

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

IN THE MATTER OF: :
: :
District Soul Food :
Restaurant & Lounge, LLC, :
t/a District Soul Food :
& Lounge :
500 8th Street SE : Protest
Retailer CR - ANC 6B : Hearing
License No. 112072 :
Case #19-PRO-00078 :
:
(Application to Renew the:
License) :

Wednesday
January 8, 2020

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

PRESENT:
DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
JAMES SHORT, JR., Member
REMA WAHABZADAH, Member
ALSO PRESENT:
DAVID ROUNTREE, Applicant
EDWARD REYNOLDS, Applicant
JAMES LOOTS, ANC 6B
CHANDER JAYARAMAN, ANC 6B

I-N-D-E-X

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

2 1:44 p.m.

3 CHAIRMAN ANDERSON: Our next case is
4 case number 19-PRO-00078, District Soul Food &
5 Lounge, license number 112072.

6 Will the parties please approach and
7 identify themselves for the record? I will start
8 with the licensee.

9 MR. ROUNTREE: David Rountree.

10 CHAIRMAN ANDERSON: Who are you, sir?
11 What's your relationship to the --

12 MR. ROUNTREE: I apologize. Owner.

13 CHAIRMAN ANDERSON: Good afternoon,
14 Mr. Rountree.

15 MR. REYNOLDS: Edward Reynolds, Soul
16 Food, also the owner.

17 CHAIRMAN ANDERSON: Good afternoon,
18 Mr. Reynolds.

19 MR. LOOTS: James Loots as counsel for
20 ANC 6B.

21 CHAIRMAN ANDERSON: Good afternoon,
22 Mr. Loots.

23 MR. JAYARAMAN: Chander Jayaraman,
24 chair.

25 CHAIRMAN ANDERSON: Good afternoon,

1 Mr. Jayaraman. Are you an attorney, Mr. Loots?

2 MR. LOOTS: I am.

3 CHAIRMAN ANDERSON: Okay.

4 MR. LOOTS: I have entered my
5 appearance.

6 CHAIRMAN ANDERSON: That's fine. I
7 have a different expectation when I deal with
8 attorneys. That's why I ask.

9 MR. LOOTS: I will take that as a good
10 thing.

11 CHAIRMAN ANDERSON: It's a good thing.
12 Because that's what I said, I have different
13 expectations for attorneys. So, that's why I
14 asked. Good afternoon, sir.

15 Are there any preliminary matters that
16 need to be brought to the Board's attention?

17 MR. LOOTS: I had one matter I'd like
18 to raise, a preliminary issue. It's my
19 understanding that the licensee has not filed any
20 exhibits or a protest information form in this
21 matter which would have been due a week ago.

22 I have served my petition and exhibits
23 on them.

24 Although I am hesitant to ask that
25 they be precluded from telling their side of the

1 case which I think is in everybody's best
2 interest to have a fulsome record here, I do wish
3 to reserve the right to object to any witness and
4 particularly to the introduction of an exhibit
5 that I haven't seen.

6 CHAIRMAN ANDERSON: All right. Well,
7 as a preliminary matter it's my understanding
8 that there is no PIF so are you planning to rely
9 on documents and witnesses to present the case,
10 or are you just giving oral arguments to present
11 your case? How do you plan to move forward?

12 MR. ROUNTREE: Oral argument. We'll
13 just give an oral argument. We complied in good
14 faith with what they asked for so I didn't know
15 that we had to --

16 CHAIRMAN ANDERSON: What do you mean
17 you complied with what they asked for? Well, I'm
18 not trying to get into the weeds. I guess I
19 didn't understand when you said you complied with
20 what they asked for. So that's why I don't
21 understand.

22 MR. ROUNTREE: Oh, okay. Do you want
23 me to explain that?

24 CHAIRMAN ANDERSON: No. So I guess
25 you're saying that they asked for certain things

1 and you did it so therefore you didn't realize
2 they were still going to move forward with the
3 hearing. Is that what you're saying?

4 MR. ROUNTREE: Yes. Well, I got the
5 email they were moving forward with the hearing,
6 but I thought it would be -- like they would come
7 by and take a look at what was done, what we had
8 agreed to do.

9 And so I didn't know, I didn't know
10 exactly what to do to be honest.

11 CHAIRMAN ANDERSON: Well, sir, weren't
12 you here for the status hearing? Were you here
13 for -- you had to be here for the status hearing
14 to move forward, right?

15 MR. ROUNTREE: Yes, sir, I was here.

16 CHAIRMAN ANDERSON: And I read some
17 instructions about the process to be followed.
18 And I also gave a phone number to say if you
19 don't understand what you need to do you need to
20 call Ms. Randall. And if you don't know what to
21 do she will tell you what to do.

22 I hate when people show up and say I
23 did not know what I was supposed to do when we
24 had the status hearing. I read some instructions
25 and I gave the phone number and said if you don't

1 know what to do call this person and this person
2 will explain, will walk you through the process.

3 MR. ROUNTREE: Yes, sir. I wasn't
4 talking about exactly like that. What I'm trying
5 to explain is that we were --

6 CHAIRMAN ANDERSON: But still -- and
7 the reason I'm saying this and I'm cutting you
8 off, because he's saying that you didn't provide
9 -- you got documents from him, is that correct?

10 MR. REYNOLDS: I mean, I haven't.

11 CHAIRMAN ANDERSON: Who did you send
12 the documents to, sir?

13 MR. LOOTS: To Mr. Rountree
14 simultaneously with --

15 CHAIRMAN ANDERSON: How did you
16 provide the documents to him?

17 MR. LOOTS: By electronic mail.

18 CHAIRMAN ANDERSON: At what email
19 address?

20 MR. LOOTS: I believe it's davidroun
21 -- R-O-U-N-T-R-E-E @soulfood.com. I can confirm
22 that. I do have an extra set I can share with
23 him.

24 CHAIRMAN ANDERSON: I guess I'm trying
25 to find out. So he's saying he never even got

1 it. So you did not receive an email from them
2 with documents?

3 MR. ROUNTREE: I got a lot of emails
4 from Mr. Loots. I'm trying to explain what
5 happened and he'll tell you too. Because we got
6 several different emails that had different names
7 of various restaurants.

8 So, I didn't look at a lot of stuff
9 because it didn't have our name of our
10 restaurant. Am I correct?

11 MR. LOOTS: I'm unaware of what he's
12 speaking about now.

13 CHAIRMAN ANDERSON: Where were the
14 documents sent?

15 MR. LOOTS: I can probably find the
16 exact time, but it was on January 2 since the
17 first was a holiday at 6:19 p.m. And Mr.
18 Rountree was in fact among the recipients. They
19 also went to Laverne Fletcher, Mr. Jayaraman,
20 Kristen Olenburg, and April Randall.

21 Again, I do have an extra set.

22 CHAIRMAN ANDERSON: I would give it to
23 him. He doesn't seem to even know that he got
24 email from you, so.

25 MR. ROUNTREE: I have an email from

1 him, but I didn't get that. What I got was an
2 appeal, it just says appeal. It's one page. It
3 said appeal thing. I didn't get the package
4 though. And then it had a different restaurant.

5 MR. JAYARAMAN: The subject line says
6 19-PRO-00078 on January 2 at 6:14. It includes -
7 - that one includes the protest exhibit list as
8 well as all the documents that have been
9 submitted.

10 CHAIRMAN ANDERSON: Do you have -- you
11 only have one you're going to give him. Do you
12 have an extra PIF?

13 MR. LOOTS: I certainly have an extra
14 set of exhibits. I don't know if I brought an
15 extra PIF with me or not.

16 CHAIRMAN ANDERSON: In the future if
17 you appear before us again I'm going to ask that
18 you provide -- you bring extra copies of these at
19 the hearing for the board.

20 MR. LOOTS: Oh, for the board as well?

21 CHAIRMAN ANDERSON: Yes.

22 MR. LOOTS: I apologize.

23 CHAIRMAN ANDERSON: You weren't aware.
24 What did I say. I said I'm not saying you did
25 anything wrong at this time. In the future.

1 MR. LOOTS: Yes. I can do so.

2 CHAIRMAN ANDERSON: Yes, Mr.

3 Jayaraman.

4 MR. JAYARAMAN: According to my
5 records the PIF was submitted on January 2 at
6 3:46 p.m. to Martha Jenkins, Mr. Rountree, Ms.
7 Fletcher, myself, Ms. Olenburg, and Ms. Randall.

8 CHAIRMAN ANDERSON: And did you
9 receive that email, sir? Do you have that email?

10 MR. ROUNTREE: What I have is about --

11 CHAIRMAN ANDERSON: Do you have the
12 email he's talking about?

13 MR. ROUNTREE: No, sir. What I have
14 is, it says Rito Loco.

15 CHAIRMAN ANDERSON: What does the
16 email that you sent say? What is the email that
17 you sent and what email address was it sent to?

18 MR. JAYARAMAN: 86BP, PIF attached,
19 sending links to exhibits, too large to transmit.
20 James Loots.

21 CHAIRMAN ANDERSON: And what's the
22 email address that it was sent to?

23 MR. JAYARAMAN: It was sent to David
24 Rountree with no D at DistrictSoulFood.com.

25 CHAIRMAN ANDERSON: Is that your email

1 address, sir?

2 MR. ROUNTREE: Yes, sir, that is the
3 correct email.

4 CHAIRMAN ANDERSON: All right.

5 MR. ROUNTREE: I have an email for
6 January 2 from Ms. Randall and it has a whole
7 bunch of information, but it had the wrong
8 restaurant. And it had the wrong hearing time.

9 So he emailed back, but I didn't get
10 anything else back on that day.

11 CHAIRMAN ANDERSON: All right. This
12 is your hearing I think to renew your license and
13 so we'll see where we go with what you have to
14 present to renew your license. All right.

15 Are there any -- do we need a hearing,
16 or do you guys -- can it be settled?

17 MR. LOOTS: No. It cannot at this
18 point be settled. There have been a number of
19 overtures which we'll present testimony about and
20 the violations continue through last week at
21 least, through last week Friday. So at this
22 point we do request action by the board.

23 CHAIRMAN ANDERSON: All right. This
24 is a protest hearing, and the way this is going
25 to operate is that I start off already to

1 introduce. I'll ask are there preliminary
2 motions. And we discussed that there are none.

3 The next thing that's going to happen
4 is that I'm going to ask the applicant to give an
5 opening statement to tell us what it is that you,
6 the applicant, is seeking.

7 Then I will ask the protestant to make
8 an opening statement. That means that they can
9 tell me what it is that they're seeking from the
10 board.

11 The board will call its first witness
12 which is our investigator. It's my understanding
13 the investigator has interviewed both sides,
14 written a report. I will ask the investigator to
15 go through his report.

16 The board will question the
17 investigator about his report once he is done
18 testifying.

19 Once the board has questioned its
20 investigator then the applicant will have an
21 opportunity to ask questions of the board's
22 agent, and then the -- I'm sorry, then the
23 protestant will have an opportunity to ask
24 questions of the board's witness.

25 The board will then have closing

1 questions and the board -- its presentation.

2 After that the applicant will present
3 its case. And so you will decide how you're
4 going to present your case to us, sir. I don't
5 know, you can tell -- once I call that we'll see
6 how you decide to present your case.

7 Once the applicant has presented its
8 case then the protestant will have an opportunity
9 to present its case. And folks can cross examine
10 witnesses.

11 Then that's it. Each side has -- the
12 process is supposed to be 90 minutes. You have
13 90 minutes to present your case.

14 I would ask that you present -- use
15 most of your time under questioning rather than
16 cross examination because that goes against your
17 time.

18 In this particular case we do not have
19 a 4:30 hearing so I'm not going to be too stickly
20 on time to say you have 90 minutes. But I don't
21 -- the board doesn't expect and intend to be here
22 all night.

23 I will say that if you have witnesses
24 I do not want to hear redundant testimony. And
25 so therefore you give the testimony. If you have

1 another witness they should not tell me the same
2 thing. We have heard it the first time.

3 So if you have witnesses who are going
4 to repeat, regurgitate the same thing then I'm
5 going to ask you to move on.

6 You can do cross examination. And one
7 of the reasons I asked if you're an attorney,
8 there are certain expectations that I expect from
9 an attorney.

10 He's not an attorney on this side I
11 don't believe so I'll give a little bit more
12 leeway. But I try to be evenhanded in dealing
13 with both sides.

14 All right. So I'll give both sides.
15 You have five minutes to do an opening. So Mr.
16 Rountree, do you wish to give an opening
17 statement?

18 An opening statement, just tell me
19 what is it -- why you're here today and what is
20 it you're asking the board to do at the end of
21 the testimony.

22 MR. ROUNTREE: I'm here today to renew
23 our license. And I believe that we've complied
24 now since we --

25 CHAIRMAN ANDERSON: You what?

1 MR. ROUNTREE: I believe that we've
2 complied with what the ANC was asking for. And I
3 guess you will hear that as we move forward in
4 the case.

5 So we would just like to have our
6 license renewed and move forward with our current
7 agreement.

8 CHAIRMAN ANDERSON: Mr. Loots.

9 MR. LOOTS: Thank you. I'll try to be
10 brief. I'm sure the board is familiar with the
11 restaurants and establishments on --

12 CHAIRMAN ANDERSON: No, sir, I don't
13 know anything.

14 MR. LOOTS: Okay.

15 CHAIRMAN ANDERSON: I'm just saying we
16 don't -- this is all new to us so we're hearing
17 this for the first time.

18 MR. LOOTS: I'm speaking very
19 generally. Barracks Row which is the section of
20 8th Street loosely defined as from Pennsylvania
21 Avenue down to Southeast-Southwest Freeway is
22 home to a number of varied, interesting and
23 popular restaurants.

24 Most of those are restaurants licensed
25 CR. Some of them are tavern license CT. But

1 they do offer what the community and the ANC in
2 particular considers an exciting and vibrant and
3 important part of the community in terms of their
4 creepings and their offerings including
5 entertainment.

6 At the location of this establishment
7 there was a previous establishment that operate
8 with a CR license with entertainment, that
9 operated without incident for decades before
10 closing in the year prior to the current
11 applicant.

12 The concerns of the ANC which have
13 been expressed both in the settlement agreement
14 and as you will hear testimony significant in the
15 ongoing efforts by the ANC to bring the
16 establishment into compliance with the settlement
17 agreement and with District of Columbia laws and
18 regulations related to noise, and particularly
19 amplified noise that is audible throughout the
20 neighborhood, not just even right in immediate
21 proximity to the establishment.

22 Those efforts have failed. There have
23 been a number of promises that were not kept.
24 There appears to be largely an indifference, or
25 perhaps inability to comply with the terms of the

1 settlement agreement and to comply with the terms
2 of the laws as opposed to noise ordinances.

3 You will hear testimony today from the
4 ANC chair and the single member district
5 representative of the ANC as to the efforts that
6 have been made and the nature of the concerns of
7 the ANC that led to this protest.

8 You will also hear from -- and I will
9 keep the neighbor witnesses as brief as possible.
10 I think each one of them does bring a different
11 perspective because they live in various places
12 in different proximities and have different
13 concerns about the noise based upon where they
14 live.

15 But you will hear from five neighbors
16 who are within a block or two, block and a half
17 of the establishment as to their personal
18 experiences and their personal observations as to
19 noise that is audible not just immediately next
20 to the restaurant, but indeed hundreds of feet
21 away and penetrating their walls into their
22 homes.

23 So this is a very serious issue. It's
24 one that the ANC has made extraordinary efforts
25 to address. But in the end there has been no

1 abatement.

2 So at this point the relief the ANC
3 requests is that the entertainment endorsement be
4 revoked.

5 The ANC has no issue whatsoever with
6 the restaurant license, only with the conduct of
7 what has basically turned into a seven day a week
8 venue for entertainment at which very loud music
9 is played, sometimes live, sometimes by DJs.

10 But in any event in violation of both
11 the settlement agreement and in violation of DC
12 law.

13 And after providing notice and
14 opportunity to cure in May the situation
15 continues. And you'll hear testimony that there
16 was audible noise a block away as recently as
17 last Friday. So that's what we want.

18 I would also note that the
19 investigator's report indicates that the
20 applicant is seeking to actually expand its
21 license to include a cover charge and to include
22 dancing.

23 And obviously the ANC is very much
24 opposed to that as well because those are
25 hallmarks of a nightclub entertainment venue, not

1 of a restaurant with CR license that seeks to
2 provide music.

3 So those are the requests of the ANC
4 and I expect our testimony will demonstrate
5 repeated and recurring lapses in compliance with
6 the settlement agreement and with the DC Code.

7 CHAIRMAN ANDERSON: All right, thank
8 you. All right, the board will call its first
9 witness, Mr. Andy De Los Santos.

10 WHEREUPON,

11 ANDY DE LOS SANTOS

12 was called as a witness by Counsel for the Board
13 and, having been first duly sworn, assumed the
14 witness stand, was examined and testified as
15 follows:

16 BOARD EXAMINATION

17 CHAIRMAN ANDERSON: Can you state your
18 name for the record, please?

19 MR. DE LOS SANTOS: Andy De Los
20 Santos.

21 CHAIRMAN ANDERSON: And where are you
22 currently employed?

23 MR. DE LOS SANTOS: Here at ABRA.

24 CHAIRMAN ANDERSON: What is your role
25 at ABRA, sir?

1 MR. DE LOS SANTOS: Investigator.

2 CHAIRMAN ANDERSON: And how long have
3 you been working for this agency?

4 MR. DE LOS SANTOS: It's about nine
5 months now.

6 CHAIRMAN ANDERSON: And are you
7 familiar with District Soul Food restaurant?

8 MR. DE LOS SANTOS: Yes.

9 CHAIRMAN ANDERSON: And how are you
10 familiar with this establishment?

11 MR. DE LOS SANTOS: I conducted a
12 protest investigation at District Soul & Lounge.

13 CHAIRMAN ANDERSON: Now, did there
14 come a time that you wrote a report?

15 MR. DE LOS SANTOS: Yes.

16 CHAIRMAN ANDERSON: So can you tell us
17 what -- what's your report, and tell us what it
18 is that you were able to find out about this
19 protest, please?

20 MR. DE LOS SANTOS: The renewal
21 application for District Soul & Lounge on 500 8th
22 Street SE was protested by one entity at the
23 Advisory Neighborhood Commission for 6B. ANC
24 chair and designated representative Chander.

25 The protest issues for all protestants

1 are peace, order and quiet for the community.
2 There are about 34 establishments within the
3 1,200 feet at 500 8th Street SE which consists of
4 two class A retail establishments that sells
5 beer, wine, spirits, three class B off premises
6 retail establishments that sell beer, wine, and 4
7 taverns and 25 class CR restaurants.

8 District Soul & Restaurant Lounge is
9 located on the first floor and second floor of
10 500 8th Street SE. The sidewalk café occupies
11 areas on the western and northern side of the
12 building. The sidewalk café has a maximum
13 capacity of 40.

14 The building is of similar height to
15 the buildings that it is adjoined to, sharing the
16 street with District Soul & Lounge. To the south
17 and north are a number of similar businesses that
18 sell alcoholic beverages.

19 To the west of District Soul Food &
20 Restaurant Lounge is a residential street. There
21 is one entrance to the establishment located at
22 the northwest corner of the building.

23 The interior of District Soul Food &
24 Lounge is a two-level establishment located on
25 the first and second floor.

1 Once inside of the establishment there
2 is a dining room, bar area that runs along the
3 west wall and the kitchen that is located on the
4 south side of the building.

5 There's a staircase that leads from
6 the ground level to the second floor in the
7 northeast corner, and the second level is
8 accessed from the northeast staircase.

9 Once on the second floor there is a
10 bar located along the south wall, a dance floor,
11 and a stage on the northwest corner.

12 On Wednesday, October 23, 2019 I
13 telephonically interviewed David Rountree who is
14 the owner, one of the owners of District Soul &
15 Lounge.

16 Mr. Rountree stated that he was going
17 to install stone windows at the establishment.
18 Mr. Rountree stated that the representatives of
19 DC Fire and Emergency Medical Services informed
20 him that he was not permitted to install stone
21 windows due to egress and safety concerns.

22 Mr. Rountree stated that he was
23 permitted by DC Fire and Emergency Medical
24 Services to install half inch plexiglass windows
25 and coat the windows with black foam in between

1 the windows which would help contain sound.

2 Mr. Rountree stated that he would be
3 purchasing the plexiglass on Thursday, October
4 24, 2019.

5 Mr. Rountree stated that the
6 plexiglass windows would be installed no later
7 than Saturday, October 26, 2019.

8 On the same day, Wednesday, October
9 23, I also telephonically interviewed Chander who
10 represents ANC 6B.

11 Mr. Jayaraman stated that his concern
12 is the loud noise that comes from the live bands
13 at District Soul Food & Restaurant & Lounge, has
14 from Thursday through Saturday evenings.

15 Mr. Jayaraman stated that the bass is
16 too loud and the way the speakers are facing
17 inside the establishment creates excessive noise,
18 can be heard outside of the establishment.

19 Mr. Jayaraman stated that he has
20 visited the establishment on numerous occasions
21 to request that the establishment windows be
22 replaced to eliminate the emitted sound.

23 The establishment on 500 SE was
24 monitored a total of six times from Wednesday,
25 October 9, 2019 through Thursday, December 19,

1 2019 with no criminal activity nor any noise.

2 And finally, there were seven calls
3 for service from the Crime Analysis Division for
4 500 8th Street SE between the dates of December
5 2018 through December 2019. These calls were not
6 necessarily dedicated to the physical address of
7 500 8th Street SE, but were ultimately responded
8 to by MPD. No calls were related to ABRA
9 violations.

10 CHAIRMAN ANDERSON: In speaking to ANC
11 what did they express to you were their concerns
12 with the establishment?

13 MR. DE LOS SANTOS: Just the loud
14 noise from the bass during live band
15 performances.

16 CHAIRMAN ANDERSON: And you said that
17 ABRA personnel monitored the establishment six
18 times. How many times did you personally monitor
19 the establishment?

20 MR. DE LOS SANTOS: All of them.

21 CHAIRMAN ANDERSON: So, all right.
22 What are the hours that -- do you know the hours
23 of this establishment? The hours of --

24 MR. DE LOS SANTOS: Operation?

25 CHAIRMAN ANDERSON: Yes.

1 MR. DE LOS SANTOS: Yes. Sunday
2 through Saturday is 10 a.m. to 11 p.m. Well,
3 except for Thursday through Saturday is till 2
4 a.m.

5 CHAIRMAN ANDERSON: All right. So, I
6 saw one day you -- oh no. Do you recall -- you
7 said Thursday through Saturday what are the
8 hours?

9 MR. DE LOS SANTOS: Well, the hours of
10 operation Thursday through Saturday is 10 a.m. to
11 2 a.m.

12 CHAIRMAN ANDERSON: Can you be a
13 little bit more specific? I know that you went
14 there and you observed on Thursday, October 17.
15 You went 10:45 to 11:15. Can you tell me if you
16 recall what, if anything, you observed?

17 MR. DE LOS SANTOS: I believe there
18 was a live band playing that evening, but they
19 ended right at 11:15 as I said there.

20 CHAIRMAN ANDERSON: So, what was -- if
21 you recall what the noise level was like if you
22 recall?

23 MR. DE LOS SANTOS: There was no noise
24 level. When I was monitoring there was no -- it
25 was contained inside. I knew there was

1 performing, but it was contained inside.

2 Therefore that's why I wrote no ABRA violations.

3 CHAIRMAN ANDERSON: I know, I was just
4 asking if you recall. I mean, since the ANC is
5 complaining about noise. I know you said no
6 violation so I was just trying to find out what
7 was the level of noise like if you recall at that
8 time.

9 MR. DE LOS SANTOS: I mean, it was
10 normal. It wasn't anything disturbing. You can
11 tell there was a band up there, but there was
12 just no -- it wasn't disturbing if I was to be a
13 neighbor in the neighborhood.

14 CHAIRMAN ANDERSON: I saw in your
15 report that there were noise complaints. Did you
16 say that they were not necessarily specific to
17 this address, but just the location?

18 MR. DE LOS SANTOS: Correct. Just the
19 vicinity of the area, not necessarily for the
20 said address.

21 CHAIRMAN ANDERSON: Okay. Are there
22 any exhibits attached to your report? Can you
23 identify them for the record, please?

24 MR. DE LOS SANTOS: Yes. There's
25 about 14 exhibits.

1 CHAIRMAN ANDERSON: And what are the
2 exhibits, please?

3 MR. DE LOS SANTOS: The first one is
4 a copy of the protest letter from ANC 6B.

5 Exhibits 2 through 4 is the District
6 of Columbia Geographic Information System map.

7 Five through seven is the exterior of
8 the restaurant.

9 Nine through twelve are the interior,
10 including first floor and second floor.

11 CHAIRMAN ANDERSON: What's 8?

12 MR. DE LOS SANTOS: Eight, the
13 interior of the first floor.

14 CHAIRMAN ANDERSON: All right. And
15 what did you say 9 was?

16 MR. DE LOS SANTOS: Same thing,
17 interior of the first floor. Just a different
18 angle.

19 CHAIRMAN ANDERSON: All right.

20 MR. DE LOS SANTOS: Ten, interior of
21 the first floor as well. And then 11 is interior
22 of second floor. Twelve, interior of the second
23 floor.

24 Thirteen is just MPD calls for service
25 at 500 8th Street SE. And then the last one is a

1 copy of their settlement agreement.

2 (Whereupon, the above-referred to
3 documents were marked for identification and
4 received into evidence as Board Exhibit Nos. 1-
5 14.)

6 CHAIRMAN ANDERSON: What's the address
7 of this restaurant, this establishment?

8 MR. DE LOS SANTOS: 500 8th Street SE.

9 CHAIRMAN ANDERSON: I'm looking at
10 exhibit 13 and I see it says 500. How far -- do
11 you know what was -- I see another establishment
12 listed and I'm trying to find out whether or not
13 -- the distance between these two places.

14 MR. DE LOS SANTOS: Right. When I
15 requested this calls for service a lot of them
16 weren't directly involved with District Soul. As
17 you can see it says Bachelor's Mill.

18 CHAIRMAN ANDERSON: Right. But that's
19 what I'm trying to find out. How far or close is
20 this establishment, Bachelor's Mill, to District
21 Soul Food?

22 MR. DE LOS SANTOS: Just a few feet,
23 I believe.

24 CHAIRMAN ANDERSON: Do you know what
25 establishment, do you know what establishment

1 that this District Soul Food replaced? What
2 establishment was in that location previously?

3 MR. DE LOS SANTOS: No.

4 CHAIRMAN ANDERSON: All right. Does
5 anyone else have any questions for this
6 investigator? Yes, Ms. Crockett.

7 MS. CROCKETT: Investigator De Los
8 Santos, you stated that you knew there was a band
9 playing when you were at the establishment. How
10 did you know there was a band playing?

11 MR. DE LOS SANTOS: You can just tell.
12 There was like different instruments. It was
13 like live amplified performance. It wasn't like
14 a DJ or anything.

15 MS. CROCKETT: Could you tell that
16 there was a band playing when you were outside?

17 MR. DE LOS SANTOS: Yes, ma'am.

18 MS. CROCKETT: Thank you. No further
19 questions.

20 CHAIRMAN ANDERSON: Let me follow up.
21 So, outside were the doors open, or was the doors
22 for the establishment closed when you could tell
23 that there was a band playing?

24 MR. DE LOS SANTOS: There's only one
25 door to go in. But you can just -- as I was

1 parked outside you can hear it through the
2 windows. Like just, you can just tell it was a
3 band.

4 CHAIRMAN ANDERSON: All right. So
5 basically what you're saying is you were hearing
6 sound emanate even with the doors closed. Is
7 that what you're saying?

8 MR. DE LOS SANTOS: Yes, sir.

9 CHAIRMAN ANDERSON: So --

10 MR. DE LOS SANTOS: Because there was
11 no door leading from like the second floor.

12 CHAIRMAN ANDERSON: So let me ask you
13 a question. I'm looking at the settlement
14 agreement and I saw something, it talked about
15 noise mitigation.

16 And it says that all necessary actions
17 to ensure that music, noise and vibration from
18 the establishment are not audible outside the
19 establishment at any time. Right? I'm on page 3
20 of the settlement agreement and that is number 6.
21 Number 6 on page 3.

22 And so if you're stating that when you
23 went there you heard noise when you were parked
24 why didn't you -- so how then did you state that
25 there were no ABRA violation?

1 MR. DE LOS SANTOS: You're talking
2 about for October 17?

3 CHAIRMAN ANDERSON: Because you stated
4 that you went there you know there was a band. I
5 think you said that you parked and you heard
6 music.

7 MR. DE LOS SANTOS: Right. Like I
8 heard -- there was music going on.

9 CHAIRMAN ANDERSON: And you knew there
10 was a band. So isn't that a violation of the
11 settlement agreement since you were hearing it?
12 I mean, I was asking a question. Was it that you
13 heard with the door open. And you said no, the
14 doors were not open.

15 MR. DE LOS SANTOS: Yes, the noise
16 didn't travel through the first floor out to
17 outside. Does that make sense? So when you walk
18 into the establishment there's only the front
19 door. And then you go up the stairs and then
20 you're at the second floor which is where all the
21 entertainment happens.

22 CHAIRMAN ANDERSON: But where -- all
23 right. I thought you testified that when you
24 parked you knew there was a band. So I'm trying
25 to find out whether or not you were hearing the

1 noise when you parked your car, or did you hear
2 it once you were inside the building, or did you
3 hear the noise outside the building?

4 MR. DE LOS SANTOS: I heard it outside
5 of the building. Once I parked I got out of my
6 car. I'm standing on the street.

7 CHAIRMAN ANDERSON: So if you heard it
8 outside the building why then -- I mean if --

9 MR. DE LOS SANTOS: It just wasn't
10 enough to be a bother. I'm just so close to the
11 building that you can just hear there's like
12 entertainment going on. I'm not sure if that
13 makes sense.

14 CHAIRMAN ANDERSON: Well, their
15 settlement agreement said that noise and
16 vibration from the establishment are not audible
17 outside of the establishment at any time.

18 So is that something -- I guess what
19 I'm trying to find out from you. Why didn't your
20 review page 3 --

21 MR. DE LOS SANTOS: I'm trying to find
22 it. I'm trying to find it. I have page 3 but it
23 might be different than yours.

24 CHAIRMAN ANDERSON: Hold on. I'm
25 looking at the settlement agreement.

1 MR. DE LOS SANTOS: Right.

2 CHAIRMAN ANDERSON: The settlement
3 agreement page 3. Page 3. Are you on page 3
4 that says noise mitigation? Paragraph 6. Do you
5 have that? Page 3 of the settlement agreement,
6 paragraph 6.

7 MR. DE LOS SANTOS: Okay, got it. Got
8 it.

9 CHAIRMAN ANDERSON: Can you read that
10 -- review paragraph 6. The first paragraph.
11 Just that paragraph that says --

12 MR. DE LOS SANTOS: You want me to
13 read it out loud?

14 CHAIRMAN ANDERSON: No. Just review
15 that, please.

16 MR. DE LOS SANTOS: Okay.

17 CHAIRMAN ANDERSON: Based on your
18 review of this section were they compliant with
19 this section?

20 MR. DE LOS SANTOS: Yes. To my
21 observation they were compliant.

22 What I'm saying is you can just tell
23 there was a band, but it was just not -- it was
24 not -- it's like if I'm walking down the street
25 you're not going to just look up. I'm just

1 standing there and I can just see commotion going
2 on and I can tell there's a band. Does that make
3 sense?

4 CHAIRMAN ANDERSON: No, because
5 immediate trying -- I guess this is what I'm
6 trying to draw. I'm trying to find out, and I'm
7 not trying to put you on the spot or anything.
8 I'm just trying to find out. The neighbors are
9 asking for noise. You're saying I hear it. So
10 I'm just saying to you that did you hear audible
11 noise outside the building when you went there.

12 MR. DE LOS SANTOS: No.

13 CHAIRMAN ANDERSON: All right. Any
14 other questions by any other board members? Yes,
15 Mr. Short.

16 MR. SHORT: Good afternoon, Mr.
17 Santos. How long have you been employed by ABRA,
18 Alcoholic Beverage Control Regulation?

19 MR. DE LOS SANTOS: It's about nine
20 months now.

21 MR. SHORT: And you finished your
22 training when?

23 MR. DE LOS SANTOS: Sometime July. If
24 I'm not mistaken.

25 MR. SHORT: I want to just clarify for

1 the record. You heard music in your car and when
2 you got out of the car, and you had not been into
3 the club as of yet -- I mean, the restaurant as
4 of yet, correct?

5 MR. DE LOS SANTOS: I'm sorry, repeat
6 that question again?

7 MR. SHORT: You heard music when you
8 got out of your car. And I heard you say to you
9 it didn't sound like it was a problem. You're
10 out of training apparently, right?

11 MR. DE LOS SANTOS: Yes.

12 MR. SHORT: And you read from
13 paragraph 6 page 3 of 5 in the settlement
14 agreement that no noise can be heard outside and
15 that's a violation of the settlement agreement.
16 Is that correct?

17 MR. DE LOS SANTOS: Yes, sir.

18 MR. SHORT: Did they have a violation
19 or did not they have a violation?

20 MR. DE LOS SANTOS: They did not.

21 MR. SHORT: Again, noise mitigation
22 says no objectionable noise, sounds, odors, or
23 other conditions that are publicly observable.
24 You were in the public, correct? When you heard
25 it. You were in public?

1 MR. DE LOS SANTOS: If I were in
2 public?

3 MR. SHORT: Were you in public when
4 you heard the music?

5 MR. DE LOS SANTOS: Yes.

6 MR. SHORT: Okay. I'll read this
7 again. Noise mitigation. No objectionable
8 noise, sounds, odors, or other conditions that
9 are publicly observable or emitted beyond the
10 immediate proximity of the premises will be
11 created by the applicant. What does that mean?

12 MR. DE LOS SANTOS: No noise coming
13 out, outside.

14 MR. SHORT: You heard noise outside.

15 MR. DE LOS SANTOS: What I'm saying is
16 -- what that paragraph is saying is there's no
17 noise should be coming out.

18 MR. SHORT: Did you hear noise coming
19 out?

20 MR. DE LOS SANTOS: Yes, but only --

21 MR. SHORT: No further questions.

22 MR. DE LOS SANTOS: Okay.

23 MR. SHORT: No further questions.

24 Thank you very much for your testimony. Thank
25 you, sir.

1 CHAIRMAN ANDERSON: Do you want to
2 finish saying what you were saying? Were you
3 done answering?

4 MR. DE LOS SANTOS: I'm done.

5 CHAIRMAN ANDERSON: All right. Any
6 other questions by any board members? All right.
7 Thank you for your testimony Mr. De Los Santos.
8 Now we'll have the licensee can ask questions off
9 the report if you have any.

10 MR. ROUNTREE: I don't have any
11 questions.

12 CHAIRMAN ANDERSON: You don't have any
13 questions. Mr. Loots.

14 MR. LOOTS: Yes, I do have several
15 questions.

16 PROTESTANT EXAMINATION

17 MR. LOOTS: Mr. Los Santos, I'd like
18 to direct your attention to your report at page 2
19 where you indicated under roman numeral II formal
20 protest issues number 1, right at the bottom of
21 that page you indicate that Mr. Rountree stated
22 to you that he'd be purchasing plexiglass on
23 Thursday, October 24, and that he stated the
24 plexiglass windows would be installed no later
25 than Saturday, October 26.

1 And I believe you also testified about
2 that representation.

3 Did you ever return to the
4 establishment after those dates to determine if
5 in fact the plexiglass windows had been
6 installed?

7 MR. DE LOS SANTOS: Yes.

8 MR. LOOTS: And when did you return to
9 the premises?

10 MR. DE LOS SANTOS: Just recently.
11 Before New Year's just to see, but there was no
12 changes made.

13 MR. LOOTS: There were no changes.

14 MR. DE LOS SANTOS: No.

15 MR. LOOTS: Okay. So, that
16 representation was not consistent with what
17 actually happened, is that correct?

18 MR. DE LOS SANTOS: I'm sorry.

19 MR. LOOTS: Okay. The promise or
20 representation was made that the windows would be
21 installed no later than Saturday, October 26.
22 That turned out not to be true.

23 MR. DE LOS SANTOS: Oh, you mean
24 whatever Mr. Rountree told me?

25 MR. LOOTS: Yes.

1 MR. DE LOS SANTOS: No, there wasn't.
2 No.

3 MR. LOOTS: There were no changes.

4 MR. DE LOS SANTOS: There were no
5 changes since that conversation.

6 MR. LOOTS: Okay. Did you feel any
7 need to update your report to include that
8 additional information?

9 MR. DE LOS SANTOS: No.

10 MR. LOOTS: If you would turn, please,
11 to the hours of operation which is paragraph 7 --
12 I'm sorry, page 7 paragraph (d), roman numeral
13 IV(d), proposed hours of operation in your
14 report.

15 MR. DE LOS SANTOS: Yes. To 11 p.m.

16 MR. LOOTS: Yes. I want to direct
17 your attention to be clear that the hours of live
18 entertainment that are currently permitted are
19 different than the hours of operation. Is that
20 correct?

21 MR. DE LOS SANTOS: That's correct.
22 Proposed hours of live entertainment.

23 MR. LOOTS: Okay. And in fact on
24 Sunday, Monday, and Tuesday, and Wednesday the
25 live entertainment is not permitted prior to 4

1 p.m., is that correct?

2 MR. DE LOS SANTOS: That's correct,
3 yes.

4 MR. LOOTS: Did you make any efforts
5 to ascertain if in fact live music was played
6 between the hours of 10 a.m. and 4 p.m. on any of
7 those days?

8 MR. DE LOS SANTOS: Yes. If you look
9 at Thursday, December 19, 11:50 a.m. The last
10 one. On page 8.

11 MR. LOOTS: So, you were there during
12 those hours on that date. Were they open for
13 lunch that day?

14 MR. DE LOS SANTOS: They were open,
15 but there was no live entertainment.

16 MR. LOOTS: Okay. Now while we're
17 looking at page 8 which is your list of the times
18 you did not visit on any Friday or Saturday
19 nights, did you?

20 MR. DE LOS SANTOS: No, sir.

21 MR. LOOTS: Okay. And in fact the
22 latest you were there any night was on a Thursday
23 at 11:15 p.m. Is that correct, on 10/17?

24 MR. DE LOS SANTOS: Yes.

25 MR. LOOTS: Is there any reason you

1 didn't go for a weekend night? I mean, after all
2 this establishment, the concern was noise
3 including weekends.

4 MR. DE LOS SANTOS: Right. I don't
5 work on weekends.

6 MR. LOOTS: Okay. That's a good
7 reason.

8 Going back again to the hours of
9 entertainment you testified, and I'll try not to
10 duplicate questions that have come from the
11 board, but that you didn't -- you heard -- music
12 was audible to you, but you did not consider it,
13 I think your words were not enough to be a
14 bother. Is that correct?

15 MR. DE LOS SANTOS: Correct.

16 MR. LOOTS: Okay. But you could hear
17 it.

18 MR. DE LOS SANTOS: Yes. Once --
19 patrons coming in and out from the front door.

20 MR. LOOTS: Well, in fact previously
21 you said it was not related to the door open.
22 You said it was audible from the sidewalk when
23 you got out of your car, is that correct?

24 MR. DE LOS SANTOS: Yes.

25 MR. LOOTS: Okay. You testified that

1 none of the MPD calls were related to ABRA
2 violations. How did you determine that?

3 MR. DE LOS SANTOS: Which page are you
4 looking at?

5 MR. LOOTS: It would appear in your
6 report. You also said it in your testimony. But
7 in your report it appears at page 8 roman numeral
8 VI paragraph (a). Under the first part talking
9 about MPD, calls for service at said address with
10 no calls related to ABRA violations.

11 MR. DE LOS SANTOS: Right. That list
12 you see there are 27 noise complaints to us.

13 MR. LOOTS: Okay. I'm not asking
14 about that. I'm asking about exhibit 12 which I
15 believe is the radio run report from MPD.

16 MR. DE LOS SANTOS: Oh, yes, from the
17 crime analysis. The calls for service.

18 MR. LOOTS: Right. How did you
19 conclude that none of those calls were related to
20 ABRA violations?

21 MR. DE LOS SANTOS: If you look at the
22 list, the exhibit, a lot of them don't mention
23 District Soul at all. It says another --

24 MR. LOOTS: But many of them also do.

25 MR. DE LOS SANTOS: Right, right. By

1 looking at that exhibit the total that was
2 actually directly related to District Soul are
3 only seven.

4 MR. LOOTS: Okay. Well --

5 MR. DE LOS SANTOS: If you count them
6 up. There's obviously more, there's a lot of
7 pages, but not all of them are related to
8 District Soul.

9 MR. LOOTS: I mean some of them are
10 cars being towed and things like that.

11 MR. DE LOS SANTOS: Right.

12 MR. LOOTS: I understand. But how did
13 you determine -- and let's just limit it to the
14 ones that specifically say District Soul Food
15 even though they all have the address on it.

16 How did you determine that none of
17 these were related to ABRA violations?

18 MR. DE LOS SANTOS: I'm sorry, repeat
19 the question?

20 MR. LOOTS: How did you determine from
21 this report, this exhibit 18, that none of the
22 radio runs from the MPD were ABRA violations?

23 MR. DE LOS SANTOS: Not too sure.

24 MR. LOOTS: Isn't it true that exhibit
25 18 doesn't give you any objective ability to

1 determine what might or might not have been an
2 ABRA violation there?

3 MR. DE LOS SANTOS: Right. It could
4 be a car passing by with loud music. It could be
5 --

6 MR. LOOTS: Or it could be something
7 that's also an ABRA violation such as an incident
8 involving intoxication, or an incident involving
9 -- several of them say trash improperly placed.
10 Some of those things could have been an ABRA
11 violation, correct?

12 MR. DE LOS SANTOS: Correct.

13 MR. LOOTS: Okay. Also, you have a
14 list here identified in section roman numeral
15 VI(a) that says that on November 24 of 2019 you
16 requested noise complaints regarding District
17 Soul Food. So you would agree that that is in
18 fact specific to this establishment, correct?

19 MR. DE LOS SANTOS: Correct, because
20 there were calls made directly to us.

21 MR. LOOTS: Okay. And it goes through
22 November 20. Did you make any attempt to
23 supplement that from November 20 to the present
24 to determine how many calls for noise complaints
25 there were?

1 MR. DE LOS SANTOS: From the 20th to
2 now?

3 MR. LOOTS: Yes. Bring it current
4 from your report date in December.

5 MR. DE LOS SANTOS: Well, there hasn't
6 been any more calls to us since then.

7 MR. LOOTS: You're certain?

8 MR. DE LOS SANTOS: I mean, I've
9 written this report. I just stuck to the facts
10 with this report. I haven't looked into further.

11 MR. LOOTS: Okay. Let me try to
12 rephrase the question. When you prepared this
13 report you stated here that you requested a list
14 and you got it on November 24 of 2019. Right?

15 MR. DE LOS SANTOS: Right.

16 MR. LOOTS: Have you since November 24
17 requested a supplemental list to show what's
18 happened between then and now?

19 MR. DE LOS SANTOS: No.

20 MR. LOOTS: Okay. So you basically
21 don't have any knowledge, presumably ABRA does,
22 but you don't have any knowledge --

23 MR. DE LOS SANTOS: Since the present?
24 Since then, now to the present?

25 MR. LOOTS: Since that to the date.

1 MR. DE LOS SANTOS: No, because by
2 then the report was already.

3 MR. LOOTS: Right. Okay. I've got a
4 question about Bachelor's Mill. Are you familiar
5 with that establishment?

6 MR. DE LOS SANTOS: No, sir.

7 MR. LOOTS: Okay. If I suggested to
8 you that it's actually located six and a half --
9 or was located six and a half blocks away at --
10 it was located at 1104 8th Street SE on the other
11 side of the freeway.

12 MR. DE LOS SANTOS: Outside the 1200?

13 MR. LOOTS: Yes. They're definitely
14 outside. They're six and a half blocks away. So
15 yes. So would that change your testimony as to -
16 -

17 MR. DE LOS SANTOS: Why I didn't
18 include it?

19 MR. LOOTS: No. The question is you
20 testified that many of the radio runs identified
21 a different establishment and were therefore
22 inapplicable. And we can all I guess speculate
23 as to why MPD would sometimes title particular
24 radio runs to a particular address.

25 But if Bachelor's Mill was the 1100

1 block and we're talking about the 500 block --

2 MR. DE LOS SANTOS: It's way too far.

3 MR. LOOTS: It's way too far, right?

4 So you would concede that whatever it was, it
5 wasn't Bachelor's Mill. Bachelor's Mill was
6 located in the 1100 block.

7 MR. DE LOS SANTOS: Right. It would
8 be no correlation because it's just.

9 MR. LOOTS: Right. Okay. Under
10 section roman numeral VIII investigative history
11 you mention two cases that were -- I believe
12 these are ABRA cases, correct?

13 MR. DE LOS SANTOS: Yes.

14 MR. LOOTS: Okay. First one, all you
15 say here is failed to follow settlement agreement
16 and were referred to staff settlement. Can you
17 provide the board with additional information as
18 to what that violation of settlement agreement
19 was?

20 MR. DE LOS SANTOS: No, actually.

21 CHAIRMAN ANDERSON: You're talking for
22 us to here. I can't hear you.

23 MR. DE LOS SANTOS: No, actually.

24 MR. LOOTS: Okay. Presumably that's
25 in the board's records. But when you pulled up

1 the investigative history did you actually read
2 the 10/22/19 case allegations?

3 MR. DE LOS SANTOS: I did not, sir.

4 MR. LOOTS: Okay. And there's a
5 second investigative history number 2 dated July
6 9 of 2019. It says operated sidewalk café
7 without endorsement. Primary citation for 223
8 warning. Did you actually read the allegations
9 of that complaint in the ABRA system?

10 MR. DE LOS SANTOS: No, sir.

11 MR. LOOTS: Are you aware of any other
12 aspects or situations concerning that
13 investigation?

14 MR. DE LOS SANTOS: No. Those are the
15 only two.

16 MR. LOOTS: My question is a little
17 bit different. My question was are you aware of
18 any of the circumstances or allegations related
19 to the 7/9/19 incident.

20 MR. DE LOS SANTOS: No. Just that it
21 was just a warning.

22 MR. LOOTS: Okay. In your report at
23 page 1 in the introduction section, in the last
24 sentence of the first paragraph you say the
25 licensee has requested entertainment endorsement

1 to include dancing, cover charge endorsement, and
2 sidewalk café endorsement.

3 So, is it your belief that the
4 applicant licensee here wishes to add dancing and
5 cover charge endorsements to its license?

6 MR. DE LOS SANTOS: Yes.

7 MR. LOOTS: Okay. I would note for
8 the board that was not mentioned in the
9 introduction by the application.

10 Did you do any investigations
11 specifically to determine whether the
12 establishment has been charging cover charges
13 without having that endorsement?

14 MR. DE LOS SANTOS: If I'm aware? No,
15 I'm not aware they have been.

16 MR. LOOTS: Okay. Did you make any
17 attempt to discern or ask questions to determine
18 if they had been charging a cover charge?

19 MR. DE LOS SANTOS: Asking questions
20 to the establishment?

21 MR. LOOTS: The establishment, yes.

22 MR. DE LOS SANTOS: No, I did not ask
23 that question.

24 MR. LOOTS: As an investigator for
25 ABRA you're aware of the sales reporting

1 requirements associated with a CR license, is
2 that correct?

3 MR. DE LOS SANTOS: Yes.

4 MR. LOOTS: Did you inspect or verify
5 any of the CR quarterly reports filed by the
6 establishment?

7 CHAIRMAN ANDERSON: That's going way
8 afield.

9 MR. LOOTS: Okay. Actually I believe
10 it is germane to an investigation to determine if
11 there is compliance.

12 CHAIRMAN ANDERSON: There's no mention
13 in his report. I mean, you're asking questions
14 based on a report. There is no mention in his
15 report.

16 MR. LOOTS: I would respectfully
17 disagree in that I think it goes to his finding
18 that there were no ABRA violations.

19 CHAIRMAN ANDERSON: I guess what I'm
20 saying, there are no -- he lists I think in his
21 report that there are two ABRA violations. I'm
22 not sure. But he did not mention that.

23 Now, in your presentation of your case
24 if you want to present evidence that's fine. But
25 remember, the questions you're asking him should

1 be based on what's in his report.

2 MR. LOOTS: Very good, sir. I have no
3 further questions of this witness.

4 CHAIRMAN ANDERSON: Any other
5 questions by any of the board members? Mr. De
6 Los Santos, thank you for your testimony. You
7 can step down.

8 MR. DE LOS SANTOS: Thank you.

9 CHAIRMAN ANDERSON: Mr. Rountree, do
10 you have any witnesses you plan to call? Are you
11 calling yourself as a witness? Are you calling
12 the other owner as a witness? How do you plan to
13 present your case?

14 MR. ROUNTREE: I guess I can call my
15 owner as a witness. We weren't prepared to have
16 any witnesses.

17 CHAIRMAN ANDERSON: If you weren't
18 prepared to have any witnesses -- okay. You're
19 asking us to renew your license, okay?

20 MR. ROUNTREE: Yes, sir.

21 CHAIRMAN ANDERSON: How do you plan --
22 how is it -- what is it that the basis you're
23 asking the board to look at to renew your
24 license?

25 MR. ROUNTREE: Is it okay if I explain

1 my level of understanding?

2 CHAIRMAN ANDERSON: Let me -- raise
3 your right hand, sir, please.

4 WHEREUPON,

5 DAVID ROUNTREE

6 was called as a witness by Counsel for the
7 Applicant and, having been first duly sworn,
8 assumed the witness stand, was examined and
9 testified as follows:

10 CHAIRMAN ANDERSON: I'm not going to
11 tell you how to present your case. I'm just
12 asking you to present your case. So you can go
13 ahead and tell me whatever you want to do.

14 But remember you asked us to renew
15 your license and so therefore you need to present
16 testimony and evidence to give the board
17 confidence that they're going to renew your
18 license, or whether or not they're going to do
19 what the protestant has asked, or some
20 combination of the other.

21 So whatever we do today, it's going to
22 be based on what's presented here today. Okay?

23 MR. ROUNTREE: Okay.

24 CHAIRMAN ANDERSON: Go ahead.

25 MR. ROUNTREE: All right. So I'll

1 start with explaining some of the things that the
2 investigator had explained, or concerns as far as
3 the windows were concerned.

4 CHAIRMAN ANDERSON: This is you
5 explaining your case so you do it whichever way
6 you feel like you need to do it, okay?

7 MR. ROUNTREE: Okay. There are
8 several different things that I'm going to
9 address.

10 Number one which is the main thing
11 which is the windows. The windows are under
12 Historic Preservation.

13 There are several things that we had
14 to do in order to be able to make any changes to
15 the windows which was we had to go to Historic
16 Preservation. They had to give us a list of
17 windows. I'm just telling you this from the
18 beginning on how we got here.

19 We had to go to Historic Preservation.
20 They gave us a list of things to do. I then met
21 with Chander, explained to him what we had to do.

22 Number one was -- we had several
23 different options. Number one was we could pay
24 like thirty to thirty-five thousand dollars to
25 replace all the windows which was not going to

1 guarantee any sound -- it wasn't going to be
2 really any soundproofing because you are only
3 allowed, you couldn't do double paned windows.
4 You had to stay within the bounds what they gave
5 you.

6 The second thing was to do storm
7 windows, to do storm windows. Our landlord
8 wouldn't allow us to do -- landlord and the fire
9 department wouldn't allow us to do storm windows.

10 Third thing was to do plexiglass which
11 is what a lot of businesses do with historic
12 windows when they need to soundproof.

13 But for us we had to have the
14 inspection. When I explained it to the
15 investigator that we would have the windows we
16 actually did purchase the plexiglass, but when
17 the fire department came in they found several
18 other things. So it pushed our inspection out
19 until like the end of December.

20 Since then the windows have been
21 installed. They are up. Plexiglass has been
22 installed. And so that's the explanation as far
23 as the windows are concerned.

24 And that's basically it. That's been
25 the whole argument going back and forth on when

1 we were going to get it.

2 But we couldn't do it because we were
3 bound by certain laws and things like that.

4 As far as the music was concerned,
5 because the windows are broken and they sag and
6 you can't really fix them without replacing them
7 and you have to get all this permission.

8 So I will say that in keeping it
9 honest that the music has been loud at certain
10 times.

11 But every time that someone has called
12 us or whatever we turn it down immediately. And
13 it's hard for us to know whether it's going down
14 the street unless somebody says something.

15 We have done since then, we only have
16 entertainment two days a week. And we've hired a
17 full-time sound person to bring the sound down.

18 And as I said, the windows have been
19 installed since I think Monday, Sunday. Sunday.

20 CHAIRMAN ANDERSON: Anything else you
21 wish to say?

22 MR. ROUNTREE: Sir?

23 CHAIRMAN ANDERSON: Anything else you
24 wish to say?

25 MR. REYNOLDS: And also --

1 CHAIRMAN ANDERSON: Can you raise your
2 right hand, sir?

3 MR. REYNOLDS: Sure.

4 WHEREUPON,

5 EDWARD REYNOLDS

6 was called as a witness by Counsel for the
7 Applicant and, having been first duly sworn,
8 assumed the witness stand, was examined and
9 testified as follows:

10 MR. REYNOLDS: As the inspector
11 mentioned that he heard music when he got out of
12 the car, people are coming in and out the
13 restaurant all the time.

14 I mean, it's a revolving door. So
15 it's hard to keep all the sound inside the
16 restaurant when we've got the door opening and
17 closing as people are coming and going after they
18 finish eating and dining in. So people are
19 actually coming in and out the door all the time
20 so it's hard to keep that sound down.

21 MR. ROUNTREE: Also, you know, I would
22 like to bring up. I'm pretty sure it will be
23 something that comes up later on.

24 The constant complaining was elevated
25 to the Mayor's Office as well. We've had a

1 meeting about this, about the racism that we've
2 endured. You can verify it. Mr. Townsend was
3 there. Several other people from the Mayor's
4 Office was there.

5 There have been several emails that
6 were written about the excessive R&B music that
7 we play. Several different things as far as us
8 being there and the constant harassment.

9 The windows. The windows. Even times
10 when there is not music playing I get complaints
11 about music playing. So, I guess that's it.

12 CHAIRMAN ANDERSON: You have nothing
13 else to say?

14 MR. ROUNTREE: No, sir.

15 CHAIRMAN ANDERSON: Your --

16 MR. LOOTS: Yes, I do have a couple of
17 questions.

18 PROTESTANT EXAMINATION

19 MR. LOOTS: I may depending on what
20 your preference is, some of the questions I have
21 will go beyond the scope of direct examination or
22 testimony. I can recall him as a witness as part
23 of our case, or I can just ask them now.

24 CHAIRMAN ANDERSON: He put himself on
25 the witness stand so you can ask him questions.

1 MR. LOOTS: Okay. Very good. My
2 first question then. Sorry, I have forgotten
3 your name, sir.

4 MR. REYNOLDS: My name? Edward
5 Reynolds.

6 MR. LOOTS: Okay. Mr. Reynolds, you
7 made a comment about noise coming out when the
8 doors are open.

9 MR. REYNOLDS: Correct.

10 MR. LOOTS: Isn't it true that there
11 is a vestibule area and there are actually two
12 doors between the establishment and the outside.
13 Is that correct?

14 MR. REYNOLDS: Correct.

15 MR. LOOTS: So in the situation you
16 posit both doors would have had to have been open
17 at the same time for any noise to come out,
18 right?

19 MR. REYNOLDS: Correct. And plenty of
20 times that happens.

21 MR. LOOTS: And also is it not true
22 that the entertainment is limited to both by your
23 settlement agreement and in practice the second
24 floor of the establishment and not the first. Is
25 that correct?

1 MR. REYNOLDS: Correct.

2 MR. LOOTS: So for noise to get to the
3 street through the doors it would have to travel
4 down the stairs or through the ceiling and then
5 across. And the stairwell to the upstairs, it's
6 at the far side away from the 8th Street
7 entrance, correct?

8 MR. REYNOLDS: Correct. But keep in
9 mind the ceiling in the restaurant is exposed.
10 So there's no drywall, there's no insulation.
11 It's floor joists that's painted black.

12 MR. LOOTS: Okay. I just want to make
13 sure the board has a clear visual as to what it
14 would take for noise to get out the front door.

15 MR. REYNOLDS: Okay.

16 MR. LOOTS: Mr. Rountree, you
17 indicated that you had received noise complaints
18 directly from neighbors and that you had I
19 believe you said always when you were aware of it
20 turned the volume down, is that correct?

21 MR. ROUNTREE: I wouldn't say -- I
22 mean always is, I guess 100 percent is an exact
23 number. But most of the time, yes.

24 MR. LOOTS: Okay.

25 MR. ROUNTREE: If I'm there it

1 happens.

2 MR. LOOTS: Okay. And when you turn
3 down the volume does that include telling bands
4 that are playing to turn down their volume?

5 MR. ROUNTREE: What usually happens is
6 because there's a mike on them, on their
7 instrument, the sound man is able to turn them
8 down.

9 MR. LOOTS: Okay. So that would be
10 the band's instrument levels. Let's just say a
11 drum. And let's assume the drum is not miked.
12 Are you able to take any steps to turn down the
13 nature of the drum?

14 MR. ROUNTREE: Our drum is miked so we
15 can turn it down.

16 MR. LOOTS: Okay. The drum is miked.
17 Okay.

18 MR. ROUNTREE: Every instrument in
19 there has a mike on it.

20 MR. LOOTS: Okay. Which actually
21 leads me to my next question. You're talking
22 about potential remedial measures, putting in
23 some plexiglass. Why don't you just turn down
24 the volume to get within the noise ordinance?

25 MR. ROUNTREE: We have turned down the

1 volume. The reason we put the plexiglass in was
2 to replace the windows that are cracked, that
3 have a seal that's exposing the outside.

4 So that's been the issue because we
5 haven't been able to get a complete seal on the
6 windows.

7 MR. LOOTS: Okay. Now, you indicated
8 earlier that you had made at least some efforts
9 to replace -- or not to replace the windows, but
10 rather to get permission from Historic
11 Preservation to replace the windows. Is that
12 correct?

13 MR. ROUNTREE: Yes.

14 MR. LOOTS: Did you actually put in an
15 application for a permit to replace those
16 windows?

17 MR. ROUNTREE: When we went down there
18 they told me that that wasn't going to solve the
19 problem. So the answer to your question is no,
20 because I was advised that was going to be a
21 waste of time and a waste of money.

22 MR. LOOTS: Who told you that?

23 MR. ROUNTREE: The Preservation.
24 Because they said that the windows they were
25 putting in are single pane. They're just redoing

1 the windows and fixing the windows which was a
2 \$30,000 fix.

3 I spoke in depth with this as to some
4 of the proper ways to go and expressed needing
5 help and advisement.

6 Some of the ANC members did advise us,
7 and we did exactly that which is how we come up
8 with the plexiglass fix.

9 MR. LOOTS: Okay. Is it your
10 testimony that Historic Preservation told you
11 that replacing the windows would not affect the
12 soundproof nature of the windows? Or alleviate
13 your noise problem?

14 MR. ROUNTREE: Yes. It would not
15 alleviate 100 percent of the noise that was
16 coming out of there.

17 What we wanted to do, we were trying
18 to eliminate all the noise, any noise that would
19 emit from the top windows. Those are the only
20 windows on the side, on the 8th Street side that
21 were really broken, that you could see exposure
22 from the outside.

23 MR. LOOTS: Okay. But my question
24 remains did someone at Historic Preservation
25 advise you that replacing the windows would not

1 mitigate the noise issue.

2 MR. ROUNTREE: Yes, that's correct.

3 MR. LOOTS: Interesting. Did you take
4 any steps to determine if soundproof glass could
5 be installed in historically appropriate windows?

6 MR. ROUNTREE: Yes, I did. That would
7 entail replacing the glass. We wanted to put new
8 windows in. They wouldn't allow us to put new
9 windows in because that was protected by the
10 Historic Preservation.

11 MR. LOOTS: Is it your testimony that
12 you could not replace the windows with an
13 appropriate historically accurate or compatible
14 window design?

15 MR. ROUNTREE: Yes. And it was going
16 to cost us \$35,000 which we did not have.

17 MR. LOOTS: That's a different issue.
18 The question is was there a solution available to
19 you that you could replace the windows with
20 soundproof glass --

21 MR. ROUNTREE: No.

22 MR. LOOTS: And why is that?

23 MR. ROUNTREE: Because the windows,
24 the current windows are historical and they have
25 to put the same windows back in.

1 The only thing they could do was frame
2 them different. The whole purpose is to preserve
3 the glass that's in the windows.

4 MR. LOOTS: That's interesting. Now,
5 your testimony if I understood you correctly was
6 that the reason you had not taken steps to
7 mitigate the noise until last week was that you
8 had a series of regulatory challenges to do that.

9 Does it take an entire year -- you've
10 been open about a year, right?

11 MR. ROUNTREE: Yes. That's not what
12 I said.

13 MR. LOOTS: Okay. Well, please
14 correct me.

15 MR. ROUNTREE: What I said was we
16 bought the windows. We had the windows for some
17 time. We couldn't put them in because we had to
18 go through a fire code.

19 So when the fire inspector came out in
20 October we thought it was just going to be a
21 formality of him coming out.

22 There were several things that he had
23 to do and when did he finish -- he finished the
24 report in December?

25 (Simultaneous speaking)

1 MR. ROUNTREE: He finished his report
2 sometime in December. And so that's when we --
3 we couldn't do anything until then.

4 They were working on the easement.
5 They had to work on the easement which the
6 easement was not as simple because it impacted
7 another restaurant. We had to get permission.
8 It was several different things. It wasn't just
9 walking through.

10 Because our restaurant and the
11 easement, it's an adjoining restaurant, you have
12 to have permission to do certain things.

13 MR. LOOTS: Okay. Well, my question
14 remains what -- now you're talking about
15 easement. Did you apply for an easement?

16 MR. ROUNTREE: No. It was an easement
17 that was grandfathered in. But they could not
18 find the easement so that was part of the issue
19 as well.

20 MR. LOOTS: Okay. Did you ever apply
21 for a DCRA permit to replace the windows?

22 MR. ROUNTREE: No. As I explained
23 earlier we did not apply for a permit to replace
24 the windows because they gave us the alternative
25 to where we didn't have to touch the windows.

1 MR. LOOTS: And who gave you that
2 alternative?

3 MR. ROUNTREE: You said who gave me
4 the alternative?

5 MR. LOOTS: Yes.

6 MR. ROUNTREE: The fire department and
7 the Historical Preservation gave us the
8 alternative. We had to get permission.

9 So in other words I asked the question
10 other than replacing the windows which they had
11 already told us that wasn't going to solve what
12 we had to do, what else is it that we could do.

13 And they explained to me, they gave me
14 the options on what we could do. Storm windows,
15 plexiglass.

16 MR. LOOTS: And that's it. Storm
17 windows and plexiglass.

18 MR. ROUNTREE: Yes. Or replace the
19 windows. But it was still not going to help. It
20 was going to be a costly fix.

21 They gave us an inexpensive way to a
22 lot of other restaurants, when they told us
23 exactly what to do and we did that.

24 MR. LOOTS: And that's the plexiglass
25 you mounted I assume on the inside last week?

1 MR. ROUNTREE: That's correct.

2 MR. LOOTS: Mr. Rountree, do you
3 sometimes host entertainment events in the
4 context of a brunch, like for instance a jazz
5 brunch or something like that at your restaurant?

6 MR. ROUNTREE: It's advertised that
7 way, but it's us playing music through our system
8 so it's not a jazz brunch. It's not like -- it's
9 us playing jazz music. It's not a band.

10 MR. LOOTS: Okay. What about live
11 entertainers for brunch?

12 MR. ROUNTREE: Live entertainers for
13 brunch, no. We don't have any live entertainment
14 for brunch.

15 Oh, we've had a drag brunch. So yes,
16 we've had a drag brunch.

17 MR. LOOTS: Okay. If you can turn to
18 exhibit 8 in the papers I gave you.

19 CHAIRMAN ANDERSON: Do you have an
20 extra copy that the board can look at?

21 MR. LOOTS: I'm sorry. In previous
22 hearings the board has had a copy of what we
23 submitted. I apologize.

24 You know, I can give -- one moment,
25 please. Meanwhile let me pass up to the board

1 what is --

2 CHAIRMAN ANDERSON: Over there. Are
3 you sure there's nothing there for me not -- sure
4 that I can look in what you're giving me? No
5 writing and notes and stuff?

6 MR. LOOTS: No, that's a clean copy
7 for the witness.

8 CHAIRMAN ANDERSON: All right, go
9 ahead.

10 MR. LOOTS: So, I'm going to ask you
11 to look at the first page of what we marked as
12 exhibit 8.

13 MR. ROUNTREE: Is this it?

14 MR. LOOTS: Yes. So, do you recognize
15 that -- what's been identified as the first page
16 of exhibit 8?

17 (Whereupon, the above-referred to
18 document was marked for identification as
19 Protestant Exhibit No. 8.)

20 MR. ROUNTREE: Yes.

21 MR. LOOTS: And what is that document?

22 MR. ROUNTREE: That's a flyer.

23 MR. LOOTS: Okay. If you look at the
24 annotation to the right do you know whether this
25 was published in some size, shape, or form on

1 some social media?

2 MR. ROUNTREE: Yes. It was on
3 Instagram it looks like.

4 MR. LOOTS: Okay. If I were to
5 suggest to you that it may have been Facebook
6 would that?

7 MR. ROUNTREE: Facebook, yes. That's
8 accurate.

9 MR. LOOTS: Okay. And you can look in
10 the lower lefthand corner and get the detail of
11 where it was printed it out from which is
12 Facebook.

13 So, this advertisement appears to
14 indicate that on December 14 from 11 a.m. to 2
15 p.m. you had a drag brunch show. Is that
16 correct?

17 MR. ROUNTREE: That's correct.

18 MR. LOOTS: Okay. Does your license
19 permit you to offer live entertainment between 11
20 a.m. and 2 p.m.?

21 MR. ROUNTREE: You said does it --
22 it's not really live entertainment, but I'm not
23 sure. It's on the weekend so I'm not sure.

24 MR. LOOTS: Okay. How are actors
25 and/or -- I'm not quite sure how best to describe

1 a drag show, but how are those individuals not
2 live entertainment?

3 MR. ROUNTREE: They're actually
4 walking around and serving. So it's a part of
5 the restaurant when they come in and do it.

6 I guess if you want to call it
7 entertainment it is, but they're there as a part
8 of the restaurant serving as well.

9 MR. LOOTS: Okay. Well, it says here
10 Ebony Pyramid Entertainment. Who is Ebony
11 Pyramid Entertainment?

12 MR. ROUNTREE: They're a marketer,
13 promoter if you want. They help us market the
14 event.

15 MR. LOOTS: Okay. And down below it
16 says admission, pre-sale, \$34, at event \$39. Do
17 you see that one?

18 MR. ROUNTREE: That's correct.

19 MR. LOOTS: Okay. So did you in fact
20 charge admission?

21 MR. ROUNTREE: I charged -- no. We
22 charged -- \$34 is for the brunch. If you pay in
23 advance for the brunch -- the brunch includes
24 food. If you pay in advance for the brunch it's
25 \$34. If you pay at the door it's \$39.

1 MR. LOOTS: Okay. Did that event in
2 fact occur on December 14 between 11 a.m. and 2
3 p.m.?

4 MR. ROUNTREE: It did.

5 MR. LOOTS: Okay. If you turn to the
6 next page do you recognize that document?

7 MR. ROUNTREE: Yes, sir.

8 MR. LOOTS: And what is that?

9 MR. ROUNTREE: That's for one of our
10 bands.

11 MR. LOOTS: Okay. I'll direct your
12 attention to the photographic portion of it. It
13 says \$20 cover, doors open at 7 p.m. See that?

14 MR. ROUNTREE: That's correct.

15 MR. LOOTS: Okay. Did this event in
16 fact happen?

17 MR. ROUNTREE: What day was that?

18 MR. LOOTS: September 13 was the
19 Facebook posting.

20 MR. ROUNTREE: Yes. I'm going to say
21 yes.

22 MR. LOOTS: Okay. And you did in fact
23 collect a \$20 cover charge?

24 MR. ROUNTREE: We collect \$20 for --
25 it's the admission. It's not a cover charge.

1 It's a drink ticket.

2 MR. LOOTS: It says \$20 cover here.

3 MR. ROUNTREE: Yes, but it's a drink
4 ticket.

5 MR. LOOTS: Okay. And what do you get
6 for your drink ticket?

7 MR. ROUNTREE: What do you mean for
8 your drink ticket? You get a drink.

9 MR. LOOTS: Okay. So \$20 is one
10 drink.

11 MR. ROUNTREE: Basically we're
12 charging a drink minimum. That's what we're
13 doing.

14 MR. LOOTS: Well, it says cover
15 charge, and you say now you get a ticket for your
16 \$20. And now you're saying it's a drink minimum.
17 Which is it?

18 MR. ROUNTREE: It's a drink minimum.

19 MR. LOOTS: Are all the drinks \$20?

20 MR. ROUNTREE: No, but we have
21 different various drinks. It depends on what you
22 get. If you order something with multiple
23 alcohol in it it's \$20. Or \$20 plus actually.

24 MR. LOOTS: What if I order a beer in
25 a can? Do you have those?

1 MR. ROUNTREE: No, we don't have beer
2 in a can. We have beer in a bottle.

3 MR. LOOTS: Beer in a bottle. Is that
4 \$20?

5 MR. ROUNTREE: No, that's not \$20.

6 MR. LOOTS: Okay.

7 MR. ROUNTREE: Or you can get the
8 equivalent of \$20. So if you order a beer, then
9 it's three beers.

10 MR. LOOTS: So the drink ticket that
11 you're describing is a \$20 voucher, not a single
12 drink. Is that correct?

13 MR. ROUNTREE: Yes. It's a ticket.
14 So if you go to the bar and you say hey, I want a
15 beer, then you get three beers with that ticket.

16 MR. LOOTS: It says in the narrative
17 here celebrating a birthday, question mark, you
18 get in free, exclamation point. If it's not a
19 cover charge what are you giving somebody for
20 free if it's your birthday?

21 MR. ROUNTREE: I mean, rephrase that
22 question?

23 MR. LOOTS: Okay. Well, your
24 narrative here says you get in capital F-R-E-E.

25 MR. ROUNTREE: That means you're not

1 required to buy the drink.

2 MR. LOOTS: So if it's your birthday
3 you don't buy a drink ticket.

4 MR. ROUNTREE: If it was your birthday
5 on that day, yes, you don't have to buy a drink
6 ticket.

7 MR. LOOTS: Can I come in anyway? Say
8 I don't want to buy a ticket, I don't pay \$20.

9 MR. ROUNTREE: You can come into the
10 establishment. You can eat downstairs. It's
11 just that the band, it's just that going upstairs
12 into the lounge we require a drink minimum,
13 that's all. Because the seats are limited.

14 MR. LOOTS: Okay. It says also on
15 here that there are two-seat table for \$100.
16 What's that all about?

17 MR. ROUNTREE: That means that it
18 comes with dinner and a bottle of wine.

19 MR. LOOTS: For \$100.

20 MR. ROUNTREE: Yes.

21 MR. LOOTS: Okay. Let's go down to
22 the next page please and ask you if you recognize
23 that document.

24 MR. ROUNTREE: Yes.

25 MR. LOOTS: It indicates -- I'll

1 direct your attention. This one says Friday,
2 September 6, \$20 admission. Did you in fact
3 charge \$20 admission to that event?

4 MR. ROUNTREE: No. And we didn't have
5 that event on September 6 I don't believe.

6 MR. LOOTS: Is there any -- I will
7 represent to you that there was no Facebook
8 posting or similar notice that it had been
9 canceled. Why do you say you don't think you had
10 that event?

11 MR. ROUNTREE: Because this group was
12 out of town. That's why.

13 MR. LOOTS: Okay. When you collect
14 the money at the door, whether it be
15 characterized as a cover charge or something
16 else, is that money retained by District Soul
17 Food?

18 MR. ROUNTREE: You mean for the
19 drinks? Yes, it's retained.

20 MR. LOOTS: Okay. And how do you
21 report that on your quarterly reporting?

22 MR. ROUNTREE: It goes in as a charge
23 for a drink.

24 MR. LOOTS: Okay. Is that true for
25 all of the charges you collect at the door?

1 MR. ROUNTREE: Yes, that's true for
2 every charge. That's how we monitor the cash.

3 MR. LOOTS: Okay. So it is in fact
4 reported as drinks?

5 MR. ROUNTREE: It's reported as
6 alcohol.

7 MR. LOOTS: Is there any situation
8 where a third party promoter gets to retain any
9 portion?

10 MR. ROUNTREE: No. No third party
11 promoter gets to retain from us.

12 MR. LOOTS: Okay. Turn to the next
13 page, please. It says this week at District Soul
14 Food, August 18 to 24. See that?

15 MR. ROUNTREE: Yes.

16 MR. LOOTS: And in the bar across the
17 bottom it says asterisk, cover charge Friday
18 night only. Do you see where it says that?

19 MR. ROUNTREE: Yes, I see that.

20 MR. LOOTS: So was there a cover
21 charge in fact on Friday night of that week?

22 MR. ROUNTREE: If it was it's the same
23 thing. We've been doing the same thing since --
24 when did we start doing that? Maybe in August?

25 MR. REYNOLDS: Before that.

1 MR. ROUNTREE: Yes. We've been doing
2 the same thing. So it's not a cover charge.

3 MR. LOOTS: Well, it says it's a cover
4 charge.

5 MR. ROUNTREE: Yes, but it's not -- I
6 just explained to you at every incident what it
7 is.

8 And I believe on my -- do you have a
9 copy of my ABC license?

10 MR. LOOTS: I'm sorry?

11 MR. ROUNTREE: Do you have a copy of
12 my ABC license?

13 MR. LOOTS: Not in front of me.

14 MR. ROUNTREE: Okay.

15 MR. LOOTS: What about it?

16 MR. ROUNTREE: Is it okay if I pull it
17 up? On our license I think it does say cover
18 charge on it. I believe it does say.

19 MR. REYNOLDS: The old one doesn't.

20 MR. ROUNTREE: No, but the new one
21 does I think, I believe.

22 MR. LOOTS: Well, it was the
23 investigator's testimony that you have applied
24 now to get permission to charge a cover charge.

25 MR. ROUNTREE: That's why I wanted to

1 -- I don't have a copy of it with me, but I
2 wanted to take a look at it because I thought I
3 saw that.

4 But nonetheless we don't charge a
5 cover charge to get in. Admittances is either a
6 food ticket or a drink ticket. That's what we
7 charge.

8 MR. LOOTS: Okay. I ask you to look
9 at the next page, please. It says brunch wine
10 and jazz. And specifically September 7 from 12
11 noon to 4 p.m. See that there?

12 MR. ROUNTREE: Yes.

13 MR. LOOTS: And right underneath that
14 it says live band. See where it says that?

15 MR. ROUNTREE: Yes.

16 MR. LOOTS: So you testified a few
17 minutes ago you don't have live bands at your
18 jazz brunch. You said it was just recorded
19 music. Is that still a correct statement?

20 MR. ROUNTREE: That's still a correct
21 statement.

22 MR. LOOTS: Okay. So the fact that it
23 says here, advertises a live band, that would be
24 what you told the public but you didn't actually
25 deliver on that, right?

1 MR. ROUNTREE: Was this on a Sunday
2 for our brunch? Was September 7 on a Sunday?

3 MR. LOOTS: We can look it up.

4 MR. ROUNTREE: It was a Saturday.

5 MR. LOOTS: So you're advertising a
6 live band, but it's your testimony that you don't
7 provide a live band.

8 MR. ROUNTREE: We did not have a live
9 band.

10 MR. LOOTS: Ever?

11 MR. ROUNTREE: I'm not saying that
12 we've never had a live band, but we did not --

13 MR. LOOTS: For a brunch.

14 MR. ROUNTREE: We've had live bands
15 early on, early on, but not on this day we did
16 not.

17 MR. LOOTS: Okay. Well, this says
18 August 26 of 2019 is when it posted.

19 MR. ROUNTREE: That says September 7.

20 MR. LOOTS: I'm looking at the posting
21 date, August 26.

22 MR. ROUNTREE: Right.

23 MR. LOOTS: That's a couple of weeks
24 away.

25 MR. ROUNTREE: Right. This was the

1 same weekend that you asked me about the other
2 band. We did not have a band on that day.

3 MR. LOOTS: Well, it says here
4 providing the soundtrack this enchanted day will
5 be the lovely jazz sounds of Kaleidoscope. So
6 you're telling the board that Kaleidoscope did
7 not in fact provide lovely jazz sounds on that
8 day.

9 MR. ROUNTREE: No, not on the seventh.
10 Have they ever done it before? Yes, they have.

11 MR. LOOTS: For a brunch?

12 MR. ROUNTREE: Yes, but that -- yes.
13 For a brunch.

14 MR. LOOTS: And does your
15 entertainment endorsement permit you to offer
16 live music before 4 p.m.?

17 MR. ROUNTREE: As I said I did not
18 know that. I thought it covered the whole
19 weekend. So yes, from before, yes, that was a
20 violation. We were in violation of that.

21 MR. LOOTS: Okay. It also says
22 admission \$25.

23 MR. ROUNTREE: As I said anything that
24 you see it's food or beverage.

25 MR. LOOTS: Okay. Let's turn to the

1 next page, please. It says this week -- or I'm
2 sorry, that's duplicative I believe of the
3 previous.

4 The next one, however, is August 4
5 through August 10. And again there's an asterisk
6 at the bottom of the photo part that says cover
7 charge Friday night only.

8 Is it your testimony that for this
9 event as well that was not in fact a cover
10 charge?

11 MR. ROUNTREE: It's not a cover
12 charge.

13 MR. LOOTS: Let me just ask you as a
14 matter of marketing if it's not a cover charge
15 why don't you say \$20 minimum, or voucher? If I
16 were a consumer wouldn't I be more likely to come
17 and pay you \$20 knowing that I'm going to get
18 something in return instead of a cover charge?

19 MR. ROUNTREE: Honestly, I'm not in
20 charge of the marketing. There is a person that
21 we hire to do this. So I can definitely bring it
22 to their attention.

23 MR. LOOTS: Yes. Okay. Turn to the
24 next page, please. You recognize that document?

25 MR. ROUNTREE: Yes.

1 MR. LOOTS: Okay. It also says
2 admission \$20 at the door. See that there? And
3 in the narrative it says \$20 admission after 7
4 p.m. Great music, great food, great drinks and
5 yes, full air conditioning.

6 So, is it your testimony that the \$20
7 admission at the door which is called in this
8 case admission is not a cover charge?

9 MR. ROUNTREE: It's not a cover
10 charge.

11 MR. LOOTS: Turn to the next page. It
12 talks about the schedule for July 28 through
13 August 3. Again it says cover charge Friday
14 night only. Is your response the same for that,
15 that it was not really a cover charge even though
16 it says cover charge?

17 MR. ROUNTREE: Yes. Like I said, I'm
18 not in charge of putting the flyers together.
19 It's something I'll have to speak to my marketing
20 person about.

21 MR. LOOTS: Mr. Chair, I would move
22 the admission of the Protestant's Exhibit 8.

23 CHAIRMAN ANDERSON: Any objection? Do
24 you have any objection for me moving this exhibit
25 into evidence?

1 MR. ROUNTREE: No, I have no
2 objection.

3 CHAIRMAN ANDERSON: So moved.

4 (Whereupon, the above-referred to
5 document was received into evidence as Protestant
6 Exhibit No. 8.)

7 MR. LOOTS: Okay. Mr. Rountree, why
8 don't we just while we're here turn to exhibit 9.
9 That will be the next page. And it appears to be
10 a Facebook posting dated June 25, 2019. Do you
11 recognize this document?

12 (Whereupon, the above-referred to
13 document was marked for identification as
14 Protestant Exhibit No. 9.)

15 MR. ROUNTREE: I do not.

16 MR. LOOTS: Okay. If you look in the
17 line of where it came from the internet, at the
18 bottom lower lefthand corner, it says
19 facebook.com/districtsoulfoodrestaurantandlounge
20 /photos. Does that help you in identifying where
21 this photo came from?

22 MR. ROUNTREE: Yes, but I've never
23 seen it before.

24 MR. LOOTS: Okay. Let me ask you
25 this. It says here, reading the narrative, it's

1 almost here. Come by District Soul Food on
2 Saturday, June 29 from 11 a.m. to 5 p.m. for the
3 official grand opening of the Incognito Cigar
4 Lounge. And it says new outdoor smoking patio.
5 Do you see where it says that? Does in fact
6 District Soul Food Restaurant & Lounge have a new
7 outdoor smoking patio?

8 MR. ROUNTREE: No.

9 MR. LOOTS: Okay. Did you at some
10 point open an outdoor smoking patio adjacent to
11 the establishment?

12 MR. ROUNTREE: No. I mean we put down
13 concrete, but no, we haven't opened anything.
14 And I've never even seen this. I don't even know
15 what Incognito is.

16 MR. LOOTS: Okay. It appears in your
17 company's Facebook page. You don't know what
18 that is?

19 MR. ROUNTREE: No. I've never seen
20 it. Have you ever seen it?

21 MR. LOOTS: It says come by District
22 Soul Food on Saturday for the official grand
23 opening of Incognito Cigar Lounge. You're saying
24 you've never heard of Incognito?

25 MR. ROUNTREE: I've never heard of

1 Incognito, ever.

2 MR. LOOTS: Okay. So is this Facebook
3 posting saying come by to District Soul Food's
4 new Incognito --

5 MR. ROUNTREE: Maybe it was someone
6 wanting to have an event there and it never
7 happened. But I don't even know who Incognito
8 is.

9 MR. LOOTS: Well, it says here it's
10 District Soul Food's new outdoor cigar bar.

11 CHAIRMAN ANDERSON: What exhibit is
12 that?

13 MR. LOOTS: This is exhibit 9.

14 CHAIRMAN ANDERSON: What's exhibit 9?

15 MR. ROUNTREE: I don't know what
16 Incognito is. We don't have any --

17 MR. LOOTS: Okay. So you have no
18 knowledge.

19 MR. ROUNTREE: I have no knowledge of
20 that.

21 MR. LOOTS: Was in fact District Soul
22 Food cited as an ABRA violation for operating its
23 sidewalk café without proper endorsement?

24 MR. ROUNTREE: Yes, but we have the
25 endorsement.

1 MR. LOOTS: I'm sorry?

2 MR. ROUNTREE: We have the
3 endorsement.

4 MR. LOOTS: You have the endorsement
5 for both sides of the building?

6 MR. ROUNTREE: No, one side. We only
7 use one side.

8 MR. LOOTS: Okay. But you did not in
9 fact pave and furnish and open a business on the
10 E Street side of the building?

11 MR. ROUNTREE: We were quickly
12 corrected on what it is that we could not do and
13 we are in compliance.

14 MR. LOOTS: Well, I know you're in
15 compliance today, but I'm wondering if it took an
16 ABRA citation to bring you into compliance.

17 MR. ROUNTREE: If you don't know
18 something and you're being directed by one
19 department, and you don't know how all -- this is
20 our first restaurant in DC. So some of the
21 things that we did we hired people to do and they
22 didn't do their job. And so it came back to us
23 and we ended up having to do their job.

24 You asked me a direct question. I
25 have no idea who Incognito is. I have no idea.

1 I've never seen this advertisement before.

2 MR. LOOTS: Okay. Did you in fact
3 prior to you say being corrected and remedying
4 it, did you obtain or attempt to obtain a public
5 space permit for the area that was to be used as
6 an outdoor cigar smoking area?

7 MR. ROUNTREE: I don't understand.

8 MR. LOOTS: On the E Street side.

9 MR. ROUNTREE: On the E Street side?

10 MR. LOOTS: Right.

11 MR. ROUNTREE: Yes, we applied. We
12 applied. But we did not understand that -- when
13 we applied for it we did not understand that the
14 only area that we could use, it was limited
15 space. We thought that we could use the whole
16 space.

17 And so like I said when you asked me
18 before we quickly corrected the issue and we are
19 in compliance.

20 MR. LOOTS: Did you -- well, you say
21 you're in compliance. You're in compliance by
22 having closed that side, the E Street side of the
23 outdoor patio, correct?

24 MR. ROUNTREE: I'm trying to figure
25 out the line of questioning and what it is that

1 he's actually trying to get at.

2 MR. LOOTS: I'll be happy to rephrase
3 the question if it's in any way confusing. I
4 think it's pretty straightforward.

5 The E Street side --

6 (Simultaneous speaking)

7 MR. ROUNTREE: -- about that we are in
8 compliance with. I've answered your question
9 three times. You asked me three different ways.
10 I've answered it each way.

11 I have no idea what Incognito was. I
12 have no idea what that is. You asked me about
13 that side. We don't use that side. They quickly
14 put us in -- we got in compliance with DCRA. So
15 that's where it is. What else are you asking me?

16 MR. LOOTS: My question is prior to
17 opening your business on that side did you get a
18 public space permit for the E Street side of your
19 building? Yes or no is fine.

20 MR. ROUNTREE: No.

21 MR. LOOTS: Prior to opening the
22 sidewalk café on the E Street side of the
23 building did you get a certificate of use from?

24 MR. ROUNTREE: We had a certificate.
25 I explained this. We hired a third party to

1 advocate on our behalf. The third party gave us,
2 but they did not -- what is it, the people that
3 we had applied with? That dude that handles the
4 sidewalk?

5 MR. REYNOLDS: Public space.

6 MR. ROUNTREE: Yes, public space. We
7 got everything else. We didn't have the public
8 space permit. We did not know that. The third
9 party that was working on our behalf we have
10 since fired and we've handled everything
11 ourselves.

12 Again, going back to once we found out
13 where we were out of compliance we quickly got
14 into compliance. And we don't use that sidewalk.

15 MR. LOOTS: Yes, I know you don't now.
16 My question was historically. Okay.

17 Can you turn your attention please to
18 this. It's been marked as exhibit 10. It
19 appears to be a poster for a New Year's Eve
20 party. Do you recognize that document?

21 (Whereupon, the above-referred to
22 document was marked as Protestant Exhibit No. 10
23 for identification.)

24 MR. ROUNTREE: Yes.

25 MR. LOOTS: Okay. Now, the hours

1 advertised are 8 p.m. till. And my first
2 question for you is how is "till" part of your
3 hours of operation.

4 MR. ROUNTREE: It's not. I mean
5 "till" is not.

6 MR. LOOTS: So the event on New Year's
7 Eve which I believe was a Tuesday evening. Or
8 was it Monday. Oh no, Tuesday.

9 Anyway, it was a weekday evening. How
10 late did you stay open that night?

11 MR. ROUNTREE: Until 1 o'clock.

12 MR. LOOTS: And were you permitted to
13 stay open till 1 o'clock that day?

14 MR. ROUNTREE: No. You want to know
15 why I know this? Because I talked to the
16 investigator that came by. She explained to us
17 exactly what it was that we were -- how and what
18 we were in violation of. Gave us a detailed
19 breakdown on what it is that we're supposed to
20 do. And if we want extended hours what we're
21 supposed to do and how we're supposed to do it.

22 MR. LOOTS: And did you do that for
23 New Year's Eve?

24 MR. ROUNTREE: No, I did not. We were
25 out of compliance on New Year's Eve.

1 MR. LOOTS: It also indicates the
2 tickets are \$25 more at the door, but doesn't say
3 how much the tickets were.

4 MR. ROUNTREE: You're going to ask me
5 the same question over and over.

6 CHAIRMAN ANDERSON: Sir, sir. Your
7 chance -- if he asks you a question you answer
8 the question if you can answer the question. You
9 don't ask him over and over. If I believe he's
10 asking over and over then I'll tell him move on.

11 MR. ROUNTREE: Okay.

12 CHAIRMAN ANDERSON: If you can't
13 answer the question tell him you can't answer.
14 You don't have an answer. It's not your position
15 to tell him he's asking a question over and over.

16 So he's asking a question. If you
17 have an answer you answer it. If you can't
18 answer it you tell him you can't answer that
19 question, sir. Okay?

20 MR. ROUNTREE: Yes, sir.

21 MR. LOOTS: My question actually is
22 different. It says tickets are \$25 more at the
23 door, but it doesn't say how much they are if you
24 buy them in advance. My question is what was the
25 advance ticket price.

1 MR. ROUNTREE: I'm not real sure. I'm
2 not real sure what the advance ticket price was.
3 My managers put this on. It was for a brunch.
4 We had a brunch. We had a champagne toast. It
5 was several different things that were going on
6 that night.

7 MR. LOOTS: Well, it starts at 8 p.m.
8 Did you mean to say brunch meaning a midday meal?

9 MR. ROUNTREE: No, it's a brunch. It
10 was a buffet. Buffet, it was a buffet brunch
11 style, meaning that we had breakfast, we had some
12 of the same things that we serve on our brunch.
13 So that's why I said that.

14 MR. LOOTS: Okay. And it says there
15 are food and drink specials. Is one required --
16 oh it said actually complimentary drinks and
17 drink specials. Did that mean you were giving
18 free drinks to people who were admitted?

19 MR. ROUNTREE: We gave a champagne
20 toast. And maybe some of the wording is
21 misleading, but we gave a champagne toast. I
22 think the champagne was free.

23 And that came with the purchase of the
24 buffet.

25 MR. LOOTS: I see. And then again it

1 says tables are available, \$160 for six tickets.

2 Where were those tables located?

3 MR. ROUNTREE: They were all over the
4 restaurant.

5 MR. LOOTS: Both upstairs and
6 downstairs?

7 MR. ROUNTREE: Upstairs and
8 downstairs, yes.

9 MR. LOOTS: One final question on this
10 one. It says at the top Brothers of the Square
11 Entertainment Group presents. Who is Brothers of
12 the Square Entertainment Group?

13 MR. ROUNTREE: That is a fraternity.
14 So they were just helping us promote the event
15 and invited. They had like a private party with
16 inside of what we were doing to advertise.

17 MR. LOOTS: Did they receive any
18 compensation for their presentation of the New
19 Year's Eve party?

20 MR. ROUNTREE: No, they didn't receive
21 any -- no. They just were able to do the event
22 there so there was no compensation.

23 MR. LOOTS: When you say do the event
24 there what do you mean by that?

25 MR. ROUNTREE: Help us with, you know,

1 with the New Year's event. The buffet and all
2 that stuff.

3 MR. LOOTS: In what way did they help
4 you?

5 MR. ROUNTREE: Inviting people to come
6 out and celebrate with us.

7 MR. LOOTS: Promotion basically.

8 MR. ROUNTREE: Promotion and
9 marketing.

10 MR. LOOTS: Okay. Mr. Chair, I would
11 move admission of exhibit number 10.

12 CHAIRMAN ANDERSON: Do you have any
13 objection?

14 MR. ROUNTREE: No, sir.

15 CHAIRMAN ANDERSON: So moved.

16 (Whereupon, the above-referred to
17 document was received into evidence as Protestant
18 Exhibit No. 10.)

19 MR. LOOTS: Mr. Rountree and the
20 board, I appreciate your patience here. I
21 believe I'm almost done with this witness.

22 Have you done any measurements of
23 sound since the installation of the plexiglass?

24 MR. ROUNTREE: No, sir.

25 MR. LOOTS: Did you do any measurement

1 of the sound that is audible outside the windows
2 before installation of the plexiglass?

3 MR. ROUNTREE: Yes, sir. We've had
4 several sound specialists come out and give us
5 what they thought that we needed as far as the
6 measurement, the thickness of the glass. We did
7 that prior to opening and we've done that during
8 I guess some of the complaints.

9 MR. LOOTS: Okay. And again, did that
10 include measurement of the level of sound outside
11 the premises?

12 MR. ROUNTREE: I'm not real sure. You
13 mean by measurement you mean in decibels?

14 MR. LOOTS: Yes.

15 MR. ROUNTREE: Yes, but I don't have
16 that paperwork with me. They have done the
17 decibels.

18 MR. LOOTS: Okay. Would you concede
19 then that when you've got live entertainment or
20 for that matter amplified music inside that it is
21 audible beyond the building in which your
22 establishment is located?

23 MR. ROUNTREE: You mean has it been?
24 Or has it ever been?

25 MR. LOOTS: Well, yes. Since you say

1 the plexiglass went in last week sometime.

2 MR. ROUNTREE: The plexiglass went in
3 on Sunday.

4 MR. LOOTS: Sunday this week.

5 MR. ROUNTREE: Yes, sir.

6 MR. LOOTS: Okay. So, at a time prior
7 to Sunday of this week would you concede that
8 amplified music was audible outside of your
9 premises?

10 MR. ROUNTREE: We've only had one
11 band. That was on Friday. That was on Friday.
12 And I'm not real sure if the -- I wasn't there.
13 Was I there? I wasn't there on Friday. I wasn't
14 there on Friday.

15 MR. LOOTS: Okay. But you've been
16 open for almost a year, is that correct?

17 MR. ROUNTREE: Yes, sir.

18 MR. LOOTS: Okay. And during that
19 year was there any noise mitigation in place to
20 keep the amplified music from being audible
21 outside your building?

22 MR. ROUNTREE: Yes. We tried to
23 mitigate. We have sound curtains that we
24 installed. We tried our best to pin the windows
25 and silicone the windows. We've done everything

1 to try and do it without harming or hurting the
2 windows and trying to preserve that. But yes, we
3 have done sound.

4 And like I told you before we had a
5 full-time sound guy to mitigate sound. And he
6 showed us where to place the speakers at to
7 bounce the sound off to also mitigate it from
8 going outside.

9 You can't do anything when a window
10 was just open.

11 MR. LOOTS: When you say open, you
12 don't mean physically open. You mean --

13 MR. ROUNTREE: No, I mean physically
14 open. The windows are broken. And you can't do
15 anything, you can't do anything, you can't touch
16 them without taking them to a specialist.

17 MR. LOOTS: Now your testimony is the
18 windows are actually broken?

19 MR. ROUNTREE: I said that the first
20 time.

21 MR. LOOTS: Okay. You're talking in
22 terms of the pane, the window -- the glass in the
23 window is broken?

24 MR. ROUNTREE: Not the glass. The --
25 like it has hinges on it, right. So you may have

1 one, it doesn't go all the way to the top. Or
2 the wood is warped to the point to where you can
3 see the outside.

4 MR. LOOTS: Okay. And what is the
5 reason you have not repaired that?

6 MR. ROUNTREE: It was a \$35,000 fix
7 and it's just that we didn't have that to fix it.

8 MR. LOOTS: I have no further
9 questions of this witness.

10 CHAIRMAN ANDERSON: Any questions by
11 any board members? Yes, Mr. Short.

12 MR. SHORT: Good afternoon, Mr.
13 Rountree.

14 MR. ROUNTREE: Good afternoon.

15 MR. SHORT: Can you explain to this
16 board how much business experience, business
17 period, any kind of business before you bought
18 this establishment?

19 MR. ROUNTREE: Twenty-five years of
20 experience.

21 MR. SHORT: Give us the pedigree, all
22 25 years. Where did you start and how did you
23 get where you are right now?

24 MR. ROUNTREE: Okay. So I'm an Army
25 vet. Well, Army veteran. I played basketball

1 overseas as well.

2 MR. SHORT: We're talking about
3 business now.

4 MR. ROUNTREE: Oh, business.

5 MR. SHORT: Business, yes.

6 MR. ROUNTREE: Real estate.

7 Everything real estate related. Building.

8 MR. SHORT: District of Columbia,
9 Maryland, Virginia?

10 MR. ROUNTREE: DMV, yes, sir.

11 MR. SHORT: Were you a licensed
12 realtor?

13 MR. ROUNTREE: Yes, sir.

14 MR. SHORT: You had your own license
15 or you worked for someone else?

16 MR. ROUNTREE: No, I had my own
17 license. I had my own company.

18 MR. SHORT: How many years?

19 MR. ROUNTREE: Well, 25 years in real
20 estate. My own business, my own company, about
21 13-14 years.

22 MR. SHORT: Okay. So you know the
23 rules back and forth, didn't you?

24 MR. ROUNTREE: I know some of the
25 rules. Not everybody as far as like --

1 MR. SHORT: So you sell real estate
2 and you don't know the rules.

3 MR. ROUNTREE: You mean real estate?
4 Yes, sir, I know the rules.

5 MR. SHORT: Let's get past that.
6 Let's get past that.

7 How many years or how long have you
8 been in this establishment, 500?

9 MR. ROUNTREE: One. Or coming up on
10 one.

11 MR. SHORT: Had you ever been in the
12 restaurant or nightclub business before?

13 MR. ROUNTREE: I had one in Virginia,
14 yes, sir.

15 MR. SHORT: Did you go by all the
16 rules and regulations when you were in Virginia?

17 MR. ROUNTREE: Yes, sir, absolutely.

18 MR. SHORT: All the rules and
19 regulations.

20 MR. ROUNTREE: All the rules and
21 regulations.

22 MR. SHORT: Have you gone by all the
23 rules and regulations here in the District of
24 Columbia?

25 MR. ROUNTREE: Yes, sir, to the best

1 of my ability.

2 MR. SHORT: How familiar are you with
3 the ABRA rules, the regulations?

4 MR. ROUNTREE: I'm not extremely
5 familiar. I'm more familiar now because they've
6 been visiting the establishment and explaining
7 them to me, exactly what it is that we can and
8 can't do.

9 MR. SHORT: Okay. Did you have a
10 business plan before you purchased this business?

11 MR. ROUNTREE: Yes, sir.

12 MR. SHORT: Did you have inspection of
13 the building before you bought it, or before you
14 started using it?

15 MR. ROUNTREE: Yes, sir. Yes, sir.

16 MR. SHORT: You saw the windows.

17 MR. ROUNTREE: Yes, sir.

18 MR. SHORT: You knew it was going to
19 be \$35,000.

20 MR. ROUNTREE: No, sir, we didn't.
21 Can I elaborate on that?

22 MR. SHORT: Please do.

23 MR. ROUNTREE: Okay. So when we
24 bought the building, there's an upstairs and
25 downstairs.

1 The downstairs windows were replaced.
2 Banana Café which was the old establishment had
3 an improved plan on file. So we thought that we
4 could use the same plan to replace the windows,
5 that you didn't have to put in historic windows.

6 When we went down there to file. And
7 like I said, we've had a third party that was
8 handling this for us.

9 MR. SHORT: Okay, I don't want to talk
10 about third parties because the total
11 responsibility is yours.

12 MR. ROUNTREE: Yes, sir.

13 MR. SHORT: You can't -- please don't
14 tell me anymore about -- at least while I'm
15 asking you questions about what somebody else
16 did.

17 You're sitting here before us. You're
18 asking us to give you your license, renew it,
19 correct?

20 MR. ROUNTREE: Yes, sir.

21 MR. SHORT: So please answer why we
22 should give it to you if you have so many third
23 party people doing business for you in your
24 business's name.

25 MR. ROUNTREE: Well, they're no longer

1 doing that for us. We handle all of our own
2 stuff now. That's how we were able to get back
3 into compliance.

4 Other than the noise issue which we
5 feel like that we've remitted we haven't had any
6 issues as far as being in front of you.

7 MR. SHORT: You still have a broken
8 window that you can't close.

9 MR. ROUNTREE: We've put it up all the
10 way, but we've also set the half inch plexiglass
11 inside of it. So you can't hear anything.

12 MR. SHORT: Okay. Did you get a
13 certified sound engineer to do the test? Who did
14 you get to do the test?

15 MR. ROUNTREE: We had a certified
16 person. Because we were going in front of the
17 ANC and we wanted everything to be correct we
18 hired two certified people to come out and do the
19 inspection.

20 MR. SHORT: You want to give us the
21 names for this hearing?

22 MR. ROUNTREE: I can email it to you.
23 I can email you all the documentation that we
24 have.

25 MR. SHORT: When can you get that to

1 the board?

2 MR. ROUNTREE: Today. Once I leave I
3 can email it tonight.

4 MR. SHORT: Let's say this. Why don't
5 you just say by Monday. Today is Wednesday.

6 MR. ROUNTREE: Yes, sir.

7 MR. SHORT: By next Monday. Don't
8 rush, but you're going to email it to -- see our
9 lawyer before you leave, our legal staff. And
10 she'll give you all the emails that you can send
11 that information to us.

12 So you're going to send us now sound
13 engineer information, certified sound engineers.

14 MR. ROUNTREE: Yes, sir.

15 MR. SHORT: And have they certified
16 anything since you had put the plexiglass up?

17 MR. ROUNTREE: No, sir, they have not.
18 It was to find out what we needed to be rated,
19 where we needed plexiglass for the thickness of
20 the glass, where it needed to be.

21 MR. SHORT: So, sound engineer that
22 you paid told you just do this and you'll be
23 straight. I don't have to come back out and test
24 or anything.

25 MR. ROUNTREE: Yes, sir. He said we

1 found out what plexiglass -- we didn't know the
2 thickness of it. So he told us what thickness
3 would emit --

4 MR. SHORT: You mentioned the DC Fire
5 Department Fire Marshal's Office.

6 MR. ROUNTREE: Yes, sir.

7 MR. SHORT: So they told you
8 plexiglass would work? Or who told you
9 plexiglass would work?

10 MR. ROUNTREE: The Preservation. They
11 explained to us that plexiglass would be a better
12 solution than going -- because it was still going
13 to be a single pane window.

14 MR. SHORT: Did they give you anything
15 in writing?

16 MR. ROUNTREE: No, sir. They just
17 told us that when we went down there.

18 MR. SHORT: Nothing in writing. Just
19 any old plexiglass.

20 MR. ROUNTREE: Yes, sir. As you said
21 plexiglass. They didn't give me a number to go
22 to.

23 MR. SHORT: It could be this thick, or
24 could it be placed into the window. They didn't
25 give you any instructions.

1 MR. ROUNTREE: No, sir. They didn't
2 tell me about the sound. That's why we ended up
3 hiring a sound guy to find out how thick the
4 plexiglass should be.

5 MR. SHORT: So what did the sound guy
6 tell you about the plexiglass?

7 MR. ROUNTREE: He told us anywhere
8 from 3/16 to a half an inch would work. If we
9 wanted to go more that's just over --

10 MR. SHORT: Would that be in writing
11 when you send that information back to us?

12 MR. ROUNTREE: The thickness, I don't
13 know. I think it's a half inch on there. I'm
14 not sure.

15 MR. SHORT: It should be in the
16 paperwork that you paid him for, correct?

17 MR. ROUNTREE: Yes, sir.

18 MR. SHORT: You have a contract with
19 him?

20 MR. ROUNTREE: We just paid him. We
21 just paid him to come out. He did a little
22 report as far as the sound, why and how the sound
23 was escaping. That was it.

24 MR. SHORT: So did you get any permit
25 from DCRA to do any work on your building? You

1 know you're required when you have a business,
2 especially if you're going to do modifications on
3 windows and doors, exits and egress. That's why
4 the fire department was telling you what you
5 could and could not do.

6 So did you go to DCRA to get any
7 permits to put the plexiglass up?

8 MR. ROUNTREE: They said we don't have
9 to have any. We didn't have to have any because
10 it wasn't a change. That's the reason why they
11 referred --

12 MR. SHORT: Did you get that in
13 writing?

14 MR. ROUNTREE: No, they said there
15 wasn't anything they could give me in writing.
16 They just said that -- because when we went down
17 there we originally went down there to apply to
18 do that, to put the windows and stuff on.

19 They told us that we didn't need a
20 permit to put storm windows on or plexiglass
21 because we weren't doing any damage to -- or like
22 changing out the window sills.

23 MR. SHORT: Okay. I've been sitting
24 here and just absorbing all the information. And
25 you -- so on your license now do you have

1 permission to have the cover charges?

2 MR. ROUNTREE: Yes, sir.

3 MR. SHORT: You do?

4 MR. ROUNTREE: No, I was asking the
5 question.

6 MR. SHORT: Please don't ask the
7 questions. Let me ask the questions and you
8 please give me some answers, Mr. Rountree.

9 MR. ROUNTREE: No, I thought you were
10 asking me the question.

11 MR. SHORT: I asked you a question.
12 On your business license that you have from ABRA
13 right now, your ABC license, does it permit you
14 to charge people to come in your?

15 MR. ROUNTREE: Oh, I'm not sure. I'm
16 not sure whether it allows me to -- that was the
17 question. I was explaining that was the question
18 that I was asking.

19 MR. SHORT: Okay. Well, I'll simply
20 say this to you. Would you stop getting cover
21 charges or whatever you want to call it, taking
22 money until you get permission from the ABC
23 board?

24 MR. ROUNTREE: Yes, sir.

25 MR. SHORT: So you won't do any more

1 cover charges.

2 MR. ROUNTREE: Absolutely not.

3 MR. SHORT: Okay. Now we talked about
4 hours and entertainment. What's on your license?
5 What hours can you have entertainment?

6 MR. ROUNTREE: I believe it's 4 to 11
7 p.m.

8 MR. SHORT: Every day that you're
9 open?

10 MR. ROUNTREE: Sunday through
11 Wednesday it's 4 to 11, and Thursday through
12 Saturday is 4 till 1.

13 MR. SHORT: Have you had any
14 operations before 4 o'clock on any of those days
15 when you -- I think you've already testified that
16 you have.

17 MR. ROUNTREE: Yes. I've had it one
18 day, yes, sir.

19 MR. SHORT: Why did you do that?

20 MR. ROUNTREE: I didn't realize that
21 it started as late. I thought that, or I
22 believed that when I did it it was all day on
23 Saturday. Saturday would have been the day.

24 MR. SHORT: Will you stop doing that
25 until you get permission to change?

1 MR. ROUNTREE: Absolutely.

2 MR. SHORT: All you have to do is come
3 down here and ask for permission and the board
4 will go over. If we found your business was
5 allowed to do that then the board probably
6 wouldn't have a problem.

7 But you can't keep violating ABRA
8 code, sitting here testifying that you have been
9 breaking the law and expect us to just say well,
10 he didn't know.

11 Have you ever seen any of the ABRA
12 regulations in writing?

13 MR. ROUNTREE: Yes.

14 MR. SHORT: Code book.

15 MR. ROUNTREE: The code book, no, sir.
16 I have not seen the code book.

17 MR. SHORT: I think you can stop at
18 the counter before you leave and ask. They might
19 provide you one or tell you how you can get one.
20 Or you can online. Do you use a computer?

21 MR. ROUNTREE: Yes, sir.

22 MR. SHORT: You can go online and get
23 the information. To be in business on Capitol
24 Hill you're in a prime business spot. You agree
25 with that?

1 MR. ROUNTREE: Yes, sir.

2 MR. SHORT: And the citizens here,
3 because I'm not against business. I'm for
4 business. That's why I'm on this board.

5 MR. ROUNTREE: Yes, sir.

6 MR. SHORT: But the bottom line is for
7 a decent business to get along with the community
8 it's a two-way street.

9 You need something from the community
10 and the community needs something from you.
11 Correct?

12 MR. ROUNTREE: Yes.

13 MR. SHORT: So I hope I never see you
14 again when you sit here and say I came before you
15 before and I told you I wasn't going to do it,
16 but I did it one more time. I just forgot.

17 MR. ROUNTREE: I ain't going to do it.

18 MR. SHORT: Okay. All right. Thank
19 you. That's all I have, Mr. Chair. Thank you,
20 Mr. Rountree.

21 CHAIRMAN ANDERSON: Any other
22 questions by any of the board members? Anything
23 else you need to say, sir?

24 MR. ROUNTREE: No.

25 CHAIRMAN ANDERSON: Do you rest?

1 That's the extent of the presentation of your
2 case?

3 MR. ROUNTREE: Yes, sir.

4 CHAIRMAN ANDERSON: All right. The
5 protestant. Do you have a first witness?

6 MR. LOOTS: Yes, I do.

7 CHAIRMAN ANDERSON: How many witnesses
8 do you have?

9 MR. LOOTS: I'm expecting one of my
10 witnesses.

11 CHAIRMAN ANDERSON: I see 16.

12 MR. LOOTS: Yes. We will not be
13 calling 16 witnesses.

14 CHAIRMAN ANDERSON: How many do you
15 believe you will be?

16 MR. LOOTS: We will actually be
17 calling six witnesses.

18 CHAIRMAN ANDERSON: Who's your first
19 witness?

20 MR. LOOTS: Chander Jayaraman.

21 WHEREUPON,

22 CHANDER JAYARAMAN

23 was called as a witness by Counsel for the
24 Protestant and, having been first duly sworn,
25 assumed the witness stand, was examined and

1 testified as follows:

2 PROTESTANT EXAMINATION

3 MR. LOOTS: Mr. Jayaraman, can you
4 state your full name for the record?

5 MR. JAYARAMAN: Yes. Full name is
6 Chander Jayaraman.

7 MR. LOOTS: And do you have any role
8 with the ANC protestant 6B?

9 MR. JAYARAMAN: Yes. I serve as the
10 chair of all of 6B, but also I've served as chair
11 of the ABRA committee for the ANC 6B for the past
12 five years.

13 MR. LOOTS: Okay. In that capacity
14 have you been dealing with this particular
15 establishment over the past year before they
16 opened?

17 MR. JAYARAMAN: Yes. It's been more
18 than a year.

19 MR. LOOTS: Okay. Can you tell the
20 board please when you first met with the owners
21 of this establishment what they proposed as a
22 license category?

23 MR. JAYARAMAN: They had indicated
24 that they were going to be a restaurant.

25 MR. LOOTS: Okay. And what type of

1 food were they proposing to serve?

2 MR. JAYARAMAN: They were proposing to
3 serve soul food, seafood, which I thought was
4 really needed on the block because we had lost
5 some.

6 MR. LOOTS: Okay. Did you have any
7 discussions at the time prior to entering into
8 the settlement agreement, did you have any
9 discussions with the then applicant as to use of
10 an entertainment endorsement?

11 MR. JAYARAMAN: Yes. Because the
12 previous establishment had a piano bar upstairs
13 with only the piano they indicated that they were
14 intending to have light jazz music and that's
15 what they told me.

16 MR. LOOTS: Okay. And did you as the
17 chair of the ANC and the chair of the ABRA
18 committee, did you have any objections or
19 concerns about light jazz music?

20 MR. JAYARAMAN: I didn't at that
21 moment because I was under the impression it
22 would be very similar to the previous
23 establishment which had not received any
24 complaints from the neighborhood. So I didn't
25 have any reason to believe that this would be any

1 different.

2 MR. LOOTS: Okay. I'm going to direct
3 your attention to what is in this exhibit book as
4 -- it's marked here as exhibit 11. It is not
5 part of the exhibits because what it is is the
6 ANC settlement agreement which was previously put
7 into evidence through the investigator.

8 But if the board wishes to follow
9 along it's in the investigator's report. I can
10 find which exhibit it is.

11 But Mr. Jayaraman, I'm going to ask
12 you to look at that document. Tell me if you
13 recognize what it is.

14 MR. JAYARAMAN: I do.

15 MR. LOOTS: What is it?

16 MR. JAYARAMAN: It is the settlement
17 agreement that ANC 6B entered into with District
18 Soul Food & Lounge.

19 MR. LOOTS: Okay. And when was that
20 settlement agreement signed?

21 MR. JAYARAMAN: It was signed on
22 December 11, 2018.

23 MR. LOOTS: And are you aware
24 approximately when the establishment opened?

25 MR. JAYARAMAN: They did not actually

1 open until about mid-January of 2019.

2 MR. LOOTS: Okay. Looking at page 1
3 of 5 in paragraph 2 it says nature of the
4 business. You see that there?

5 MR. JAYARAMAN: Yes, sir.

6 MR. LOOTS: And it describes a full
7 service seated restaurant at the premises period.
8 Was it your understanding that that was the
9 primary nature of the business?

10 MR. JAYARAMAN: Yes.

11 MR. LOOTS: Underneath that it says
12 this license includes an entertainment
13 endorsement with the following conditions.

14 First of all, it says live
15 entertainment shall be restricted to the inside
16 the second floor of the premises. Was that
17 important to the ANC as a condition?

18 MR. JAYARAMAN: It was because we
19 wanted to maintain what had been there previously
20 and there were some concerns from residences that
21 there was, about potentially becoming a
22 nightclub. And in order to facilitate and
23 assuage residents that it would remain on the
24 second floor we put specific language to that
25 extent.

1 MR. LOOTS: Okay. In the second one,
2 subsection (b) of paragraph 2 it says applicants
3 shall sound proof the windows on the E Street
4 side of the premises by hanging two panels of
5 sound deadening drapes per window, installing
6 high back booths covering the lower portion of
7 each window so that the music and patrons' voices
8 heard outside the premises will strictly comply
9 with DC Official Code Section 25-725.

10 First of all, let me ask you why was
11 there a particular concern and entire paragraph
12 devoted to treatment of the windows on the E
13 Street side?

14 MR. JAYARAMAN: We felt that that was
15 the side that would be closest to residential
16 neighborhoods on that block.

17 And in order to -- and because where
18 they were going to set up the entertainers, and
19 the direction in which the speakers would be
20 pointed we needed to make sure that the sound
21 that was traveling in that direction would have
22 something to dampen the noise from exiting the
23 building.

24 MR. LOOTS: Okay. You make reference
25 here to DC Code Section 25-725. Are you familiar

1 with what that portion of the code actually
2 provides?

3 MR. JAYARAMAN: Yes, sir.

4 MR. LOOTS: What does that reference?

5 MR. JAYARAMAN: It references the
6 noise ordinance applicable to a variety of areas
7 of the city including residential and commercial
8 areas.

9 MR. LOOTS: Okay. Obviously it's
10 public record what the DC Code actually says.

11 What is your understanding as applied
12 to this particular licensee as to what that
13 section of the DC Code requires?

14 MR. JAYARAMAN: The aim of including
15 that is -- can be found actually later. But it
16 is to ensure that establishments that have
17 entertainment are -- establishes a range within
18 which the establishments can operate legally.
19 And under the noise ordinance of the District.

20 MR. LOOTS: Okay. Turning now to page
21 3 of 5 of the settlement agreement at paragraph 6
22 it says noise mitigation. I won't read the whole
23 thing again. It's been read into the record a
24 couple of times already.

25 But let me ask you to review that

1 briefly and tell me what your understanding as to
2 what the requirements of that paragraph 6 are.

3 MR. JAYARAMAN: The requirements of
4 that paragraph are to ensure that even if certain
5 noise ordinances do not apply in the commercial
6 corridors the applicant voluntarily agrees to
7 ensure that noise will be limited even from their
8 building to one that is only permitted within a
9 residential area which generally has to be lower
10 than the commercial areas.

11 But because of how the close proximity
12 to residential neighbors we felt it important
13 that the noise regulations applied to residential
14 areas also applied specifically to this
15 establishment.

16 MR. LOOTS: And they agreed to that.

17 MR. JAYARAMAN: Yes, sir.

18 MR. LOOTS: Okay. Now, it also says
19 here that the applicant needs to make
20 architectural improvements to the property and
21 take all necessary actions to ensure music, noise
22 and vibration from the establishment are not
23 audible outside the establishment. See that
24 there?

25 MR. JAYARAMAN: Yes, sir.

1 MR. LOOTS: Okay. Why was that
2 important to the ANC?

3 MR. JAYARAMAN: Again because of the
4 close proximity to residential neighbors in the
5 area and our past experience with noise and how
6 it adversely impacts the sleeping patterns of
7 residential neighbors we felt that that was --
8 and to be equitable to and consistent with other
9 establishments on the block that that was a
10 standard that we regularly utilize that no noise
11 shall be audible beyond the street curbside.

12 MR. LOOTS: To your knowledge as you
13 sit here today do you believe that the
14 establishment has complied with this paragraph 6?

15 MR. JAYARAMAN: I am not there
16 frequently, but reports are that they are not.

17 MR. LOOTS: Okay. When it says here
18 that architectural improvements were to be made
19 for the property, you heard the testimony of Mr.
20 Rountree that he had met with you personally to
21 discuss what could be done. Did you hear that
22 testimony?

23 MR. JAYARAMAN: Yes, sir.

24 MR. LOOTS: Okay. What is your
25 perspective on what architectural improvements

1 may have been required or were in fact affected?

2 MR. JAYARAMAN: I'm not an architect
3 or expert so I wouldn't have spoken on that. But
4 what I did say was that I emphasized the need to
5 ensure that whatever that treatment is, that it
6 meets this requirement and that it reduces the
7 amount of noise coming out of the building, and
8 that it definitely does not violate noise
9 ordinances which could be heard within the
10 neighboring residential houses.

11 MR. LOOTS: And realizing that the
12 applicant -- or the establishment has testified
13 here that last Sunday they installed some
14 plexiglass on the inside, other than that are you
15 aware of the establishment taking any steps to
16 make architectural changes or otherwise ensure
17 that no noise emanates from the premises?

18 MR. JAYARAMAN: I've not been there
19 recently, but the last time I was there they --
20 and which was well after they had opened and
21 operating I did not see any additional changes to
22 the interior aside from what they all had agreed
23 to initially which was curtains.

24 MR. LOOTS: Okay.

25 MR. SHORT: Can you repeat that,

1 please?

2 MR. JAYARAMAN: Yes. The last time I
3 was there I did not see any changes to the
4 interior of the establishment beyond what they
5 had agreed to which was to place curtains over
6 the windows.

7 MR. LOOTS: I would ask one more
8 question about the settlement agreement, page 4
9 of 5 at paragraph 12 which is called Notice and
10 Opportunity to Cure. Are you familiar with that
11 provision?

12 MR. JAYARAMAN: Yes, sir.

13 MR. LOOTS: Did there come a time that
14 the ANC believed it was necessary to provide
15 notice and opportunity to cure as to violations
16 of the settlement agreement?

17 MR. JAYARAMAN: Yes. Soon after they
18 opened we had received some complaints from
19 residents of noise complaints.

20 And it was my understanding that an
21 ABRA inspector had been called and had gone to
22 the establishment, but then also had spoken with
23 -- I'm not sure exactly who. I can't recall
24 that.

25 But indicated to the complainant that

1 there was nothing that he or she could do because
2 of the notice to cure provision, and that they
3 had to come to the ANC and request the ANC to
4 initiate such actions as specified in the notice
5 to cure provision.

6 MR. LOOTS: I ask you to direct your
7 attention to what's been marked as exhibit 4 in
8 the witness book in front of you.

9 MR. JAYARAMAN: I'm there.

10 MR. LOOTS: Do you recognize that
11 document?

12 MR. JAYARAMAN: Yes.

13 MR. LOOTS: What is that document?

14 MR. JAYARAMAN: It is the notice to
15 cure for District Soul Food Restaurant & Lounge.

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

19 MR. LOOTS: Okay. I see that there's
20 a date on it of 5/13/19. Was that in fact
21 delivered to the establishment on or about that
22 date?

23 MR. JAYARAMAN: This was actually a
24 revised version of the document. You'll notice
25 the curative action, this was actually executed

1 on December 11, 2018. I'm sorry, the settlement
2 agreement was. And that's correct. So May 13
3 was the correct date for when this was provided
4 to the applicant.

5 MR. LOOTS: Okay. Mr. Chair, I'd move
6 the admission of exhibit 4.

7 CHAIRMAN ANDERSON: Do you have any
8 objection, Mr. Rountree?

9 MR. ROUNTREE: No, sir.

10 (Whereupon, the above-referred to
11 document was received into evidence as Protestant
12 Exhibit No. 4.)

13 MR. LOOTS: I'll direct your
14 attention. There are several issues in exhibit
15 4 that you raised.

16 The first one is refuse and storage
17 disposal. It says odor and emission control
18 concerns.

19 But I'd like to focus today on the
20 request that the ANC made in section 6, noise
21 mitigation which is at the bottom of page 1 of
22 the notice to cure. You see that there?

23 MR. JAYARAMAN: Yes, sir.

24 MR. LOOTS: Okay. There's a
25 recitation in here as to steps that were taken

1 prior to May 13 of 2019 to achieve compliance
2 with the settlement agreement.

3 Are those to the best of your
4 knowledge accurate statements?

5 MR. JAYARAMAN: They are.

6 MR. LOOTS: Okay. And then in italics
7 at the end of that section it says curative
8 actions requested. And it referenced that on
9 April 9, 2019 DCSF, that would be District Soul
10 Food, owners reiterated plans to replace all the
11 windows on the second floor of the 500 8th Street
12 building.

13 Did that in fact happen at the ANC 6B
14 monthly meeting to your knowledge?

15 MR. JAYARAMAN: Yes, it did.

16 MR. LOOTS: And to your knowledge did
17 the establishment ever actually replace all the
18 windows on the second floor?

19 MR. JAYARAMAN: No, they did not.

20 MR. LOOTS: In fact, subsequent to
21 this notice to cure and accepting at face value
22 the testimony of the applicant that last Sunday
23 they put in plexiglass, are you aware during
24 their nearly year of operation of any efforts to
25 mitigate the sound through replacement or

1 buffering the windows that actually came to
2 fruition? Not just ideas, but permits, or --

3 MR. JAYARAMAN: No, I don't have any
4 evidence that they had initiated architectural
5 improvements to mitigate the noise.

6 MR. LOOTS: Okay. Very quickly I'm
7 going to ask you to look at exhibit 5 and tell me
8 if you recognize that document.

9 MR. JAYARAMAN: I do.

10 MR. LOOTS: Okay. And it indicates --
11 - the date of this would be December 6, 2018
12 meeting of the ANC 6B. What is this document?

13 MR. JAYARAMAN: It is the committee
14 meeting report. The meeting was on December 6,
15 2018. And this speaks to the discussion within
16 the committee level, and the ultimate
17 recommendation to the full ANC of what we should
18 do with respect to the application for a new
19 class C restaurant license.

20 (Whereupon, the above-referred to
21 document was marked as Protestant Exhibit No. 5
22 for identification.)

23 MR. LOOTS: Okay. And as part of that
24 discussion the document kind of speaks for
25 itself, but was a primary focus of that what

1 steps would be taken for noise mitigation?

2 MR. JAYARAMAN: It was. And adding to
3 that was that we knew that because renewal was
4 coming up in March that we would have another
5 option.

6 And this was really -- the discussion
7 surrounded, revolved around the fact that this
8 could be essentially a trial period to see how
9 well their initial efforts with curtains would
10 work. And if they did not work then we would
11 have the opportunity at the renewal period to re-
12 address those concerns.

13 MR. LOOTS: And in your opinion as we
14 sit here today how did that trial period go?

15 MR. JAYARAMAN: There were a number of
16 concerns raised by residential neighbors during
17 that -- we call it a trial period.

18 MR. LOOTS: Okay. Mr. Chair, I'd move
19 admission of exhibit number 5.

20 CHAIRMAN ANDERSON: Do you have any
21 objection?

22 MR. ROUNTREE: No, sir.

23 CHAIRMAN ANDERSON: So moved.

24 (Whereupon, the above-referred to
25 document was received into evidence as Protestant

1 Exhibit No. 5.)

2 MR. LOOTS: Mr. Jayaraman, if you
3 would turn next quickly to exhibit number 6. And
4 tell me what this document is.

5 MR. JAYARAMAN: We had asked -- we had
6 provided some additional time for District Soul
7 Food to take some mitigating actions that they
8 had voiced at the previous committee meeting. So
9 we wanted to get an update on where they were on
10 the several concerns that were -- specifically in
11 the notice to cure, and what steps they had taken
12 to address those.

13 And so here you see specifically the
14 three major areas, sorry, four major areas which
15 is trash concerns, noise concerns, smoke concerns
16 that -- and they spoke to and this document
17 essentially summarizes the discussions that
18 happened at that meeting and the steps that they
19 had taken on each of those major categories.

20 (Whereupon, the above-referred to
21 document was marked as Protestant Exhibit No. 6
22 for identification.)

23 MR. LOOTS: I'd like to direct your
24 attention in particular to the entry under noise
25 concerns where it says the applicant intends to

1 replace existing windows on the D Street -- and I
2 assume it should be E Street -- and 8th Street
3 sides of the building with double hung storm
4 windows.

5 Was that representation in fact made
6 to the ANC at that meeting?

7 MR. JAYARAMAN: Yes, it was. And you
8 are correct, that is a typographical error and it
9 would have said -- should normally say E Street.

10 MR. LOOTS: Okay. To your knowledge
11 did the applicant ever follow through with
12 replacing double hung windows?

13 MR. JAYARAMAN: They did not.

14 MR. LOOTS: It also says these windows
15 are expected to significantly reduce the decibel
16 level of noise from the live music which can be
17 heard inside neighboring residences.

18 At that meeting was there testimony
19 from residents or others that they could hear
20 noise inside their existing residences?

21 MR. JAYARAMAN: That is correct.

22 MR. LOOTS: Mr. Chair, I'd move
23 admission of exhibit number 6.

24 CHAIRMAN ANDERSON: Any objection?

25 MR. ROUNTREE: No, sir.

1 CHAIRMAN ANDERSON: So moved.

2 (Whereupon, the above-referred to
3 document was received into evidence as Protestant
4 Exhibit No. 6.)

5 MR. LOOTS: And finally, I ask you to
6 direct your attention to exhibit number 7. And
7 tell me what that document represents.

8 MR. JAYARAMAN: In order to find a
9 common path forward we wanted to -- the ANC ended
10 up facilitating a meeting between the community
11 and the applicant for some terse words to try and
12 get to the root of what had been accomplished,
13 what remained to yet be addressed.

14 And this document summarizes that
15 discussion. It's not an official ANC meeting,
16 but it was one that was facilitated and supported
17 by the ANC.

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

21 MR. LOOTS: And to the best of your
22 belief and knowledge does this document
23 accurately summarize what transpired at that
24 community meeting?

25 MR. JAYARAMAN: It does.

1 MR. LOOTS: Mr. Chair, I move the
2 admission of exhibit number 7.

3 CHAIRMAN ANDERSON: Any objection?
4 Mr. Rountree?

5 MR. ROUNTREE: No, sir.

6 CHAIRMAN ANDERSON: So moved.

7 (Whereupon, the above-referred to
8 document was received into evidence as Protestant
9 Exhibit No. 7.)

10 MR. LOOTS: I'd like to briefly
11 explore with you what you mentioned in passing as
12 to how this meeting came about.

13 At that point, we're now on July 22
14 which is far after mid-May when you sent the
15 notice to cure. At that point was the ANC still
16 actively seeking remedial measures to bring the
17 establishment into compliance?

18 MR. JAYARAMAN: Yes.

19 MR. LOOTS: And at that point had the
20 ANC made any decision to formally object to the
21 application?

22 MR. JAYARAMAN: Not at that time. We
23 were wanting to provide and we even offered the
24 applicant any assistance that we could provide
25 with Historic Preservation Office.

1 We realized that it's a historic area
2 and that they would need support from the ANC.
3 And we recognized that and offered them our
4 support and to even go before the Historic
5 Preservation Office.

6 And to do whatever we needed to do as
7 an ANC to be able to support any application they
8 might submit to replace those windows.

9 MR. LOOTS: I have no further
10 questions of this witness.

11 CHAIRMAN ANDERSON: Any questions by
12 the board? Yes, Mr. Short.

13 MR. SHORT: Good afternoon. Mr.
14 Jayaraman.

15 MR. JAYARAMAN: Jayaraman.

16 MR. SHORT: Okay, thank you. There's
17 been some testimony and now exhibits about notice
18 to cure. For the record were they explained to
19 the applicant?

20 MR. JAYARAMAN: Yes, sir.

21 MR. SHORT: What was the business's,
22 establishment's reply?

23 MR. JAYARAMAN: We went through point
24 by point exactly what the issues were. And I did
25 that directly myself as chair of the ABC

1 committee.

2 And what the settlement agreement said
3 in terms of the notice to cure. And in fact we
4 put into this specific thing because we
5 recognized they may not know the specific
6 curative actions that they could take in order to
7 meet the bar and meet the notice to cure
8 provisions.

9 MR. SHORT: So there was no --

10 MR. JAYARAMAN: I don't believe there
11 was any ambiguity.

12 MR. SHORT: Okay. So, he understood.
13 You understood. He agreed.

14 MR. JAYARAMAN: Yes, sir.

15 MR. SHORT: Thank you, Mr. Chair,
16 that's all I have. Thank you.

17 CHAIRMAN ANDERSON: Any other
18 questions by any of the board members? Mr.
19 Rountree, do you have any questions of Mr.
20 Jayaraman based on the questions that were asked
21 by Mr. Short?

22 MR. ROUNTREE: Yes, sir. Mr. Chander,
23 how do you go about -- when somebody has a noise
24 complaint how do you go about, they're saying
25 that they can hear noise in their home. How do

1 you figure out whether you can actually hear the
2 noise or not?

3 MR. JAYARAMAN: The way that's done is
4 they would actually have to get an inspector from
5 the city agency to come inside your house and
6 measure -- actually it's not even necessary to
7 measure.

8 If they can come into a residential
9 house and they can hear the music and they can
10 identify where it's coming from, that's a
11 violation.

12 MR. ROUNTREE: Okay. So my next
13 question to your knowledge has anyone of the
14 witnesses, have they had that done?

15 MR. JAYARAMAN: I have no knowledge of
16 that.

17 MR. ROUNTREE: Okay. So when we're
18 talking about the noise complaint that has been
19 found against us, to your knowledge you're not
20 sure whether that's actually accurate or not,
21 correct?

22 MR. JAYARAMAN: I don't even know
23 whether a noise complaint has been filed. I
24 think there's been calls made to 311. That's
25 what I understand. Again this is all hearsay.

1 I don't have any direct evidence what
2 calls were made and exactly to who. But I do
3 know that that would be the process that would be
4 followed under the regulations.

5 MR. ROUNTREE: Okay. Earlier this
6 summer, July, let's say month of July myself,
7 yourself and the community had a meeting about
8 District Soul Food.

9 And it was basically about race
10 relations, correct?

11 MR. JAYARAMAN: That was one of the
12 things that came up, yes.

13 MR. ROUNTREE: Okay. And about
14 District Soul Food feeling like there was
15 excessive complaining about what was going on,
16 correct?

17 MR. JAYARAMAN: That's correct. That
18 was the impetus for what is now exhibit 7 which
19 is the July 22 meeting.

20 MR. ROUNTREE: Okay. So, some of the
21 people that sit on the board that have complained
22 and have also filed complaints, are they in this
23 room?

24 MR. JAYARAMAN: Sir, I don't know
25 who's filed a complaint because I have no

1 evidence that anybody even has.

2 MR. ROUNTREE: Okay. I'm done.

3 CHAIRMAN ANDERSON: Nothing more. Mr.
4 Jayaraman, there is no question.

5 Do you have any follow-up questions
6 based on the questions that was asked by Mr.
7 Rountree?

8 MR. LOOTS: I actually have one
9 question. The establishment has now twice raised
10 an issue of whether there is a racial bias
11 involved in the ANC's action.

12 CHAIRMAN ANDERSON: I'm trying not to
13 get there.

14 MR. LOOTS: Just because it came -- I
15 want to stay away from that as well. I'll just
16 withdraw the question.

17 CHAIRMAN ANDERSON: I mean, he had
18 asked a general question. I was waiting. We
19 didn't really get into where -- because that's
20 not really something that this board can handle.
21 All right. Thank you very much, Mr. Jayaraman.
22 You can sit down.

23 MR. LOOTS: Our next witness is
24 Katherine Szafran.

25 WHEREUPON,

1 ANNA CATHERINE SZAFRAN
2 was called as a witness by Counsel for the
3 Protestant and, having been first duly sworn,
4 assumed the witness stand, was examined and
5 testified as follows:

6 PROTESTANT EXAMINATION

7 MR. LOOTS: Ms. Szafran --

8 CHAIRMAN ANDERSON: Can you ask her to
9 spell her name for the record?

10 MR. LOOTS: Oh, yes. Will you please
11 spell your name for the record?

12 MS. SZAFRAN: So my full name is Anna
13 Katherine Szafran. A-N-N-A Catherine K-A-T-H-E-
14 R-I-N-E Szafran S-Z-A-F-R-A-N.

15 MR. LOOTS: Ms. Szafran, what is your
16 address?

17 MS. SZAFRAN: 704 E Street SE which is
18 approximately a block away from the
19 establishment.

20 MR. LOOTS: I'm going to ask you and
21 direct your attention to what's been marked for
22 identification exhibit 1 in the book in front of
23 you and ask you if you can describe what that
24 represents.

25 MS. SZAFRAN: Hang on. That is a map

1 of our sort of immediate neighborhood.

2 CHAIRMAN ANDERSON: Speak in the
3 microphone, please.

4 MS. SZAFRAN: Sorry. This is a map of
5 our immediate neighborhood.

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

9 MR. LOOTS: Now, does this map
10 accurately identify where District Soul Food is
11 located in your neighborhood?

12 MS. SZAFRAN: It does.

13 MR. LOOTS: Okay. I'd like to move
14 admission of exhibit number 1.

15 CHAIRMAN ANDERSON: Any objection, Mr.
16 Rountree?

17 MR. ROUNTREE: No, sir.

18 CHAIRMAN ANDERSON: Exhibit 1 so
19 moved.

20 (Whereupon, the above-referred to
21 document was received into evidence as Protestant
22 Exhibit No. 1.)

23 MR. LOOTS: Okay. Next I'm going to
24 ask you to turn to the next page which is the
25 same photograph and I'll represent to you that

1 the highlights have been added.

2 Are you aware of what those highlights
3 on this portion of the map represent?

4 MS. SZAFRAN: It looks like that's all
5 the residential neighbors.

6 MR. LOOTS: Okay. And is your home or
7 at least a portion of your home reflected on that
8 map?

9 MS. SZAFRAN: Looks like it catches
10 the front facade.

11 MR. LOOTS: Okay. So, I have the
12 blown up copy of exhibit number 2 and a tab with
13 your name on it. I'd like you to put this tab
14 where your home is located.

15 (Whereupon, the above-referred to
16 document was marked as Protestant Exhibit No. 2
17 for identification.)

18 MR. LOOTS: You can cover up any part
19 you want.

20 MS. SZAFRAN: I'm going sideways.

21 MR. LOOTS: Okay. Here you go. So
22 this is where her home. Relate how far away your
23 home is away from District Soul Food.

24 MS. SZAFRAN: I live one house in from
25 the intersection of 7th and E Street SE. They're

1 catty-corner from me on the opposite corner of
2 8th and E SE.

3 MR. LOOTS: So basically that's more
4 than a block away, is that correct?

5 MS. SZAFRAN: It's about a block away.

6 MR. LOOTS: Okay.

7 CHAIRMAN ANDERSON: Can I see that map
8 again?

9 MR. LOOTS: Absolutely.

10 CHAIRMAN ANDERSON: Okay. All right.

11 MR. LOOTS: So, do you have any
12 personal knowledge of noise or music, amplified
13 music emanating from District Soul Food?

14 MS. SZAFRAN: I unfortunately do, yes.

15 MR. LOOTS: Before I go on, I don't
16 want to forget. I move the admission of exhibit
17 number 2.

18 CHAIRMAN ANDERSON: Do you have any
19 objection, Mr. Rountree?

20 MR. ROUNTREE: No, sir.

21 CHAIRMAN ANDERSON: So moved.

22 (Whereupon, the above-referred to
23 document was received into evidence as Protestant
24 Exhibit No. 2.)

25 MR. LOOTS: Can you please describe

1 for the board the nature of your knowledge and
2 observations about sound emanating from that
3 establishment?

4 MS. SZAFRAN: So, frequently over the
5 last year starting in February of 2019 I have had
6 heavy bass and sometimes drums inside my house.

7 I haven't been the one that's
8 reporting it to DCRA because I personally really
9 wanted District Soul Food to succeed. So I've
10 tried to work directly with them.

11 I was walking over prior to the July
12 meeting. Subsequent to the July meeting I got
13 their telephone number so I've been texting, or
14 walking over. Sometimes both.

15 MR. LOOTS: And approximately how many
16 times did you make contact with the ownership, or
17 at least send them information about a concern
18 about noise?

19 MS. SZAFRAN: So, I didn't keep
20 records prior to August which is when I got their
21 direct contact information and I could reach out
22 to them that way.

23 But it's approximately 30 times since
24 then, plus a couple with their sound guy.

25 MR. LOOTS: Okay. Now, you mentioned

1 and they mentioned the sound guy. Can you
2 describe for the board the nature of your
3 interaction and conversation with their sound
4 person, and if you know that person's name?

5 MS. SZAFRAN: I do. His first name is
6 Brian. He's actually I think a pretty talented
7 sound guy.

8 I happened to meet him because he was
9 trying to find -- parking is really tight in our
10 neighborhood. And we started talking and he had
11 mentioned that he had had his truck broken into
12 more than once around the District and was having
13 trouble finding parking.

14 So I actually invited him to park in
15 my driveway when he's working on District Soul
16 Food so he can get out of -- if it's open he can
17 get out of the street. It's safer in there and
18 he can do his job because that personally helps
19 me out because he manages to turn the sound down.

20 MR. LOOTS: Okay. And have you
21 discussed substantively with him what is needed
22 or what can be done about the sound?

23 MS. SZAFRAN: I have. I've talked
24 both about the windows issues and what he can do
25 to turn it down.

1 He's talked about it depends on the
2 band and depending on whether or not the sound is
3 bass driven how he can adjust it.

4 It's also kind of helpful for him to
5 be walking out towards my place because he can
6 see that the sound travels all the way down the
7 block and try to adjust it.

8 MR. LOOTS: Very specifically can you
9 describe for the board please, you said you heard
10 bass and drums inside your house.

11 MS. SZAFRAN: And in my back yard.

12 MR. LOOTS: Are you able to otherwise
13 hear music or anything inside or outside of your
14 house?

15 MS. SZAFRAN: Well, so it depends on
16 the band. There are some days that I get the
17 full melody traveling all the way down.

18 Before I report it I really try to
19 walk over to there to make sure that it's coming
20 from them.

21 And then I usually walk in the
22 opposite direction down in the 600 block which is
23 like two blocks away to see how far it's carrying
24 so I can give them an accurate description of
25 what I'm hearing, not just what's in my house so

1 that they have an idea of how they're able to
2 adjust it.

3 Usually inside my house it's the drums
4 and the bass that come through. On occasion it
5 will be a full scope band.

6 MR. LOOTS: Now you mentioned you had
7 walked down the 600 block of E Street to see sort
8 of how far the noise has traveled.

9 Have there been times when you've been
10 able to hear the noise in the 600 block as well?

11 MS. SZAFRAN: I have occasionally
12 heard it in the 500 block in Marion Park,
13 literally across the street.

14 Given that's not the most common
15 thing, but yes, it can travel down that far if
16 they have like a good live band going.

17 MR. LOOTS: Okay. It sounds like you
18 like music, correct?

19 MS. SZAFRAN: I do like the music. I
20 just want to go over there and have a drink and
21 listen to it.

22 Sometimes I turn on my dryer and our
23 TV to try to cover it up if it's getting to be
24 too loud. And I want to be able to choose when I
25 go.

1 MR. LOOTS: Are there any other ways
2 in which -- you mentioned sometimes you have to
3 turn on something to cover up the noise.

4 Are there any other ways that the
5 noise that's emanating from the establishment has
6 affected your life?

7 MS. SZAFRAN: Yes. It keeps me from
8 sleeping. And I'm tired. I've been trying to
9 work with David and the owners since February.
10 That's when I first sent an email there because I
11 really, like I feel like every business should
12 have the chance to succeed.

13 And I'm just frustrated right now
14 because I feel like my requests, like I'm still
15 texting you guys fairly frequently. And I don't
16 know.

17 Obviously it's like this week that
18 you've gotten new windows, but it's been
19 basically a year that I've been in communication
20 with you guys directly. It's a long time to have
21 to get up the next morning and go to work having
22 not been able to fall asleep. Or having to go
23 crawl into the back bedroom.

24 MR. LOOTS: Again, if you could direct
25 your comments to the board, not to the applicant.

1 MS. SZAFRAN: Sorry.

2 MR. LOOTS: No, that's fine. Just
3 very quickly I'm going to ask you to get this
4 into the record. Can you look at exhibit number
5 3? And what is that a depiction of?

6 MS. SZAFRAN: That is the front, the
7 8th Street side of District Soul Food.

8 (Whereupon, the above-referred to
9 document was marked as Protestant Exhibit No. 3
10 for identification.)

11 MR. LOOTS: Okay. Does this fairly
12 and accurately represent the view from across the
13 street?

14 MS. SZAFRAN: Yes. Sure does.

15 MR. LOOTS: I would move admission of
16 exhibit number 3.

17 CHAIRMAN ANDERSON: Do you have any
18 objection? No objection.

19 (Whereupon, the above-referred to
20 document was received into evidence as Protestant
21 Exhibit No. 3.)

22 MR. LOOTS: I'll direct your attention
23 to exhibit 3. There appears to be a couple of
24 stanchions and a velvet rope across the front
25 door. You see that there?

1 MS. SZAFRAN: I do.

2 MR. LOOTS: Have you ever observed
3 that rope being used as a queue or otherwise as a
4 holding area for getting into the establishment?

5 MS. SZAFRAN: They have on occasion
6 had DJs on the first floor it seems, just sort of
7 spinning some tunes. And that's when they tended
8 to have a longer line out front.

9 MR. LOOTS: I have no further
10 questions of this witness.

11 CHAIRMAN ANDERSON: Any questions, Mr.
12 Rountree?

13 MR. ROUNTREE: Yes, sir.

14 CHAIRMAN ANDERSON: Go ahead. Ask
15 her.

16 APPLICANT EXAMINATION

17 MR. ROUNTREE: To your knowledge are
18 there any other restaurants on 8th Street that
19 have a live band?

20 MS. SZAFRAN: I don't -- I'm sure that
21 there are, but there are none near that
22 particular corner.

23 MR. ROUNTREE: Okay. My next question
24 is have you had an inspector come into your home
25 from ABRA?

1 MS. SZAFRAN: No, but I've had your
2 employees walk down to the 600 block and they
3 have acknowledged directly that the music carries
4 all the way down there.

5 And remember, I'm not the one calling
6 DCRA. I'm trying to work with you guys. Craig
7 also walked down with me. That's another one of
8 their owners.

9 MR. ROUNTREE: That's it.

10 BOARD EXAMINATION

11 CHAIRMAN ANDERSON: What time are you
12 hearing all of this noise?

13 MS. SZAFRAN: For me it's in the
14 evenings. Usually I let it go like until 9, 10
15 o'clock because that's a little bit earlier and
16 I'm not getting into bed yet.

17 I mean, I can hear it and I try to
18 block it out. But after about 9:30, 10 I'm
19 frequently contacting them because it's
20 continuing getting loud and I've got an early job
21 that I need to go to.

22 On the weekends sometimes I've been
23 over there not necessarily for live music, but
24 for amplified music through their speakers at
25 like 1 or 2 and their employees have actually

1 walked down with me to my back yard sometimes.

2 CHAIRMAN ANDERSON: One or two?

3 MS. SZAFRAN: One or two p.m. On the
4 weekends. Not on the weekdays. That's less
5 usual than the evenings.

6 CHAIRMAN ANDERSON: The reason I'm
7 asking is because at least I'm looking at their -
8 - unless I'm looking at the right -- because
9 their entertainment is 4 to 11 Sunday, Monday,
10 Tuesday, Wednesday. Thursday it's 1, Friday it's
11 1 and Saturday it's 1. If I'm looking at the
12 correct information. So that's why I'm asking
13 you.

14 I know there are noise regulations so
15 that's why I'm trying to find out what time is
16 it, what time of day. If you're hearing this
17 noise what time of day you're hearing this noise.

18 MS. SZAFRAN: I would definitely say
19 evenings is the vast majority.

20 CHAIRMAN ANDERSON: And like what
21 time?

22 MS. SZAFRAN: Again, starting at say
23 8 p.m. on the weekdays, although I would not be
24 contacting them at 8 because sometimes it takes
25 some time to get some sound regulated.

1 Definitely 9, 10, 11, sometimes after
2 midnight.

3 CHAIRMAN ANDERSON: What nights after
4 midnight are you hearing it?

5 MS. SZAFRAN: On weekdays as I've been
6 over there sometimes three times one evening
7 speaking with them, texting them.

8 CHAIRMAN ANDERSON: Because if they're
9 supposed to have -- they can only have live
10 entertainment till 11 on Sunday, Monday, Tuesday
11 and Wednesday. So what days are you hearing live
12 -- you're hearing live entertainment after 11
13 o'clock?

14 MS. SZAFRAN: Sometimes I am hearing
15 live entertainment after their required hours.

16 CHAIRMAN ANDERSON: What day of that
17 week that is? I'm trying to find out.

18 MS. SZAFRAN: Weekdays. Tuesday,
19 Wednesday, Thursday. I don't have my cell phone
20 with me. I could look it up probably on the cell
21 phone on days that I have actually texted them.

22 MR. ROUNTREE: We've never had --

23 MS. SZAFRAN: What about the time that
24 --

25 CHAIRMAN ANDERSON: Ma'am, I ask

1 questions. When I ask questions you respond to
2 me.

3 MS. SZAFRAN: I'm sorry, sir.

4 CHAIRMAN ANDERSON: No one else asks
5 questions unless I direct folks to ask questions.

6 I mean, I'm looking at this map and I
7 guess -- maybe I'm not familiar with the
8 neighborhood. But this business is at the corner
9 of 8th and E. Oh, that's E Street.

10 And you live where?

11 MS. SZAFRAN: One house in from the
12 corner of 7th and E.

13 CHAIRMAN ANDERSON: And so -- I'm
14 trying to figure how this noise will jump over,
15 I'm looking at, at least the map I'm looking at I
16 see Ophelia's Fish House. I see --

17 MS. SZAFRAN: It's a one-story
18 building, sir.

19 CHAIRMAN ANDERSON: The Shakespeare
20 Theater. I mean, I'm trying to figure out the
21 possibility of this because I'm looking at the
22 map. That's why I've asked for. That's why I
23 asked for the map. I saw.

24 So I saw where District Soul Food is
25 and I see -- that's why that's let me have a

1 better look off this establishment. And I just
2 can't fathom that so that's the problem I'm
3 having right now based on the distance.

4 MS. SZAFRAN: Sir, it's straight down
5 the street without any intervening buildings,
6 trees, or otherwise. I can point to my house if
7 you like.

8 CHAIRMAN ANDERSON: Show me one more
9 time on the map. I'm missing it. I have the map
10 in front of me so I need -- let her point out to
11 me where her --

12 MS. SZAFRAN: Laser pointer?

13 MR. LOOTS: Yes.

14 MS. SZAFRAN: Okay. So I don't know
15 how to work this. Top button. Okay, so there's
16 District Soul Food.

17 CHAIRMAN ANDERSON: That's correct.

18 MS. SZAFRAN: Okay. So this is the
19 intersection. This is my house. This is just
20 the street. So they're on the opposite corner
21 and I'm opposite there. So literally, their
22 windows are all on this corner on the second
23 floor so it's a straight shot.

24 So my other neighbors have also
25 experienced this.

1 CHAIRMAN ANDERSON: All right. I
2 don't have any other questions. Any other
3 questions by any of the board members? All
4 right.

5 MR. ROUNTREE: Can I ask one more
6 question?

7 CHAIRMAN ANDERSON: Give me a chance
8 to ask you, Mr. Rountree, if you have any
9 questions. All right. Go ahead, sir.

10 MR. ROUNTREE: All right. In our
11 cigar room, you've been there when I've had a
12 band --

13 MS. SZAFRAN: Yes, sir.

14 MR. ROUNTREE: -- in our cigar room.
15 Can you hear the noise, can you hear the band in
16 the cigar room?

17 MS. SZAFRAN: No. You've done a good
18 job soundproofing your cigar room.

19 MR. ROUNTREE: But it's no
20 soundproofing, it's just brick. It's just the
21 brick wall.

22 MS. SZAFRAN: Well, you told me that
23 you had done significant soundproofing to that
24 room so that once you enter it and the door is
25 sealed.

1 MR. ROUNTREE: Yes, the door.

2 MS. SZAFRAN: Yes. In my opinion you
3 have done a good job soundproofing that cigar
4 room.

5 MR. ROUNTREE: Okay. That was it.

6 CHAIRMAN ANDERSON: Any last
7 questions, sir?

8 MR. LOOTS: Nothing.

9 CHAIRMAN ANDERSON: Thank you very
10 much for your testimony, ma'am. You can step
11 down.

12 Do you have another witness?

13 MR. LOOTS: I do. I would call Amber
14 Jones.

15 CHAIRMAN ANDERSON: All right.
16 Before, Ms. Jones, before -- let's take a 10-
17 minute break.

18 (Whereupon, the above-entitled matter
19 went off the record at 4:30 p.m. and resumed at
20 4:48 p.m.)

21 CHAIRMAN ANDERSON: All right, we're
22 back on the record. All right, so you have
23 another witness?

24 MR. LOOTS: Yes. I'd like to call
25 Amber Jones.

1 CHAIRMAN ANDERSON: Amber Jones.

2 WHEREUPON,

3 AMBER JONES

4 was called as a witness by Counsel for the
5 Protestant and, having been first duly sworn,
6 assumed the witness stand, was examined and
7 testified as follows:

8 PROTESTANT EXAMINATION

9 MR. LOOTS: Ms. Jones, would you state
10 your full name and address for the record,
11 please?

12 MS. JONES: Amber Jones, 816 E Street
13 SE, Washington, DC.

14 MR. LOOTS: Okay. Ms. Jones, I'm
15 going to show you what's already been admitted as
16 exhibit 2 and a sticker that has your name on it.
17 Can you place this please where you are on this
18 map?

19 MS. JONES: Well, we determined that
20 we're just off the edge of the map. It's right
21 over here at this edge.

22 MR. LOOTS: Okay. So, I will show
23 this to the board as well because she's actually
24 off of the map, down the block. And it's on E
25 Street, correct?

1 MS. JONES: Correct.

2 MR. LOOTS: So you're almost to the
3 corner of 9th.

4 MS. JONES: Correct. One house from
5 the corner.

6 MR. LOOTS: One house from the corner
7 of 9th Street. Do you have a rough estimate as
8 to how many feet that is from the restaurant?

9 MS. JONES: Yes. We calculated about
10 125 feet.

11 MR. LOOTS: Okay. And you're on the
12 opposite side of the street, is that correct?

13 MS. JONES: Correct.

14 MR. LOOTS: Can you please tell the
15 board what personal knowledge and experience you
16 have as to noise emanating from amplified music
17 at District Soul Food.

18 MS. JONES: Friday and Saturday nights
19 it's an issue in the evening, usually after 9
20 o'clock and particularly after 11 o'clock almost
21 every week for the past year when I'm home. I'm
22 not always home. You can hear music coming
23 through the walls or the windows from outside the
24 establishment.

25 MR. LOOTS: I'm sorry. So you can

1 hear music.

2 MS. JONES: You can hear definitely
3 the bass and the drum.

4 MR. LOOTS: Okay. And where is it
5 that you have personally observed this?

6 MS. JONES: I have observed it many
7 times from the street and front of the
8 establishment, several times from my front yard,
9 and a few times from inside my house.

10 MR. LOOTS: Okay. So if we are -- if
11 one is standing in the front yard of your house
12 over here like a block away is it your testimony
13 that you can hear music, or drums, or bass, or
14 what?

15 MS. JONES: The drums and the bass,
16 yes.

17 MR. LOOTS: Okay. And what about as
18 you walk closer to the restaurant? Have you done
19 that during time when there's live entertainment?

20 MS. JONES: Yes, I have.

21 MR. LOOTS: As you get close to the
22 restaurant what do you observe?

23 MS. JONES: Well, you can definitely
24 hear it all along the street.

25 MR. LOOTS: And you're referring to E

1 Street there?

2 MS. JONES: E Street, correct.

3 MR. LOOTS: How do you know that the
4 noise is coming from this particular
5 establishment?

6 MS. JONES: Because that's what I do.
7 I go out and walk along the street to make sure
8 that's where it's coming from because I don't
9 want to falsely accuse any particular
10 establishment of being responsible.

11 MR. LOOTS: Okay. And you mentioned
12 before that -- I believe you said every weekend,
13 is that correct?

14 MS. JONES: The incidents that I have
15 recorded, and when I say recorded that means that
16 I called ABRA or sent a message to my ANC
17 commissioner Kristen Olenburg have all -- have
18 mostly been Fridays and Saturdays. A couple of
19 Tuesday and Thursdays, but generally Friday and
20 Saturday nights.

21 MR. LOOTS: Okay. And approximately
22 what hour of the nights might those concerns have
23 been?

24 MS. JONES: Well, I usually sent an
25 email at the time that I call ABRA or otherwise

1 have a complaint. And I send that email to the
2 ANC. And the emails all went out around 11 to
3 11:30 p.m. on Friday and Saturday nights in most
4 cases.

5 MR. LOOTS: Okay. Has this problem
6 been continuous since the establishment opened?

7 MS. JONES: I can only speak to when
8 I started observing and that was because of the
9 ANC meetings that we had. So I started paying
10 attention to it after March. So from March to
11 December it was relatively frequent.

12 MR. LOOTS: Okay. I believe you said
13 you reported it both to the ANC single member
14 district commissioner and ABRA, is that correct?

15 MS. JONES: Correct.

16 MR. LOOTS: Okay. When you called
17 ABRA did you have any interaction with any
18 investigator or anybody?

19 MS. JONES: Yes. It was usually Mark
20 Basheers.

21 MR. LOOTS: And what did Mr. Basheers
22 tell you?

23 MS. JONES: He said -- sometimes he
24 said he would come out, or that somebody had
25 already called and they were coming out, they

1 were on their way.

2 I never met him in person or saw any
3 of the ABRA people when they came out.

4 MR. LOOTS: Okay. Now you mentioned
5 that on at least some occasions ABRA reported
6 that somebody had already called about the same
7 night's incidents, is that correct?

8 MS. JONES: That's correct.

9 MR. LOOTS: Okay. Did you have
10 occasion to speak with your neighbors or
11 otherwise coordinate any response on specific
12 nights?

13 MS. JONES: Well, we do have a
14 neighbor who is not here today who sent an email
15 every time she called ABRA and when they came
16 out.

17 So I looked through my cell phone this
18 afternoon and I do have some dates when she said
19 ABRA came out. And at least one specific date
20 when she said they came into my house.

21 MR. LOOTS: Okay. Now to be clear for
22 the record ABRA has never come into your house.

23 MS. JONES: Correct.

24 MR. LOOTS: This is what your neighbor
25 reported.

1 MS. JONES: That's correct.

2 MR. LOOTS: Have you ever reported any
3 loud noise incidents directly to the
4 establishment?

5 MS. JONES: I have spoken to the
6 owners who are here today not about that specific
7 issue, no. I've talked to them about noise that
8 their patrons make when they return to their
9 cars, but not about the music.

10 MR. LOOTS: Okay. How -- can you
11 describe for the board how the presence of this
12 amplified music noise has affected your quality
13 of life?

14 MS. JONES: Well, I have to say
15 indirectly because what affects my quality of
16 life is being woken up on Friday and Saturday
17 nights in the middle of the night, usually about
18 1:30 when patrons are coming to their cars and
19 making a lot of noise.

20 And because of that I've been paying
21 attention to the fact that where they're coming
22 from. I walk out and go to see where they're
23 coming and going from. And making sure that I
24 understand where they're coming from before I say
25 anything to anybody.

1 So I've been woken up many times for
2 that reason.

3 The actual music does not wake me up
4 inside my house. It's not that loud that it
5 comes into my house enough to wake me up.

6 But if I go outside for other reasons
7 such as patrons making noise on the street then I
8 can hear it.

9 MR. LOOTS: Has the music,
10 specifically talking about the amplified music,
11 has it negatively affected your ability to use
12 your yard or home in any way?

13 MS. JONES: No.

14 MR. LOOTS: Okay. Other than your
15 reports to ABRA have you made any other formal
16 complaints or reports to any governmental agency?

17 MS. JONES: Only the ANC.

18 MR. LOOTS: Can you give the board a
19 rough estimate of how many times you have heard
20 and reported amplified music noise?

21 MS. JONES: Only a couple because
22 usually I'm reporting patrons being loud on the
23 street.

24 MR. LOOTS: Okay. I have no further
25 questions of this witness.

1 CHAIRMAN ANDERSON: Do you have any
2 questions for her, Mr. Rountree?

3 MR. ROUNTREE: Yes, sir.

4 APPLICANT EXAMINATION

5 MR. ROUNTREE: Approximately how many
6 times have you called ABRA?

7 MS. JONES: I don't have an exact
8 record. I have a written record of two times.
9 I'd say probably five or six altogether.

10 MR. ROUNTREE: Have they ever asked
11 you to come into your home to check for the sound
12 during a disturbance?

13 MS. JONES: No. They said they were
14 coming out, whatever that means.

15 MR. ROUNTREE: That's it. That's all
16 the questions I have.

17 MR. LOOTS: If I may.

18 CHAIRMAN ANDERSON: No. Questions by
19 any board members? Go ahead, Mr. Short.

20 BOARD EXAMINATION

21 MR. SHORT: Good afternoon again.
22 Yes, good afternoon still.

23 Ms. Jones, you say you never heard the
24 music inside of your home.

25 MS. JONES: That's not correct. I did

1 hear the music inside my house several times.

2 MR. SHORT: What did you do when you
3 heard the noise in your house?

4 MS. JONES: What do I do?

5 MR. SHORT: What actions did you take
6 when you heard it inside your home?

7 MS. JONES: Well, one of those times
8 I called ABRA.

9 MR. SHORT: What happened?

10 MS. JONES: They said they would come
11 out.

12 MR. SHORT: What time was that?

13 MS. JONES: Eleven p.m. on October 11,
14 a Friday night.

15 MR. SHORT: And no one ever came?

16 MS. JONES: They don't come to my
17 house. I don't know that they actually came out
18 to the restaurant or not.

19 MR. SHORT: Okay, thank you. You do
20 know it's the law that if they come in your house
21 and hear the music it's a violation on them.

22 MS. JONES: I did not know that until
23 today. I thought the settlement agreement stated
24 the music was not to be.

25 MR. SHORT: That's not in the

1 settlement agreement. The law, regulations say,
2 the noise regulation says when you hear noise in
3 your house and you call ABRA and you tell them I
4 hear the noise and they come to your home and you
5 let them in the door and they close the door and
6 they can hear music without the windows being
7 open that's a major violation.

8 MS. JONES: I learned that today.
9 However, there have been a number of times that I
10 called ABRA because the noise was that loud, but
11 it was not from music. It was from patrons
12 returning to their cars and making a lot of noise
13 in front of my house. Because they parked in
14 front of our house.

15 MR. SHORT: Okay. Thank you very
16 much. That's all I have, Mr. Chair.

17 CHAIRMAN ANDERSON: So you're saying
18 that most of the noise you hear are from patrons,
19 not necessarily from the establishment itself.

20 MS. JONES: That's correct. And I
21 have verified that the patrons are coming from
22 District Soul Food. And I understand that's not
23 necessarily --

24 CHAIRMAN ANDERSON: Go ahead. Go
25 ahead and finish.

1 MS. JONES: I understand that that's
2 something we may not be able to solve.

3 CHAIRMAN ANDERSON: And you say that
4 you have never addressed this issue, at least the
5 noise coming into your house, you have never
6 addressed this issue with Mr. Rountree?

7 MS. JONES: The music from the
8 establishment, no, I have not.

9 CHAIRMAN ANDERSON: Why not since --

10 MS. JONES: Because my neighbors are
11 doing it constantly. My neighbors, Alison
12 Brooks, Carol Grodsen and Katherine who already
13 testified have submitted emails to ANC and copied
14 me saying they've been discussing it with the
15 owners.

16 So I didn't feel like I needed to add
17 anything to that.

18 CHAIRMAN ANDERSON: All right. Any
19 other questions by the board members? Any
20 questions, Mr. Rountree, by the board members --
21 I or the board members asked her?

22 MR. ROUNTREE: Yes, sir. I would like
23 to correct one thing.

24 CHAIRMAN ANDERSON: Not correct.
25 You're asking questions. So you're not

1 testifying, you're asking her a question. If
2 there's no question for her then you can't say
3 anything.

4 MR. ROUNTREE: No, sir.

5 CHAIRMAN ANDERSON: Any questions --
6 yes, sir. Now it's your chance.

7 MR. LOOTS: Thank you. Sorry. I had
8 neglected to introduce one exhibit that I can use
9 this witness.

10 CHAIRMAN ANDERSON: You can't
11 introduce new evidence on recross.

12 MR. LOOTS: Okay. Well, then I missed
13 my chance. Thank you.

14 CHAIRMAN ANDERSON: All right. Thank
15 you for your testimony, ma'am. You can step
16 down. You have any other witnesses?

17 MR. LOOTS: Yes. I call Pope Barrow.
18 WHEREUPON,

19 POPE BARROW
20 was called as a witness by Counsel for the
21 Protestant and, having been first duly sworn,
22 assumed the witness stand, was examined and
23 testified as follows:

24 PROTESTANT EXAMINATION

25 MR. LOOTS: Mr. Barrow, can you state

1 your full name and address for the record?

2 MR. BARROW: Middleton Pope Barrow,
3 816 E Street SE. Same house as Amber.

4 MR. LOOTS: Okay. So, just to have a
5 fulsome record here I'm going to ask you the same
6 thing I asked Amber. Would it be correct to put
7 this basically at the same location as hers?

8 MR. BARROW: That's right. Yes.

9 MR. LOOTS: So again, this is a
10 residence that is located one unit from the
11 corner of E Street and 9th. Is that correct?

12 MR. BARROW: Correct.

13 MR. LOOTS: Can you tell the board
14 please what your personal experience is with
15 noise that may have emanated from the
16 establishment?

17 MR. BARROW: Well, I don't have a
18 tremendous problem with the noise from the
19 establishment inside my house because I'm
20 partially deaf. I need a hearing aid even to be
21 in this meeting.

22 I'm in good shape with the noise from
23 anywhere. I don't hear much of anything.

24 MR. LOOTS: Okay. That said, when you
25 have your hearing aid on and it is late at night

1 are you able inside your home to hear any audible
2 noise or music that comes from --

3 MR. BARROW: I can hear. I can hear.
4 It's rare that I have my hearing aid on late at
5 night, but I do -- when I come in I can hear.

6 CHAIRMAN ANDERSON: I'm sorry. With
7 all due respect, I don't see how helpful this
8 witness is going to be.

9 MR. BARROW: I'm willing to take a
10 seat.

11 MR. LOOTS: Now that you've said
12 something we've got to go through the round. But
13 thank you, I have no further questions of this
14 witness.

15 CHAIRMAN ANDERSON: I'm sorry?

16 MR. LOOTS: I have no further
17 questions of this witness.

18 CHAIRMAN ANDERSON: Mr. Rountree?

19 MR. ROUNTREE: No, sir.

20 CHAIRMAN ANDERSON: Mr. Barrow, I
21 really appreciate the fact that you're here
22 today. You've been here for awhile. But as I
23 stated I just want to make sure that I hear
24 testimony from.

25 I appreciate the fact that you

1 informed us of your impairment and thank you.

2 MR. BARROW: There are plenty of other
3 witnesses that can say more.

4 CHAIRMAN ANDERSON: Thank you.

5 MR. BARROW: Thank you.

6 MR. LOOTS: I would call Alison
7 Brooks, please.

8 WHEREUPON,

9 ALISON BROOKS

10 was called as a witness by Counsel for the
11 Protestant and, having been first duly sworn,
12 assumed the witness stand, was examined and
13 testified as follows:

14 PROTESTANT EXAMINATION

15 MR. LOOTS: Ms. Brooks, will you
16 please state for the record your full name and
17 address?

18 MS. BROOKS: Alison with one L, Spence
19 Brooks, B-R-O-O-K-S.

20 MR. LOOTS: And what is your address?

21 MS. BROOKS: 810 E Street SE.

22 MR. LOOTS: Okay. How long have you
23 lived at that address?

24 MS. BROOKS: Forty-three years.

25 Forty-four years.

1 CHAIRMAN ANDERSON: I can't hear you,
2 ma'am.

3 MS. BROOKS: Forty-four years.

4 MR. LOOTS: Thank you. So you were
5 living at that address when Banana Café was
6 operating there, correct?

7 MS. BROOKS: I was.

8 MR. LOOTS: Were there ever any noise
9 concerns with Banana Café?

10 MS. BROOKS: Perhaps once or twice in
11 all the years that he ran that business. The
12 piano bar singing was a little bit loud and I'd
13 go over and say it's too loud, I can hear it,
14 could you please turn it down and he'd do it.
15 He'd turn it down immediately.

16 And that was maybe twice in I can't
17 remember, 25 years that he had that
18 establishment. Had no problem.

19 And he also had signs inside asking
20 people to be considerate of the neighborhood when
21 they left.

22 MR. LOOTS: Now with respect to the
23 current establishment District Soul Food have you
24 witnessed personally any noise or amplified music
25 outside the premises?

1 MS. BROOKS: I would say that since I
2 was made aware that ABRA had a complaint number
3 that I personally am disturbed by the noise
4 practically every weekend that I'm in residence.
5 I'm not always there and I was not there in the
6 summer.

7 But certainly starting in mid August
8 I have called the complaint line at least half a
9 dozen to a dozen times a month.

10 And when I call usually I'm told --
11 Mr. Basheers knows my number by heart. And
12 whether it's him or someone else on the phone I'm
13 usually assured that they've already received
14 several calls and they've sent someone out to
15 investigate.

16 MR. LOOTS: Has anyone ever come to
17 your home to take any measurements or observe
18 anything?

19 MS. BROOKS: They offered to come to
20 my home, but the problem was that it was late at
21 night. I have two other people living in my
22 house in the front bedrooms, my husband and my
23 niece. And they had finally managed to fall
24 asleep through the noise. So I felt it would be
25 just too disturbing to them to have somebody come

1 in and start measuring the noise in the bedrooms,
2 that they would be really upset.

3 MR. LOOTS: Being as specific as you
4 can, can you tell the board please where in your
5 home you're able to hear amplified music from
6 District Soul Food and what it is that you're
7 able to hear?

8 MS. BROOKS: I mainly hear again the
9 bass which seems to travel better than the upper
10 notes. Though occasionally if it's really loud I
11 hear some wailing at the upper notes.

12 But I can hear it in my living room,
13 in the hall, in the front hall, in the second
14 floor bedroom, in the third floor bedroom, and in
15 the bathroom which is in the middle of the house.

16 And all of those front rooms have
17 double paned noise canceling windows on them. I
18 can still hear it.

19 MR. LOOTS: Let me ask you a question
20 about those double insulated sound dimming
21 windows.

22 MS. BROOKS: Yes.

23 MR. LOOTS: You live in the historic
24 district, correct?

25 MS. BROOKS: Yes, I do.

1 MR. LOOTS: And did you require
2 special approval of the Historic Preservation
3 Office in order to replace your windows?

4 MS. BROOKS: We definitely did. I'm
5 sorry that Kristen isn't here because she was on
6 the board when we requested the exception.

7 Partly because the windows in our
8 house which are more than 100 years old were
9 curved at the top on the second floor. So those
10 windows had to be manufactured specially. And I
11 can assure the board it did not cost us \$35,000
12 which we could not have afforded to install nine
13 windows on the front.

14 MR. LOOTS: More specifically though
15 were those windows designed to your knowledge to
16 reduce transmission of sound?

17 MS. BROOKS: They were.

18 MR. LOOTS: Okay. And Historic
19 Preservation did in fact approve them?

20 MS. BROOKS: They did.

21 MR. LOOTS: Okay. About how long did
22 that process take you?

23 MS. BROOKS: Maybe a couple of months
24 at the most. And then there was some lag time as
25 they were manufacturing the special windows that

1 were curved at the top.

2 But maybe three, four months for the
3 whole thing.

4 MR. LOOTS: When was the most recent
5 time that you personally heard music from
6 District Soul Food?

7 MS. BROOKS: I have records that I
8 called ABRA on, let me see, I wrote this down.
9 December 15, 20, 23, and one time on the weekend
10 between Christmas and New Year's.

11 And I -- there are other times when I
12 heard it but didn't call because it was just too
13 much trouble and I was tired.

14 MR. LOOTS: And is it your testimony
15 under oath today that on each of those occasions
16 when you called music or amplified music
17 emanating from District Soul Food was in fact
18 audible inside your house?

19 MS. BROOKS: Yes. And I would go
20 outside. As you know there are many restaurants
21 in the area.

22 I would go outside in every case to
23 make sure that it was coming from District Soul
24 Food and not from anywhere else.

25 And only when I had verified that did

1 I go back into my house.

2 MR. LOOTS: Let me ask you as I have
3 the previous witnesses to take this sticker and
4 put it where your house is located with relation
5 to District Soul Food.

6 Okay. So you are then on the north
7 side of the street, is that correct?

8 MS. BROOKS: Yes.

9 MR. LOOTS: And can you give the board
10 an estimate of how far it is from District Soul
11 Food to your home?

12 MS. BROOKS: Maybe I would say 60
13 feet.

14 MR. LOOTS: You're much closer.

15 MS. BROOKS: I'm closer. I'm twice as
16 close as they are.

17 MR. LOOTS: Can you tell the board how
18 the noise that you've observed has had an impact
19 on your life?

20 MS. BROOKS: Well, first of all it's
21 very hard for me to fall asleep when the beat is
22 going. I find it very hard to relax and go to
23 sleep. So it's affecting my sleep.

24 And also I'm a teacher. I used to
25 grade papers in the living room sitting in a

1 comfortable chair by the front windows.

2 I can't do that because it's too
3 distracting. I need to do that at night so I can
4 hand the papers back. And I can't concentrate.
5 I end up doing a lot more work back in the
6 kitchen of my house which is too far back and too
7 many brick walls in between the kitchen and the
8 street that I don't hear much noise from the
9 street in the kitchen of any sort.

10 MR. LOOTS: I have no further
11 questions of this witness.

12 CHAIRMAN ANDERSON: Mr. Rountree?

13 MR. ROUNTREE: Yes, I have a couple of
14 questions.

15 APPLICANT EXAMINATION

16 MR. ROUNTREE: You said you have
17 double soundproof windows that the Historic
18 Preservation allowed you to get, correct?

19 MS. BROOKS: Yes.

20 MR. ROUNTREE: And you can still hear
21 my music from down the street.

22 MS. BROOKS: Let me say that they were
23 extremely effective. They're now more than 10
24 years old. They were extremely effective in the
25 beginning. Their effectiveness has decayed a

1 little bit, but the fact that I only hear the
2 bass is -- and I only hear it in the front parts
3 of my house is a testimony. I still don't hear
4 very well people talking outside.

5 I barely hear big trucks going by.
6 But because it's quiet on the street at night
7 except for the music. I do hear that. If I'm in
8 the front part of the house. I don't hear it
9 further back.

10 MR. ROUNTREE: My next question is if
11 you said that you hear music and that your
12 quality of life has changed since we opened up.
13 We only have music two days a week now. We've
14 never had it on Tuesday or Wednesday. But you
15 stated earlier that you've heard it on Tuesday,
16 Tuesday and other days other than Friday and
17 Saturday.

18 MS. BROOKS: Let me cite from an email
19 I sent around to my neighbors about an incident
20 on the 22nd of October which was a Tuesday.

21 I went out to deal with the trash, to
22 empty the trash into the trash cans in front of
23 my house. The music was really loud on the
24 street.

25 So I went across. I thought well

1 maybe -- the ANC has been encouraging us to deal
2 directly with the management. Maybe I'll go
3 across the street instead of calling ABRA and
4 I'll talk to whoever is in charge at the
5 restaurant.

6 So I go across the street. It's a
7 Tuesday. I have no idea who's producing the
8 music, but it's unbelievably loud. It was so
9 loud that I had to shout at the top of my voice
10 to ask the man behind the bar to please turn the
11 music down. I couldn't sleep because it was
12 reaching my house.

13 MR. ROUNTREE: Was this on the first
14 floor or second floor?

15 MS. BROOKS: I was on the first floor.
16 And the man behind the bar -- first of all, he
17 was insulted that I was shouting at him, but he
18 couldn't hear me if I didn't shout.

19 And second of all -- so I asked him,
20 or I asked him, yes, to please call the manager.
21 And it quickly became evident that there was no
22 manager or anybody in charge on the premises at
23 least beyond the guy behind the bar.

24 So, he -- they basically said wouldn't
25 I like to have a drink. And then they said why

1 didn't I just go home and smoke a joint. And I
2 was rather upset about this. I went home and
3 wrote to my neighbors and the ANC.

4 MR. ROUNTREE: So that's what
5 happened.

6 MS. BROOKS: Yes, that's what
7 happened. And the music did not go down because
8 there was a complaint from one of my neighbors
9 half an hour later that they were unable to sleep
10 because the music continued to be really loud.

11 MR. ROUNTREE: Okay. Would it help
12 you to understand that there are no subs -- now
13 there are, but October we had no subs. We didn't
14 have any subwoofers until the middle of November.
15 They had no subs for that very reason.

16 CHAIRMAN ANDERSON: You're asking her
17 a question, sir.

18 MR. ROUNTREE: So, I guess let me ask
19 you this question. Have you ever been to my
20 restaurant to eat?

21 MS. BROOKS: I have to say my husband
22 came to your restaurant to eat and he was turned
23 away. So that didn't encourage me to come back.

24 MR. ROUNTREE: So we turned him away.
25 And we encouraged you to smoke a joint.

1 MS. BROOKS: To go home and smoke a
2 joint.

3 MR. ROUNTREE: So you've never been
4 there to listen to music or anything.

5 MS. BROOKS: I haven't, but it's not
6 -- I'm not a person who commonly goes to
7 nightclubs.

8 MR. ROUNTREE: Have you ever been to
9 any other restaurant on 8th Street?

10 MS. BROOKS: Yes. I go to restaurants
11 on 8th Street at least once a week probably.

12 MR. ROUNTREE: With the exception of
13 mine.

14 MS. BROOKS: Yes. But we tried. We
15 just -- we just got turned away. What can I say.

16 MR. ROUNTREE: I have no other
17 questions.

18 CHAIRMAN ANDERSON: Any questions by
19 the board members? Yes, Mr. Short.

20 BOARD EXAMINATION

21 MR. SHORT: Good afternoon.

22 MS. BROOKS: Good afternoon.

23 MR. SHORT: How long have you resided
24 in this neighborhood?

25 MS. BROOKS: In the District or at

1 this --

2 MR. SHORT: At this address.

3 MS. BROOKS: Forty-three years.

4 MR. SHORT: Forty-three years.

5 MS. BROOKS: Yes.

6 MR. SHORT: Okay. And there's a fire
7 station not far from you, 515 8th Street, Engine
8 8, Truck 7. Right?

9 MS. BROOKS: Yes.

10 MR. SHORT: They're not as busy as
11 they used to be, I don't think.

12 MS. BROOKS: What?

13 MR. SHORT: Forty some years ago they
14 were one of the busiest stations in the city.
15 They're not as busy as they used to be.

16 MS. BROOKS: No, they're not.

17 MR. SHORT: At any rate, you also hear
18 when you heard testimony and I said to one of
19 your neighbors if you can hear noise at your
20 front door, in your front room when you say you
21 sit down and correct papers and you let that
22 investigator in after he shows you his badge
23 through the window and you let him in and just
24 close the door.

25 It doesn't have to be long. He

1 doesn't bring a machine with him. The code says
2 if he can hear noise in your living room with the
3 door closed and no windows opened he's got to
4 write a ticket.

5 MS. BROOKS: Okay.

6 MR. SHORT: That would solve a lot of
7 this. Thank you for your testimony.

8 MS. BROOKS: Sorry. I didn't think we
9 knew that before. So that's very helpful.

10 MR. SHORT: Thank you.

11 MS. BROOKS: Thank you.

12 MR. SHORT: That's all I had, Mr.
13 Chair. Thanks very much.

14 CHAIRMAN ANDERSON: Any other
15 questions?

16 MR. LOOTS: Nothing here.

17 CHAIRMAN ANDERSON: Any other
18 questions?

19 MR. ROUNTREE: No, sir.

20 CHAIRMAN ANDERSON: All right. Thank
21 you for your testimony, Ms. -- I'm sorry.

22 MS. BROOKS: Brooks.

23 CHAIRMAN ANDERSON: Ms. Brooks. Thank
24 you very much for your testimony.

25 MR. LOOTS: Our last witness of the

1 afternoon is Mark Bilali.

2 WHEREUPON,

3 MARK BILALI

4 was called as a witness by Counsel for the
5 Applicant and, having been first duly sworn,
6 assumed the witness stand, was examined and
7 testified as follows:

8 MR. LOOTS: Mr. Bilali, will you state
9 your full name and address for the record?

10 MR. BILALI: Mark Bilali, 813 E Street
11 SE.

12 MR. LOOTS: I'm going to show you the
13 same poster and ask you to put your name where.
14 So basically you're across the street from Ms.
15 Brooks, is that correct?

16 MR. BILALI: I think so, according to
17 that. Yes.

18 MR. LOOTS: And approximately how far
19 is it from District Soul Food to where your
20 residence is?

21 MR. BILALI: It's four touchdowns. So
22 DC rowhouses are probably 10-15 feet each. So
23 40-ish, 50 probably.

24 MR. LOOTS: Okay. Can you tell the
25 board please what your personal observations and

1 experience is with respect to amplified music
2 outside of District Soul Food?

3 MR. BILALI: Yes. There's probably
4 been a handful of times where I've heard loud
5 music obviously on the street, but then also in
6 front of my house. I'm not around on the weekends
7 all the time. I'm out a lot of times on the
8 weekends, but there has been a number of times
9 where I've heard the music from the front of my
10 house and from the street in front of my house.

11 MR. LOOTS: Okay. Now, when you hear
12 this music are you able to discern that it's
13 actually music, or is it -- other witnesses
14 talked about bass drums and bass guitars.

15 MR. BILALI: Yes. I mean it's hard to
16 discern exactly what it is. You can obviously
17 hear the bass. Everyone can hear the bass.

18 I'm not going to sit here and say I
19 can hear a guitar or some other instrument more
20 than others. But you can definitely hear the
21 bass.

22 MR. LOOTS: And approximately how many
23 times have you personally heard this?

24 MR. BILALI: Probably a handful of
25 times. Again, I'm gone a lot on weekends and I'm

1 out a lot on weekends so I'm not there kind of
2 between the hours of 9 and 12 all the time, or 9
3 and 1, whatever it is.

4 But there have been a number of times,
5 a handful of times where I've heard music.

6 MR. LOOTS: And when was the most
7 recent time that you've heard that music?

8 MR. BILALI: Specifically last Friday.
9 I was at dinner with my wife. We came back
10 probably around 10:30, maybe 11. And I was
11 surprised at how loud the music was.

12 I actually walked up and down the
13 street and took a video with my phone. You could
14 actually hear the music more than halfway down,
15 almost to 9th Street which was a little bit
16 concerning to me.

17 I could also hear it obviously from
18 the front of my house. I took that video also.

19 I acknowledge I did not call the ABRA
20 authorities. I haven't done that in the past. I
21 realize now that I probably should have, but
22 anyway. Yes, Friday was the most recent.

23 MR. LOOTS: Okay. And again,
24 specifically what you observed on Friday was loud
25 music emanating from District Soul Food?

1 MR. BILALI: Yes. It was about 11
2 o'clock. You could definitely hear the bass. It
3 was loud.

4 MR. LOOTS: And when you recorded this
5 on your cell phone you said, did you play that
6 back?

7 MR. BILALI: Yes, you can hear it. I
8 mean, I'm willing to play it. I mean, you can
9 clearly hear there's bass and it's coming from
10 one source. I walked closer to the source and it
11 gets louder. You walk further from the source it
12 obviously gets less loud. So there's pretty clear
13 in my opinion that that's where the music was
14 coming from.

15 MR. LOOTS: Okay. I have no further
16 questions of this witness.

17 CHAIRMAN ANDERSON: Mr. Rountree.

18 APPLICANT EXAMINATION

19 MR. ROUNTREE: You said this was last
20 Friday, correct?

21 MR. BILALI: Yes. Last Friday night.

22 MR. ROUNTREE: Were you aware that
23 there was a rock band last Friday night at the
24 Ugly Mug?

25 MR. BILALI: I was not. But again, I

1 didn't walk anywhere near the Ugly Mug.

2 MR. ROUNTREE: Were you aware that the
3 guy -- it's a gentleman that also plays, they
4 play a piano and a guitar. Are you aware of that
5 as well, that they play on the street?

6 MR. BILALI: Where is that?

7 MR. ROUNTREE: On 8th Street.

8 MR. BILALI: I was not aware of it
9 that night, but again I did not run in to see
10 anyone that was playing a guitar or an instrument
11 on 8th Street.

12 MR. ROUNTREE: Okay. And have you had
13 a chance to come in to my establishment and
14 listen to a band or anything like that?

15 MR. BILALI: I have not. I am a fan
16 of live music. I am a fan of generally going out
17 in the city. Never been an issue. Just
18 obviously there's a lot of places to go and just
19 haven't been there yet.

20 MR. ROUNTREE: I have no other
21 questions.

22 CHAIRMAN ANDERSON: Any questions by
23 any board members? Hearing none, thank you, sir,
24 for your testimony. You can step down. Does the
25 ANC rest?

1 MR. LOOTS: The ANC rests.

2 CHAIRMAN ANDERSON: Are we ready for
3 closing?

4 MR. LOOTS: We are, Your Honor.

5 CHAIRMAN ANDERSON: All right. So I'm
6 going to ask you, Mr. Rountree, to provide a
7 closing statement.

8 A closing statement is for you to tell
9 us what it is that was presented today and
10 specifically what it is that you're asking this
11 board to do.

12 So I'm not quite sure what's on the
13 application. So I need you to tell us what is it
14 specifically you want this board to do in
15 renewing your license. I'm not sure if you're
16 asking for any additional endorsements. I don't
17 know.

18 So that's why I'm saying in closing I
19 need you to be very specific what is it you're
20 asking the board to do.

21 MR. ROUNTREE: Okay. First, in
22 closing I would like to correct a wrong, I guess
23 and error and read my endorsements that I
24 actually have on my license.

25 CHAIRMAN ANDERSON: Well, it's not

1 what you have. It's what is it that you want the
2 board to do.

3 MR. ROUNTREE: I would like for my ABC
4 license to be renewed. I do not believe that
5 there should be a change.

6 We have mitigated the noise complaint
7 and put the plexiglass and have time or at least
8 see -- we can even put a stipulation in there.
9 If they're not satisfied with the windows they
10 can do whatever. And I'm open to adjusting our
11 agreement.

12 But I don't believe that per the
13 agreement now that we have the windows and stuff
14 in that they'll have another problem.

15 So what I would like is for our
16 license to be renewed and the agreement to stay -
17 - the prior agreement to stay in place.

18 CHAIRMAN ANDERSON: All right. So you
19 weren't asking for like a cover charge. I don't
20 know if you have a cover charge.

21 MR. ROUNTREE: I have that. That's
22 what I wanted to explain.

23 CHAIRMAN ANDERSON: All right. What
24 do you have?

25 MR. ROUNTREE: So on my endorsements

1 I have entertainment, dancing, cover charge and
2 sidewalk café.

3 CHAIRMAN ANDERSON: That's on your
4 current license.

5 MR. ROUNTREE: That's on my current
6 license.

7 MR. LOOTS: Can I see that?

8 CHAIRMAN ANDERSON: I don't mean to
9 laugh. The man has his license. I don't have it
10 in front of me. I don't have the license in
11 front of me so I just want to make sure that
12 everyone knows what's on the license.

13 All right. So he wants us -- you're
14 asking us to renew your license, your current
15 license as it stands.

16 MR. ROUNTREE: That's correct.

17 CHAIRMAN ANDERSON: That's all you're
18 asking for. All right.

19 MR. LOOTS: I want to just begin by
20 noting for the record that the ANC agreement does
21 not permit or even mention any endorsement other
22 than entertainment.

23 And it does state exclusively that the
24 sidewalk café and the entertainment endorsement
25 are permitted. So we'll leave that for whatever

1 it is.

2 It's the position of the ANC that it
3 has over the past year taken extraordinary steps
4 in cooperation with the neighbors to try to
5 facilitate a constructive dialogue with the
6 establishment to try to guide and assist the
7 establishment into coming into compliance with
8 what are admitted breaches of the settlement
9 agreement and demonstrated breaches of DC law
10 with respect to sound.

11 As to some of those issues which we
12 are not pursuing today there has been some
13 progress. For instance, trash management and the
14 behavior of some of the employees who are not
15 permitted to loiter or use the back entrance
16 except for garbage and whatever, grease removal.

17 The issue is and remains, has been and
18 will continue to be that of amplified music
19 emanating from the premises.

20 There's been testimony today that I
21 think makes it pretty much incontrovertible that
22 the establishment has been continuously in
23 violation of its settlement agreement in that
24 paragraph 6 of the settlement agreement requires
25 it to take whatever steps are required without

1 limitation to ensure that noise is not heard
2 outside the premises.

3 And your own investigator on cross
4 examination or on questions from the board
5 acknowledged that he could hear -- when he got
6 out of his car he could hear that there was music
7 playing inside.

8 You've had I think the very credible
9 testimony of neighbors, some living as far as a
10 block away that they can hear on a regular and
11 recurring basis can hear music, amplified music
12 that is directly traceable and clearly emanating
13 from this establishment.

14 And can hear it whether they have gone
15 through the full effort of the enforcement
16 procedures to document it through a DCRA
17 inspection.

18 Nonetheless they have testified under
19 oath and consistently and credibly that they can
20 hear it inside their house as to at least the
21 bass drum and the bass guitar.

22 We have had basically an admission
23 from the establishment that they're aware that
24 there is amplified music audible beyond their
25 premises and that it is happening.

1 They have a variety of excuses for why
2 they believe they have attempted in good faith to
3 mitigate it.

4 But it's not a question of good faith.
5 It's a question of results. And the settlement
6 agreement with the ANC and the DC noise
7 regulations are not questions of efforts in good
8 faith. They're questions of compliance.

9 And there is no question based upon
10 the testimony and evidence today including that
11 admission of the establishment and the testimony
12 of your own investigator that music, amplified
13 music is audible not only beyond the premises
14 which is directly contrary to the ANC agreement,
15 but is in fact audible blocks away inside of
16 people's houses. And it is causing a significant
17 disruption to those residences.

18 This location admittedly as is
19 demonstrated in exhibit 2, this location is
20 nested within a residential community. But so is
21 the entirety of the Barracks Row main street
22 restaurant community.

23 And as a restaurant, as a restaurant
24 with a CR license, as a restaurant with a CR
25 license even with an entertainment endorsement

1 that would be properly administered compliant
2 with noise standards and the ANC's agreement
3 would not be an issue.

4 But what they're doing basically, and
5 some of the witnesses kind of slipped into the
6 vernacular of calling it a nightclub.

7 Well, as the board well knows
8 nightclub is a whole different license and a
9 whole different set of regulations and a whole
10 different issue for the ANC.

11 What they have let there be no mistake
12 is a CR license with an entertainment
13 endorsement.

14 And that license does not permit them
15 to operate in the manner that they are of
16 basically turning it into a music venue, charging
17 cover charges. Even if they have a cover charge
18 endorsement I would respectfully submit that that
19 is not the critical question. It's just another
20 example of how they are behaving and what the
21 type of establishment they are operating is.

22 There are plenty of CR licenses on 8th
23 Street. There are plenty of CT licenses. There
24 are no nightclubs.

25 But none of them have caused the

1 disruption to the community and the continual
2 unabated noise violations that this particular
3 establishment has.

4 We accept that they have made efforts.
5 One could certainly question whether the efforts
6 have been sufficient because they've been
7 ineffective.

8 And testimony among other things from
9 Ms. Brooks that they were able to get
10 soundproofed windows approved by Historic
11 Preservation in a matter of weeks kind of belies
12 the undocumented assertions of the establishment
13 that they were told it can't be done. They won't
14 approve soundproof glass.

15 We submit that there has been an
16 ongoing violation, a failure to take the
17 corrective measures necessary and required by the
18 settlement agreement to soundproof the building.

19 There has been an assertion that on
20 Sunday -- a year late, but they installed some
21 plexiglass inside.

22 And it's now Wednesday. I can't say
23 I'm aware of any complaints between Sunday and
24 Wednesday of this week.

25 But a year of demonstrated problems is

1 far more indicative of what the community is
2 dealing with than the possibility, unproved, that
3 installation of a few sheets of plexiglass on the
4 inside of the windows is going to abate or
5 ameliorate the problem.

6 It is our position that the license
7 should be renewed as a CR license and that the
8 entertainment endorsement should be removed. And
9 if there is in fact a cover charge endorsement
10 and a dancing endorsement that those also should
11 be removed because those are really effectively
12 subsets of the entertainment.

13 There's been again admitted violations
14 of the hours for live entertainment. Admitted by
15 the establishment. They have not followed the
16 rules. They have not followed many rules at all.

17 But the ANC has tried as it may to get
18 them into compliance and it hasn't happened.
19 It's a year later.

20 So it's our request and position that
21 this board should revoke the entertainment
22 endorsement.

23 We also request that as a condition to
24 the renewal of the license that the board require
25 a financial audit to determine compliance with

1 the CR sales requirements. That is of much less
2 importance but I think it would be appropriate in
3 this situation.

4 And one other point I did want to make
5 is that the establishment as a restaurant serving
6 alcohol has in fact been embraced by the
7 neighborhood.

8 I've eaten there. Other neighbors
9 have eaten there. And the presence as Chairman
10 Jayaraman said, the presence of another diverse
11 type of cuisine on the street is nothing but good
12 for everybody.

13 The presence, however, of unabated
14 loud, late night, amplified music that is audible
15 blocks away is not in the community's interest
16 and it needs to be addressed.

17 One final point is certainly the ANC
18 would be amenable to considering at some point in
19 the future a request for reinstatement of the
20 entertainment endorsement.

21 As we mentioned there was an
22 establishment there with an entertainment
23 endorsement for decades. It was never an issue.

24 But prior to that the establishment
25 would have to demonstrate not just the intent,

1 but the ability and effect of being able to
2 contain its sound within the premises.

3 CHAIRMAN ANDERSON: Thank you. Do the
4 parties wish to file proposed findings of fact
5 and conclusions of law, or you want the board to
6 make a decision based on the testimony here
7 today?

8 Basically what that means Mr. Rountree
9 is that I know Mr. Loots knows. It's do you want
10 to wait for the transcript to come out for you to
11 review the transcript and then you say that these
12 are the facts and the law and this is how the
13 board should rule based on the presentation
14 today.

15 Or you want to waive your right to do
16 that and just have the board make a decision
17 based on the evidence that was presented today.

18 MR. ROUNTREE: I'm not going to waive
19 my right.

20 CHAIRMAN ANDERSON: I'm sorry?

21 MR. ROUNTREE: I would like the first
22 thing that you said.

23 CHAIRMAN ANDERSON: Which is what?

24 MR. ROUNTREE: Review the transcript.

25 CHAIRMAN ANDERSON: And then you're

1 going to put -- and so this is not bringing in
2 new evidence and new witnesses. This is --
3 you're going to say this is what the facts and
4 this is the conclusion of law that the board
5 should make based on what was presented today.

6 MR. ROUNTREE: That's correct.

7 CHAIRMAN ANDERSON: All right. So,
8 you should receive the transcript. There will be
9 email to you within three weeks and your proposed
10 findings of fact and conclusions of law will be
11 due 30 days to the board after you receive this.

12 And again this is not new information.
13 You can't go out and put in new information that
14 was not presented here today.

15 I'm sorry. This is you having -- I
16 know Mr. Loots knows because he's an attorney.

17 So basically you're writing the board
18 a legal brief. That's what that is.

19 MR. ROUNTREE: We'll go with your --

20 CHAIRMAN ANDERSON: I'm sorry, you'll
21 go with?

22 MR. ROUNTREE: We'll go with your
23 decision. I'll waive my right.

24 CHAIRMAN ANDERSON: What do you want
25 to do, sir?

1 MR. LOOTS: Well, if they're waiving
2 we're content to rest upon the board's
3 contemplation.

4 CHAIRMAN ANDERSON: Fine. That's
5 fine. As Chairperson of the Alcoholic Beverage
6 Control Board for the District of Columbia in
7 accordance with DC Official Code Section 25.74(b)
8 of the Open Meetings Act I move that ABC board
9 hold a closed meeting for the purpose of seeking
10 legal advice from our counsel on case number 19-
11 PRO-00078, District Soul Food & Lounge for the --
12 pursuant to DC Official Code Section 25.74(b)(4)
13 of the Open Meetings Act and deliberating upon
14 case number 19-PRO-00078, District Soul Food &
15 Lounge for the reasons cited in DC Official Code
16 Section 25.74(b)(13) of the Open Meetings Act.
17 Is there a second?

18 MR. SHORT: Second.

19 CHAIRMAN ANDERSON: Mr. Short has
20 seconded the motion. I will now take a roll call
21 vote on the motion now that it has been seconded.
22 Ms. Wahabzadah?

23 MS. WAHABZADAH: I agree.

24 CHAIRMAN ANDERSON: Mr. Short?

25 MR. SHORT: I agree.

1 CHAIRMAN ANDERSON: Mr. Cato?

2 MR. CATO: I agree.

3 CHAIRMAN ANDERSON: Ms. Crockett?

4 MS. CROCKETT: I agree.

5 CHAIRMAN ANDERSON: Mr. Anderson. I
6 agree. It appears that the motion has passed. I
7 hereby give notice that the ABC board will recess
8 these proceedings to hold a closed meeting in the
9 ABC board conference room pursuant to Section
10 25.74(b) of the Open Meetings Act.

11 This matter -- the board will issue a
12 decision I think within 60 to 90 days we'll issue
13 a decision. Thank you very much for your
14 presentations today.

15 I just want to advise District Soul
16 Food that I'm looking at your current license
17 says that and I think -- it says that your
18 proposed hours of live entertainment is 4 p.m. to
19 11 p.m. Sunday, Monday, Tuesday, Wednesday, 6
20 p.m. to 1 a.m. Thursday, Friday, Saturday.

21 So if you're having jazz brunch at 12
22 o'clock and having live entertainment your
23 license does not allow you to do that.

24 So if you're going to have any type of
25 live entertainment prior to 4 o'clock what you

1 would have to do is that you would have to come
2 back to the board and ask the board to change to
3 give you -- provide earlier hours. I just want
4 to say as an FYI based on what your current
5 license is.

6 I don't know if that's what's been
7 done, but I think from some of the exhibits it
8 was saying that there was brunch and there was
9 entertainment. And so if there's entertainment
10 you cannot have that based on your current
11 license.

12 MR. ROUNTREE: Can I clarify?

13 CHAIRMAN ANDERSON: No, you don't have
14 to --

15 MR. ROUNTREE: -- ask you a question.

16 CHAIRMAN ANDERSON: I'm just saying as
17 an FYI. I don't say that you're doing that, I'm
18 just saying as an FYI based on your current
19 license you cannot have live entertainment prior
20 to 4 p.m. on Sunday, Monday, Tuesday, Wednesday.
21 That's all I'm saying as an FYI.

22 I don't know what it is you're doing
23 there. I'm just saying as an FYI.

24 I know you have your license. You
25 have it there. So I'm just saying the hours are

1 specific for what's considered live
2 entertainment. And so you need to comply with
3 that. Okay?

4 MR. ROUNTREE: All right.

5 CHAIRMAN ANDERSON: Thank you for your
6 presentation today and have a great day.

7 (Whereupon, the above-entitled matter
8 went off the record at 5:39 p.m.)

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This is to certify that the foregoing transcript

In the matter of: District Soul Food

Before: DCABRA

Date: 01-08-20

Place: Washington, DC

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