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

2 1:41 p.m.

3 CHAIRPERSON ANDERSON: Our next case
4 is Case No. 19-PRO-00153, Club Cinema, License
5 No. 60040.

6 Will the parties please approach and
7 identify themselves for the record please.

8 MR. O'BRIEN: Stephen O'Brien for the
9 licensee. I'm accompanied by Dominick Zarrillo,
10 Z-A-R-I-L-L-O, who is a representative of AMC
11 Theaters.

12 CHAIRPERSON ANDERSON: Good afternoon.

13 MR. BENDER: All right. Jonathan
14 Bender for the ANC. I'm the chair of the ANC and
15 the SMD Commissioner for the area that
16 encompasses AMC Mazza.

17 CHAIRPERSON ANDERSON: Okay. This is
18 a protest hearing under petition to amend or
19 terminate the settlement agreement.

20 And I assume that the parties have -
21 is there anything, just as an FYI, are we able to
22 memorialize any agreement, we can write a Board
23 order, or the parties are like no, we have spoken
24 and we need to go to a protest hearing?

25 MR. O'BRIEN: Commissioner Bender and

1 I have had no problem communicating on a very
2 professional, civil level.

3 CHAIRPERSON ANDERSON: All right.

4 MR. O'BRIEN: Unfortunately, we just
5 can't reach agreement.

6 CHAIRPERSON ANDERSON: All right. I
7 got to ask.

8 All right. The way they have you -
9 Commissioner Bender, are you familiar with the
10 protest hearing, sir?

11 MR. BENDER: I have never been to one.

12 CHAIRPERSON ANDERSON: You have never
13 been to a protest hearing. Okay. Fine.

14 All right. Each side has 90 minutes
15 to present their case. Your 90 minutes starts
16 once you present your case.

17 So the way the process starts is that
18 I will do an opening remark, I'll ask if there
19 are any preliminary motions, then the licensee
20 will give an opening statement. You can also
21 give an opening statement, then the Board will
22 call its witness, who is an investigator.

23 MR. BENDER: Uh-huh.

24 CHAIRPERSON ANDERSON: The
25 investigator will go through his report. The

1 Board will ask questions of the investigator
2 based off of - based on what's in his report.

3 Once the Board asks questions of the
4 investigator, then the licensee will have an
5 opportunity to ask questions of the investigator,
6 of his report, and then you'll also have that
7 opportunity.

8 MR. BENDER: Uh-huh.

9 CHAIRPERSON ANDERSON: Once that's
10 done, the Board will ask more questions if it so
11 desires.

12 Depending what's going on, I might
13 give both sides an opportunity to ask more
14 questions, but that's my prerogative because it's
15 our witness.

16 MR. BENDER: Uh-huh.

17 CHAIRPERSON ANDERSON: Once the Board
18 presents its case, then the licensee will present
19 its case-in-chief. Once they present its case,
20 you'll have an opportunity to cross examine
21 whatever witness they bring.

22 Your time starts once the licensee
23 presents its case. So the time that you utilize
24 to ask cross examination of witnesses, that's
25 going to take away from your time.

1 So I would save that and be careful in
2 that aspect and not spend a whole lot of time in
3 cross examination. I don't know how many
4 witnesses you have, but I would say use more of
5 your time in direct, rather than cross,
6 examination based on that, but each side has 90
7 minutes.

8 I try to be this is the only hearing
9 we have for the rest of -the afternoon. That
10 doesn't mean we're going to stay here until
11 midnight, but I'm somewhat flexible in the sense
12 of time.

13 But at the same time, depending how
14 many witnesses you have, each side has - we're
15 not going to have redundant or repetitive
16 testimony. I don't need ten people telling me
17 the same thing.

18 MR. BENDER: Uh-huh.

19 CHAIRPERSON ANDERSON: So one person,
20 their experience, and let's move on.

21 MR. BENDER: Okay.

22 CHAIRPERSON ANDERSON: All right. So
23 are there any preliminary motions from either
24 side?

25 MR. O'BRIEN: What's the rule on

1 witnesses please?

2 CHAIRPERSON ANDERSON: How many
3 witnesses do you have, sir?

4 MR. BENDER: I have -

5 CHAIRPERSON ANDERSON: I'm sorry, I
6 was asking Mr. -- oh, Mr. Bender, what Mr.
7 O'Brien asked is the rule on witnesses.

8 So what he's asking is that if -
9 depending whoever the witnesses are, that they
10 stay out of the room while another person is
11 testifying.

12 I'm sorry, who's with you, Mr.
13 O'Brien?

14 MR. O'BRIEN: Mr Zarrillo.

15 CHAIRPERSON ANDERSON: Is he your only
16 witness?

17 MR. O'BRIEN: Correct.

18 CHAIRPERSON ANDERSON: So because Mr.
19 Zarrillo, because he is the licensee, although
20 he's going to testify -- he's allowed to stay in
21 the room although he's going to testify.

22 How many witnesses do you have?

23 MR. BENDER: Four, including me.

24 CHAIRPERSON ANDERSON: All right. So
25 the three witnesses, who are your three

1 witnesses?

2 MR. BENDER: My witnesses are -

3 CHAIRPERSON ANDERSON: Are they in the
4 room?

5 MR. BENDER: Yes. Yes.

6 CHAIRPERSON ANDERSON: Who are they?

7 MR. BENDER: Dr. Kimberly Wilson, who
8 is the principal of Wilson High School; we have
9 Mr. Jeffrey Howser, who is the No. 2 person at
10 Georgetown Day School; and Anoushka Chander, who
11 is a student at Georgetown Day School.

12 CHAIRPERSON ANDERSON: All right. So
13 all three folks have to leave the room. And so
14 therefore, when it's time for them to testify,
15 they can come in and testify.

16 So they have to leave the room at this
17 moment, and the Agency will find a room for them
18 to sit and stay. Once they have testified, then
19 they can come back in the room. Okay.

20 (Pause.)

21 CHAIRPERSON ANDERSON: All right.

22 MR. O'BRIEN: Just to make it clear,
23 Mr. Chairman, no one who remains in the room will
24 be permitted to testify.

25 CHAIRPERSON ANDERSON: He said he had

1 four witnesses -

2 MR. BENDER: Yes.

3 CHAIRPERSON ANDERSON: -- including
4 himself. Three people left. And so he's the
5 fourth person.

6 MR. O'BRIEN: The only reason I
7 brought that up was the protest information form,
8 I think, had at least one more.

9 MR. BENDER: No, there were actually
10 two more in there. They're not here.

11 CHAIRPERSON ANDERSON: All right. I
12 asked and he said he had four witnesses,
13 including himself, and three people left the
14 room. So that's four. So if any -

15 MR. O'BRIEN: All right.

16 CHAIRPERSON ANDERSON: Any other
17 preliminary matter?

18 MR. O'BRIEN: No, sir.

19 MR. BENDER: No.

20 CHAIRPERSON ANDERSON: All right. All
21 right. And does the applicant wish to make an
22 opening statement?

23 MR. O'BRIEN: Yes, sir.

24 The Board's longstanding and
25 consistent position favors settlement of cases by

1 settlement agreement. That's why the statute
2 requires that we participate in mediation, and in
3 fact most cases do so by settlement agreement.

4 In this case, the settlement
5 agreement, then called "voluntary agreement," is
6 21 years old. And we believe the evidence will
7 show that it is outdated and entirely unnecessary
8 to protect the protest against the protest issues
9 of peace, order and quiet and residential parking
10 needs.

11 The evidence will show that the
12 settlement agreement has been an anchor around
13 the neck of AMC Theaters and has stopped or
14 thwarted much needed renovation of the theaters.
15 These theaters, the testimony will show, are
16 dated, outdated, tired and not a very attractive
17 place to go.

18 When I use the words "dated" and
19 "outdated" and "tired," I guess I'm also
20 encompassing the settlement agreement itself.
21 But this case -- as we know, a settlement
22 agreement can only be changed in one of two ways;
23 by the agreement of all of the parties to it or
24 by order of the Board.

25 And this case, and this 21-year-old

1 history, will show why there's a good argument to
2 be made that no party should ever enter into a
3 settlement agreement - excuse me, enter into a
4 settlement agreement. That's what the evidence
5 will show.

6 CHAIRPERSON ANDERSON: Do you wish to
7 make an opening statement, sir?

8 MR. BENDER: I do. As I mentioned,
9 I'm Jonathan Bender, chair of ANC 3E.

10 AMC says in its protest information
11 form, its statement to its investigator to your
12 investigator, that it can't, quote/unquote,
13 compete in today's market because it has been,
14 quote, thwarted by the existence of the incident
15 voluntary agreement. Mr. O'Brien just called it
16 an anchor around their neck.

17 AMC goes on to claim that it has
18 labored under this subject agreement for 21
19 years. And if the Board doesn't terminate this
20 agreement unilaterally, future applicants won't
21 want to enter settlement agreements to even say
22 if -- if not now, when their BIF will terminate.
23 We submit that this is a gross distortion of
24 reality.

25 The petitioner first contacted the ANC

1 six years ago without involving outside counsel.
2 The ANC said it would support an application from
3 the petitioner for alcohol service at all seven
4 screens if petitioner would agree to limit
5 patrons to one drink per trip to the bar, and all
6 patrons who were of age and wanted to drink were
7 issued -

8 CHAIRPERSON ANDERSON: Hold your voice
9 up, sir. I can't hear you.

10 MR. BENDER: Oh, I'm sorry.

11 CHAIRPERSON ANDERSON: That's better.

12 MR. BENDER: Do you want me to go back
13 or -

14 CHAIRPERSON ANDERSON: You can just
15 move forward, but just hold your -

16 MR. BENDER: I'm sorry. I apologize.

17 MEMBER SHORT: The microphone in front
18 of you, we can leave that on.

19 MR. BENDER: Is this better?

20 CHAIRPERSON ANDERSON: Yes. Thank
21 you.

22 MR. BENDER: As I was saying, the
23 petitioner first contacted the ANC six years ago,
24 in 2014, without involving outside counsel.

25 The ANC said it would support an

1 application from the petitioner for alcohol
2 service at all seven screens if petitioner would
3 agree to limit patrons to one drink per trip to
4 the bar, and if all patrons who were of age and
5 wanted a drink were issued more distinctive
6 wristbands to make it easy for servers to tell if
7 drinks were being shared with underage patrons.
8 The petitioner agreed to this, but ultimately
9 never followed up.

10 Several years later, via. outside
11 counsel, Mr. O'Brien, AMC again reached out to
12 me, as the SMD Commissioner, about negotiating a
13 resolution. I was perplexed by this because
14 petitioner had already agreed to the two minor
15 conditions the ANC requested at a public meeting.
16 And that's reflected in our minutes.

17 And the ANC had already agreed, in
18 principle, to support the application on that
19 basis.

20 Mr. O'Brien told me there were three
21 private parties to the original agreement. Now,
22 because I - we had previously agreed with Mr.
23 O'Brien's client to do a superseding agreement, I
24 hadn't looked carefully enough at the original
25 agreement to notice there were two non-ANC

1 signatories to it. And while those signatories
2 could have complicated reaching a new agreement,
3 they didn't participate in this hearing, and so
4 that's no longer an issue.

5 It took a long time to get a clear
6 answer from O'Brien that, as to the ANC, his
7 client had decided against honoring the two minor
8 conditions it had agreed to at an open ANC
9 meeting.

10 So far from being quote/unquote under
11 the thumb of a restricting agreement and needing
12 this Board to save it, petitioner knew five years
13 ago - really, six years ago that ANC 3E would
14 support all the relief it sought, the ability to
15 serve alcohol at all seven screening rooms with
16 admission to all ages.

17 The ANC sought only two minor
18 conditions, which petitioner agreed to and then
19 years later changed its mind about.
20 Subsequently, the ANC even agreed to drop the
21 request for wristbands in order to facilitate a
22 negotiated resolution, but that wasn't enough for
23 petitioner.

24 And so that's why we're here today
25 primarily, because petitioner refuses to limit

1 patrons to one drink per person per trip to the
2 bar, as at least three other theaters in D.C. do,
3 and as some of petitioner's other theaters do.

4 Why does the ANC care about this
5 condition? Because we have a tremendous number
6 of underage students who live here and/or go to
7 school here every day.

8 That includes thousands of college
9 kids, but it also includes several thousand
10 students at the two high schools and soon two
11 middle schools within easy walking distance of
12 the theater at issue, AMC Mazza. This creates an
13 unusually high risk of underage drinking at an
14 all-age theater with alcohol service.

15 The leaders of our local schools care
16 about this condition, too. They care enough to
17 be here today instead of at the two large schools
18 they manage. Moreover, a student from one of the
19 schools has put her studies on hold to testify
20 today.

21 After I testify about the ANC's
22 attempt to resolve this matter and what I learned
23 about the conditions imposed by other theaters,
24 you'll first hear from Jeffrey Howser, who is the
25 No. 2 official at Georgetown Day School. GDS has

1 a high school in our neighborhood and will soon
2 also have a middle school.

3 Next, you'll hear from Anoushka
4 Chander, a junior at GDS. And finally, you'll
5 hear from Dr. Kimberly Wilson, principal at
6 Woodrow Wilson High school, a school with nearly
7 2,000 students.

8 All three of these witnesses will
9 testify, based on their unique perspectives, to
10 the danger posed to the community by permitting
11 drinking at an all-age theater in the community
12 without reasonable restrictions. At the close of
13 the evidence, I expect to ask you to deny the
14 petition in its entirety as it applies to the
15 ANC.

16 In the alternative, I will ask you to
17 heed the call from the ANC, educators and student
18 you hear from today, that some restrictions -
19 some restrictions must be imposed on an all-ages
20 theater in this neighborhood in which alcohol can
21 be consumed to reduce the risk of underage
22 drinking. Thank you.

23 CHAIRPERSON ANDERSON: Thank you. The
24 Board will call its first witness, Mr. Kevin
25 Puente.

1 WHEREUPON,

2 KEVIN PUENTE

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

6 CHAIRPERSON ANDERSON: Okay. Have a
7 seat please. Mr. Puente, can you state your name
8 for the record please, and where are you
9 currently employed?

10 MR. PUENTE: Kevin Puente, the
11 Alcoholic Beverage Regulation Administration.

12 CHAIRPERSON ANDERSON: And what is
13 your role at ABRA, sir?

14 MR. PUENTE: Investigator.

15 CHAIRPERSON ANDERSON: And what are
16 some of your duties and responsibilities?

17 MR. PUENTE: I conduct inspections
18 and investigations of licensed AMC establishments
19 in the District of Columbia.

20 CHAIRPERSON ANDERSON: And are you
21 familiar with this establishment today, Club
22 Cinema?

23 MR. PUENTE: Yes, I am.

24 CHAIRPERSON ANDERSON: And how are you
25 familiar with this establishment?

1 MR. PUENTE: I conducted a protest
2 investigation.

3 CHAIRPERSON ANDERSON: And did there
4 come a time that you wrote a report?

5 MR. PUENTE: Yes.

6 CHAIRPERSON ANDERSON: Can you please
7 let us - based on your written report, can you
8 give us some information about what is it -- your
9 findings about the nature of this protest today.

10 MR. PUENTE: Yes, sir. I conducted a
11 protest investigation of Club Cinema of Mazza,
12 Inc. trading as Club Cinema, which is located at
13 5300 Wisconsin Avenue, N.W.

14 The petition to amend or terminate the
15 SA was submitted by Vice President Kevin Connor.
16 The application was being protested by ANC 3E,
17 which is being represented by Jonathan Bender.

18 The protest issues for the protestants
19 involved are the following: That the
20 establishment will have an adverse impact on
21 peace, order and quiet, adverse impact of the
22 establishment on real property values, and the
23 effect of the establishment on residential
24 parking needs and vehicle and pedestrian safety.

25 On Monday, March 2nd, I telephonically

1 interviewed Jonathan Bender of ANC 3E. Mr.
2 Bender stated that the current SA states that
3 only two out of the seven theaters require
4 patrons to be 21 years old or more to enter and
5 have alcohol.

6 Mr. Bender advised me that Club Cinema
7 wants to have all seven theaters to have alcohol
8 inside them. Mr. Bender stated that the ANC has
9 two issues, the first being that they would like
10 to see Club Cinema have a policy in place that
11 the patrons only get one drink per trip.

12 Mr. Bender stated that the ANC is
13 concerned that there could be underage
14 consumption of alcohol if all the theaters allow
15 alcohol consumption. They say that the area, the
16 1500 block of Wisconsin, is very close to
17 American University as well as two other major
18 schools.

19 Mr. Bender said that ANC 3E is
20 concerned that the kids that attend these schools
21 that are not 21 will consume alcohol.

22 Mr. Bender stated that someone that is
23 21 years old or more could possibly buy multiple
24 drinks, then pass the drinks off to underage kids
25 inside the theaters. Mr. Bender stated that ANC

1 3E believes that it could be bad.

2 Mr. Bender advised me that the second
3 issue that ANC 3E would like to see is more
4 matinee movies that are P and PG rated. Mr.
5 Bender stated that parents would like to take
6 their kids to these movies, and they don't want
7 to deal with adults inside of them consuming
8 alcohol and possibly getting intoxicated.

9 Mr. Bender stated that the parents are
10 going to allow their kids ranging from 10 to 14
11 years old to attend these movies, and they don't
12 want to worry about people who could possibly be
13 consuming alcohol.

14 Mr. Bender stated that he checked the
15 other local movie theaters in the area,
16 Landmark's E Street Cinema and AMC Georgetown,
17 and they both have a one-drink policy per trip to
18 the counter.

19 Mr. Bender stated that the ANC 3E
20 would like to see the movie theater continue to
21 operate until midnight seven days a week. And
22 then he lastly added that they're mainly
23 concerned about the high density of students in
24 the area from local schools and American
25 University, and that could possibly pose a risk

1 to underage consumption at the theater.

2 On Tuesday, March 3rd, 2020, I
3 received a statement from Club Cinema's lawyer,
4 Mr. O'Brien, that stated the following: The
5 existing voluntary agreement dates back to 1999
6 when the application was first made for this
7 license in order for the movie theater in the
8 District to serve alcohol. Thus, the parties
9 were sailing in unchartered waters.

10 Restrictions such as serves alcohol at
11 only two of the licensee's seven screens, and
12 patrons only - patrons only 21 or over in those
13 two screens, were negotiated in order to address
14 the fear of consequences of introducing alcohol
15 to the movie theaters.

16 What has changed in that intervening
17 20 years is that the service of alcohol in movie
18 theaters has become more common in the District
19 without - has become common in the District
20 without any evidence that the fears of the 1999
21 SA have materialized.

22 The licensee's theaters have operated
23 for the entire time without any ABC violations or
24 citizen complaints. Moreover, none of the other
25 movie theaters licensed in the District,

1 including the commonly owned AMC Georgetown
2 theater, are subject to some restrictions such as
3 the one found in the 1999 agreement at issue
4 here.

5 Meanwhile, during the intervening 21
6 years, the state-of-the-art movie-going
7 experience has changed. The public now expects
8 amenities such as plush, reclining seats, wider
9 aisles and food and beverages served at the
10 seats.

11 The licensee wants to modernize these
12 theaters so that to be able to compete in today's
13 market, but has been thwarted by the existence of
14 the incident voluntary agreement limiting age of
15 patrons at two screens, and restricting the
16 consumption of alcohol to only those two screens.

17 The grounds for the protest of the
18 requested termination of the 1999 agreement are
19 peace, order and quiet, residential parking needs
20 and vehicle/pedestrian safety, but the protest
21 that ANC cannot cite any such problem generated
22 by these movie theaters in the past 21 years of
23 operation.

24 And the licensee presently offers free
25 parking for all the patrons in the same building.

1 Patrons do not have to go outdoors in order to
2 get from the garage to the theater. And the
3 planned remodeling actually will reduce the
4 present total theater seating approximately by
5 200 patrons.

6 According to the District of Columbia
7 Geographic Information System, there are no
8 schools, recreation centers and public safety -
9 or public libraries within 400 feet of the
10 establishment. The Chevy Chase Plaza Children's
11 Day Care Center is approximately 113 feet away at
12 5310 43rd Street, N.W.

13 According to the GIS System, as of
14 February 27th, 2020, there are seven active ABC-
15 licensed establishments operating within 1,200
16 feet of Club Cinema. The seven licensed ABC
17 establishments in the area consist of one Class A
18 retail-licensed establishment, two Class CR
19 restaurant-licensed establishments, one Class DT
20 tavern-licensed establishment, one Class Hotel-
21 licensed establishment and two Class B grocery-
22 licensed establishments. Two licensed
23 establishments have settlement agreements.

24 Club Cinema is located at 5300
25 Wisconsin Avenue, N.W., between Jennifer Street,

1 N.W. to the south, Wisconsin Avenue, N.W. to the
2 east, Western Avenue, N.W. to the north, and 44th
3 Street, N.W. to the west.

4 Club Cinema is located primarily in a
5 mixed-used district with other business directly
6 beside the establishment. Club Cinema is located
7 inside a multi-use building. The establishment's
8 movie theater is located on the fourth floor. As
9 soon as you enter Club Cinema on the fourth floor
10 off the escalators or elevator, there's a ticket
11 counter and concession stand.

12 After you pass the ticket stand, there
13 are seven theaters down the hallway. At the end
14 of the hallway is a bar area that is commonly
15 known as Club Cinema. In order to enter the bar
16 area, you have to be 21 years old. There's
17 approximately seating for 15 people. All the
18 alcohol is locked and secured behind the bar.

19 I was advised that the bar is only
20 open on Friday and Saturdays from 6:00 p.m. to
21 12:00 a.m. There is one Metro stop in the city
22 at Club Cinema. The Friendship Heights Metro
23 station is one block away. There are four Metro
24 bus stops in the vicinity of Club Cinema. The
25 bus stop services Wisconsin Avenue, N.W., Western

1 Avenue, N.W., Jennifer Street, N.W.

2 Club Cinema is located at 5300
3 Wisconsin Avenue, N.W., and the building has an
4 underground parking garage for vehicles. Across
5 the street is Chevy Chase Pavilion. They also
6 have underground parking. And all across
7 Wisconsin Avenue, N.W., and Jennifer Street,
8 N.W., there is various two-hour parking.

9 ABRA investigator monitored Club
10 Cinema on two occasions from February 27th to
11 March 3rd, 2020. ABRA investigator did not hear
12 any excessive noise. On both occasions, Club
13 Cinema was closed.

14 On Thursday, February 27th, 2020, I
15 contacted the Office of Unified Communications
16 regarding a call for service at 300 block N.W.
17 At the time of the writing of this report, I have
18 not received them. And also the establishment
19 has no ABRA violations found in their
20 investigative history.

21 CHAIRPERSON ANDERSON: Are there
22 exhibits attached to your -

23 MR. PUENTE: Yes, sir.

24 CHAIRPERSON ANDERSON: What are they?
25 Can you go through the exhibits please?

1 MR. PUENTE: Exhibit 1 is a copy of
2 the petition to amend or terminate the settlement
3 agreement. Exhibit 2 is the copy of ANC 3E
4 protest letter. Exhibit 3 is a copy of the D.C.
5 zoning map. Exhibit 4 is a copy of the -

6 CHAIRPERSON ANDERSON: Go a little bit
7 slower please.

8 MR. PUENTE: Exhibit 4 is a copy of
9 the 1,200-foot GIS map. Exhibit 5 is a copy of
10 the 400-foot GIS map. Exhibit 6 is a photograph
11 of Club Cinema's front entrance. Exhibit 7 is a
12 photograph of the cinema lobby. Exhibit 8 is
13 another photograph of the Club Cinema lobby.
14 Exhibit 9 is a photograph of Club Cinema
15 entrance.

16 Exhibit No. 10 is a photograph of the
17 seating area inside the bar. Exhibit 11 is a
18 photograph of the alcohol behind the bar.
19 Exhibit 12 is a copy of the settlement agreement.
20 Exhibit 13 is a photograph of the Friendship
21 Heights Metro station. Exhibit 14 is a copy of a
22 nearby Metro bus map of the area bus stop.
23 Exhibit 15 is the Club Cinema parking garage.

24 Exhibit 16 is the photograph of the
25 Chevy Chase Pavilion parking garage. Exhibit 17

1 is a photograph of Wisconsin Avenue, N.W.,
2 parking. Exhibit 18 is also another photograph
3 of Wisconsin Avenue, N.W. parking. Exhibit 19 is
4 a photograph of Jennifer Street, N.W. parking.
5 And Exhibit 20 is a photograph of Jennifer
6 Street, N.W. parking.

7 CHAIRPERSON ANDERSON: All right. I'm
8 sorry, what are 19 and 20 again?

9 MR. PUENTE: Those are photographs of
10 parking along Jennifer Street, N.W.

11 CHAIRPERSON ANDERSON: Oh, there is
12 street parking along -

13 MR. PUENTE: Yes.

14 CHAIRPERSON ANDERSON: I thought in
15 your report you said that the cinema provided
16 parking in the building.

17 MR. PUENTE: Yes. There is an
18 underground parking garage.

19 CHAIRPERSON ANDERSON: Okay. Any
20 questions by the Board members? Go ahead, Mr.
21 Short.

22 MEMBER SHORT: Good afternoon,
23 Investigator.

24 MR. PUENTE: Good afternoon.

25 MEMBER SHORT: The cause of this

1 investigation that you're doing, was peace, order
2 and quiet a part of that?

3 MR. PUENTE: Yes. In the letter I
4 actually received from the ANC 3E, peace, order
5 and quiet was listed as one of the protest
6 reasons.

7 MEMBER SHORT: Did you find any
8 violations caused by this licensee to peace,
9 order or quiet?

10 MR. PUENTE: No, sir.

11 MEMBER SHORT: Did you go over the -
12 any settlement agreements or any voluntary
13 agreements, or any agreements between the
14 community and the licensee?

15 MR. PUENTE: Yes, sir.

16 MEMBER SHORT: Did you find any
17 violations in that agreement that have occurred
18 or are occurring with this licensee?

19 MR. PUENTE: No.

20 MEMBER SHORT: So your investigation,
21 according to your testimony and the questions
22 I've asked you, you didn't find any reason that
23 this licensee should - did do what he's
24 requesting to do - or what is he requesting to
25 do I guess is the question I need to ask.

1 MR. PUENTE: From our understanding,
2 they would like to expand their alcohol service
3 to all seven screens inside the movie theater.

4 MEMBER SHORT: And your investigation
5 of the theater at all seven of these locations,
6 would they cause a problem to the community?

7 MR. PUENTE: No, not that I found.

8 MEMBER SHORT: Thank you very much.
9 Thank you for your investigation - your
10 investigation and your report. That's all I
11 have, Mr. Chair.

12 CHAIRPERSON ANDERSON: Ms. Crockett.

13 MEMBER CROCKETT: Thank you,
14 Investigator Puente. I do have a question.
15 Given that the crux of this issue appears to be
16 young people coming to this movie theater and
17 possibly being able to consume alcohol, is there
18 any reason why none of the visits were made
19 during opening hours, during hours that the
20 theater would be open and you could actually
21 observe, you know, are there adults here, are
22 there mainly teenagers here or, you know, who is
23 - who's there?

24 MR. PUENTE: Yes. So I got assigned
25 this protest investigation on Thursday, February

1 27th. I worked night shift on the Friday the
2 28th. My dates are wrong. On one of those
3 dates, we received MPD closure. So I was
4 assigned that closure. So I couldn't get to the
5 establishment by midnight to monitor that.

6 Then when I came back on Monday the
7 following day shift, I was on day shift the rest
8 of the week. And on my two visits, the movie
9 theater was closed.

10 MEMBER CROCKETT: Okay. Thank you.

11 CHAIRPERSON ANDERSON: Any other
12 questions by any of the Board members?

13 (Pause.)

14 CHAIRPERSON ANDERSON: Your witness,
15 Mr. O'Brien.

16 MR. O'BRIEN: Thank you, sir.
17 Investigator Puente, just so the record is clear,
18 I think everyone understands the MPD closure that
19 you were assigned had nothing to do with this
20 licensee, right?

21 MR. PUENTE: Nothing to do with this
22 licensee, no.

23 MR. O'BRIEN: Okay. Thank you. Can
24 I invite your attention to your Exhibit No. 13,
25 the photograph?

1 MR. PUENTE: Yes, sir.

2 MR. O'BRIEN: If I understood your
3 testimony correctly, No. 13 depicts an entrance
4 to the Friendship Heights Metro station?

5 MR. PUENTE: Yes, sir.

6 MR. O'BRIEN: Okay. Now the
7 photograph depicts the east side of Wisconsin.
8 Am I correct?

9 MR. PUENTE: Yes.

10 MR. O'BRIEN: All right. And the
11 subject premises is on the west side?

12 MR. PUENTE: Yes. Uh-huh.

13 MR. O'BRIEN: So in other words, if
14 one looks to the right of this photograph -

15 MR. PUENTE: Uh-huh.

16 MR. O'BRIEN: -- one would see the
17 building -

18 MR. PUENTE: Yes.

19 MR. O'BRIEN: -- that we're talking
20 about. To your knowledge, is there not a direct
21 entrance to the Metro station from the building
22 across the street, in other words, under
23 Wisconsin Avenue?

24 MR. PUENTE: Yes, I believe there is.
25 It's -- I didn't go down there.

1 MR. O'BRIEN: Okay. But you're aware

2 -

3 MR. PUENTE: Yes.

4 MR. O'BRIEN: -- that that exists?

5 MR. PUENTE: Uh-huh.

6 MR. O'BRIEN: That one can go from
7 Metro underneath the street and into the Mazza
8 Gallerie building without going outdoors?

9 MR. PUENTE: Yes.

10 MR. O'BRIEN: Thank you. You stated
11 that there was no history of ABRA violations on
12 this license?

13 MR. PUENTE: Yes.

14 MR. O'BRIEN: And that's going back 21
15 years; am I correct?

16 MR. PUENTE: Yes. So I reviewed the
17 history for the last five years, and the last
18 five years I - there's nothing.

19 MR. O'BRIEN: Okay. If I were to tell
20 you that there's no history over 21 years -

21 MR. BENDER: I object.

22 MR. O'BRIEN: - would you have reason
23 to -

24 MR. BENDER: I object.

25 CHAIRPERSON ANDERSON: Hold on. Hold

1 on. What's the nature of your objection, sir?

2 MR. BENDER: That he is essentially
3 testifying to the witness.

4 CHAIRPERSON ANDERSON: No, he's asking
5 him a question and whether or not - Mr. O'Brien
6 is an astute lawyer, and I know that you're not
7 - are you a lawyer, sir?

8 MR. BENDER: I'm a lawyer, but I don't
9 practice in this area.

10 CHAIRPERSON ANDERSON: No. No. The
11 reason - no, the - I asked that for a reason.
12 Because when I know folks are lawyers, I have
13 different expectations.

14 So I did not know that you are a
15 lawyer. So you have now raised the bar, although
16 you don't practice here. So I'm going to
17 overrule the objection. You can answer the
18 question. Go ahead.

19 MR. O'BRIEN: Let me state it again.
20 The records that you were able to access go back
21 five years?

22 MR. PUENTE: Yes.

23 MR. O'BRIEN: To your knowledge, is
24 there any history of infractions before then
25 dating back 21 years?

1 MR. PUENTE: Not to my -

2 MR. O'BRIEN: Have you seen anything
3 to suggest a problem in that 21-year period?

4 MR. PUENTE: Not to my knowledge, no.

5 MR. O'BRIEN: Okay. To your
6 knowledge, have there been any complaints
7 received at ABRA regarding operations by this
8 licensee in 21 years?

9 MR. PUENTE: Not to my knowledge.

10 MR. O'BRIEN: Thank you.

11 MEMBER SHORT: As soon as the chair
12 comes back -- he stepped away for a minute.

13 (Pause.)

14 CHAIRPERSON ANDERSON: I'm sorry. I
15 apologize. I had to do something. So what did I
16 miss? You're done asking questions?

17 MR. O'BRIEN: I am done.

18 CHAIRPERSON ANDERSON: Go ahead, sir,
19 you can ask questions.

20 MR. BENDER: Good afternoon.

21 MR. PUENTE: Good afternoon.

22 MR. BENDER: So the theaters as they
23 currently stand, and have stood for 21 years, are
24 such that only two theaters serve alcohol. Is
25 that correct?

1 MR. PUENTE: Yes.

2 MR. BENDER: And in those two
3 theaters, you have to be over 21 to enter?

4 MR. PUENTE: Yes.

5 MR. BENDER: So there would be no
6 possibility of a person who was of age passing
7 drinks to a minor in those theaters. Is that
8 correct?

9 MR. PUENTE: There shouldn't be, no.

10 MR. BENDER: I mean unless they were
11 admitting underage people.

12 MR. PUENTE: Yes.

13 MR. BENDER: So this applicant wants
14 now to have seven theaters where anybody can
15 drink. Is there any evidence, in your estimation
16 - and let me rephrase that.

17 Isn't it true that a person who is
18 over 21 who has a drink, in such a situation,
19 could pass a drink to somebody who is less than
20 21?

21 MR. O'BRIEN: Objection on two
22 grounds. No. 1, calls for speculation by the
23 witness. And No. 2, it was not the subject of
24 the testimony of the witness. So it's a scope
25 objection.

1 MR. BENDER: So -- and if I may reply,
2 first of all, this is an expert witness and this
3 question is certainly within his expertise. It's
4 also common sense.

5 And it is within the scope of -
6 certainly after the questioning, which is that
7 the - what I'm trying to establish is that the
8 theater's experience with lack of infractions has
9 little to no bearing on what they want to do now
10 because the concern is not - that we, the ANC,
11 has raised is not that they won't adequately card
12 people they give alcohol to. It's that they'll
13 be able to pass alcohol to minors.

14 CHAIRPERSON ANDERSON: I'll allow this
15 question, Mr. O'Brien. The only reason I'm going
16 to allow it, it's based on the nature of what the
17 crux of this case is about. So I'll allow the
18 question.

19 MR. BENDER: Thank you, sir. I'm
20 trying to remember the question. Forgive me.
21 But certainly in a situation where all ages are
22 admitted to the theater, couldn't a 21-year-old
23 person - or 21-or-over-year-old person pass a
24 drink to a minor?

25 MR. PUENTE: Yes. There's always that

1 possibility.

2 MR. BENDER: And that would not be the
3 situation under the current regime, correct?

4 MR. PUENTE: Yes.

5 MR. BENDER: So do you think that -
6 so the current - well I'll leave it at that.

7 Do you recall when we spoke, I asked
8 if you could check to confirm that the two
9 theaters I had mentioned have wristband -- excuse
10 me have one-drink-per-trip requirements?

11 MR. PUENTE: Yes.

12 MR. BENDER: Did you have an
13 opportunity to check them?

14 MR. PUENTE: Yes. I checked all six
15 theaters in the District -

16 MR. BENDER: Uh-huh.

17 MR. PUENTE: -- and the two that you
18 mentioned, AMC Georgetown and I believe - excuse
19 my recollection.

20 MR. BENDER: It was the Landmark E
21 Street -

22 MR. PUENTE: Uh-huh.

23 MR. BENDER: -- and the Regal at
24 Gallery Place.

25 MR. PUENTE: Yes. They have

1 wristbands.

2 CHAIRPERSON ANDERSON: I'm sorry, I
3 didn't hear that answer.

4 MR. PUENTE: They had wristbands when
5 I called and asked on the phone and spoke with -

6 CHAIRPERSON ANDERSON: They had
7 wristbands?

8 MR. PUENTE: Yeah. That's what they
9 told me.

10 MR. BENDER: And they also have a one-
11 drink-per-person limit?

12 MR. PUENTE: They didn't tell me the
13 one drink per person. They just talked about the
14 wristbands and checking IDs.

15 MR. BENDER: Okay. And the other
16 theaters, what did you find?

17 MR. PUENTE: Well I found out that
18 there's - in D.C., we have six licensed ABC
19 theaters that have alcohol.

20 MR. BENDER: Uh-huh.

21 MR. PUENTE: I didn't look too much
22 more into it after that.

23 MR. BENDER: Okay. So you didn't
24 actually call the other -

25 MR. PUENTE: Yeah, I didn't call the

1 other four, no.

2 MR. BENDER: All right. Thanks. And
3 then just one other brief line of questioning.

4 You visited AMC Mazza?

5 MR. PUENTE: Yes.

6 MR. BENDER: And you've visited other
7 theaters in the past?

8 MR. PUENTE: Yes.

9 MR. BENDER: Okay. Did AMC Mazza
10 appear to be derelict or shabby in any way?

11 MR. PUENTE: What do you mean by that?

12 MR. BENDER: Were there things in
13 disrepair - obvious things in disrepair?

14 MR. PUENTE: No. When I went last
15 week on the March 1st and 3rd visit -- the March
16 3rd visit when it was closed, I went inside.

17 There was a manager there. I mean
18 everything was tidy and cleaned away. Everything
19 was locked and secured. So I can't really speak
20 if it was the words that you're using.

21 MR. BENDER: Uh-huh. Okay. But what
22 you saw didn't look radically unlike other
23 theaters you've been to?

24 MR. PUENTE: Oh yeah. It looked clean
25 and neat and I had no issues with it.

1 MR. BENDER: Okay. I don't have any
2 further questions. Thank you.

3 MR. PUENTE: Uh-huh.

4 CHAIRPERSON ANDERSON: Any questions
5 by any other Board members?

6 MEMBER SHORT: Yes.

7 CHAIRPERSON ANDERSON: Go ahead, Mr.
8 Short.

9 MEMBER SHORT: Investigator Puente,
10 you mentioned wristbands at other theaters in the
11 District of Columbia that serve alcohol.

12 MR. PUENTE: Yes.

13 MEMBER SHORT: Does that serve as a
14 deterrent, or does it serve its purpose as far as
15 people handing off drinks to other people in
16 theaters?

17 MR. PUENTE: It could serve as a
18 purpose. It can allow staff who are walking
19 through the theaters to see if someone is
20 consuming alcohol that doesn't have a wristband.
21 They can possibly have them step out of the
22 theater and question them and check their ID.

23 MEMBER SHORT: Okay. And the other
24 theaters that you inquired or did an
25 investigation of, what is their history as far as

1 alcohol and young people and passing off drinks?

2 MR. PUENTE: I conducted a records
3 check. We have no sale-to-minor violations at
4 any of the theaters regarding alcohol service.

5 MEMBER SHORT: So the wristbands seem
6 to be working pretty well?

7 MR. PUENTE: Yes.

8 MEMBER SHORT: Okay. Thank you.

9 That's all I have, Mr. Chair.

10 CHAIRPERSON ANDERSON: All right. Now
11 is it that all the other theaters -

12 MR. PUENTE: I only called two
13 theaters. I didn't call all six.

14 CHAIRPERSON ANDERSON: Okay. So as
15 far as your - do you know whether all the other
16 theaters that have -- that serve alcohol in D.C.,
17 if they utilize wristbands?

18 MR. PUENTE: I do not know.

19 CHAIRPERSON ANDERSON: Any other
20 questions by any other Board members?

21 (Pause.)

22 CHAIRPERSON ANDERSON: All right, Mr.
23 O'Brien, I need to go to Mr. Bender. Do you have
24 any questions based on the questions that were
25 asked by the Board or are in a different area?

1 MR. O'BRIEN: I have a question based
2 on a question asked by Mr. Bender.

3 CHAIRPERSON ANDERSON: All right. Go
4 ahead. I'll give him a chance also. Go ahead.

5 MR. O'BRIEN: All right. I understood
6 Mr. Bender's question of you to be whether
7 allowing one patron to purchase two alcoholic
8 beverages would give rise to the potential for
9 one of those beverages to be passed on to a
10 minor. I think that's a fair characterization of
11 the question, and I understood your answer to be
12 yes.

13 MR. PUENTE: Yes.

14 MR. O'BRIEN: Would it not also be
15 equally possible for a person of age to go to the
16 bar, purchase a drink, bring it back into the
17 theater, give it to the minor and then go back to
18 the bar and purchase a second one?

19 MR. PUENTE: Yes, that's possible.

20 MR. O'BRIEN: Thank you.

21 MR. BENDER: May I just follow up?

22 CHAIRPERSON ANDERSON: Go ahead.

23 MR. BENDER: And would that not be
24 extra effort for somebody to buy one drink, go
25 back, get in line and go back with a second

1 drink?

2 MR. PUENTE: Yes.

3 MR. BENDER: And so that would make it
4 at least somewhat more difficult to buy drinks
5 for underage people, would it not?

6 MR. PUENTE: Yes.

7 MR. BENDER: And to the extent that
8 the underage person might share the drink, would
9 that not mean that they would drink less -
10 consume less alcohol than if they had their own
11 drink?

12 MR. PUENTE: Yes.

13 MR. BENDER: Thank you.

14 MR. O'BRIEN: Mr. Chair, I ask that
15 that whole - I objected on the grounds that it
16 was calling for speculation in the first place,
17 but this is all idle speculation. No facts, just
18 speculation. I ask that the whole series of
19 questions be stricken.

20 CHAIRPERSON ANDERSON: Well, I think
21 the Board - I think based on Mr. Puente's
22 testimony earlier, I mean, he's not - at least
23 he's not aware of any sale-to-minor violations by
24 any other theaters, at least the ones that he has
25 investigated.

1 So I mean the Board will take that --
2 will take the testimony for what it's worth based
3 on the questions that were asked by counsel.

4 MR. O'BRIEN: Very well.

5 CHAIRPERSON ANDERSON: All right. No
6 more questions by other Board members? Mr.
7 Puente, thank you very much for your testimony.
8 You can step down. Thank you.

9 I'm sorry, Mr. O'Brien, how many
10 witnesses did you say you had? Just the one? Do
11 you wish to call your first witness?

12 MR. O'BRIEN: Yes, sir.

13 CHAIRPERSON ANDERSON: All right.

14 MR. O'BRIEN: Dominick Zarrillo.

15 CHAIRPERSON ANDERSON: Mr. Zarrillo.
16 All right. Can you ask him to, once he gets up
17 there, to spell his -

18 MR. O'BRIEN: To spell his name?

19 CHAIRPERSON ANDERSON: Yes please.

20 MR. O'BRIEN: Yes, sir. I will do
21 that.

22 CHAIRPERSON ANDERSON: Right.

23 MR. O'BRIEN: The reporter also has
24 his business card.

25 WHEREUPON,

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

5 CHAIRPERSON ANDERSON: All right.
6 Your witness, sir.

7 MR. O'BRIEN: State your first name
8 and spell your last name please.

9 MR. ZARRILLO: Dominick Zarrillo, Z-A-
10 R-R-I-L-L-O.

11 MR. O'BRIEN: And, Mr. Zarrillo, are
12 you employed, and if so, by whom?

13 MR. ZARRILLO: Yes, AMC Theatres.

14 MR. O'BRIEN: And what is your position
15 at AMC Theatres?

16 MR. ZARRILLO: Director of Operations
17 for the dine-in theatres in the Northeast area.

18 MR. O'BRIEN: How long have you been
19 with AMC Theatres?

20 MR. ZARRILLO: This November will mark
21 34 years, both with AMC and Loews Cineplex
22 Entertainment.

23 MR. O'BRIEN: What's the relationship
24 between those two?

25 MR. ZARRILLO: AMC bought Loews back in

1 2006, so combined years in the industry, 34
2 years.

3 MR. O'BRIEN: All right. How did you
4 get started in the industry?

5 MR. ZARRILLO: It was a high school
6 job, back in 1986 in high school. Went through
7 college, worked my way up. 1991, graduated from
8 college and was going to find a real job. And 34
9 years later, I'm still with the company. So it
10 actually turned out to be just a part-time job
11 that turned into a career.

12 MR. O'BRIEN: How many movie theatre
13 facilities does AMC operate in the United States?

14 MR. ZARRILLO: Approximately 640.

15 MR. O'BRIEN: And within those 640
16 facilities, how many screens, actual individual
17 theatres, might there be --

18 MR. ZARRILLO: Any --

19 MR. O'BRIEN: -- in each one?

20 MR. ZARRILLO: Anywhere from two to 30,
21 is our largest one. So two screens up to 30
22 screens, throughout the country.

23 MR. O'BRIEN: Okay. Out of the 640 AMC
24 Theatre facilities nationwide, how many are
25 licensed to serve alcoholic beverages?

1 MR. ZARRILLO: Three hundred and forty.

2 MR. O'BRIEN: How many individuals does
3 AMC Theatres employ in the United States?

4 MR. ZARRILLO: Just under 25,000.

5 MR. O'BRIEN: I invite your attention
6 now to the facility at issue today, the Club
7 Cinema at Mazza. Are you personally familiar
8 with that theatre?

9 MR. ZARRILLO: I am.

10 MR. O'BRIEN: And how is it that you're
11 familiar with it?

12 MR. ZARRILLO: It's one of the 15
13 locations that I currently supervise as Director
14 of Operations.

15 MR. O'BRIEN: All right. How would you
16 characterize the physical condition of this
17 theatre?

18 MR. ZARRILLO: It's in desperate need
19 of repair and upgrades to be able to compete in
20 this industry today. It's -- the seats are
21 aging, the carpet's aging, food and beverage
22 offerings are not what they need to be. So it
23 really needs to have a facelift in order to stay
24 relevant in today's theatre industry environment.

25 MR. O'BRIEN: When did AMC first

1 consider updating, renovating this particular
2 theatre, to your knowledge?

3 MR. ZARRILLO: Yeah, it was prior to my
4 supervision of the last couple months, but about
5 five years ago, I believe.

6 MR. O'BRIEN: Okay. Upon renovation,
7 what changes would be made in the theatre?

8 MR. ZARRILLO: So we would add the
9 plush recliner seats that we've been putting in
10 most all of our remodeled theatres.

11 We would enhance the food and beverage
12 operation, which would include not only
13 traditional concession items, such as the popcorn
14 and soda, candy, nachos, but it would also entail
15 a more robust food and beverage menu, with hot
16 foods that are prepared. We would have a bar
17 that would serve alcohol to our guests.

18 And most importantly, or one of the
19 most competitive things, would be a deliver-to-
20 seat concept, where guests can order traditional
21 items at the concession stand, like I said,
22 popcorn, soda, candy, and take that with them
23 directly into the auditorium.

24 With the deliver-to-seat concept and
25 the dine-in experience, they would also be able

1 to order a variety of menu items at the
2 concession stand, keeping in mind that each seat
3 is reserved, so each guest that would go there
4 would have an assigned seat.

5 So being able to deliver food and
6 beverage offerings at a higher scale, like I
7 said, the hot foods, they would place that order
8 at the stand, and then an associate would bring
9 that food directly into the theatre, seat-side
10 service to the guest, based on their seat
11 assignment in the auditorium.

12 MR. O'BRIEN: How much has AMC budgeted
13 in order to renovate this theatre complex in
14 order to become a dine-in theatre?

15 MR. ZARRILLO: These renovations
16 typically range in the neighborhood of \$5 million
17 to complete.

18 MR. O'BRIEN: Okay. Why haven't you
19 done it yet?

20 MR. ZARRILLO: We need to be able to
21 offer the entire concept to our guests, from the
22 food and beverage offerings to the alcohol
23 beverages that we offer to our guests in the
24 auditoriums.

25 And until we can do that, we need to

1 be able to have that entire experience offered to
2 each one of our guests. And the alcohol piece is
3 something that's very important for that concept.

4 MR. O'BRIEN: This theatre opened 21
5 years ago, I think that's established. Was it
6 state of the art, based on what you've seen now,
7 based on your 34 years experience, was this
8 theatre state of the art back in 1999?

9 MR. ZARRILLO: Back in 1999, if it was
10 a fairly new building, it probably was state of
11 the art, at that point. Like, it was relevant at
12 that point, but no longer.

13 MR. O'BRIEN: What's changed?

14 MR. ZARRILLO: The guests are expecting
15 to walk into our theatres -- and I should also
16 add that our competitors have followed suit. We
17 are the innovator of this industry, and
18 longstanding for that as well.

19 The seats that the guests expect when
20 they walk in is not what it is in Mazza today.
21 The reserved seats are expected by the guests,
22 where they can just walk in at show time and have
23 a guaranteed seat and be able to have their food
24 delivered to them, even while the movie's
25 playing.

1 The enhanced food and beverage
2 concept, whether it be the bars or the hot foods.
3 The guest is expecting an elevated experience, in
4 order to get them out of their home environment
5 to get into the theatres.

6 MR. O'BRIEN: What is the present
7 seating capacity, total, for this facility?

8 MR. ZARRILLO: It's just under 1,500,
9 I believe. Yes.

10 MR. O'BRIEN: And I'm going to invite
11 your attention to our Exhibit Number A2, which is
12 in Tab 2 of the binders in front of the Board
13 Members. Mr. Bender has a copy. And there
14 should be a binder in front of you, Mr. Zarrillo.

15 MR. ZARRILLO: Yes, it just opened up
16 here, hold on a second. I'm sorry, A2?

17 (Simultaneous speaking.)

18 MR. O'BRIEN: Exhibit 2.

19 MR. ZARRILLO: Exhibit 2, okay. Yes.

20 MR. O'BRIEN: Can you tell the Board
21 what Exhibit 2 depicts?

22 MR. ZARRILLO: Exhibit 2 exhibits or it
23 depicts the current layout of the theatre at
24 Mazza.

25 MR. O'BRIEN: The current layout?

1 MR. ZARRILLO: The expected layout, I'm
2 sorry, of what the renovation would look like.

3 MR. O'BRIEN: All right. And can you
4 tell from that exhibit what the seating capacity
5 will be after the renovation?

6 MR. ZARRILLO: Approximately 860 seats.

7 MR. O'BRIEN: Okay. Now I understood
8 you to say a minute ago you're presently at
9 1,500. You're going to spend \$5 million to go
10 down to 860, is that correct?

11 MR. ZARRILLO: Yes.

12 MR. O'BRIEN: Explain that, please.

13 MR. ZARRILLO: Well, the seat that we
14 put in is a plush recliner seat. They're bigger
15 seats. Again, what the guests are expecting.
16 The aisles are bigger. So with a bigger aisle, a
17 bigger seat, you're going to lose capacity.

18 And since we've been doing these
19 remodels, back several years, the capacity in
20 these auditoriums, we fill these theatres quite
21 regularly, especially under high volume.

22 Guests, again, are looking for --
23 they're sourcing out the recliner seats, those
24 theatres that have them, and we're filling up
25 those auditoriums quite regularly, you know, with

1 these remodeled theatres with those seats.

2 MR. O'BRIEN: All right. I invite your
3 attention to Tab Number 3, which is in the
4 binder. Can you tell the Board what Tab Number 3
5 depicts?

6 MR. ZARRILLO: Yeah. This is a current
7 seat that we're putting in our remodeled
8 theatres. It's a prototype seat.

9 MR. O'BRIEN: Okay. Now you mentioned
10 the, I think you call it direct-to-seat --

11 MR. ZARRILLO: Deliver-to-seat, yes.

12 MR. O'BRIEN: -- deliver-to-seat model.
13 Can you take a look please at Exhibit Number 4,
14 which is two pages, and tell the Board what that
15 depicts?

16 MR. ZARRILLO: That's a current copy,
17 a sample copy, of what our hot foods menu would
18 look like at the concession stand in these dine-
19 in, deliver-to-seat theatres.

20 MR. O'BRIEN: These items, am I correct
21 though, these items would be delivered to the
22 seat?

23 MR. ZARRILLO: Correct.

24 MR. O'BRIEN: You have heard already
25 today that the principal, that's my

1 characterization, principal interest, principal
2 issue in this case appears to be concern over
3 underage consumption of alcohol. Is this a
4 subject with which you are familiar?

5 MR. ZARRILLO: Yes.

6 MR. O'BRIEN: How so? Let me do this
7 instead this way. I realize that's a difficult
8 question. Would you turn to Exhibit Number 5,
9 please?

10 MR. ZARRILLO: Okay.

11 MR. O'BRIEN: Tell the Board what
12 Exhibit -- now, Exhibit 5 appears to have a total
13 of six pages, but would you tell the Board first
14 what Exhibit 5 is, generically?

15 MR. ZARRILLO: Yeah, these are what we
16 call standard operating procedures for all our
17 theatres that serve alcohol we need to follow.
18 These are published documents that are available
19 on our -- each theatre has copies of these on the
20 company portal, and they're expected to read and
21 understand these policies in its entirety.

22 MR. O'BRIEN: All right. I'd invite
23 your attention to the age verification section on
24 Page 1 of Exhibit 5. Could you explain to the
25 Board what that provides?

1 MR. ZARRILLO: Yes. Every guest that
2 purchases an alcoholic beverage at our theatre is
3 required to present, obviously, an
4 identification.

5 And that's every guest, whether it's
6 somebody that's 21 or, as I like to say, my
7 grandmother, 80-90 years old, every guest is
8 asked for ID for every transaction, regardless.

9 We have a lot of procedures and
10 follow-up mechanisms in place. There's zero
11 tolerance for the associates.

12 We have mystery shopper programs, once
13 a month, every location in our company that has a
14 bar is shopped once a month by outside mystery
15 shops. And one of the main questions on there is
16 were you asked for identification?

17 And with the zero tolerance policy, if
18 it's found that that we do not -- or that
19 associate did not, there's a strict investigation
20 that takes place, internally, that may result in
21 disciplinary action, up to and including
22 termination, for those offenses.

23 But again, the training that we have
24 in place, zero tolerance, no exceptions, every
25 guest, every time, has to be asked for an ID.

1 MR. O'BRIEN: Would you flip to Page 2
2 of Exhibit 5 please? And I invite your attention
3 two-thirds of the way down the page, to quantity
4 of alcoholic beverages purchased. Tell me when
5 you're there, please.

6 MR. ZARRILLO: Yes, I'm here.

7 MR. O'BRIEN: All right. It seems to
8 have two bullets underneath it, full-service bar
9 and counter service. When renovated, which
10 category will this theatre fall under?

11 MR. ZARRILLO: This would be counter
12 service, post-renovation.

13 MR. O'BRIEN: Okay. And what is AMC's
14 rule regarding quantity of alcoholic beverages
15 purchased at counter service?

16 MR. ZARRILLO: AMC limits alcohol sales
17 to two drinks per person with ID within a single
18 transaction.

19 MR. O'BRIEN: And that's chain-wide?

20 MR. ZARRILLO: Yes.

21 MR. O'BRIEN: Let us continue on to
22 Page 4. Middle of the page, this is a section
23 called alcohol compliance monitoring. Would you
24 discuss with the Board what that provides,
25 please?

1 MR. ZARRILLO: Yeah. Alcohol
2 compliance monitoring is basically, or it is,
3 each one of our associates are required to
4 practice responsible service of alcohol, from the
5 GM all the way down to the crew member, if that's
6 an usher.

7 We need to constantly be aware of
8 possible underage drinking, passing of the
9 alcohol, responsible drinking, possible guests
10 that are intoxicated. We have training
11 procedures in place for that at every level of
12 the theatre.

13 MR. O'BRIEN: Okay. And in particular,
14 concern was raised about passing alcohol from one
15 person to another. What steps are taken in AMC
16 theatres to preclude that?

17 MR. ZARRILLO: So I would say,
18 initially, it definitely starts with the
19 bartender. The bartender, for sure, is the first
20 point of contact in most cases.

21 They need to be very well aware of
22 their surroundings, the guest behaviors. Is it
23 one guest approaching the bar? Is it a guest
24 approaching the bar and the bartender sees maybe
25 another guest kind of waiting off to the side?

1 The bartender needs to be aware of
2 what kind of drinks the guest is purchasing. Is
3 the guest purchasing for the two drinks the same
4 drink, two draft beers, or are they purchasing a
5 draft beer and a glass of wine?

6 So the bartender needs to be very
7 aware of the surroundings and that engagement
8 right there with that guest. And if he or she
9 suspects anything that might be out of the
10 ordinary or not in compliance, he or she would
11 definitely alert management, supervisors, other
12 crew members that are patrolling those
13 auditoriums, to kind of keep an extra close eye
14 on that type of situation, or in that scenario.

15 MR. O'BRIEN: Once -- let us say,
16 hypothetically, that someone escapes scrutiny at
17 the bartender and manager level and makes it into
18 one of the theatres, one of the screens, and
19 hands, hypothetically hands a drink to someone
20 who shouldn't have it. At that point, what
21 measures would be undertaken?

22 MR. ZARRILLO: Yes. So, again, once
23 inside the auditorium, not only are we monitoring
24 theatres for responsible service of alcohol, but
25 we're also monitoring guest behaviors, cell

1 phones, temperature, rowdy crowds, so guests can
2 enjoy their movie.

3 All associates are expected to check
4 the auditorium. Specifically, we would have
5 ushers go in there, do the theatre checks, and
6 look for responsible drinking.

7 And one thing that we can keep an eye
8 on, or that helps us with that, is the vessels
9 that we serve our alcohol in, and in Mazza's
10 case, it would a plastic, clear plastic cup, is
11 different that what we serve at our concession
12 stands. So, in the concession stand, they would
13 get an ICEE cup, it says ICEE on it, or it would
14 be an AMC branded soda cup.

15 With the alcohol piece, as we're doing
16 theatre checks, and we would walk down to the
17 front, turn around, and walk back, so the light
18 on the screen would project back into the
19 audience, give us a little bit of extra light
20 level in certain portions of the movie. And not
21 only do we monitor the other guest behaviors, but
22 looking for signs of possible intoxication or
23 passing of the drinks.

24 And in those cases, if we do suspect
25 that and we do see somebody with an alcoholic

1 beverage that appears to be underage or not at
2 the age of 21, that associate, if it's not a
3 manager conducting that, would immediately call
4 for a manager.

5 Manager would go in the auditorium,
6 and, yes, during the movie, this would happen, in
7 a very discreet way, as to not disturb other
8 members in the audience, and request ID. If the
9 ID is presented, it needs to be presented, and
10 it's okay, then enjoy the rest of your movie.

11 If that guest does not have an ID or
12 it's determined that he or she is underage, the
13 drink is immediately removed from their
14 possession, they're asked to step out into the
15 hallway, at which time law enforcement is called.
16 If that guest is determined to be under the age
17 of 18, their parent or guardian will also be
18 called at that time.

19 MR. O'BRIEN: Okay. We know that food
20 will be delivered to the seats. Will alcoholic
21 beverages be delivered to the seats?

22 MR. ZARRILLO: No, it will not.
23 Alcohol will only be able to be purchased by the
24 guest at the bar, before entering.

25 MR. O'BRIEN: Okay. How much -- what's

1 the range of prices for alcohol at the bar?

2 MR. ZARRILLO: Well, in keeping with
3 our concession prices, if you go to the movies,
4 you know it's not cheap at the concession stand.
5 Basic draft beer is just under \$8. A glass, an
6 eight-ounce glass of wine is just over \$18.50 for
7 a glass of wine. So anywhere from \$8 to \$18.50.

8 MR. O'BRIEN: And I'm sure it varies
9 from location to location and show to show, but
10 how much does a ticket to the movies cost?

11 MR. ZARRILLO: At our value ticket
12 pricing, during the morning, could be as low as
13 \$6. Depending on the type of movie, 3D, IMAX,
14 whatever showing you're going to, could be up to,
15 in some cases, \$18 to \$21.

16 At Mazza specifically, I'm not sure of
17 what the top price would be, but they do not have
18 any of those premium formats, so it would likely
19 be in the neighborhood of \$12 to \$13, at the top
20 ticket price.

21 MR. O'BRIEN: Okay. Overall, across
22 the country, does AMC find that minors go to
23 their theatres to attempt to get alcohol?

24 MR. ZARRILLO: No.

25 MR. BENDER: Go ahead.

1 MR. O'BRIEN: Why do you think that is,
2 that minors don't go to get alcohol?

3 MR. ZARRILLO: Well, it's a short movie
4 typically, it's two hours. The minors are
5 looking to go and have fun. And to be honest,
6 the price of the drinks, I don't think minors are
7 going to pay that money for the drink on top of
8 the ticket price.

9 MR. O'BRIEN: All right. You've
10 described, you've walked us through Exhibit
11 Number 5, which is your policies. By yours, of
12 course I mean AMC's policies. You would agree,
13 would you not, though, that policies are only as
14 good as the individuals implementing the
15 policies?

16 MR. ZARRILLO: Yes, I would.

17 MR. O'BRIEN: Okay. I'm going to
18 invite your attention -- well, before I do this,
19 what training do your employees undergo in order
20 to work in theatres serving alcoholic beverages?
21 What specific training?

22 MR. ZARRILLO: Yeah, we have specific
23 AMC training. Learning studio modules, or
24 segments, that are about two hours long, that are
25 built by AMC, that all associates have to go

1 through within 14 days of their employment.

2 It's an online training, again, that
3 takes about two hours. Really talks about the
4 responsible service of alcohol, age verification,
5 behaviors to look at from the guest standpoint,
6 and tactics to do in case you see or suspect any
7 type of underage drinking.

8 MR. O'BRIEN: All right. I'm going to
9 invite your attention now to Exhibit 6. Can you
10 tell -- which is a very thick document. Can you
11 tell the Board what Exhibit 6 is?

12 MR. ZARRILLO: Exhibit 6 is the second
13 level of the training, which is geared towards
14 the managers. Every manager would need to take
15 this level 201 training. Again, about a two-hour
16 course.

17 That goes into a little bit more
18 detail at the management level on what actions
19 need to be taken, you know, regard to law
20 enforcement, responsible carding steps, if it's
21 underage as well. So it's a little bit more in-
22 depth that we would ask the leadership, the
23 management team to do, as opposed to the staff.

24 MR. O'BRIEN: All right. Again, I
25 don't want to go through this page-by-page, but

1 to your knowledge, does this program, Exhibit 6,
2 address prevention of underage drinking?

3 MR. ZARRILLO: It absolutely does.

4 MR. O'BRIEN: Okay. I'm going to
5 invite your attention to the second page of that
6 exhibit. Unfortunately, Mr. Chair, the pages in
7 this document are not numbered. But I invite
8 your attention to the second page and ask if you
9 see there any emphasis on prevention of sale to
10 minors?

11 MR. ZARRILLO: Again, this one is
12 really talking about the age verification, the
13 ID, the zero tolerance, and steps that need to be
14 taken if we suspect that underage.

15 MR. O'BRIEN: All right. I'd invite
16 your attention three or four, five pages in, to
17 Section 2.3, entitled near the bottom of the
18 page, Knowing Your Responsibilities.

19 MR. ZARRILLO: Okay.

20 MR. O'BRIEN: And if you would flip to
21 the next page, starting at the top, could you
22 describe for the Board what is provided there?

23 MR. ZARRILLO: Just give me a second to
24 take a look at this real quick.

25 MR. O'BRIEN: Okay.

1 MR. ZARRILLO: Again, it's talking
2 about some interactive exercises that the
3 managers can point and click on the screen that
4 directs them to procedures and policies that we
5 have and steps that they need to take regarding
6 the alcohol compliance, the ID verification
7 checks, and things to look for if they're
8 underage.

9 MR. O'BRIEN: Thank you, Mr. Zarrillo.
10 Thank you, Mr. Chair.

11 CHAIRPERSON ANDERSON: All right. Your
12 witness, Mr. Bender.

13 MR. BENDER: Thank you. So if I may
14 turn your attention back to, I believe it's
15 Petitioner's 5, Alcohol Policies Operational is
16 the title?

17 MR. ZARRILLO: Okay.

18 MR. BENDER: Okay. This basically --
19 or is it fair to say that this governs your
20 policies towards alcohol enforcement compliance
21 within AMC Theatres?

22 MR. ZARRILLO: Yes.

23 MR. BENDER: Okay. Pardon me one
24 moment, it's just it's a long document. So I was
25 pleased to see that you have 100 percent ID

1 check.

2 MR. O'BRIEN: Objection, that's not a
3 question.

4 MR. BENDER: I'm getting to my
5 question, Counselor. Why is that? Why do you
6 have 100 percent ID check?

7 MR. ZARRILLO: Well, I think,
8 absolutely, it goes back to the training that we
9 have for our associates and the zero tolerance
10 policy that we have in place.

11 Our associates know what's expected
12 for the training, they know the consequences that
13 would be there if they don't do what's set forth
14 in the training documents, in the training
15 procedures.

16 MR. BENDER: That's not -- I don't
17 believe that's responsive. What I asked is what
18 is the reason for 100 percent ID check? Why do
19 you have that policy? Not --

20 MR. ZARRILLO: Oh, I'm sorry. Well, I
21 mean, I think if you go to any bars, you're
22 always being asked for ID.

23 In our case, AMC, since we started
24 this, took the stance that in order to protect
25 the integrity of our liquor license, as well, and

1 to ensure the safety of our guests and
2 responsible service of alcohol, that we're just
3 going to card everybody, no questions asked.
4 That's just what we have, it's a longstanding
5 policy, every guest.

6 MR. BENDER: Well, I mean, is it fair
7 to say that you can't tell by looking at someone
8 whether or not they're over or under 21?

9 MR. ZARRILLO: I would say, in some
10 cases, I guess that's a fair statement.

11 MR. BENDER: Right. Because there will
12 occasionally be cases where someone looks 25 and
13 it turns out that they're 20?

14 MR. ZARRILLO: Correct, yes.

15 MR. BENDER: And even older than that,
16 right? I mean, isn't that why you have 100
17 percent ID check?

18 MR. ZARRILLO: We're asking every
19 guest, regardless of what they look like as far
20 as age, we're not -- we can't have our associates
21 try to guess what their age is, so we're asking
22 everybody, all of our associates to card
23 everybody, to take that guessing game out.

24 MR. BENDER: Because you can't tell by
25 looking at somebody for sure how old they are?

1 MR. ZARRILLO: Correct.

2 MR. BENDER: Okay. And there are
3 absolutely no exceptions to this policy?

4 MR. ZARRILLO: If a guest does not have
5 an ID and they request to speak to a manager,
6 only the highest ranking manager in the building
7 can make an exception to the policy, under a few
8 conditions. Like I said, first, the associate
9 can't initiate that, it has -- that request has
10 to be initiated by a guest.

11 Now, again, I'll use the example of my
12 grandmother. She's obvious -- 80 years old, rest
13 in peace, she's obviously over 21, but doesn't
14 have an ID. So, in that scenario, the highest
15 ranking manager would be summoned to that
16 situation, whether at the bar, in the lobby, or
17 in an auditorium.

18 And our policy states that, again,
19 only the manager can make an exception, so long
20 as that guest visibly looks at least at the age
21 of 40, in the manager's opinion. And if that is
22 the case, then the manager would be able to make
23 that exception. And in that scenario as well,
24 would be limited to only one drink.

25 MR. BENDER: And why would they be

1 limited to only one drink per person per trip?

2 MR. ZARRILLO: Because they did not
3 provide an ID, and we made an exception to the
4 rule, with the age of 40, looking at least age
5 40.

6 MR. BENDER: Okay.

7 MR. ZARRILLO: So we would put that
8 restriction on that guest for just the one,
9 because they don't have an ID.

10 MR. BENDER: To minimize the chances
11 for abuse?

12 MR. ZARRILLO: Again, just without the
13 ID, we're making that exception, and part of that
14 exception would be to limit the consumption of
15 alcohol to just the one drink.

16 MR. BENDER: To limit consumption, to
17 prevent abuse?

18 MR. ZARRILLO: I didn't say abuse, I
19 said limit the consumption of alcohol to --

20 MR. BENDER: Well, and I'm asking you
21 why, why do you want to limit the consumption of
22 alcohol to somebody who you've decided is of age?

23 MR. ZARRILLO: Again, they did not have
24 the ID, so it's AMC's standard and practice to
25 limit it to just the one.

1 MR. BENDER: So you can't tell me the
2 reason for that, beside that it's standard and
3 practice?

4 MR. ZARRILLO: That's what it is, yes.

5 MR. BENDER: That's as much as you
6 know?

7 MR. ZARRILLO: That's what I can tell
8 you, yes.

9 MR. BENDER: Okay. And 40, the reason
10 you do 40 is because you need a significant
11 margin of safety to make that determination?

12 MR. ZARRILLO: I didn't make the age
13 limit of 40. I can't speak for certain why it
14 was put to 40. That's just something that's in
15 our training material, and the number of 40,
16 that's what was used as a guideline for our
17 associates to follow. Why 40 was chosen and not
18 35, I can't answer that.

19 MR. BENDER: But it has to be a margin
20 of safety, didn't you just say that, well, it's
21 your grandmother and she's 80 years old, you
22 shouldn't need to -- everybody should know that
23 she is of age?

24 MR. ZARRILLO: I guess it would be fair
25 to say that age 40 is a margin of safety, then,

1 yes.

2 MR. BENDER: Thanks. You're familiar
3 with all the AMC Theatres' alcohol policy?

4 MR. ZARRILLO: Can you be more specific
5 what the question is?

6 MR. BENDER: Well, let me ask you a
7 specific question. You do have theatres that
8 have a one-drink limit, don't you? AMC does?

9 MR. ZARRILLO: Not that I'm aware of in
10 my territory.

11 MR. BENDER: And how big is your
12 territory?

13 MR. ZARRILLO: Fifteen locations.

14 MR. BENDER: Okay. And they have 340
15 locations that serve alcohol, right?

16 MR. ZARRILLO: Correct.

17 MR. BENDER: So you're not able to
18 testify really at all about the policies of the
19 other 325?

20 MR. ZARRILLO: What I would say is it's
21 AMC's policy and standard to have a two-drink
22 limit, unless specifically noted in the specific
23 jurisdiction or area of the country, but I can't
24 speak to all --

25 MR. BENDER: Right.

1 MR. ZARRILLO: -- of those
2 specifically.

3 MR. BENDER: So you certainly can't say
4 that there aren't other theatres, AMC theatres,
5 that have one-drink limits? Aside from the 15 in
6 your district?

7 MR. ZARRILLO: I can't say for certain,
8 no.

9 MR. BENDER: Okay. And AMC has
10 theatres where the total number of drinks that
11 can be sold per person per day is two, isn't that
12 true?

13 MR. ZARRILLO: Two drinks per ID, per
14 guest, is that what you're asking?

15 MR. BENDER: No, just total, two.

16 MR. ZARRILLO: That I'm not aware of.

17 MR. BENDER: Okay. But again, you can
18 only speak to 15 of 340 theatres?

19 MR. ZARRILLO: I'm speaking on behalf
20 of the entire company, but I'm not aware of any
21 specific locations that have a two-drink limit
22 per visit.

23 MR. BENDER: But your knowledge
24 actually of this is limited to the 15 in your
25 district, right?

1 MR. O'BRIEN: Objection, this is
2 getting argumentative.

3 MR. BENDER: Well, I just, I mean, I
4 feel like the witness is being evasive.

5 CHAIRPERSON ANDERSON: Well, I mean, he
6 said he doesn't, I mean, he said he doesn't know
7 the answer, so I'm going to sustain the
8 objection.

9 MR. BENDER: Okay.

10 CHAIRPERSON ANDERSON: Let's move on.

11 MR. BENDER: Thank you. Do all AMC --
12 well, we know all AMC theatres don't serve
13 alcohol, right? About roughly half of them serve
14 alcohol?

15 MR. ZARRILLO: Correct.

16 MR. BENDER: Do all AMC theatres in
17 D.C. serve alcohol?

18 MR. ZARRILLO: No, they do not, I don't
19 believe.

20 MR. BENDER: Okay. And which ones
21 don't serve alcohol in D.C.?

22 MR. ZARRILLO: I can't be specific on
23 the other ones. I'm not familiar with all of the
24 ones that have alcohol or not.

25 MR. BENDER: Okay.

1 MR. ZARRILLO: I know Georgetown, which
2 is close to ours, does have alcohol.

3 MR. BENDER: But you're not sure about
4 AMC Uptown, whether they have alcohol?

5 MR. ZARRILLO: I'm not, no.

6 MR. BENDER: Okay. Do you know whether
7 AMC Uptown is able to -- has been renovated?

8 MR. ZARRILLO: I can't speak to Uptown.
9 I'm not too familiar with that location.

10 MR. BENDER: Okay. So you're not able
11 to tell us, really, about -- strike that. So you
12 don't know if it's been renovated, and you don't
13 know whether they plan to renovate it?

14 MR. ZARRILLO: I don't have any
15 knowledge of any plans for Uptown. I don't
16 believe they've been renovated, no. It's a
17 single-screen theatre, but I don't believe there
18 was a renovation there.

19 MR. BENDER: Okay. And the two drink
20 per person per trip thing, that's a corporate
21 policy, that's what you always seek?

22 MR. ZARRILLO: Correct.

23 MR. BENDER: Okay. All alcohol
24 purchases are at a counter outside the theatres?

25 MR. ZARRILLO: Correct.

1 MR. BENDER: And the person checking ID
2 at the counter isn't assigned to check that legal
3 patrons don't pass drinks to underage patrons do
4 they? Are they?

5 MR. ZARRILLO: Are you asking if the
6 bartender --

7 MR. BENDER: Well, the bar, the people,
8 those people don't go back into the theatre to
9 check if someone they haven't served is drinking,
10 correct?

11 MR. ZARRILLO: The bartender will not
12 leave the bar station, but they will absolutely
13 communicate any suspicious activity or thought of
14 a possible underage drinking or passing, they
15 will alert another member of the theatre team.

16 MR. BENDER: And is a person who buys
17 two drinks, are they allowed -- is a husband, for
18 instance, allowed to buy two drinks, one for his
19 wife and one for himself? His wife's sitting
20 back at the --

21 MR. ZARRILLO: Yes, it's a two-drink --

22 MR. BENDER: Right.

23 MR. ZARRILLO: -- limit. But then
24 again, that's why we have the monitoring in the
25 auditoriums, to make sure if that did occur, that

1 we're taking proactive measures to limit the
2 underage drinking.

3 MR. BENDER: Right. But so, for
4 instance, you mentioned that it would be
5 suspicious if somebody, a bartender might find it
6 suspicious if somebody bought a beer and a mixed
7 drink. But that wouldn't be suspicious, would
8 it? I mean, because --

9 MR. O'BRIEN: Objection, I don't recall
10 that testimony.

11 MR. BENDER: Didn't you testify to
12 that? I'm sorry. Didn't you testify that one of
13 the things that a bartender would look at is
14 whether someone is buying two different kinds of
15 drinks?

16 MR. ZARRILLO: I did mention that, but
17 that could also be cause for pause and to at
18 least alert our associates. That doesn't mean
19 it's going to happen, but it's something that we
20 want to keep an eye on.

21 MR. BENDER: So it could happen, but
22 AMC is perfectly happy for people who are of age
23 to buy drinks for other people at their seats who
24 are of age, right?

25 MR. ZARRILLO: Yes.

1 MR. BENDER: And people -- and two
2 people don't always drink the same thing.

3 MR. ZARRILLO: Correct.

4 MR. BENDER: Do all associates who have
5 a responsibility to check for compliance have to
6 be over 21 themselves?

7 MR. ZARRILLO: No, but they have to be
8 able, if they're going to approach a guest that
9 is underage, after they talk to the guest and
10 they're underage, they have to call a manager.
11 They --

12 MR. BENDER: Okay.

13 MR. ZARRILLO: -- can't interject or
14 deal with that scenario.

15 MR. BENDER: But the staff who are
16 checking this stuff could be underage?

17 MR. ZARRILLO: Yes.

18 MR. BENDER: And they could be students
19 themselves?

20 MR. ZARRILLO: Yes.

21 MR. BENDER: Okay. Did you do any
22 financial modeling of the cost to the theatre of
23 implementing a wristband policy?

24 MR. ZARRILLO: I did not, no.

25 MR. BENDER: Are you --

1 MR. ZARRILLO: I don't --

2 MR. BENDER: -- aware of any?

3 MR. ZARRILLO: I'm not aware of that
4 being conducted.

5 MR. BENDER: Did you do or are you
6 aware of any financial modeling about the effect
7 of the cost of a one-drink per trip, per person
8 per trip limit on the company's earnings?

9 MR. ZARRILLO: I did not do any
10 modeling, but I can't say that that hasn't been
11 done, I just --

12 MR. BENDER: Okay.

13 MR. ZARRILLO: -- don't have any
14 knowledge of it.

15 MR. BENDER: But you're the only
16 witness here to testify. And so as far as you
17 know, it hasn't?

18 MR. ZARRILLO: As far as I know, it
19 hasn't.

20 MR. BENDER: So you have no way of
21 knowing whether implementation of a wristband
22 policy or implementation of a one-drink per
23 person per trip policy would affect the theatre's
24 ability to renovate, correct?

25 MR. ZARRILLO: It would absolutely

1 affect the theatre's ability to renovate because
2 we will not move forward without the two-drink
3 minimum.

4 MR. BENDER: But you have -- that's
5 your corporate policy?

6 MR. ZARRILLO: Right.

7 MR. BENDER: Okay. But you have no
8 idea or you're not -- you have no basis to say
9 what the financial effect would be?

10 MR. ZARRILLO: I did not personally do
11 that modeling, but I can't say for certain that
12 that modeling has not been done.

13 MR. BENDER: I understand that. And
14 has modeling been done, financial modeling been
15 done about the cost of perhaps starting alcohol
16 service after matinees, for P and PG and PG-13
17 movies?

18 MR. ZARRILLO: I'm not sure if that's
19 been discussed, but our guests, when they come in
20 in the morning, they're expecting to have the
21 entire experience from open to close. So we're
22 not looking to limit --

23 MR. BENDER: Right.

24 MR. ZARRILLO: -- that.

25 MR. BENDER: And you've taken survey,

1 you have survey data for that?

2 MR. ZARRILLO: I don't know if we have
3 survey data, I --

4 MR. BENDER: That's your opinion?

5 MR. O'BRIEN: Excuse me, please.

6 CHAIRPERSON ANDERSON: What's the --

7 MR. O'BRIEN: He's interrupting the
8 witness, before the witness --

9 CHAIRPERSON ANDERSON: Mr. Bender --

10 MR. O'BRIEN: -- can answer.

11 CHAIRPERSON ANDERSON: -- can you allow
12 him to finish --

13 MR. BENDER: Yes, please.

14 CHAIRPERSON ANDERSON: -- his question
15 first?

16 MR. BENDER: I apologize.

17 MR. ZARRILLO: Can you repeat your
18 question?

19 MR. BENDER: That's your opinion?

20 MR. O'BRIEN: Objection, it's not clear
21 to me now what --

22 MR. BENDER: It's your opinion about
23 what guests want, if you don't have survey
24 evidence.

25 MR. ZARRILLO: No, I don't have survey

1 evidence. But as a Director, and AMC, if we're
2 offering amenities in our buildings, we want to
3 make them offered to our guests at any time.

4 MR. BENDER: I understand that --

5 MR. ZARRILLO: Yes.

6 MR. BENDER: -- that's what AMC wants,
7 right?

8 MR. ZARRILLO: Right.

9 MR. BENDER: Okay. Are you familiar
10 with the theatres that AMC competes with in D.C.?

11 MR. ZARRILLO: I am not. I don't have
12 any knowledge of them.

13 MR. BENDER: Okay. Well, so you're not
14 able to testify as to what AMC's competitors do,
15 then, correct?

16 MR. ZARRILLO: I don't have any
17 knowledge or opinions about any of the
18 competitors in the theatre area right here in
19 D.C. that I supervise.

20 MR. BENDER: Okay.

21 MR. ZARRILLO: I can't say for certain
22 that other theatres in the country don't have
23 alcohol from our competitors.

24 MR. BENDER: Well, I'm just asking
25 about in the D.C., or the D.C. market. You're

1 not familiar with those theatres?

2 MR. ZARRILLO: I'm not familiar with
3 current standards, practices, training,
4 procedures, or anything with the alcohol that is
5 served or not served in those competitor
6 theatres.

7 MR. BENDER: Well, or what they offer?
8 What kind of amenities they offer?

9 MR. ZARRILLO: I do not.

10 MR. BENDER: Okay. Whether they offer
11 amenities like yours, like you want to offer,
12 you're not familiar?

13 MR. ZARRILLO: I don't --

14 MR. O'BRIEN: Objection, he said he
15 didn't know.

16 MR. BENDER: I asked -- all right,
17 that's fine, I'll move on.

18 CHAIRPERSON ANDERSON: Thank you. I
19 just want to remind you also, Mr. Bender, that
20 you're on a time limit. Remember, I told you you
21 have 90 minutes, and your 90 minutes, the cross
22 examination of witnesses you do, that's a part of
23 your 90 minute presentation. I just wanted to
24 remind you.

25 MR. BENDER: Thank you.

1 CHAIRPERSON ANDERSON: All right.

2 MR. BENDER: I'm almost done.

3 CHAIRPERSON ANDERSON: I'm not trying
4 to end your -- I just want to remind you. All
5 right.

6 MR. BENDER: I understand. Would you
7 expect the price for tickets at this theatre to
8 go up after they renovate and serve alcohol?

9 MR. ZARRILLO: I can't say for certain.
10 We evaluate pricing at both box office and
11 concession twice a year.

12 MR. BENDER: And you said that, in your
13 opinion, you don't think minors will want to pay
14 to get into this movies? Is that what you said?

15 MR. ZARRILLO: To get into the movies?
16 They'll pay to get into the movie. But --

17 MR. BENDER: But you're saying -- so
18 they will pay, I think you said the tickets can
19 be as much as \$21. Is that correct, 18 to 21?

20 MR. ZARRILLO: Depending on the
21 theatre. Mazza will not have a ticket price
22 quite that high because they don't have an IMAX,
23 but they'll be in the \$13 to \$14 top ticket price
24 range.

25 MR. BENDER: So your testimony is that

1 a minor who wants to see a movie and to have a --
2 to be able to drink too, will pay \$14 for a
3 ticket, but won't pay \$8 for a beer?

4 MR. ZARRILLO: I'm saying -- what I
5 said was, I think what the question was, my
6 opinion is a guest, a minor going to the theatre,
7 is paying a pretty pricy amount for the ticket,
8 and then you want to add the pricy cost of our
9 alcohol, I think that's a lot for the minors to
10 fork over.

11 MR. BENDER: Doesn't that depend on the
12 neighborhood and how much money the kids have?

13 MR. ZARRILLO: It could.

14 MR. BENDER: Okay. I have nothing
15 further. Thank you, sir.

16 CHAIRPERSON ANDERSON: Any questions by
17 any Board Members? Yes, Mr. Grandis?

18 MEMBER GRANDIS: Excuse me. If I
19 understand right, you currently have seven
20 theatres and two of them allow alcohol? Is that
21 how it works currently?

22 MR. ZARRILLO: Yes, out of the seven,
23 only two are permitted to serve alcohol at this
24 time.

25 MEMBER GRANDIS: So is anyone under 21

1 allowed to go into one of those two theatres
2 during a movie?

3 MR. ZARRILLO: Not at this time, you
4 have to be 21 to go into those two movies, as
5 well as purchase the alcohol as well in those two
6 theatres.

7 MEMBER GRANDIS: Okay. Thank you.

8 CHAIRPERSON ANDERSON: I just want to
9 ask this because I was somewhat confused. So are
10 you saying that each person is able to buy two
11 drinks? Is that the limit?

12 MR. ZARRILLO: So, yes, a guest with a
13 valid ID, we're looking to have a limit of two
14 drinks per ID per transaction.

15 CHAIRPERSON ANDERSON: Now because I've
16 seen there's a provision where it talks about if
17 the person doesn't have an ID, that I guess they
18 can get one. But I guess that's for someone who
19 looks like they're above 40?

20 MR. ZARRILLO: Yes, that was the
21 exception that I was talking about, that only a
22 manager can make, if they look at least 40 years
23 old.

24 CHAIRPERSON ANDERSON: Any other
25 questions by any other Board Members? Any

1 questions, Mr. O'Brien, based on the questions
2 that was asked by the Board?

3 MR. O'BRIEN: No, but based on a
4 question by Mr. --

5 CHAIRPERSON ANDERSON: All right.

6 MR. O'BRIEN: -- Bender.

7 CHAIRPERSON ANDERSON: All right, go
8 ahead.

9 MR. O'BRIEN: There was mention of
10 wristbands. Does the Georgetown AMC Theatre
11 utilize wristbands?

12 MR. ZARRILLO: No, they do not.

13 MR. O'BRIEN: Thank you. That's it,
14 Mr. Chair.

15 CHAIRPERSON ANDERSON: Any final
16 questions, sir?

17 MR. BENDER: No.

18 CHAIRPERSON ANDERSON: All right. Mr.
19 Zarrillo --

20 MR. ZARRILLO: Yes.

21 CHAIRPERSON ANDERSON: -- thank you
22 very much for your testimony, you can step down.

23 MR. O'BRIEN: Mr. Chair, I'd like to
24 move our Exhibits 2 through 6, each of which has
25 been identified by the witness.

1 CHAIRPERSON ANDERSON: Mr. Bender, any
2 objection?

3 MR. BENDER: Without objection.

4 CHAIRPERSON ANDERSON: So moved, thank
5 you.

6 (Whereupon, the above-referred to
7 documents were received into evidence
8 as Exhibit Nos. 2 through 6.)

9 MR. O'BRIEN: Just for clarification,
10 Exhibit 1 is just a copy of the settlement
11 agreement, which is already in the Board's
12 records.

13 CHAIRPERSON ANDERSON: All right. Do
14 you rest?

15 MR. O'BRIEN: We rest.

16 CHAIRPERSON ANDERSON: All right.
17 Let's take a ten-minute break. And then we can
18 start your case.

19 (Whereupon, the above-entitled matter
20 went off the record at 3:09 p.m. and resumed at
21 3:22 p.m.)

22 CHAIRPERSON ANDERSON: Who is your
23 first witness, sir?

24 MR. BENDER: My first witness is going
25 to be me. I just wanted to mention that one of

1 our witnesses, Dr. Martin Wilson had to go back
2 and talk to the teachers about COVID. So there
3 are only three witnesses, and we're also going to
4 do those a little bit out of order. So I'm going
5 to testify, and then Anoushka Chander, and then
6 Jeffrey Houser.

7 CHAIRPERSON ANDERSON: All right. Mr.
8 O'Brien?

9 MR. O'BRIEN: Yes?

10 CHAIRPERSON ANDERSON: Do you have any
11 concerns?

12 MR. O'BRIEN: No, I'm fine.

13 CHAIRPERSON ANDERSON: Oh, no, you
14 stand up --

15 (Simultaneous speaking.)

16 MR. BENDER: Oh, and finally, if I
17 could just ask, I'm not sure how -

18 CHAIRPERSON ANDERSON: I'm sorry, Mr.
19 Bender?

20 MR. BENDER: Yes, pardon me, I have a
21 couple of exhibits to show. They're on the
22 computer, so I take it I'm probably going to have
23 to get up from the witness stand and come over
24 here. Is that okay?

25 CHAIRPERSON ANDERSON: You can do it

1 from there. You can testify from there.

2 MR. BENDER: Okay, thank you.

3 CHAIRPERSON ANDERSON: All right. So
4 can you raise your right hand please, sir?

5 MR. BENDER: Yes.

6 WHEREUPON,

7 JONATHAN BENDER

8 was called as a witness by Counsel for the and,
9 having been first duly sworn, was examined and
10 testified as follows:

11 MR. BENDER: I do.

12 CHAIRPERSON ANDERSON: All right. And
13 you know that Mr. O'Brien will be cross examining
14 you?

15 MR. BENDER: I do.

16 MR. O'BRIEN: Will the witness take
17 the stand for cross examination, Mr. Chair?

18 CHAIRPERSON ANDERSON: Right, okay,
19 that's fine.

20 MR. O'BRIEN: Okay, very well.

21 CHAIRPERSON ANDERSON: So for direct,
22 because he said he had some exhibits -

23 MR. O'BRIEN: I understand, that's
24 fine.

25 CHAIRPERSON ANDERSON: All right, go

1 ahead, Mr. Bender.

2 MR. BENDER: Okay, thanks. As I
3 mentioned, I'm Jonathan Bender, Chair of ANC 3E
4 and SMD Commissioner for the area, including the
5 theater at issue here.

6 By resolution passed at its November
7 12th, 2019, meeting, the ANC lodged a protest in
8 this matter and authorized me to represent it in
9 protest proceedings. By subsequent resolution,
10 the ANC delegated settlement authority for the
11 matter to me.

12 I've served on this ANC since 2009,
13 and in those 11 years ANC 3E has never needed to
14 attend a protest hearing on the merits until now.
15 Instead, we've worked with every applicant who
16 has come before us to reach a negotiated
17 settlement to prevent the need to protest an
18 application. Some applications have been harder
19 than others, and we've filed protests before, but
20 all were resolved before this point.

21 Our ANC is committed to building a
22 vibrant, safe, and livable business district. To
23 that end, we helped establish Tenleytown Main
24 Street, and I served on Main Street's board for a
25 time and well recall a report by an independent

1 consultant that we commissioned on the strengths
2 and weaknesses of the business district.

3 One of the strengths he cited in the
4 report, from the perspective of attracting
5 businesses that served liquor, was that our ANC
6 does not require or routinely require onerous
7 settlement agreements as some other ANCs do.

8 Our goal is always to strike a balance
9 between protecting against underage drinking and
10 disturbance on the one hand and providing options
11 for responsible adults to consume alcohol in our
12 neighborhood.

13 We took that approach in 2014 and 2015
14 when Petitioner first approached us about the
15 possibility of serving alcohol in all seven
16 screening rooms without admission age
17 restrictions.

18 An ANC representative first reached
19 out to us about the matter in May 2014 with a
20 very general concept of what they wanted to do.
21 They then asked to schedule a meeting with me in
22 November of 2014. I met with one Tabitha
23 Hilibun, then Manager for Alcohol for AMC, and
24 explained then, so 2014, that in principle I and,
25 I believe, my colleagues would support their

1 request for alcohol in all seven theaters with
2 two minor conditions.

3 First that they provide wrist bands to
4 all carded individuals so it would be clear to
5 theater personnel who was entitled to drink
6 alcohol and, second, that they limit sales to one
7 drink per person, per transaction.

8 Some more time elapsed without hearing
9 from AMC, and then in March of 2015, Ms. Hilibun
10 wrote back to me thanking me for meeting with her
11 in November and stating that AMC would consider
12 what the ANC had requested, stating that, quote,
13 unquote, "We feel that in addition to our
14 standard operating procedures these enhanced
15 tactics will further ensure that we are not over-
16 serving guests or serving minors."

17 In May of 2015, AMC couldn't make our
18 April meeting. We heard from Frank Lewis, then
19 AMC's Director of Alcohol, at our regularly
20 scheduled meeting. Our minutes from that meeting
21 reflect that Mr. Lewis stated that AMC agreed to
22 wrist bands and a one drink per transaction
23 limit.

24 After that, I corresponded with
25 another AMC representative about amending the

1 existing settlement agreement. And at some
2 point, AMC just stopped following up.

3 The next time I recall hearing from
4 them was when Mr. O'Brien contacted me in summer
5 of 2018. I told Mr. O'Brien, and my recollection
6 was that AMC agreed to provide wrist bands and
7 one drink per transaction limit. And we were
8 prepared to support the application on that
9 basis.

10 Some weeks later, it became clear that
11 AMC was no longer to honor its promise from
12 2015. Eventually, after I called a couple of DC
13 theaters that serve alcohol, and have a one drink
14 per transaction requirement, the ANC offered to
15 support the license application with only the one
16 drink per transaction limit.

17 The Petitioner's refusal to agree to
18 that one condition, not our ANC's refusal to
19 support alcohol in all seven screening rooms as
20 has been suggested, at least implied, is
21 primarily why we're here.

22 The worry which you'll hear more about
23 from the other witnesses from the schools is that
24 we have many, many kids in our neighborhood.
25 Theaters are dark. The person doing the carding

1 at the theater is not the same person who is
2 supposed to ensure that drinks aren't being
3 passed to underage patrons. Those people have no
4 knowledge, presumably, of whether a patron has
5 been carded.

6 So the staff is charged with policing
7 underage drinking, assuming they're in the
8 theaters. They won't know who drinks were sold
9 to, and they would be naturally reluctant to
10 cause a disturbance in the theater to check the
11 IDs of every person drinking who looks younger
12 than, say, 30 or 40. This is in contrast to the
13 counter staff who have to check IDs for every
14 patron no matter how old they look.

15 Note that the ANC understands, as no
16 doubt do the other theaters in town with the one
17 drink limit, that a one drink limit is hardly a
18 perfect way to prevent legal patrons from passing
19 drinks to underage patrons.

20 We were looking for an approach that's
21 not burdensome to implement, that is commonly
22 done, and would clearly deter at least some
23 underage drinking. And if there is underage
24 drinking, there would presumably be less alcohol
25 consumed on average with the one drink limit.

1 At this point, I've learned of three
2 theaters in DC with a one drink per transaction
3 limitation. First, several months ago I
4 contacted both Landmark E Street, and the Regal
5 Gallery Place, and four DX theaters in DC by
6 phone. Managers there confirmed that both
7 theaters have a one drink per visit limit.

8 I called back this week to confirm
9 those policies were still in place. I spoke to a
10 manager at Landmark E Street who confirmed their
11 one drink per trip policy continues to exist. If
12 two patrons show up with IDs, they will serve
13 them a bottle of wine, presumably two glasses.

14 I spoke to a manager at the Regal
15 Gallery Place who identified herself, well, who
16 only identified herself by her first name and
17 last initial, who confirmed that Regal also
18 continues their policy. She did say that they
19 recently instituted a program where a patron who
20 brings two IDs may purchase two drinks however.

21 Just yesterday, I discovered a third
22 theater with this policy on ABRA's site. It can
23 be hard to find things on ABRA's site, because it
24 doesn't appear that the contents as opposed to
25 the titles of documents can be searched. And

1 theaters in town often seem to have registered
2 with ABRA under names very different from their
3 trade names.

4 Moreover, I should say I heard Mr.
5 O'Brien say on more than one occasion that, and I
6 think he said it today, that no other theater's
7 alcohol sales are subject to a settlement
8 agreement.

9 Unless I missed something, that's
10 apparently not correct. ABRA Order 2016-038 on
11 License Number 100805, Cinema Beverages Holding
12 Company, doing business as West End Cinema
13 Beverage Service, approves and incorporates a
14 settlement agreement that, among other things,
15 states at Paragraph 5 that alcohol purchase is
16 limited to one serving per person at a time.

17 All three of these theaters appear to
18 have been renovated. Now, I couldn't visit each
19 theater and take pictures, but information is on
20 the web. I'm going to try to put Protestant's
21 Exhibit Number 5 on the screen, if you'll please
22 bear with me for a moment.

23 We had identified this as Protestant's
24 Exhibit Number 5. This is an information page
25 from the Landmark E Street Cinema. And we can

1 see in the text of the page the theater describes
2 itself as an "eight-screen luxury movie theater,"
3 quote, unquote, and also, quote, unquote,
4 "aesthetically unique," and goes on to talk about
5 its stadium seating, state of the art film
6 presentation, espresso bar, et cetera. So it
7 would certainly appear that this is not a shabby
8 theater, and it has modern amenities.

9 The webpage for the Regal,
10 unfortunately, didn't describe the specific
11 amenities at the theater. I have a webpage in
12 the exhibit list, but it has very little about
13 it. The best source I found on the web
14 describing the amenities was Yelp, of all things.

15 And so I didn't put the Yelp website
16 on my exhibit list, but I will testify that I
17 read several reviews on that site praising the
18 lavish reclining seats, and some with pictures of
19 lavish looking seats.

20 Again, I only discovered the West End
21 Cinema Settlement Agreement yesterday. So I
22 didn't have time to put anything on the eye
23 witness, excuse me, on my exhibit list.

24 But I did review the page for the West
25 End Cinema which states a pertinent part. "In

1 March of 2016, the theater was extensively
2 renovated. Each of the three auditoriums was
3 remodeled and outfitted with oversized, plush,
4 leather seating, and riser platforms designed to
5 provide maximum comfort.

6 "Additional enhancements include
7 larger screens, new aisle lighting, and wall-to-
8 wall carpeting on auditorium floors. The West
9 Side Cinema also offers rotating wine and beer
10 selections which patrons are welcome to bring
11 into any auditorium."

12 So we know that, contrary to at least
13 Petitioner's suggestion, a one drink per
14 transaction requirement has not prevented
15 Petitioner's DC competitors from remodeling their
16 theaters and installing enhancements like, to
17 quote from the last theater I addressed,
18 "oversized, plush, leather seating."

19 I do want to address a couple of other
20 conditions which the ANC would like to see that
21 is, or one condition, excuse me, that's not in
22 the original agreement and one I think both
23 parties would tend to see deleted. The ANC's
24 concern that younger teens and tweens are
25 impressionable. And we believe there ought to be

1 opportunities for this demographic to engage in
2 entertainment opportunities that don't involve
3 alcohol at all.

4 First, these younger adolescents and
5 pre-adolescents, many of whose parents allow them
6 to visit the movies alone, often as one of their
7 first independent activities, may be more likely
8 to start underage drinking if, among other
9 things, excuse me, if exposed to drinking in this
10 setting away from their parents.

11 Second, there's always the possibility
12 of over-consumption. But only in a theater
13 setting as opposed to a restaurant setting which
14 would be, I think, the only other setting in
15 which a minor would be exposed to alcohol, would
16 these young people potentially be sitting
17 directly adjacent to an over-consumer.
18 Accordingly, we'd like to see some matinees, at
19 least for G, PG, and PG 13 movies, be alcohol
20 free.

21 The other condition I want to
22 reference is one in the original settlement
23 agreement that requires Petitioner to provide
24 free parking to patrons in the theater where
25 drinking is allowed.

1 Although the ANC is concerned about
2 burdens to parking in the neighborhood, we're
3 more concerned about the dangers to pedestrians
4 and other vehicles from a requirement that
5 incentivizes patrons who drink to come in their
6 cars instead of walking, riding a bike, or taking
7 public transit. So we would be happy to strike
8 that provision. And I don't believe the
9 Applicant has said that they would object to
10 that.

11 To sum up, the ANC has been willing
12 for six years to support Petitioner's desire to
13 serve alcohol in all seven of its screening rooms
14 without age restrictions. We only want
15 Petitioner to agree to a few minor conditions to
16 protect youth. Chief among them, one, to which
17 numerous theaters in DC are subject to, these
18 theaters all appear to have been renovated. And
19 we're aware of nothing to suggest that they
20 aren't successful.

21 Petitioner does not need and has never
22 needed the Board to rescue it from the original
23 settlement agreement as it contends. The ANC has
24 always been willing to provide them what they're
25 asking. Thank you.

1 CHAIRPERSON ANDERSON: Mr. O'Brien?

2 MR. O'BRIEN: Mr. Bender, I know you
3 said you said you, oh, Commissioner Bender,
4 excuse me, I know you said you have been on the
5 ANC since 2009. How long have you lived in the
6 neighborhood?

7 MR. BENDER: I've lived in the
8 neighborhood since 1995.

9 MR. O'BRIEN: Okay. So you've been
10 there as long as Club Cinema at Mazza has been
11 there, correct?

12 MR. BENDER: I don't recall when Club
13 Cinema Mazza began.

14 MR. O'BRIEN: I'll represent to you it
15 was 1999.

16 MR. BENDER: So yes, I have.

17 MR. O'BRIEN: Okay. It's fair to say,
18 is it not, that to the best of your knowledge,
19 including your knowledge derived from your
20 service as an ANC Commissioner for the last 11
21 years, that this theater has never caused a lick
22 of trouble in this neighborhood.

23 MR. BENDER: Well, I mean, a lick of,
24 no. What I would say is that I haven't heard
25 complaints about noise, and I haven't heard any

1 complaints about underage alcohol consumption.
2 But, of course, as I have said, that the current
3 theaters only permit drinking by those who are,
4 or only permit admission by those who are 21 and
5 over.

6 MR. O'BRIEN: So is the answer that
7 I'm correct, you've never had a lick of trouble
8 out of these theaters?

9 MR. BENDER: I don't recall any
10 complaints.

11 MR. O'BRIEN: So when the ANC protests
12 the termination of this agreement on the grounds
13 that peace, order, and quiet, there is no
14 foundation, peace, order, and quiet for this
15 protest?

16 MR. BENDER: Oh no, sir. That's not
17 true. We can tell, I mean, just through common
18 sense and our experience as Commissioners, that
19 there is a risk of underage drinking.

20 MR. O'BRIEN: But it hasn't
21 materialized.

22 MR. BENDER: It hasn't materialized
23 because what you want to do has not been your
24 practice since 1999. The theater has absolutely
25 no experience serving alcohol in a situation

1 where minors can be admitted.

2 MR. O'BRIEN: Your protest filing said
3 that there would be an adverse impact on real
4 property values from the termination of the
5 present settlement agreement. You have no
6 foundation for making that assertion whatsoever,
7 do you?

8 MR. BENDER: Well, I need to correct
9 that. We did not say that. I know that the
10 investigator said that. But no, I do not recall
11 us citing real property values.

12 MR. O'BRIEN: Okay, so we're in
13 agreement that real property values is not an
14 issue in this case.

15 MR. BENDER: Correct.

16 MR. O'BRIEN: Okay. Vehicular and
17 pedestrian safety, I believe, you did mention.

18 MR. BENDER: I did. And as you and I
19 have discussed fairly extensively, our concerns
20 have been that we're not particularly interested
21 in maintaining the provision that requires
22 parking.

23 Actually, I should take a step back
24 and say that when I filed this or when we filed
25 this, there was still the possibility that the

1 other parties to the agreement would also join
2 the protest.

3 They were concerned that there would
4 be -- or one of the things they wanted was that
5 the Petitioner agree to require parking in all
6 seven theaters. As you know, because you were at
7 one of our ANC meetings where this came --

8 MR. O'BRIEN: With respect, you and I
9 may have had conversations that the Board wasn't
10 privy to.

11 MR. BENDER: No. I'm saying that at
12 a public meeting -

13 MR. O'BRIEN: Okay.

14 MR. BENDER: -- at a public meeting we
15 heard from a variety of perspectives. And there
16 were some guests, excuse me, some constituents
17 who wanted to have a parking requirement for all
18 seven theaters. There were others who were
19 absolutely against it.

20 And so, yes, our concern at that time
21 was that, by requiring parking for all seven
22 theaters where alcohol was going to be served at
23 all seven, we are at least setting a bad
24 precedent. Because we don't want to require a
25 liquor license holder to have to have parking for

1 every patron who's going to be drinking there.
2 Because that increases the danger to pedestrians
3 and other vehicular traffic of drunk driving
4 accidents.

5 MR. O'BRIEN: But you've seen no such
6 consequences emanating from the operation of this
7 theater in 21 years, have you?

8 MR. BENDER: Well, not that I'm aware
9 of, no. Again, it's only been two of the seven
10 theaters that have this requirement currently.

11 MR. O'BRIEN: Would you agree then
12 that vehicular and pedestrian safety are not
13 really issues in this case?

14 MR. BENDER: Well, to the extent that
15 you wish to keep that, or that you wish to extend
16 that requirement, they would be. To the extent
17 that you don't, no.

18 MR. O'BRIEN: Well, Commissioner
19 Bender, the proceeding that we're engaged in here
20 is for termination of the settlement agreement.
21 There would be nothing to keep under those
22 circumstances.

23 MR. BENDER: Well, my understanding is
24 that you had originally styled this as a petition
25 to terminate or amend.

1 MR. O'BRIEN: I suggest to you that's
2 not correct.

3 MR. BENDER: All right. That's what
4 we had understood and, in fact, I think that's
5 how the, I believe that's how the investigator
6 characterized it. I believe that's how you
7 characterized it in an email to me. I don't have
8 the email.

9 MR. O'BRIEN: All right. Would you
10 agree that residential parking needs is really
11 not an issue in this case?

12 MEMBER SHORT: Can I make an
13 interjection in this?

14 MR. O'BRIEN: Absolutely, Mr. Short.

15 MEMBER SHORT: Parking comes under the
16 Zoning Commission which would take it away from
17 our authority, which we look at that. But if
18 there's parking in the garage in designated
19 parking, I understand there's two designated
20 parking areas for the theater, is that correct?

21 MR. BENDER: My understanding is that
22 they provide validation, well, they're required
23 to provide validation for free parking for every
24 patron of the theaters that currently serve
25 alcohol.

1 MEMBER SHORT: But then that comes
2 down to the point that everybody coming there
3 drives a car. Do neighbors walk there, do people
4 catch the subway there, like a person like myself
5 coming from the side of town I come from. So we
6 wouldn't need parking for every patron in there.
7 And I've never been to a theater, especially the
8 matinees or whatever, when the whole theater was
9 packed. That's years ago.

10 But I would simply say this. I
11 understand the points that you're trying to make,
12 and you're trying to make your case. I
13 understand that. But has there been a parking
14 issue before in that neighborhood about the
15 theater specifically? Because I know you have
16 Cheesecake Factory, and you have so many
17 businesses.

18 I mean, your neighborhood is to die
19 for when it comes to restaurants and businesses.
20 So you're kind of lucky with that. But I've
21 never been up there and couldn't find a parking
22 space. And I've never, when I take the train up
23 there I never have a problem getting around and
24 doing everything I wanted to do. So is there any
25 other issue you have besides parking that you are

1 discussing right now?

2 MR. BENDER: Well, I'm simply
3 discussing that, I mean, I would say that if you
4 simply want to terminate the agreement to try to
5 simplify things, Mr. Board Members, if you're
6 saying you just want to terminate the agreement,
7 that wasn't what I had understood. I'm not sure
8 that that was clear, no. There is no issue,
9 because there won't be a requirement.

10 To the extent that the Board retains
11 the ability to modify the agreement, and that's
12 what I thought this was also part, there could
13 be.

14 MR. O'BRIEN: Okay, Commissioner
15 Bender, the present agreement, the agreement
16 that's the subject of today's proceeding,
17 restricts alcohol service to two of seven
18 theaters.

19 MR. BENDER: Correct.

20 MR. O'BRIEN: Okay. Now you did a
21 survey, telephone and internet survey of other
22 movie theaters in DC with alcohol licenses. Did
23 you find any of the theaters that restricted
24 alcohol service, any licensed theaters that
25 restricted alcohol service to just some screens?

1 MR. BENDER: I didn't ask that
2 question. But you've represented that there
3 aren't any. And I will accept that.

4 MR. O'BRIEN: Well, okay. Do you know
5 of any other screens in any of the theaters in
6 this city where the screens are, certain screens
7 within the theater are limited to 21 and over?

8 MR. BENDER: I don't know of any, no.
9 I haven't been to every theater in town.

10 MR. O'BRIEN: You detailed proceedings
11 or negotiations, I'll call them negotiations, in
12 2014 and 2015 in which you stated, and I wrote
13 the word down, that representatives of AMC
14 promised wrist bands and one drink per patron.
15 What do you mean by promised? Are you saying a
16 deal was made?

17 MR. BENDER: Well, I'm saying that
18 they represented to the community at a public ANC
19 meeting that that's what they would seek.

20 MR. O'BRIEN: Okay. But that never
21 materialized, did it?

22 MR. BENDER: No, it didn't.

23 MR. O'BRIEN: Okay. And then in 2018,
24 AMC came back and Frank Lewis came back again.
25 And it was clear at that point, I'm sorry, I'm

1 having a problem with the dates.

2 MR. BENDER: Well, first of all, yes,
3 I think it might have been 2019 when we had you
4 back. I can't remember. But also was it Frank?
5 I don't recall Frank Lewis.

6 MR. O'BRIEN: I'll represent to you
7 that it was December 13th, 2018, before the ANC.
8 And it was clear at that point that AMC was not
9 going to agree to the limitations or the
10 restrictions you were demanding.

11 MR. BENDER: That's correct. In 2015
12 they said they would, and they came back after
13 outside counsel was involved and said they would
14 not.

15 MR. O'BRIEN: Okay. You listened to
16 the testimony of AMC's representative regarding
17 their awareness of the perils of service to
18 underage people, and the measures, and the
19 training they undertake to preclude that. You
20 heard that testimony, did you not?

21 MR. BENDER: I heard their testimony.

22 MR. O'BRIEN: Okay. And you heard
23 that AMC operates 340, I think, licensed, meaning
24 alcohol licensed theaters around the country,
25 okay. You heard that, did you not?

1 MR. BENDER: Yes.

2 MR. O'BRIEN: Okay. What is your
3 experience with respect to alcohol in movie
4 theaters?

5 MR. BENDER: I don't have personal
6 experience. I've not purchased alcohol in movie
7 theaters before. I've been to a lot of movies.
8 I've seen how dark it is. I have, well, you
9 asked about movie theaters.

10 MR. O'BRIEN: Okay. And I'm going to
11 say the next question with a bit of a smile on my
12 face, because I don't want it to come across as
13 overly aggressive. But what makes you the expert
14 on how to handle, and how to run a movie theater,
15 and how to control underage drinking?

16 MR. BENDER: Well, first of all, well,
17 let me go back. I'm an elected ANC Commissioner,
18 and I've served in that position for 11 years.
19 By statute, I'm asked my opinion on this matter.
20 And by statute the ANC is a necessary party to
21 every alcohol proceeding.

22 I've heard a lot from a lot of people.
23 And, you know, I don't think one needs to have
24 run a movie theater to know or to form a
25 reasonable belief as to whether there will be

1 underage drinking. I mean, the Charter of the
2 District of Columbia expects me, as well as all
3 my colleagues, to render an opinion on those
4 issues. And that opinion is legally entitled to
5 great weight.

6 MR. O'BRIEN: Thank you, Commissioner.

7 MR. BENDER: You're welcome.

8 CHAIRPERSON ANDERSON: Any other
9 questions.

10 MR. O'BRIEN: Oh, I'm sorry.

11 CHAIRPERSON ANDERSON: Mr. Bender, the
12 question I need to ask you. I mean, I read the
13 current settlement agreement. And I see that
14 alcohol is limited to two theaters. But I don't
15 see anything in the settlement agreement
16 regarding the service. So how many drinks can be
17 served, at least in your view, from the current
18 settlement agreement per customer?

19 MR. BENDER: Well, there is no limit.
20 Again though that's because, well, excuse me,
21 because you have to be 21 to enter those
22 theaters. There doesn't seem to be any reason to
23 have a concern about adults passing drinks to
24 minors.

25 Now again, I wasn't on the ANC in

1 1999. I didn't negotiate this agreement. And I
2 can't speak for specifically what the concerns
3 were at that point. But that's why we have a
4 concern.

5 CHAIRPERSON ANDERSON: So your
6 position is that because, if you're going to
7 allow them to serve alcohol in all seven
8 theaters, then because of the possibilities of
9 service to minors you want it limited to one per
10 person and then have an ID, I'm sorry, then have
11 a wrist band.

12 MR. BENDER: Yes. And the thing about
13 wrist bands is that would remove any question
14 about who is able to drink. You either have the
15 wrist band or you don't. It wouldn't have to, an
16 associate wouldn't have to make an age
17 determination based on how someone looks.

18 CHAIRPERSON ANDERSON: Now, are you
19 aware that the Agency can police that, via we
20 don't serve to minors drinks and also that an
21 establishment can lose its license if they're
22 caught selling minors over a period of time. So
23 the Agency can police that itself. And the
24 establishment, that's their peril if they do that
25 and we catch them.

1 MR. BENDER: How --

2 CHAIRPERSON ANDERSON: Go ahead.

3 MR. BENDER: Yes, sir. So I am aware
4 that the Agency polices underage drinking. Do
5 you know how frequently the Agency does stings
6 where a person who's of age buys a drink and then
7 passes it in a theater to a minor?

8 CHAIRPERSON ANDERSON: But I guess
9 what I'm saying, whether or not it's, I'm asking
10 from your view whether or not it's one drink. I
11 mean, I can buy a drink and give it to a minor,
12 go back and buy another drink.

13 MR. BENDER: Absolutely. Yes, sir.

14 CHAIRPERSON ANDERSON: So, I mean,
15 because are you saying that it's one drink for
16 the entire experience?

17 MR. BENDER: No.

18 CHAIRPERSON ANDERSON: So how then,
19 I'm asking, how's preventing them from selling
20 two drinks, how is that going to -

21 MR. BENDER: It simply makes it more
22 difficult. As I think I mentioned earlier, we're
23 aware that it's not perfect. And our ANC is
24 trying to balance the needs for a vibrant
25 business community and the ability for them to do

1 what they want with mitigation of underage
2 drinking.

3 The one drink per person per trip,
4 requirement is one that is used widely in DC by
5 at least three different theaters that serve
6 alcohol.

7 CHAIRPERSON ANDERSON: I think,
8 unfortunately, there is a provision in the law
9 that says no backup drinks. So I think we just
10 repeal that so

11 MR. BENDER: But this is, I mean, I
12 contacted those theaters yesterday.

13 CHAIRPERSON ANDERSON: Okay.

14 MR. BENDER: And so they still have
15 it. Also, I don't know that the backup drink
16 provision applies in this situation or only at
17 bars. I thought it might only apply to bars, but
18 I'm not into --

19 CHAIRPERSON ANDERSON: All right, any
20 other questions by Board members? Yes, Ms.
21 Crockett?

22 MEMBER CROCKETT: Mr. Bender, I think
23 Mr. O'Brien was kind of getting at this with his
24 question, and I'm curious. Do you frequent movie
25 theaters in this city such as Landmark E Street,

1 such as the West End, such as the Gallery Place
2 Cinemas where alcohol, you stated you've not
3 bought alcohol, but have you frequented theaters
4 where alcohol was served?

5 MR. BENDER: Yes, I've been to
6 theaters where alcohol is served. Yes.

7 MEMBER CROCKETT: Have you observed
8 the passing of alcohol to minors at these movie
9 theaters?

10 MR. BENDER: Madam Board Member, I
11 have not. But I haven't been going to theaters
12 to look, to turn around and look and see if
13 that's going on. I've been going to watch the
14 movies and so, as I assume most patrons are, so I
15 have not gone on an attempt to inspect theaters
16 for that behavior.

17 MEMBER CROCKETT: Do you believe this
18 to be a widespread problem?

19 MR. BENDER: I mean, I believe it to
20 be a problem. And I would presume that it's
21 going on at theaters across the city. But maybe
22 the danger in our neighborhood is enhanced by the
23 number of schools, large schools, that are
24 nearby. We have a lot of students, more, I
25 think, a denser concentration than in most other

1 areas of the city.

2 And we have AU, that's about the same
3 size as Georgetown University. I know they've
4 got that Georgetown University in the vicinity of
5 their AMC Georgetown theater. But we also have
6 Wilson High School, that's almost 2,000 students,
7 Deal Middle School, which is also getting close
8 to 2,000 now. Those schools are growing, and GDS
9 which is bringing their middle school. I presume
10 they'll testify about how many students they
11 have.

12 And there are also statistics that
13 show that we have a much higher number of under-
14 20 students here in our neighborhood than, say,
15 in Georgetown.

16 MEMBER CROCKETT: Thank you. That's
17 all, Mr. Bender.

18 MR. BENDER: You're welcome.

19 CHAIRPERSON ANDERSON: Any other
20 questions by any other Board members? All right.
21 Mr. O'Brien, any follow-up questions based on the

22 -

23 MR. O'BRIEN: Just one. How far is
24 Wilson High School from this theater?

25 MR. BENDER: A few blocks. I don't

1 have the precise --

2 MR. O'BRIEN: Well, if I were to tell
3 you the address of Wilson High School is the 3900
4 Block of Chesapeake Street NW, would that seem
5 correct?

6 MR. BENDER: It would.

7 MR. O'BRIEN: Okay. Now, to get to
8 this theater, one would have to walk across
9 Chesapeake to Wisconsin, right?

10 MR. BENDER: Yes.

11 MR. O'BRIEN: And then go up to
12 Davenport, correct?

13 MR. BENDER: Yes, Davenport --

14 (Simultaneous speaking.)

15 MR. BENDER: Those are short blocks.

16 MR. O'BRIEN: Harrison --

17 (Simultaneous speaking.)

18 MR. O'BRIEN: -- then up to --

19 MR. BENDER: Yes. And then you're
20 there. It's --

21 MR. O'BRIEN: If I were to tell you
22 that mapped on MapQuest, taking any number of
23 different routes, it's a mile away.

24 MR. BENDER: Well, it's possible, but
25 it is the only theater in the vicinity that I'm

1 aware of. It's the theater that the kids from
2 these schools go to.

3 MR. O'BRIEN: That was my question,
4 Mr. Chair.

5 CHAIRPERSON ANDERSON: All right,
6 thank you. All right, Mr. Bender, you can step
7 down.

8 MR. BENDER: Thank you. Our next
9 witness is going to be Anoushka Chander.

10 CHAIRPERSON ANDERSON: Chander?

11 MR. BENDER: I have to go get her out
12 of -

13 CHAIRPERSON ANDERSON: She'll -

14 MR. BENDER: Oh, okay.

15 CHAIRPERSON ANDERSON: When you call
16 her, have her spell her name for the record, will
17 you?

18 MR. BENDER: All right. And then
19 she's written out her testimony. But I'll ask
20 her to -

21 PARTICIPANT: How much time is left,
22 Judge?

23 CHAIRPERSON ANDERSON: I'm not --
24 (Simultaneous speaking.)

25 CHAIRPERSON ANDERSON: No, this is

1 not, I'm not addressing you, sir. Ha, ha, ha.

2 All right.

3 (Pause.)

4 CHAIRPERSON ANDERSON: Miss, can you
5 stand up, please?

6 MS. CHANDER: Yes.

7 CHAIRPERSON ANDERSON: Can you raise
8 your right hand?

9 WHEREUPON,

10 ANOUSHKA CHANDER

11 was called as a witness and, having been first
12 duly sworn, was examined and testified as
13 follows:

14 MS. CHANDER: Yes.

15 CHAIRPERSON ANDERSON: All right. You
16 don't have any documents with you, is that
17 correct?

18 MS. CHANDER: I have my testimony with
19 me.

20 CHAIRPERSON ANDERSON: No, you can't,
21 you can give him your testimony, and he can ask
22 you questions for it. But you can't read your,
23 you can't have any documents with you to read
24 your testimony from.

25 MR. BENDER: Mr. Chair, I actually

1 contacted, I've never done a hearing here before.
2 I contacted the General Counsel and asked if you
3 followed the same practice that the Zoning
4 Commission does where -

5 CHAIRPERSON ANDERSON: Well, I don't
6 know, but you can't have somebody testify from
7 prepared documents. I think that Mr. O'Brien
8 doesn't know what's there. And I'm surprised
9 that he hasn't said something to me already. So
10 she has her testimony. I mean, you can take it
11 from her.

12 MR. BENDER: All right.

13 CHAIRPERSON ANDERSON: You can ask her
14 questions about her testimony. She can testify.
15 But use her testimony to ask her. She knows
16 what's in it.

17 MR. BENDER: No, that's fine.

18 (Simultaneous speaking.)

19 MR. BENDER: I just think Ms.
20 Jenkinson told me that you followed this -

21 CHAIRPERSON ANDERSON: Yes. Well, I
22 don't know what, but I think that Ms. Jenkinson
23 would have stated to you that a person cannot go
24 and testify off a written, it's just not a
25 written document. Because this is - and I don't

1 know what happens at the Board of Zoning, but
2 this is an administrative proceeding that you
3 cross examine persons under oath. Questions are
4 being asked, and as you see, then Mr. O'Brien
5 will have an opportunity to cross examine her
6 testimony. And the Board's going to do that. So
7 you can take her testimony -

8 MR. BENDER: Yes, sir.

9 CHAIRPERSON ANDERSON: -- from her and
10 then formulate the questions you want to ask her
11 from the testimony, since she knows what's on the
12 document.

13 All right, so can you, as one of the
14 first questions, just ask her to state and spell
15 her name for the record, please.

16 MR. BENDER: Would you state your
17 name, please, for the record?

18 MS. CHANDER: My name is Anoushka
19 Chander. And it is spelled A-N-O-U-S-H-K-A C-H-
20 A-N-D-E-R.

21 CHAIRPERSON ANDERSON: So Anoushka
22 Chander, that's your last name, or is it your
23 first and the last name?

24 MS. CHANDER: My first name is
25 Anoushka, and my last name is Chander.

1 CHAIRPERSON ANDERSON: Because you
2 said space, that's why. Ha, ha. All right, go
3 ahead. Your witness, sir.

4 MR. BENDER: Thank you, Mr. Chair.
5 Anoushka, what do you do during the day?

6 MS. CHANDER: During the day, I
7 usually, on Mondays through Fridays, go to
8 school, on the weekends do homework or do other
9 extra curricular activities.

10 MR. BENDER: And where do you go to
11 school?

12 MS. CHANDER: I go to school at
13 Georgetown Day School. I am a junior.

14 MR. BENDER: Okay, thanks. And how
15 far a walk is GDS from the AMC Mazza Theater in
16 Friendship Heights?

17 MS. CHANDER: It's less than 15
18 minutes.

19 MR. BENDER: Okay, and you've taken
20 that walk?

21 MS. CHANDER: I have taken that walk,
22 yes.

23 MR. BENDER: Do you have any concern
24 about alcohol being served in movie theaters?

25 MS. CHANDER: I do have a concern

1 about alcohol being served in movie theaters. I
2 think that it poses a public health risk to
3 underage students like me. There are two high
4 schools, soon to be another middle school at GDS,
5 and Deal Middle School, within a three-mile
6 radius from the AMC Mazza Theater. And many
7 students go to that theater.

8 If there was to be a policy that would
9 say that each person who would like to buy a
10 drink at the theater is carded when they buy the
11 drink but can only buy one drink per person, per
12 trip, I think that would mitigate any underage
13 drinking that could occur in a theater. It's
14 hard to regulate who is drinking what in a dark
15 movie theater.

16 MR. BENDER: Is there a difference
17 between a theater and a bar in that regard?

18 MS. CHANDER: Yes. So in a
19 restaurant, you know, if someone wants to buy a
20 drink, a young man comes up to the bartender,
21 they can card him. And he'll buy two drinks.
22 And if he goes back and takes it to a friend who
23 clearly looks underage, you can take steps to
24 stop that from happening.

25 Whereas in a movie theater, if a young

1 man who is of age comes and buys two drinks from
2 the concession stand you do not know who then
3 that drink is being served to in the dark
4 theater. You cannot be sure.

5 MR. BENDER: And, I mean, in a
6 restaurant, what's your understanding of a
7 server's responsibility when it comes to alcohol?

8 MS. CHANDER: So I think in a
9 restaurant, either way, they would have to card
10 the individual who is attempting to purchase
11 alcohol. But again, there is less regulation
12 than there would be, there is less regulation in
13 a movie theater than there would be at a
14 restaurant.

15 MR. BENDER: So everybody who drinks
16 in a restaurant would need to be carded?

17 MR. O'BRIEN: This is obviously a
18 leading question.

19 CHAIRPERSON ANDERSON: Mr. Bender,
20 you're an attorney, so please avoid asking
21 leading questions. So rephrase the question,
22 please.

23 MR. BENDER: What, if anything, would
24 a server need to do if two people at a restaurant
25 wanted to, say, share a bottle of wine?

1 MS. CHANDER: I think that if those
2 people are very obviously of age and can legally
3 consume alcohol, then they should be allowed.
4 They're legally allowed to consume alcohol.

5 MR. BENDER: Okay. Do you think
6 alcohol should be banned from movie theaters?

7 MS. CHANDER: I do not think alcohol
8 should be banned from movie theaters. It's
9 actually been a growing trend in the recent years
10 that more movie theaters have decided to start
11 serving alcohol as a way to increase their
12 revenue.

13 But I do think that in this specific
14 case, and in most cases, movies are a type of
15 recreation for underage people, for underage
16 youth. And there should be steps taken that
17 would mitigate any potential for underage
18 drinking.

19 MR. BENDER: Are you aware of any
20 efforts to take such steps in other
21 jurisdictions?

22 MS. CHANDER: Yes. So right now, or
23 in January of 2020, Governor Andrew Cuomo of New
24 York submitted a proposal that would allow adults
25 who are seeing PG-13 rated movies or higher to

1 consume alcohol. But that is on a one drink per
2 legal person, per trip basis. So that policy is
3 a proposal right now --

4 MR. BENDER: Yes.

5 MS. CHANDER: -- from the Governor.

6 MR. BENDER: And did you do, are you
7 aware of how many drinks the average customer
8 buys per visit to a movie theater?

9 MS. CHANDER: According to the AMC
10 it's about one drink per customer. So
11 implementing the policy that says one drink per
12 lawful person, per trip would not significantly
13 cut revenue in any way.

14 MR. BENDER: Are you aware of other
15 theaters in DC that have a requirement similar to
16 Governor Cuomo's proposal?

17 MS. CHANDER: Yes. So it is my
18 understanding that the Landmark Theater E Street
19 and the Regal Theater on 7th Street, both
20 voluntarily abide by a one drink per legal
21 person, per trip policy, yes.

22 MR. BENDER: Did you call AMC
23 Georgetown?

24 MS. CHANDER: So I did call the AMC
25 Loews Theater at Georgetown. And the employee

1 there said that they also voluntarily abide by a
2 one drink per lawful person, per trip policy. I
3 know the AMC has said that it is two drinks per
4 person. So there might have been a
5 miscommunication.

6 MR. BENDER: Well, you know that
7 through me.

8 MS. CHANDER: I know that through you,
9 yes, Mr. Bender.

10 MR. BENDER: But you were told -

11 MS. CHANDER: I was told by an
12 employee when I called that there was one drink.

13 MR. BENDER: What kind of risks are
14 associated with underage alcohol use?

15 MR. O'BRIEN: Objection, calling for
16 opinion testimony with no foundation.

17 CHAIRPERSON ANDERSON: Sustained.

18 MR. BENDER: Did you review any
19 research on the effects of alcohol on underage
20 youth?

21 MS. CHANDER: So on in some research
22 from the Centers for Disease Control it is my
23 understanding that alcohol use is, or alcohol is
24 the most used and abused drug by teenagers, by
25 underage people. About 4,300 underage youth will

1 die from alcohol use related to drunk driving or
2 suicide.

3 And one of the issues I am very
4 concerned of, from personal experience, is
5 teenagers driving to a movie theater, and going
6 to see a movie with their friends in the
7 afternoon, drinking there, and then driving home
8 under the influence. I think that poses a very
9 significant risk to their safety.

10 MR. BENDER: In your research, did you
11 find any other effects of alcohol use by teens?

12 MS. CHANDER: So there are all the,
13 you know, well cited effects of brain damage and
14 of the troubles in school, troubles with the law,
15 and many more.

16 MR. BENDER: Are you aware of a method
17 of preventing underage drinking that's been
18 proven to work?

19 MS. CHANDER: So one of the most
20 proven methods -

21 MR. O'BRIEN: Objection.

22 CHAIRPERSON ANDERSON: Sustained.

23 MR. BENDER: What's the nature of the
24 objection?

25 MR. O'BRIEN: No foundation for expert

1 testimony.

2 CHAIRPERSON ANDERSON: And she hasn't
3 been declared an expert of that if he says --
4 you're asking her for expert testimony. And
5 although we're not as formal here, but she's not
6 an expert. And she hasn't been presented as an
7 expert.

8 MR. BENDER: May I, Judge, I'd like to
9 try it this way. You're a teenager.

10 MS. CHANDER: Uh-huh.

11 MR. BENDER: And you have friends who
12 presumably drink unlawfully, or at least
13 acquaintances?

14 MS. CHANDER: Uh-huh.

15 CHAIRPERSON ANDERSON: You have to say
16 yes or no. You can't say uh-huh.

17 MS. CHANDER: Yes.

18 CHAIRPERSON ANDERSON: All right.

19 MR. O'BRIEN: It's also a leading
20 question, Mr. Chair.

21 CHAIRPERSON ANDERSON: All right.

22 MR. BENDER: It's foundation. So
23 that's what you -

24 CHAIRPERSON ANDERSON: All right. But
25 because it's been, this is being transcribed, he

1 can't pick up uh-huh. So that's why you have to
2 say yes or no, okay?

3 MS. CHANDER: Okay.

4 CHAIRPERSON ANDERSON: All right, go
5 ahead.

6 MR. BENDER: Based on your experience
7 as a teenager who has acquaintances who drink
8 unlawfully, what methods, if any, would tend to
9 deter that drinking?

10 MS. CHANDER: I think that if you were
11 to limit access to alcohol in these movie
12 theaters, and make it unavailable for people my
13 age, people who are underage, to obtain alcohol,
14 that would be the most effective way of keeping
15 teenagers safe.

16 MR. BENDER: Do you know how many
17 students are within three miles of the theater?

18 MS. CHANDER: There are approximately
19 4,300 students from Wilson High School,
20 Georgetown Day School, and Deal Middle School.

21 MR. BENDER: And in your experience,
22 is the AMC theater a popular place for these
23 students to go for recreation?

24 MS. CHANDER: Yes, it is very popular.
25 I have been to movies there.

1 MR. BENDER: As a teenager who has
2 experience with other teenagers who drink, has
3 some expertise in that regard --

4 MR. O'BRIEN: Objection to the
5 characterization.

6 CHAIRPERSON ANDERSON: Sustained.
7 Rephrase the question and ask, you can ask the
8 question, but you can take out that caveat.

9 MR. BENDER: Okay. Based on your
10 experience, are there any specific
11 recommendations you would make that you believe,
12 based on your experience, would reduce the
13 chances of underage drinking in an
14 all-ages theater.

15 MS. CHANDER: So the specific policy
16 that I would recommend and support is this idea
17 of a one drink per lawful person, per trip to the
18 bar at the movie theater policy.

19 MR. BENDER: And why is that?

20 MS. CHANDER: I think that, A, it
21 would allow for legal adults to have their drink
22 with their movie and enjoy that. And it would
23 make it much easier to understand who is actually
24 going to have those drinks at a given time.

25 MR. BENDER: Okay, thank you for your

1 testimony.

2 CHAIRPERSON ANDERSON: Your witness,
3 Mr. O'Brien.

4 MR. O'BRIEN: Ms. Chander, you've
5 forcefully stated more than once that you believe
6 that there should be a limit of one drink per
7 individual purchase at the AMC theaters.

8 MS. CHANDER: And per trip to the bar.

9 MR. O'BRIEN: Okay. How did you come
10 to formulate that opinion?

11 MS. CHANDER: So when I did my
12 research and learned about Governor Cuomo's
13 proposal, that seemed like a very reasonable
14 solution. Governor Cuomo's proposal also says
15 that the only people who are allowed to consume
16 alcohol are people who are watching a movie that
17 is rated PG-13 or above. And I do not think that
18 that was as reasonable.

19 MR. O'BRIEN: I'm sorry, what caused
20 you to research Governor Cuomo of New York?

21 MS. CHANDER: I researched on Google
22 movie theater drinking laws.

23 MR. O'BRIEN: What caused you to
24 undertake a research project on underage
25 drinking?

1 MS. CHANDER: So I am the leader of my
2 school's Student Action Committee. And so we
3 have recently been looking into the vaping crisis
4 and talking a lot about public health. And so in
5 that same vein, this is another public health
6 issue that impacts teens. And so I was very
7 interested to be a part of this case.

8 MR. O'BRIEN: Okay. How did you
9 become a part of this case?

10 MS. CHANDER: I was invited by the
11 Chief Financial Officer, Jeffrey Houser, of my
12 school.

13 MR. O'BRIEN: And what did he invite
14 you to do?

15 MS. CHANDER: To submit testimony.

16 MR. O'BRIEN: Did he ask you what your
17 testimony would be in advance? Or did he tell
18 you here's what we need you to say?

19 MS. CHANDER: He provided the details
20 of what the case was, and allowed me to do my own
21 research.

22 MR. O'BRIEN: And then you discussed
23 this with Mr. Bender, did you not?

24 MS. CHANDER: We have discussed it --

25 MR. O'BRIEN: Okay. And you know that

1 Mr. Bender wants you to come in here say one
2 drink per person, correct?

3 MS. CHANDER: This was a policy that
4 was discussed between me, and Jeffrey, and Mr.
5 Bender.

6 MR. O'BRIEN: And Mr. Bender told you
7 he needed you to come in here and say to the
8 Board one drink per person, correct?

9 MS. CHANDER: He never told me that I
10 needed to say anything.

11 MR. O'BRIEN: So is it just
12 coincidence that Mr. Bender has been in here
13 saying one drink per person, and then you come in
14 and just coincidentally say one drink per person,
15 just coincidence?

16 MS. CHANDER: I don't think it's
17 coincidence. I think that our opinions have been
18 the same on this issue.

19 MR. O'BRIEN: As you've discussed with
20 Mr. Bender?

21 MS. CHANDER: As we have discussed
22 previously and come to our similar conclusion,
23 yes.

24 MR. O'BRIEN: All right, thank you
25 very much.

1 MR. BENDER: May I --

2 CHAIRPERSON ANDERSON: Any questions
3 by any Board members?

4 MEMBER HANSEN: I do.

5 CHAIRPERSON ANDERSON: Ms. Hansen, go
6 ahead.

7 MEMBER HANSEN: So just to go along
8 with that question, were you asked to be here
9 today to testify, or did you volunteer?

10 MS. CHANDER: I was asked to be here.

11 MEMBER HANSEN: You were asked to be
12 here, okay. And do you consider underage
13 drinking to be an issue at your school?

14 MS. CHANDER: I do. I do consider it
15 to be an issue.

16 MEMBER HANSEN: And do you find that
17 to be the fault of anyone in particular?

18 MS. CHANDER: I don't think it's the,
19 you can lay blame in this issue. I think that
20 access to alcohol is a problem notwithstanding.
21 But I don't think I can point fingers at any
22 specific organization or person.

23 MEMBER HANSEN: So it could be the
24 fault of the student or where they're getting,
25 however they're obtaining?

1 MS. CHANDER: I think that it is a
2 student's choice. But there has been a concerted
3 effort to target young students through vape
4 products, through alcohol, for the last, well,
5 multiple years.

6 MEMBER HANSEN: By whom?

7 MS. CHANDER: By either of those
8 industries.

9 MEMBER HANSEN: But not specifically
10 by the movie theater?

11 MS. CHANDER: I would not say that the
12 movie theater has advertised to young consumers
13 that they want them to buy alcohol. But the fact
14 that the movie theater is in a location that is
15 frequented, has high traffic in young, underage
16 consumers would suggest that they're okay with
17 this potential ramification of the alcohol, of a
18 free alcohol policy.

19 MEMBER HANSEN: And do you think that
20 the students, it's also their responsibility to,
21 as underage people, not to consume alcohol?

22 MS. CHANDER: I do think that is the
23 responsibility of people who are underage to not
24 consume alcohol.

25 MEMBER HANSEN: And why did you say

1 that there is less regulation at a movie theater
2 than there would be at a restaurant?

3 MS. CHANDER: Because in a restaurant,
4 if a person was to go and order a drink, and that
5 person was of legal age, and they could take it
6 back to a partner, a friend with them at a
7 restaurant or bar, the person who was running the
8 bar, the bartender, would be able to see who was
9 consuming those drinks.

10 In a movie theater, if you buy two
11 drinks at a concession stand, one of those drinks
12 could be going to an underage person. And it's
13 hard to tell.

14 MEMBER HANSEN: Okay. No further
15 questions.

16 CHAIRPERSON ANDERSON: Have you been
17 to any movie theaters that sell alcohol?

18 MS. CHANDER: Yes, I have.

19 CHAIRPERSON ANDERSON: And what is it
20 like? Have you seen teens, underage folks
21 drinking alcohol that was purchased legally?

22 MS. CHANDER: I have not noticed teens
23 drinking alcohol illegally at a movie theater.

24 CHAIRPERSON ANDERSON: Any questions
25 by, yes, Mr. Grandis?

1 MEMBER GRANDIS: Good afternoon. You
2 understand that the purpose of the hearing day is
3 about a settlement agreement, whether it should
4 be terminated, or kept, or amended?

5 MS. CHANDER: Yes.

6 MEMBER GRANDIS: Okay. And my
7 question then goes, you've been to movies at this
8 theater.

9 MS. CHANDER: Yes.

10 MEMBER GRANDIS: And have you observed
11 alcohol sales at this theater?

12 MS. CHANDER: No, I do not recall
13 observing alcohol sales at this theater. I
14 remember I bought Dibs ice cream.

15 MEMBER GRANDIS: Yes, okay. So you
16 have not observed underage people drinking
17 alcohol purchased at that theater, have you?

18 MS. CHANDER: Not at the AMC Mazza,
19 no.

20 MEMBER GRANDIS: Thank you.

21 CHAIRPERSON ANDERSON: All right. Any
22 other questions by any of the Board members? Mr.
23 O'Brien?

24 MR. O'BRIEN: No, sir.

25 MR. BENDER: Yes, sir, just a couple.

1 To your knowledge, do you have to be 21 and over
2 to get into the movie theaters in Mazza that
3 serve alcohol?

4 MS. CHANDER: Not to my knowledge, no,
5 but I might be mistaken.

6 MR. BENDER: Mr. O'Brien asked you
7 about how many conversations you've had with me.
8 Have we actually spoken in person or on the
9 telephone before today?

10 MS. CHANDER: No, we have not. All
11 communication has either been through email or
12 through Jeffrey.

13 MR. BENDER: And there's actually only
14 been one email from me, is that correct?

15 MS. CHANDER: Yes.

16 MR. BENDER: Okay. And were you
17 required by GDS to come here?

18 MS. CHANDER: No. I was offered this
19 opportunity, and I was grateful to take it.

20 MR. BENDER: And you did your own
21 research, independent research, to arrive at the
22 opinions you arrived at?

23 MS. CHANDER: Yes.

24 MR. BENDER: Okay. I don't have
25 anything further.

1 MR. O'BRIEN: Mr. Chair, I'd like to
2 see that email.

3 CHAIRPERSON ANDERSON: I'm sorry?

4 MR. O'BRIEN: I'd like to see that
5 email.

6 CHAIRPERSON ANDERSON: What email?

7 MR. O'BRIEN: The email between the
8 witness and Counsel to see the extent to which
9 the Witness' testimony has been induced.

10 CHAIRPERSON ANDERSON: Well, I'm not
11 going, all right, I think that's a minor portion
12 of this case. So from the Board's perspective, I
13 don't think so. I'm not going to allow that.

14 So, Ms. Chander, thank you for your
15 testimony. You can step down, please.

16 MS. CHANDER: Thank you very much.

17 CHAIRPERSON ANDERSON: All right. Do
18 you have another witness, sir?

19 MR. BENDER: I do.

20 CHAIRPERSON ANDERSON: This is your
21 last witness?

22 MR. BENDER: It is my last witness.

23 CHAIRPERSON ANDERSON: Who is your
24 last witness?

25 MR. BENDER: My witness is Mr. Jeffrey

1 Houser.

2 CHAIRPERSON ANDERSON: Can you raise
3 your right hand, sir?

4 WHEREUPON,

5 JEFFREY HOUSER

6 was called as a witness and, having been first
7 duly sworn, was examined and testified as
8 follows:

9 CHAIRPERSON ANDERSON: All right. I
10 see you have a binder in front of you. Can I
11 please ask you not to open that binder, please,
12 sir?

13 MR. HOUSER: I have my notes in there.

14 CHAIRPERSON ANDERSON: I know. You
15 cannot refer to your notes. So if you have
16 notes, you can give it to Mr. Bender. He can use
17 your notes to ask you questions. But you can't
18 read from prepared notes, sir.

19 MR. BENDER: May I just explain to the
20 witness that I have called the General Counsel,
21 and apparently I misunderstood. I thought that
22 the Board here followed the same -

23 CHAIRPERSON ANDERSON: But it's, I
24 believe you are the, where are you employed, sir?

25 MR. HOUSER: I'm the CFO at Georgetown

1 Day School.

2 CHAIRPERSON ANDERSON: And we just had
3 a young student, a junior, from Georgetown Day
4 School. And she did perfectly well without her
5 notes, sir. And I would hope, as an adult, sir,
6 that you would put her to shame.

7 MR. HOUSER: That just increases the
8 pressure, Mr. Chairman.

9 MEMBER GRANDIS: Aren't our policies
10 and rules all published on our website?

11 CHAIRPERSON ANDERSON: Well, we're
12 during our practice here formally, and he said he
13 did ask the Agency. But you can give Mr. Bender
14 your notes. He can review that, and you know
15 what your notes are. But he can utilize that to
16 ask you questions. And you can give the same
17 information.

18 MR. HOUSER: Sure.

19 MR. BENDER: Anyway, my point was only
20 that I apologize, I really misinformed --

21 CHAIRPERSON ANDERSON: But as I said
22 before, sir, the previous witness is a teenager.
23 She --

24 MR. HOUSER: I get the pressure I'm
25 under.

1 CHAIRPERSON ANDERSON: So she did, in
2 the sense that she, under the same, without any
3 notes, she held up well, sir. You should be
4 proud of the product that the school is
5 producing. So go ahead, Mr. Bender.

6 MR. BENDER: Thank you. Would you
7 please identify yourself?

8 MR. HOUSER: Right. My name is
9 Jeffrey Houser. I am the CFO at Georgetown Day
10 School.

11 MR. BENDER: Okay. How large a school
12 is Georgetown Day School?

13 MR. HOUSER: Georgetown Day School is
14 1,075 students.

15 MR. BENDER: Okay. And they're not
16 all currently in the Tenleytown campus, correct?

17 MR. HOUSER: That's correct.
18 Georgetown Day School is consolidating, we like
19 to say unifying its campus. Currently we have
20 500 high school students in Tenleytown. And
21 starting September of 2020, that's this year,
22 that will be 1,075 students.

23 MR. BENDER: Do you attract, where do
24 you attract students from?

25 MR. HOUSER: Yes, that's a great

1 question. So, Georgetown Day School is a school
2 that attracts students from all over the DMV. At
3 the same time we consider ourselves a
4 neighborhood school.

5 So, when we scatter plot map the
6 students that attend Georgetown Day School, many
7 of them live within, like the highest
8 concentration of the students that attend school
9 live within about three miles of the current
10 Tenleytown address.

11 MR. BENDER: Okay. As a school
12 administrator, what's your most important
13 priority?

14 MR. HOUSER: Well, hands down school
15 leadership, at Georgetown Day School, and I would
16 suggest as schools generally, is for the well
17 being of the students.

18 MR. BENDER: Does the school become
19 involved in public policy issues affecting, that
20 may affect students?

21 MR. HOUSER: I think it's fair to say,
22 or important to say, as a 501(c)(3) the school is
23 not permitted to take a partisan position.

24 MR. BENDER: Right.

25 MR. HOUSER: We're prohibited from

1 that by statute. At the same time the school
2 promotes thought among its leadership and its
3 students, to think critically and actively about
4 issues that affect our world, both locally,
5 regionally, nationally, and globally.

6 MR. BENDER: Do you have, does the
7 school oppose legal drinking?

8 MR. HOUSER: No. The school has no
9 problem with of-age or legal drinking, no.

10 MR. BENDER: Does the school have any
11 problem with movie theaters in principle serving
12 alcohol?

13 MR. HOUSER: No. I mean, the idea of
14 a movie theater serving alcohol, I think what we
15 understand is it may be a possible, logical move
16 for theaters who are looking to attract
17 additional patrons.

18 You know, everybody recognizes that
19 there's a lot of competition in that particular
20 industry. You know, we know that, you know, as
21 many attendees as might have been in years past
22 is shrinking.

23 And so, if alcohol is a way to attract
24 more individuals to the theater, I think that
25 that's a logical move for those individual who

1 are of age. Sure.

2 MR. BENDER: And does GDS, excuse me,
3 does GDS have any concerns about underage
4 drinking in theaters?

5 MR. HOUSER: I think it's important to
6 say that Georgetown Day School has a concern
7 about underage drinking generally, or substance
8 abuse.

9 Our reason for that is as we look into
10 the individual groups that track the statistics
11 on underage drinking, we recognize that it is
12 growing in problem.

13 We also recognize that we believe,
14 from what we've understood as educators, that
15 students of youth in particular that have access
16 to alcohol at an early age have a
17 disproportionately higher possibility of becoming
18 substance addicted, whether it's alcohol or other
19 things. But in this case alcohol is the item in
20 question.

21 We believe that we as adults,
22 particularly leaders in education, have a
23 responsibility to set in motion environments, and
24 policy, and law that adheres, if you will, to, or
25 supports the understanding that we have about the

1 effects, the negative effects of substance on
2 youth.

3 We recognize that there are national,
4 and in some cases, you know, more local laws
5 that, but in the case of alcohol restrict
6 drinking to individuals 21 and above. We also
7 know that not everyone younger to 21 adheres to
8 that.

9 And so, we believe as educators it's
10 incumbent upon us to provide, again, responsible
11 environments that students are not, youth is not
12 inadvertently motivated to take action that would
13 be harmful to themselves.

14 MR. BENDER: Are you aware of any
15 organizations that have raised concerns about
16 drinking in movie theaters?

17 MR. HOUSER: Well, I am. I'm not an
18 expert on those particular groups. I mean,
19 there's the national, I think, I have to be
20 careful here that I say it, you know, as it
21 should be. But there's a National Education, or
22 the National --

23 MR. BENDER: Okay. Could I just ask,
24 is it the Community Anti-Drug Coalition of
25 America?

1 MR. HOUSER: Well, that's the group
2 that we've read about. Again, as the CFO, our
3 teachers and our principles read about these
4 things a whole lot more than I do. But yes, that
5 is a group that has been in conversation at
6 Georgetown Day School.

7 MR. BENDER: Is it your understanding
8 --

9 MR. O'BRIEN: I'm going to object
10 because that has to be a leading question. Is it
11 your understanding that. There's no way that
12 question cannot turn out to be a leading
13 question.

14 CHAIRPERSON ANDERSON: I'm sorry, but
15 I, so I didn't hear --

16 MR. O'BRIEN Is it your understanding
17 that the sky is blue? Yes.

18 MR. BENDER: I don't remember my
19 question now. I do think probably I would ask
20 that you let me finish a question --

21 CHAIRPERSON ANDERSON: Oh, I --

22 MR. BENDER: -- before --

23 CHAIRPERSON ANDERSON: -- that a
24 leading question is that, I mean, the direct
25 presupposes the answer, sir. His objection is

1 that if you, so just don't, just ask it a
2 different way.

3 MR. BENDER: No. I understand, Mr.
4 Chair.

5 CHAIRPERSON ANDERSON: Yes.

6 MR. BENDER: I just meant, I think he
7 should probably wait until I finish my question
8 before objecting.

9 MR. O'BRIEN: Well, the problem then
10 is that the cat's out of the bag, Mr. Chair. You
11 can't unring the bell once the answer is
12 suggested to the witness.

13 CHAIRPERSON ANDERSON: You know what
14 you should have said to me, Mr. O'Brien, you
15 should have said to me earlier that you were not
16 an attorney.

17 And so then I'll say to Mr. O'Brien
18 now, give some leeway. Because he doesn't, he
19 has not done this before, what is actually
20 before, what folks have told. There are now
21 three attorneys up here.

22 So, but now, one tells me that they're
23 an attorney. Although you might not practice,
24 but I know you have the legal training. I'm
25 going to say, you know better than that. So --

1 MR. BENDER: All right. All I was
2 asking is that he wait for the question --

3 CHAIRPERSON ANDERSON: All right.

4 MR. HOUSER: -- just in the --

5 CHAIRPERSON ANDERSON: I think Mr.
6 O'Brien is, he's looking at the time. And it's
7 like, okay, let me get to the end of it. I know
8 where he's going. So, let me stop him before he
9 gets there.

10 MR. BENDER: Okay.

11 CHAIRPERSON ANDERSON: But all right.

12 MR. BENDER: I understand.

13 CHAIRPERSON ANDERSON: All right.

14 MR. BENDER: I understand. What
15 theater, if any, are most popular with GDS
16 students?

17 MR. HOUSER: So, I just want to be
18 clear that we haven't like surveyed our students
19 to take an exact statistical count of how many
20 students attend the Mazza AMC.

21 But I do want to make clear that the,
22 again, back to the comment that was made earlier
23 about scatter plot maps. When we look at where
24 students live, we know that a disproportionately
25 high number of the GDS students live within three

1 miles of Friendship Heights.

2 And so, you know, there was a student
3 before you here a couple of minutes ago. But
4 just to speak to the students that I interact
5 with at school, I recognize that they go to
6 movies. They still go to movies, which I think
7 is a good thing. They're not all addicted to
8 Netflix.

9 But they also, because of the fact
10 that they live where they do, which is close to
11 Tenleytown, it's close to Friendship Heights.
12 Many of them go to the Mazza AMC.

13 And they go there in the evenings when
14 they're not studying. And they go there on
15 Saturdays for matinees. Again, we don't have an
16 exact number.

17 But what I would also say is that when
18 you combine the schools together in the area,
19 it's fair to say that there are in excess of
20 4,000 students in the area.

21 If you were to include the
22 undergraduates at American University, you know,
23 there's another 2,000 or so, I believe. There's
24 many more when you include the individuals that
25 attend American University that are also

1 underage.

2 We know that within three miles of the
3 Friendship Heights downtown, if you wanted to
4 call it that, there's roughly 500 Georgetown Day
5 School students that live there. And we
6 understand that those students, and it could be
7 all, or it could be some of them, watch movies.

8 MR. BENDER: Has GDS given thought to
9 -- what if anything would GDS like to see this
10 movie theater do to reduce the possibility of
11 underage drinking?

12 MR. HOUSER: Well, first of all, I
13 think that, before I answer that question, I'd
14 like to just mention that I think that we are
15 always as educators looking for support from the
16 community, from the business people of the
17 community to help us educate the next generation,
18 right.

19 So, it's important for, I think it's
20 important to mention that we are looking for
21 things that we as a community do together that
22 make it easy for us educators to support the laws
23 that exist currently.

24 And to encourage our students, our
25 youth, and the youth of the schools around us

1 that we interact with to do the right thing. But
2 particularly by restricting the, you know,
3 restricting the barriers to doing the right
4 thing, and putting in place structures that
5 encourage youth to do the right thing.

6 I think that's incumbent upon us as
7 adults. I guarantee you that we as educators, we
8 work with great students, but sometimes troubled
9 students, right.

10 We work with families who discover
11 that their children are doing things they wish
12 they wouldn't. And they recognize that the
13 effect of decisions that are made by students
14 when young have the potential of setting a life's
15 course.

16 One of the things that we recognize is
17 when students drink, or drink a lot, they don't
18 perform as well at school as if they didn't. And
19 the same thing is true for other types of
20 substance abuse.

21 We would like to see that, in our
22 community, that access to things that are not
23 technically allowable for individuals underage
24 are difficult to get their hands on.

25 And we're looking for things that are

1 in our stores, in our gas stations, and in the
2 places of entertainment that by virtue of their
3 structure provide a barrier or a difficulty for
4 those underaged to get access to.

5 And our concern about, what we
6 understand about the proposal is that, given the
7 very nature of the environment, the theater, the
8 possibility exists that youth will exploit.

9 We happen to know children very well.
10 Well meaning, but also experimental in many ways.
11 Would like to, we know they would take advantage
12 of exploiting the uniqueness of a dark room and
13 an unsupervised space.

14 MR. BENDER: So, is there anything GDS
15 would recommend to mitigate that risk?

16 MR. HOUSER: Yes. Again, from the
17 understanding that we have about what's done in
18 theaters. We understand first of all that
19 alcohol is becoming a common thing.

20 There's kind of a national move
21 towards including alcohol at theaters. And as
22 was mentioned before, there's no, there's nothing
23 wrong with that, like from our perspective.

24 But what we think would be important
25 is there would be some way to identify an

1 individual who is of age, so that when they're
2 purchasing alcohol we know that they are 21 or
3 older.

4 The idea about some demarcation on
5 that person. You know how when many times you go
6 to a museum you get a wristband. It makes sense
7 that people that are, you know, allowed to get
8 alcohol would be somehow marked, so that anybody
9 observing them would know they're of age.

10 And reciprocally that those that are
11 standing there with alcohol or sitting with
12 alcohol that don't have a wristband on, we know
13 that they're not of age.

14 I think the second thing is just to
15 simply limit the number of drinks sold at any one
16 time. So, the point of sale. We've discussed
17 this actually in the school recently.

18 That if we know that we can set up a
19 process whereby, you know, an individual that can
20 legally drink has access to one drink, the
21 chances of them sharing that drink with others,
22 except if they were to, you know, share the cup
23 between them, would be minimal.

24 So, I mean, one drink minimum and or,
25 and/or a wristband I think seems to make some

1 kind of sense to us.

2 MR. BENDER: Okay. And that's GDS's
3 position?

4 MR. HOUSER: That's our position. I'm
5 not speaking for any other schools.

6 MR. BENDER: Right. And, sorry I have
7 to ask this. But I didn't coerce you in any way
8 to give this testimony today?

9 MR. HOUSER: You invited us to come
10 and speak.

11 MR. BENDER: Right. And I mentioned
12 that the ANC had considered these as options.
13 But you considered them independently?

14 MR. HOUSER: We support, I said
15 earlier, you know, restrictions in the places of
16 entertainment, particularly in place where
17 products are for sale that make it difficult for
18 youth to do what they're not supposed to do.

19 MR. BENDER: So, this is consistent
20 with other positions that GDS has taken?

21 MR. HOUSER: It is. And, you know, I
22 don't know if it helps to mention, but, you know,
23 not, of course we're building this beautiful new
24 building. We're unifying the campus. We, many
25 of us live in the area.

1 Recently there was a store that popped
2 up on Wisconsin. You know, it's a vape shop.
3 And I just want to let everybody know that, you
4 know, whether or not that's legal, or whether or
5 not we can imagine that everybody that's working
6 at that shop is controlling that those items are
7 sold only to individuals with whatever is
8 determined is the proper age of majority.

9 We also recognize that that extends to
10 our students a temptation that then we have to
11 deal with. And we also know, because students
12 talk, that sometimes young high school students
13 looking for a job, or working in some of these
14 locations like that vape shop.

15 I'm not saying that our students work
16 there. But they know that occasionally students
17 that are of age to work and work in those shops
18 are not necessarily as prudent about living into
19 the federal or local laws that would restrict
20 sale to minors.

21 And it doesn't make our lives as
22 educators easier. Let's just put it that way.
23 And so, you know, we're not here to talk about
24 the vape shop. But if that was to disappear,
25 that would be positive.

1 And if it was possible for us to have
2 the assurance that, when we encourage students to
3 go out and have entertainment, enjoy themselves,
4 that we don't have to believe that we're going to
5 inherit the possibility of problems that occur at
6 theaters, or as a result of them attending
7 theaters.

8 I'm not an expert on the stats on
9 this. But, I mean, you know, there have been
10 underage students that have been found drinking
11 in theaters, in some of the reading we've been
12 doing. And we just don't want that to be our
13 kids, or any kids.

14 MR. BENDER: Thank you for your
15 testimony. That would be the Board and Mr.
16 O'Brien are able to question you.

17 CHAIRPERSON ANDERSON: Mr. O'Brien,
18 thank you.

19 MR. O'BRIEN: Mr. Houser, you said
20 repeatedly, we believe as educators, we would
21 like to see, we think it important. Who is we?

22 MR. HOUSER: When I say we I'm
23 referring to specifically those of us at
24 Georgetown Day School who are in the education
25 profession. We play different roles.

1 But we are, you know, we are as a
2 local school, predominantly a local school
3 concerned about the things I've mentioned. And
4 so, when you ask the question we, as you're
5 asking me to define we, it's us in that
6 institution who happen to be considered
7 educators.

8 MR. O'BRIEN: And your position at
9 Georgetown Day School is Chief Financial Officer?

10 MR. HOUSER: That's correct.

11 MR. O'BRIEN: Okay. What's the
12 governing body of Georgetown Day School?

13 MR. HOUSER: We have a Board of
14 Trustees.

15 MR. O'BRIEN: Okay. Has the Board of
16 Trustees met and adopted the position you've
17 espoused today, that there should be only one
18 drink per transaction at the AMC theaters?

19 MR. HOUSER: No, we have not, sir.

20 MR. O'BRIEN: Well then, how is it
21 that you say that it is Georgetown Day's position
22 that there should be one drink?

23 MR. HOUSER: Well, it's a fair
24 question. I'm not suggesting that the
25 institution is stating that it should be one

1 drink.

2 But if asked as a representative of
3 Georgetown Day School in a leadership position, I
4 feel comfortable saying that the leadership of
5 the school, those people who are the educative
6 leaders, would love to make sure that there is a
7 restriction on something of this nature.

8 MR. O'BRIEN: What you've expressed is
9 your personal opinion, correct?

10 MR. BENDER: Objection. That's
11 badgering.

12 CHAIRPERSON ANDERSON: Overruled.

13 MR. O'BRIEN: You've expressed your
14 personal opinion, correct?

15 MR. HOUSER: I mean, I've discussed
16 this topic with other leaders at the school.

17 MR. O'BRIEN: My question was not
18 whether others might or might not share your
19 opinion.

20 MR. HOUSER: Okay. I've shared the
21 opinion that I believe reflects the institution.
22 But yes, I'm sharing it from me.

23 MR. O'BRIEN: Okay. So, you're not
24 here telling the Board what Georgetown Day School
25 wants, are you?

1 MR. HOUSER: No. Nor was, I mean,
2 that's a procedural move on our side. Like, if
3 that, in other words, would it be possible to
4 come and represent that the Board had made that
5 determination? Possibly. But I'm not --

6 MR. O'BRIEN: Did that happen?

7 MR. HOUSER: Well, no. It didn't
8 happen. Nor am I hear to represent that the
9 Board made that determination, no.

10 MR. O'BRIEN: Okay. How did you
11 happen to know about this proceeding today?

12 MR. HOUSER: We have with our local
13 ANC 3E, we have and have had an ongoing dialogue
14 about things in the community. I must say that a
15 lot of that interaction has ramped up recently
16 because we are unifying the campus.

17 And of course the ANC is involved a
18 lot in those types of projects. But we have
19 through the years interacted with the ANC on
20 things, or issues, or items that have to do with
21 the local community.

22 And it's in that interaction that we
23 learned about this proceeding, and particularly
24 about what's being proposed at the AMC. And we
25 took interest in that.

1 MR. O'BRIEN: Okay. Are, you need a
2 zoning variance, don't you, to complete the
3 expansion of your campus?

4 MR. HOUSER: I'm not sure how that's
5 relevant.

6 CHAIRPERSON ANDERSON: Answer the
7 question, sir, if you can. There's no objection.
8 It's up to Mr. Bender to object. There's no
9 objection. You need to answer the question.

10 MR. HOUSER: Well --

11 CHAIRPERSON ANDERSON: To the best of
12 your knowledge.

13 MR. HOUSER: Sure.

14 CHAIRPERSON ANDERSON: If you don't
15 have an answer, you don't have an answer.

16 MR. HOUSER: No, no, no. That's fair.
17 I mean, when you say we need or do need, we
18 needed.

19 MR. O'BRIEN: You needed. And you had
20 to get the ANC's acquiescence in that, correct?

21 MR. HOUSER: We certainly put before
22 the ANC what we were planning to do.

23 MR. O'BRIEN: And the ANC voted to
24 support you, correct?

25 MR. HOUSER: The ANC worked for a long

1 while to get us to understand things that the ANC
2 thought were important to the community. And we
3 as an institution realize, of course, that we can
4 make application to the Board of Zoning
5 Adjustments with or without the ANC approval.

6 It's not, as I understand it, and
7 please put me on the record for saying I'm not an
8 expert in this particular piece of law. But I
9 don't believe it was required by Georgetown Day
10 School to receive the approval of the local ANC.

11 However, I also believe that most
12 projects are looking for partnership approval, if
13 you will, because of the community nature of
14 development in communities.

15 MR. O'BRIEN: The concise answer to my
16 question is that Georgetown Day School went to
17 the ANC, and asked --

18 MR. BENDER: Is there a question
19 there?

20 MR. O'BRIEN: -- them to support --

21 CHAIRPERSON ANDERSON: I think he's
22 referring to the --

23 MR. BENDER: I object. It sounds like
24 testimony.

25 CHAIRPERSON ANDERSON: Well, I think

1 he's asking a question. So, I'm going to
2 overrule your objection. Because I, he's asking
3 a question in order to do -- but go ahead, Mr.
4 O'Brien.

5 MR. O'BRIEN: The concise answer to
6 the question that I asked would be, would it not,
7 that Georgetown Day went to the ANC, asked for
8 assistance with a zoning variance. And the ANC
9 voted to support the zoning variance. Is that
10 not correct?

11 MR. HOUSER: With all due respect, I'd
12 like to just nuance that a little bit.

13 (Simultaneous speaking.)

14 MR. HOUSER: I mean, may I?

15 CHAIRPERSON ANDERSON: Answer the
16 question, sir. Mr. Bender can, if you need to
17 nuance, Mr. Bender can ask you when he has an
18 opportunity to ask you on the direct. So --

19 MR. HOUSER: Well, I, again, I really
20 love the truth of things. So I, we understand
21 that as a process of applying for a Board of,
22 well, a Zoning adjustment, that we're obligated
23 to go to the ANC. So, we did that.

24 MR. O'BRIEN: And the ANC voted to
25 support your request for a zoning variance,

1 correct?

2 MR. HOUSER: Ultimately they did.

3 MR. O'BRIEN: Okay. And Mr. Bender
4 subsequently came to you and said, I need your
5 help on something, didn't he?

6 MR. HOUSER: It wasn't quite like that
7 either. He invited us to be a participant in
8 this if we felt it was of interest to Georgetown
9 Day School.

10 And based upon what I understand is in
11 question, it immediately looked like it was
12 something that would be something we would like
13 to speak about.

14 MR. O'BRIEN: And Mr. Bender told you
15 what he really needed you to say was, one drink
16 per person, correct?

17 MR. HOUSER: I'm going to be candid
18 and say, we did discuss what was at play here.
19 Like, what some theaters do, and what is being
20 asked, as I understand it, from, if I get it
21 correctly, from the theater to the Board.

22 And when we heard, and yes, in
23 conversation with Mr. Bender, when we heard what
24 was being proposed it was pretty easy to say,
25 well, it would be better if there was some degree

1 of restriction.

2 MR. O'BRIEN: No further questions,
3 Mr. Chair.

4 CHAIRPERSON ANDERSON: Any questions
5 by the Board Members? Yes, Mr. Grandis.

6 MEMBER GRANDIS: Hi. Good afternoon.

7 MR. HOUSER: Hi.

8 MEMBER GRANDIS: As you probably are
9 aware, the purpose of today's hearing is a
10 petition to amend or terminate the settlement
11 agreement.

12 And one of the things that we explore
13 is the compliance by the licensee to settlement
14 agreements and other violations, in the I guess
15 11 years that this has been a settlement
16 agreement. From your, I think I heard you say
17 you've gone to movies at this theater?

18 MR. HOUSER: Correct.

19 MEMBER GRANDIS: Yes. Have you ever
20 purchased alcohol beverage?

21 MR. HOUSER: No.

22 MEMBER GRANDIS: Have you ever
23 observed anyone passing an alcoholic beverage to
24 someone you thought may be underaged?

25 MR. HOUSER: I've not noticed that.

1 I will say that some students have mentioned that
2 they --

3 MEMBER GRANDIS: I'm asking you.

4 MR. HOUSER: No, no. I have not. I
5 have not.

6 MEMBER GRANDIS: Okay. And are you
7 aware of any violations that this particular
8 licensee has had over the years?

9 MR. HOUSER: No.

10 MEMBER GRANDIS: Okay. Thank you.

11 CHAIRPERSON ANDERSON: All right. Any
12 other questions by any other Board Members? Mr.
13 --

14 MR. O'BRIEN: No, sir.

15 MR. BENDER: Yes.

16 CHAIRPERSON ANDERSON: Go ahead.

17 MR. BENDER: You were saying some
18 students have -- are you aware of -- from -- have
19 you heard of any students who have engaged in
20 underage drinking in theaters?

21 MR. HOWSER: So, we hear students talk
22 all the time, you know. And we have students
23 that need discipline, right. So, yes. But we
24 haven't, you know, we haven't had a situation
25 where we've heard a student very specifically say

1 that's what they did at that theater.

2 MR. BENDER: At this theater?

3 MR. HOWSER: Correct.

4 MR. BENDER: But you're aware that
5 students, your students sometimes --

6 MR. HOWSER: Well, they joke about all
7 kinds of things. So, I mean, it's known to us in
8 a very general sense that students will attempt
9 to try to push their limits. And, you know, so
10 we know that they have attempted things that we
11 believe they shouldn't have done.

12 MR. BENDER: Okay.

13 MR. HOWSER: But again --

14 MR. BENDER: Mr. O'Brien asked you
15 about zoning. How long did it take us to get an
16 agreement where we would support, we being the
17 ANC, would support GDS --

18 MEMBER SHORT: Can you please up and
19 talk into the mic.

20 MR. BENDER: Oh, I apologize, sir.
21 How long in your recollection did it take the ANC
22 to come around to supporting your application?

23 MR. HOWSER: We needed to have
24 approval before financing. And we started the
25 application process in 2017. It took about 18 to

1 20 months, according to my recollection.

2 MR. BENDER: And would you
3 characterize that as easy?

4 MR. HOWSER: I wouldn't suggest it was
5 easy, no.

6 MR. BENDER: Did the ANC ask you for
7 -- to agree to anything before they would support
8 your application?

9 MR. HOWSER: The ANC didn't require us
10 to agree to anything. But there was dialogue
11 about things that the ANC believed would be
12 helpful to the neighborhood within the
13 construction of the project, particularly
14 traffic-related items.

15 MR. BENDER: And are there some
16 extensive requirements regarding traffic? And if
17 you're not aware, because I -- you can say that.

18 MR. HOWSER: Well, I mean, we have as
19 a result of our commitment to the neighborhood,
20 and in cooperation with the ANC, defined what
21 traffic control needs to be on campus. And that
22 has included both, you know, traffic,
23 transportation demand management, goals, as well
24 as some infrastructure.

25 MR. BENDER: Have you -- who have you

1 spoken to at GDS about these issues, about the
2 issues that we're discussing here today?

3 MR. HOWSER: Well, I mean, I spoke
4 about this with our head of school, Russell Shaw.
5 And I've spoken with our, some individuals in our
6 Human Resource Department about this, as it
7 relates to their take on it for the adult
8 community, and for the student community.

9 MR. BENDER: And is Russell Shaw the
10 leader of Georgetown Day School?

11 MR. HOWSER: He's the head of school.

12 MR. BENDER: He's the head of school
13 for the whole? And did Russell express an
14 opinion as to what you were going to testify
15 about?

16 MR. HOWSER: I'm just going to say
17 that he endorsed the idea that we would attend
18 and support this initiative.

19 MR. BENDER: Okay. Are -- does GDS
20 consider itself one of ANC 3E's constituents?

21 MR. HOWSER: Yes.

22 MR. BENDER: So, do you believe it's
23 important for us to have a sense of what you care
24 about as an educational institution?

25 MR. HOWSER: I certainly hope so.

1 MR. BENDER: Okay. I have nothing
2 further.

3 MR. O'BRIEN: Mr. Chairman?

4 CHAIRPERSON ANDERSON: Yes, sir.

5 MR. O'BRIEN: Are you familiar with
6 the Avalon Theater on Connecticut Avenue?

7 MR. HOWSER: Have I been? Was that
8 the question?

9 MR. O'BRIEN: Are you familiar with
10 the Avalon Theater?

11 MR. HOWSER: I'm not very familiar
12 with it, no.

13 MR. O'BRIEN: All right. Do you know
14 where it is though?

15 MR. HOWSER: Yes.

16 MR. O'BRIEN: Okay. And is that not
17 also within that, I forget the word --

18 MR. HOWSER: The radius?

19 MR. O'BRIEN: The radius of where most
20 of your students come from?

21 MR. BENDER: May I just -- I just want
22 to offer an objection. My understanding is that
23 recross should only be about questions that were
24 asked on redirect.

25 MR. O'BRIEN: I'll make a proffer.

1 I'll make a proffer.

2 CHAIRPERSON ANDERSON: We're at the
3 end. And one of the reasons why, because even my
4 Board Members were saying that the questions to
5 the witness went way, way beyond.

6 And one of the reasons I've allowed
7 it, he's the last witness. We have not much more
8 going on. So, I know that both parties want to
9 complete the record. So, that's why I'm allowing
10 this to occur. But this is it.

11 MR. BENDER: Yes, sir.

12 CHAIRPERSON ANDERSON: We have no more
13 witnesses, nothing else to say outside of
14 closing. So, I'll allow you, both parties, to
15 get out what, the last things that you want to
16 get out.

17 MR. BENDER: Thank you.

18 MR. O'BRIEN: The Avalon Theater on I
19 think the 5400 block of Connecticut.

20 MR. HOWSER: Yes.

21 MR. O'BRIEN: Is that not within the
22 radius from which you draw most of your students?

23 MR. HOWSER: So, is it okay if I say
24 I don't know what --

25 MR. O'BRIEN: It is. If you don't

1 know.

2 MR. HOWSER: I don't know. But we
3 have a pretty --

4 CHAIRPERSON ANDERSON: If you don't
5 know, sir, say you don't know and end right
6 there.

7 MR. HOWSER: I don't know.

8 MR. O'BRIEN: Okay. No further
9 questions.

10 CHAIRPERSON ANDERSON: Do you want to
11 ask one final question, if you need to?

12 MR. BENDER: I don't. I just want to
13 thank the witness --

14 CHAIRPERSON ANDERSON: Sure.

15 MR. BENDER: -- and then thank the
16 Board for their --

17 CHAIRPERSON ANDERSON: Right. All
18 right. Mr. Howser, thank you very much for your
19 testimony. You can step down. And I'll say that
20 -- well, I won't say what I wanted to say.

21 MR. HOWSER: Now I'm really curious.

22 CHAIRPERSON ANDERSON: I know you were
23 concerned that you didn't have your notes, sir.
24 That's all I was saying. All right. Okay. All
25 right. Mr. Howser, do you rest? I'm sorry, not

1 Mr. Howser, Mr. Bender.

2 MR. BENDER: Yes, we rest.

3 CHAIRPERSON ANDERSON: Do you rest?

4 MR. BENDER: Yes.

5 CHAIRPERSON ANDERSON: Before you
6 rest, and I'm not sure if -- are there any
7 documents or witnesses you wish to --

8 MR. BENDER: I would just like to
9 admit the one document that I showed, which I
10 believe was Plaintiff's 5.

11 CHAIRPERSON ANDERSON: I don't have a
12 copy of your documents in front of me. So, what
13 document is that? Was that --

14 MR. BENDER: It's the document about
15 showing the Landmark Theater.

16 CHAIRPERSON ANDERSON: Landmark? And
17 what exhibit number was that? Because I don't
18 have it in front of me, because I don't have a --
19 I don't have your whole --

20 MR. O'BRIEN: Protestant's number 5.

21 CHAIRPERSON ANDERSON: All right. So,
22 any objection, Mr. O'Brien?

23 MR. O'BRIEN: No objection.

24 CHAIRPERSON ANDERSON: So, Protestant
25 Document number 5 will be admitted to the, into

1 evidence without objection. Do you rest, sir?

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Protestant's Exhibit No. 5.)

5 MR. BENDER: I do rest, yes.

6 CHAIRPERSON ANDERSON: All right. All
7 right. Are the parties ready for a closing, or
8 do you want a break?

9 MR. O'BRIEN: I'm ready.

10 CHAIRPERSON ANDERSON: Okay. Mr.
11 O'Brien.

12 MR. O'BRIEN: Thank you. I want to
13 first clear up what maybe appears to have been a
14 misunderstanding here. The form for filing a
15 petition is titled Petition to Unilaterally Amend
16 or Terminate a Settlement Agreement.

17 If one looks at the form filed in this
18 case, in particular Question number 12 --

19 MR. BENDER: Do you have another copy
20 of that, Counsel?

21 MR. O'BRIEN: Sure. Right here. I'm
22 sorry, Question number 10, there's two boxes to
23 check. What action would you like the ABC Board
24 to take regarding your settlement agreement,
25 amend or terminate?

1 The terminate box is checked. This is
2 not a proceeding to amend the settlement
3 agreement. The request here is to terminate the
4 agreement.

5 The Chair alluded to the repeal of the
6 prohibition against backup drinks effective
7 February 21st of this year. At the same time the
8 Council, obviously on the advice of the Board,
9 also amended the definition of legitimate
10 theater, which previously excluded motion picture
11 theaters.

12 But now the definition of legitimate
13 theater encompasses explicitly motion picture
14 theaters. So, what this licensee, and I think
15 most of them have been licensed as taverns
16 previously, but -- because for lack of a better
17 license category to shoehorn it into.

18 But now the Council has said, yes,
19 movie theaters are legitimate theaters for
20 purposes of ABC licensing. Now, the Council
21 knows how to make special provisions for the
22 protection of minors when it thinks it's
23 important in a particular context.

24 I invite the attention of the Board to
25 D.C. Code 25-782, which restricts entry of minors

1 into Class A liquor stores before -- while school
2 is in session. Okay.

3 So, where the Council determines that,
4 hey, we've got to make up a special rule here, it
5 knows how to do it. The Council has said, movie
6 theaters may be licensed, said it explicitly.
7 But doesn't say, except only put one drink in.
8 They could have done that. They didn't.

9 This agreement, and you're probably
10 tired of hearing me say that, has been in
11 existence for 21 years. Not a whiff of a
12 violation, no problems from this theater.

13 And you've heard that AMC theaters are
14 vigilant and diligent with respect to prevention
15 of underage drinking. They recognize the peril
16 and they've got procedures in place, and they
17 know what they're doing.

18 They operate 340 licensed theater
19 complexes around the country. They're the
20 experts on how to prevent underage drinking in
21 their theaters, not the ANC.

22 With no history of violations
23 whatsoever, and I thank Commissioner Bender for
24 his candid acknowledgment that this place just
25 doesn't cause anybody any trouble.

1 With no history of violations, and the
2 anchor around its neck that precludes it from
3 modernizing these theaters, precludes it from
4 spending the money to modernize these theaters.

5 And given the 21 years, if this
6 settlement agreement is not to be terminated, no
7 settlement agreement ever is going to be
8 terminated.

9 And that takes me full circle to how
10 I started this, this afternoon. If these
11 settlement agreements cannot be abrogated under
12 the right circumstances, with the right showing,
13 then no licensee should ever, ever sign one,
14 because it is a yoke around your neck forever, in
15 perpetuity.

16 And that's why I suggest the
17 appropriate disposition of this case is outright
18 termination of the settlement agreement. Thank
19 you very much.

20 CHAIRPERSON ANDERSON: Mr. Bender.

21 MR. BENDER: I believe that this Board
22 has the power, nonetheless, to amend this
23 agreement. Certainly it wasn't our understanding
24 that this was, and I would have to go back and
25 listen to our, the tapes of our audio.

1 But I believe it's been, I believe he
2 referred to a motion to terminate or amend. And
3 I would encourage the Board to consider doing
4 that. It's simply, they made a strategic choice.

5 But it is not true that the two
6 choices are that they have complete freedom to do
7 what they want, or that they're under the yoke of
8 an oppressive settlement agreement.

9 The Board can certainly add a couple
10 of minor conditions if it believes that it
11 should, if that will be in the interest of
12 justice.

13 The petitioner says that -- so, they
14 say they need you to rescue them from an
15 oppressive settlement agreement. That's really
16 wrong in the facts and the law. And the facts,
17 as we said, we've offered since 2014 to work with
18 them to have the alcohol at all seven theaters.

19 It's not that this is all or nothing.
20 And in fact, in Milaft, that's Court of Appeals,
21 it talked about the importance of trying to find
22 a workable amendment before actually terminating
23 an agreement.

24 Also in Milaft the Court of Appeals
25 said, construing the statute that petitioner

1 brings this case under, quote unquote, voluntary
2 agreements were intended to be permanent, rather
3 than easy to amend or terminate.

4 Here, as in Milaft, the petitioner as
5 a sophisticated commercial actor bargained for
6 significant benefits. As the petitioner stated,
7 the bargain they struck allowed it to become the
8 first theater in D.C. to serve alcohol. That was
9 no doubt of great benefit to them.

10 Per the Court of Appeals, the Board
11 should start from the presumption that the
12 subject agreement was intended to be permanent,
13 and that petitioner bears a heavy burden to
14 terminate or amend it.

15 It's hard to see how wanting to keep
16 up with the Joneses commercially constitutes
17 circumstances beyond the petitioner's control,
18 but justifies the Board to amend, much less
19 terminate the current agreement.

20 Circumstances beyond a petitioner's
21 control are things like changes in zoning or
22 liquor law that make complying with an agreement
23 impossible.

24 It's hard to understand why the
25 legislature, which intended to make settlement

1 agreements hard to amend or terminate, as the
2 court tells us, would view the desire to
3 implement a new strategy to make more money,
4 because competitors are doing something similar,
5 as circumstances beyond a petitioner's control
6 sufficient to abrogate a settlement agreement.

7 Even assuming arguendo that petitioner
8 has met this threshold for some change in the
9 agreement, petitioner has unquestionably not
10 shown that circumstances beyond its control
11 require the Board to permit it to offer alcohol
12 at all seven theaters without a one drink per
13 transaction limit.

14 That's not circumstances beyond their
15 control. Multiple other theaters in D.C. do have
16 this limitation. They have it as of yesterday,
17 including one that is subject to a, currently
18 subject to a requirement in a settlement
19 agreement.

20 All of them appear to have done what
21 petitioner says they need this relief to do,
22 which is renovate their theaters, and to offer
23 fancy amenity.

24 If petitioner can't keep up with its
25 competitors, that's on petitioner. Failure to be

1 able to compete on an even playing field, which
2 they have, shows the failure of a competitor.

3 Likewise, the petitioner hasn't shown
4 that starting alcohol service for G and PG movies
5 after matinees would cause it any harm so
6 significant as to justify this Board in requiring
7 that an amended agreement not include such a
8 term.

9 You heard petitioner's witness
10 basically say they haven't done any studies to
11 show what financial effect, or he's not aware of
12 any. And so, it is uncontested that, or that
13 petitioner has not put in any evidence to show
14 that these requirements would hurt it
15 significantly commercially, would prevent it from
16 renovating their theater.

17 They haven't shown in any way that
18 these are circumstances beyond their control that
19 justify either terminating or amending the
20 agreement.

21 As witnesses including me have
22 demonstrated, the actual material hardship of
23 allowing petitioner to escape these modest
24 requirements is likely to be an increase in
25 underage drinking.

1 Unfortunately Dr. Martin had to leave.
2 But you did hear from one educator who told you
3 about the position of the leadership at their
4 school. And you heard from a student.

5 You heard each of these witnesses
6 express concern about allowing the petitioner to
7 serve alcohol in all seven theaters without age
8 restrictions. And you heard deep concern about
9 allowing them to do so without modest conditions,
10 such as limiting sales to one drink per person.

11 So, I ask on behalf of the ANC and the
12 community that you heed this testimony. I ask
13 likewise that you use your own common sense to
14 see that it's intrinsically difficult for
15 companies to police drink sharing in theaters.

16 It's dark in the theater. And
17 theaters and theater goers place a premium on
18 quiet in the theater, and the absence of
19 disturbances. How often are theater personnel
20 really going to create a disturbance by checking
21 IDs during a movie? We certainly heard no
22 specific testimony on how often that occurs.

23 But I finally ask you to look at the
24 petitioner's own statements and policies, to come
25 to the conclusion that underage drinking will be

1 a problem.

2 On Page 1 of petitioner's alcohol
3 policies the petitioner requires, quote, positive
4 valid proof from all guests purchasing alcohol,
5 regardless of age. And they have regardless of
6 age underlined.

7 You heard their witness testify that's
8 because you really can't tell for sure that
9 somebody is of age by looking at them. I think
10 he said, you know, somebody could easily be 20,
11 look 25 and be under 21.

12 Or they could be older. And in fact,
13 their policy is they will occasionally make
14 exceptions, though they're not allowed to admit
15 to it that they do it. They will occasionally
16 make exceptions for someone who looks 40 or over.

17 But then they require them to have
18 only one drink per trip, exactly what we're
19 asking for. That's what this theater believes is
20 appropriate when you can't tell for sure, when
21 you haven't carded someone to tell if they're of
22 age.

23 Now, something else I want to point
24 out is, on Page 4 of their document it states
25 that in compliance monitoring, quote, associates

1 are required to check ID for any guests consuming
2 alcohol who appear to be under the legal age of
3 21 in areas outside and inside the auditorium,
4 close quote.

5 That's the only thing it says about
6 compliance. That is irreconcilable with the
7 policy embodied in petitioner's requirement that
8 at point of sale everybody has to be carded, no
9 matter their apparent age.

10 At first petitioner admits, and he
11 admitted today, it's impossible in the light to
12 say for sure if anybody is really over 21. So,
13 how can one tell in the dark that everybody
14 drinking is over 21?

15 The very subjectivity that the 100
16 percent point of sale check is intended to combat
17 now comes back with even more force in compliance
18 monitoring.

19 And even if we could all agree on who
20 appears to be under the legal age of 21, which is
21 the only standard that they instruct their folks
22 for checking IDs of -- inside the theater, what
23 about the many underage patrons who look like
24 they're older than 21?

25 Petitioner's policies for compliance

1 checking create no requirement to check IDs in
2 the theater of patrons who can pass as 21 and
3 over.

4 Such underage patrons will thus have
5 carte blanche to drink what their legal friends
6 or dates pass them.

7 Again, they, when they have any
8 uncertainty, almost any uncertainty at all, they
9 allow someone to drink who looks 40 or over.
10 They require them to only be able to purchase one
11 drink.

12 I would submit that given that they
13 admit that people over -- people who look 25,
14 people who look older than 25 can in fact be
15 under 21. And that their own policy says you
16 only have to check if you're less than 21.

17 They're setting themselves up for
18 failure. They will have no way of knowing how
19 many people they've missed. And they've made a
20 corporate decision that where there is some
21 uncertainty, when there's less than 100 percent
22 positive ID check, and they allow somebody to
23 drink, they have the one drink limit.

24 I respectfully ask you to dismiss the
25 instant petition. If you do so the ANC will

1 likely ask petitioner to agree to the modest but
2 vital conditions we've discussed here, and then
3 support a voluntary modification of the
4 agreement.

5 But if you decide nonetheless to
6 modify the agreement itself, and you should
7 absolutely consider that, so, especially in light
8 of the fact that we're instructed by the Court
9 that agreements are meant to be permanent, and
10 hard to abrogate, and that we can supply
11 everything they want with a couple of minor
12 restrictions.

13 We ask that in light of the evidence
14 you've heard today, and the inferences you draw
15 from them, that you require at a minimum that
16 petitioner serve only one drink per transaction.

17 That they have wristbands for carded
18 individuals, which will make it easy for
19 compliance personnel to tell if an underage
20 patron is drinking.

21 And really, the wristbands are the
22 only way that somebody who appears, somebody who
23 can pass for 21 would be busted, as it were.
24 Because their policy is, as written, is you only
25 look for people who are, who appear to be less

1 than 21.

2 And that they serve only one drink --
3 excuse me. And that they begin alcohol service
4 at, at least G, and PG, and PG-13 movies after
5 matinees.

6 CHAIRPERSON ANDERSON: Sorry, that
7 what?

8 MR. BENDER: That they begin alcohol
9 service at -- for the G, and PG, and PG-13 movies
10 after matinees, so that there's --

11 CHAIRPERSON ANDERSON: For G?

12 MR. BENDER: G.

13 CHAIRPERSON ANDERSON: And PG?

14 MR. BENDER: PG. And PG-13, which are
15 all the designations in which a person under 18
16 without an adult could be admitted to the
17 theater.

18 CHAIRPERSON ANDERSON: After the
19 matinee?

20 MR. BENDER: Yes. That matinees, at
21 least some matinees be alcohol free. Thank you.

22 CHAIRPERSON ANDERSON: Thank you very
23 much. I want to thank both parties for their
24 presentation. Do the parties wish to file
25 proposed findings of fact and conclusion of law,

1 or waive their right to do so?

2 MR. O'BRIEN: Waive.

3 MR. BENDER: We'll waive.

4 CHAIRPERSON ANDERSON: Thank you. We
5 will issue a decision in 90 days. That's my
6 understanding. All right.

7 As Chairperson of the Alcoholic
8 Beverage Control Board for the District of
9 Columbia, in accordance with DC Official Code,
10 Section 2-574(b) of the Open Meetings Act, I move
11 that the ABC Board wholly close the meeting for
12 the purpose of seeking legal advice from our
13 Counsel, on Case number 19-PRO-00153, Club
14 Cinema.

15 Pursuant to DC Official Code Section
16 2-574(b)(4) of the Open Meetings Act and, excuse
17 me, deliberate upon Case number 19-PRO-00153,
18 Club Cinema for the reasons cited in DC Official
19 Code Section 2-574(b)(13) of the Open Meetings
20 Act. Is there a second?

21 MEMBER SHORT: Second.

22 CHAIRPERSON ANDERSON: Mr. Short has
23 seconded the motion. I will now take a roll vote
24 of the motion before us now that has been
25 seconded. Ms. Hanson.

1 MEMBER HANSEN: I agree.

2 CHAIRPERSON ANDERSON: Ms. Crockett.

3 MEMBER CROCKETT: I agree.

4 CHAIRPERSON ANDERSON: Mr. Cato.

5 MEMBER CATO: I agree.

6 CHAIRPERSON ANDERSON: Mr. Short.

7 MEMBER SHORT: I agree.

8 CHAIRPERSON ANDERSON: Ms. Wahabzadah.

9 MEMBER WAHABZADAH: I agree.

10 CHAIRPERSON ANDERSON: Mr. Grandis.

11 MEMBER GRANDIS: I agree.

12 CHAIRPERSON ANDERSON: Donovan -- Mr.

13 Anderson, I agree. As it appears that the motion

14 has passed I hereby give notice that ABC Board

15 will recess this proceeding to hold a closed

16 meeting in the ABC Board conference room,

17 pursuant to Section 2-574(b) of the Open Meetings

18 Act. Thank you very much.

19 MR. O'BRIEN: Thank you.

20 MR. BENDER: Thank you, Mr. Chair.

21 (Whereupon, the above-entitled matter
22 went off the record at 5:19 p.m.)

23

24

25

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Date: 03-11-20

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