is April 1 letter
14 submitted today. On the second page, there are a
15 number of hearings beginning in reverse order
16 from October 2018, January 16 that encompass the
17 four years that is under consideration when I had
18 been recognized with standing, recognized under
19 the ANC-6B have standing.

20 A couple of these were represented
21 by --

22 CHAIRPERSON ANDERSON: Hold on. Do

1 you have a copy of the attachment, Mr. Kline?

2 MR. KLINE: I have a copy of --

3 CHAIRPERSON ANDERSON: I have -- I
4 don't have the attachment that you are -- I see
5 that --

6 DR. FARLEE: No, it's not the
7 attachment. It's the --

8 CHAIRPERSON ANDERSON: No, no, no.
9 You said that -- I have a letter and it says
10 attachments letter is 11/2/20 --

11 DR. FARLEE: Yes.

12 CHAIRPERSON ANDERSON: But those
13 letters are not -- I'm sorry. All right. I
14 apologize. I do have. I apologize. I have what
15 you have, yes.

16 DR. FARLEE: Seven examples there
17 where I was represented, sorry, recognized by
18 Agent Fletcher as representing the ANC and given
19 standing, a couple of those. One at least was
20 attended by Mr. Kline, one I think by Ms.
21 Yohannes.

22 Secondly, the quote Mr. Kline read

1 from was provided by April Randall, that's the
2 Board's responsibility right now will have to
3 decide at the April 3rd Protest Hearing. I didn't
4 make up that quote.

5 But more importantly, at the Roll Call
6 Hearing for this protest, I was recognized as
7 representing the ANC-6D and having standing at
8 the Roll Call Hearing, December 24. It was
9 rather at the Status Hearing that it was
10 protested, my status was protested.

11 CHAIRPERSON ANDERSON: And what was
12 what -- I recall at the Protest Hearing that --

13 DR. FARLEE: At the Status Hearing.

14 CHAIRPERSON ANDERSON: -- I'm sorry,
15 at the Status Hearing we had a conversation that
16 a motion was initially made and one of the things
17 that I had asked you to do was to provide the
18 Board with a letter, since it was in question to
19 provide the Board with your authorization. Have
20 you subsequently provided?

21 DR. FARLEE: That's the February 20th
22 letter.

1 CHAIRPERSON ANDERSON: Oh, you
2 provided a letter --

3 DR. FARLEE: Attached to --

4 CHAIRPERSON ANDERSON: -- to the Board
5 on the 20th? All right. Anything else you want
6 to say?

7 DR. FARLEE: No, that's fine. Thank
8 you.

9 CHAIRPERSON ANDERSON: All right.
10 It's my understanding --

11 MR. KLINE: May I?

12 CHAIRPERSON ANDERSON: Yes, sir.

13 MR. KLINE: It's our motion, so I
14 think we get the last word, which will be very
15 brief. And that is that the fact that it was
16 never challenged before is irrelevant. I mean,
17 it is being challenged now. And if it's wrong,
18 the fact that it was never challenged before, is
19 completely irrelevant.

20 It is being challenged in this case
21 and each case stands on its own and the Board
22 needs to make a decision in this case.

1 CHAIRPERSON ANDERSON: All right. It
2 is my understanding that when -- in order to have
3 a Protest Hearing, we need to have a formal
4 motion by the ANC. The ANC has to vote and the
5 ANC has to vote to protest the liquor -- I'm
6 sorry, the application. And the ANC will
7 designate a representative.

8 It's my understanding that in the
9 former letter that came to the Agency, both the
10 ANC and Dr. Farlee was designated as the
11 representative in that. That's what I was told
12 by the Agency that it was in that letter. If I'm
13 incorrect, I'm incorrect.

14 I am aware that it is stated in that
15 letter that she -- that's what I was told by the
16 Agency. But that's neither here or there.
17 That's neither here or there, that's what I was
18 told.

19 So however, when this matter -- when
20 we had the Status Hearing, when the motion was
21 formally made, I did ask that since there was a
22 question that Ms. Farlee that she clear the

1 record up by putting -- by providing us some
2 information.

3 MEMBER ALBERTI: The line on the top
4 is 2015.

5 CHAIRPERSON ANDERSON: Oh, hold on.
6 All right. I stand corrected. On November 19,
7 2018, and I really don't understand why we even
8 have -- we are even having this issue anywhere,
9 on November 19, 2018, when the ANC voted to
10 protest this matter, the letter that I have in
11 front of me is dated November 19, 2018.

12 It says please -- it basically stated
13 that they had a meeting. The vote was 6-0 to
14 protest this license. It says please contact Dr.
15 -- Commissioner Fascett or Dr. Coralie Farlee if
16 you have any questions. And this letter was
17 signed by Meredith Fascett, Chair, and Dr.
18 Coralie Farlee as ABC Committee.

19 So I'm not quite sure. There doesn't
20 -- this letter I'm reading from the 18th that
21 authorizes protests.

22 MR. KLINE: Right. Conspicuously

1 absent from that letter is a statement that Dr.
2 Farlee is authorized to represent the ANC.

3 CHAIRPERSON ANDERSON: Well --

4 MR. KLINE: The person -- if I may?

5 CHAIRPERSON ANDERSON: Sure.

6 MR. KLINE: The person to contact
7 could be the officer administrator. They could
8 be anybody. I mean, the fact that it says please
9 contact so and so if you have any questions, is a
10 far cry from an elected body formally authorizing
11 someone to act on its behalf and in its stead at
12 a public meeting.

13 CHAIRPERSON ANDERSON: Well, but I'm
14 saying the letter was signed by the chair and the
15 letter was also signed by Dr. -- by Ms. Farlee.
16 That letter, the letter to the ABC Board was
17 signed by it and the letter also states that -- I
18 had seen this letter before, because I had
19 actually seen this at a Show Cause Hearing and
20 this letter also stated that these are the two
21 people to contact if you have any concerns.

22 However, at the Status Hearing, I did

1 ask her to provide us a letter from the ANC,
2 since it was brought up to state that she is
3 authorized to represent the Agency. That
4 information was provided to us on February 20th
5 where I received a letter from the ANC saying
6 that she is the designated representative.

7 So I -- as far as the Board is
8 concerned, she has complied with our request by
9 providing us an official authorization letter
10 from the ANC saying that she is authorized to
11 represent the ANC in this protest matter. So I'm
12 not -- I don't see the issue.

13 MEMBER ALBERTI: Can I?

14 CHAIRPERSON ANDERSON: Yes, Mr.
15 Alberti.

16 MEMBER ALBERTI: So I'm swayed for a
17 different reason to grant them standing. And
18 that goes back to the November 11, 2015 letter
19 from the ANC Letter of Resolution, whatever you
20 want to call it from the ANC, which we have in
21 our files. And in there, Ms. Farlee is
22 authorized to represent the ANC in an alcohol

1 beverage-related matter before this Board.

2 All right. Mr. Kline's argument that
3 this letter, this resolution no longer has -- is
4 no longer in effect because there is a change of
5 administration to the ANC, I think when we judge
6 that argument, we need to look to the precedent
7 set by how we treat settlement agreements.

8 We have settlement agreements which
9 the ANC enters into and we may have a complete
10 change of commissioners absolutely. I mean from
11 year-to-year, I mean, in 10 years there may be
12 nobody there on the commission who was there when
13 the settlement was entered into, but this body
14 must consider that settlement agreement valid.

15 And I'm not sure how the statutes talk
16 to that, but I know that is precedent throughout
17 the city over a course of 20 years. We have
18 never challenged a settlement agreement as being
19 in effect, because the ANC has changed.

20 Now, there have been cases where we
21 have proactively looked at them on request, but
22 we just don't automatically say well, the

1 settlement agreement is no longer in effect
2 because the commission, the whole commission has
3 changed, the administration has changed. And I
4 think that that same precedent is what we should
5 look to here.

6 The fact that you have new
7 administration in the ANC, but the ANC, the
8 current ANC knows of this designation, knows of
9 this authorization and has not chosen to negate
10 it. So that is what sways me in this case.

11 MR. KLINE: If I may, the difference
12 is settlement agreements specifically run for a
13 certain period of time under the statute. So
14 that's not even an issue.

15 DR. FARLEE: No.

16 MR. KLINE: They run with the term of
17 the license, unless they say otherwise.

18 MEMBER ALBERTI: Right.

19 MR. KLINE: And until they are either
20 terminated between the two parties or an
21 involuntary agreement in these proceedings and
22 that applies whether the settlement agreement is

1 with the ANC or with a citizens association or
2 with the District Government. It doesn't make
3 any difference.

4 CHAIRPERSON ANDERSON: All right. All
5 right. On our Legal Agenda, these issues were on
6 our Legal Agenda and so, therefore, let me do
7 this then.

8 The motion -- my recommendation to the
9 Board is that we deny the motion. We deny the --
10 the first one was to deny the motion that has
11 been filed. Is there a second?

12 MEMBER SHORT: Second.

13 CHAIRPERSON ANDERSON: Mr. Short has
14 seconded the motion.

15 All those in favor say aye.

16 ALL: Aye.

17 CHAIRPERSON ANDERSON: Those opposed?

18 The matter passes 6-0-0.

19 And the motion that was filed by --
20 also the supplementary motion is now moot based
21 on our first decision. And there was a letter
22 that we received from Commissioner Anthony Dale

1 objecting to ANC's -- their protest, the protest.
2 That's just an FYI for the Board, but that's the
3 decision of the Board that we have denied the
4 motion.

5 I believe, in this particular case,
6 that the -- Dr. Farlee has provided the Board
7 with the requisite information. And, Mr. Kline,
8 if I read a letter at least from -- in my view,
9 if I receive a letter, in order to protest a
10 matter, the ANC has to have a public vote. They
11 send us a letter. In the letter it says if you
12 need further information, you contact these two
13 folks to -- about the matter.

14 And the letter was also signed by the
15 two people the motion, the former motion by the
16 ANC was also signed by both persons. Then I
17 believe that it would be an error of the Board's
18 part to say because the letter didn't
19 specifically say this person is designated, at
20 least in that letter, I just think that would be
21 foolish for the Board not to move forward with
22 that letter that was passed.

1 But as I said before, at the Status
2 Hearing I asked Dr. Farlee to provide us
3 authorization from the ANC and she provided that
4 to us on the 20th of February. If that was not
5 provided, then I would have stated that I
6 specifically asked her to provide that. It was
7 never provided. As I said, it should have been
8 provided prior to today's date and we would have
9 had further discussion, because if it wasn't
10 provided, then that would tell me that she wasn't
11 designated.

12 But at the same time at this hearing,
13 we have the vice chair of the ANC and he could
14 decide, at this moment, that okay, I'm here
15 representing the Agency and I need the assistance
16 by Dr. Farlee the same way that you are
17 representing your client. And I'm not sure if
18 your client will testify today, but you are the
19 one representing your client.

20 And as a member of the Bar, I have not
21 asked you for a Letter of Authorization or a copy
22 of a Retainer Agreement to say that you are

1 specifically recommending this -- you are
2 specifically representing this client, because as
3 a member of the Bar, you told me that you are the
4 attorney representing the client and I'm going to
5 take that from -- based on your representation.

6 So the Board has decided to move
7 forward.

8 Are there any other preliminary
9 matters that need to be discussed?

10 MR. KLINE: I am not aware of any.

11 CHAIRPERSON ANDERSON: I'm sorry?

12 MR. KLINE: I am not aware of any.

13 CHAIRPERSON ANDERSON: Do you have any
14 preliminary matters? Okay.

15 MR. KLINE: Actually, we do have one.

16 CHAIRPERSON ANDERSON: Yes, what's
17 that?

18 MR. KLINE: We do have one preliminary
19 matter?

20 MR. CASTEN: Yes, I do.

21 MR. KLINE: That is the application
22 that was filed is for an interior CR Restaurant

1 and three summer garden areas. One of the summer
2 garden areas is contemplated to be located on a
3 pier. We have heard a number of concerns that
4 the pier hasn't been approved. We don't know
5 when it is going to be. So we are, at this
6 point, withdrawing the request for the summer
7 garden on the pier, which -- and we will get into
8 it when we get into testimony as to where the
9 summer garden areas are and how they are located
10 and what have you.

11 But we are orally amending our
12 application to withdraw permission for summer
13 garden use on the pier with the understanding
14 that we may later file for a substantial change
15 with respect to that. But at this point, it is
16 withdrawn and need not be the subject of
17 testimony or opposition.

18 CHAIRPERSON ANDERSON: All right. All
19 right. So you are asking for then two summer
20 gardens and it's specific that one -- so it's
21 clear that one of the two summer -- the two
22 summer gardens that if the Board grants that,

1 those two summer gardens will not be on the pier?

2 MR. KLINE: That is correct.

3 CHAIRPERSON ANDERSON: All right.

4 Okay. And I know we argued a Motion to Dismiss
5 any matter, can this matter be settled? Do the
6 parties, do they have terms we can memorialize it
7 as a Board Order or are we going to move forward
8 with the hearing?

9 MR. KLINE: We are moving forward with
10 the hearing.

11 CHAIRPERSON ANDERSON: All right. I
12 have to ask.

13 MR. KLINE: Yes.

14 CHAIRPERSON ANDERSON: And maybe --
15 you know, maybe you had agreed to a settlement,
16 but you didn't -- your hands were forced, so you
17 didn't necessarily want to agree to the terms, so
18 if you win the motion, then okay move forward if
19 not. All right. All right.

20 Okay. All right. As these -- since
21 the parties are here that we have done Protest
22 Hearings, this matter is supposed to last three

1 hours; an hour and a half each side, but I don't
2 necessarily use a timer, but I -- and not because
3 we started at 1:30, not that you believe that we
4 are going to stay here until 12:00, 1:00, 2:00
5 this morning, but so we do have time.

6 We have no other hearings for the
7 afternoon, but that doesn't necessarily mean that
8 we should stay here until 12:00. But use your
9 time efficiently for us to get the points across
10 and do this. Yes?

11 MR. LITSKY: I do have a question, Mr.
12 Chairman --

13 CHAIRPERSON ANDERSON: Yes?

14 MR. LITSKY: -- because I have only
15 gone to one of these protests and when I was vice
16 chair and the chair actually ran it. This is a
17 protest, I mean, as I understand the process.

18 CHAIRPERSON ANDERSON: Right.

19 MR. LITSKY: This is a Protest Hearing
20 that we are protesting the license. If we are
21 not protesting the furniture or the decor or the
22 menus, which are currently listed in evidence, is

1 it necessary to have those presentations?

2 CHAIRPERSON ANDERSON: No.

3 MR. LITSKY: Is it --

4 CHAIRPERSON ANDERSON: I mean,
5 basically, it is --

6 MR. LITSKY: All right.

7 CHAIRPERSON ANDERSON: -- you are
8 protesting the hearing. I mean, are there
9 agreement -- is there an agreement that you are--
10 you would agree for the Board to grant the
11 license?

12 MR. LITSKY: No.

13 CHAIRPERSON ANDERSON: No, no, no.
14 All right. What I'm saying, sorry, is it your
15 position -- all right. So let me know where to
16 start off from, okay, because I was going to ask
17 each side.

18 MR. LITSKY: Okay.

19 CHAIRPERSON ANDERSON: Is it that we
20 would agree to grant the license; however, the
21 Board wants these -- that we would -- if you are
22 going to grant the license, these are the

1 conditions that we want on the license or are you
2 saying that we should deny the license?

3 MR. LITSKY: No. We would suggest
4 that you deny the license. We would prefer if
5 they withdrew and came back once we had all the
6 facts in order.

7 CHAIRPERSON ANDERSON: Right.

8 MR. LITSKY: Ideally is what we
9 believe should occur.

10 CHAIRPERSON ANDERSON: Okay. All
11 right. Then that's fine. Then what --
12 basically, the way the process goes is that we
13 will have -- I'll call the Board Agent. The
14 Board Agent would have gone out -- you should
15 have a copy of his report.

16 MR. LITSKY: Yes.

17 CHAIRPERSON ANDERSON: As he had gone
18 out and done a report, write a report.

19 MR. LITSKY: Yes.

20 CHAIRPERSON ANDERSON: So he will come
21 to provide his report. The Board will then ask
22 him questions on his report. Once the Board

1 witness is asked questions of our witness of the
2 report, then each side will have an opportunity
3 to question the Board witness on the report.

4 Once you have asked those questions,
5 then the applicant will present his case. Once
6 the applicant presents his case, you will have an
7 opportunity to cross-examine the witnesses that
8 the applicant has brought forth. And once the
9 applicant has presented his entire case, then you
10 will also -- then you will have an opportunity to
11 present your case to state what it is that you
12 want the Board to do.

13 We will ask questions back and forth.
14 Each side will have an opportunity to ask
15 questions. And at the end of the day, the Board
16 will make a decision whether or not we are going
17 to grant the license, whether or not we are going
18 to deny the license or if we grant the license,
19 are we going to impose restrictions or conditions
20 on the license or will we -- if we decide to
21 grant the license, will we grant the license
22 without any restrictions.

1 And so that's one of the reasons why
2 I was asking if you would agree to say that we
3 agree that we can grant the license and these are
4 the restrictions that we would want on the
5 license. Then, yes, they could present their
6 case and you could present to the Board what are
7 the impact of peace, order and quiet and why is
8 it that you believe that the Board -- if the
9 Board was to grant this license, why -- what
10 restrictions it is that the Board could grant.

11 I will also let the parties know that
12 one of the reasons why I always tell folks that
13 you can do settlements is because there are
14 provisions you can put in a settlement agreement
15 that the Board itself will not order.

16 Yes, if you -- if it's in the
17 settlement agreement and if we can manage that or
18 if we are able to enforce it, we will approve it,
19 but the Board on its own initiative will not, for
20 example, tell them that they have to plant
21 daffodils in front of or stuff like that.

22 While in a settlement agreement, you

1 can do that, but the Board itself would never
2 order you to put flowers in. I'm being -- I'm
3 doing -- giving you an example --

4 MR. LITSKY: Yes.

5 CHAIRPERSON ANDERSON: -- of something
6 that you would understand to say these are things
7 that people can do in a settlement agreement, but
8 the Board itself would never order the applicant
9 to plant flowers or daisies or whatever specific
10 type of flowers to beautify the area.

11 MR. LITSKY: Again, the reason for my
12 question was, and I appreciate, you know, hearing
13 what the process is again to reacquaint me with
14 that.

15 CHAIRPERSON ANDERSON: Sure.

16 MR. LITSKY: I was hoping that or
17 wanted to ask the question whether we might be
18 able to save the Board some time and the
19 applicant and us as well by stipulating we have
20 no problem with the furniture. We have no
21 problem with the fire pits. We have no problem
22 with the color of the walls. We certainly have

1 no problem with the menu from, you know, James
2 Beard, Chef, and I don't think it is necessary
3 for us to hear in this hearing about whether we
4 still have concern about the license on any of
5 those points.

6 It is irrelevant to our concern. I
7 don't believe that's something that still needs
8 to be heard, but that was what I raised the
9 question about.

10 CHAIRPERSON ANDERSON: Well, I don't
11 know how -- I don't know what is going to be -- I
12 don't know what will be provided in the
13 testimony, because I have not looked at the
14 exhibits, but I think that Mr. Kline's office is
15 -- they are pros. They are the ones who -- they
16 are going to go first.

17 MR. LITSKY: Okay.

18 CHAIRPERSON ANDERSON: And I believe
19 that Mr. Kline will not waste our time and talk
20 about the menu, because the Board would not --
21 would never order that rather than serving filet
22 mignon, that they have to serve porterhouse steak

1 or that they have to play a certain type of
2 music.

3 MR. LITSKY: No.

4 CHAIRPERSON ANDERSON: No, so we don't
5 get in the minutia of that. So we are not --
6 yes, it will be -- yes, I did have lunch, so I
7 wouldn't have a problem listening to the menu,
8 but that's not something that the Board really
9 cares to learn.

10 Okay. So basically what will happen
11 is that I will -- we are going to ask the
12 applicant to make an opening statement. And then
13 we will give you an opportunity to make an
14 opening statement. And then the Board will call
15 its witness and then we will move on.

16 And I'm hoping that we will use our
17 time and we will leave here at a reasonable hour
18 today. Okay. So, Mr. Kline, do you wish to make
19 an opening statement?

20 MR. KLINE: I do. Thank you, Mr.
21 Chairman.

22 Mr. Chairman, Members of the Board,

1 I'm here today on behalf of Greenleaf Buzzard,
2 LLC t/a Buzzard Point Fish House, which seeks a
3 Retailers License Class CR for premises in a new
4 building at 2100 2nd Street, S.W. This is on the
5 point known as Buzzard Point.

6 And I'm usually here before you on
7 what are sometimes some pretty hard cases, not
8 today. We think this case is very
9 straightforward. In fact, I think this may be
10 one of the most clear cut cases I have ever had
11 before you for a new application.

12 The evidence that we put on will
13 demonstrate that we have a very experienced
14 operator with a long track record with a history
15 of similar type establishments on the waterfront
16 in a neighborhood that perhaps is one of the most
17 difficult places to do business in the District
18 of Columbia and that would be Georgetown. And he
19 has successfully run those businesses without
20 incident for a number of years.

21 The evidence will show that he plans
22 to open what the evidence will demonstrate to you

1 as undoubtedly a restaurant, not a nightclub, not
2 an entertainment venue, a restaurant which he
3 seeks to be the greatest fish house in the
4 country.

5 The evidence will further show you
6 that the opposition by the ANC seems to be
7 largely driven by personalities and that the
8 Buzzard Point Fish House has the support of
9 residents in the immediate vicinity and the
10 support of the Single Member District
11 Commissioner in this area the restaurant is to be
12 located.

13 At the conclusion of the case, after
14 you have heard all of the evidence, we will ask
15 that you approve the license without condition or
16 restriction.

17 We will, contrary as has been
18 suggested by the protestant, give you an overview
19 of the restaurant, what it is going to feel like,
20 what it is going to look like, because in our
21 experience we think that it's important for the
22 Board to understand that, so it can render a

1 decision about what is appropriate and whether
2 this establishment will have a negative effect on
3 peace, order and quiet or vehicular parking needs
4 and traffic and safety.

5 So we will do all of that, because we
6 think it's important for you to have that flavor.
7 Thank you. That's all I have. And we look
8 forward to the conclusion of the hearing when we
9 will ask that you grant the license.

10 CHAIRPERSON ANDERSON: And how many
11 witnesses do you wish to call?

12 MR. KLINE: No more than four,
13 probably three.

14 CHAIRPERSON ANDERSON: Okay. All
15 right. Who will wish to do an opening statement?

16 MR. LITSKY: Dr. Farlee will do the
17 opening statement for the ANC.

18 CHAIRPERSON ANDERSON: Okay. Go
19 ahead, Ms. Farlee.

20 DR. FARLEE: I'm Coralie Farlee, Chair
21 of the ABC Committee --

22 CHAIRPERSON ANDERSON: Pull the

1 microphone closer to you, ma'am, so -- since you
2 have remained there.

3 DR. FARLEE: -- for the last 10 years.
4 As Commissioner Litsky has already mentioned, we
5 have processed 74 new applications in our ANC in
6 the last four years in Navy Yard, Riverfront,
7 Buzzard Point, and The Wharf.

8 Yes, I do act under the direction of
9 the ANC commissioner and commissioners and we've
10 welcomed many new establishments. Two other
11 times have we taken protests to a Protest
12 Hearing. We have negotiated and that's a
13 collaborative process and that's why we call our
14 agreements cooperative, which is authorized and
15 recognized in Title 25.

16 Cooperation requires two parties, but
17 we have been surprisingly unable to get
18 negotiations going with this applicant and the
19 attorneys. We have tried several times. The
20 applicant did not come to the ABC Committee
21 meeting, although one of the statements in this
22 submission claims that he did appear there.

1 I believe he was not at the ANC
2 meeting that took the vote on this protest
3 either, but we have tried other times to
4 negotiate and that hasn't worked out. We would
5 very much like to proceed in that direction, but
6 meanwhile we have various issues that need to be
7 resolved.

8 And without having those things done,
9 we urge that you recommend that the applicant
10 withdraw the application until those issues are
11 discussed and negotiated and resolved. We will
12 be willing to work in the ABC Committee and the
13 ANC to develop a cooperative agreement. Thank
14 you.

15 CHAIRPERSON ANDERSON: I just want to
16 say the Board is not going to -- the Board will
17 either vote to deny the application or to approve
18 the application with or without conditions.

19 The Board is not going to -- would not
20 vote to force the parties to do a settlement
21 agreement, so that's not the Board's purview or
22 place. And I might talk about settlement

1 agreements, because I have always stated that if
2 you have a settlement agreement, you can
3 determine what is within your community. But if
4 the folks decide that they do not -- they are not
5 going to have a settlement agreement, the Board
6 would never force them to enter into an
7 agreement, so it's either up or down.

8 So there is no middle ground per say,
9 that's one of the reasons why you are the one
10 that can provide us with the middle ground. Us,
11 for the Board, it's either yes or no with or
12 without conditions. Okay. All right.

13 MEMBER SILVERSTEIN: Mr. Chairman?

14 CHAIRPERSON ANDERSON: Yes, Mr.
15 Silverstein?

16 MEMBER SILVERSTEIN: I want to agree
17 and I almost always deal with our Chair, and I'm
18 a little confused with your opening statement,
19 because you are dealing with the process of
20 negotiation, which we never involve ourselves in.

21 The opening statement is supposed to
22 be you are going to tell us what you are going to

1 tell us. And you just said you have issues. We
2 normally hear what those issues are without going
3 into a great recitation of going into the weeds.
4 It's like we are going to tell you that they are
5 going to play at tuba at 3:00 in the morning.

6 We are going to tell you that they
7 have no place to put their garbage. We are going
8 to tell you this and just that, you know, give us
9 what is the purview. And I would -- you know, if
10 you have a minute just to tell us what those
11 issues are.

12 DR. FARLEE: Well, we have concern
13 about -- well, we protested on the grounds of
14 peace, order and quiet and pedestrian safety,
15 traffic and parking. We have concern about the
16 late hours, extremely late hours. We have
17 concern primarily about the endorsements for
18 entertainment, dancing, cover charge on now the
19 two exterior summer gardens. There were three.

20 There was a lot of concern about the
21 third, so we are glad that is withdrawn. But the
22 main -- mainly, it's the traffic to this dead-

1 ended Buzzard Point area where there is no plan
2 for traffic flow, no plan for how patrons will
3 get to the establishment.

4 Now, parking is totally inadequate for
5 the patrons of the restaurant as well as the
6 potential residents in the building and there is
7 going to be other retail establishments, pharmacy
8 or things like that.

9 MEMBER SILVERSTEIN: Thank you.

10 DR. FARLEE: The traffic is expected
11 to go through the edge of SMD-06, which is
12 totally residential housing and the only egress
13 is out that way as of now. And --

14 MEMBER SILVERSTEIN: Okay.

15 DR. FARLEE: -- that's the essence of
16 our problems.

17 MEMBER SILVERSTEIN: Thank you that
18 helps us to focus on what the issues are going to
19 be that --

20 DR. FARLEE: Serious noise.

21 MEMBER SILVERSTEIN: -- here.

22 DR. FARLEE: Even if it's inside.

1 MEMBER SILVERSTEIN: We don't want to
2 get involved in --

3 DR. FARLEE: Even if it's inside
4 noise --

5 MEMBER SILVERSTEIN: -- telling you
6 what to do.

7 DR. FARLEE: -- the concern is some
8 places now are having the barn door, a garage
9 door kind of opening, so that the -- even if it's
10 entertainment inside, the noise flows outside.
11 There is a James Creek Marina nearby that could
12 be totally disrupted. It's a very quiet peaceful
13 area right now.

14 MEMBER SILVERSTEIN: Thank you.

15 CHAIRPERSON ANDERSON: You can
16 present. I think what Mr. Silverstein was saying
17 is that you provide -- in your opening, you
18 provide a roadmap.

19 DR. FARLEE: Um-hum.

20 CHAIRPERSON ANDERSON: In the
21 presentation of your case, then that's when you
22 give us the meat on the bone. So I didn't

1 necessarily need to get the minutia of it, but in
2 the presentation of the case --

3 DR. FARLEE: Thank you.

4 CHAIRPERSON ANDERSON: -- we will do
5 that. All right. With that said, the Board then
6 will present our case and the Board will call our
7 first witness and that's Mr. Anthony Howze.

8 Mr. Howze, can you raise your right
9 hand, please?

10 Whereupon,

11 INVESTIGATOR ANTHONY HOWZE
12 was called as a witness by the ABRA Board, and
13 having been first duly sworn, assumed the witness
14 stand and was examined and testified as follows:

15 INVESTIGATOR HOWZE: Yes.

16 CHAIRPERSON ANDERSON: And, Mr. Howze,
17 there is a microphone there, can you, please,
18 pull the microphone and speak directly into the
19 microphone? Okay.

20 DIRECT EXAMINATION

21 CHAIRPERSON ANDERSON: Can you state
22 your name for the record, sir?

1 THE WITNESS: Anthony Howze, A-N-T-H-
2 O-N-Y H-O-W-Z-E.

3 CHAIRPERSON ANDERSON: And where are
4 you currently employed, sir?

5 THE WITNESS: Alcoholic Beverage
6 Regulation Administration.

7 CHAIRPERSON ANDERSON: How long have
8 you been working for the Agency?

9 THE WITNESS: Four years.

10 CHAIRPERSON ANDERSON: And what is
11 your role at the Agency?

12 THE WITNESS: I'm assigned to
13 investigate ABC establishments in the District of
14 Columbia.

15 CHAIRPERSON ANDERSON: What do you
16 mean investigate? Just tell, yeah, me what you
17 do.

18 THE WITNESS: To inspect and
19 investigate ABC establishments in the District of
20 Columbia.

21 CHAIRPERSON ANDERSON: Now, are you
22 familiar with the application, this Greenleaf

1 Buzzard, LLC?

2 THE WITNESS: Yes, I am.

3 CHAIRPERSON ANDERSON: And how are you
4 familiar with this application?

5 THE WITNESS: I was assigned this
6 protest investigation for Buzzard Point Fish
7 House.

8 CHAIRPERSON ANDERSON: So as a result
9 of you being assigned, can you tell us what is it
10 that you have been able to find out about this
11 new licensee?

12 THE WITNESS: When I spoke with Ms.
13 Coralie Farlee, she informed me that they had
14 three summer gardens proposed with outside
15 entertainment, music, cover charge and dancing.
16 The establishment is proposing occupancy of 750,
17 three summer gardens.

18 The first summer garden will have 250
19 seats. 50 seats in the second garden and 50
20 seats in the third. Hours being from Sunday to
21 Thursday 7:00 a.m. to 2:00 a.m., Friday and
22 Saturday from 7:00 a.m. to 3:00 a.m.

1 Ms. Farlee is concerned that the noise
2 from this establishment will carry to the
3 Southeast area as well as the marina, as she just
4 stated. She informed me that the National Park
5 Service Marina is allowed to occupy boats for 72
6 hours in a row, which come and enjoy the weekend
7 there now.

8 She also informed me that this
9 proposal is premature, to the BID it will remain
10 vacant until early 2020. In addition to the
11 noise concern, she is concerned about the parking
12 and travel, which she just stated.

13 Ms. Farlee informed me that the area
14 is particularly quiet and the application will
15 disrupt the peace, order and quiet in the
16 neighborhood for those there now and those in the
17 near future.

18 She is concerned about the litigation
19 for dissatisfactory meals on the summer gardens.
20 She thinks that the hours on the weekend,
21 entertainment until 3:00 a.m. is unreasonable.

22 Again, there is no committed parking

1 for patrons and it's unclear where patrons will
2 park, including staff and personnel. And that
3 was the issues that Ms. Farlee had.

4 I have since received the statement on
5 behalf of the applicant from Ms. Sidon Yohannes.
6 And I'm just going to read the statement briefly.

7 Buzzard Point Fish House filed an
8 application for a restaurant license at 2100 2nd
9 Street, S.W., with three summer gardens,
10 entertainment endorsement, cover charge and
11 dancing.

12 Regarding the three summer gardens,
13 the first one will be a sundeck next to the
14 water. The second one will be on the pier. And
15 the third will be on the deck. And photos are
16 attached in the report, the diagrams.

17 The applicant is seeking maximum hours
18 for operation for sales and service of alcoholic
19 beverages. The owner is an experienced operator
20 and the maximum hours would provide the owner
21 with flexibility he can use to efficiently run
22 his business.

1 The licensed application is protested
2 by the ANC-6D. The protestant states the
3 following basis for their protest of the
4 application: Peace, order and quiet, including
5 noise, litter, residential parking needs,
6 vehicular and pedestrian safety. That is also in
7 the Protest Letter.

8 However, the protestant has not
9 specified the concerns with this application.
10 While ANC Commissioner Dale has been very
11 cooperative through this process, he has voiced
12 his objection to this protest. The applicant has
13 never received any specific concerns from the ANC
14 as a whole.

15 Since the filing of this application,
16 the applicant has attended the ABC Committee
17 meeting, the administrative meeting, and several
18 communications with the ANC. The applicant has
19 provided the ANC with drawings showing the
20 premises and location of those summer gardens.

21 Buzzard Point Fish House is located in
22 the Capitol Gateway Zone, which is intended to

1 permit medium-density, mixed-use development
2 generally in the vicinity of the waterfront and
3 encourage a variety of support and visitor-
4 related issues -- uses, excuse me, such as retail
5 service, entertainment, cultural and hotel uses,
6 provide for reduced height and welcome buildings
7 along Anacostia River in the interest of assuring
8 venues over and around the waterfront buildings
9 and provide continuous public open space along
10 the waterfront with public access points.

11 There are residents that live in the
12 area. There will be no negative impact nor
13 effect on peace, order and quiet. That was the
14 statement from -- on behalf of the applicant from
15 Ms. Sidon Yohannes.

16 And I'm just going to go through what
17 my actual investigation consisted of.

18 CHAIRPERSON ANDERSON: Yes, go ahead.

19 THE WITNESS: The geographic
20 information system stated that within 400 feet,
21 there are no schools, recreation centers, public
22 libraries or day care centers.

1 The ABC -- one ABC-licensed
2 establishment which is in 1200 feet of the
3 proposed application and that is Ziegfeld's
4 Secrets.

5 MEMBER SILVERSTEIN: Mr. Litsky, if
6 you could turn off your microphones or at least
7 not against, rub paper against it. Just hit the
8 bar.

9 MR. LITSKY: Sorry. All right.

10 MEMBER ALBERTI: Okay. Push it,
11 rather.

12 THE WITNESS: As far as the building
13 exterior and interior, Buzzard Point Fish House
14 has not yet been built, but the proposed exterior
15 structure into the outlying are in the
16 application, which is in my report, and I'm sure
17 the applicant will provide some diagram today.

18 ABRA personnel monitored Buzzard Point
19 Fish House on seven occasions from January 29th to
20 March 27th. During those hours, no ABRA
21 violations or unusual activity were observed
22 during that time.

1 There are two Metro Stations within
2 close proximity. The Navy Yard Ballpark and
3 Capitol South Metro Station.

4 There were two calls from the
5 Metropolitan Department Crime Analysis Unit from
6 the time of March 1, 2018 through March 1, 2019.
7 Both of those calls were unrelated to ABRA
8 issues.

9 And that's the conclusion of my
10 summary.

11 CHAIRPERSON ANDERSON: So there are no
12 other structures in -- I'll say this. What is
13 the area like? What's in the vicinity?

14 THE WITNESS: There is an apartment
15 building that they started to build over there
16 behind the apartment building, it's the James
17 Creek Marina. Other than that, it's just a
18 parking lot and street parking. That's all
19 that's in the area for right now.

20 CHAIRPERSON ANDERSON: So how far from
21 the proposed site is this apartment building,
22 approximately?

1 THE WITNESS: It's directly across the
2 street. I don't know exactly how far in feet,
3 but it's directly --

4 CHAIRPERSON ANDERSON: Are there any
5 questions by any Board Members?

6 MEMBER SILVERSTEIN: Yes.

7 CHAIRPERSON ANDERSON: Yes, Mr.
8 Silverstein.

9 MEMBER SILVERSTEIN: You are saying
10 that the apartment building that is directly
11 across the street from this proposed
12 establishment is under construction, at this
13 time, or is on the drawing board or what is its
14 current status?

15 THE WITNESS: The apartment building
16 is up, but it's not finished. There is
17 construction being done there. And Buzzard Point
18 Fish House has not yet been built.

19 MEMBER SILVERSTEIN: And the distance
20 is directly across the street from --

21 THE WITNESS: Yes.

22 MEMBER SILVERSTEIN: Okay. Nothing

1 further.

2 CHAIRPERSON ANDERSON: Any other
3 questions by any other Board Members? Mr.
4 Alberti?

5 MEMBER ALBERTI: Investigator, so you
6 talked about the apartment building that is going
7 up directly across the street. I guess you mean
8 directly north of it?

9 THE WITNESS: Yes.

10 MEMBER ALBERTI: Okay. Are there
11 other vacant lots that are very close to it?

12 THE WITNESS: Yes, that's -- it's a
13 vacant lot.

14 MEMBER ALBERTI: Where is that? And
15 I'm looking at the map. No, I'm not looking at a
16 map. Let me find the map here. Your report is
17 pretty extensive and so there's a lot of -- let
18 me find the map in your report. Okay.

19 So this is the -- the proposed
20 location of this establishment is between 1st and
21 2nd Street, right?

22 THE WITNESS: Correct.

1 MEMBER ALBERTI: And north of V Street
2 between 1st and 2nd is where the apartment building
3 is going up. Is that correct?

4 THE WITNESS: Yes.

5 MEMBER ALBERTI: All right. And I
6 would guess west of 2nd Street on that map, what--
7 west, directly west of where that apartment
8 building is going up, is that a vacant lot?

9 MR. KLINE: Excuse me, if I may? Mr.
10 Alberti, what exhibit are you looking at?

11 MEMBER ALBERTI: I'm looking at a map
12 of the area, so I'm looking at -- right now I'm
13 looking at Exhibit 8 or Exhibit 7 will be --

14 MEMBER SHORT: The protest report.

15 MEMBER ALBERTI: -- the protest
16 report, I'm sorry, thank you, Mr. Short, are what
17 I'm looking at.

18 (Whereupon, the above-
19 referred to documents were
20 marked as Government Exhibit
21 No. 7 and 8 for
22 identification.)

1 MEMBER ALBERTI: So north of V Street
2 and west of where this apartment complex is
3 going, apartment building is going, in, is that a
4 vacant lot?

5 THE WITNESS: I apologize, let me
6 backtrack for a second. Where this apartment is
7 is where the application will be. Across the
8 street is the parking lot from the apartment.

9 MEMBER ALBERTI: So wait, okay. I'm
10 sorry.

11 THE WITNESS: Exhibit 14 --

12 MEMBER ALBERTI: Just repeat what you
13 just said.

14 THE WITNESS: Exhibit 14.

15 MEMBER ALBERTI: Exhibit 14? So I'm
16 going to have trouble finding that. Describe it
17 to me what Exhibit 14 is.

18 THE WITNESS: It's the apartment
19 construction building.

20 (Whereupon, the above-
21 referred to document was
22 marked as Government Exhibit

1 No. 14 for identification.)

2 MEMBER ALBERTI: Okay. But where is
3 that? I only see the apartment building. Where
4 is it? I'm sorry. So on this map, Exhibit 8,
5 where would that apartment building be? Describe
6 it by what streets surround it.

7 THE WITNESS: It's surrounded by V
8 Street and 2nd Street.

9 MEMBER ALBERTI: Okay. So is it --
10 okay. If I look at the map, this map is -- the
11 top of that page is oriented north. At the top
12 of the page it says Exhibit 8, that's oriented
13 north. Is that correct?

14 THE WITNESS: Yes.

15 MEMBER ALBERTI: Okay. So we are all
16 on the same page. Is the apartment building
17 north or south of V Street?

18 THE WITNESS: South.

19 MEMBER ALBERTI: South. Okay. And
20 the proposed location of this licensee is south
21 of that or --

22 THE WITNESS: It's in the actual

1 apartment building.

2 MEMBER ALBERTI: In the actual
3 building. Okay.

4 THE WITNESS: Across the street--

5 MEMBER ALBERTI: Thank you.

6 THE WITNESS: -- is the parking lot.

7 MEMBER ALBERTI: Okay. North of V
8 Street, what is there? I'm not -- between 1st and
9 2nd north of V Street.

10 THE WITNESS: That would be just the
11 lot and street parking.

12 MEMBER ALBERTI: Okay. So it's just
13 a vacant lot there?

14 THE WITNESS: Yes.

15 MEMBER ALBERTI: Okay. Note your
16 questions.

17 THE WITNESS: No, it's -- okay.

18 MEMBER ALBERTI: All right. So north
19 of V Street between 5th Avenue and 2nd Street, I
20 think that's 5th Avenue and 2nd Street, or west of
21 2nd Street, north of V Street, what is there
22 currently?

1 THE WITNESS: Are you still on Exhibit
2 8?

3 MEMBER ALBERTI: Yeah.

4 THE WITNESS: I haven't finished
5 reading my --

6 MEMBER ALBERTI: Well, okay, but west
7 of 2nd Street, right? You see 2nd Street?

8 THE WITNESS: Correct.

9 MEMBER ALBERTI: So if you are looking
10 at this map, it would be to the left of 2nd Street
11 and north of V Street, what's there?

12 THE WITNESS: Street parking and there
13 is the marina behind there.

14 MEMBER ALBERTI: No, that would be
15 south of it, because the marina would have to be
16 on the water. So north of the marina, if I go
17 north of the marina across V Street, what is
18 there?

19 THE WITNESS: Nothing.

20 MEMBER ALBERTI: What do you mean by
21 nothing? Vacant lot?

22 THE WITNESS: So there is 2100 2nd

1 Street, which is the apartment building.

2 MEMBER ALBERTI: Right.

3 THE WITNESS: Directly behind the
4 apartment building will be the James Creek
5 Marina. And in front of 2100 2nd Street is a
6 vacant lot and then on the side of 2100 2nd Street
7 is the street parking.

8 MEMBER ALBERTI: Okay. But there is
9 a piece of -- all right. If I look at this map,
10 all right, and I go to the left of 2nd Street and
11 north of V Street, what is in that quadrant?

12 THE WITNESS: Street parking.

13 MEMBER ALBERTI: What's on the --
14 besides street parking, what is there?

15 THE WITNESS: Space.

16 MEMBER ALBERTI: I know. But what is
17 in that orange area? I mean --

18 THE WITNESS: Are we looking at the
19 same thing?

20 MEMBER ALBERTI: Pardon?

21 THE WITNESS: This map here?

22 MEMBER ALBERTI: Yeah, yeah, yeah.

1 I'm going to put a big X. This won't be in the
2 record, but it will help you. I'm going to put a
3 big X where I'm talking about right now. Can you
4 see where my X is?

5 THE WITNESS: Yes.

6 MEMBER ALBERTI: Okay. What is in
7 that -- this --

8 MR. KLINE: Mr. Alberti, I can --

9 MEMBER ALBERTI: Just for the record,
10 it is north of V Street and west of 2nd Street.
11 What is in that quadrant, besides public space?

12 THE WITNESS: That's all that it is.

13 MEMBER ALBERTI: Is there a building
14 there? Is there a building along V Street?

15 THE WITNESS: Not that I'm aware of.

16 MEMBER ALBERTI: Okay. So is it
17 vacant lot?

18 THE WITNESS: Yes.

19 MEMBER ALBERTI: Just north of V
20 Street?

21 THE WITNESS: Yes.

22 MEMBER ALBERTI: Okay. That's what I

1 needed to have in the record.

2 THE WITNESS: Okay.

3 MEMBER ALBERTI: Okay. I know it is
4 difficult when I can't point to things. I
5 appreciate your patience. Okay.

6 So north of V Street and west of 2nd
7 Street along V Street is a vacant lot, correct?

8 THE WITNESS: Correct.

9 MEMBER ALBERTI: All right. Do you
10 know what is in the marina besides -- do you know
11 if anyone is living in that marina, the James
12 Creek Marina?

13 THE WITNESS: I'm not aware if people
14 is living in the marina.

15 MEMBER ALBERTI: You are not aware if
16 there are residences on those boats?

17 THE WITNESS: Correct.

18 MEMBER ALBERTI: Okay. I have no
19 further questions. Thank you.

20 THE WITNESS: Okay.

21 CHAIRPERSON ANDERSON: Any other
22 questions by any other Board Members? Yes, Mr.

1 Short?

2 MEMBER SHORT: Good afternoon,
3 Investigator Howze.

4 THE WITNESS: Good afternoon.

5 MEMBER SHORT: I'm looking at, again
6 going back to Exhibit No. 14 --

7 THE WITNESS: Okay.

8 MEMBER SHORT: -- the protestants,
9 okay, you see the building under construction
10 there?

11 THE WITNESS: Yes, sir.

12 MEMBER SHORT: And that is going to be
13 all residential?

14 THE WITNESS: Residential along with
15 Buzzard Point Fish House.

16 MEMBER SHORT: Do you -- would you
17 happen to know for your records for ABRA what the
18 zoning is for that area?

19 THE WITNESS: It's the Capitol Gateway
20 Zone.

21 MEMBER SHORT: Hum?

22 THE WITNESS: Capitol Gateway Zone.

1 CHAIRPERSON ANDERSON: No. He is
2 asking what zone.

3 MEMBER SHORT: What zone? What kind
4 of -- is it residential? Is it commercial?

5 MEMBER ALBERTI: I think, Mr. Short,
6 just being helpful --

7 MEMBER SHORT: Yes, go ahead.

8 MEMBER ALBERTI: -- he said -- I think
9 it is called the Capitol Gateway Zone, if I'm
10 correct.

11 THE WITNESS: Yes, it is.

12 MEMBER ALBERTI: I don't know -- what
13 you are asking is --

14 MEMBER SHORT: That's not --

15 MEMBER ALBERTI: -- just let me
16 finish. What you are asking for is what are the
17 uses allowed in the Capitol Gateway Zone.

18 MEMBER SHORT: That is correct.

19 MEMBER ALBERTI: I just want to help
20 out the Investigator.

21 MEMBER SHORT: Thank you very much.

22 Okay. Thank you, Mr. Alberti.

1 THE WITNESS: Retail, service,
2 entertainment, cultural and retail use and
3 visitor-related uses.

4 MEMBER SHORT: So it's mixed-use?

5 THE WITNESS: Mixed-use.

6 MEMBER SHORT: Okay. How many stories
7 is that apartment building going to be when it is
8 completed? If you don't know, you can say you
9 don't know.

10 THE WITNESS: I don't know for sure,
11 but it looks like seven.

12 MEMBER SHORT: Okay. And would it be
13 mostly residential or what is that building going
14 to be composed of?

15 THE WITNESS: A restaurant license and
16 housing for residents.

17 MEMBER SHORT: Okay. So as Mr.
18 Alberti pointed out earlier, it's mostly vacant
19 lots down there, at this present time?

20 THE WITNESS: As of right now,
21 correct.

22 MEMBER SHORT: Okay. And once the

1 buildings go up, and assuming that most people
2 have automobiles, because there is no Metro
3 anywhere close to there, is it?

4 THE WITNESS: The Navy Yard and --

5 MEMBER SHORT: And how far away is the
6 Navy Yard?

7 THE WITNESS: -- Capitol South.

8 MEMBER SHORT: How far away is that,
9 approximately?

10 THE WITNESS: I don't know
11 approximately.

12 MEMBER SHORT: Would you say several
13 miles?

14 THE WITNESS: I think within 3 miles.

15 MEMBER SHORT: Okay. That's good.
16 Okay. Now, so once this construction is
17 completed and they get more residents down there,
18 parking is going to become an issue, would you
19 think or not think? Because the street and the
20 number of people that are going to be in that
21 building.

22 THE WITNESS: I think it would be a

1 better question for the applicant. I'm not sure
2 how they are going to set up the parking. I know
3 as of right now, there is not a lot of parking
4 down there.

5 MEMBER SHORT: Okay. That's good
6 enough. Thank you very much for your testimony.
7 Thank you, Mr. Chair.

8 CHAIRPERSON ANDERSON: Any other
9 questions by any other Board Members?

10 MEMBER SILVERSTEIN: Real quick.

11 CHAIRPERSON ANDERSON: Yes, Mr.
12 Silverstein.

13 MEMBER SILVERSTEIN: Thank you for
14 your report, Investigator Howze. If you could,
15 give us an idea how long it might take to walk
16 from this site to the Metro? 5 minutes, 10
17 minutes, 20 minutes?

18 THE WITNESS: Maybe 10 minutes.

19 MEMBER SILVERSTEIN: Okay. I think
20 that gives a better idea. Thank you.

21 MEMBER SHORT: For your own walk.
22 Thank you.

1 CHAIRPERSON ANDERSON: Any other
2 questions? All right. Mr. Kline?

3 MR. KLINE: Yes.

4 CROSS-EXAMINATION

5 BY MR. KLINE:

6 Q Investigator Howze, I believe we
7 missed something. What is a block north of this
8 location? Do you know? Isn't there something
9 pretty significant there?

10 A That would be Audi Field.

11 Q Correct, the soccer stadium, right?

12 A Correct.

13 Q All right. So this is the
14 neighborhood where the new soccer stadium is,
15 right?

16 A Yes, sir.

17 Q All right. And at this point there
18 are actually a number of service lots there,
19 aren't there?

20 A Yes.

21 Q Right there in the vicinity, correct?

22 A There is a lot. There is a parking

1 lot there.

2 Q And your photographs also indicate
3 that there is street parking that seems to be
4 available, because there are vacant parking
5 meters there, correct?

6 A Yes, pay-to-park meters.

7 Q Paid parking meters?

8 A Yes, specific.

9 Q So and when you were there, there was
10 street parking available, correct?

11 A Yes.

12 Q All right. So you were asked there is
13 not a lot of parking down there, there actually
14 right now is a lot of parking down there, isn't
15 there?

16 A As of right now, yes.

17 Q Okay. Now, do you recall a power
18 plant in that neighborhood? A Pepco plant
19 somewhere?

20 A I'm not familiar.

21 Q Okay. During the course of your
22 investigation, did you talk to the Single Member

1 District Commissioner Anthony Dale?

2 A I spoke with Mr. Dale, yes.

3 Q Okay. And there is no reference of
4 what he said in your report. Is there a reason
5 for that?

6 A Mr. Dale wasn't on the initial Roll
7 Call Hearing protest application that I received,
8 my packet, my ABRA packet.

9 Q All right. So he wasn't at the Roll
10 Call? Is that what you are saying?

11 A He was not on the Roll Call Status
12 Hearing.

13 Q But he lives in the neighborhood,
14 correct?

15 A Yes.

16 Q But you didn't -- what did he tell
17 you?

18 A Would you like for me to read his
19 statement?

20 Q Sure.

21 A Chairman Anderson and Board Members,
22 as Advisory Neighborhood Commissioner for the

1 SMD, which is the Single Member District, the
2 encompassing proposed license raised objections
3 to this protest.

4 To be clear, I speak on behalf of my
5 SMD, not for ANC-6D. I believe this application
6 will not present significant concerns to the
7 residents. While I understand there are several
8 concerns regarding perceived transportation
9 impact imposed by the inclusion of this project.

10 However, this area has 7,000 visitors
11 each year that come to watch soccer games at Audi
12 Field, which is less than two blocks from the
13 site.

14 It is my fellow belief that less than
15 200 new visits will not dramatically impact this
16 area. The southwest host the headquarters for
17 the United States Coast Guard was peaked at over
18 300 daily employees without any issues.

19 I do believe that we need to have a
20 larger conversation on new transportation
21 infrastructure in this area. However, we should
22 do it in concert with the welcoming of venues

1 into our neighborhood.

2 There have also been -- concerns were
3 raised regarding peace, order and quiet. I mean,
4 this argument lacks merits. Currently, this area
5 is not home to any residents. Furthermore, after
6 speaking to the property owner, I have been
7 advised that it includes several noise provisions
8 and the applicant needs to make good on those
9 issues.

10 In addition to this, this applicant
11 has provided the ANC seven drawings that show
12 equipment that will reduce noise emanating from
13 the summer gardens.

14 Several of the residents who filed
15 within the SMD are excited about the opportunity
16 to have a restaurant near their homes and welcome
17 this addition and believe will reintegrate this
18 area.

19 A previous ANC initiative was brought
20 to us and while I appreciate their concerns, I
21 believe they were raised without consultation
22 with applicant or the property owner.

1 Since taking offers in January, I have
2 met the applicant several times and spoken to the
3 property owner. They are providing evidence that
4 will remove any concerns that were raised. I ask
5 this body to approve this license for this
6 applicant. Sincerely, Anthony Dale.

7 Q All right. So he provided that
8 statement to you?

9 A Yes.

10 Q And did you also interview him and
11 speak to him?

12 A We really spoke about the statement.
13 We spoke briefly. He said that he would just
14 email me the statement.

15 Q Okay. Is there anything that he told
16 you that is relevant to this application that is
17 not included in that statement?

18 A No.

19 Q Did you speak to -- and he is a
20 resident of the area, because he is the Single
21 Member District Commissioner, correct?

22 A Yes.

1 Q Did you speak to any other residents
2 of that area during your investigation?

3 A No.

4 Q Are there many residents in that area?

5 A No.

6 Q Where, from your investigation, would
7 you find the nearest current resident?

8 A I'm not familiar with the closest
9 resident in that area.

10 Q All right. Thank you.

11 MR. KLINE: That's all I have at this
12 time. Thank you.

13 CHAIRPERSON ANDERSON: Any questions?

14 DR. FARLEE: Yes, several. I believe
15 I can answer one of your questions.

16 CHAIRPERSON ANDERSON: Remember, you
17 are asking Mr. Howze questions.

18 MEMBER SILVERSTEIN: Okay. You can
19 now move the microphone closer. Doctor, you can
20 move the microphone closer to yourself now.

21 DR. FARLEE: All right. Okay.

22 MEMBER SILVERSTEIN:

1 REDIRECT EXAMINATION

2 BY DR. FARLEE:

3 Q Mr. Howze, I believe what you were
4 talking about was the Fort McNair area where you
5 said it was vacant lots in the -- when you were
6 referring to 5th Avenue, etcetera, just a
7 clarification, I think.

8 A couple questions about your report.
9 The quote that you provided with -- from Sidon
10 Yohannes indicates that the applicant attended
11 the ABC Committee. Did the applicant tell you
12 that or it was in Sidon's report?

13 A If I can just find my papers.

14 Q In her email? He did not attend the
15 ABC Committee meeting.

16 MR. KLINE: Objection. We are at
17 questioning time.

18 DR. FARLEE: All right.

19 CHAIRPERSON ANDERSON: Are you -- all
20 right. I thought --

21 BY DR. FARLEE:

22 Q Do you have any evidence that he --

1 CHAIRPERSON ANDERSON: Hold on.

2 BY MR. FARLEE:

3 Q -- attended the ANC --

4 CHAIRPERSON ANDERSON: Hold on, hold
5 on, hold on, Ms. Farlee. I think Mr. Howze
6 stated that he was going to look.

7 DR. FARLEE: For it.

8 CHAIRPERSON ANDERSON: You asked him
9 a question and I thought he said let him check
10 his report.

11 DR. FARLEE: Okay.

12 CHAIRPERSON ANDERSON: So and if you--
13 once you check your report, Mr. Howze, if you can
14 answer the question, then you can go ahead. If
15 not, you can say you don't have an answer.

16 THE WITNESS: Can you repeat the
17 question?

18 BY DR. FARLEE:

19 Q Did you clarify, confirm that the
20 applicant had attended the ABC Committee meeting
21 or an ANC public meeting?

22 A No.

1 Q Okay. And did you confirm that we had
2 -- that the ANC has not received any concerns
3 from the -- the applicant has not received any
4 concerns from the ANC about this application,
5 other than what is in Sidon Yohannes' statement?

6 A Can you repeat the question for me?

7 Q Did you confirm that with the
8 applicant that he didn't --

9 A Ms. Yohannes was speaking on behalf of
10 the applicant, so I would assume that they had a
11 conversation.

12 Q Right. Okay. On your seven site
13 visits to -- now, do we acknowledge that this
14 building we are talking about is totally gutted,
15 at the moment? It's totally unoccupied. It is a
16 former Coast Guard office building, but it is
17 totally gutted and being refurbished, correct?

18 A My understanding is it's been under
19 construction right now.

20 Q Yeah. So you visited seven times at
21 night and it is surrounded by wire fencing with a
22 guard. You visited seven times, seven nights to

1 this fenced in, gutted building, which is in our
2 Exhibit 6, to determine that there were no ABRA
3 violations. What kind of ABRA violations did you
4 expect to find at night at a closed, gutted
5 building, fenced in?

6 A This is protocol for the protest
7 report.

8 Q Uh-huh.

9 A We have to notify if there was any
10 ABRA violations.

11 Q Okay.

12 A And also put any unusual activity just
13 to be clear.

14 Q Uh-huh. I understand that you did
15 talk with Commissioner Litsky, but don't have his
16 comments or questions in your report. Why is
17 that?

18 A Mr. Litsky stated himself that he
19 didn't want to be a part of the record or report,
20 so I did not add him in.

21 Q That he did not want to be a part of
22 the record?

1 A Correct.

2 Q But did you include any of his
3 concerns in your report?

4 A Again, he stated that he didn't want
5 anything that we talked about in the record or
6 the report.

7 Q He didn't want to be quoted, but did
8 you include any of the concerns?

9 A Any conversation that me and Mr.
10 Litsky had, he did not want in the report.

11 Q Okay.

12 A I don't know if I'm -- that is
13 answering the question, but --

14 Q So what was in the discussion? What
15 did you cover in the discussion? What was he
16 concerned about?

17 A It's not in the report, so I don't
18 think it needs to be on the record.

19 Q Okay. Do you, yourself, based on your
20 experience and judgment about other
21 establishments in the city have an opinion about
22 whether the outside 2:00 or 3:00 on the summer

1 gardens, entertainment, dancing and other things
2 that we are concerned about, does that, in your
3 opinion, meet the appropriateness standard in
4 Title 25?

5 A I don't have an opinion. I just
6 investigated the protest case.

7 Q Okay. Thank you.

8 CHAIRPERSON ANDERSON: All right. Mr.
9 Howze, the report you wrote, are there exhibits
10 in the report?

11 THE WITNESS: Several.

12 CHAIRPERSON ANDERSON: Can you --
13 let's go through the exhibits and you can tell us
14 what exhibits are attached to the report.

15 THE WITNESS: Exhibit 1 is a statement
16 in the binder from applicant's attorney.

17 Exhibit 2, 3, 4, 5 and 6 are the
18 contents and outline for the summer gardens.

19 (Whereupon, the above-
20 referred to documents were
21 marked as Government Exhibit
22 No. 1 through 6 for

1 identification.)

2 THE WITNESS: Exhibit 7 and 8 are the
3 GIS Map for the one establishment within 1200
4 feet and the no school, recreation or public
5 libraries within 400 feet.

6 Exhibit 9 is part of the application
7 which talks about the interior of the
8 establishment, the proposed establishment.

9 Exhibit 10 is the MPD Calls for
10 Service.

11 Exhibit 11 and 12 are just
12 advertisement for what is to come in the future.

13 Exhibit 13 is directly across from the
14 proposed establishment and the apartment.

15 (Whereupon, the above-
16 referred to documents were
17 marked as Government Exhibit
18 No. 9 through 13 for
19 identification.)

20 THE WITNESS: Exhibit 14 is the
21 construction for the apartment for the
22 establishment along with 15.

1 16 is just the pay-to-park sign.

2 17 is a picture of V Street.

3 18, this picture was taken and 19 and
4 20, these are -- this is the area and the parking
5 lot that is there now, but it is fenced off.

6 21, 22 and 23, also 24 is the James
7 Creek Marina.

8 And 25 to 29 is just pictures that
9 were taken at nighttime.

10 30 is the Protest Letter.

11 31 is the Notice of Public Hearing.

12 32 is the Roll Call Hearing results.

13 33 is the ABC Roll Call meeting. That
14 happened on Monday, December 21st at 9:18.

15 (Whereupon, the above-
16 referred to documents were
17 marked as Government Exhibit
18 No. 15 through 33 for
19 identification.)

20 CHAIRPERSON ANDERSON: It's a what?

21 You mean it's the Roll --

22 THE WITNESS: 33? The Roll Call

1 Hearing?

2 CHAIRPERSON ANDERSON: Okay. All
3 right.

4 THE WITNESS: Yes. And I believe
5 that's all there is.

6 CHAIRPERSON ANDERSON: All right. All
7 right. Mr. Howze, you can step down. Thank you.

8 (Whereupon, the witness was excused.)

9 CHAIRPERSON ANDERSON: All right. Who
10 is the applicant's first witness?

11 MR. KLINE: We call to the stand
12 Gregory Casten.

13 Whereupon,

14 GREGORY J. CASTEN

15 was called as a witness by Counsel for the
16 Licensee, and having been first duly sworn,
17 assumed the witness stand and was examined and
18 testified as follows:

19 MR. CASTEN: Yes.

20 CHAIRPERSON ANDERSON: Have a seat,
21 please. Your witness.

22 DIRECT EXAMINATION

1 BY MR. KLINE:

2 Q Would you state your name for the
3 record, please?

4 A Gregory J. Casten, C-A-S-T-E-N.

5 Q Mr. Casten, are you in business or
6 businesses?

7 A Yes, I am, several.

8 Q Will you tell the Board what those
9 are, please?

10 A I'm a partner in two restaurants in
11 Georgetown: Tony and Joe's Seafood Place, Nick's
12 Riverside Grill. I'm the primary owner in a
13 seafood wholesale distributorship called Profish.
14 I am the majority owner in a low voltage wire
15 installation company called OneSource.

16 I am the majority owner in a moving
17 company called Straightline Movers. I am the
18 majority owner of Ivy City Smokehouse and Ivy
19 City Tavern.

20 Q Excuse me, if you could keep your
21 voice up?

22 A Sorry. There are a couple of other

1 small things around the District, but all of
2 those are businesses that I am involved in.

3 Q All right. Let's focus today on the
4 hospitality establishments, you mentioned a few.
5 You mentioned a couple restaurants in Georgetown?

6 A That's correct, two. Tony and Joe's,
7 Nick's Riverside Grill.

8 Q All right. And what's your
9 involvement with those restaurants?

10 A I built both of those restaurants and
11 I have been active in the daily operations every
12 day since the first day of their operation.

13 Q All right. Would you describe the
14 location for the Board of these two restaurants?

15 A Both restaurants are located in
16 Washington Harbor right along the river, the
17 Potomac River, literally at the river shore in a
18 mixed-use development complex. The complex is
19 approximately 500,000 square feet of seven
20 stories in two buildings and the top three
21 stories are residential and the middle five or
22 four are office and the bottom is retail.

1 Q All right. When you say you built
2 them, you were not out there with a hammer. What
3 is it that you mean that you built them?

4 A The restaurants not only did I build
5 them, I built them a second time after the flood
6 in 2011, but yeah, I was out there when there was
7 nothing but beams not on the walls directing and
8 picking up a hammer on occasion, if that's what
9 it took. So, yes, I built them.

10 Q For the most part, you supervised the
11 construction, correct?

12 A Well, okay. It depends on who was
13 taking out the trash, but that is -- you know, I
14 was active. I'm an active guy and involved in
15 it. I get involved in that type of stuff.

16 Q Okay. And those restaurants, what's
17 the first of them to open?

18 A Tony and Joe's opened in 1987, October
19 of 1987.

20 Q Okay. And you were involved in the
21 original construction and opening of that
22 restaurant?

1 A That's correct. I went to work there
2 in spring.

3 Q And Nick's opened when?

4 A 1982.

5 Q And what is the capacity of this
6 restaurant?

7 A Tony and Joe's has 283 seats inside
8 and 300 seats on the patio overlooking the water.
9 Nick's Riverside Grill has 145 seats inside and
10 250 seats outside overlooking the water.

11 Q So the total number of seats at that
12 location?

13 A For Tony and Joe's it's 580 and for
14 Riverside Grill it's 395 combined it's some 900
15 seats.

16 Q And what's the total number outside?

17 A 550.

18 Q 550 outside?

19 A Correct.

20 Q And that's directly on the river,
21 correct?

22 A Correct.

1 Q And in those locations, you sometimes
2 deal with boaters perhaps?

3 A Every -- well, 10.5 months out of the
4 year. Not every day, but yes.

5 Q And is it -- is that complex built to
6 engage the river in some way?

7 A It was specifically built for the
8 enjoyment of people on the river.

9 Q Okay. And does it tie in to parks in
10 Georgetown in some way?

11 A Yes. It's, in fact, the wood planks
12 where the boats park is Park Service. The brick
13 is the city.

14 Q Okay. So and then from there, the
15 wood planks is there sort of like a boardwalk
16 there? Is that --

17 A Yes.

18 Q Okay. And then if you walk west from
19 there, where do you get to?

20 A You get to a park that is in front of
21 the foundry, the old incinerator in Georgetown,
22 building. Where the movie theaters are, there is

1 an open park there.

2 Q Okay. And then if you walk east,
3 where do you go?

4 A The Embassy of Sweden.

5 Q And then beyond there?

6 A Rock Creek Park Tributary and then on
7 the other side of that is the boat house,
8 Thompson's Boat House for water activity.
9 Rowboats and things of that nature. Keep going
10 and you get to the Kennedy Center.

11 Q Okay. So you have had some experience
12 operating a waterfront restaurant adjacent to
13 public park land. Is that a fair statement?

14 A I think that's a fair way to put it.

15 Q And a very large -- two very large
16 restaurants.

17 A And for a very long time.

18 Q All right. Now, during the years
19 there, did you ever have any issues, complaints
20 from residents, things that needed to be dealt
21 with in Georgetown?

22 A Yes, on occasion.

1 Q Okay. What might those have been?

2 A I was around in the '80s when
3 Georgetown was much, much busier late at night.
4 And there was a concerted effort by the ANC and a
5 number of the licenses to try to figure out how
6 to alleviate that late night problem. People
7 going into neighborhoods and behaving in ways
8 they shouldn't, not necessarily my patrons, but
9 globally Georgetown as a whole.

10 And I participated with the ANC and
11 actually came to an agreement and signed an
12 agreement with them as part, again, of a global
13 movement to close an hour earlier hoping to
14 change whole neighborhood behaviors, rather than
15 my establishment behavior.

16 Q Okay. When you say a whole hour
17 earlier, a whole hour earlier than what?

18 A Than the license allowed by law.

19 Q So before that you were entitled to
20 open and operate until what time?

21 A 3:00 a.m.

22 Q On?

1 A On Friday and Saturday. 2:00 a.m. the
2 other nights. The full extent of the license
3 period.

4 Q Okay. And then at some point, you
5 changed that in cooperation with the
6 neighborhood?

7 A Correct, with the ANC and the
8 citizens, absolutely.

9 Q All right. And that was in response
10 to some specific problems you were having at that
11 time or the neighborhood was having at that time?

12 A I think it was more the neighborhood,
13 rather than just our establishment. There were
14 not a specific incident at our establishment, but
15 again globally, which could have been our
16 patrons, it could have been Nick's patrons. We
17 did the same thing at Nick's that we did at Tony
18 and Joe's.

19 If you recall Georgetown in those
20 days, there were meaningless liquor licenses
21 throughout.

22 Q Okay. And did that work?

1 A Yes. I think it took a little bit of
2 time and effort, more than just that piece, but
3 yes, ultimately, I think that was a resounding
4 beneficial thing for the overall neighborhood.

5 Q And since that time, have you been in
6 cooperation or been in communications with the
7 Advisory Neighborhood Commission and other groups
8 in Georgetown concerning the operation of these
9 two establishments?

10 A I mean only on occasion. We do an
11 annual New Year's Eve party. I'm an active
12 member of the Georgetown BID Board. I mean, I go
13 to occasional social functions. I have not had
14 official business with the ANC since the early
15 '90s. You know, from time-to-time there were
16 several individual ANC commissioners who would
17 walk by and look at our particular operation on a
18 particular night and they might comment that it
19 was busy or this or that, but there were not
20 official interactions.

21 I'm friendly with almost every one of
22 the -- all that I know. Recently, it has changed

1 quite dramatically, the ANC in Georgetown.

2 Q All right. Speaking of the BID, tell
3 the Board about some of your other civic
4 involvement in the District of Columbia.

5 A I currently sit on the Georgetown BID,
6 the -- I'm a member of the restaurant association
7 and have been for years. I have been on the
8 Georgetown BID for years. I sit on the
9 Destination DC Tourism BID. I sit on the
10 Destination DC's American Experience Foundation.
11 I'm actually the chair of that, I'm very proud to
12 say. We have a big New Year's Eve event down on
13 the -- not New Year's Eve, 4th of July event where
14 we are raising money to bring kids in for trips.
15 And I sit on Educate at Each Chair as well.

16 Q Educate at Each Chair, what's that?

17 A Educate at Each is a foundation that
18 the restaurant association has to work with
19 under-privileged students throughout Washington,
20 DC and help get them educated in the hospitality
21 industry as a potential avenue for a career.

22 Q And is that something that you have

1 done throughout the District?

2 A 12, yeah, years, that's correct, yes.

3 Q You have been heavily involved in
4 Educate at Each Chair?

5 A Very much so. Well, Franz Hoggins
6 started it, I'll give him the credit or started
7 the initiative, but I have been in the individual
8 schools from Ballou to Roosevelt to, you know,
9 all of them, Carlos Rosario as well, different
10 places where I'm interacting with the youth to
11 try to counsel them and help mentor them to come
12 into our ministry. You need that vibrancy, it's
13 very important.

14 Q All right. Now, let's talk about this
15 new restaurant that you are planning, the Buzzard
16 Point Fish House. What is the concept? What do
17 you want to do there?

18 A Seafood. All things seafood. I grew
19 up actually just south of Boston working on a
20 beach town working in a seafood -- on a seafood
21 lobster boat on occasion. And my life, as you
22 can hear from the restaurants and the fish

1 wholesale company, has been about seafood. And I
2 want this to be a celebration of that and the
3 food to be the best that it can possibly be.

4 Q All right. And in terms of format or
5 menu or what have you, you know, what do you
6 envision? What do you --

7 A So the menu is under design, but if
8 you look in the internal design of the place,
9 which I'm happy to put a board up for you if you
10 would like, but there are fish tanks that will
11 hold live bronzini. There are fish tanks that
12 will hold live Alaskan King Crab leg. There are
13 fish tanks that will hold live lobster. There is
14 a sushi bar. There is a tin, tin seafood is a
15 big up and coming thing, sardines and octopus and
16 some of the delicacies that they eat in Europe.

17 So there is a section where that is
18 celebrated. And then, of course, we will have
19 access to all the local fish and if things work
20 out, I'll have somebody drop off at that dock
21 fish that is actually harvested, if I can get
22 D.C. to get a commercial fishery, actually do

1 that fishing there hopefully.

2 Q All right. We are going to -- we will
3 walk through the plan in just a minute, but I did
4 miss one thing.

5 You have another restaurant, too?

6 A Ivy City Smokehouse and Tavern, that's
7 correct.

8 Q All right. And tell the Board about
9 that location.

10 A So Ivy City Smokehouse and Tavern
11 became a little bit of an afterthought. The
12 smokehouse is downstairs. We actually take fish
13 and cold smoke and build -- create packaged
14 products for sale and retail units throughout the
15 country. We sell to Kroger. We sell to Lidl,
16 Safeway, hopefully Giant, hopefully Wholefoods,
17 those natures of people, those natures of
18 customers as well as, of course, Profish.

19 And then on top of that was a space
20 that the Ivy City neighborhood, I have been going
21 there every day for 30 years, was relatively
22 under-served for a restaurant and being in the

1 restaurant business, I got a restaurant license
2 there. And then my partner, being who he is, it
3 became recognized by Michelin for its high-
4 quality food.

5 We are using nothing but the freshest
6 seafood and it has become immensely popular in a
7 very wonderful way, but that's Ivy City
8 Smokehouse.

9 Q And you won some awards there, too?

10 A We have won the restaurant association
11 casual restaurant of the year. We have been
12 recognized with Michelin Bib Gourmand, which is
13 they don't rate you by a star because you are not
14 expensive enough for them. You are actually more
15 of a lower income, not income, but a lower priced
16 high-quality restaurant and that's what we are
17 recognized.

18 The chef is James Beard and my chef
19 Ron, my chef partner, Ron.

20 Q All right. And how long has your
21 chef/partner been with you?

22 A So Ron, I call the mad scientist, was

1 the original chef at Tony and Joe's Seafood
2 Place. He was my partner in a smoked fish and
3 seafood venture we did in the late '90s called
4 Washington Seafood. He went off to work for
5 Johns Hopkins University doing -- he has got a
6 PhD in chemistry, a masters in horticulture.

7 He graduated from Hyde Park in the
8 original class and he spent a long time working
9 on foods and stroke victims and how you can
10 really help people with what they eat and what
11 they put in their bodies and that's why I call
12 him the scientist.

13 One that is really -- I mean, I think
14 he is the hidden jewel and the best unknown
15 secret in Washington, D.C.

16 Q And when you say Hyde Park, you were
17 talking about Culinary Institute of America?

18 A Correct. He was in the original class
19 of Hyde Park. And then he worked in Washington
20 D.C. He owned some places called My Brother and
21 Me with his brother, Craig. He worked for Jean-
22 Louis at the Watergate. Of course, he worked for

1 -- at Lily on Door, which was a really upscale
2 French place.

3 And then he went to London and worked
4 for Albert. Ron is an interesting pedigree
5 individual.

6 Q All right. We have talked about what
7 this concept will be like. Let's -- if we will--

8 MR. KLINE: I'm going to hand, with
9 the Board's permission, may I approach the
10 witness?

11 CHAIRPERSON ANDERSON: Sure.

12 BY MR. KLINE:

13 Q I've handed you a stack of exhibits.
14 Let's start with Exhibit 18, if we might.

15 A Okay.

16 MR. KLINE: Mr. Chairman, this is in
17 our set of exhibits, right?

18 CHAIRPERSON ANDERSON: All right.

19 MR. KLINE: We need for the Board to
20 blow-up that exhibit.

21 THE WITNESS: I show that as 15.

22 MR. KLINE: All right. Then let's

1 start with 15.

2 THE WITNESS: Okay.

3 CHAIRPERSON ANDERSON: I don't seem
4 to--

5 BY MR. KLINE:

6 Q All right. Exhibit 15, identify that.
7 What is it?

8 A That is the current floor plan and
9 patio floor plan. One of the two sundecks for
10 Buzzard Point Seafood Fish -- Buzzard Point Fish
11 House. Sorry.

12 MR. KLINE: It's Tab 4.

13 MR. LITSKY: I'm sorry, can we protest
14 what's being presented here?

15 CHAIRPERSON ANDERSON: I'm sorry.
16 Why? Tell me.

17 MR. LITSKY: Well, these drawings, as
18 far as I understand them, were submitted --

19 CHAIRPERSON ANDERSON: You can turn
20 the microphone on.

21 MR. LITSKY: These drawings as far as
22 I understand were submitted late last night, like

1 after 9:00. We -- you know, it's after the
2 period. I appreciate the fact that you're trying
3 to get information in, but we really haven't had
4 an opportunity to see them. They are large,
5 printed out on a large format to even analyze
6 them and ask Mr. Casten questions.

7 So I would kindly request that any
8 exhibits that were sent by the applicant after
9 the time when it was supposed to be sent, should
10 be stricken from the record and not used in this
11 hearing.

12 CHAIRPERSON ANDERSON: So what --
13 well, I wasn't aware of that. So what documents
14 are we -- so are we saying as part of -- all
15 right. As part of the document that has just
16 been submitted seven days before --

17 DR. FARLEE: No.

18 CHAIRPERSON ANDERSON: What was
19 submitted? What did you receive?

20 DR. FARLEE: They were not submitted.
21 These were not submitted seven days --

22 CHAIRPERSON ANDERSON: What did you

1 receive?

2 MR. LITSKY: What did we receive last
3 night? What are the list?

4 CHAIRPERSON ANDERSON: I'm sorry.
5 What exhibits were -- all right. Let me --

6 MR. KLINE: Mr. Chairman, I can just
7 cut to the chase on this and the Board can make a
8 decision as to what it wants to do.

9 CHAIRPERSON ANDERSON: Yes.

10 MR. KLINE: These documents replicate
11 what has already been submitted, except they are
12 better drawings. They are in color. There could
13 not possibly be any prejudice.

14 CHAIRPERSON ANDERSON: I don't know,
15 so you tell me. I don't know what -- let me -- I
16 don't know what is in your exhibits, so --

17 MR. KLINE: If I may finish? If you
18 look at the date on these exhibits, they were
19 submitted last night and they were filed with the
20 Board and they are dated yesterday, which is when
21 they were created. They were created earlier
22 this week and they are not any different from

1 what is in --

2 DR. FARLEE: What is in the first
3 batch?

4 MR. KLINE: -- our exhibit book and
5 was filed a week ago. In terms of layout, they
6 are merely clearer and provide some more detail.
7 And I cannot imagine --

8 CHAIRPERSON ANDERSON: Mr. Kline?

9 MR. KLINE: Yes, sir?

10 CHAIRPERSON ANDERSON: Remember, I
11 don't know what was submitted before.

12 MR. KLINE: Okay.

13 CHAIRPERSON ANDERSON: So you need to
14 let me know what was submitted before. So what
15 it is, so Exhibit 15, from your exhibit that was
16 submitted before, what is Exhibit 15?

17 MR. KLINE: Exhibit 15 is a layout.

18 CHAIRPERSON ANDERSON: No, no, no.
19 You are saying that these documents, this is just
20 a clearer picture of what was exhibit -- that was
21 of what was submitted previously. What was the--

22 MR. KLINE: Well, 12 and 13 were filed

1 a week ago.

2 CHAIRPERSON ANDERSON: So is Exhibit
3 15, 12, Exhibit 12? You said that these are
4 clearer versions of exhibits that were submitted
5 before.

6 MR. KLINE: Right. So if you look at
7 Exhibit 13 --

8 CHAIRPERSON ANDERSON: All right.

9 MR. KLINE: -- you look at Exhibit 12,
10 and you look at Exhibit 13, those are layout
11 drawings of the restaurant. If you look at
12 Exhibit 15, it is the same layout. It is merely
13 color. You get a better -- it's easier to view,
14 frankly, than the other drawing. And the
15 protestants' objection that they don't have an
16 opportunity to examine the witness, well, have an
17 opportunity to examine the witness about it.

18 DR. FARLEE: But the point is we were
19 told we could not supplement any of our --

20 CHAIRPERSON ANDERSON: No, it's not --

21 DR. FARLEE: -- exhibits after the --

22 CHAIRPERSON ANDERSON: All right.

1 DR. FARLEE: -- a week ago.

2 CHAIRPERSON ANDERSON: All right.

3 Hold on, Mr. Silverstein. Okay.

4 It is not -- I'm not told -- it's the
5 same exhibit. I think what I've been told -- and
6 that's why I'm asking for clarification. It's
7 the same exhibit. What I'm being told is that
8 what was submitted last night is in color. Is
9 that what is being stated, Mr. Kline?

10 MR. KLINE: Yes, that's essentially
11 correct.

12 CHAIRPERSON ANDERSON: I don't -- Mr.
13 Kline, I don't know what was submitted. I didn't
14 even know documents were submitted last night.

15 MR. KLINE: I understand.

16 CHAIRPERSON ANDERSON: So as their
17 right, they are objecting and I'm asking for
18 clarification. So there is no -- it's not
19 prejudicial, because from what I'm being told is
20 that -- and you said you weren't an attorney, Mr.
21 Litsky.

22 MR. LITSKY: I'm not.

1 CHAIRPERSON ANDERSON: But you --

2 MR. LITSKY: I just play one on TV.

3 CHAIRPERSON ANDERSON: All right. No,
4 it's not prejudicial, because --

5 MR. LITSKY: All right.

6 CHAIRPERSON ANDERSON: -- it was the
7 same document that was --

8 MR. LITSKY: Okay. And we had no --

9 CHAIRPERSON ANDERSON: -- disclosed
10 earlier.

11 MR. LITSKY: -- understanding of what
12 was submitted. We just got a data dump at 9:00.

13 CHAIRPERSON ANDERSON: All right.

14 MR. LITSKY: And, you know, we wanted
15 to make sure that nothing was being sneaked in.

16 CHAIRPERSON ANDERSON: All right.
17 Fine.

18 MR. LITSKY: Thank you.

19 CHAIRPERSON ANDERSON: Mr. Kline has
20 represented that this is just -- that exhibit --
21 so what I'm asking for to clarify the record, Mr.
22 Kline, whatever the exhibits that were disclosed

1 last night, can you, please, state what the
2 exhibit -- what exhibit that was that was
3 previously disclosed timely?

4 So you are saying to me that Exhibit
5 15 is Exhibit 13? Is that --

6 MR. KLINE: Correct.

7 (Whereupon, the above-
8 referred to documents were
9 marked as Licensee Exhibit
10 No. 12, 13 and 15 for
11 identification.)

12 CHAIRPERSON ANDERSON: -- what is
13 being stated?

14 MR. KLINE: That is correct.

15 CHAIRPERSON ANDERSON: All right.

16 Okay.

17 MR. KLINE: Do you want me to go
18 through the other ones as well, at this point?

19 CHAIRPERSON ANDERSON: If you are
20 going to introduce, then just to clarify, so they
21 will know what it is.

22 MR. KLINE: Okay. Well, we will do

1 them as we get to them.

2 CHAIRPERSON ANDERSON: That's fine,
3 yes.

4 MR. KLINE: All right.

5 BY MR. KLINE:

6 Q So, Mr. Casten, looking at Exhibit 15
7 and if it would aid the Board and we can get a
8 mike, it might be helpful for him to approach the
9 easel.

10 CHAIRPERSON ANDERSON: I don't know
11 where a microphone would come from, Mr. Kline.

12 MR. KLINE: Well, maybe --

13 THE WITNESS: I'll talk loud. Is that
14 what you want?

15 MR. KLINE: You can come closer.

16 MEMBER ALBERTI: Can I ask a question
17 just for clarity?

18 CHAIRPERSON ANDERSON: Yes.

19 MEMBER SHORT: Mr. Kline, put the
20 easel up.

21 MEMBER ALBERTI: Just for clarity.

22 CHAIRPERSON ANDERSON: Yes, yes, Mr.

1 Alberti.

2 MEMBER ALBERTI: If you are talking
3 about Exhibit 15 here, Mr. Kline, it looks like
4 it is -- it looks like what you submitted and
5 what we have is the same exhibit only in a
6 smaller version and maybe slightly different hues
7 of color as Exhibit 15 and what was submitted
8 before.

9 CHAIRPERSON ANDERSON: No, no, no, no.

10 MEMBER ALBERTI: But he is saying
11 that's correct.

12 CHAIRPERSON ANDERSON: No, no. I
13 think you are missing the point, Mr. -- Exhibit
14 15 that is being shown today, Mr. Kline is
15 showing a much larger version of Exhibit 15. We
16 have --

17 MEMBER ALBERTI: Right. That's
18 exactly what I just said.

19 CHAIRPERSON ANDERSON: No, no, but --
20 no, but that was not -- no. But the protestant
21 has a smaller version of Exhibit 15. Exhibit 15
22 was provided to them last night.

1 MEMBER ALBERTI: Right, right. But I
2 thought earlier you said that there were
3 different numbers and I wanted to make sure --

4 CHAIRPERSON ANDERSON: Right.

5 MEMBER ALBERTI: -- it's the same
6 numbering?

7 CHAIRPERSON ANDERSON: No, no, it's
8 not.

9 MR. KLINE: No.

10 CHAIRPERSON ANDERSON: Exhibit 15 was
11 disclosed last night. Exhibit 15 is Exhibit 13
12 that was previously disclosed timely.

13 MEMBER ALBERTI: That's not what I--

14 MR. KLINE: Yes. If I can be clear--

15 MEMBER ALBERTI: Sure.

16 MR. KLINE: -- since we are all here?
17 Exhibit 12 and 13 were previously provided. They
18 are layouts of the restaurant.

19 MEMBER ALBERTI: Right.

20 MR. KLINE: Exhibit 15 is not the same
21 drawing, but it is substantially similar. It was
22 created differently by the architects and it is

1 the same layout that you see in 12 and 13. It is
2 merely in color and then we blowed it up to make
3 it easy for the Board to see. If you would
4 rather look at the small one, I'll take it down
5 and we can squint.

6 CHAIRPERSON ANDERSON: I'm fine. I'm
7 fine, Mr. Kline. I understand.

8 MEMBER ALBERTI: Thank you.

9 CHAIRPERSON ANDERSON: And I think I
10 have clarified to the protestant, so they know
11 what document it is, so go ahead.

12 MR. KLINE: All right. So if I may,
13 may I --

14 CHAIRPERSON ANDERSON: Yes, go ahead.

15 MR. KLINE: -- move Mr. Casten's
16 microphone and have him approach the exhibit --

17 MEMBER ALBERTI: Or move it back.

18 MR. KLINE: -- that is on the easel?

19 CHAIRPERSON ANDERSON: Whichever way
20 it works. I mean, but I'm looking at --

21 MR. KLINE: Pull it closer. I'm just
22 trying to make it --

1 CHAIRPERSON ANDERSON: -- the smaller
2 version. I don't think all of us can see the
3 same thing, so whichever way you think will work
4 for you.

5 MR. LITSKY: Hold it up high here.
6 How about that?

7 MEMBER ALBERTI: He said it's Exhibit
8 13.

9 CHAIRPERSON ANDERSON: 13.

10 MEMBER ALBERTI: No, no, no. Here is
11 12 and here is 13. What you are looking at there
12 is Exhibit 12, that's my confusion.

13 MR. KLINE: Is there a mike over here?

14 MEMBER ALBERTI: All right. That's my
15 confusion.

16 MR. KLINE: May I have the witness
17 approach?

18 CHAIRPERSON ANDERSON: All right. But
19 if there is a microphone, that's fine. Go ahead.

20 MR. KLINE: Right here.

21 MEMBER ALBERTI: So this is Exhibit
22 12?

1 MR. KLINE: This is Exhibit 15.

2 MEMBER ALBERTI: In what we have and
3 what was submitted before?

4 MR. KLINE: I don't know what you
5 have, but it was submitted --

6 MEMBER ALBERTI: Well, you submitted
7 it.

8 MR. KLINE: -- last night. I know,
9 but we submitted late last night.

10 MEMBER ALBERTI: No, no, no. No,
11 earlier you submitted -- you submitted exhibits
12 earlier?

13 MR. KLINE: Right.

14 MEMBER ALBERTI: We have an exhibit
15 that was submitted a week ago --

16 MR. KLINE: Correct.

17 MEMBER ALBERTI: -- labeled Exhibit
18 15. Is that what we are looking at?

19 MR. KLINE: Exhibit 15 was not
20 submitted a week ago. It was submitted last
21 night. But you have called it 13.

22 MEMBER ALBERTI: Okay. So what -- how

1 does it correspond to what was submitted a week
2 ago? Maybe not exactly how does it correspond to
3 what was submitted a week ago? That's what I'm
4 trying to get at.

5 MR. KLINE: It's the same drawing,
6 except it's in color.

7 MEMBER ALBERTI: As --

8 MR. KLINE: And there is --

9 MEMBER ALBERTI: -- what exhibit?

10 MR. KLINE: -- as Exhibits 12 and 13.

11 MEMBER ALBERTI: Okay. Thank you.

12 That's why I wanted to make sure it's clear.

13 MR. KLINE: Okay. All right.

14 MEMBER ALBERTI: Just make sure it's
15 clear for the record.

16 MR. KLINE: I want it to be clear.

17 MEMBER ALBERTI: Yes. All right.

18 Thank you.

19 BY MR. KLINE:

20 Q Mr. Casten, if you may approach --

21 A Yes.

22 Q -- and explain the layout to the Board

1 starting with the entrance to the restaurant.

2 You might, and I would suggest that if the

3 protestants can't view --

4 A We can see. So the restaurant entrance
5 is on 2nd Street, again, designed and the windows
6 will be fish tanks that are live biofilters
7 designed with the University of Baltimore Aquaria
8 specialist, Dr. Zohar. The fish will actually be
9 available for slaughter. We are not going to do
10 that in the restaurant, but it's going to be
11 really unique. It's going to go three-quarters
12 of the way up and then will halt in a place where
13 we are hoping scientists can begin to see and
14 appreciate what is going on.

15 Dr. Zohar created the world of
16 bronzini. He is from Israel and did it over in
17 Egypt and has been working with the aquarium for
18 30 years trying to get this. We are working with
19 -- on another project, so all of the salt water
20 tanks will be really state of the art and be
21 really some fun unique stuff that you won't be
22 able to see in other places.

1 Here is an Alaskan King crab leg tank.
2 You come in. There are two private dining rooms
3 on the side. The bathrooms are back in here.
4 The -- as an explanation for why the color, as
5 I'm getting this information, I'm giving it to my
6 attorneys and to them if they want it. This was
7 just done by the architects yesterday. We are a
8 little bit behind the ball.

9 The colors. it is intended to be a
10 hardwood floor throughout and the colors
11 delineate the different colors of floor. As Mr.
12 Kline indicated, the tables, chairs and layout
13 all remain the same.

14 These are two private dining rooms
15 which can be put together as one dining room with
16 40 seats. What we do at Tony and Joe's are often
17 tour bus type activities that can't ironically
18 find anywhere to park at The Wharf. They can't
19 find anywhere to park anywhere except down by the
20 stadium, so they are actually thrilled when they
21 heard about that.

22 I don't know if that helps you, but I

1 can talk about the parking issues, too. These
2 are two wheelchair seats here. This is a private
3 dining area or just a casual area. It attaches
4 with a small overhead door between one frame and
5 not the length. The length is all solid glass
6 except for one door between the front and the
7 back and that door is -- will allow this area to
8 be sort of a party-type area where if you have an
9 event and you want to have some outside activity
10 and some inside activity, you will be able to do
11 that. That's a really unique feature with some
12 upgrowing, outgoing Renaldo doors, they are
13 called, and we will have a couple of live walls
14 throughout.

15 This area is all dining. This area is
16 all dining. This is the bar area here. On the
17 bar you see this jettison here, this is a raw bar
18 out here. Back here will be all the tins. This
19 will be a sushi bar over here. There is another
20 fish tank here. In this area will be an 18 foot
21 long open flame grill with charcoal and wood,
22 hardwoods that we are lining up from Pennsylvania

1 that I can show you a picture of on this.

2 The kitchen will be open. This is
3 another potential private area that can be
4 closed. This is also an area that will have 6
5 inches of elevation so it looks over this entire
6 area. This is a sister restaurant where more
7 than likely no alcohol will be served.

8 This sister restaurant we are going to
9 call it Beside the Point and have on the cone, in
10 the cone, so my partner wants to make soft serve
11 ice cream, which has a warm place in my heart. I
12 grew up on the beach working at amusement park,
13 that's my second job to -- I did the lobster
14 boat. Actually, it's vice versa. But so this is
15 aimed at the upcoming fast casual.

16 By on the cone means the ice cream
17 will be on the cone or in the cone, we plan to
18 provide again medium-priced appetizer-style where
19 you can get and walk, as you walk down it's not
20 on this plan, but the hope for a pathway, which
21 is, I hope, quick. It could be 10 years away.
22 They don't really know.

1 And I can go through those buildings
2 for you as well. But the other significance,
3 these four tables are all built of pretty heavy
4 duty construction and about 1,000 pounds each.
5 Probably not going to ever move, maybe if there
6 is an event. The reason we built them this way,
7 you can't see it as well on this, but it -- they
8 are going to have built-in pieces that come up
9 and go over, so they can shift from an 8 to a 12
10 or 16 top. And they are right here where the
11 show is.

12 So the expeditor will stand here, but
13 all the cooking will go on here. And they will
14 be able to really focus on what is going on and
15 feel like they are a part of that show as the
16 expeditor doubles as their waiter. We think that
17 is one of the unique things that is going to
18 happen in here.

19 The back, the rest of it is entirely
20 kitchen. There are 22 feet of ceiling height of
21 which the landlord has claimed rights to 4. So I
22 know at some point when they tell me that I'm

1 either going to be 18 feet up or 20 feet up and
2 we have brought some stuff to show you what I
3 think I can do to help mitigate the noise.

4 Aside from this fact this building is
5 built by the Government and has good 8 footers,
6 an 8 inch slab on every floor. You could
7 literally drive cars through it. I get your
8 point.

9 Q Yes. I think that's great. One
10 question for you. The application includes an
11 entertainment and dancing endorsement. Where is
12 the dance floor, Mr. Casten?

13 A So I mean it's all a hardwood floor.
14 So arguably anywhere, I guess. What is a dance
15 floor? But I don't intend to have dancing here.
16 That's not what it is about. However, I do have
17 activities where dancing is part of a wedding, we
18 do Salsa dance night at Ivy City Smokehouse. You
19 know, I just am not intending to have a dance
20 floor, a dance operation here where it's like a
21 club-type dance atmosphere. That is not what we
22 are looking for here. I think that would

1 actually -- anyway --

2 Q All right. And in terms of -- just to
3 be clear, you alluded to it earlier, but it may
4 not have been clear as to why, a number of the
5 pieces of furniture are fixed and stationary and
6 it would be pretty difficult to move them for a
7 dance floor. Is that fair?

8 A 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
9 13, 14 fixed big pieces.

10 Q Okay.

11 A \$600,000 worth of millwork.

12 Q All right.

13 A And there is a picture of them
14 somewhere.

15 Q All right. So if you did say have an
16 event for a wedding or whatever it might be, is
17 there a certain area where you could do that in
18 terms of dance floor? Are some of the tables
19 portable and easily moveable?

20 A I mean, anywhere you sort of see these
21 round or not round, but square chairs against
22 these tables, other than these four, so I would

1 say in here I guess. In here, I don't think so,
2 just because of the column that is in the way.
3 So maybe right there, maybe.

4 Q Okay.

5 A If I were trying to fit it in at
6 somebody's wedding or something.

7 Q Okay. All right. Thank you. That's
8 all I have on 15. Hold on, let me see what we
9 have got.

10 All right. So back on 15, will you
11 just show the Board where that outside seating
12 area is?

13 A So this is -- and there is another
14 floor plan that will show the other one, but this
15 is what we call the patio. So there is three
16 places. There is the patio, which is adjacent to
17 the building. The sundeck, which sits just in
18 front of this patio, about 10 yards forward. And
19 then a future to be built pier, which, of course,
20 we have dropped the application for, at this
21 time.

22 This would be what we call the patio.

1 And the gray area which designates it's a slate
2 floor, that's what the coloring is there for.
3 And this would be the outside bar that sits in
4 the patio. And then these dotted lines represent
5 the sound enhancing awning system that will go
6 overhead, I brought of a picture of, too.

7 Q Okay. So the awning system that is on
8 the back side, you have a picture of that there?
9 It's Exhibit 3, I believe?

10 A That just shows you the awning.

11 (Whereupon, the above-
12 referred to document was
13 marked as Licensee Exhibit
14 No. 3 for identification.)

15 THE WITNESS: It gives you an idea on
16 the extent of that as well. If you notice, it
17 has got -- first of all, it will be white, not
18 yellow and this is their photograph, but these
19 ribs and inside them they have some sound wave
20 device. I can try to get better information if
21 need be, but this demonstrates how it is actually
22 six awnings that will -- there will be columns

1 throughout that you see. It will all be
2 automated. It will be automation for the sounds
3 to come down that will block the noise.

4 And then further I mentioned four
5 awnings and there are an awful lot of bugs down
6 there, for bug screens to come down, so people
7 can actually enjoy dinner out here in this line
8 of peacefulness of a beautiful spot on the river.

9 BY MR. KLINE:

10 Q All right. Now, let's turn back to
11 the sound. Are there sound mitigation properties
12 of that awning?

13 A Yes, there are.

14 Q And do you know any more about what --
15 how it works or what it does?

16 A Not technically enough. I know that
17 inside the fabric they have some sort of diagonal
18 or cross-shape that is used to -- you know, the
19 sound waves go up and they bounce off the one
20 side and then bounce back. I'm not a sound
21 engineer, but it helps muffle any up grading
22 sound that it will be -- that will emanate from

1 there.

2 Q And but you have consulted with an
3 engineer or appropriate professionals in
4 selecting this design. Is that correct?

5 A Specifically, that was one of the
6 features.

7 Q Okay. And you are committed to doing
8 this. Is that right in connection with this
9 construction?

10 A It's not quite ordered yet, but it
11 will be. I've got to hurry up. It takes seven
12 months and I want to be open.

13 Q And what's the cost of that then?

14 A Right now, it's about \$400,000.

15 Q Okay. All right. Now, so we talked
16 about the one outside area and there is --

17 A That's 13.

18 Q -- Exhibit 13.

19 CHAIRPERSON ANDERSON: I'm sorry, what
20 exhibit is this again?

21 MR. KLINE: Exhibit 3.

22 CHAIRPERSON ANDERSON: Exhibit 3?

1 MR. KLINE: Yes, sir.

2 BY MR. KLINE:

3 Q All right. I'm going to have you
4 return to the witness stand, if you don't mind.

5 I want to show you Exhibit 12. There
6 shouldn't be any issue about -- the Board should
7 have it, the protestants should have it.

8 A I have it.

9 Q All right. Could you identify that,
10 please?

11 A Exhibit 12 is the layout, floor plan
12 and includes the second deck, which we refer to
13 as the sundeck.

14 Q All right. And will you tell the
15 Board about the sundeck? Where it is located,
16 based on the exhibits, so that they have a sense
17 and we have a sense on the record as to what it
18 is that we are looking at.

19 A The sundeck is located due south of
20 the building on the shoreline and perhaps
21 slightly into the river with pier legs. And if
22 you look at that direct line, it's on the private

1 property of the complex.

2 Q Right.

3 A Or within the boundaries.

4 Q And how many seats are contemplated
5 there?

6 A It is up in the air right now, but we
7 are showing 82. We don't know what the final --
8 it depends on what the landlord tells us we have
9 in actual terms, because I believe he was some
10 anticipation of some small section of it for
11 something he is going to do. But I anticipate 82
12 seats there.

13 Q All right. And in the other summer
14 garden area that you previously identified on
15 Exhibit 15?

16 A That is on there as well. That is
17 adjacent up at closer north of the sundeck patio,
18 south of the restaurant itself.

19 Q And how many seats will be there?

20 A I believe that is 135. Please, don't
21 quote me on the exact number. That number is,
22 you know, not --

1 Q All right. And I mean is that what
2 you would like the Board to approve you for?

3 A Yes. What I put forth in the thing.

4 Q All right. There has been discussion
5 of a 750 total capacity.

6 A That's correct.

7 Q Is that correct?

8 A Yes.

9 Q What is that number?

10 A That's -- you know, I put that number
11 down making an assumption that if we were to do
12 an event like what we do at Charity off the Hook,
13 which is a now 9-year Profish event with 600, 700
14 people who show up and tin chefs cook and we have
15 a silent auction and we raise a bunch of money
16 for local charities or if we do perhaps a
17 political event where we have some people who
18 want to speak.

19 -- I used to do that sort of activity
20 and you can get a lot of people. So we also
21 might have weddings where they would want maybe
22 not the traditional sit-down wedding, but an

1 after event. Actually, ironically, the people
2 that operate the James Creek Marina have -- will
3 rent that space out for weddings and they were
4 thrilled to hear there was going to be a
5 restaurant next door, because that means more
6 people can enjoy the use of the National Park
7 Service assets that are there.

8 So there were all those anticipated
9 potential uses that might expand beyond just the
10 seats, but would require more bodies inside.

11 Q The final number, however, that will
12 be determined by DCRA?

13 A Correct. Well, what we submit for
14 permit and they accept, so presumably by us,
15 hopefully, that they accept. But, yes,
16 ultimately what is approved for the occupancy
17 will be what will tie to what this permit -- what
18 I expect the permit to read.

19 Q Well, we expect it would be no more
20 than 750?

21 A Correct. No, yes.

22 Q And that's why the 750 was applied

1 for?

2 A That's correct.

3 Q Okay. And as you get further through
4 the plan review, that number may change?

5 A I would hope not, but perhaps. I have
6 been through DC permitting before, stranger
7 things have happened. I'm hoping that we go in
8 there and we have a really tight plan, but --

9 Q All right. Now, in the interior, have
10 you taken any steps to mitigate noise in there at
11 all? I think you alluded to it earlier.

12 A So we are actually just sort of
13 designing the sound system, if you will, which
14 is, you know, I really like what I see at some
15 specific restaurants like a Houston's where they
16 point a little speaker at each individual table
17 and you can actually record it or raise it based
18 on the upper and the lower levels.

19 So beyond that, what we have done is
20 looked in general at the application on the
21 ceiling and the buffer between ourselves and
22 above and we have got -- I have provided you with

1 a piece of the substance that we are going to put
2 across the entire ceiling to help reinforce the,
3 again forgive me for if I get it wrong
4 technically, PFC rating, which is the amount of
5 penetration that the noise can do from one level
6 to the next.

7 So we are doing some enhancement in
8 that way. And then hopefully --

9 MR. KLINE: May I approach the
10 witness?

11 CHAIRPERSON ANDERSON: Sure.

12 BY MR. KLINE:

13 Q Mr. Casten, can you identify what I
14 have just handed you?

15 A It's an acoustical tile.

16 Q And is that something that you intend
17 to use in the establishment?

18 A That's what I just described, correct.
19 Along the ceiling throughout and I think we
20 provided that sample, but -- I mean that drawing
21 that demonstrates where, but, essentially, it is
22 over, but high, you know, 20 feet up, the entire

1 restaurant area. The seating area. It's not over
2 the kitchen. The kitchen has a drop ceiling.

3 Q Okay. All right. Now, before we were
4 talking about the neighborhood and talking about
5 Exhibit 7 in the Investigator's report, which I'm
6 going to hand to you. Maybe you can fill-in for
7 the Board where we are, what's in this
8 neighborhood? Do you want to walk toward --
9 through Exhibit 7, which is the maps that we were
10 talking about?

11 A Yes. I'll be glad to help to the
12 extent I can identify it correctly. Our
13 building, we are in the 2100 2nd Street, the
14 entire block is encompassed by one building. We
15 are in that building on the south side. To the
16 west side, I guess, would be the James Creek
17 Marina, which is, approximately, 2.5 acres, 395
18 boat slips, 300 parking spaces. The parking is
19 open and charged to the public.

20 And another comment about that is they
21 would love to have activity there. They used to
22 make a small fortune when the Coast Guard

1 Headquarters was there and now they very much
2 miss that revenue, which helps maintain that
3 park.

4 Immediately north of it towards the
5 Audi Stadium is a wide open parking lot, which I
6 think a developer has long term plans to put
7 additional residential and retail units.

8 The next block up is the Audi Stadium.
9 To the east of that or to the east of the
10 building itself on the waterfront is a 200-unit,
11 don't quote me on the number, condominium
12 building known as Peninsula 88.

13 Just east of that is the Park Service
14 combined effort with the Nature Conservancy
15 building, which is part of what I think they are
16 trying to do with the pier is redo that whole
17 general area and get some kind of help,
18 Government help to build the pier out there.

19 North of that is the old Pepco power
20 plant, which I believe they are talking to some
21 museums about potentially using. I think it is
22 historical. It is pretty ugly, I can give you

1 that, from my personal opinion, I guess that is
2 personal.

3 In front of that one step forth are
4 some transformer stations that will remain in
5 spite of getting rid of the use of the power
6 station, but those transfer stations will remain.
7 They have come up with a -- I have seen the
8 Southwest Waterfront BID's hope to put some sort
9 of wall system to block the people's view from
10 those at some point.

11 And then variously up the cost around
12 across the Capitol Street Bridge, as that bridge
13 gets rebuilt over the next two years, are
14 numerous other residential buildings that are
15 planned and developed over the next 10 years.

16 Q All right. Thank you, Mr. Casten.
17 I'm going to hand you the exhibit book and we are
18 going to flip through it and then quickly
19 identify the other exhibits, if you would.

20 A Sure.

21 Q Starting with Exhibit 1.

22 A Exhibit 1 is the landlord's rendering

1 of what the Riverpoint, which is the name of the
2 apartment building, will look like when
3 completed.

4 (Whereupon, the above-
5 referred to document was
6 marked as Licensee Exhibit
7 No. 1 for identification.)

8 THE WITNESS: If you look in the
9 bottom left of that corner, the blue and orange
10 umbrellas that go along about half of the
11 building, represent what would be -- what was
12 shown today as my patio.

13 BY MR. KLINE:

14 Q Now, just to be clear, the entrance to
15 your establishment will be --

16 A Is on --

17 Q -- where?

18 A -- if you look on the very left, there
19 is sort of that white spot, that would be the
20 circle and our entrance is on that side, that's
21 2nd Avenue right above the R in Riverpoint.

22 Q All right. Looking at Exhibit 2?

1 A Okay. Exhibit 2 is our architect's
2 schematic of what the -- beside the point
3 entranceway will look like.

4 (Whereupon, the above-
5 referred to document was
6 marked as Licensee Exhibit
7 No. 2 for identification.)

8 THE WITNESS: If you go back to
9 Exhibit 1, that entranceway is to the far right
10 above the Washington, D.C., about the D and
11 Washington, D.C. and as I described, this is sort
12 of a separate concept that we are hoping people
13 will come off the waterfront and enjoy some of
14 Ron's creations.

15 BY MR. KLINE:

16 Q Right. Now, that was what we call the
17 sister restaurant?

18 A Correct. Sister concept.

19 Q So just to be clear, that is part of
20 the same premise?

21 A It is all under the same license and
22 will operate as one business.

1 Q Okay.

2 A The kitchens are joined. The only
3 difference is it has a to-go carry out. Will not
4 serve alcohol.

5 Q You already identified Exhibit 3.
6 What is Exhibit 4?

7 A The picture that we showed earlier of
8 the awning system for over the patios.

9 Q That was Exhibit 3. We are talking
10 about -- we are moving --

11 A Oh, I'm sorry.

12 Q -- on to Exhibit 4.

13 A Another schematic. This shows the
14 height of the awning in relation.

15 (Whereupon, the above-
16 referred to document was
17 marked as Licensee Exhibit
18 No. 4 for identification.)

19 THE WITNESS: And I think what is
20 significant on this is if you look where it says
21 Exhibit 4, directly underneath it, you notice how
22 there is a wall going up that is a sound barrier

1 that is part of what the building put in to help
2 mitigate sound waves, so that the waves won't
3 actually hit where, if you notice, there is a
4 little bit of a walkway there and if you go,
5 again, back to Exhibit 1, you will see how the
6 design of the building sort of has those
7 courtyards in them.

8 Our restaurant is not under -- half of
9 our restaurant is not even under a residence, but
10 those courtyards and that area in front of it are
11 protected additionally from the sound going up by
12 the construction of this buffer wall. That's
13 what I was told anyway.

14 BY MR. KLINE:

15 Q All right. And Exhibit 5 is just
16 another floor plan, correct?

17 A Yes.

18 Q And Exhibit 6 gives you an aerial of
19 the area?

20 A That's correct.

21 Q Exhibit 7 shows the layout of the --
22 or the location in this area?

1 A That's correct. And all the different
2 restaurants anticipated.

3 Q Exhibit 8 an example of some of the
4 finishes?

5 A That's what we are thinking about for
6 the chairs throughout the restaurant and down by
7 the riverfront.

8 Q Exhibit 10, is that --

9 A That's --

10 Q -- what you referred to as the show?

11 A The monster, right.

12 Q Yeah. What is that?

13 A That's the -- if you look, those
14 things that kind of look like waffle irons
15 actually hold whole fish and allow them to slow-
16 roast over the open charcoal. So everywhere you
17 see the brown, there is -- would be charcoal and
18 real wood that would be slow-burning and slow-
19 roasting. And then you see that giant wheel,
20 that's to give you height, so that you can grill
21 at the proper height, which is all the much
22 healthier way to eat if you look at actually

1 smoke and its effect on the human body, it's
2 really dramatic. I know this from Ron Goodman.

3 (Whereupon, the above-
4 referred to documents were
5 marked as Licensee Exhibit
6 No. 5 to 8 and No. 10 for
7 identification.)

8 BY MR. KLINE:

9 Q All right. And that's the simple
10 focal point of the restaurant?

11 A Yes. The whole concept was fire and
12 fish and fire. And that is our management
13 company, that's what we are called, Fish and
14 Fire. We named it Buzzard Point because of the
15 recognition of the peninsula and the soccer
16 stadium and the soccer team are both using that
17 and they are advertisements to attract people to
18 this neighborhood. And we think it is going to
19 be very important that people know where we are,
20 because we think in the end, we should be a
21 destination.

22 Q All right. Exhibit 11?

1 A That's a live picture of that grill in
2 use somewhere else, but it just gives you the
3 demonstration of how the cooking apparatus would
4 work.

5 (Whereupon, the above-
6 referred to document was
7 marked as Licensee Exhibit
8 No. 11 for identification.)

9 BY MR. KLINE:

10 Q Exhibit 12?

11 A Floor plan again.

12 Q All right.

13 A Again showing the sundeck.

14 Q And we talked about 13.

15 A 13 is the equipment list. The
16 significance of that is to demonstrate there is
17 eight combi ovens. A combi oven actually flew my
18 partner over to Italy to help design those ovens.
19 One of them is an experimental oven, but there is
20 a whole bunch of high-tech kitchen equipment
21 going in back here.

22 Q All right. And we have already talked

1 about 15.

2 Exhibit 16?

3 A Is this the picture?

4 Q Yeah.

5 A That is -- so that's hot off the
6 press. Tuesday we had our final design meeting
7 and this is the 3-D and full color rendition. It
8 really doesn't do it justice. I did bring it in
9 in a better picture, but this is what the
10 architects anticipate the interior to look like
11 after it is built.

12 Q All right. 17?

13 A Yes.

14 Q What is that?

15 A The same thing.

16 Q Is that 16, 17 and 18 are basically
17 that?

18 A Correct.

19 Q All right.

20 (Whereupon, the above-
21 referred to documents were
22 marked as Licensee Exhibit

1 No. 16, 17 and 18 for
2 identification.)

3 BY MR. KLINE:

4 Q All right. Now, let's talk about the
5 issues that you heard raised. I think we have
6 talked a bit about noise mitigation. What about
7 noise management? How are you going to run this
8 place and make sure that people are not disturbed
9 in their residences or otherwise?

10 A Well, aside from the fact that a lot
11 of the management will come from existing
12 restaurants that have experience with me and with
13 others and know how to handle that type of
14 complaint or situation, quiet the music or
15 resolve a rowdy situation, we have been through
16 that.

17 I specifically went out and looked for
18 a general manager who had that kind of experience
19 and who I knew and I had a personal relation with
20 and I could trust to handle a project of this
21 kind of money that I'm putting in and this kind
22 of significance.

1 I don't ever really want to be in
2 front of this Board. I'm scared of it. So
3 that's true.

4 Q All right. Let's talk about parking,
5 transportation. What parking will be available
6 for your patrons?

7 A I find this somewhat interesting in
8 that it's my big issue in Georgetown. So this is
9 the smallest restaurant I'm involved in. Ivy
10 City Smokehouse, Tony and Joe's and Nick's
11 Riverside Grill all have larger occupancies than
12 this.

13 None of them have any designated
14 parking per say. And so when I look at this, I
15 just think the complete opposite. There is a
16 plethora of parking. There is a public parking
17 lot across the street with 300 spaces. My lease
18 designates 85 or 92 spaces that are designated
19 for our tenants.

20 Q Well, wait a minute. Let me stop you.

21 A For our --

22 Q When you say 85 or 92, who are they

1 designated for?

2 A Our patrons and employees.

3 Q All right. So that's for the
4 commercial space.

5 A That's correct.

6 Q All right. And is there other parking
7 in the building?

8 A Yeah, oh, yeah. I don't know how many
9 spaces, but it's a lot.

10 Q Okay.

11 A I mean, there is three stories of
12 parking --

13 Q For the residents?

14 A -- for the residents and we only get
15 like one-third of one story. And when I say we,
16 I think, I presume it's the restaurants in total.

17 Q All right. And there are other
18 restaurants to be located there?

19 A I know of one definitely and then on
20 the front side they want to have that same
21 operator operate sort of a quick-go casual, you
22 know, get lunch, get a beer type place.

1 Q Well, aren't there certain dates where
2 there are going to be a lot of people down there
3 anyway?

4 A Well, certainly on the 4th of July, I
5 would expect that place to be packed. And there
6 is 16 Audi -- I mean, 16 soccer games where I
7 know from experience going down there now to see
8 it, it's packed. There is eight XFL games that
9 are planned there where it is packed. The
10 baseball game doesn't truly get down that far
11 yet. I think it will as people recognize the
12 parking opportunities there and that there is
13 vibrancy on this side.

14 Right now, it sort of stops at the
15 salt line, if you will.

16 Q So you have a long experience in the
17 restaurant business. Do you see people heading
18 down to that neighborhood on game day, unless
19 they are going to a game?

20 A I mean, I think that will actually
21 enhance that, because they will come earlier and
22 be able to park and then walk over to the game

1 and so not add to that congestion at the game and
2 then hopefully they come after the game and do a
3 little bit of the same thing while they let the
4 parking alleviate itself and then they leave from
5 their spaces.

6 Q So in other words, come earlier and
7 leave later?

8 A Correct.

9 Q And I think you mentioned it is over
10 100 dates that we are talking about where that
11 situation is --

12 A If you count baseball, it might be
13 closer to 200. You know, baseball is 81 games
14 and now that we have made a few trades, maybe we
15 will have a few more home games, although not
16 after Bryce's performance yesterday.

17 Q All right. Lastly, how many people do
18 you expect to employ here?

19 A Somewhere between 75 and 100.
20 Probably 55 full-time jobs and then depending on
21 the seasonalness of it or just fill-in auxiliary
22 shifts, but I envision 25 to 30 back of the house

1 and the same number front of the house.

2 Q And do you have any specific goals in
3 terms of hiring?

4 A I have spoken to the ANC. If you look
5 at my history at Ivy City Smokehouse, I go out in
6 the community and try to find people that live
7 there that want jobs and with my work with
8 Educated Eats, I try to get people who perhaps
9 haven't had the opportunity. And then my partner
10 Ron is a wonderful human being and teacher and we
11 give a real opportunity to those in the
12 neighborhood.

13 Q Right.

14 MR. KLINE: I have no further
15 questions of the witness, at this time.

16 CHAIRPERSON ANDERSON: Any questions?

17 MR. LITSKY: Questions, yes.

18 CHAIRPERSON ANDERSON: To the witness.

19 MR. LITSKY: Chairman, I think it
20 would be helpful for us before we ask questions
21 of the witness to understand who else is on the
22 witness list. The witness list according to

1 counsel for the applicant apparently has been
2 amended. So in order to get some of the points
3 on the record that we would like to get, it would
4 be helpful to know who else is going to appear as
5 a witness.

6 CHAIRPERSON ANDERSON: Well --

7 MR. LITSKY: I -- just otherwise, we
8 will just, you know, put them all to Mr. Casten.

9 CHAIRPERSON ANDERSON: You --

10 MR. LITSKY: That's fine.

11 CHAIRPERSON ANDERSON: -- this is--

12 MR. LITSKY: That's what we will do.

13 CHAIRPERSON ANDERSON: You never know,
14 because he might say that he had five witnesses,
15 but he decided maybe not to call them.

16 MR. LITSKY: There you go.

17 CHAIRPERSON ANDERSON: And so --

18 MR. LITSKY: Okay. We're ready.

19 CHAIRPERSON ANDERSON: -- you have
20 someone you can ask questions, go ahead and ask.

21 MR. LITSKY: You got it. Thank you.

22 CROSS-EXAMINATION

1 BY MR. LITSKY:

2 Q Good afternoon, Mr. Casten. I
3 appreciate your answering our questions as well.
4 And congratulations on your restaurants. I have
5 been to a number of them. I especially like Ivy
6 City Smokehouse.

7 A There you go.

8 Q Best smoked fish south of New York.

9 A Everybody has got an opinion.

10 Q Yes, we do. Isn't it so that you have
11 never attended an ANC-6D ABC meeting? Not in
12 October when your attorney presented your
13 application nor in November 2018 nor January or
14 February 2019. Is that correct?

15 A If you say so. I have been to meet
16 the ANC at least one time and individually other
17 times.

18 Q Right.

19 A There have been times where just my
20 counsel went to a hearing meeting, because I --

21 Q One time.

22 A Yes.

1 Q Yes.

2 A So that could be --

3 Q But not you. And you didn't attend
4 the November 2018 meeting and we voted in
5 opposition to this where you could have had an
6 opportunity to speak.

7 A No.

8 Q Okay.

9 A I don't think I did.

10 Q So it was only a few weeks ago that we
11 first met as an ANC with you, with the applicant.
12 And that was, I think, on March 4th, if I'm not
13 correct at an ANC-6D administrative meeting where
14 you also met for the first time any of the ANC
15 commissioners, except perhaps Mr. Dale. I don't
16 know if you had conversations with him before.
17 Is that so?

18 A I met Coralie here before I think.

19 Q But she is not a commissioner.

20 A Oh, okay. And I -- nothing personal
21 with Mr. Dale, I don't remember the first time I
22 met him.

1 Q Okay.

2 A To be honest with you, but --

3 Q I'm sure he won't take offense.

4 A Yeah.

5 Q I'm curious, were you advised by your
6 attorney that you had an opportunity to attend
7 and speak on behalf of your application?

8 MR. KLINE: Objection.

9 MR. LITSKY: At any of the meetings we
10 mentioned?

11 MR. KLINE: Attorney/client. He is
12 not going to talk about what he was advised by
13 his attorney.

14 MR. LITSKY: Okay.

15 CHAIRPERSON ANDERSON: You can't ask
16 that question, sir. I'm sustaining the
17 objection.

18 MR. LITSKY: I'll withdraw it.

19 BY MR. LITSKY:

20 Q Speaking of your attorney, are you
21 aware in a written statement, so it wasn't a
22 misquote and it wasn't attorney/client privilege,

1 because it was provided to the ABRA Investigator,
2 Mr. Howze, that Ms. Yohannes stated that you, the
3 applicant, attended both an ANC, ABC Committee
4 meeting, that you just stated you did not attend.
5 And the administrative meeting that you actually
6 did attend. But you didn't attend both, did you?

7 MR. KLINE: Objection to the compound
8 question. I think there were maybe three
9 questions there.

10 MR. LITSKY: I'll break it down.

11 CHAIRPERSON ANDERSON: So break --

12 MR. LITSKY: I'll break them down.

13 BY MR. LITSKY:

14 Q Were you aware that in the witness
15 statement that Ms. Yohannes provided to the ABRA
16 Investigator that she inaccurately stated that
17 you attended both the ABC Committee meeting and
18 the ANC administrative meeting? Were you aware
19 of that?

20 A I'm not sure I understand what you are
21 saying.

22 Q Okay.

1 A I mean, I heard what happened here
2 today.

3 Q Right.

4 A So I mean, the applicant -- I didn't
5 go to some meetings that my counsel represented,
6 so if that's what you are saying, I would agree
7 to it.

8 Q And that's correct. Okay. Thank you.
9 Now, in your application, you list two outside
10 venues that I would like to describe in greater
11 detail. And again, we are kind of at a loss here
12 because we didn't know that the pier was going to
13 be removed from this, so we are going to have to
14 take a little bit more time on this. I hope you
15 will give us an opportunity.

16 But the first venue that I would like
17 to discuss and I quote "is the sundeck next to
18 the water." And what we had received from you in
19 your -- any information you had provided us was
20 that it would seat 250. Isn't that correct, what
21 your application had stated?

22 A Fair enough.

1 Q You're the applicant.

2 A I don't have it in front of me, but
3 that --

4 Q Okay.

5 A -- at the time I filled it out, I was
6 unaware of the exact numbers.

7 Q And now you're stating that how many
8 people will be on that sundeck?

9 A What the architecture was 82.

10 Q 82. That's how --

11 A But until that deck is officially
12 approved and the landlord designates officially
13 the outline of what I'll have --

14 Q Right.

15 A -- then I'll know the exact numbers
16 here.

17 Q Let's speak about what your agreement
18 might be with the landlord. You stated you have
19 an agreement with the landlord regarding parking.
20 And in his opening statement, I believe, if I'm
21 correct your attorney had stated that there was
22 an agreement to handle noise, because that was

1 part of your lease. Did you ever provide the
2 lease to this body or to the ANC for us to review
3 it?

4 A No, I don't think I did. And I don't
5 have any other agreement with my landlord other
6 than the lease.

7 Q So we are depending upon a document
8 that we have not seen and the Board hasn't seen
9 to guarantee that the concerns that we have about
10 peace, order and quiet are going to be met.

11 MR. KLINE: Objection. Argumentative.

12 MR. LITSKY: I'm just asking.

13 MR. KLINE: It's argumentative. It's
14 an argumentative question.

15 MR. LITSKY: I'll rephrase.

16 CHAIRPERSON ANDERSON: All right.

17 MR. LITSKY: I'll rephrase.

18 BY MR. LITSKY:

19 Q Does your lease specifically state
20 what sound mitigation measures you are to be
21 taking as a consequence of your opening up your
22 business in that site?

1 A No.

2 Q It doesn't? That's contrary to what
3 I had just heard before and what I think the
4 Board just heard, because they heard that your
5 lease actually contains sound mitigation that
6 would protect the surrounding community.

7 MR. KLINE: Objection. It's
8 argumentative and it argues facts that are not in
9 evidence, because it was never said. I made no
10 reference to the lease agreement.

11 MR. LITSKY: We will review the
12 report, but okay, thank you.

13 BY MR. LITSKY:

14 Q Would you be willing to put in writing
15 the fact that your lease has sound mitigation,
16 sound mitigation systems is part of it?

17 MR. KLINE: Objection as to relevance.

18 MR. LITSKY: The relevance, if I can
19 clarify, is to the ANC's concern of peace, order
20 and quiet and whether the construction of the
21 building and the manner in which you are going to
22 be doing your operation will have sound carried

1 outside of your premises.

2 MR. KLINE: Mr. Chairman, the witness
3 has testified as to the sound mitigation
4 techniques it will employ. If Mr. Litsky's
5 argument is not -- that's not adequate, he can
6 certainly argue that.

7 CHAIRPERSON ANDERSON: I don't think
8 that's -- I think he is trying to get some
9 guarantee from the witness that this is actually
10 going to be in place. I think that's what I'm
11 hearing him asking. Am I correct?

12 MR. LITSKY: That's what I'm trying to
13 get from the witness.

14 CHAIRPERSON ANDERSON: All right.

15 MR. KLINE: I don't know that it is
16 appropriate to ask the witness whether he is
17 going to sign anything, a blood oath as to what
18 he is going to do, but he can certainly ask him
19 if that's what he intends to do.

20 MR. LITSKY: I didn't ask for a blood
21 oath. What I did ask is for information to show
22 us indeed that this exists, that's all. If the

1 managing agent or somebody from the architect can
2 show up and is going to be also a witness here,
3 Mr. Casten, perhaps they will be better able to
4 answer that question. I'm not sure.

5 MR. KLINE: Objection. Argumentative.
6 It's not a question.

7 CHAIRPERSON ANDERSON: I'm not sure --
8 there was no question asked. I didn't take it as
9 a question, so let's move on. All right.

10 MR. LITSKY: Thank you.

11 BY MR. LITSKY:

12 Q Now, at the time of the -- one time
13 that we did have an opportunity to meet with you
14 and the ANC, which was on March 4th, you told the
15 commissioners that you owned the water in front
16 of your restaurant.

17 A No, I --

18 Q Could you explain that?

19 A -- don't recall saying those exact
20 terms. But if I did, it was a misspeak, if you
21 will. I mean, I have rights to the patio as
22 demonstrated in the Exhibit 12.

1 Q Well, it may be --

2 A I think it's 12.

3 Q -- and I'm curious. I just want to
4 follow that through to get a better understanding
5 of the design and placement of that sundeck patio
6 now that we are not talking about the pier, the
7 patio still may have some questions about it.
8 Are you -- would you agree?

9 A No.

10 Q Okay.

11 A I don't agree.

12 Q Well, then we will see if we can
13 clarify the questions that we have.

14 Is it -- the water in front of the
15 restaurant belongs to the City of Washington,
16 right?

17 A You know, so you are -- you brought
18 this up at that meeting as well.

19 Q Yes.

20 A I don't know specifically what it is.
21 What I said then and what I'll say now is the
22 same thing. Whatever the landlord tells me that

1 he has rights to on private property and my
2 understanding is yes, this -- because this used
3 to be the Federal Government property, if you
4 look at the line in 12 --

5 Q Yes.

6 A -- there is land that goes over a part
7 of the river. Just like the city has empyrean
8 rights to the pier that is at the end of it. So
9 both of those are questions way outside my
10 bailiwick. I'm going to wait for the landlord to
11 tell me where and what I can do with my tables.
12 He has told me this is what he has applied for
13 and this is what I should apply for my
14 application to cover, that's what I will do.

15 Q I appreciate that. Thank you. And so
16 I would ask you again perhaps for further
17 clarification about that. Let me see if I can
18 phrase this properly, so it's in a question.

19 Can you tell us that the sundeck in
20 any way touches the water of the Anacostia?

21 A I cannot at this time.

22 Q Okay. So we don't have drawings about

1 where this is going to appear?

2 A You have a drawing right here. I
3 can't tell you exactly whether or not the pier is
4 going to touch that water or not.

5 Q Can you tell me --

6 A I think the intention of it is to abut
7 or hang slightly over. I don't know. In the
8 end, what -- I haven't actually even seen the
9 application they put in with whoever it is they
10 put it in with. If it's zoning. I don't --
11 Andrew, help me. Who? I don't know whose issue
12 that is.

13 Q That's what we are trying to get the
14 facts on.

15 A That's not about the ABC --

16 MR. KLINE: There is no question
17 pending, Mr. Casten.

18 MR. LITSKY: Okay.

19 BY MR. LITSKY:

20 Q Can you tell us whether you envision
21 that your sundeck will in any way be designed to
22 hover over the waters of the Anacostia?

1 MR. KLINE: Mr. Chairman, I'm going to
2 object to this line of questioning.

3 MR. LITSKY: This is very important
4 for us to get --

5 CHAIRPERSON ANDERSON: Hold on.

6 MR. LITSKY: -- information out.

7 MR. KLINE: Objection. May I finish,
8 please, Mr. Chairman?

9 CHAIRPERSON ANDERSON: Hold on. Yes,
10 go ahead.

11 MR. KLINE: This line of questioning
12 seems to go as to what right there is to build.
13 We are the ABC Board. To the extent that there
14 is any question about rights to build, that's not
15 before this Agency. This Agency approves an ABC
16 License and then the applicant is required to go
17 to different agencies and get building permits
18 and the other things that are required to build a
19 restaurant.

20 And if indeed there is some issue as
21 to whether Mr. Casten under his lease or Mr.
22 Casten's company, more accurately, under his

1 lease with the landlord does not authorize to be
2 in a particular area, this isn't the forum for
3 that nor are we prepared to deal with that issue.

4 And lastly, it's way beyond the scope
5 of direct, which I don't expect Mr. Litsky to
6 know without guidance from the Chair, but it is
7 beyond the scope of direct. And his ability is
8 to be able to raise issues that were raised on
9 the direct examination at this point.

10 CHAIRPERSON ANDERSON: That's correct.
11 And I'll sustain the objection. So I don't think
12 that's relevant to these proceedings, sir.

13 MR. LITSKY: I appreciate that. I was
14 speaking to readiness to come before the Board,
15 but let's explain.

16 BY MR. LITSKY:

17 Q Since the Anacostia Riverwalk Trail is
18 supposed to be directly next to the river. Can
19 you describe how your deck may impact what --
20 impact the Anacostia Riverwalk Trail?

21 A My understanding is they don't know
22 what is going to happen with that riverwalk

1 trail, because this right now is private property
2 and I think what you are doing is discussing or
3 expecting me to opine and discuss negotiations
4 between the property owner and the Federal
5 Government and the National Park Service.

6 I have no business in that discussion
7 whatsoever. I don't know what their plans are.
8 I know what the representations that are made to
9 me were and that's all private property at this
10 time, I believe.

11 Q I appreciate that. Thank you. And so
12 even though the ANC -- and do you understand that
13 the ANC has no quarrel or no question about the
14 design of the building or the intent of building
15 separate, perhaps --

16 A No, I actually don't accept that to be
17 honest with you. Based on our meeting together
18 and what happened there and the fact that I would
19 not just roll over and do what you asked, in
20 fact, you asked questions about access and you
21 asked questions about handicap access and told me
22 that you needed a full set of architectural

1 drawings, so that you could evaluate whether or
2 not this building met the standards and designs
3 that you felt were appropriate.

4 Q I see.

5 A You were completely out of bounds in
6 that discussion. The ANC was completely out of
7 bounds in that discussion. And that's a big part
8 of the reason why we are here, sir. So no, I
9 absolutely do not agree with what you just said.

10 Q Do you agree that the reason we are
11 here is because you had refused to speak with us
12 and negotiate on anything?

13 A No, I don't.

14 Q Okay. Do you agree that when you
15 attended the ANC meeting, the administrative
16 meeting, that you had told us point blank with
17 your arms crossed that you would not even discuss
18 any of the elements that might conceivably be put
19 in a CA?

20 A No. What happened at the ANC meeting
21 when I was there was you threw or somebody passed
22 me, maybe threw is a too direct a word --

1 Q Okay.

2 A -- approximately a 10-page settlement
3 agreement and then began saying to me you are not
4 -- you mean what you are saying to me now is you
5 are not going to sign the settlement agreement?
6 And then told me I could have a -- one word
7 answer, yes or no. You said -- I think her name
8 was Gail, said it like four times, I want a one
9 word answer. Will you sign the settlement
10 agreement or not?

11 And I said no and I tried to say no,
12 but if I have a problem in the future or if there
13 is some activity that I'm doing that is
14 inappropriate that the ANC and the residents find
15 wrong, you will find me to be a most cooperative
16 person.

17 Q Right.

18 A And that is what happened. You didn't
19 want -- you didn't listen for the answer. You
20 wanted an answer and didn't get it.

21 Q I didn't ask the question, so the --
22 let's talk about the handicap access then.

1 MR. KLINE: Objection as to relevance
2 and beyond the scope of direct.

3 MR. LITSKY: Is it? Okay. Thank you.
4 I have to learn these things, Mr. Chairman.

5 CHAIRPERSON ANDERSON: Sustained.

6 MR. LITSKY: And I apologize.

7 BY MR. LITSKY:

8 Q Did you understand that if -- you are
9 having asking for a cover charge for this
10 restaurant, correct?

11 A I'm asking for --

12 Q As part of the license?

13 A -- everything that is available to a
14 licensee of this classification.

15 Q Okay. Okay.

16 A Under the law.

17 Q That's okay. I'm not arguing.

18 A Yes.

19 Q I'm just pointing out --

20 MR. KLINE: Objection. May the
21 witness, please, be given an opportunity to
22 answer the questions?

1 CHAIRPERSON ANDERSON: Go ahead.

2 THE WITNESS: I'm asking for
3 everything available to the license, all
4 endorsements that I can possibly get at this
5 point in time, yes.

6 BY MR. LITSKY:

7 Q Okay. I appreciate that. And again,
8 I'm not an attorney and I haven't been through
9 this process before, but from my reading of the
10 application, in Line Item 16, you were planning
11 on a cover charge. You are supposed to be
12 requiring to submit two things, a copy of the
13 Public Hall Certificate from Zoning and a copy of
14 the entertainment endorsement for the Public Hall
15 of DCRA, that's in the ABRA forum.

16 Have those been presented?

17 A I don't know off the top of my head.
18 You would have to ask my counsel. I assume, but
19 I don't know, that's part of the application
20 process.

21 Q Well, so that's an open question.
22 Whether or not you have met the requirements in

1 the application that ABRA has sent to you,
2 whether you have met them for this license and
3 that was my question, that's why I asked it of
4 you.

5 Now, let's get back to some of the
6 main concerns of the ANC, which is really peace,
7 order and quiet. You are applying to have liquor
8 service, drinking and dancing potentially and
9 music on a sundeck, which now holds 88 people,
10 right?

11 A No.

12 Q The sundeck?

13 A Oh, the sundeck. I thought you said
14 Sunday.

15 Q No, no, no, the sundeck.

16 A Yeah, the sundeck as of now, I think
17 it is 83, but whatever that number is or
18 approximately 80 to 90 people.

19 Q You operate restaurants on the
20 waterfront in Georgetown, so you are aware that
21 sound carries differently over the water than it
22 carries on land?

1 A Yes, I grew up on the water.

2 Q Great. So did I, close by, not on it.
3 What did the -- what speakers are you planning to
4 have in your establishment? I know you spoke
5 about that 3 foot --

6 A So we haven't finalized the exact
7 speaker, but aimed at background and restaurant-
8 type environment music.

9 Q So do you have a current design for
10 the number of speakers and how they are going to
11 be placed in your restaurant?

12 A I spoke to the guy this morning
13 actually and I don't. It's a work in progress--

14 Q I appreciate that.

15 A -- as we get the design to the point
16 where he will be. Right? We are at mechanical
17 now.

18 Q I mean, you understand our concern
19 about the placement of speakers?

20 A It's a fair concern.

21 Q Especially if they go out to the river
22 or aimed at the boats or to neighbors next door,

1 the National Park Service might create a
2 disturbance.

3 MR. KLINE: Objection. He is
4 testifying.

5 CHAIRPERSON ANDERSON: Yeah. I --

6 MR. KLINE: I don't even know if there
7 is a question there, other than testimony. I
8 object.

9 BY MR. LITSKY:

10 Q At what volume do you plan to operate
11 the speakers?

12 A I have -- I don't know how to answer
13 that. I mean, at a volume consistent with a
14 fine-dining, first class restaurant that does not
15 interfere with those people that are living and
16 being around it.

17 Q And I --

18 A Just like any normal good citizen
19 would do.

20 Q -- and you had stated previously, did
21 you not, that you hired acoustical consultants or
22 engineers to design the sound?

1 A There has been people involved. The
2 engineers and specialists involved in that
3 process.

4 Q And isn't it true that we saw a copy
5 of the ceiling tile or whatever?

6 A Correct.

7 Q Yeah. So and again, it probably would
8 be better left to another question, but could you
9 describe how the canopied sundeck is going to
10 operate in terms of sound absorption?

11 A Well --

12 Q Isn't that really --

13 A -- so you are right, it's better left
14 to somebody who knows a little bit better, but
15 just having the substance, the fabric or the
16 multi-layered fabric in between helps deaden the
17 sound waves. I'm no expert on that, but from
18 what I understand --

19 Q You hope.

20 A -- this will help mitigate any, you
21 know, talking noise and music noise.

22 Q Okay. On -- you had also said --

1 let's talk about your hours. You are planning on
2 opening a restaurant. What is your plan -- well,
3 let's just skip that, because I think you already
4 answered that.

5 You are going to have a security plan,
6 correct?

7 A Yes. I mean, I do not envision an
8 immediate security plan to start, but if it
9 proves to be an extremely popular place that
10 requires the posting of people, I have experience
11 with that nature of business. By and large, I'm
12 really not anticipating that kind of environment.

13 Q Even if it holds 170 -- 750 people?

14 A Even -- I don't care if it holds
15 1,000. I'm not expecting that kind of cliental.
16 That's not what I'm putting multiple millions of
17 dollars into this venture for.

18 Q So, okay, you don't commit to a
19 security plan.

20 A I will certainly discuss a security
21 plan when it is opened should there be the need
22 or should my patrons or the activity at that

1 place merit it.

2 Q Okay.

3 A And I would be happy to do that in
4 unison with Members of the Board, Investigators
5 or --

6 Q Right.

7 A -- I have experience doing that stuff.
8 I have no problem. At this point in time, I'm a
9 little bit more nervous about how many patrons
10 are actually going to come down there --

11 Q Okay.

12 A -- than I am about having too many
13 patrons.

14 Q They will be down there.

15 A So I think you are over.

16 Q The Renaldo walls, they are called,
17 could you explain what those are and how they
18 work?

19 A A Renaldo wall is essentially an
20 overhead door that goes up and down, but
21 integrates with a storefront to protect it from
22 weather.

1 Q Are you aware that when -- that in
2 other establishments across the city when we have
3 had Renaldo doors, that when they are open, sound
4 travels then outside of those walls?

5 A Which is why we actually put the
6 Renaldo wall in the private dining room, which
7 will allow it to be closed to the restaurant
8 activity, but open to the outside without any
9 activity from the inside affecting what happens
10 outside or perhaps people out there.

11 So I think we have taken steps to
12 mitigate that in advance.

13 Q Great. I appreciate that. Thank you.
14 My apologies. I have to, you know, cruise
15 through here just to make sure that I'm not
16 addressing things that have already been removed
17 from the application.

18 CHAIRPERSON ANDERSON: And also make
19 sure you don't spend too much time in cross-
20 examination.

21 MR. LITSKY: No, we are not. We're
22 certainly not.

1 CHAIRPERSON ANDERSON: That you spend
2 more of your time on your own case.

3 MR. LITSKY: Yeah, okay. I thank you
4 for the opportunity to answer our questions.
5 Appreciate it.

6 CHAIRPERSON ANDERSON: All right. Any
7 questions by any Board Members? Yes, Mr. Short?

8 MEMBER SHORT: Yes, Mr. Casten?

9 THE WITNESS: Yes, sir.

10 MEMBER SHORT: Thank you for your
11 excellent testimony. I would like to, for the
12 sake of transparency, say that I worked for the
13 city for 33 years. 10 years of those in the Fire
14 Marshal's office. And during that period of
15 time, I represented the city at the National
16 Planning Commission and I saw the plans 20 years
17 ago for Buzzard Point.

18 And so now sitting here today, I'm
19 aghast to hear the technology and engineering
20 that you are putting into this neighborhood. And
21 also, since I have been on this Board, I have
22 heard a lot of testimony from a lot of businesses

1 and you are right there, Tony and Joe's, under
2 the Whitehurst Freeway.

3 THE WITNESS: Yes, sir.

4 MEMBER SHORT: Where there used to be
5 city events in the street there blocking
6 everything off, either part of that, and so I
7 just want that to go on the record also.

8 I don't think I have seen you or any
9 of your businesses here and I have been on the
10 Board now for better than 4 years and this is the
11 first time I think I have ever seen you. And I
12 would think a lot of neighborhoods would be glad,
13 one way or the other, to have a business like
14 yours in their neighborhood. And I hope
15 everything works out between you and the
16 citizens.

17 But my question to you is you have
18 operated for how many years here in the District
19 of Columbia with restaurants?

20 THE WITNESS: Since 1986. 41 -- 31.
21 If my math is right.

22 MEMBER SHORT: And you go to locations

1 all over the city?

2 THE WITNESS: I have been in multiple
3 locations in the city.

4 MEMBER SHORT: What's the latest, any
5 of your restaurants are open?

6 THE WITNESS: Well, we -- Georgetown
7 closes an hour before. Ivy City has the ability,
8 right now these are my three active, to stay open
9 until 3:00 in the morning. We generally don't.
10 Every once in a while if there is an event and
11 people are sort of still congregating, instead of
12 running them all out at that time, we will stay
13 late, but I would say -- I don't -- I mean, I
14 applied for extended hours for the holidays and
15 didn't even use them.

16 I found that they weren't -- I just
17 don't know how late Washington is as a city.
18 Deep down it has a southern --

19 MEMBER SHORT: Well, let me ask you
20 this. You're in that same business model,
21 apparently you're going to use it here on the
22 Buzzard Point location?

1 THE WITNESS: Yes, sir, food first.

2 MEMBER SHORT: And you have -- have
3 you had any problems in any of the communities
4 that you use that business model in?

5 THE WITNESS: No, they enjoy us being
6 a part of their --

7 MEMBER SHORT: So the communities that
8 you now have restaurants in enjoy it?

9 THE WITNESS: Correct.

10 MEMBER SHORT: And I would simply say
11 with my experience outside and my 33 years,
12 Georgetown can be a rough place for a business to
13 get off and get up and to stay. How many years
14 you been in Georgetown?

15 THE WITNESS: 31, 31. 32.

16 MEMBER SHORT: Thank you.

17 THE WITNESS: 1986, 32.

18 MEMBER SHORT: All right.

19 THE WITNESS: A long time.

20 MEMBER SHORT: All right.

21 THE WITNESS: And seen it go through
22 a lot of stuff and worked with a lot of ANCs and

1 have had excellent relations with all throughout.

2 MEMBER SHORT: And I think you should
3 be commended also for the work you do with the
4 community, working with the youth, giving some
5 people hope in the city, giving them jobs and
6 opportunity. So you will have some of those same
7 programs at this location, I would imagine?

8 THE WITNESS: Yes, fully intend to.
9 I have already spoken with some of the ANC
10 members about that specifically.

11 MEMBER SHORT: Okay. And you don't
12 intend to break any of the rules and regulations
13 of ABRA in this location and be a good neighbor?

14 THE WITNESS: Contrary to your opinion
15 earlier, I have been in front of ABRA in an
16 unfortunate situation. I have made mistakes.
17 And I do not ever intend or want to be in front
18 of this Board. And I try to operate my
19 businesses in a manner at all times to stay
20 consistently within the boundaries and
21 expectations of both protocol and moral behavior
22 with your neighborhood and be consistent with

1 that.

2 MEMBER SHORT: Thank you for your
3 compelling testimony. And thank you for being so
4 very candid with this Board and the community.
5 Hopefully again, I hope things work out. That
6 fish tank idea sounds like it's going to be
7 something that a lot of visitors to Washington,
8 D.C., a lot of people who live in Washington,
9 D.C. and a lot of tourists are going to really
10 enjoy.

11 And again, Washington, D.C. is alive
12 and well because when you started in 1980s, you
13 said 1980s?

14 THE WITNESS: '86, yes.

15 MEMBER SHORT: The city was dying.
16 And you stuck it out and for that I commend you
17 also. That's all I have, Mr. Chair. Thank you
18 very much.

19 CHAIRPERSON ANDERSON: Any other
20 questions?

21 MEMBER ALBERTI: Mr. Silverstein.

22 CHAIRPERSON ANDERSON: Mr.

1 Silverstein?

2 MEMBER SILVERSTEIN: Yes. First, one
3 year does kind of go into another when you reach
4 our age.

5 THE WITNESS: Yeah.

6 MEMBER SILVERSTEIN: And you know,
7 Calvin Coolidge isn't President, but we still
8 have these things.

9 THE WITNESS: They barely use his high
10 school.

11 MEMBER SILVERSTEIN: Right. So I
12 would ask how important to your business plan are
13 the late hours for your outdoor activities?

14 THE WITNESS: It's important to me
15 because of the size of the investment to have the
16 flexibility to be able to make that choice. The
17 expectation early on is that it will end up
18 mimicking what the existing establishments I have
19 do and not be so important after midnight or
20 1:00. But at this time, it would be too early
21 for me to absolutely say that without question.

22 MEMBER SILVERSTEIN: Your

1 establishments in Georgetown are how far from the
2 nearest residence?

3 THE WITNESS: In vertical feet or
4 linear feet?

5 MEMBER SILVERSTEIN: Yeah, right.

6 THE WITNESS: Linear feet we are
7 directly underneath them just like this
8 situation. There is three stories of buffer
9 office space --

10 MEMBER SILVERSTEIN: Um-hum.

11 THE WITNESS: -- between our
12 restaurant there.

13 MEMBER SILVERSTEIN: And what are your
14 hours in Georgetown?

15 THE WITNESS: We close voluntarily at
16 2:00 and basically, it's last call at 1:20.
17 Drinks off the bar.

18 MEMBER SILVERSTEIN: And these are the
19 outdoor hours?

20 THE WITNESS: That's in or out.

21 MEMBER SILVERSTEIN: Have you had any
22 complaints?

1 THE WITNESS: No. I mean, last year
2 we had a Howard Homecoming event that got a
3 little bit more than what we bargained for.

4 MEMBER SILVERSTEIN: Imagine that.

5 THE WITNESS: And we did have
6 complaints.

7 MEMBER SILVERSTEIN: A homecoming
8 event.

9 THE WITNESS: We went and took our
10 medicine. We also didn't have control of the
11 individual that was there, but we straightened
12 that out. We -- so just honestly, I have had a
13 complaint in the last two years.

14 MEMBER SILVERSTEIN: Will the
15 residences proposed or expected here be any
16 closer than what you have in Georgetown?

17 THE WITNESS: So the guy who owns the
18 Nationals actually lives over our other place,
19 Lerner, and I'm hoping he moves down here,
20 because it will be closer to his game. I think
21 there is a little more affluency in the
22 Georgetown residence because of the price and

1 that has actually been more difficult to right.
2 People pick up the phone, who have the ability to
3 get heard quickly in Georgetown.

4 As much as you hate to believe that,
5 but at one point it was the Secretary of the
6 Army, her name was White, she would call and they
7 would come and we would talk through things. And
8 we worked through all of that with her.

9 So I anticipate this will be hopefully
10 not quite as high-reaching, if you will, in terms
11 of if they don't like something, that they talk
12 to us, but no, I'll be available to talk to
13 anybody.

14 MEMBER SILVERSTEIN: Thank you, sir.
15 No further questions.

16 CHAIRPERSON ANDERSON: Mr. Alberti?

17 MEMBER ALBERTI: Mr. Casten, thank you
18 for coming and impressive proposal project.
19 Thank you.

20 I guess all of my questions are going
21 to be geared toward, I just want to put this out
22 there, understanding what you are asking us to

1 approve. Because, I mean, you have to admit some
2 of this is vague and I understand why and I
3 understand why you want to just move ahead with
4 getting approval, I get that.

5 So but I need to ask --

6 THE WITNESS: Yes.

7 MEMBER ALBERTI: -- what we are being
8 asked. So first of all, the -- I have no
9 questions about the inside. All right. It's the
10 -- let's talk about the outside summer garden
11 that is attached to the building. All right?

12 THE WITNESS: Yes.

13 MEMBER ALBERTI: So you have got the
14 sound mitigating awning covering the top. You
15 talked about sides. What are those -- that come
16 down, what are those? What's the material on
17 those?

18 THE WITNESS: So you can see that what
19 is there, how they come down, they will be
20 automatic. The material will be, you know,
21 strong enough to stop wind, but I don't know what
22 the specific rating for noise would be, but --

1 MEMBER ALBERTI: Okay.

2 THE WITNESS: -- not so heavy that --
3 you know, they are not going to be a piece of
4 paper, but it's not going to keep you warm at
5 night either.

6 MEMBER ALBERTI: Right, right. Okay.
7 So but you are asking for entertainment on that
8 area?

9 THE WITNESS: I'm asking for
10 entertainment throughout the license. I mean,
11 I'm asking for the ability. Is it my
12 anticipation? I don't see beyond an acoustical
13 guitar playing there for happy hour. Really that
14 area being conducive to that type of behavior.
15 And I think if you look at, you know, I guess,
16 Ivy City, we have a stage room that has everybody
17 thinking that that's sort of what my genre is,
18 but believe me, I don't want to be in that game.
19 It's a very hard game to be in.

20 And in fact, we -- that whole area at
21 Ivy City is morphed into more dining than music
22 anyway, so --

1 MEMBER ALBERTI: Um-hum. Okay. Let's
2 talk about the sundeck. I'm a little flustered
3 because I'm not sure we know what we are
4 approving on the sundeck in terms of capacity.
5 And that's of concern to me. I'll just put it
6 out there. I mean, I don't want to just sign on
7 the dotted line and not know as a responsible
8 Board Member what I'm signing onto.

9 THE WITNESS: Right.

10 MEMBER ALBERTI: So what is the
11 maximum capacity that you --

12 THE WITNESS: So again --

13 MEMBER ALBERTI: -- are thinking
14 there?

15 THE WITNESS: -- I would say 82 or
16 whatever number is on Exhibit 12 there.

17 MEMBER ALBERTI: Can you give me a
18 maximum?

19 THE WITNESS: There is an exhibit, I
20 think it might be 15.

21 MEMBER ALBERTI: I don't want to tie
22 you into -- tie your hands and hamstring you, but

1 then I don't want to sign-on to 200 either, when
2 you are sitting here and saying 80 to 90. So
3 can --

4 THE WITNESS: It's definitely not 200
5 people.

6 MEMBER ALBERTI: Okay.

7 THE WITNESS: It's under 100 people.
8 I'm confident of that.

9 MEMBER ALBERTI: Okay. So we will
10 take that as under 100. Great, great. That's
11 sort of what I need to know. You are asking for
12 entertainment out there also?

13 THE WITNESS: I'm asking for
14 entertainment with the license. I really do
15 not --

16 MEMBER ALBERTI: And you are asking
17 for --

18 THE WITNESS: -- beyond again
19 potential acoustical out there, have any
20 anticipated entertainment.

21 MEMBER ALBERTI: All right. And you
22 are asking for 3:00 a.m. out there also?

1 THE WITNESS: Just consistent
2 throughout with the license.

3 MEMBER ALBERTI: Okay. I mean, you
4 understand why I'm asking you?

5 THE WITNESS: Totally.

6 MEMBER ALBERTI: Because --

7 THE WITNESS: I understand.

8 MEMBER ALBERTI: -- you know, you are
9 sitting in the neighborhood and someone is asking
10 for entertainment out on that sundeck until 3:00
11 a.m., there is a little -- you can understand the
12 concern, I hope.

13 THE WITNESS: Yes. And we --
14 actually, I go the other way, right? I mean, we
15 plan to open it for coffee. We think it is going
16 to be a very attractive place --

17 MEMBER ALBERTI: Yes.

18 THE WITNESS: -- for coffee and a crab
19 deck to serve crabs, which nobody else has on the
20 water, which I have vast experience with.

21 MEMBER ALBERTI: And I am not
22 belittling your --

1 THE WITNESS: Yeah, no, I understand.

2 MEMBER ALBERTI: -- reputation and
3 what I know about the operations of the other
4 places. I just -- this is a fact that --

5 THE WITNESS: I understand.

6 MEMBER ALBERTI: -- you need to put
7 out there. The other thing I -- and this is
8 going to get into very unchartered area, we have
9 this bike path going through potentially. How
10 will your operation deal with, you know, the
11 split? You have got -- you will have basically--

12 THE WITNESS: So I think --

13 MEMBER ALBERTI: -- just so I can make
14 it very clear.

15 THE WITNESS: Yeah.

16 MEMBER ALBERTI: You are going to have
17 public access through the middle of -- middle
18 area that is all potentially your license, I
19 mean.

20 THE WITNESS: Well, I'm not asking for
21 the --

22 MEMBER ALBERTI: No, no.

1 THE WITNESS: -- well, I guess I have
2 to transport to there and that's an interesting
3 question. It is going to be an easement that is
4 going to remain the property of the complex. I
5 believe. Look, I may not be the right guy to --

6 MEMBER ALBERTI: I may not know.

7 THE WITNESS: -- speak on this, but my
8 understanding is that will be done through
9 easements, because the Park Service wants
10 something from the property.

11 MEMBER ALBERTI: So let's
12 hypothetically say that you do have an easement
13 that now will be --

14 THE WITNESS: You would have to --

15 MEMBER ALBERTI: -- open to the
16 public. How would you deal with that in terms of
17 service?

18 THE WITNESS: I don't know. That's an
19 interesting question. We haven't necessarily
20 thought that all the way through. The service
21 bar would be the outside bar that is above or
22 perhaps the inside bar with its direct door out

1 and the person would walk down the stairs through
2 a delineated path and serve the alcohol.

3 MEMBER ALBERTI: I mean, would you --
4 I won't get into solutions. I'll leave it at
5 that. I have no further questions. Thank you.

6 THE WITNESS: Sure.

7 CHAIRPERSON ANDERSON: Any other
8 questions by any other Board Members? Any other
9 questions, based on the questions that were asked
10 by the Board? It's based on the questions that
11 were asked by the Board, so it can't be outside
12 of the -- it can't be a new area.

13 MR. LITSKY: No.

14 CHAIRPERSON ANDERSON: No? Mr. Kline?

15 MR. KLINE: Just a couple.

16 REDIRECT EXAMINATION

17 BY MR. KLINE:

18 Q Mr. Casten, in terms of the
19 entertainment, you have done different things in
20 your various venues, magicians and all sorts of
21 things, right?

22 A Actually, yes, you know, Peter Loftus,

1 my manager at Ivy City is a classic piano player
2 who plays one night a week in the dining room.
3 You might ask Matthew if he can sing. I
4 understand he is talented. You laugh, but we
5 fully intend to that type of stuff. We have also
6 done events like Charity off the Hook and Shuck
7 It is another event in Georgetown that has 650
8 people or so attend it.

9 Q And in terms of outside entertainment,
10 you don't intend to do late night nightclub
11 entertainment Friday and Saturday night, are you?

12 A No.

13 Q The purpose of the entertainment is to
14 allow you the flexibility to do the things you
15 need to be successful?

16 A I'm putting an awful lot of time,
17 energy and resources into this. I don't want to
18 be restricted in whatever works, so long as it is
19 within the boundaries of reasonable decor with
20 the people around. And I don't think that should
21 be preconceived here.

22 Q All right. And Mr. Alberti asked you

1 about the challenges of operating in this area
2 that is separate from the main building. You are
3 aware that you have responsibilities of
4 controlling the alcohol throughout the process,
5 so that its being clearly consumed, correct?

6 A Yes. I actually have a catering
7 license, too, that allows me to do that at some
8 of my other establishments.

9 MEMBER SHORT: What type of license?

10 THE WITNESS: Catering.

11 MEMBER SHORT: Thank you.

12 THE WITNESS: Where you can serve
13 licensed liquor separate. I mean, I'm looking at
14 that from a parallel.

15 BY MR. KLINE:

16 Q So when you get this business built
17 and open, that's one of the things operationally
18 that you or your general manager are going to
19 have to figure out, correct?

20 A That's correct.

21 Q All right. And that's your pledge to
22 do that?

1 A 100 percent.

2 Q All right. The other issue that we
3 have heard a lot about is well, gee, why are we
4 here so early? Why is this application now? You
5 plan to open when?

6 A Well, originally when I signed the
7 lease, I was hoping to be open for the first two
8 weeks in January or so. They want me --

9 Q Of?

10 A 2020.

11 Q Right.

12 A I mean, they were supposed to give me
13 the space in May. They have now pushed it back
14 until late July, I think. They haven't given me
15 official writing, but they have told me it's not
16 coming in May. My estimates, I'm 8 weeks in
17 permits. I have been working feverishly to get
18 there. I'm hoping to be at permit in 15 days.
19 God willing, the licensing gets through it in 8,
20 9 weeks. Hopefully that coincides and I'm open
21 here by April 15th, right.

22 Q As a business person and from a risk

1 management perspective, you need to know as early
2 as you can whether you are going to get a license
3 and what the permissions will be, correct?

4 A That's correct.

5 Q All right. Is that why we are here
6 now, where you are developing the other plans and
7 moving along in that direction?

8 A Yes. I mean, it calls for me to do
9 that, absolutely.

10 Q Okay.

11 A I want as much time as possible. I
12 got enough to focus on. This is just one of the
13 boxes for many that a restaurateur has to go
14 through to get his place open.

15 Q Okay.

16 MR. KLINE: That's all I have. Thank
17 you.

18 CHAIRPERSON ANDERSON: Yes, Mr.
19 Casten, thank you very much for your testimony.

20 THE WITNESS: You're welcome.

21 CHAIRPERSON ANDERSON: You can step
22 down.

1 THE WITNESS: Your exhibits are here.

2 (Whereupon, the witness was excused.)

3 MR. KLINE: Great. Thank you.

4 Matthew Stickney to the stand, please.

5 CHAIRPERSON ANDERSON: All right, Mr.

6 Stickney.

7 Whereupon,

8 MATTHEW STICKNEY

9 was called as a witness by Counsel for the
10 Licensee, and having been first duly sworn,
11 assumed the witness stand and was examined and
12 testified as follows:

13 MR. STICKNEY: I do.

14 CHAIRPERSON ANDERSON: All right.

15 Your witness.

16 DIRECT EXAMINATION

17 BY MR. KLINE:

18 Q State your name for the record,
19 please?

20 A Matthew Stickney, S-T-I-C-K-N-E-Y.

21 Q And what's your connection to this
22 project?

1 A I'm going to be the general manager
2 when the restaurant opens.

3 Q And what's your experience in the
4 restaurant industry?

5 A So I have been in the industry for 9
6 years. I have been managing multiple, different
7 concepts from \$20 million stores down in Disney
8 Springs to smaller fine dining restaurants up in
9 eastern Massachusetts. So yeah, that would be my
10 experience.

11 Q All right. And in terms of capacity,
12 what is the largest place that you have managed?

13 A It was my most recent position was
14 down in Disney Springs called Splitsville Luxury
15 Lanes. It's a two-story split concept of bowling
16 and dining and that had a capacity of right
17 around 1,000 and we had about 800 seats in it.

18 Q All right. And you were the general
19 manager?

20 A I was not the general manager. I was
21 one of the managers.

22 Q Okay. You were one of the managers.

1 And in your previous experience, did you have
2 occasions when you had to monitor and/or control
3 noise?

4 A Absolutely. So Disney Springs gives
5 every restaurant there the opportunity to have
6 outside entertainment, but it is a mixed
7 restaurant and a retail area. So we decided to
8 have a live band outside every single day. We
9 would have them from 12:00 p.m. until 12:00 a.m.,
10 Monday through Sunday. And then we would have to
11 actually take measurements using a decibel meter
12 to figure out how loud they were, making sure
13 that we weren't creating a nuisance for the
14 ambiance of the other restaurants and retailers
15 around our location.

16 Q All right. And this was outside?

17 A This was outside.

18 Q Every day?

19 A Every day.

20 Q All right. And this was -- part of
21 your responsibility was to monitor the noise?

22 A Yeah.

1 Q And did you also have responsibility
2 for monitoring patron behavior?

3 A Absolutely.

4 Q And how did you deal with that?

5 A Just, you know, if people were getting
6 too rowdy -- Disney Springs is one of the few
7 locations in the United States where you are
8 actually allowed to take your liquor and walk
9 around the area. So we had to be carefully
10 monitoring, you know, how much people were
11 getting served.

12 We would have to watch our bartenders
13 and see how they were serving, making sure their
14 pours were accurate every single time. And yeah,
15 you know, just through knowledge and through, you
16 know, making sure your staff is on board with you
17 and responsible service, making sure no one gets
18 to that point. If anyone did get to that point,
19 we had certain measurements we would take in
20 order to take them away from whatever situation
21 they were in and calm them down.

22 Q And you live in the Washington area

1 now. Is that correct?

2 A I do. I live right on 4th and M, so
3 I'm part of the 6D05 Single Member District.

4 Q 4th and M, S.W.?

5 A Southwest, yes, sorry.

6 Q And when did you move there?

7 A I moved there in January, late
8 January.

9 Q And the restaurant is not going to
10 open for a while. Why are you here so early?

11 A So Greg and the others thought it
12 would be a good idea to have me up and train at
13 Tony and Joe's in order to get a feel for how,
14 you know, Washington, D.C.'s high volume
15 restaurants work and to get a feel for, you know,
16 everything that goes on in their operation.

17 Q Great. What are you doing this
18 summer?

19 A This summer, so I'll be at Tony and
20 Joe's helping out there and then whenever we do
21 get the keys, I'll also be assisting in the
22 general contracting of Buzzard Point.

1 Q And just one last question. In the
2 various restaurants that you have been involved
3 in running, any of them in close proximity to
4 residences?

5 A Disney Springs there was a pond
6 separating the hotels that were there, so that
7 was probably about 200 yards. I did work in a
8 restaurant up in east, I know I mentioned before,
9 Stoneforge Grill, and that actually has
10 apartments less than 100 yards behind it with a
11 patio being right in between that.

12 Q And did you -- you managed that and
13 dealt with whatever issues might arise with
14 respect to noise and rowdy patrons?

15 A Yeah. You just -- you know, you would
16 monitor your patrons, make sure that no one was
17 getting overboard. We would have -- there would
18 be activities out there whether it was, you know,
19 just shuffleboard or anything along the lines of
20 that. We just make sure people wouldn't get out
21 of hand and, you know, just monitor it closely.

22 Q Okay.

1 MR. KLINE: No further questions for
2 the witness, at this time. Thank you.

3 CHAIRPERSON ANDERSON: Do you have any
4 questions?

5 MR. LITSKY: Yes, I do.

6 CROSS-EXAMINATION

7 BY MR. LITSKY:

8 Q I'm Andrew Litsky.

9 A Good afternoon.

10 Q I presume you agree that turning over
11 tables during the course of an evening is an
12 important opportunity --

13 MEMBER SILVERSTEIN: Please speak into
14 the microphone.

15 BY MR. LITSKY:

16 Q Is an important opportunity for you to
17 close the business?

18 A Absolutely.

19 Q Great. So currently the application
20 that we have before us is 750 tables. Let's just
21 say --

22 DR. FARLEE: Patrons.

1 BY MR. LITSKY:

2 Q -- for lack of -- patrons. For lack
3 of argument, we are lowering that and taking off
4 the numbers of people that would be on the pier
5 and some other things. Let's just say it's 500.

6 On a regular night like that with your
7 table turnover, what would you anticipate?

8 A Well, that --

9 Q The number of patrons that would go
10 through the place?

11 A I mean --

12 Q A variable.

13 A -- it -- yeah, it would be impossible
14 to give you an accurate assessment on how many
15 people are going to show up. I mean, if you want
16 me to go based off of experience with --

17 Q Yes.

18 A -- like where I worked when I had 800
19 people, I could tell you that we would have, you
20 know, guess counts of, you know, over 1,000.

21 Q Okay. So it's -- one assumes that
22 simply the number of patrons that have been

1 licensed or -- that's going to be the base number
2 and then you have people who will be moving in
3 and out of the establishment? That answers the
4 question, I appreciate it.

5 What would be your recommendation for
6 how much parking would be necessary to
7 accommodate the numbers of patrons that you
8 expect to have at this establishment?

9 MR. KLINE: Objection. Beyond the
10 scope of direct.

11 CHAIRPERSON ANDERSON: I'm going to
12 allow it. But if you can answer the question,
13 you can. I'll --

14 THE WITNESS: All right. Honestly, it
15 wouldn't be my expertise. Me giving an example
16 would be, you know, asking me to, you know, go
17 play on the trapeze. I would have no experience
18 in doing so. In Disney Springs, I mean, you
19 know, there were several methods of people
20 getting there kind of like the city with the
21 Metro, with walking, with, you know, buses.

22 You know, in Disney Springs, they had

1 a monorail. They have ferries. They have buses
2 and they have parking lots in which they are
3 expanding, but, you know, that -- it's just --
4 yeah, I would not be able to give a
5 recommendation that would be accurate.

6 BY MR. LITSKY:

7 Q Got it. Maybe this is beyond the
8 scope of questioning as well on direct, you --
9 had you stated or Mr. Casten stated the number of
10 employees that you are going to have at the
11 restaurant?

12 A Mr. Casten did.

13 Q Okay. We will wait when it comes to
14 our witness, I appreciate that.

15 But and I guess we will also wait to
16 discuss with Mr. Casten a number of other things
17 that I have on here. Thank you, Mr. Stickney.
18 Welcome to Ward 6. Welcome to the ANC-6D.

19 A Thank you.

20 Q Welcome to the hood.

21 A Thank you.

22 Q It's a great neighborhood.

1 CHAIRPERSON ANDERSON: Any questions
2 by any Board Members? Thank you very much for
3 your testimony, sir. You can step down.

4 (Whereupon, the witness was excused.)

5 MR. KLINE: Thank you. I'll call to
6 the stand Anthony Dale.

7 CHAIRPERSON ANDERSON: I'm sorry, who?

8 Oh.

9 Whereupon,

10 ANTHONY DALE

11 was called as a witness by Counsel for the
12 Licensee, and having been first duly sworn,
13 assumed the witness stand and was examined and
14 testified as follows:

15 MR. DALE: Yes.

16 CHAIRPERSON ANDERSON: All right.
17 Your witness.

18 DIRECT EXAMINATION

19 BY MR. KLINE:

20 Q State your name for the record,
21 please.

22 A Anthony Dale.

1 Q Mr. Dale, you are an ANC Commissioner.
2 Is that correct?

3 A Yes. I'm the ANC Commissioner for
4 6D05.

5 Q All right. And how does that relate
6 to the application that is before the Board
7 today?

8 A So my Single Member District covers
9 the entire Buzzard Point area to include this
10 restaurant, where this restaurant will be
11 located.

12 Q All right. And do you support the
13 application?

14 A I do support the application. I think
15 it's a great addition to our community.

16 Q Have you spoken with residents in your
17 Single Member District about this application?

18 A Yes. I have spoken to residents who
19 are on the 2nd Street part and the closest
20 resident that I have to this venue as well as
21 residents that live on the Army Base that we have
22 located there as well as residents throughout the

1 6D05 community.

2 Q And then approximately how many people
3 have you spoken with?

4 A Approximately, 35 people.

5 Q Okay. And were -- did you hear
6 concerns that were raised?

7 A No. I think, you know, D.C., we hear
8 the same concerns raised everywhere around
9 transportation and parking, that's not unique to
10 our SMD. For the most part, residents were
11 excited to have this venue there. I actually
12 included a survey in my last newsletter that
13 asked residents if they want this restaurant to
14 be here. An overwhelming 80 percent agreed that
15 they wanted this restaurant to be a part of our
16 community.

17 Q So we have heard a pretty long
18 presentation from the owner today. You have met
19 him before, correct?

20 A I have spoken to him several times,
21 yes.

22 Q All right. And have you talked to him

1 about this establishment?

2 A Yes. Early on when I assumed my role
3 as ANC Commissioner, I reached out to Mr. Casten
4 to discuss the application and address any
5 concerns that I may have related to the
6 application, as well as the concerns that were
7 articulated to me by fellow commissioners.

8 Q And was he responsive to you?

9 A He was very responsive. He initially
10 sent me several drawings of sound mitigation
11 tactics that he was going to use in his
12 restaurant, which I then conveyed to my fellow
13 commissioners, so they can see some of the stuff
14 he had produced.

15 Q Were you at the ANC administrative
16 meeting that was discussed earlier?

17 A Yes. I asked Mr. Casten to come to
18 the ANC administrative meeting with the hope to
19 resolve any concerns that my fellow commissioners
20 had, so that we can withdraw our protest.

21 Q All right. And was that productive?

22 A It was not productive, as I hoped it

1 was going to be.

2 Q And why wasn't it productive?

3 A I think that there were personality
4 conflicts that somewhat complicated that
5 conversation that resulted in almost a screaming
6 match between commissioners and Mr. Casten that
7 somewhat took us off course of what we were
8 focused on.

9 Q Was he asked, and he had to answer yes
10 or no, whether he would sign a settlement
11 agreement?

12 A Yes.

13 MR. KLINE: I beg the Board's
14 indulgence.

15 BY MR. KLINE:

16 Q All right. So as we said earlier, we
17 had a pretty long presentation from Mr. Casten.
18 So what do you think this is all about? Why are
19 we here today? Can you share with the Board why
20 it is today that we are here?

21 A You know, I think this -- the protest
22 is, in my humble opinion, interaction, I think

1 this is mainly based off of personalities, rather
2 than the merits of this application.

3 I have not seen or heard from my
4 colleagues and I have asked several times on
5 specific issues that they have with this
6 application and as the SMD rep, I have not
7 received those. And so I know it's challenging
8 for the applicant to actually have specific
9 issues.

10 I think this is based off of the
11 personality between, unfortunately, yourself and
12 some of the other commissioners as well as the
13 interaction that happened at the ANC admin
14 meeting.

15 Q Right. Now, you are a newly elected
16 commissioner, correct?

17 A Yes, I was elected in November of
18 2018.

19 Q But you have previous knowledge of the
20 business and workings of the ANC?

21 A Yes. Prior to my service on the ANC,
22 I served as Legislative Director for the

1 Department of Parks and Recreation, as well as
2 Deputy Chief of Staff to the Richmond City
3 Council. So I have been involved in local
4 Government for approximately 15 years now.

5 Q All right. Well, specifically with
6 respect to ANCs, is, in your experience, the
7 Single Member District Commissioner normally
8 given deference with respect to ABC protests?

9 A Yes. As a matter of fact, my
10 colleague that is at the table now, Commissioner
11 Litsky, had said to me on several occasions that,
12 you know, what happens in our SMD is what we
13 approve and the Commission should go with that.
14 So I find it surprising that the ANC is not
15 supporting my withdraw of this protest, being
16 that we generally focus only on our SMDs when it
17 comes to applications like this.

18 Q Great. Thank you.

19 MR. KLINE: I don't have any further
20 questions.

21 CROSS-EXAMINATION

22 BY MR. LITSKY:

1 Q Good afternoon, Commissioner Dale.
2 Could you tell us how many years you have served
3 as an ANC Commissioner?

4 A I have served as an ANC Commissioner
5 since January 2nd of this year. I don't know the
6 approximate weeks, but it's like that.

7 Q You had stated that --

8 DR. FARLEE: Use the microphone.

9 MR. LITSKY: I'm sorry. Right. I
10 apologize. I'm used to having the standard mikes
11 with a push button. I apologize.

12 BY MR. LITSKY:

13 Q So you had attended the meeting with
14 the -- at the ANC that evening when the applicant
15 had attended. And yes, I agree with you that it
16 was unproductive.

17 MR. KLINE: Objection. He is
18 testifying again.

19 MR. LITSKY: Okay.

20 BY MR. LITSKY:

21 Q Now, what you had stated was that you
22 had not received any information from fellow

1 commissioners about their concerns?

2 A No.

3 Q Is that so?

4 A No, I have -- I requested several
5 times from the Commission the very specific
6 concerns that we had related to this project as
7 well as I requested the information by email and
8 in person from our ABC Chair and I have yet to
9 receive specific issues that we have with this
10 protest.

11 Q Okay.

12 A All the stuff I received just says
13 peace, order and quiet and transportation.

14 Q Okay. Had you -- did you not receive,
15 because I thought that you had referenced this in
16 the meeting that we had this week, the letter
17 that Commissioner Hamilton had provided as
18 evidence in the ANC's application to ABRA on
19 this? Did you ever receive the letter from
20 Commissioner Hamilton?

21 A I did receive a letter from
22 Commissioner Hamilton. It was a part of an email

1 chain and I saw that on the record, but I have
2 not had a chance to review it for its entirety.

3 Q Okay. So you had an opportunity, but
4 you haven't read it? Okay. I would ask you as
5 well you had had made out -- reached to your
6 residents and that's appreciated, that's what we
7 do. You stated that you had put out a question
8 and 80 percent of the responses came in positive?

9 A Yes. So I do a monthly newsletter to
10 SMD, for my SMD that has about 175 people on the
11 newsletter and of that 175 people on the
12 newsletter, 87 people responded and of those 87,
13 80 percent overwhelmingly support this project.

14 Q Great. You had -- so you have done
15 direct outreach and I appreciate that. And so
16 you say that your constituents strongly support
17 this application. Have you spoken with the
18 constituent who is a board member of WABA, the
19 Bicycle Association? Speaking about
20 transportation and their concern.

21 A I am unfamiliar with WABA. And no, I
22 have not spoken to that board member. So I mean

1 to that --

2 Q Have you spoken with the constituent
3 who is president of the National Sierra Club
4 about this application and what Sierra Club's
5 concerns may be?

6 A I can speak to these people who are
7 constituents. I would have to know their names
8 and know who these individuals are to know if
9 they are constituents. I'm taking your testimony
10 as saying that these are my constituents, but I
11 have not spoken to them.

12 Q Okay.

13 A But I will tell you that I hold
14 monthly chat and chews within my SMD and I invite
15 every resident to come participate in the chat
16 and chews. And we announce these at every ANC
17 meeting. So if either one of these individuals
18 wanted to come and speak to me about this, they
19 had the opportunity not only to come to one of
20 the chat and chews, the ANC meeting or contact me
21 via my SMD email.

22 Q Okay. So then what your testimony is

1 is that you are supporting this because you
2 believe it and the ANC -- the Single Member
3 District folks are supporting this?

4 A Correct.

5 Q Is that so?

6 A Correct.

7 Q Okay. Are you familiar with the ANC
8 oath that you swore 13 weeks ago?

9 A I'm very familiar with -- I'm vaguely
10 familiar when I gave it, when I swore it several
11 -- I'm also familiar with the oath that I gave to
12 serve the United States of America as a United
13 States Marine, so I'm familiar with lots of
14 oaths.

15 Q We appreciate that you did both of
16 them. Do you recall, Mr. Dale, that that oath
17 states "I will perform duties such as may be
18 assign to me as a member of said commission to
19 the best of my ability without fear of favor and
20 I will exercise my best judgment and consider
21 each matter before me from the viewpoint of the
22 best interest exactly of the District of Columbia

1 as a whole." And that it does not mention Single
2 Member Districts.

3 MR. KLINE: Objection as to relevance
4 and beyond the scope of direct.

5 MR. LITSKY: It's relevant to the
6 question of whether the --

7 CHAIRPERSON ANDERSON: I'm going to
8 overrule the objection. So go ahead and ask the
9 question.

10 MR. LITSKY: Okay.

11 BY MR. LITSKY:

12 Q So are you familiar with that?

13 A I'm familiar that I was elected by
14 over 700 members of my SMD to serve my SMD
15 without reservations. And so I do that by
16 serving these constituents and serving their
17 concerns each and every day. And so when I swore
18 the Oath of Office, I swore the oath to make sure
19 I protected residents that live in my District as
20 it relates to the District of Columbia as a
21 whole.

22 Q The best interest of the District of

1 Columbia as a whole. I appreciate that.

2 MEMBER SILVERSTEIN: I'm sorry? Speak
3 up a little louder.

4 MR. LITSKY: To the District of
5 Columbia as a whole and I appreciate that.

6 BY MR. LITSKY:

7 Q That as part of the District of
8 Columbia whole and part of the ANC that you are a
9 member of, are you familiar with the
10 transportation concerns that have been raised
11 about what may occur at this restaurant if it's
12 opened? If -- that may have -- that were stated
13 in Ron Hamilton's letter that you had read
14 partially.

15 A I am familiar with the transportation
16 concerns that relate to Buzzard Point. As you
17 well -- as you are aware, I have been working
18 actively to address several transportation-
19 related concerns to include us adding an
20 additional parking lot to Buzzard Point. This
21 location will also encompass the Metrobus coming
22 down from where it currently is at 74 to be -- to

1 stop right in front of this restaurant, so we can
2 have more access for people to catch the
3 Metrobuses to our neighborhood.

4 So I'm actively working to address
5 those issues and I think those are the concerns
6 we should be focused on and not on anecdotal
7 information that we receive from various
8 community members.

9 Q Anecdotal information from fellow
10 commissioners then?

11 A I say anecdotal information as the SMD
12 rep and someone who actually lives in this
13 neighborhood each and every day, I experience the
14 transportation problems related to our community
15 every day.

16 Q How long have you lived in the
17 neighborhood?

18 A I have lived in the Southwest
19 neighborhood since 2003. I moved to this part --
20 I moved to my current residence in June of last
21 year. And so I have been involved in Southwest
22 for the better part of 15 years now.

1 Q The Buzzard Point area that you
2 represent that you stated actually is the Buzzard
3 Point area. There is a marketing Buzzard Point
4 area which is everything south of the baseball
5 stadium, also west of the bridge and the Buzzard
6 Point area that most folks assume, I think, on
7 the east -- on the west side of the bridge going
8 down --

9 MR. KLINE: Objection. Are we getting
10 to a question here or --

11 MR. LITSKY: Yes. That's --

12 MR. KLINE: -- are we going to have
13 testimony?

14 MR. LITSKY: I will if you allow me.

15 CHAIRPERSON ANDERSON: All right,
16 gentlemen.

17 BY MR. LITSKY:

18 Q Is the part of Buzzard Point that you
19 represent east of the bridge or west of the
20 bridge?

21 A I want to -- I represent the entire
22 Buzzard Point. There is not a separation between

1 the two Buzzard Points. I take some issue with
2 your question. Buzzard Point area encompasses
3 the community that borders South Capitol that
4 goes over to Fort McNair and up to, I want to
5 say, P Street.

6 So I take issue if you are alluding
7 that the Buzzard Point area stands across South
8 Capitol Street into what we now call Capitol
9 Riverfront.

10 Q Well, that's what Capitol Riverfront
11 calls it. Are you aware that they could consider
12 that Buzzard Point as well?

13 A I --

14 MR. KLINE: Objection as to relevance.

15 MR. LITSKY: It's --

16 MR. KLINE: And he has answered.

17 CHAIRPERSON ANDERSON: All right.

18 Let's move on, gentlemen.

19 MR. LITSKY: Because --

20 CHAIRPERSON ANDERSON: Yeah.

21 MR. LITSKY: I will.

22 BY MR. LITSKY:

1 Q Exactly how -- you spoke about the
2 residents that live on Buzzard Point. How many
3 residents do you have in your Single Member
4 District that actually live on Buzzard Point
5 itself, south of P Street?

6 A I would say I have all the residents
7 that live on Buzzard Point, since I encompass all
8 of Buzzard Point. So anyone that lives down
9 there are my residents.

10 Q But the --

11 A Could I tell you the number of those
12 individuals? I cannot, but I can tell you that
13 if they are residents in the District of Columbia
14 and live in those streets, I represent every
15 single one of them.

16 Q Exactly. So there is one -- so you
17 would represent the residents living on that one
18 short block of small two-story residences south
19 of P Street with fewer than 40 actual residents?

20 A I'm sorry, restate your question. I'm
21 confused.

22 Q Okay.

1 MR. KLINE: Asked and answered. He
2 said who he represents.

3 MR. LITSKY: Yes.

4 CHAIRPERSON ANDERSON: All right.
5 Where are we going, Mr. Litsky? Where are we
6 going with this line of questioning?

7 MR. LITSKY: I'm sorry. I can't do
8 that, because it's on redirect.

9 CHAIRPERSON ANDERSON: No, no, no, no.
10 I said where are we going? What's the point you
11 are trying to make? I'm trying --

12 MR. LITSKY: I was trying to make the
13 point that if we are talking about the residents
14 of a Single Member District that extends more
15 than a mile north and south and we are talking
16 about the -- making the distinction between the
17 residents that live on Buzzard Point, I just
18 wanted to understand who was recommending that
19 this go forward.

20 CHAIRPERSON ANDERSON: Well, I guess
21 the question I'm -- all right. Is he the
22 Commissioner for the Single Member District?

1 MR. LITSKY: Absolutely.

2 CHAIRPERSON ANDERSON: That -- so does
3 it really matter what residents?

4 MR. LITSKY: No, it doesn't.

5 CHAIRPERSON ANDERSON: If this is
6 within his Single Member District, then it's --

7 MR. LITSKY: Right.

8 CHAIRPERSON ANDERSON: -- irrelevant
9 what residents we are talking about.

10 BY MR. LITSKY:

11 Q Are you familiar with great weight?

12 A I am very familiar with great weight.

13 Q Would you explain how great weight is
14 achieved?

15 MR. KLINE: Objection. It's beyond
16 the scope of direct. And it is --

17 CHAIRPERSON ANDERSON: I'm going to
18 sustain the objection. He is testifying in order
19 -- all right. The ANC protested the license. He
20 is testifying in his individual capacity as an
21 ANC Commissioner. I, myself, have some questions
22 that I'm going to ask later one, but I believe --

1 but he is testifying in his individual capacity
2 as the ANC Commissioner for this Single Member
3 District. All right.

4 MR. LITSKY: I don't wish to answer
5 any more -- ask any more questions.

6 CHAIRPERSON ANDERSON: All right.

7 MR. LITSKY: Redirect?

8 CHAIRPERSON ANDERSON: All right. Let
9 me ask you a question, Mr. Dale. Did you attend
10 the November 19, 2018 meeting when the ANC voted
11 to protest this application?

12 THE WITNESS: Yes, I did.

13 CHAIRPERSON ANDERSON: And what, if
14 any -- and you were not -- it's correct that you
15 were not the ANC Commissioner at the time. Is
16 that correct?

17 THE WITNESS: That is correct.

18 CHAIRPERSON ANDERSON: So what was the
19 sentiment expressed by -- if you recall, of the
20 ANC Commission at the time? Because since it
21 says that the ANC voted 6-0 to approve the
22 protest. So what was it that was stated why the

1 other ANC commissioners approved, if you recall?

2 THE WITNESS: Sure. If I recall
3 correctly, the seventh commissioner which
4 actually was the rep for this District wasn't
5 present at that vote. And whether he was
6 supported or not at that conversation, that's a
7 matter of --

8 CHAIRPERSON ANDERSON: All right.

9 THE WITNESS: -- for him --

10 CHAIRPERSON ANDERSON: So you are
11 saying then that the -- when this vote was taken,
12 the commissioner for 7B, I guess 7D --

13 MEMBER SILVERSTEIN: 6B05.

14 CHAIRPERSON ANDERSON: 6D05 did not
15 attend the meeting?

16 THE WITNESS: He was there, but he
17 wasn't present for the vote. So he had walked
18 out of the room when they took the vote for this
19 application, if I recall correctly.

20 CHAIRPERSON ANDERSON: That doesn't
21 make sense.

22 THE WITNESS: So he may have stepped

1 out in the hallway and had a conversation and
2 they continued the meeting while he was still in
3 the hallway and so when the vote come above, he
4 wasn't there.

5 CHAIRPERSON ANDERSON: All right. It
6 says 6-0, so --

7 MEMBER ALBERTI: So there is no
8 abstention.

9 THE WITNESS: There is seven. That
10 vote is wrong. There is seven commissioners, so
11 that vote is on the record as wrong.

12 CHAIRPERSON ANDERSON: Well, I can
13 only tell you what I have in front of me. We
14 have a letter dated November 19, 2018. It says
15 that the commission voted 6-0-0 to protest the
16 application and it says that -- and although
17 there are seven commissioners it says to me that
18 all six commissioners who attended the meeting
19 voted.

20 Now, it is interesting that if you are
21 saying that the commissioner whose Single Member
22 District this is didn't say something, but that's

1 neither here nor there. I don't --

2 THE WITNESS: Um-hum.

3 CHAIRPERSON ANDERSON: -- so let me
4 ask you another question, sir. So you were
5 elected and you had your first meeting in -- when
6 was the first ANC meeting for your term?

7 THE WITNESS: We had our first ANC --
8 I mean, the first Monday of January and our
9 regular business meeting was the second Monday.
10 I don't recall exact dates.

11 CHAIRPERSON ANDERSON: So did you --
12 whatever the meeting was in January, whenever the
13 meeting was in January, did you ask the
14 commission to revisit this because you were not
15 in agreement that as -- that your constituents
16 did not agree to protest the hearing, to protest
17 this matter?

18 THE WITNESS: I did. So at the admin
19 meeting, I brought up my issues with the actual
20 application. At that time, I was advised by our
21 chair and advised by fellow commissioners to have
22 the applicant to come in to see if we can come to

1 some resolution. So that's when I invited him to
2 come to our February meeting.

3 So I then spoke to Akridge, who owns
4 the actual property and got in contact with the
5 applicant and advised him to come into our admin
6 meeting in March to talk about this application.

7 CHAIRPERSON ANDERSON: So this is the
8 meeting that you said was not helpful? That it
9 wasn't productive. Is that what you are saying?

10 THE WITNESS: The March meeting wasn't
11 productive. The January meetings when the
12 commission originally discussed this, I brought
13 my objections to the protest, is when the
14 commissioners, my fellow commissioners asked that
15 I bring the applicant in and try to make some --
16 come to some resolution with him.

17 So during the course of January and
18 February, I was speaking to Mr. Casten as well as
19 the property owner to try to see if we could come
20 to some resolution and I asked that he come to
21 our March meeting to see if we can withdraw this
22 protest.

1 CHAIRPERSON ANDERSON: All right. Any
2 other questions by any other Board Members?
3 Thank you. Any questions, any other questions by
4 -- Mr. Kline, any questions to Mr. Dale based on
5 the questions that I asked?

6 MR. KLINE: No, I have nothing
7 further. Thank you.

8 CHAIRPERSON ANDERSON: Mr. Litsky, any
9 questions?

10 MR. LITSKY: I have one question.

11 CHAIRPERSON ANDERSON: Yes.

12 MR. LITSKY: Thank you.

13 RECROSS-EXAMINATION

14 BY MR. LITSKY:

15 Q Commissioner Dale, in the question
16 that was asked by Chairman Anderson, he had asked
17 you if you had attended the ANC meeting on
18 November 18th where the ANC had a vote of 6-0-0.
19 And indeed, there were only six commissioners
20 attending. Commissioner Moffatt didn't attend
21 that meeting.

22 MR. KLINE: Mr. Chairman, I must

1 object to the testimony.

2 MR. LITSKY: Did you -- may I finish?

3 CHAIRPERSON ANDERSON: Well, all
4 right.

5 MR. LITSKY: Did --

6 MR. KLINE: It assumes facts not in
7 evidence. He can't make facts by stating them
8 before a question.

9 CHAIRPERSON ANDERSON: All right.

10 MR. LITSKY: Perhaps --

11 CHAIRPERSON ANDERSON: Well, he hasn't
12 asked the question yet, so let him ask a question
13 and, Mr. Kline, remember we started off, he said
14 he is not an attorney. So I do give him some
15 leeway. He is asking a question and I believe
16 that the witness is astute enough to answer it
17 the way he believed that --

18 MR. LITSKY: So --

19 CHAIRPERSON ANDERSON: -- but let me
20 hear the question.

21 BY MR. LITSKY:

22 Q Here is the question. You had stated

1 that you attended the meeting on November 18th I
2 believe it was where the ANC voted 6-0-0 to
3 protest this application. Are you aware of the
4 procedure that our ANC has going back a number of
5 years, certainly during the term, how we use --
6 once the ANC commissioners speak, what do we do
7 before we vote?

8 A You allow the public to make comments.

9 Q You were a member of the public at
10 that time, were you not, during this debate?

11 A I was a member of the public, yes.

12 Q Did you make a comment on this at all?

13 A No, I did not make a comment about
14 this. But I also attended the ABC meeting --

15 Q That's not what I asked you.

16 A -- and made comments.

17 Q I asked you yes or no?

18 MR. KLINE: Objection. Let him answer
19 the question. Mr. Chairman?

20 CHAIRPERSON ANDERSON: He asked you a
21 specific question, sir, whether or not you
22 commented at that meeting. And did you, yes or

1 no?

2 THE WITNESS: No, I did not.

3 CHAIRPERSON ANDERSON: All right.

4 MR. LITSKY: Okay. No more --

5 CHAIRPERSON ANDERSON: Any other

6 questions?

7 MR. LITSKY: -- questions. Thank you,

8 sir.

9 DR. FARLEE: Can I clarify something?

10 CHAIRPERSON ANDERSON: No, you can't

11 clarify, because we have been asking -- we are

12 asking. All right. All right. Thank you, sir,

13 for your testimony.

14 MR. KLINE: He is my witness. I get

15 last.

16 CHAIRPERSON ANDERSON: Oh, I thought

17 you had gone. Oh, I apologize. I thought I had

18 asked you.

19 REDIRECT EXAMINATION

20 BY MR. KLINE:

21 Q Mr. Dale, why didn't you comment at

22 that meeting?

1 A I didn't comment --

2 CHAIRPERSON ANDERSON: Go ahead.

3 THE WITNESS: I didn't comment at that
4 meeting. I did speak when this issue came up at
5 our ABC Committee meeting. I didn't comment at
6 that meeting, because I was still trying to
7 figure out some of the nuances related to this
8 application. I wanted to get a better
9 appreciation for what was going on, rather than
10 speak unintelligently about this matter.

11 Q Great. Thank you.

12 MR. KLINE: That's all I have.

13 CHAIRPERSON ANDERSON: Thank you very
14 much, sir, for your testimony. You can step
15 down.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness was excused.)

18 CHAIRPERSON ANDERSON: Do you have
19 another witness?

20 MR. KLINE: I do not. I do have some
21 exhibits to move and may I approach the witness
22 stand, because I think my exhibit book is

1 actually --

2 CHAIRPERSON ANDERSON: Sure.

3 MR. KLINE: Thank you, Mr. Chairman.

4 CHAIRPERSON ANDERSON: Yes.

5 MR. KLINE: Mr. Chairman, we move the
6 following exhibits: 1 through 8.

7 CHAIRPERSON ANDERSON: Okay.

8 MR. KLINE: 10 through 13 and 15
9 through 18, and 15 through 18.

10 CHAIRPERSON ANDERSON: Do you have any
11 objection to those documents?

12 MR. LITSKY: I don't have the
13 documents in front of me. Are you talking about
14 the documents, sir, that you had transmitted last
15 night?

16 CHAIRPERSON ANDERSON: All the
17 documents he is asking to move into evidence.

18 MR. KLINE: All the ones that have
19 been identified during this hearing.

20 MR. LITSKY: Put them in.

21 CHAIRPERSON ANDERSON: All right.

22 MR. LITSKY: Absolutely.

1 CHAIRPERSON ANDERSON: So moved
2 without objection.

3 (Whereupon, the above-
4 referred to documents were
5 received into evidence as
6 Licensee Exhibit No. 1
7 through 8, 10 through 13 and
8 15 through 18.)

9 CHAIRPERSON ANDERSON: Okay. Thank
10 you.

11 MR. KLINE: With that, the applicant
12 rests.

13 CHAIRPERSON ANDERSON: All right.
14 Thank you. All right. We are going to take a 15
15 minute break. So 5:30. Thank you. We are off
16 the record.

17 (Whereupon, the above-entitled matter
18 went off the record at 5:11 p.m. and resumed at
19 5:34 p.m.)

20 CHAIRPERSON ANDERSON: All right. We
21 are back on the record. Now it is the
22 protestant's case in chief. Does the protestant

1 have a witness?

2 DR. FARLEE: We have one witness.

3 CHAIRPERSON ANDERSON: And who is the
4 witness?

5 DR. FARLEE: Commissioner Litsky.

6 CHAIRPERSON ANDERSON: All right.

7 DR. FARLEE: Mr. Dale is not
8 available.

9 CHAIRPERSON ANDERSON: Okay. Yes, can
10 you raise your right hand, please?

11 Whereupon,

12 ANDY LITSKY

13 was called as a witness for the Protestant, and
14 having been first duly sworn, assumed the witness
15 stand and was examined and testified as follows:

16 MR. LITSKY: Yes, I do.

17 CHAIRPERSON ANDERSON: I see you have
18 some paperwork with you, so you cannot look at
19 any paperwork. Okay?

20 THE WITNESS: Oh, okay.

21 CHAIRPERSON ANDERSON: All right.

22 THE WITNESS: No problem.

1 CHAIRPERSON ANDERSON: So the only
2 paperwork you can look at is if it's in the
3 record. So you can't bring any --

4 THE WITNESS: No problem.

5 CHAIRPERSON ANDERSON: -- although we
6 are not officially a Court, but we are --

7 THE WITNESS: Right.

8 CHAIRPERSON ANDERSON: -- so you have
9 to --

10 DR. FARLEE: Well --

11 THE WITNESS: I was doing that because
12 I can't always hear, so I wanted to make sure
13 what you say.

14 DR. FARLEE: One of the things was --
15 is one of our exhibits. Is that --

16 CHAIRPERSON ANDERSON: Well, once you
17 introduce the exhibit, you can give it to him.

18 DR. FARLEE: Okay. Yes.

19 CHAIRPERSON ANDERSON: So if you
20 identify -- if he wants to rely on any document,
21 he needs to produce that document and disclose --

22 DR. FARLEE: Yes, I guess I will just

1 introduce all of our exhibits.

2 CHAIRPERSON ANDERSON: You can go
3 through the documents. All right. Whatever
4 documents -- I'm sorry. Whatever documents you
5 want to be in the record, make sure that you
6 introduce them through him. So he has to
7 identify the document. So if you want -- if
8 there is any documents in your disclosure that
9 you want to make sure that it's included -- that
10 you are going to move into evidence, make sure
11 that you have him identify them.

12 DR. FARLEE: I can't introduce them
13 all as evidence? All of our -- but --

14 CHAIRPERSON ANDERSON: But what I'm--

15 DR. FARLEE: -- our exhibits --

16 CHAIRPERSON ANDERSON: -- how are you
17 going to -- how do you plan to introduce them?

18 DR. FARLEE: I'm going to mainly refer
19 to one and ask questions of that.

20 CHAIRPERSON ANDERSON: True. But if
21 there are other documents --

22 DR. FARLEE: For you guys to read,

1 yes.

2 CHAIRPERSON ANDERSON: No. There is--
3 is there other documents? The first thing you
4 need to do, you need to identify them. So we
5 need to go through the documents. Then you can
6 ask the witness to tell us what it is, just for
7 the record, because you can't tell us what it is.
8 So just if there are documents in your disclosure
9 that you want to move -- I'm not going to move
10 them into evidence, until they have been
11 identified.

12 DR. FARLEE: Okay.

13 CHAIRPERSON ANDERSON: So marked and
14 identified. So you -- in your questioning, just
15 refer him to the different exhibits and just have
16 him tell us what it is. And then at the end of
17 the case, you will ask that the records be moved
18 into evidence. Okay?

19 DR. FARLEE: All right.

20 CHAIRPERSON ANDERSON: All right.

21 DR. FARLEE: Well, I'll give Mr.
22 Litsky our packet of evidence --

1 CHAIRPERSON ANDERSON: No.

2 DR. FARLEE: -- of exhibits.

3 CHAIRPERSON ANDERSON: Don't do it
4 that way. Give them to him one at a -- ask him
5 to look at exhibit -- for example, Exhibit 1.
6 And then ask him what Exhibit 1 is.

7 DR. FARLEE: All right.

8 CHAIRPERSON ANDERSON: If that's the
9 way you want to do it.

10 DR. FARLEE: Okay. Well, I guess
11 first, I should introduce Mr. Litsky.

12 CHAIRPERSON ANDERSON: All right. So
13 you can start off asking him to introduce himself
14 for the record.

15 DR. FARLEE: Yes.

16 DIRECT EXAMINATION

17 BY DR. FARLEE:

18 Q Mr. Litsky, would you tell us who you
19 are, how long you have served as a commissioner?

20 CHAIRPERSON ANDERSON: I'm sorry.

21 Hold on a minute. There is a question.

22 MR. KLINE: Mr. Chairman, was the

1 witness sworn?

2 DR. FARLEE: Yes.

3 CHAIRPERSON ANDERSON: Yes.

4 MR. KLINE: All right. I missed it.

5 All right.

6 CHAIRPERSON ANDERSON: You know, I was
7 scratching my head, too, to remember if I did
8 that, but I believe that it is automatic, that I
9 do that automatically. Okay. All right. Go
10 ahead.

11 BY DR. FARLEE:

12 Q Okay. Mr. Litsky, Commissioner, would
13 you tell us who you are, how long you have served
14 as commissioner on ANC-6D, and about the Single
15 Member District?

16 A Sure. My name is Andy Litsky. I have
17 been an ANC Commissioner for my particular SMD
18 for 20 years, serving both in Ward 2, when we
19 were part of Ward 2, and Ward 6 since the last
20 decennial census. I represent the residential
21 waterfront in Southwest and I represent The Wharf
22 and all of the development that has occurred at

1 The Wharf.

2 So I'm familiar with dealing with the
3 various liquor licenses and licenses to serve
4 alcohol in those venues as well.

5 Q Has Buzzard Point been in your ANC all
6 this time?

7 A Buzzard Point hasn't been in our --
8 well, Buzzard Point has been in our ANC this
9 entire time, first in Ward 2, and now in Ward 6,
10 but the -- after the last decennial census, we
11 changed --

12 Q SMDs.

13 A -- we didn't change SMDs, we changed
14 geography that contained our SMDs. Originally,
15 when I was first elected, I represented Fort
16 McNair and Buzzard Point. And so for the first
17 part of my tenure until the last census, Buzzard
18 Point was my area, so I know it very well.

19 Q Yes, apparently you support the
20 building in which the applicant is going to place
21 this establishment, but you are not supporting
22 the establishment, the application?

1 A Right. I think --

2 Q Can you explain that, please?

3 A -- it is on record that we are opposed
4 to the establishment and we can get into more of
5 that later. But in terms of actually the
6 approval of the building itself into which the
7 establishment seeks to enter, yes, we approved
8 it. The ANC has design approval on those
9 buildings down there and only design approval.

10 So given that and having made the
11 changes that we had asked them to make, we
12 supported that application before Zoning.

13 Q So why is it that the ANC is opposing
14 the application?

15 A Well, we are opposing the application
16 on the issues of peace, order and quiet and also
17 the pedestrian concerns that we have, pedestrian
18 safety and traffic and parking. And that's in
19 our statement.

20 One of the reasons why we felt the
21 need to go to this extent was so that we could
22 get some kind of documentation, because all along

1 our ANC ABC Committee had a rather difficult time
2 getting documentation that gave us a clear
3 understanding of what it was that was going to be
4 built on -- at Buzzard Point.

5 And so the first time we actually had
6 met with Mr. Casten was either February 4th or
7 March 4th. And so, at that point, we had some
8 information, but we needed to get more
9 information. This provided us an opportunity to
10 at least see what it is that they were doing.

11 Q So why do you think there is a problem
12 with peace, order and quiet?

13 A Well, with peace, order and let's take
14 them one step at a time.

15 With peace, I think you have -- we
16 have covered in the discussion with Mr. Casten.
17 And also with the general manager. The concerns
18 that the ANC has about noise, this entity is
19 going to be at the very tip of Buzzard Point.
20 It's going to be a lot higher. As I know only
21 too well, representing the residents who live at
22 The Wharf and who live on the boats, in the water

1 at The Wharf, sound carries from those
2 establishments.

3 So we wanted to clarify exactly what
4 the sound mitigation plans might be. We tried to
5 get a sound mitigation plan in advance of this
6 hearing. We weren't able to do that.

7 We are concerned about the fact that
8 the Yacht Club, not the Yacht Club, the marina is
9 just to the east and there are folks who actually
10 live there for three days out of the week. This
11 is not just -- this is a recreational agreement,
12 but they have a right to live on that property.
13 They usually live there during the weekends, you
14 know, Friday, Saturday and Sunday.

15 And so should there be no noise
16 mitigation, no doubt it would impact them. Also
17 if you take a look and I'm not sure if you can
18 point it out, how do I ask for --

19 CHAIRPERSON ANDERSON: No, you can't
20 ask.

21 THE WITNESS: Oh, okay.

22 CHAIRPERSON ANDERSON: She has to ask

1 you.

2 THE WITNESS: All right. Well, what
3 we had submitted as part of our exhibits was a
4 map of Buzzard Point from the Buzzard Point
5 Vision Plan. The Buzzard Point Vision Plan was a
6 vision plan from Office of Planning that I was
7 intimately involved in and on the front page or
8 on whatever page we submitted for the record,
9 submitted as evidence, it shows those plots where
10 the National Park Service --

11 CHAIRPERSON ANDERSON: Excuse me a
12 minute. Is that a document in -- that you --

13 DR. FARLEE: Yes.

14 CHAIRPERSON ANDERSON: All right.

15 DR. FARLEE: Would you --

16 CHAIRPERSON ANDERSON: Can you show
17 him and --

18 DR. FARLEE: -- like him --

19 CHAIRPERSON ANDERSON: -- ask him to
20 identify --

21 THE WITNESS: Okay.

22 CHAIRPERSON ANDERSON: -- it for the

1 record. What exhibit is that?

2 DR. FARLEE: 3.

3 CHAIRPERSON ANDERSON: What exhibit is
4 that?

5 THE WITNESS: That's Exhibit 3 that
6 she --

7 CHAIRPERSON ANDERSON: Okay.

8 (Whereupon, the above-
9 referred to document was
10 marked as Protestant Exhibit
11 No. 3 for identification.)

12 CHAIRPERSON ANDERSON: So all right.
13 You can go ahead and testify. No, no, leave it
14 with him.

15 THE WITNESS: Okay.

16 CHAIRPERSON ANDERSON: You can now
17 testify because you have the document in front of
18 you.

19 BY DR. FARLEE:

20 Q What would you like to comment on from
21 that document?

22 A Well, I was doing that. I think that

1 it is not just in this exhibit, but there are the
2 tip of Buzzard Point on --

3 CHAIRPERSON ANDERSON: I'm sorry, what
4 exhibit is it again?

5 DR. FARLEE: 3.

6 THE WITNESS: Exhibit 3.

7 CHAIRPERSON ANDERSON: All right.

8 THE WITNESS: That's the vision
9 framework and the design review guidelines.
10 Clearly, we at the ANC have no expectation that
11 Buzzard Point is not going to be built. It is
12 going to be built and it will be built with
13 wonderful buildings.

14 OP has stated that on Buzzard Point,
15 we are going to have, and including the Capitol
16 Riverfront part of Buzzard Point as well on the
17 other side of the bridge, 6,000 residents down
18 there. That will be a lot of residents.

19 Our concern that we raised as part of
20 this vision framework was to maintain the peace
21 of the park areas that are going to be adjacent
22 to the building where this venue is seeking to

1 locate. And so that's why we put it in evidence.
2 And we were also concerned that we could find
3 some measure of cover, if you will, to ensure
4 that the actual vision of the Vision Point Plan
5 or the Buzzard Point Plan is carried forth.

6 Because they do talk about park use
7 directly along the water and our concern still
8 remains that perhaps we are not quite ready to
9 understand precisely how portions of this
10 establishment are going to interact with the
11 water.

12 In terms of order, we had asked the
13 applicant for a security plan or provide us with
14 more information about how security was going to
15 be handled. Again, we did that initially based
16 upon the notion that a pier that had not been in
17 evidence was going to be proposed. It has been
18 withdrawn, so that was only a portion of the
19 concern that we had about order, because we
20 didn't know how that was going to be worked. We
21 hadn't been shown.

22 But basically, it was about security.

1 This is going to be a venue of 750, perhaps more
2 at certain times. It is going to -- they are
3 going to be serving alcohol. There is going to
4 be music. There will be dancing at times and the
5 concern that we had was that without a clear
6 understanding of the kind of venue that was going
7 to be operated and the people that were going to
8 be within that venue inside and outside that
9 order will be maintained.

10 We know what sometimes happens at
11 waterfront restaurants and spaces. And what we
12 are trying to do is to assure through the ANC to
13 figure out a way to embrace the vision of the
14 Vision Point Plan to keep -- not to keep
15 restaurants like this from opening, but to make
16 sure that they are opening understanding that
17 they are doing it kind of in a peaceable kingdom
18 along the waterfront, because waterfront space is
19 rare.

20 And we want to make sure that the
21 waterfront space that is occupied by any building
22 or any restaurant occupying that building is

1 going to be doing it according to what the plan
2 states.

3 In terms of quiet, again, we had a
4 concern about not only the -- what is happening
5 on the building itself, within the venue itself,
6 and I have already, you know, discussed that in
7 the peace section and our concern is that sound
8 may travel outside, because we are dealing with
9 open decks and we are dealing with kind of
10 screened entities. I can't remember what it is
11 called, Ravina, the siding that can be raised and
12 lowered.

13 Q Renaldo?

14 A That can be raised and lowered and how
15 that really works and how often it is going to be
16 down and when it is going to be up and how the
17 sound is going to work.

18 In terms of the quiet as well, we
19 don't have now a clear indication of how many
20 speakers we are going to have. We have no
21 indication of where those speakers are going to
22 be placed or whether those speakers will be

1 placed away from the water and away from the
2 folks who are occupying their vessels at James
3 Creek Marina.

4 And to make sure that those speakers
5 are not aimed toward the Anacostia Riverwalk
6 Trail, which is something that we have been
7 working on since Anthony Williams was Mayor. And
8 which is a broad mandate through to input and
9 through the Anacostia Larger Plan to loop a river
10 walk all the way, we would love to see it all the
11 way through Georgetown, but to loop it certainly
12 in the Southwest part and our ANC part from The
13 Wharf all the way down. We can't go on the water
14 at Fort McNair because it is a military
15 reservation, but down P Street, down 2nd Street
16 and then looping along the water of Buzzard Point
17 itself going over to Capitol Riverfront, that's
18 the plan.

19 And so we wanted to make sure that the
20 quiet was going to be maintained and that we
21 would not be having anything in terms of the
22 other concern that I had about transportation,

1 that the transportation of the bicyclists and the
2 pedestrians would not be impacted.

3 Q Let's leave transportation for a
4 minute.

5 A Okay. Very well.

6 Q I want to have you talk about more
7 things under peace, order and quiet.

8 About the outside plan, Mr. Casten, we
9 heard Mr. Casten say he wants to apply for
10 everything he is allowed to do. But what about
11 the outside entertainment, dancing, cover charge
12 on the two now remaining outside summer gardens?

13 A Right. Well --

14 Q Please comment on that.

15 A -- again, Mr. Casten has the right to
16 apply for everything under the law and that he
17 has done. Our concern is, of course, that what
18 is also going -- was applied for is an
19 entertainment endorsement and a cover charge.

20 When most ANCs hear cover charge,
21 well, when my ANC hears cover charge, we -- you
22 know, our eyes roll back in our heads. There are

1 not many of them in our ANC that have cover
2 charges and serve alcohol. Cover charges per say
3 in a restaurant.

4 And so you know, we did have on our
5 Southwest Waterfront two very large venues that
6 had cover charge, that had alcohol and it created
7 massive problems in our neighborhood prior to The
8 Wharf being built. And I'm sure that the Board
9 Members are familiar with some of the larger
10 venues that function then as nightclubs at that
11 point formerly restaurants before that, but
12 turned into a nightclub.

13 And so our concern is that it doesn't
14 evolve into a nightclub with a cover charge and
15 entertainment, but I'm taking Mr. Casten at his
16 word, at what it is that he says he wants to do.

17 Q Could you be more specific? Do you --
18 are you comfortable with having outside
19 entertainment, dancing, cover charge or do you
20 want to oppose that?

21 A Again, again, we are not unreasonable
22 at the ANC. Part of the reason that we entered

1 into this protest was to hear exactly what is
2 going to be done, because we have precious few
3 documents in front of us. And this enables us to
4 hear and from Mr. Casten himself who, as you
5 heard, only attended one ANC meeting and it
6 wasn't productive, not just on his part, but
7 perhaps on some of the commissioners, so this is
8 an opportunity to get more information to assuage
9 some of the concerns.

10 In terms of the concerns that we would
11 have about -- or that we have about outside use
12 of that space, you know, when you have a cover
13 charge on a deck, does it mean it's an outside
14 nightclub? Gee, I don't know. Is it an outside
15 occasional nightclub? Gee, I don't know.

16 When we talk about entertainment, are
17 they, you know, magicians performing? Is it, you
18 know, a quartet performing at brunch? Is it
19 sound systems and a disco atmosphere on a
20 Saturday night? If so, how often does that work?
21 And so these are the concerns that we are trying
22 to hammer up, but those are clearly the concerns

1 that the ANC has.

2 Q What about the hours? Assuming that
3 the outside two summer gardens do exist --

4 A Sure.

5 Q -- what would be the maximum hours you
6 would recommend?

7 A Well, our preference --

8 Q That is at the moment it is proposed
9 for 2:00 and 3:00.

10 A Correct.

11 Q How about midnight and 1:00 a.m.

12 A Well, that would be, you know,
13 helpful. But we are not negotiating here. What
14 I think is difficult for us is to say that not
15 really understanding exactly how this venue is
16 going to operate with entertainment and speakers
17 and dancing and cover charge to 2:00 or 3:00 and
18 then to have an opportunity to maybe come back
19 later, so I'm not sure the 3:00 would be ideal
20 time that we might want to have this operation
21 not having a clear understanding of the noise
22 concerns that we have got addressed yet to go

1 with that time frame. So an earlier time frame
2 would be preferable, both on weekend nights and
3 during the week. But especially on weekend
4 nights.

5 Q Okay. I want to show you our Exhibit
6 5, I believe. 6, I'm sorry.

7 A Okay.

8 Q Exhibit 6 is two photographs.

9 CHAIRPERSON ANDERSON: Ask him to
10 identify it first.

11 THE WITNESS: Yes, I am looking at one
12 photograph which shows the actual building of the
13 River Point building. That's ABRA Exhibit 5.

14 CHAIRPERSON ANDERSON: You are talking
15 to -- you are not talking to her. You are
16 talking to us.

17 THE WITNESS: Oh, well --

18 DR. FARLEE: Yes.

19 THE WITNESS: Okay.

20 DR. FARLEE: Exhibit 5 has two parts
21 that page and the next page.

22 THE WITNESS: Right. So Exhibit 5,

1 the first page is that. The second page, if it's
2 also part of Exhibit 5 is the north egress on 2nd
3 Street, S.W.

4 CHAIRPERSON ANDERSON: I'm sorry,
5 what? Exhibit 5?

6 THE WITNESS: I was told --

7 CHAIRPERSON ANDERSON: What exhibit
8 are you looking at, sir? What exhibit is that?

9 THE WITNESS: This?

10 CHAIRPERSON ANDERSON: That's exhibit?

11 DR. FARLEE: 6.

12 CHAIRPERSON ANDERSON: That's Exhibit
13 6?

14 DR. FARLEE: Sorry.

15 CHAIRPERSON ANDERSON: All right.

16 DR. FARLEE: It's Exhibit 6.

17 THE WITNESS: Okay.

18 DR. FARLEE: Exhibit 6.

19 (Whereupon, the above-
20 referred to document was
21 marked as Protestant Exhibit
22 No. 6 for identification.)

1 THE WITNESS: And then is this Exhibit
2 5 then?

3 BY DR. FARLEE:

4 Q No, they are both Exhibit 6.

5 A They are both Exhibit 6.

6 CHAIRPERSON ANDERSON: All right. All
7 right.

8 THE WITNESS: So the first page if I
9 can tell you is the building as it looks today or
10 as it looked a couple weeks ago. It is under
11 construction. There is nothing there now. I
12 understand that the ABRA Investigator had to go
13 through and enter his determination based upon
14 normal procedures, but there is no operating club
15 there, so no ABRA Laws were broken, clearly ABC
16 Laws were broken.

17 But to the left of that, that's the
18 area where -- yes, that's of James -- actually in
19 front of that --

20 CHAIRPERSON ANDERSON: I can't hear
21 you.

22 THE WITNESS: Actually in front --

1 CHAIRPERSON ANDERSON: You need to
2 speak into the microphone.

3 THE WITNESS: -- of that on here is
4 where the James Creek Marina is.

5 CHAIRPERSON ANDERSON: All right.

6 THE WITNESS: So it is the closest
7 thing in proximity to the west from this building
8 and where the venue will be placed.

9 CHAIRPERSON ANDERSON: All right.

10 BY DR. FARLEE:

11 Q On the second photograph?

12 A I am not there yet.

13 Q Okay.

14 A The second photograph as part of that
15 you see the egress north on 2nd Street, S.W., that
16 too is a photograph that was taken on 3/23 by one
17 of our ABC Committee members who went out there
18 to photograph and that shows the access down to
19 Buzzard Point along 2nd Street.

20 For any of the members who have been
21 down to the soccer stadium, you may have traveled
22 down 4th Street to P Street, down 2nd and that's

1 how a lot of folks get to the DC United.

2 2nd Street is a major ingress point to
3 Buzzard Point. It -- and there is currently
4 parking alongside it, but there are very strong
5 indications that DDOT is going to remove parking
6 along those streets to make sure that we can move
7 traffic in and out. We are not there yet, but
8 that's part of our concern.

9 We also wanted to make sure that what
10 you can't see from the top of the photograph is
11 at the very northern most part of 2nd Street is P
12 Street, which is the beginning of where the
13 majority of the residential that is adjacent to
14 Buzzard Point exists.

15 Commissioner Dale had stated that he
16 represents all the residents on Buzzard Point.
17 Yes, he does. And I think that all of those
18 living there currently, there will be many more
19 to come, but currently there are about 40 in a
20 short row of townhouses.

21 Just north of that, however, is where
22 we have our concern as the ANC. Just north of

1 there is where we have 2,200 residents living in
2 Commissioner Hamilton's District and there is a
3 letter as --

4 Q Let me introduce another exhibit,
5 please.

6 A Okay.

7 Q That's Exhibit 6.

8 A This is Exhibit 6. There is a letter
9 that Commissioner Hamilton, who represents the
10 ANC-6D --

11 MR. KLINE: If I may, objection. We
12 have Exhibit 6. So just so our record is clear,
13 are we talking about the Hamilton letter?

14 CHAIRPERSON ANDERSON: That's not
15 Exhibit 6.

16 MEMBER SILVERSTEIN: It's Exhibit 7.

17 MR. KLINE: It is 7.

18 THE WITNESS: That's Exhibit 7.

19 MR. KLINE: Okay. I just wanted to
20 make sure what we are talking about.

21 DR. FARLEE: I did it again.

22 THE WITNESS: I appreciate that.

1 (Whereupon, the above-
2 referred to document was
3 marked as Protestant Exhibit
4 No. 7 for identification.)

5 THE WITNESS: So you have Exhibit 7,
6 that is a letter from Commissioner Hamilton
7 stating her concerns which voice the concerns of
8 the ANC.

9 And again, her residents and the
10 residents actually living en masse closest to
11 where this is going to be and close to the soccer
12 stadium as well are in that Single Member
13 District.

14 The concern for building the soccer
15 stadium, the concern for building any of the
16 other buildings that are happening on Buzzard
17 Point is that many of the trucks and construction
18 vehicles and people who then go to soccer and
19 will go, we anticipate, to this restaurant once
20 it is open, will be traveling through the
21 neighborhood.

22 There are other routes into Buzzard

1 Point. Uber, as you may know, follows the
2 easiest route. I expect that since although the
3 Investigator said it is only a 10-minute walk to
4 the Metro at the stadium, it takes a little bit
5 longer than that, because both of our Metro
6 stops, one at waterfront in Southwest and the
7 other at the baseball stadium, are equal
8 distance, just shy of a mile. Shy a mile to the
9 entrance of the soccer stadium.

10 If you continue past the soccer
11 stadium, we are adding another several tenths of
12 a mile. So we are expecting that unless there is
13 appropriate parking down there, which we contend
14 there isn't, and unless there is a plan to deal
15 with 400 vehicles, that this will create
16 challenges.

17 And so we had hoped to have a
18 discussion with Mr. Casten or with his attorney
19 to understand better how they intend to manage
20 those vehicles, because those Uber vehicles are
21 going to cut right through the residential
22 neighborhood and there are going to be many.

1 And so we just wanted to see what his
2 plan was at that narrow tip of Buzzard Point with
3 the additional construction going on, how that is
4 going to be managed.

5 So Commissioner Hamilton, you will see
6 on the 2nd page states again, restates the concern
7 that we have had at the ANC that on the bullet
8 points, the applicant has provided no plan for
9 parking, that the applicant has provided no
10 transportation plan to and from their venue, that
11 the applicant has provided no plan for properly
12 managing Uber, Lyft and taxi service to their
13 isolated location and the applicant has signed no
14 CA, which of course we can't require them to do.

15 I'm sure that their staff is going to
16 manage crowds and noise that will emanate not
17 just from the venue, but then exiting the venue
18 and through the residential neighborhood.

19 So that's what we have before you. I
20 would urge you to read it more thoroughly than I
21 have been able to provide a synopsis.

22 BY DR. FARLEE:

1 Q Is it directly adjacent to the ANC
2 Single Member District --

3 A I'm sorry? What's the question? I
4 didn't hear you.

5 Q Commissioner, what is the SMD that
6 Commissioner Hamilton represents?

7 A I believe I stated it, but she
8 represents Single Member District 606.

9 Q That is adjacent to?

10 A Directly adjacent and directly north
11 of P Street, which is the top of the ANC-6D05
12 District.

13 Q Um-hum.

14 A Now Buzzard Point.

15 Q And what's the relevance of that, that
16 is why would people be going through that
17 neighborhood to get to this Buzzard Point Fish
18 House?

19 A Well, for anybody who has been down at
20 Buzzard Point, there are limited ways in and
21 limited ways out. There will be soon constructed
22 a new Frederick Douglass Bridge that is in

1 process. There is going to be an oval that will
2 enable people to swoop around and go into Buzzard
3 Point that way, but what we have found is that
4 people don't take South Capitol Street, that
5 people go through the neighborhood.

6 And specifically, when people get out,
7 they go through the residential neighborhood.
8 They don't take P Street. They don't take 4th
9 Street to M and out of Southwest. They go
10 through an existing residential neighborhood of
11 low-rise buildings, housing residents of
12 Commissioner Hamilton.

13 Q So is it fair to say that the
14 pedestrian concerns are traffic and pedestrian
15 concerns on parking involve more than just SMD
16 05?

17 A Yes, it would be. And I think we
18 stated our concerns about the pedestrian
19 interruptions that may or may not occur on the
20 Anacostia Waterfront Riverfront Trail. We
21 haven't seen the real drawings for that yet. But
22 also, how the pedestrians will walk to this

1 venue, if indeed they are going to walk. Are
2 they going to be taking -- how are they going to
3 be walking?

4 Are they walking on 2nd Street? Are
5 they walking down other streets? I don't know.
6 It's a long hike. If you are dressed up to go to
7 dinner, I don't think you want to walk, you know,
8 a little under a mile and a half to get there or
9 back. So they are going to call Uber. They are
10 going to call Lyft or they are going to drive.

11 And I can tell you that the parking
12 that has been provided and approved by Zoning for
13 that building is fine for the residents. The
14 parking lot has been approved by Zoning for the
15 retail in that building are 91 spots. 91 spots
16 will be granted if they were all 91 spots that
17 would go to the restaurant perhaps, but the 91
18 spots have to be divided along with the other
19 retail establishments that are going to occupy
20 the remaining 31,000 square feet of retail space
21 in that building.

22 So if you balance around on the ratio

1 on this, we have different information to the
2 contrary. It would seem to me that the
3 restaurant would be accorded about just shy of 50
4 spots of those 91 spots, including spots for
5 management and workers and people who will be
6 going down to the restaurant itself in that
7 space.

8 Yes, the applicant had stated and
9 Commissioner Dale had stated that there are
10 currently parking lots down across from this
11 building. There are. Akridge owns a big lot.
12 Akridge is just waiting to build. And they will.
13 They don't want to leave it as a parking lot.

14 As we have found in the baseball
15 stadium area, which we have dealt with from the
16 very beginning, we have parking that was promised
17 and parking disappeared very quickly as soon as
18 the buildings went up, because there were no
19 longer flat spaces to park cars. We had
20 buildings there. And those buildings almost
21 universally do not allow them baseball parkers or
22 other parkers to park underneath. So it's kind

1 of a faulty premise.

2 So yes, there are currently spaces of
3 lots available. The Akridge lot being the
4 largest, I think.

5 Q Okay. I would like you to identify
6 these other exhibits that we have provided.

7 A Sure.

8 Q Maybe you can focus on things about
9 peace, order and quiet and traffic and things you
10 want to present from those.

11 A Okay. This is our --

12 Q These are our exhibits.

13 A All right.

14 CHAIRPERSON ANDERSON: What are -- can
15 you identify the number?

16 THE WITNESS: I'm trying to read them.
17 All right. I got them now.

18 CHAIRPERSON ANDERSON: What exhibit
19 are you referencing?

20 THE WITNESS: The one -- the first
21 exhibit that I'll talk about will be -- what
22 exhibit is this part of? That's part of Exhibit

1 4.

2 Exhibit 4 -- I've got it. Exhibit 4
3 is an article that was printed in The Hill within
4 the past year, about May 2017. It was written by
5 Michael Stevens and he is the executive director
6 of the Capitol Riverfront BID.

7 (Whereupon, the above-
8 referred to document was
9 marked as Protestant Exhibit
10 No. 4 for identification.)

11 THE WITNESS: If you read through the
12 article, you will see that he describes this area
13 as, you know, dynamic yet still preserving the
14 peace and quiet of the waterfront area.

15 You have to read the article. I don't
16 have it circled here in the area, but it's pretty
17 clear that it is going to be an active site, the
18 whole of Buzzard Point, but that the -- Michael
19 Stevens, the Director of the BID that services
20 Buzzard Point himself, says that a lot of those
21 areas along the park lands are going to be park
22 land and we want to embrace that and preserve

1 that. And I urge you to read that article.

2 In addition to that, we have an
3 Exhibit 2, which is a Zoning order reference for
4 17-05, a reference that has been extracted from
5 the 25-page Zoning order that allows the building
6 to be built.

7 (Whereupon, the above-
8 referred to document was
9 marked as Protestant Exhibit
10 No. 2 for identification.)

11 THE WITNESS: In their Findings of
12 Fact with particular attention to page 5, Item
13 35, which states "The project also includes
14 construction of a portion of the Anacostia
15 Riverwalk Trail," which is something that the
16 owner is supposed to do, okay, "along the
17 waterfront at the Property. The trail includes
18 active and passive trails, plantings and seating
19 for public use. The trail will also include
20 seating, public art, educational signs that are
21 incorporated into the public realm along the
22 waterfront to provide interactive spaces for

1 visitors."

2 And it's hopeful -- again, part of the
3 reason we put this in as, again, because prior to
4 this afternoon, we started a pier going out into
5 the water, which bisected the trail. We no
6 longer have that as part of it, but we still do
7 have a question about how the Anacostia
8 Waterfront Trail, as has been referenced in the
9 Zoning order for the building, is going to be
10 kind of like through, so that we are not having
11 regulatory bodies and licensing bodies at odds
12 with one another, which we seem to have on a
13 regular basis in the District.

14 MR. KLINE: Mr. Chairman, I would like
15 to object to the testimony. You know, I'm trying
16 to give leeway because I don't have an attorney
17 and there aren't questions to object to, but we
18 are far afield. The planning on this property
19 has been done. There is an order.

20 THE WITNESS: Yes.

21 MR. KLINE: You have part of it. We
22 will probably introduce all of it, so you get the

1 full picture. I don't believe it is fair for you
2 to see part of it. But, you know, in terms of
3 the planning, if there are issues to how it is
4 built, that is not what we are here about. We
5 are here about an alcohol license.

6 And if we get approved for something
7 and when we can't build it, too bad, we can't
8 build it. But this is the alcohol process,
9 that's what we are here for, for the license.

10 THE WITNESS: Very well.

11 MR. KLINE: So if there are complaints
12 of planning, then those issues should be raised
13 elsewhere. And I would object to the testimony
14 and ask that we get back on track concerning the
15 issues related to this alcohol license
16 application.

17 DR. FARLEE: It's peace and quiet
18 and --

19 CHAIRPERSON ANDERSON: All right.

20 DR. FARLEE: -- safety traffic.

21 CHAIRPERSON ANDERSON: Go ahead, Ms.

22 Farlee, what were -- what was your --

1 DR. FARLEE: Can you focus on --

2 CHAIRPERSON ANDERSON: Hold on.

3 DR. FARLEE: -- concerns with peace,
4 order, quiet?

5 CHAIRPERSON ANDERSON: All right.

6 BY DR. FARLEE:

7 Q And parking, pedestrian safety and
8 traffic?

9 A Yes. Again, I think I stated that the
10 ANC has concerns with peace, order and quiet. We
11 are, you know, similarly concerned as is
12 Commissioner Hamilton about patrons from this
13 entity exiting Buzzard Point through her
14 neighborhood and through the places where people
15 are actually living now, in addition to the, you
16 know, small block of housing that currently
17 exists in Commission Dale's Buzzard Point.

18 Ask me more questions. I can't speak
19 about this broadly. Ask a specific question,
20 please, and I can give you a more directed
21 answer.

22 Q Well, are there points in that 17-05

1 that you would like to focus on that relate to
2 this?

3 A (No audible answer.)

4 Q No? Okay. Thank you. Then as a
5 representative of the ANC-6D, which you are,
6 would you -- what would you recommend be the best
7 solution for this application?

8 A Well --

9 MR. KLINE: Objection as to his
10 ability to speak on behalf of and make
11 recommendations on behalf -- he can say what he
12 thinks, but I think we need to be careful and Mr.
13 Litsky alluded to it before when he was examining
14 the other commissioner, ANCs operate and have
15 authority as ANCs, Single Member District
16 Commissioners have authority to vote at ANC
17 meetings and take official action.

18 So for him to make recommendations as
19 a commissioner, I don't believe is appropriate.
20 He can certainly state his personal opinion.

21 CHAIRPERSON ANDERSON: Well, why don't
22 you state -- I'll rephrase the question. So why

1 don't you state the official position of the ANC?

2 MR. KLINE: If there is one.

3 THE WITNESS: I'm trying to --

4 DR. FARLEE: The official position of
5 the --

6 CHAIRPERSON ANDERSON: If there is
7 one, yeah.

8 THE WITNESS: Ah, okay. The official
9 position is to oppose this license. Do I have a
10 personal feeling? I can give you that, but it's
11 not, at this point, the decision of the ANC.

12 What we -- I can tell you what we have
13 requested of the applicant through his attorney
14 the first time that the applicant's information,
15 as small as it was, was presented to the ABC
16 Committee and that, I think, was in maybe
17 October.

18 And the request was, at that time,
19 withdraw the proposal until you have more
20 information to give to the ABC Committee and to
21 the ANC. So that was the position at that time.

22 It is not until today really and

1 shortly after we had received any of these
2 exhibits through the exhibit process presented by
3 the attorneys for the applicant that we received,
4 you know, hard goods. That we really had a clear
5 understanding of what this was about. I don't
6 know if that answers your question or I answered
7 your question, Chairman Anderson.

8 CHAIRPERSON ANDERSON: It's -- I was
9 just trying to clarify the question --

10 THE WITNESS: Sure.

11 CHAIRPERSON ANDERSON: -- that was
12 being asked. Any other questions?

13 BY DR. FARLEE:

14 Q Is there anything you want to say
15 about the recommendation or your position on
16 this?

17 A No, I do not.

18 Q Thank you.

19 CHAIRPERSON ANDERSON: Do you have any
20 other questions, Ms. Farlee?

21 DR. FARLEE: No.

22 CHAIRPERSON ANDERSON: Before -- are

1 there any other documents? Did you introduce --
2 I think there are seven documents, I think, that
3 they have disclosed.

4 DR. FARLEE: Another article.

5 CHAIRPERSON ANDERSON: So you have --
6 have you had him identify all seven documents?

7 DR. FARLEE: No. There is --

8 CHAIRPERSON ANDERSON: What documents
9 did he not? What other document did you not
10 mention?

11 THE WITNESS: Sorry? I'm looking
12 through them.

13 CHAIRPERSON ANDERSON: Any -- if there
14 is another document, please, identify the
15 document.

16 THE WITNESS: We have the -- we have
17 on Exhibit 1 the Zoning Commission Order of the
18 District of Columbia Order 17-05.

19 (Whereupon, the above-
20 referred to document was
21 marked as Protestant Exhibit
22 No. 1 for identification.)

1 CHAIRPERSON ANDERSON: All right.

2 THE WITNESS: That's Exhibit 1. And
3 we would like to place that in evidence.

4 CHAIRPERSON ANDERSON: All right.

5 THE WITNESS: We already have in
6 evidence, I believe, Commissioner Hamilton's
7 letter. We have in evidence, I believe, the two
8 pictures that have been taken by the ABC
9 Committee member of the property as it exists and
10 the concern showing the major egress into
11 Southwest on 2nd Street.

12 We have --

13 CHAIRPERSON ANDERSON: All right. I
14 think we have covered all seven.

15 THE WITNESS: I think we are.

16 CHAIRPERSON ANDERSON: Yes, we have
17 covered all seven documents, yes.

18 THE WITNESS: There is --

19 CHAIRPERSON ANDERSON: All right.

20 THE WITNESS: -- one more that I
21 didn't put --

22 CHAIRPERSON ANDERSON: Which one is

1 that?

2 THE WITNESS: -- in that I would like
3 to, it's Exhibit 5, I believe it is 5, which is
4 an article that came out of Current.

5 CHAIRPERSON ANDERSON: All right.

6 THE WITNESS: It speaks to a brand new
7 mixed-use project, long proposed on Buzzard
8 Point.

9 (Whereupon, the above-
10 referred to document was
11 marked as Protestant Exhibit
12 No. 5 for identification.)

13 CHAIRPERSON ANDERSON: Is that project
14 this project?

15 THE WITNESS: Yes, yes.

16 CHAIRPERSON ANDERSON: All right.

17 THE WITNESS: The building, its retail
18 and restaurants.

19 CHAIRPERSON ANDERSON: Okay. Thank
20 you. All right. Mr. Kline?

21 MR. KLINE: They are not admitted at
22 this, are they? I mean, they are moved. I mean,

1 I have objections to some of them, so --

2 CHAIRPERSON ANDERSON: Well, they have
3 been identified and I will -- when the testimony
4 is done, then I'll ask if she wants to move them
5 and then I'll hear whatever your objection.

6 MR. KLINE: Okay.

7 CHAIRPERSON ANDERSON: But at a
8 minimum, as you know, Mr. Kline, I'm trying to be
9 fair, she is not -- there is not an attorney, in
10 allowing her to introduce the documents before,
11 because I know that if at the end of the
12 proceeding if she tries to move them and they
13 have not been identified, you are going to
14 object.

15 MR. KLINE: I don't have any objection
16 to that. I just wanted to make sure that --

17 CHAIRPERSON ANDERSON: No, no, yeah,
18 they are not into evidence as of yet. They have
19 just been identified. I'll ask her to move them
20 later on. All right. Do you have any questions
21 for the witness?

22 MR. KLINE: Indeed.

CROSS-EXAMINATION

BY MR. KLINE:

1
2
3 Q Mr. Litsky, it sounds like the bulk of
4 your testimony really relates to issues related
5 to planning, doesn't it? Isn't that what your
6 concern is? Aren't these planning issues?

7 A No.

8 Q No?

9 A And let me tell you why. They may
10 have been planning issues at some point. What we
11 are dealing with now are putting in buildings and
12 other restaurants that are having to conform to
13 what it is that has already been decided as part
14 of planning, in terms of the physical structure.

15 In terms of how one uses the physical
16 structure of the streets and the parks, that is
17 yet to be determined. And it is also to be
18 determined how the various venues that are going
19 to be operating within Buzzard Point are going to
20 operate.

21 We are talking about what we believe
22 may be the impacts of the applicant's restaurant

1 and that's what we are addressing.

2 Q All right. But a number of the things
3 relate to transportation, things current about
4 transportation, correct?

5 A Can I tell you why?

6 Q No.

7 A Yes.

8 Q I'm going to get the answer to my
9 question.

10 A Sure.

11 Q Then we will move to the next
12 question. And you reference and presumably the
13 protestants plan to move the Zoning Commission
14 Order that allowed this project to be built,
15 correct?

16 A It is -- we are proposing that that be
17 entered in evidence, yes.

18 Q All right. And that Zoning Commission
19 Order it exhaustively looked at parking and
20 traffic, didn't it?

21 A Well, the Zoning Commission -- well,
22 actually --

1 Q It's a yes or no question.

2 A No.

3 Q It's very simple.

4 A The answer is no.

5 Q Wasn't there a transportation study,
6 which you purport to extract one page from that
7 was done by the applicant and is a, I don't know,
8 50-page document, 36-page with exhibits on top of
9 that that looked at transportation? And in fact,
10 you cite an abstract from in your testimony?

11 A Well --

12 Q What's the transportation --

13 A -- did I actually do -- cite the
14 transportation plan in my testimony? I don't
15 believe I did.

16 Q Didn't you cite --

17 A I cited the Zoning order. Did I
18 present the table for it here?

19 Q Yes, it's one of your exhibits that
20 you have identified.

21 A Okay. I'm sorry. Yes.

22 Q So there was a transportation study,

1 correct?

2 A Yes. Oh, yeah.

3 Q All right. And the Zoning order found
4 that there were approximately 361 stripped
5 parking spaces accessible in the project,
6 correct?

7 A If you are reading from the Zoning
8 order, I presume that is correct.

9 Q All right. And then also 41 short-
10 term bicycle spaces provided?

11 A That -- if you are reading from the
12 Zoning order, I presume that is correct.

13 Q And there was also an order that there
14 be a Bikeshare, correct?

15 A If you are reading from the Zoning
16 order, I presume that's correct.

17 Q Well, you are concerned about these
18 issues.

19 A Yes, I am, sir, but you are asking me
20 something that you have got in front of you and I
21 don't have the ability to read it.

22 CHAIRPERSON ANDERSON: All right.

1 THE WITNESS: So we haven't found it.

2 CHAIRPERSON ANDERSON: All right.

3 BY MR. KLINE:

4 Q Do you have the exhibits in front of
5 you?

6 A I can spend time and go through it.

7 Q My question is do you have it in front
8 of you?

9 CHAIRPERSON ANDERSON: What exhibit
10 are you referring to?

11 THE WITNESS: Yes, which exhibit are
12 you referring to precisely, sir.

13 BY MR. KLINE:

14 Q I am referring to Protestant's --

15 A I have it.

16 Q -- Exhibit No. 1.

17 A Okay. I do have it in front of me.

18 On which page is this, so that I can read it and
19 refer to it?

20 Q Sure. Paragraph 32 on page 5.

21 A Page 5, that's very helpful. Thank
22 you. Okay. And what that states -- okay. And

1 what was the question about that in particular?

2 Q That provides that there will be
3 approximately 361 stripped parking spaces,
4 correct?

5 A For the building.

6 Q For the building.

7 A Yes.

8 Q And also 168 long-term bike places,
9 well, parking spaces, correct?

10 A For the building, not necessarily for
11 this project.

12 Q This project that is being considered
13 in Zoning Order 17-05 is the project that is at
14 issue in the Zoning order, correct?

15 A It is.

16 Q Okay.

17 A It is.

18 Q All right.

19 A And I could -- well, perhaps the
20 commissioners will ask me questions about it.
21 That's for the building, not for the retail
22 within the building.

1 Q All right. And on page --

2 A That's the total parking.

3 Q -- 14, 61(a) --

4 A Hang on, let me get there. Yes.

5 Q There is a 19-dock Capital Bikeshare
6 Station.

7 A There is.

8 Q That DDOT has requested.

9 A Yeah, there is.

10 Q All right. And that is part of the
11 order, correct?

12 A Yes, it is.

13 Q And paragraph 62 references reports
14 and a supplemental report from DDOT concerning
15 transportation, correct?

16 A It does reference that. What are you
17 asking to -- out of that?

18 Q I'm just asking you if it's there,
19 that's all.

20 A It's --

21 Q All right.

22 A -- that sentence is there, yes.

1 Q All right. Now, you referenced
2 Commissioner Hamilton's statement.

3 A I did.

4 Q All right. Now, isn't there a new
5 Cambria Hotel going up in Commissioner Hamilton's
6 Single Member District?

7 A It is.

8 Q And that's 141 hotel rooms?

9 A I can't tell you if it's not in front
10 of me, but it's, you know, more than 100 hotel
11 rooms, yes.

12 Q All right. And isn't it true that the
13 only parking that is specified for that hotel is
14 for employees, seven spots for employees?

15 A I don't know. I can get back to you
16 with that answer.

17 Q You don't need to. I'll had you the
18 Zoning Commission Order.

19 A Thank you. And could you point out
20 where it states that, so that I don't have to
21 read it all?

22 MR. KLINE: May I approach the

1 witness?

2 CHAIRPERSON ANDERSON: Sure. Is this
3 a document that is in the record or is this
4 just --

5 MR. KLINE: No, but it's impeachment.

6 THE WITNESS: It --

7 CHAIRPERSON ANDERSON: Go ahead.

8 THE WITNESS: Okay.

9 BY MR. KLINE:

10 Q Turn your attention to page 6,
11 paragraph 30.

12 A Page 6, paragraph 30, got it.

13 Q 154 hotel rooms.

14 A Correct. Okay. 154. Thank you for
15 clarifying.

16 Q Do you recall if that was what was
17 approved?

18 A I can see that is what was approved.

19 Q All right. And then paragraph 92.

20 A Um-hum, hang on, let me get there,
21 too. Got it.

22 Q What does paragraph 92 say?

1 A It says the DDOT analyzed the
2 applicant's parking plan to determine if 8 spaces
3 would be sufficient to meet the hotel's needs in
4 order that the spaces are intended for employee
5 parking and that the applicant provide employee
6 rates for other hotels in the District, which
7 results in initially the need for 7 spaces.
8 Accordingly 8 spaces is sufficient.

9 DDOT further noted that additional
10 spaces are likely to be needed. During
11 demolition --

12 Q Page 30, to accommodate hotel guests
13 who arrive by personal vehicle?

14 A Page 30 where?

15 Q At the top of the page, it's the
16 continuation of the sentence.

17 A During demolition. Oh, page 30. I'm
18 sorry. I went to page 31. To accommodate hotel
19 guests who arrive by personal vehicle, which
20 would occur by valet. And the hotel would work
21 with Colonial Parking to park the valet vehicles
22 in garages within 1 mile of the property.

1 Q All right. And so do you recall this
2 now as the former chair of the ANC?

3 A I recall this as a member of the ANC.
4 I voted on this.

5 Q Okay.

6 A Yes.

7 Q And in fact, if you look at paragraph
8 96, ANC-6D --

9 A Uh-huh.

10 Q -- noted its support of this project
11 with no parking spaces for hotel guests, correct?

12 A Yes, we did.

13 Q Okay. Now, hotel guests typically are
14 going to arrive with luggage, correct?

15 A I presume.

16 Q In your experience?

17 A I think this hotel is not going to
18 have hourly hotel guests, but, yes.

19 Q Okay. So if they are not going to
20 have hourly hotel guests, then people are going
21 to arrive with luggage, correct?

22 A Yes, yes.

1 Q All right. And so presumably, people
2 with luggage are not going to travel by bicycle,
3 correct?

4 A No, they will be going by car.

5 Q All right. So the ANC in this
6 instance, in a project in Ms. Hamilton's Single
7 Member District, supported an application that
8 provided for zero parking for patrons of the
9 hotel. Isn't that correct?

10 A It is correct.

11 Q All right. Great. Thank you. Now,
12 Ms. Hamilton also references that there are
13 already, I think her words are, let me get it so
14 I can quote it. She is talking about
15 transportation and parking and she --

16 A Where is she talking about it?

17 Q -- at the bottom of --

18 A What number?

19 Q The bottom of the first page in her
20 letter.

21 A In her letter. Thank you.

22 Q And she says "This is already a

1 constant challenge. This is how we live during
2 the Nats and DC United season." And she says
3 that this is an issue because this is only -- the
4 Nats is only 81 days a year and not 365. So
5 let's talk about that for a minute.

6 A Sure.

7 Q Nats Park is not within her SMD,
8 correct?

9 A No, it's not.

10 Q All right.

11 A It's the chair's.

12 Q So she has already got 81 days from
13 Nationals' games, right?

14 A We all do, yes.

15 Q You all do. And in fact, there is 82
16 games, because there is an exhibition game before
17 that, right?

18 A Shoot me for a game, yes.

19 Q Right. And then we have some concerts
20 as well, don't we? Maybe another half a dozen
21 events a year?

22 A Perhaps.

1 Q At Nats Park?

2 A Yep.

3 Q Okay. Then we have 10 games at Audi
4 Field for soccer?

5 A If that's what it is. I can't
6 remember when soccer plays. Something like that
7 and concerts and special events.

8 Q All right. So already we are already
9 talking about, I don't know, maybe not 81 dates,
10 but probably 125 dates where there are already
11 massive amounts of people traveling to this
12 neighborhood, correct?

13 A Traveling to the neighborhood, but not
14 necessarily traveling down narrow Buzzard Point
15 to the end of Buzzard Point. There is a
16 difference.

17 Q Well, but you have quoted her letter
18 citing these problems as being a problem in 6D06.

19 A It is.

20 Q So it's already a problem in 6D06,
21 isn't it?

22 A It is as it is a problem elsewhere in

1 Southwest. What the difference is, if you are
2 interested, is that what we are talking about is
3 a situation where these folks are basically
4 dealing with parking and that's a parking
5 concern.

6 The parking concern is less of a
7 concern for us down at Buzzard Point for parking
8 in the 6, which is what she is referencing in the
9 letter, because I know this from Commissioner
10 Hamilton. What we are concerned about parking at
11 the venue itself is the fact that there is not
12 going to be enough parking on-site specifically
13 devoted to the retail establishment, this
14 establishment, because there are only 91 spaces,
15 only a portion of which will go to the Buzzard
16 Point Fish House.

17 So what we are talking about is
18 parking down there and then the other cars that
19 are going to be having to do down Buzzard Point
20 to -- using Uber and Lyft and taxis anyway to get
21 there.

22 Q Are those 125 days?

1 A On 365 days a year if they are going
2 to be going to Buzzard Point Fish House.

3 Q Mr. Litsky, do you ever dine in
4 Chinatown?

5 A I do. I take the Metro.

6 Q Okay. Do you dine there, do you go
7 there on game days?

8 A Usually not.

9 Q Right. So no one is going down to the
10 Ballpark District or the Soccer Stadium District
11 to have dinner or to drink at a location down
12 there on game day unless they are going to a
13 game, are they?

14 A That's absolutely not true.

15 Q You don't think so?

16 A I know it's not so.

17 Q All right.

18 A I know it's not so. Ask Michael
19 Stevens who is the executive director of the BID.
20 He will blame that on the water.

21 Q He is not here at the moment.

22 A I know he is not.

1 Q All right. I would submit that that
2 experience is probably different than most of
3 ours in the room, but that's -- you are entitled
4 to your opinion, certainly.

5 A Yeah.

6 Q All right. Now, you have complained
7 about the lack of information. Isn't it your --
8 wasn't it your position, your stated position,
9 that you weren't going to look at this
10 application unless you had architectural
11 drawings? Isn't that what you stated to Mr.
12 Casten?

13 A I don't believe. I believe that's
14 what Mr. Casten stated to me.

15 Q You never demanded that there be
16 architectural drawings --

17 A I never did.

18 Q -- to be considered?

19 A No.

20 Q All right. And you indicated that you
21 were not provided with information. You know I
22 represent the applicant, right?

1 A Well, Sidon Yohannes represents the
2 applicant, that's who has come before us, yes.

3 Q Okay. Sidon is from Veritas Law Firm
4 and you know --

5 A Yes.

6 Q -- that --

7 A And I deal with Ms. Yohannes on a
8 regular basis.

9 Q All right. Did you ever reach out to
10 her and ask her for the information that you
11 thought you needed?

12 A Yes.

13 Q And when would that have been?

14 A That would have been the first time
15 she came before the ABC Committee and the only
16 time when I happened to be there when she was
17 there speaking about this application. And I
18 said, you know, Sidon, why are you presenting
19 this when we don't have all the facts? We don't
20 have any real drawings. We don't have any plan.
21 We don't have a parking plan. We don't have any
22 of the stuff that you showed us today.

1 Q Okay. Well, see you have been here
2 today.

3 A Yes.

4 Q And you have heard the testimony.
5 Based on the testimony that you have heard --

6 A Um-hum.

7 Q -- isn't it clear that Mr. Casten is
8 going to address any of the issues that you have
9 been concerned about, based on what you have
10 heard today?

11 A I have heard what he has told us. Am
12 I convinced of that? No, not necessarily. I
13 will tell you why. When I went to speak to Mr.
14 Casten when you were out of the room and Ms.
15 Sidon was out of the room, I went up to the
16 attorney and said, you know, our ANC is not like
17 opposing you. We are opposing you because we
18 needed to wind up getting information. He goes
19 whatever.

20 And so I said we really would like to
21 have a discussion with you, so we have a better
22 understanding of what is happening, he goes no

1 you don't. That's not your act. So I mean, that
2 was the manner in which he addressed me when I
3 went out there and said hey, let's figure this
4 out.

5 Q Isn't it true that --

6 A So I'm not convinced this is going to
7 be --

8 Q All right.

9 A -- able to participate.

10 Q Isn't it true that Mr. Casten did come
11 to an ANC meeting to make a presentation?

12 A He -- well, if you consider that
13 presentation, yes, he came.

14 Q The only question was did he come to
15 your ANC meeting?

16 A He came to our ANC.

17 Q Wasn't he presented with a multi-page,
18 multi-paragraph settlement agreement at the
19 commencement of that meeting?

20 A I believe he was presented with what
21 it is that the ABC Committee had drawn up as an
22 initial potential settlement agreement with Mr.

1 Casten for this forum. Yeah, I believe. I don't
2 remember.

3 Q Mr. Litsky, you are aware that ABC
4 Licenses are considered on a case-by-case basis,
5 aren't you?

6 A Absolutely.

7 Q How is it that the ANC could draw up
8 a proposed settlement agreement before -- as
9 claimed by you, you didn't have any information
10 about the application. How is that possible?

11 A Well, it was a settlement agreement
12 that we had hoped to begin to engage, so when we
13 get the facts to put it in the settlement
14 agreement. It was bare bones.

15 Q And wasn't it demanded of Mr. Casten
16 that he sign a settlement agreement?

17 A That is --

18 Q He was requested to answer yes or no?

19 A Apparently, that was stated by
20 Commissioner Dale. I don't recall that, but if
21 he says that is so, then perhaps that is so. I
22 didn't demand that, no.

1 Q You were there at the meeting?

2 A I was.

3 Q You didn't hear that?

4 A I don't recall it.

5 Q You don't recall if that happened or
6 not?

7 A That's correct.

8 Q Isn't that what effectively ended the
9 communication between your ANC and Mr. Casten?

10 A No.

11 Q Wasn't it essentially over at that
12 point?

13 A No, no. Well, we were -- any
14 possibility of having further conversation was
15 certainly ended, but it was ended significantly
16 before anything that had been presented to him
17 and said you know, it would be nice if you would
18 sign this and we sat down to begin negotiation.
19 Mr. Casten came in, if you are interested, very
20 blustery and was just ticked off at having to be
21 at the ANC at all.

22 He came in with Sidon Harris --

1 Yohannes and answered questions to the extent
2 that he chose to deliver answers. We asked for
3 kind of the information that you put before us
4 today. We were told you got nothing.

5 Q Now, you have heard Mr. Casten talk
6 about his operation, yet your testimony you say
7 well, we are worried about a sound system with
8 disco music on a Saturday night. Based on the
9 testimony that you have heard from Mr. Casten
10 today, is that a concern that you have with
11 respect to this operation?

12 A A concern that I have is the placement
13 of the speakers on the outside patio. A concern
14 that I have and the ANC has and why we put in
15 peace, order and quiet is the manner in which
16 sound will travel out on the water and out
17 through the sides of his building to the out --
18 to the marina and to National Park Service land
19 directly abutting this property, yes.

20 Q And you are worried about the people
21 in the marina, because you say that they live
22 there, correct?

1 A They have the right to live there
2 three days during the week, yes.

3 Q Are you familiar with the rules
4 governing the James Creek Marina, the Marina
5 Rules and Regulations?

6 A I am familiar with what I have been
7 told by the folks who occupy property on their
8 boats at the marina.

9 Q So you wouldn't dispute that Rule 26
10 states "Live-aboards are not permitted at the
11 James Creek Marina in accordance with National
12 Park Service policies," citing 36 CFR, which is
13 Code of Federal Regulations --

14 A Yes, I know.

15 Q -- § 2.61?

16 A I understand what is in the rules. Do
17 you understand what live-aboard means?

18 Q I don't -- you are not asking
19 questions. I'm --

20 A Okay. Then yes.

21 Q -- am asking questions today.

22 A Sure.

1 Q So your position is that the ANC's job
2 is to dictate how an applicant places its
3 speakers when you have an applicant before you,
4 he has had over 30 years' experience in the
5 business and seems to be able to competently
6 manage issues such as sound mitigation, is that
7 what your position is?

8 A My position is and the ANC's position
9 is, yes, we are concerned about the music and
10 sound emanating from any entity that does work in
11 our ANC. And we seek to ascertain precisely how
12 the sound mitigation is going to happen.

13 Q Precisely. So your position is --

14 A Well, not precisely.

15 Q -- you run the applicant's business
16 and you tell them how to do their business.
17 Isn't that your testimony?

18 A No, it's not. That's your testimony.
19 It's not my testimony.

20 Q You said precisely. I didn't say
21 precisely.

22 A In terms of --

1 Q Those are your words.

2 A -- well, you can be argumentative, but
3 fine.

4 MR. KLINE: May I approach the
5 witness?

6 CHAIRPERSON ANDERSON: Sure.

7 BY MR. KLINE:

8 Q I'm handing you what we will mark as
9 Applicant's Exhibit 20.

10 A Great.

11 CHAIRPERSON ANDERSON: Is that in the
12 record?

13 MR. KLINE: It's not in the record,
14 except that the protestants --

15 CHAIRPERSON ANDERSON: I'm fine.

16 MR. KLINE: -- it's thought that one
17 page from it --

18 CHAIRPERSON ANDERSON: Fine. Did you
19 share a copy with Ms. Farlee?

20 MR. KLINE: I already have.

21 CHAIRPERSON ANDERSON: Okay. That's
22 why I was asking. Go ahead.

1 BY MR. KLINE:

2 Q All right. You have in front of you
3 a Wells & Associates 2100 2nd Street Southwest
4 Comprehensive Transportation Review dated April
5 2017. Is that correct?

6 A I do.

7 Q All right. Now, do you have your
8 exhibits in front of you?

9 A I have -- I do. What exhibit would
10 you like me to refer to?

11 Q I would like for you to look at page
12 3 of Exhibit 2.

13 A Okay. Let me find that. Could you
14 refresh my memory? Is Exhibit 2 the Zoning
15 Commission --

16 Q No. It's excerpts from various
17 documents. I think it is four pages.

18 A Okay. I have Exhibit 1.

19 CHAIRPERSON ANDERSON: I need you to
20 speak into the microphone, sir.

21 MEMBER SILVERSTEIN: This is the
22 Applicant's Exhibit 2?

1 MR. KLINE: No, this is Protestant's
2 Exhibit 2.

3 MEMBER SILVERSTEIN: Pardon?

4 MR. KLINE: Protestant's Exhibit 2.

5 MEMBER SILVERSTEIN: Protestant's
6 Exhibit 2. Thank you.

7 BY MR. KLINE:

8 Q Do you have Exhibit 2 in front of you?

9 A I'm sorry, I'm missing that. Could
10 you, please, find Exhibit 2, because I can't find
11 it. It was mislabeled originally. So I want to
12 make sure I'm answering the question properly.

13 Okay. So what are we talking about at
14 Exhibit 2?

15 Q I believe it is the third page.

16 A Third page.

17 Q It says Wells & Associates at the top.

18 A Yes.

19 Q Do you have a Table 9?

20 A Yes, I do.

21 Q Do you see that?

22 A Table 9.

1 Q All right. And turn to page 22 of the
2 document that was handed to you.

3 A Sure thing. Go ahead.

4 Q That's the same table, correct?

5 A I'm looking at it. I don't know. It
6 would appear to be the same table, yes.

7 Q All right. So the part of Exhibit 2
8 that is the Wells & Associates Table 9, Site Trip
9 Generation Summary, is part of this Wells &
10 Associates 2100 2nd Street Southwest Comprehensive
11 Transportation Review Report, isn't it?

12 A Okay, yes.

13 Q All right. And in there you have
14 provided this exhibit, Table 9, for what reason
15 exactly?

16 A Well, what we have in there is -- are
17 a list of the number of apartments. We have a
18 list of the square footage, both of the quality
19 restaurant, I assume this applicant has the
20 quality restaurant, and 33,000 square feet of
21 additional retail.

22 What that lists is the total number of

1 trips in and out of that apartment building and
2 its associated uses.

3 Q I get all that. My question to --

4 A Well, you are asking me. I'm telling
5 you.

6 Q -- you is why do -- I don't need you
7 to read the table for me. What I need you to do
8 is tell me why it is that you think this exhibit
9 is important.

10 A Why I think this is important is
11 because it talks to the number of -- through the
12 quality restaurant which is the second box on
13 there, the number of vehicle trips that will be
14 going, especially evening hours. You will see
15 the in and out vehicle trips at 153 vehicle
16 trips, 75 out and a total of 228 vehicle trips.

17 Now, that is -- those are vehicle
18 trips to cars that are going down -- yes, that's
19 what it is.

20 Q Okay. So --

21 A Yes?

22 Q -- I mean, I know that that's what it

1 says, so why are you -- why is this offered as an
2 exhibit? What is the offered point?

3 A It's offered as an exhibit to show the
4 number of cars that at least this traffic
5 consultant says based upon her understanding of
6 what the business are going to be in that venue,
7 what kind of vehicle trips they are going to have
8 requiring in and out.

9 What I'm finding is that of the 750
10 patrons that are supposed to occupy this space,
11 that only 228 vehicle trips are going to be
12 required. Do you find that odd? I do.

13 Q Well, perhaps you do. Do you presume
14 that 750 people are going to drive themselves,
15 one person in each car?

16 A No, but if we double up, yeah.

17 Q Okay.

18 A And some people will take transit and
19 bikes.

20 Q And we will have -- and there will be
21 Rideshare vehicles, correct?

22 A Uber and Lyft, absolutely.

1 Q Correct. There will be taxi cabs?

2 A Absolutely.

3 Q There will be shared car vehicles?

4 A Absolutely.

5 Q All right. And is your concern

6 traffic or parking or what?

7 A My concern is the management of the
8 Uber and Lyft, because we have had broad
9 experience with the problems with Uber and Lyft
10 over at The Wharf and as other commissioners have
11 had problems with Uber and Lyft south of Dupont
12 Circle and in Columbia Heights and in Adams
13 Morgan. So we know what happens when you have a
14 constrained area of probably that don't have a
15 plan for Uber and Lyft, that's why I put it in
16 there.

17 Q Okay. So in terms of the p.m. peak
18 hour, the 228 is what you are talking about,
19 right?

20 A Per hour.

21 Q Right. So but in reality, what you
22 are talking about is in and out means half of

1 that number is one car, isn't it?

2 A Per hour.

3 Q Right. But that is -- even if
4 everyone drove themselves, then that --

5 A If we were surrounded --

6 Q Wait a minute, let me finish my
7 question.

8 A Oh, absolutely.

9 Q Even if we assumed every single person
10 drove themselves in their own car, then in
11 reality, that's only 114 cars, isn't it?

12 A No. We have in and we have out. If
13 you total it up, the total vehicle trips per
14 hour --

15 Q You think they are going to drive
16 different cars out than they are going to drive
17 in?

18 A No. They are going to drive in 153.
19 They will be driving out 153 at some point.

20 Q Correct. Now, with a restaurant that
21 is there, that causes people to extend their
22 stays or come early to an event, like a soccer

1 game or a baseball game or what have you, then
2 these numbers will be more dispersed, won't they?

3 A I don't know that for a fact. I'm not
4 a transportation analyst. You are.

5 Q No, I'm not. But we do have a
6 transportation report, don't we?

7 A Yes, we do.

8 Q And it is 36 pages, isn't it?

9 A Have you analyzed it? Yes.

10 Q It's 36 pages.

11 A If you say so. I haven't counted.

12 Q And the Zoning Commission analyzed it,
13 didn't they?

14 A The Zoning Commission accepted it,
15 yes.

16 Q Right. And the Zoning Commission
17 determined that the number of parking spaces and
18 the management of transportation to and from this
19 facility was adequate, didn't they?

20 A They accepted the report. I don't
21 know that they accepted what you just said.

22 Q Well, isn't that their job?

1 A Have you been to a Zoning Commission
2 hearing?

3 A Isn't that their job?

4 A No, their job is to determine broadly
5 exactly how each individual building is going to
6 be occupied.

7 What the Zoning Commissioners do is
8 dependent upon our Department of Transportation
9 to provide them guidance. They are not asking--

10 Q And they actually got such guidance in
11 this case, didn't they?

12 A And what did it say?

13 Q You were involved in this process.
14 You don't know what it said?

15 A I suppose I do, but I don't have it in
16 front of me. You do.

17 Q I'll show you what we will mark as
18 Applicant's Exhibit 21 and ask you if you know
19 what that is.

20 A You are telling me it's Applicant's
21 Exhibit --

22 MEMBER ALBERTI: Can you share a copy

1 to give to --

2 MR. KLINE: Thanks for sharing --

3 THE WITNESS: You're telling me it's
4 Applicant's Exhibit --

5 MR. KLINE: -- your copy.

6 THE WITNESS: -- 1, did you say?

7 BY MR. KLINE:

8 Q No, we are marking it as Exhibit 21.
9 Applicant's Exhibit 21.

10 A Okay.

11 Q Do you know what that is?

12 A Well, I'm seeing now that is a
13 memorandum from Sara Bardin who is the Director
14 of Office of Zoning.

15 (Whereupon, the above-
16 referred to document was
17 marked as Applicant Exhibit
18 No. 21 for identification.)

19 BY MR. KLINE:

20 Q Mr. Litsky, weren't you involved in
21 the development of all of these buildings in
22 Southwest?

1 A I have been involved in the
2 development of every single building that has
3 been south of M Street and south of the mall over
4 the course of 20 years. I don't remember every
5 single one of them, that's why I need paper in
6 front of me.

7 Q Okay. And you have paper in front of
8 you.

9 A What's your question?

10 Q Do you know what it is?

11 A I just told you what it is. It's the
12 Zoning Case subject of 17-05 for this building.
13 What are you asking me to address from within
14 that document?

15 Q I'm just asking you if that's the
16 report that you were referencing earlier. You
17 said the Department of Transportation, they did
18 the analysis.

19 A Yes.

20 Q This is the analysis, right?

21 A This is the -- yes, this is -- this
22 will be the analysis the Department of

1 Transportation provided the Zoning Commission for
2 them to review.

3 Q And we can presume given that, you
4 tell me if I'm wrong, fact that the Zoning
5 Commission approved this project in its order and
6 referenced this report and referenced the traffic
7 study that I talked about earlier, that we talked
8 about earlier, that the commission found those
9 reports and analysis acceptable, correct?

10 A Well, they accepted it and let me tell
11 you why.

12 Q No. My question to you is is it your
13 position that the Zoning -- what the Zoning
14 Commission ruled is not binding?

15 A I never said anything of the fact.

16 Q Well, answer my question.

17 A Well, here is what we are being given
18 the opportunity to speak to in this particular
19 area of zoning. This is not a PUD. This was a
20 design review before the Zoning Commission.

21 Q I'm not asking what the ANC did. I'm
22 asking you --

1 A No, I'm talking about what the Zoning
2 Commission did.

3 Q Right.

4 A The Zoning Commission had a Zoning
5 order -- a design review of this property. It
6 was not a full PUD. Whether they inquired after
7 DDOT and DDOT provided this, the basis for this
8 would not have approved or disapproved based on
9 the transportation plan.

10 Q Do you want to read the order? I
11 think we have already read the order.

12 A No, I read the order. I read the
13 order.

14 Q All right.

15 A That's fine. But that wasn't the
16 intent of the entire development.

17 MR. KLINE: I don't have anything
18 further of the witness at this time.

19 THE WITNESS: Great.

20 CHAIRPERSON ANDERSON: Ms. Farlee?

21 Oh, I'm sorry, I'm sorry. I apologize.

22 Questions by the Board Members? Mr. Silverstein?

1 MEMBER SILVERSTEIN: Yes. First,
2 thank you for 20 years of service, Commissioner.
3 Please, don't read anything determinative into
4 this question. It does not mean I have made up
5 my mind one way or another.

6 The question is this and it's a
7 question I often ask in Protest hearings. Assume
8 that the Board grants this license, what
9 conditions or what protections would have to be
10 attached to make it livable to you? Not
11 acceptable, but livable. What are your major
12 concerns? And how can they be alleviated?

13 THE WITNESS: One enormous concern
14 that we have is, the manner in which what we do
15 not have currently in front of us, precisely how
16 that lower garden is going to function, because
17 of its impact potentially on the Anacostia
18 Waterfront Trail, that's huge, that's enormous.

19 And that will impact more than just
20 our ANC. It impacts pedestrian management and
21 bicycle access through Buzzard Point. So that's
22 one thing that we are concerned about. We don't

1 have the facts for that.

2 What -- we would also appreciate if
3 what was provided would be the approval for hours
4 less than 3:00 in the morning on the weekends.
5 And perhaps a little bit less than that during
6 the week to provide a quieter area at the very
7 tip of Buzzard Point, which is as the buildable
8 area on Buzzard Point that goes out to the
9 Anacostia.

10 MEMBER SILVERSTEIN: Are you saying
11 indoor hours or outdoor hours?

12 THE WITNESS: Outdoor hours especially
13 is of concern to us. And any hours that will be
14 allowed from within the premises that have these
15 moveable walls that kind of evaporate the needs
16 for talking about indoor and outdoor hours,
17 because everything is outdoor once you lift up
18 the wall.

19 MEMBER SILVERSTEIN: Okay. No further
20 questions.

21 CHAIRPERSON ANDERSON: Mr. Short?

22 MEMBER SHORT: Good after -- oh, good

1 evening now. Whoa.

2 THE WITNESS: Let's not get to good
3 morning.

4 MEMBER SHORT: 20 years you have been
5 on the ANC. How many total years have you lived
6 in that community?

7 THE WITNESS: 42.

8 MEMBER SHORT: So it goes back quite
9 a few years.

10 THE WITNESS: It certainly does. I
11 came here with Jimmy Carter.

12 MEMBER SHORT: Okay. Believe it or
13 not, do you know where Channel Square Apartments
14 are?

15 THE WITNESS: I do. Did you live
16 there?

17 MEMBER SHORT: In 1970.

18 THE WITNESS: Really?

19 MEMBER SHORT: When they first opened
20 up, I had one of the duplexes.

21 THE WITNESS: Yeah, that's great.

22 MEMBER SHORT: Right there at the P

1 Street Loop. So the community --

2 THE WITNESS: Channel Square is in its
3 own -- are my constituents now.

4 MEMBER SHORT: Okay. I lived on 3rd
5 Street. It was very, very nice when I lived
6 there.

7 THE WITNESS: Yeah.

8 MEMBER SHORT: But let me say this to
9 you. How many changes have you seen, like this,
10 changes you have liked, changes you have
11 disliked?

12 THE WITNESS: With this?

13 MEMBER SHORT: Since in the 42 years
14 you have lived there.

15 THE WITNESS: The changes are kind of,
16 you know, hard to calculate. They are very
17 enormous. They have been enormous.

18 MEMBER SHORT: Yeah. Remember the
19 Safeway used to be right on the corner of 3rd and
20 P?

21 THE WITNESS: The first Safeway.
22 There was a second --

1 MEMBER SHORT: The little small one,
2 yes.

3 THE WITNESS: There was a second
4 Safeway and now there is a third Safeway.

5 MEMBER SHORT: Yes, okay.

6 THE WITNESS: Yes.

7 MEMBER SHORT: We know it.

8 THE WITNESS: Yes.

9 MEMBER SHORT: Okay. But at any rate,
10 those changes have been tremendous. The 4th
11 Street or the 3rd Street the new shopping -- where
12 -- it's a newer shopping center now, but -- all
13 of those nice places that were down there over
14 the years, I just thought I was somebody when I
15 lived down there. I really did. And I didn't
16 stay there long, but I stayed there maybe 18
17 months and I really enjoyed the neighborhood.

18 THE WITNESS: Come back.

19 MEMBER SHORT: And I got a chance to
20 know a little bit about the area and Fort McNair
21 and all those other wonderful things there, but
22 all of the changes. Right now, I don't recognize

1 it from 40 some years ago. But at any rate,
2 again, most of the changes you agree with,
3 correct?

4 THE WITNESS: By and large, yes.

5 MEMBER SHORT: Okay.

6 THE WITNESS: And I'll tell you why,
7 because we have had an opportunity to impact the
8 change. Our ANC is one of the most active, if
9 not the most active, in the entire city.

10 MEMBER SHORT: That's good to hear.

11 THE WITNESS: And so --

12 MEMBER SHORT: And for the sake of
13 time --

14 THE WITNESS: Sure.

15 MEMBER SHORT: -- now, this restaurant
16 according to the testimony we got from the
17 owner --

18 THE WITNESS: Yes.

19 MEMBER SHORT: -- is going to be
20 technologically one of the leading kinds of
21 restaurants probably on the east coast with salt
22 water tanks and all of the other things I saw in

1 there. And having been in public safety, I could
2 see that a lot of engineering went into this.
3 That sounds like it's going to be at the cutting
4 edge of technology.

5 THE WITNESS: If what the applicant
6 states is going to happen, absolutely, it's going
7 to be.

8 MEMBER SHORT: You saw the plans --

9 THE WITNESS: It's a restaurant.

10 MEMBER SHORT: -- that were submitted
11 for the restaurant, the drawings originally.

12 THE WITNESS: Today, yes. Yes, sir.

13 MEMBER SHORT: So that's -- some
14 architect did a lot of -- did a tremendous job on
15 that.

16 THE WITNESS: There is no doubt that
17 they are spending a lot of money on this and
18 that's not our concern. I will look forward to
19 going to that restaurant to eat, because I love
20 fish.

21 MEMBER SHORT: I'll meet you there.

22 THE WITNESS: It works well with me.

1 MEMBER SHORT: Okay. But let's say
2 this, for the sake of all of that --

3 THE WITNESS: Sure.

4 MEMBER SHORT: -- again, it's going to
5 be an added addition to the community.

6 THE WITNESS: Yes.

7 MEMBER SHORT: You have seen that --
8 the drawings and the renditions. You have heard
9 about the noise and a lot of other things. So if
10 that much engineering went into it and the
11 testimony was that they are looking at the sound
12 into the building itself and we're talking about
13 2020 before they even open.

14 THE WITNESS: Um-hum.

15 MEMBER SHORT: So between now and
16 then, do you think there is some kind of way that
17 probably the community and this business might be
18 able to work it out?

19 THE WITNESS: Well, I would like to
20 think that the applicant would work with the
21 community to work something out. But as I have
22 told Chairman Donovan or perhaps expressed in an

1 answer to the attorney on the other side, we
2 approached Mr. Casten to, you know, say we really
3 ought to talk about this.

4 I mean he -- I mean arms were crossed
5 and he just was not willing to do a damn thing.
6 And that's the concern. We are willing to sit
7 down and work stuff out. We want to. Obviously,
8 this thing is going to be built. There is no two
9 ways about it. We know it and you know it and
10 the applicant knows it.

11 The question is what can we do to
12 smooth out the rough edges so that we are not
13 creating a hassle? And that's all we are
14 attempting to do. We would look forward to
15 sitting with the applicant or the applicant's
16 representatives to work out a situation that
17 would be workable and --

18 MEMBER SHORT: Again, for the sake of
19 time --

20 THE WITNESS: Yes.

21 MEMBER SHORT: -- something I have
22 heard my Chairman Anderson say here many times,

1 if you two can't work it out or the community and
2 the business can't work it out, then this Board
3 will make decisions. And sometimes when this
4 Board makes decisions for the community, nobody
5 is happy.

6 THE WITNESS: Oh, I know that.

7 MEMBER SHORT: So we always like,
8 according to our -- and I would agree 100 percent
9 with our Chairman, you guys need to work
10 something out before the Board has to do it for
11 you. And 20 years on the ANC, I know you are --
12 you have a lot of tricks up your sleeve. No, I'm
13 not going to say tricks.

14 You have a lot of knowledge about the
15 community and business. And so hopefully things
16 work out. That's all I have, Mr. Chair. Thank
17 you very much for your testimony.

18 CHAIRPERSON ANDERSON: Any other
19 questions by any other Board Members? Mr. Kline?

20 MR. KLINE: Yes, I have one.

21 RECROSS-EXAMINATION

22 BY MR. KLINE:

1 Q Mr. Litsky?

2 A Um-hum.

3 Q You just said we would be willing to
4 sit with the applicant or the applicant's
5 representative to work this out.

6 A Absolutely.

7 Q Is that what you said?

8 A Absolutely.

9 Q All right. And is that the position
10 that you always take in terms of working with
11 applicants?

12 A That's the -- that is what it is that
13 we are doing in this case. Yes, what's your
14 point?

15 Q Well, is that what you feel that your
16 responsibility is as an ANC Commissioner?

17 A To work with applicants?

18 Q Yes.

19 A Yes, but it's a two-way street.
20 Applicants have to sit down and work with us as
21 do attorneys.

22 Q You have answered my question.

1 A As do attorneys.

2 CHAIRPERSON ANDERSON: Any other
3 questions, Mr. Kline?

4 MR. KLINE: Oh, yes.

5 BY MR. KLINE:

6 Q I want to show you what we will mark
7 as Applicant's Exhibit 22. Do you recognize
8 these series of emails?

9 A This series of emails that you had
10 sent me looking to get together for a coffee
11 date, yes.

12 (Whereupon, the above-
13 referred to document was
14 marked as Licensee Exhibit
15 No. 22 for identification.)

16 BY MR. KLINE:

17 Q Okay. So let's start from the back.

18 A Okay. The back has -- yeah, okay.

19 Q Actually, let's start from the front.

20 A Whatever you want.

21 Q You stated the front page, Saturday,
22 August 11, 2018, 1:15.

1 MR. LITSKY: Can I object to this?
2 What is his relevance?

3 CHAIRPERSON ANDERSON: Mr. -- all
4 right.

5 MR. LITSKY: I don't understand.

6 CHAIRPERSON ANDERSON: He asked a
7 question.

8 MR. LITSKY: Go ahead. I'll give you
9 the answer.

10 CHAIRPERSON ANDERSON: All right.

11 MR. LITSKY: What's the --

12 CHAIRPERSON ANDERSON: All right.
13 Hold on, hold on, hold on. He asked a question.
14 I know -- I try to stay out. If Ms. Farlee was
15 an attorney, then maybe she would object, but it
16 appears what is going on right now and because
17 I'm thinking, anticipating some of the Board
18 Members are concerned that Mr. Kline is trying to
19 impeach your testimony.

20 It appears, since I've not seen the
21 emails that he is saying that you testified today
22 that you are open to talk and he is trying to

1 show that you are not -- you were not. So --

2 THE WITNESS: In this case, yes.

3 CHAIRPERSON ANDERSON: So that's what
4 is going on at this juncture. So let's --

5 MR. KLINE: May I proceed?

6 CHAIRPERSON ANDERSON: Yes. Well, I'm
7 explaining to the folks what is going on. So you
8 can't --

9 THE WITNESS: I understand.

10 CHAIRPERSON ANDERSON: All right. If
11 you don't have an answer, don't answer. if you
12 can't answer the question --

13 THE WITNESS: Got it.

14 CHAIRPERSON ANDERSON: -- he can't
15 force you to answer a question if you can't.

16 THE WITNESS: Okay.

17 MEMBER ALBERTI: Chairman Anderson, I
18 just need to ask, since we are here very late and
19 this is getting long, I don't understand the
20 relevance. I don't understand the relevance to
21 this case as to whether the ANC was willing to
22 sit down and talk to the applicant or not. That

1 has nothing to do with the issues of peace, order
2 and quiet and all the other criteria for judging
3 this license.

4 I don't really care whether the ANC
5 was willing to talk to the applicant and I don't
6 care whether the applicant, this is personally
7 me, was willing to talk to the ANC. That is far
8 from the issues that this Board needs to
9 consider.

10 THE WITNESS: Thank you.

11 MR. KLINE: Does the Chair concur?

12 CHAIRPERSON ANDERSON: If you are
13 trying to impeach the witness. Move forward.

14 BY MR. KLINE:

15 Q Mr. Litsky, turn to the second page of
16 the document.

17 A Sure thing.

18 Q Wednesday, May 23, 2018, email from
19 you to me, what did you say?

20 A "I'm sorry, we will have to find
21 another date, Andrew. Next Wednesday doesn't
22 work. We will connect when we both get back from

1 a long weekend. Okay?"

2 Q All right. And then the bottom of the
3 first page is the response to that from me.

4 A Bottom of the first page. Okay. Yes,
5 I see it.

6 Q All right. And what does that say?

7 A It says "Andy, I have reached out to
8 you, phoned a few times, perhaps you didn't get
9 my messages. What day might work to get back on
10 the calendar? Thanks, Andrew."

11 Q And then on the top of the page, did
12 you respond?

13 A Yes, that was to you. This is -- "I
14 don't think that's necessary, Andrew. Our ABC
15 Committee makes recommendations to the ANC.
16 Coralie Farlee should be your contact. This
17 pertains to any activity regarding properties at
18 The Wharf. You should probably be speaking with
19 Elinor Bacon first before you head over to the
20 ABC Committee."

21 Q All right. And then the third page.

22 A Uh-huh.

1 Q An email dated October 17, 2018. What
2 does that say? Is that from me to you?

3 A It does. It's "Andy, it was nice to
4 see you last night. I think we can agree,
5 obviously, in terms of physical plan exceeds
6 expectations. I can't wait to get down there.
7 Yada, yada, yada, for dinner another time
8 spectacular rooftop once things settle down.

9 As I mentioned, I would still like to
10 find a time to meet for coffee. Let me know what
11 might work." And that was October 17th.

12 Q Did you respond to that?

13 A I don't remember. Did I?

14 Q I can't say whether you remember or
15 not.

16 A I don't.

17 Q All right. Turn to the next page.
18 October 23, 2018.

19 A Okay.

20 Q Can you read that email?

21 A Yes. "Andy, following up, our country
22 is turmoil because of people on the national

1 level do not talk to one another anymore. Even
2 as we might disagree, let's do better and at
3 least talk. Can we get something on the
4 calendar? Thanks, Andrew."

5 Q Did you respond to that email?

6 A I don't know. Did I?

7 CHAIRPERSON ANDERSON: All right. All
8 right. Mr. Kline --

9 THE WITNESS: I don't understand the
10 point.

11 CHAIRPERSON ANDERSON: -- thinks
12 that --

13 DR. FARLEE: I object. This is not
14 relevant.

15 CHAIRPERSON ANDERSON: I think that I
16 have gotten the point. I don't think we need to
17 go through 100 responses, okay. Do you have --

18 MR. KLINE: Just a couple follow-up
19 questions.

20 THE WITNESS: Sure.

21 BY MR. KLINE:

22 Q Did you ever reach out to me in

1 response to my inquiries to you to get together
2 concerning the nine applications that we had at
3 The Wharf and the one that we have pending here
4 today?

5 A Okay. Well, not -- no. I did not,
6 because I asked you to --

7 Q Thank you.

8 A -- get with the ANC.

9 Q You've answered my question.

10 MR. KLINE: And I have nothing
11 further.

12 CHAIRPERSON ANDERSON: Ms. Farlee, do
13 you want to -- do you wish to ask him any
14 questions to clarify any points that were made?

15 DR. FARLEE: Yeah.

16 REDIRECT EXAMINATION

17 BY DR. FARLEE:

18 Q You were asked what are your major
19 concerns and what would alleviate them. Do you
20 have anything you want to add to that that is are
21 you comfortable with the sound mitigation
22 program?

1 A Well, I haven't seen the sound
2 mitigation program and that is why when I
3 responded to the commissioners to ask what would
4 be added or what we would feel comfortable, it
5 would be a sound mitigation program. I also
6 spoke about the notion that we ought to be doing
7 something more substantive in terms of the
8 understanding about how the design is going to be
9 used outside, which currently, I believe, since
10 we don't have anything in front of us, could
11 potentially impede access and egress along the
12 Anacostia Waterfront Trail.

13 I'm charmed that, you know, lack of
14 getting together for a coffee date has caused
15 such disservice. I hope we could eliminate that.
16 Perhaps we will wind up getting together with the
17 attorney or his representatives or the applicant.
18 We actually have some dent on the table to talk
19 about.

20 No, I have nothing further.

21 Q Concerning emails, you always respond
22 to my emails?

1 A I always respond to everybody's email.
2 And I pick up the phone.

3 Q Okay.

4 A Usually, if I'm there.

5 Q What is your position on
6 entertainment, dancing and cover charge outside?

7 A At this venue?

8 Q Yes.

9 CHAIRPERSON ANDERSON: Ms. Farlee --

10 THE WITNESS: I thought I answered it.

11 CHAIRPERSON ANDERSON: -- at this
12 juncture --

13 DR. FARLEE: Yes?

14 CHAIRPERSON ANDERSON: -- the
15 questions that you are being asked are questions
16 that were generated. There can't be new
17 questions.

18 DR. FARLEE: Well, I'm summarizing
19 what are the major concerns and what would
20 alleviate them.

21 MEMBER ALBERTI: I mean, they are
22 related to what Mike asked.

1 THE WITNESS: I answered it.

2 CHAIRPERSON ANDERSON: I just want to
3 make sure.

4 THE WITNESS: I answered it.

5 CHAIRPERSON ANDERSON: Well, what are
6 they, if you need to clarify?

7 BY DR. FARLEE:

8 Q What would alleviate your concerns?
9 Are you concerned at all about entertainment,
10 dancing, cover charge outside? And what would
11 alleviate --

12 A Outside is the major concern that our
13 ANC has, because outside the sound travels.
14 Speakers outside is a concern. Music outside,
15 live music outside even, so --

16 Q Well, what would alleviate it? No EDC
17 outside?

18 A Yes, clearly.

19 Q Okay.

20 A Certainly no broadcast piped music
21 through speakers outside, that would potentially
22 alleviate it, yes.

1 Q Are you concerned about the outside
2 hours?

3 A As I stated before, yes.

4 Q And what would --

5 A I am concerned.

6 Q -- alleviate that?

7 A I believe what would alleviate that
8 certainly on the weekends would be, as I stated
9 before, lessening the hours during the evening
10 hours to 3:00 on the weekends and -- I'm sorry
11 from 3:00 on the weekends, let me rephrase that
12 before it is cast in stone.

13 Lessening it from 3:00 on the weekends
14 to perhaps 2:00 on the weekends and during the
15 week to lop an hour off, if we could do that.

16 CHAIRPERSON ANDERSON: What was --

17 THE WITNESS: It's the weekends that
18 I'm most concerned about.

19 CHAIRPERSON ANDERSON: You said 2:00
20 on the weekends and what hours did you say?

21 DR. FARLEE: 1:00.

22 CHAIRPERSON ANDERSON: You said 1:00?

1 I didn't hear the last answer you gave.

2 THE WITNESS: I didn't hear your
3 question, sir.

4 CHAIRPERSON ANDERSON: I did not hear
5 the last -- you were given some hours. You said
6 2:00 a.m. and then I didn't hear what else you
7 had said about hours.

8 THE WITNESS: Oh, I was
9 differentiating between weekend hours and weekday
10 hours.

11 CHAIRPERSON ANDERSON: Right. And you
12 said 2:00 a.m. for the weekend?

13 THE WITNESS: The weekend.

14 CHAIRPERSON ANDERSON: Yes.

15 THE WITNESS: And the weekday to
16 lessen it an hour, too. I can't remember what we
17 have down currently.

18 BY DR. FARLEE:

19 Q Let me remind you for Salt Line we
20 have them closing at 12:00 midnight during --

21 MR. KLINE: Objection as to relevance.
22 We are not here to talk about Salt Line.

1 CHAIRPERSON ANDERSON: I just --

2 DR. FARLEE: It's a nearby --

3 CHAIRPERSON ANDERSON: Hold on, hold
4 on, hold on, hold on.

5 MR. KLINE: I don't care what it is.

6 CHAIRPERSON ANDERSON: Hold on, hold
7 on.

8 DR. FARLEE: Okay.

9 CHAIRPERSON ANDERSON: The question
10 was asked of the witness. I did not hear the
11 answer the witness gave and all I ask the witness
12 to do is to, please, let me know -- I heard
13 weekend hours 2:00 a.m. and I think there was a
14 comment about weekday hours. I did not hear.
15 And so I was asking the witness what hours did
16 you state for weekdays? That's all that --

17 THE WITNESS: I think the preference--

18 MR. KLINE: Mr. Chairman, I'm going to
19 object to this whole line. Well, I mean, Mr.
20 Litsky says well, I'm concerned about this. I'm
21 concerned about that. I'm concerned about
22 getting to dinner. But I mean, the point is what

1 he is concerned about is not what this case is
2 about. It's about will this establishment have a
3 negative effect on peace, order and quiet.

4 And the fact that he pulls hours out
5 of the air as to what he would like to see, what
6 relevance does that have?

7 CHAIRPERSON ANDERSON: Well, I think
8 it --

9 DR. FARLEE: What hours we have --

10 CHAIRPERSON ANDERSON: Hold on. I
11 think -- but I do think, Mr. Kline, that it is
12 relevant because one of the questions that was
13 asked, the Board has to make a determination,
14 because you -- because both sides could not come
15 to an agreement, so the Board has to come to a
16 determination.

17 And what I had stated earlier, the
18 decision the Board is going to make is whether or
19 not are we going to approve the license, are we
20 going to deny the license? And if we are going
21 to approve the license, will the license be
22 approved with or without conditions?

1 MR. KLINE: Well, I don't -- I agree
2 with all of that.

3 CHAIRPERSON ANDERSON: Right.

4 MR. KLINE: Except the statement
5 because the parties could not come to an
6 agreement, because I --

7 CHAIRPERSON ANDERSON: Right.

8 MR. KLINE: -- do not agree with that
9 as a predicate. Every party is entitled to come
10 to this Board for a hearing.

11 DR. FARLEE: That's a rule.

12 MR. KLINE: If they reach a hearing
13 and there is an agreement in the meantime --

14 CHAIRPERSON ANDERSON: But --

15 MR. KLINE: -- that's great.

16 CHAIRPERSON ANDERSON: -- what I'm
17 stating though, Mr. Kline, I said because the
18 parties did not -- were unable to come to an
19 agreement, the Board has to make a decision.

20 And so I'm just trying to get some
21 clarification from the parties when we make the
22 decision, what type of decision we are going to

1 make.

2 Are we -- if we make a decision to
3 approve the license, are we going to approve the
4 license without conditions, as you have asked, or
5 will we approve it with conditions? I don't
6 know. So I'm just trying to find a --

7 MR. KLINE: I understand. But I mean,
8 my point is --

9 CHAIRPERSON ANDERSON: All right.

10 MR. KLINE: -- this witness does not--
11 is not competent to give testimony as to what is
12 the finding of the Board in terms of what is
13 appropriate. For Mr. Litsky to say what he would
14 like, I mean, I would like a pony.

15 CHAIRPERSON ANDERSON: I was taking
16 Mr. Litsky's testimony as him speaking on behalf
17 of the ANC. If that's not so, if he is just
18 giving his --

19 MR. KLINE: Only authorized to speak
20 on the ANC --

21 CHAIRPERSON ANDERSON: Right.

22 MR. KLINE: -- if the matter is

1 considered by the ANC and there is a vote.

2 CHAIRPERSON ANDERSON: All right.

3 MR. KLINE: He is not authorized to
4 come here and free-will -- freewheel on behalf of
5 the ANC.

6 CHAIRPERSON ANDERSON: And I agree
7 with you. All right. So let's move on.

8 Do you have any other questions you
9 want to ask, Ms. Farlee, to wrap this up?

10 DR. FARLEE: I have a few things in
11 the summary statement. Can I postpone them until
12 then?

13 CHAIRPERSON ANDERSON: You said a
14 summary statement?

15 DR. FARLEE: Not questions, but --

16 CHAIRPERSON ANDERSON: All right.

17 MEMBER SHORT: That's closing
18 statement.

19 CHAIRPERSON ANDERSON: Yes, as long as
20 these are statements that were testified to. So
21 it can't be something new. As long as we are
22 clear with that.

1 DR. FARLEE: All right.

2 CHAIRPERSON ANDERSON: All right.

3 That's it?

4 DR. FARLEE: Yes, sir.

5 CHAIRPERSON ANDERSON: All right. All
6 right. Thank you very much, sir, for your
7 testimony. You can step down.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness was excused.)

10 CHAIRPERSON ANDERSON: Do you rest?
11 Meaning that you have no more witnesses?

12 DR. FARLEE: That's right.

13 CHAIRPERSON ANDERSON: All right. All
14 right. What documents it is that you have that
15 you want to move into evidence?

16 DR. FARLEE: We put all of our
17 exhibits in evidence.

18 CHAIRPERSON ANDERSON: No, you have
19 not.

20 DR. FARLEE: I'm sorry.

21 CHAIRPERSON ANDERSON: That's why I'm
22 asking you now. So you have identified. So you

1 have --

2 DR. FARLEE: All right. Exhibit 1, ZC
3 Order 17-05. Exhibit 2, extracts from ZC Order
4 17-05.

5 CHAIRPERSON ANDERSON: That's fine.
6 Go ahead. All right.

7 DR. FARLEE: Exhibit 3, Buzzard
8 Point --

9 MR. KLINE: Can we do them one at a
10 time?

11 CHAIRPERSON ANDERSON: All right. All
12 right.

13 DR. FARLEE: I am.

14 CHAIRPERSON ANDERSON: All right. All
15 right. Hold on.

16 DR. FARLEE: 4 is --

17 CHAIRPERSON ANDERSON: No, hold on,
18 hold on a minute, Ms. Farlee. Hold on one
19 minute. All right. Okay. So the first document
20 that you want to put in evidence is -- hold on,
21 let me go through the documents. I have them in
22 front of me.

1 So Exhibit 1. All right. Mr. Kline,
2 do you have an objection to Exhibit 1?

3 MR. KLINE: I do not.

4 CHAIRPERSON ANDERSON: So moved. So
5 Exhibit 1 is in the record.

6 (Whereupon, the above-
7 referred to document was
8 received into evidence as
9 Protestant Exhibit No. 1.)

10 CHAIRPERSON ANDERSON: Okay. Exhibit
11 2?

12 DR. FARLEE: Extracts from ZC Order
13 17-05.

14 MR. KLINE: I have an objection.

15 CHAIRPERSON ANDERSON: Hold on.

16 DR. FARLEE: It's ZC 17-05.

17 CHAIRPERSON ANDERSON: Hold on. I'm
18 going through them one at a time. Go ahead, Mr.
19 Kline.

20 MR. KLINE: Right. My objection is
21 these are excerpts. I don't have any problem
22 with what we have labeled as Applicant's 20 and

1 21, which are complete documents coming in, but
2 in terms of picking and choosing and cherry
3 picking what they want, first of all, No. 1 is
4 argument. When I say No. 1, there are four pages
5 that are Exhibit 2.

6 And there are just three documents.
7 They are completely different. The first page is
8 simply argument. It is not evidence. It's
9 argument. It says well, this says this and this
10 says that and it's inappropriate as evidence.
11 It's not evidence.

12 CHAIRPERSON ANDERSON: All right. So,
13 Ms. Farlee, have you seen Exhibit 20 -- is --
14 what is Exhibit 21?

15 MR. KLINE: Exhibit 20 --

16 CHAIRPERSON ANDERSON: No, I'm sorry.
17 What document did you offer --

18 MR. KLINE: Let's -- I think it might
19 be easier to do the four pages that we are
20 talking about.

21 CHAIRPERSON ANDERSON: All right.

22 MR. KLINE: That make up Exhibit 2.

1 CHAIRPERSON ANDERSON: All right.

2 MR. KLINE: The first page of Exhibit
3 2 is argument. It's inappropriate in my opinion
4 as an exhibit. It is not evidence. It makes
5 argument that this exhibit says this and that
6 exhibit says that. And it's not appropriate as
7 it's not evidence.

8 CHAIRPERSON ANDERSON: So let me ask
9 you, is the first page, is this in the document
10 or there did someone summarize the document?

11 MR. KLINE: It looks to me -- I mean,
12 as --

13 CHAIRPERSON ANDERSON: I don't know.
14 You have the full document.

15 MR. KLINE: All right. It looks to
16 me, it says ZC Order 17-105, reference extracted
17 from the 25-page order. And then there are
18 various extracts on here, but the documents
19 aren't here. They are completely out of context.

20 What it is is argument and it says
21 what they describe, so I mean, it's not evidence.

22 CHAIRPERSON ANDERSON: So this is not

1 -- so what is on Exhibit 2? What is in Exhibit
2 2? This is not from the document itself. Is
3 this -- are these exact --

4 MR. KLINE: The first page -- I'm
5 dealing with it page-by-page, because there are
6 four pages --

7 CHAIRPERSON ANDERSON: Right.

8 MR. KLINE: -- that are completely
9 different.

10 CHAIRPERSON ANDERSON: Right.

11 MR. KLINE: The first one is extracts,
12 but also contains argument. It says, you know,
13 Table 9 shows this and the cover page for this
14 exhibit shows that.

15 CHAIRPERSON ANDERSON: All right.

16 MR. KLINE: I mean, it's argument.

17 CHAIRPERSON ANDERSON: All right. So
18 yeah, I thought that at least page 1 was the -- a
19 page from the document that you showed. This is
20 just someone's complimented --

21 MR. KLINE: Right.

22 CHAIRPERSON ANDERSON: All right. So

1 no, I'm not going to -- I'm going to exclude
2 Exhibit 2. All right. Page 1.

3 MR. KLINE: On page --

4 CHAIRPERSON ANDERSON: What's page 2?

5 MR. KLINE: Page 2 is a single page 2
6 from some document that I don't even know what it
7 was. It was never identified and I don't even
8 know what it is.

9 DR. FARLEE: It is identified on page
10 1.

11 MR. KLINE: Well, I would object to
12 one page of an entire document being submitted
13 out of context.

14 CHAIRPERSON ANDERSON: So where is
15 page 2 from?

16 MR. LITSKY: The zoning case that
17 counsel just entered into evidence.

18 MR. KLINE: Right. And we --

19 MR. LITSKY: It's the Zoning case for
20 the building.

21 MR. KLINE: -- don't need it.

22 CHAIRPERSON ANDERSON: I'm just saying

1 I don't know what -- all right. Hold on. I have
2 page 2.

3 DR. FARLEE: Exhibit 2.

4 CHAIRPERSON ANDERSON: Page 2 starts.
5 It says page 2. It's C, D, E, F, G, H, I, what
6 is this page from?

7 DR. FARLEE: The exhibit.

8 CHAIRPERSON ANDERSON: What exhibit?

9 DR. FARLEE: Exhibit 2 to Zoning Case
10 17-05.

11 CHAIRPERSON ANDERSON: But the problem
12 with this page, it's a single page. I don't know
13 what the single page is from, because if you --
14 if it was a -- if the original -- if you have the
15 whole exhibit, the Zoning decision, I will
16 include it, but this is just a random page.
17 There is nothing on this page that says that this
18 came from this document.

19 So I'm not going to allow page 2,
20 because it is out of context. There is -- I
21 cannot identify where this page came from, so I'm
22 not going to -- what about -- we have Table 9.

1 What is Table 9?

2 MR. KLINE: I have no objection to
3 Table 9 coming in.

4 CHAIRPERSON ANDERSON: Okay.

5 MR. KLINE: Because as long as
6 applicant's 20, which Table 9 comes from, is
7 admitted.

8 CHAIRPERSON ANDERSON: All right. So
9 I don't have -- I have never seen 20, because I
10 don't have 20. I know --

11 MR. KLINE: May I pass up 20 and 21?

12 CHAIRPERSON ANDERSON: Right. So --

13 MR. KLINE: May I approach?

14 MR. LITSKY: I would object to having
15 that put in.

16 CHAIRPERSON ANDERSON: Tell me.

17 MR. LITSKY: I would remove this.

18 CHAIRPERSON ANDERSON: I'm sorry? Go
19 ahead, go ahead. I'm listening to you.

20 MR. LITSKY: Okay.

21 CHAIRPERSON ANDERSON: Why do you
22 object to the full document being --

1 MR. LITSKY: Well, if we are not going
2 to be able to submit the table that comes from
3 that document --

4 CHAIRPERSON ANDERSON: You will. No,
5 you are able to do that.

6 MR. LITSKY: Okay.

7 CHAIRPERSON ANDERSON: No, this is --
8 I'm trying to get some clarification.

9 MR. LITSKY: Sure.

10 CHAIRPERSON ANDERSON: Exhibit -- what
11 exhibit has this table?

12 MR. KLINE: Applicant's 20. We
13 identified it as Applicant's 20.

14 CHAIRPERSON ANDERSON: All right.
15 Have you seen 20? Can the protestant tell me
16 what Exhibit 20 is?

17 MR. LITSKY: Exhibit 20 is the plan
18 from which the third page of this document came.

19 CHAIRPERSON ANDERSON: Right, right.

20 MR. LITSKY: It is Table 9 from within
21 that.

22 CHAIRPERSON ANDERSON: Right. Okay.

1 MR. LITSKY: We, you know, would love
2 to have it in there if we are also --

3 CHAIRPERSON ANDERSON: Yes.

4 MR. LITSKY: -- provided Table 9.

5 CHAIRPERSON ANDERSON: All right. So
6 yes, so I will allow it, because it's the same
7 document. So at least it's in context.

8 MR. LITSKY: Absolutely, I understand.

9 CHAIRPERSON ANDERSON: All right. So
10 Exhibit 20 will be Joint Exhibit 1 from both
11 parties. Joint Exhibit 1.

12 (Whereupon, the above-
13 referred to document was
14 marked as Joint Exhibit 1
15 for identification and was
16 received into evidence.)

17 MR. KLINE: Got it.

18 CHAIRPERSON ANDERSON: So give that
19 copy to Ms. -- so both folks are going to -- are
20 introducing the entire document. All right. So
21 I need to get a copy of that one. So it's now
22 Joint Exhibit 1. I guess there is no one --

1 MR. KLINE: May I approach?

2 CHAIRPERSON ANDERSON: Yes, yes.

3 MR. KLINE: Thank you.

4 CHAIRPERSON ANDERSON: All right.

5 Thank you. All right.

6 MR. KLINE: And pages 4 and 5 of this
7 Exhibit 2, I don't care. I think they were
8 previously identified.

9 CHAIRPERSON ANDERSON: All right.

10 What's the next page?

11 DR. FARLEE: They are acceptable?

12 CHAIRPERSON ANDERSON: All right.

13 Fine. So they are part of the record.

14 (Whereupon, the above-
15 referred to document was
16 received into evidence as
17 Protestant Exhibit No. 2.)

18 CHAIRPERSON ANDERSON: Exhibit 4?

19 MR. KLINE: Exhibit 4 we object to.

20 It's an article. I mean, I could have put lots
21 of articles from The Eater to support our game.

22 We don't think it's appropriate for the Board to

1 consider editorial comment from any source, be it
2 The Hill Rag, be it Eater, be it Yelp or
3 whatever.

4 The point is that if Mr. Steven has a
5 viewpoint, he could have been here to testify and
6 we could have cross-examined him. And that would
7 have been that and we don't know for what purpose
8 this article was written, you know, what the
9 reasons were for the position that was taken. We
10 don't know any of that.

11 So this isn't even a letter to the
12 Board, where I know the Board would give leeway
13 even though the person isn't here to cross-
14 examine. This could be for a completely
15 different purpose. We just don't even know. And
16 if we are going to get into admitting articles,
17 then, you know, I'll be here next time with the
18 New York Times and the Washington Post and the
19 Washingtonian and everything else. It's just all
20 kind of silly.

21 CHAIRPERSON ANDERSON: All right. Why
22 is No. 4 being included?

1 MR. LITSKY: The reason we thought it
2 would be helpful for the Board to consider this
3 article written by the Executive Director of the
4 BID serving Buzzard Point, it provides and puts
5 in context from the standpoint of the guy who is
6 managing it, what is happening down there.

7 So we just thought that this was kind
8 of a bewildering case, I will tell you because
9 Buzzard Point is actually unbuilt, so we thought
10 that it would help -- it would be helpful in
11 putting the larger developments that are
12 happening at Buzzard Point in context and that's
13 why we included them. It does seem to do
14 anything insidious at all.

15 CHAIRPERSON ANDERSON: All right. All
16 right. I will -- I'm going to include Exhibit 4.

17 (Whereupon, the above-
18 referred to document was
19 received into evidence as
20 Protestant Exhibit No. 4.)

21 MR. KLINE: The Washingtonian is
22 coming next hearing. I've got to tell you, every

1 article from Washingtonian is coming next week.

2 CHAIRPERSON ANDERSON: Well, you know,
3 Mr. Kline, you have to -- if there are articles
4 out that that support your position, but the
5 Board will give it the weight that we think it's
6 worth. But it's -- all right.

7 So Exhibit 5? Position on Exhibit 5?

8 MR. KLINE: The same argument. I
9 don't even know what it's about. I don't think
10 this one was even identified.

11 CHAIRPERSON ANDERSON: Yes, it was.

12 MR. KLINE: All right.

13 MR. LITSKY: It was. We will --
14 that's okay. We don't have to enter that.

15 CHAIRPERSON ANDERSON: It's up to you.

16 DR. FARLEE: That's fine.

17 CHAIRPERSON ANDERSON: All right. All
18 right. So I would have, but Exhibit 5 -- all
19 right. Exhibit 6?

20 MR. KLINE: No objection.

21 CHAIRPERSON ANDERSON: So moved.

22 (Whereupon, the above-

1 referred to document was
2 received into evidence as
3 Protestant Exhibit No. 6.)

4 CHAIRPERSON ANDERSON: Exhibit 7?

5 MR. KLINE: I mean, Ms. Hamilton -- I
6 mean, I have a couple problems with this. One is
7 we had no opportunity to cross-examine her about
8 everything. I know the Board accepts hearsay
9 liberally. I get that. But she is an ANC
10 Commissioner. She doesn't have authority to
11 speak as a Single Member District Commissioner.

12 And this looks like an effort to
13 bootstrap and say gee, this is the position of
14 the Single Member District, which is not -- it's
15 not a thing. I mean, the commission either
16 speaks as a commission or doesn't speak at all
17 and it speaks as a commission after a duly called
18 vote and consideration of resolution.

19 CHAIRPERSON ANDERSON: Yeah, but, Mr.
20 Kline, one of your main witnesses was a Single
21 Member District Commissioner who was speaking --

22 MR. KLINE: But he spoke -- he didn't

1 speak to issues like this. He talked about how
2 his constituents felt and who he talked to and
3 his involvement in the location.

4 CHAIRPERSON ANDERSON: And she is also
5 speaking from her perspective, so --

6 DR. FARLEE: Her constituents.

7 CHAIRPERSON ANDERSON: -- I'll give
8 both the weight that it's due, so I will admit
9 it. I'm going to admit.

10 (Whereupon, the above-
11 referred to document was
12 received into evidence as
13 Protestant Exhibit No. 7.)

14 MR. KLINE: Both in terms of the
15 weight that they are due, please, keep in mind
16 that Commissioner Dale was here and subject to
17 cross-examination.

18 CHAIRPERSON ANDERSON: Yes.

19 MR. KLINE: So in considering that
20 weight, I hope the Board will consider it
21 appropriately given those differences.

22 CHAIRPERSON ANDERSON: And I think

1 though, Mr. Kline, if I remember, you did cross-
2 examine this document. There was extensive
3 conversation that you brought out in cross-
4 examination with Mr. Litsky regarding this
5 document and what was or was not.

6 I remember you asked some specific
7 questions that I believe that -- this is actually
8 what -- this is actually a great cross-
9 examination of a document and the person was not
10 here, because there is a mission that came and I
11 think you got your point across, sir. So I
12 will --

13 MR. KLINE: I will accept the
14 flattery.

15 CHAIRPERSON ANDERSON: I was not
16 trying to flatter you. You were stating that you
17 couldn't cross-examine the document and if I
18 remember correctly, you did a great job in cross-
19 examining the document and the witness was not
20 here.

21 So therefore, I will allow No. 7. And
22 I think that --

1 MEMBER SHORT: That's it.

2 CHAIRPERSON ANDERSON: -- is it as far
3 as the protestants are concerned.

4 The documents that you want to place,
5 I have included what was initially 21 as Joint
6 Exhibit 1, so that's in the record.

7 What documents are you trying to move
8 in?

9 MR. KLINE: I think that one was
10 actually 20.

11 CHAIRPERSON ANDERSON: Yes, 20. I'm
12 sorry. 20 as Joint Exhibit 1.

13 MR. KLINE: Right. And then so we
14 would move the Department of Transportation
15 Planning and Sustainability Division report on
16 the Zoning Case 17-05.

17 CHAIRPERSON ANDERSON: So that's No.
18 20 --

19 MR. KLINE: 21.

20 CHAIRPERSON ANDERSON: Which -- that
21 was 22?

22 MR. KLINE: It was identified during

1 the testimony as 21.

2 CHAIRPERSON ANDERSON: Oh, I'm sorry,
3 as 21. Any comments on 21?

4 MR. LITSKY: I'd ask that you put it
5 in.

6 CHAIRPERSON ANDERSON: I'm sorry?

7 MR. LITSKY: Put it in.

8 CHAIRPERSON ANDERSON: All right. So
9 21.

10 (Whereupon, the above-
11 referred to document was
12 received into evidence as
13 Licensee Exhibit No. 21.)

14 CHAIRPERSON ANDERSON: So I don't have
15 that, so provide it.

16 MR. KLINE: May I approach?

17 CHAIRPERSON ANDERSON: Yes, please.

18 MR. KLINE: Thank you.

19 CHAIRPERSON ANDERSON: So this is
20 Exhibit 21? Okay. What else?

21 MR. KLINE: That's what we have, Your
22 Honor. I mean, Mr. Chairman.

1 CHAIRPERSON ANDERSON: Did I move in
2 all your documents earlier?

3 MR. KLINE: Yes.

4 CHAIRPERSON ANDERSON: I know that --
5 all right. Okay. So they are moved into
6 evidence.

7 (Whereupon, the above-
8 referred documents were
9 received into evidence as
10 Licensee Exhibit No. 22.)

11 CHAIRPERSON ANDERSON: Okay. Fine.

12 MR. LITSKY: No objection from us, by
13 the way.

14 CHAIRPERSON ANDERSON: I'm sorry?

15 MR. LITSKY: I said no objection from
16 us.

17 CHAIRPERSON ANDERSON: Well, I just
18 wanted to make sure. Okay. That's all right.
19 Thank you. All right. Okay. So all right. Do
20 you need to take a break before you do closing
21 arguments or do you want to move forward, do it
22 right now?

1 MR. KLINE: I'm ready to go.

2 CHAIRPERSON ANDERSON: All right. So
3 go ahead, sir. And what I ask -- what I'm asking
4 both parties to do in your closing, I need you to
5 let the Board know what it is that you are asking
6 for, what findings that you are asking the Board
7 to make. Go ahead, Mr. Kline.

8 MR. KLINE: Yes, thank you, Mr.
9 Chairman and Members of the Board. Thank you for
10 your patience today. It has turned into a long
11 afternoon and now an evening.

12 But I hope I kept my promise, I told
13 you at the outset of this case that we think it's
14 an easy case. After all the evidence is in, we
15 still think it's an easy case.

16 We have, in my experience and I have
17 been in this room one or two times, one of the
18 most qualified applicants that I have ever had
19 the privilege of putting on the stand over there.
20 And I mean that most sincerely.

21 You have heard about his broad
22 experience running establishments. You have

1 heard how he has run similar establishments on
2 the water in a very similar setting. And as I
3 said at the outset, one of the toughest
4 neighborhoods to do business in in terms of
5 neighbors and neighborhood complaints and that's
6 Georgetown.

7 And he has done it and whenever there
8 were complaint, he testified, when there were
9 issues, he addressed them. He reacted and he did
10 what needed to be done.

11 There was one circumstance where they
12 were having, in terms of the whole area, issues
13 and he testified that he voluntarily cut his
14 hours by an hour to try to work with the
15 community and see that the problems were
16 addressed.

17 I appreciate that the ANC has
18 concerns. That's not unfair. However, when you
19 have quality operators that come before you and
20 make a presentation like we heard today, we have
21 a very clear vision as to what they want to do,
22 what they have done in other locations, then I

1 don't think that it is anyone's business,
2 particularly, you know, a protestant or an ANC,
3 to micromanage their affairs.

4 If there are problems with noise, I
5 hope that you are confident, as I am, that Mr.
6 Casten will address them. And that was really --
7 I mean, the two issues that we heard about today
8 substantively, other than well, they didn't meet
9 and they wouldn't tell us and they wouldn't
10 cooperate, I mean, we can talk about that all
11 night long.

12 But I think as Mr. Alberti said in
13 response to some rebuttal evidence that we were
14 putting in, some impeachment evidence, it's not
15 terribly relevant, who cares.

16 At the end of the day, you are charged
17 with determining whether this location for which
18 the applicant seeks a Retailer's Class CR is
19 appropriate considering issues related to peace,
20 order and quiet and concerning issues related to
21 residential parking needs and vehicular and
22 pedestrian safety.

1 Now, the latter is a mouthful, but I
2 think we can deal with that pretty easily. We
3 have -- this is not an old building. This is not
4 an old project. It was vetted by the Zoning
5 Commission just two years ago and you have in the
6 record the reports of all the transportation
7 analysis that was done.

8 And one of the important things to
9 note here is what the statute says and what it is
10 that you have evidence of. The statute talks
11 about effects on residential parking.

12 Now, if you read the reports that you
13 have in front of you, you will see that the
14 developer of this property provided 100 or more
15 spaces for residential parking than are required
16 by the Zoning Regulations. 100 or more spaces
17 additional than are required.

18 So if we are going to talk about an
19 effect on residential parking, well, this
20 building put even more than they were required to
21 do. They certainly, according to the Zoning
22 Commission and according to the Zoning

1 Regulations, provided the parking that was
2 required by law for the new residents that are
3 going to move into that building, but they also
4 provided an additional 100 spaces.

5 Now, the ANC, in their testimony
6 today, the protestants, jumped all up and down
7 about parking and people coming through the
8 neighborhood. And what do they do in the very
9 Single Member District from which we had a letter
10 complaining about this project and traffic and
11 parking and everything else, they approved a
12 hotel with 141 rooms and no parking for guests.
13 I mean, it just boggles the mind the positions
14 that are taken on an inconsistent basis.

15 We can approve a hotel, that's all
16 fine, we don't need any additional parking. But
17 Mr. Casten, who wants to spend, not on the
18 record, but one would guess quite a large sum of
19 money on this, as many Board Members have
20 described, state of the art facility, somehow he
21 is supposed to absolve all the parking problems
22 in the neighborhood.

1 I would submit to you that the parking
2 and transportation issues are a red herring.
3 They are raised because of hurt feelings. They
4 wouldn't talk to us. We demanded they sign a
5 settlement agreement and they refused. So
6 therefore, let's protest their license and cost
7 them money, that's why we are here today. I
8 don't think there is any question about that. I
9 think the evidence is very, very clear as to
10 that's why we are here today.

11 Now, the other issue, let's talk about
12 peace, order and quiet. The issue that we heard
13 about was noise. And you heard Mr. Casten talk
14 about what he is willing to do and will do, he
15 was pretty clear, I'm going to do that,
16 proactively to address noise, including a canopy
17 over the outside seating area, including sound
18 installation in the interior.

19 And he also testified this is a
20 Government building. The concrete slabs are, I
21 forgot how thick he said they were, but it's in
22 the record. And the chances that there is going

1 to be noise directly from the interior seem
2 pretty remote based on all of that.

3 In terms of the outside, there are a
4 couple of things that are important to note:

5 One is we talked about the canopy. We
6 talked about that.

7 The other is, I come back to what I
8 started with, the quality of the operator. Do we
9 have any doubt? Maybe Mr. Litsky does, but I
10 don't think anybody else in this room can have
11 any doubt that if there is a problem, Mr. Casten
12 is going to deal with it.

13 And Mr. Casten's testimony -- there is
14 one thing I want to point out, because I think
15 it's really important. Did Mr. Casten say I do
16 everything perfectly all the time? There is
17 never an issue in my establishment? He even
18 admitted, yeah, we make mistakes. Sometimes we
19 do. I don't want to be before you, unless it's
20 for an application, because that means I have
21 made a mistake and I have a problem.

22 But when he makes a mistake, I'm

1 convinced and I hope the Board is convinced, he
2 is going to deal with it. He is going to address
3 it. And if there is a problem from the operation
4 of this establishment, I think the evidence is
5 overwhelming that this applicant is going to deal
6 with it.

7 You heard from his manager briefly who
8 has been hired a year in advance before the
9 restaurant is going to open. Who does that?
10 I'll tell you who does it, someone who cares
11 about their operation, cares about what they are
12 doing, wants to manage it and wants to make sure
13 that it is done right. And I think the evidence
14 is overwhelming that that is what is going to
15 happen.

16 We are requesting that you approve the
17 CR application with the requested endorsements
18 and overall capacity of no more than -- and I say
19 no more than, because Mr. Casten was very clear,
20 it's all subject to getting through permitting.
21 It's all subject to a final C of O. But no more
22 than 750 people in terms of, you know, standing

1 occupancy for the few times a year he decides to
2 make use of it for charitable or fundraising
3 purposes, which is what he testified he was going
4 to do, that the inside seating be no more than
5 I'll say 300.

6 It is 265 is what we have, but I mean,
7 you know, I don't want to come back to you and
8 say well, the C of O was more. Until we get
9 completely through the permitting phase, you
10 know, that's what I would say.

11 And the outside sundeck of 85. And
12 then the other outside area adjacent to the
13 premises that was described on the board that we
14 saw pointing to the left, it's not there anymore,
15 but the outside area that over which the canopy
16 will be of 140.

17 And we would request that the
18 entertainment endorsement be approved inside and
19 outside. You heard Mr. Casten. It will be used
20 judiciously. He is not there to run a nightclub.
21 But he wants the flexibility to make this place
22 successful and be something special in the

1 District of Columbia.

2 I hope we all got that sense, but from
3 the presentation and the drawings, I think it is
4 going to be a very special place. And it is
5 going to be the greatest fish house in the United
6 States. I mean, that's what he seeks to do. And
7 some flexibility in terms of entertainment. I
8 mean if he wants to have a magician or a juggler
9 or anything else that is considered entertainment
10 outside, then I believe the evidence should be
11 clear that he should be trusted to do so.

12 And if there is going to be music out
13 there, I believe that we can count on Mr. Casten
14 to manage it, so that it doesn't disturb anyone.

15 And I think that that is a very
16 important component of the Board's decision in
17 this case is hearing from an applicant,
18 understanding what their vision is and having
19 some confidence in what they are going to do and
20 not hamstringing them with a lot of regulations
21 simply because an ANC commissioner raises his
22 hand and says I'm concerned about this. I'm

1 concerned about that. And pulls out some
2 excerpts from some various documents without any
3 other evidence and complains that they weren't
4 properly respected.

5 That's not what this process is about.
6 So we would request that you approve the license
7 on that basis. Thank you.

8 CHAIRPERSON ANDERSON: So you are
9 asking for the hours that were -- that is on the
10 notice?

11 MR. KLINE: That is correct.

12 MEMBER ALBERTI: May I ask a
13 clarifying question?

14 CHAIRPERSON ANDERSON: What's that?

15 MEMBER ALBERTI: May I ask that Mr.
16 Kline --

17 CHAIRPERSON ANDERSON: Go ahead.

18 MEMBER ALBERTI: So, Mr. Kline, I
19 think what you -- when you refer to capacity, I'm
20 trying to make sure we understand, you were
21 referring to seating, right? Because the seating
22 that -- those numbers that you gave us don't add

1 up to 750 total. So I think it was seating that
2 you are requesting?

3 MR. KLINE: Right. So the 750 is
4 overall interior occupancy.

5 MEMBER ALBERTI: Seating or --

6 MR. KLINE: No, occupancy.

7 MEMBER ALBERTI: Okay.

8 MR. KLINE: As you know --

9 MEMBER ALBERTI: Right, right.

10 MR. KLINE: -- when you --

11 MEMBER ALBERTI: Okay. Okay.

12 MR. KLINE: yeah.

13 MEMBER ALBERTI: I understand.

14 MR. KLINE: 750 total number.

15 MEMBER ALBERTI: 300 --

16 MR. KLINE: For occupance.

17 MEMBER ALBERTI: -- you said 300

18 inside?

19 MR. CASTEN: Inside.

20 MEMBER ALBERTI: So that's seating?

21 MR. KLINE: Yes, 300 seating.

22 MEMBER ALBERTI: 140 for the outside

1 adjacent --

2 MR. KLINE: Right.

3 MEMBER ALBERTI: -- summer garden.

4 MR. KLINE: And 85 on the sundeck.

5 MEMBER ALBERTI: And then the detached
6 summer garden was 85. Okay. Seating. Is what
7 you are asking?

8 MR. KLINE: Correct.

9 MEMBER ALBERTI: Okay. I just wanted
10 to make sure.

11 MR. KLINE: Yes.

12 CHAIRPERSON ANDERSON: Just a
13 clarification though, Mr. Kline. In your initial
14 application, you had asked for the 750, but you
15 were asking for the three outdoor areas. So you
16 are -- although you are only asking for two
17 outdoor areas, you are not making a change in the
18 total occupancy?

19 MR. KLINE: The total occupancy is --
20 the 750 is interior, I want to be perfectly
21 clear, because the way your --

22 MEMBER ALBERTI: Oh, okay.

1 MR. KLINE: -- the occupancy permits
2 now we are under your MOU or maybe it's ABRAs, I
3 am not sure.

4 MEMBER ALBERTI: Okay.

5 MR. KLINE: MOU with DCRA, there are
6 two numbers. There is a seating number and there
7 is an overall occupancy number to accommodate
8 employees, standing and what have you.

9 And what Mr. Casten was saying look,
10 if I want to have an event and I want to have a
11 cocktail party, fundraiser for politicians or I
12 want to have, he mentioned, a charity event that
13 he is involved in and has been involved in a
14 number of years, then he wants the ability to do
15 that, which might mean clearing some tables out
16 and doing standing, you know, cocktail parties
17 there, which means there would be more people in
18 there.

19 And that's why there are two numbers
20 to do that. That's not something that will be
21 done on a regular basis. I think Mr. Casten was
22 very, very clear about that and talked about the

1 stationary furniture and the stuff that couldn't
2 be moved around.

3 So I don't think by the time we are
4 done that the total occupancy number inside is
5 going to be 750, but I leave that to his
6 architect and to DCRA and to plan reviewers in
7 terms of what the appropriate overall number is.

8 CHAIRPERSON ANDERSON: All right.
9 Just another clarification again. And I'm going
10 back to the notice.

11 MR. KLINE: Yes.

12 CHAIRPERSON ANDERSON: The notice had
13 said that the second summer garden, 150 seats,
14 will be on a 50 -- okay, that's -- oh, that's the
15 one that you have -- the one that would be in a
16 50 yard long pier? Is that the one that you
17 have--

18 MEMBER SHORT: Nothing, no piers.

19 CHAIRPERSON ANDERSON: I'm trying to
20 figure out which one -- when I'm looking at the
21 application, which one you had dropped?

22 MR. KLINE: We are withdrawing the

1 pier.

2 CHAIRPERSON ANDERSON: The pier. So
3 that's the one with 150 on the pier?

4 MR. KLINE: Yes.

5 CHAIRPERSON ANDERSON: Okay. I'm just
6 looking at the application. All right.

7 MR. KLINE: I understand. I mean, the
8 numbers have shifted around a little bit.

9 CHAIRPERSON ANDERSON: All right.

10 MR. KLINE: It seems to move forward--

11 CHAIRPERSON ANDERSON: That's fine.

12 I was just look -- I was going back to the public
13 notice, what was being -- just to clarify what
14 was being -- okay. The hours are there, so
15 that's fine.

16 MR. KLINE: I mean, from a -- just --
17 I mean, just to be clear because I want to put
18 this on the record, from a notice standpoint, the
19 public is on notice of much more overall outside
20 occupancy, so I hope even the fact that the
21 numbers are shifting around, it's not going to be
22 of concern to the Board.

1 CHAIRPERSON ANDERSON: Okay. That's
2 fine. All right.

3 MR. KLINE: Plus we have withdrawn the
4 pier.

5 CHAIRPERSON ANDERSON: All right.
6 That's fine. All right. Ms. Farlee?

7 DR. FARLEE: But since we are talking
8 about occupancy --

9 CHAIRPERSON ANDERSON: You are now
10 doing your closing, so why don't you --

11 DR. FARLEE: Oh.

12 CHAIRPERSON ANDERSON: -- this is your
13 closing.

14 DR. FARLEE: Okay.

15 CHAIRPERSON ANDERSON: So why don't
16 you -- you tell me what it is that you are asking
17 the Board to do.

18 DR. FARLEE: Well, looking at the
19 placard and the third one with 50 seats on the
20 deck on the second floor, Mr. Kline just said
21 that would be 140 seats. So that's not
22 consistent.

1 CHAIRPERSON ANDERSON: Hold on.

2 DR. FARLEE: The application says 50
3 seats on that.

4 CHAIRPERSON ANDERSON: On the deck.
5 Right. The application says --

6 DR. FARLEE: On summer garden --

7 CHAIRPERSON ANDERSON: -- 50 seats
8 will be held on the deck on the second floor.

9 DR. FARLEE: -- on second floor. 50
10 seats.

11 CHAIRPERSON ANDERSON: Right.

12 DR. FARLEE: Not 140.

13 CHAIRPERSON ANDERSON: Is that the
14 same? Mr. Kline, the 50 seats that are on the
15 deck on the second floor, is that the same as the
16 outside adjacent to premise that where the canopy
17 will be?

18 MR. KLINE: That outside adjacent to
19 the premises is?

20 CHAIRPERSON ANDERSON: Where the
21 canopy is. Which --

22 MR. KLINE: It's adjacent to the

1 premises is 140.

2 CHAIRPERSON ANDERSON: No, but I'm
3 saying going by the notice, where is that? Do
4 you have the notice? Where is that in the
5 notice?

6 MR. KLINE: I'm looking at it. I'm
7 looking at the notice.

8 CHAIRPERSON ANDERSON: All right.
9 Which one would that be?

10 MEMBER SHORT: Mr. Chair, can I make
11 a comment?

12 MR. KLINE: It was the one that was
13 originally --

14 CHAIRPERSON ANDERSON: Hold on.

15 MR. KLINE: -- for 50.

16 CHAIRPERSON ANDERSON: I'm sorry,
17 what, Mr. Kline? I'm sorry, Mr. Short.

18 MEMBER SHORT: The observation I would
19 like to make is we are throwing all these numbers
20 around without getting the architectural drawings
21 and all those things and I really think that this
22 is kind of moot right now.

1 CHAIRPERSON ANDERSON: No, but what--

2 MR. KLINE: Mr. Short, we have the
3 drawings now. You have seen them today.

4 MEMBER SHORT: Yes, but they had --
5 nothing has been approved.

6 CHAIRPERSON ANDERSON: No, but what
7 I'm trying to do, Mr. Short, I'm looking at the
8 notice that was provided to the public about what
9 was --

10 MEMBER SHORT: What might happen.

11 CHAIRPERSON ANDERSON: -- right. What
12 was being requested. And so I just want to make
13 sure that in closing, that what is being proposed
14 is consistent with the notice. So that's all I'm
15 trying to do.

16 MEMBER SHORT: Okay.

17 CHAIRPERSON ANDERSON: Yeah.

18 MR. KLINE: And as I --

19 MEMBER SHORT: I understand.

20 MR. KLINE: -- tried to make clear
21 earlier --

22 CHAIRPERSON ANDERSON: Right.

1 MR. KLINE: -- what we had indicated
2 was there were two --

3 CHAIRPERSON ANDERSON: So I'm trying
4 to figure out the 140 --

5 MR. KLINE: Yesterday, there were a
6 total of 450 seats outside --

7 CHAIRPERSON ANDERSON: Right.

8 MR. KLINE: -- in three separate
9 areas.

10 CHAIRPERSON ANDERSON: All right.

11 MR. KLINE: My -- and three separate
12 areas. At this point, we are asking for 225 in
13 two separate areas. I agree the numbers have
14 moved around a bit, but my position is the public
15 has clearly been on notice that there were 450
16 seats contemplated and the fact that a few seats
17 moved from one area to another, I don't see as
18 fatal.

19 CHAIRPERSON ANDERSON: No, I know, but
20 was -- all right. Was the 50 seats on the deck
21 on the second floor, was that the area that was
22 going to have the canopy? That's what I'm trying

1 to find out. So which one would have the canopy?

2 MR. CASTEN: I can help you. So the
3 pier that extends out off 1st Street is supposed
4 to have or ultimately is going to have an area
5 underneath to service the general public for a
6 bunch of things. And then I think what they
7 envision are three different restaurant spaces on
8 top of it. That is where the second story came
9 in the confusion.

10 So when we made the application, all
11 of this was described to me. And I tried to
12 describe as best I could in the application.
13 There are three patios. One is the pier, one is
14 the sundeck and one is the adjacent patio we call
15 it.

16 The two we are looking for are the
17 patio, which is adjacent, the sundeck, which is
18 at the water's edge. The patio that is adjacent,
19 we are requesting 140-seat occupancy and the
20 sundeck on the water, we are requesting 82.

21 The second story and 250 occupancy for
22 the deck on the -- for the pier has been

1 withdrawn. And I think that is what is causing
2 the confusion.

3 MEMBER SHORT: Yes, that is great.

4 MEMBER ALBERTI: So the notice doesn't
5 address the patio with the canopy, according to
6 your explanation. This is what I think is the
7 question here. Because it addresses the sundeck.
8 It addresses the interior. But it doesn't seem
9 to address the patio at all.

10 MR. KLINE: Right. But I think that
11 is the contemplated third area. I mean, there
12 were three areas. There were not four areas.
13 There is one area --

14 MEMBER ALBERTI: I understand.

15 MR. KLINE: -- that has been --

16 MEMBER ALBERTI: But according to --

17 MR. KLINE: -- withdrawn.

18 MEMBER ALBERTI: -- Mr. -- it's either
19 50 or it's not contemplated at all in this
20 notice. That's all I'm pointing out for the
21 record.

22 MR. KLINE: Right. And what I am --

1 what I have said to you is if the public is on
2 notice of 425 seats outside, then it would seem
3 to be adequate notice, particularly if it is
4 indicated that there are various different areas.

5 MEMBER ALBERTI: All right.

6 CHAIRPERSON ANDERSON: Okay. I just
7 wanted to make clear that the area that is going
8 to have the canopy that you are asking for 140?

9 MR. KLINE: Seats.

10 CHAIRPERSON ANDERSON: I'm sorry?

11 MR. KLINE: 140 seats.

12 CHAIRPERSON ANDERSON: 140 seats.

13 MR. KLINE: Right. And then the
14 sundeck that is adjacent to the water --

15 CHAIRPERSON ANDERSON: Right.

16 MR. KLINE: -- 85 seats. And then the
17 pier has been withdrawn.

18 CHAIRPERSON ANDERSON: All right.

19 Okay. All right. Ms. Farlee?

20 DR. FARLEE: Yes, I want to try to
21 summarize the concerns about peace, order and
22 quiet and pedestrian safety, traffic and parking.

1 CHAIRPERSON ANDERSON: Okay.

2 DR. FARLEE: Initially, in response to
3 Mr. -- Board Member Silverstein's question about
4 major concerns and how would they be alleviated,
5 we have agreed to -- that the lower summer garden
6 is -- we are concerned about the lower summer
7 garden and its impact on the Anacostia Trail and
8 pedestrian access there.

9 We are concerned about the late hours,
10 3:00 on weekends is excessive. I believe we
11 compromised on 1:00 during the week and 2:00
12 weekends. I would propose even less, based on
13 what is nearby with our own -- well, Salt Line is
14 one who closes at 12:00 and 2:00, that's only an
15 hour difference, but that's a comparison to what
16 is in that neighborhood now.

17 MR. KLINE: I hate to object during
18 closing. There is no evidence as to what Salt
19 Line's hours are in this record.

20 CHAIRPERSON ANDERSON: There was
21 arguments, but there was no evidence. All right.
22 But I know you had objected when someone threw

1 out the Salt Line, so but go ahead, Ms. Farlee.

2 DR. FARLEE: We are concerned about
3 sound exiting the premises. So whenever there
4 are moveable walls, we want guarantees that there
5 are mitigation efforts that don't let the sound
6 outside.

7 But also, concerning outside sound, I
8 think our preference would be no entertainment,
9 dancing or cover charge on the outside.

10 Now, I think there has been discussion
11 that there could be appropriate sound mitigation
12 for that, but we have to be guaranteed of that.
13 Otherwise, it's a wide open area and on the
14 water.

15 The -- in terms of pedestrian safety,
16 traffic and parking, we want proposed sufficient,
17 committed parking for patrons, including
18 employees of the establishment. A plan for a
19 drop-off or whatever of -- drop-off/pick-up for
20 higher vehicles. Clarify traffic flow that is
21 ingress/egress.

22 Concern about, yes, the residential

1 parking making certain that the residential
2 parking in the building includes parking for
3 patrons and employees. I guess I said that, but
4 also we recommend a security plan that is
5 acceptable to ABRA staff and the Board prior to
6 the issuance of any license.

7 The preference would be to delay the
8 issuance of the license until all these issues
9 are resolved. Thank you.

10 CHAIRPERSON ANDERSON: Okay. Thank
11 you.

12 Do the parties wish to do proposed
13 findings of fact and conclusions of law or waive
14 their right?

15 MR. KLINE: We would like to reserve
16 the right to. We may waive later, but at this
17 point, we would like to reserve the right.

18 MR. LITSKY: We will reserve the right
19 as well.

20 CHAIRPERSON ANDERSON: All right. All
21 right. This is a new license, so the Board will
22 issue a decision within 60 days when the Board

1 receives the proposed findings of fact and
2 conclusions of law.

3 They are due to the Board 30 days
4 after you receive the transcript and the
5 transcript will be emailed to the parties in
6 approximately three weeks.

7 If you change your mind about filing,
8 please, inform us as soon as possible. All
9 right.

10 As Chairperson of the Alcoholic
11 Beverage Control Board for the District of
12 Columbia and in accordance with DC Official Code
13 Section 2-574(b) of the Open Meetings Act, I move
14 that the ABC Board hold a closed meeting for the
15 purpose of seeking legal advice from our counsel
16 on Case No. 18-PRO-00083, Buzzard Point Fish
17 House, pursuant to DC Official Code Section 2-
18 574(b)(4) of the Open Meetings Act and
19 deliberating upon Case No. 18-PRO-00083, Buzzard
20 Point Fish House, for the reasons cited in DC
21 Official Code Section 2-574(b)(13) of the Open
22 Meetings Act.

1 Is there a second?

2 MEMBER SHORT: Second.

3 CHAIRPERSON ANDERSON: Mr. Short has
4 seconded the motion. I will now take a roll call
5 vote on the motion before us now that it has been
6 seconded.

7 Ms. Wahabzadah?

8 MEMBER WAHABZADAH: I agree.

9 CHAIRPERSON ANDERSON: Mr. Short?

10 MEMBER SHORT: I agree.

11 CHAIRPERSON ANDERSON: Mr. Alberti?

12 MEMBER ALBERTI: I agree.

13 CHAIRPERSON ANDERSON: Mr. Cato?

14 MEMBER CATO: I agree.

15 CHAIRPERSON ANDERSON: Mr. Anderson?

16 I agree.

17 As it appears that the motion has
18 passed, I hereby give notice that the ABC Board
19 will recess these proceedings to hold a closed
20 meeting in the ABC Board conference room pursuant
21 to Section 2-574(b) of the Open Meetings Act.

22 Let me close the record and then I'm

1 going to make a statement. All right.

2 As Chairperson of the Alcoholic
3 Beverage Control Board for the District of
4 Columbia and in accordance with DC Official Code
5 Section 2-574(b) of the Open Meetings Act, I move
6 that the ABC Board hold a closed meeting on April
7 10, 2019 for the purpose of seeking legal advice
8 from our counsel on the matters identified in the
9 Board's Legal, Licensing and Investigative Agenda
10 for April 10, 2019 as published in the DC
11 Register on April 5, 2019.

12 Is there a second?

13 MEMBER CATO: Second.

14 CHAIRPERSON ANDERSON: Mr. Cato has
15 seconded the motion. I will now take a roll call
16 vote on the motion before us now that it has been
17 seconded.

18 Ms. Wahabzadah?

19 MEMBER WAHABZADAH: I agree.

20 CHAIRPERSON ANDERSON: Mr. Short?

21 MEMBER SHORT: I agree.

22 CHAIRPERSON ANDERSON: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON ANDERSON: Mr. Cato?

3 MEMBER CATO: I agree.

4 CHAIRPERSON ANDERSON: Mr. Anderson?

5 I agree.

6 As it appears that the motion has
7 passed, I hereby give notice that the ABC Board
8 will hold this closed meeting pursuant to the
9 Open Meetings Act. Notice will also be posted on
10 the ABC Board hearing room bulletin board, placed
11 on the electronic calendar on ABRA's website and
12 published in the DC Register in as timely a
13 manner as practicable.

14 It is 7:53 and we are adjourned for
15 the day. Thank you very much.

16 I would like to thank the parties for
17 their presentation today.

18 (Whereupon, the above-entitled matter
19 was concluded at 7:51 p.m.)
20
21
22

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This is to certify that the foregoing transcript


In the matter of: Buzzard Point

Before: DCABRA

Date: 04-03-19

Place: Washington, DC

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



Court Reporter

NEAL R. GROSS

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