

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

IN THE MATTER OF: :

Shoreditch Cooperative, LLC :  
t/a Duke's Grocery :  
1513 17th Street NW : Protest  
Retailer CR - ANC 2B : Hearing  
License No. 92298 :  
Case # 18-PRO-00024 :  
(Substantial Change - :  
Request to Change Hours :  
of Sidewalk Café) :

Wednesday  
July 11, 2018

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  
NICK ALBERTI, Member  
DONALD ISAAC, SR., Member  
JAMES SHORT, Member  
REMA WAHABZADAH, Member

**ALSO PRESENT:**

**ABIGAIL NICHOLS, PROTESTANT (DCCA)**

**ROBIN DIENER, PROTESTANT (DCCA)**

**RANDY DOWNS, ANC 2B05**

**DANIEL KRAMER, LICENSEE**

**NICK DELLEDONNE, ANC 2B04 (WITNESS)**

**DaVON TODD, ABRA INVESTIGATOR**

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

2 4:39 p.m.

3 CHAIRPERSON ANDERSON: All right. The  
4 next case on our calendar is a Protest Hearing,  
5 Case No. 18-PRO-00024, Duke's Grocery, License  
6 No. 92298.

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

9 MS. NICHOLS: I forget that this means  
10 just speak into this, right? You don't want to  
11 see us up there.

12 CHAIRPERSON ANDERSON: You're fine.

13 MS. NICHOLS: Okay.

14 CHAIRPERSON ANDERSON: As long as it's  
15 on, I can hear.

16 MS. NICHOLS: Good afternoon, Chairman  
17 Anderson, Members of the Board. I am Abigail  
18 Nichols, non-lawyer representative for the  
19 protestants, the Dupont Circle Citizens  
20 Association.

21 CHAIRPERSON ANDERSON: Good afternoon,  
22 Ms. Nichols.

1 MS. DIENER: Hi, I'm Robin Diener,  
2 President of the Dupont Circle Citizens  
3 Association.

4 CHAIRPERSON ANDERSON: Good afternoon,  
5 Ms. Diener.

6 MR. DOWNS: Good afternoon. My name  
7 is Randy Downs. I'm a neighborhood commissioner  
8 for Dupont Circle 2B05.

9 CHAIRPERSON ANDERSON: Good afternoon,  
10 Mr. Downs.

11 MR. KRAMER: Good afternoon. My name  
12 is Daniel Kramer. I'm the managing partner at  
13 Duke's Grocery and also not a lawyer.

14 CHAIRPERSON ANDERSON: Okay. Good  
15 afternoon, Mr. Kramer. And you are not here for  
16 a pub crawl, right?

17 MR. KRAMER: No, sir.

18 CHAIRPERSON ANDERSON: That's normally  
19 when I see you, so all right.

20 Just some administrative processes.  
21 When we had our Status Hearing, I think that  
22 Board Member Silverstein had stated that because

1 I think he is on ANC-2B, which is a party in this  
2 matter, so he had volunteered to say if the  
3 parties wanted him to recuse himself -- and I  
4 know Mr. Silverstein had recused himself during  
5 the ANC process, because since he is an ANC  
6 Commissioner and he is also on the Board, if he  
7 wants to, as an ANC Member, if you want to  
8 participate in a Board hearing, you cannot  
9 participate in the ANC process. And Mr.  
10 Silverstein had also recused himself from the ANC  
11 process.

12 However, at our pre-hearing  
13 conference, status conference, he had volunteered  
14 to say that if the parties wanted him to recuse  
15 himself from these proceedings, we would.

16 Mr. Kramer had sent an email saying  
17 that pursuant to Mr. Silverstein's request, that  
18 he would recuse himself if he was asked to. So  
19 the licensee had requested that Mr. Silverstein  
20 recuse himself and Mr. Silverstein has agreed to  
21 recuse himself from these proceedings. So  
22 therefore, he will not participate in these

1 matters. And you see he is not here today.

2 Okay.

3 All right. So yes, Ms. Diener? Yes,  
4 ma'am?

5 MS. DIENER: Well, I am sorry, I  
6 wasn't aware that Mike Silverstein wasn't going  
7 to be here, because he is our representative on  
8 the ABRA Board. And I have testified in his  
9 behalf and greatly respect him and since he is  
10 recused at the ANC level, he recuses himself  
11 specifically so that he can be here. So I guess  
12 it's too late to do anything about that.

13 CHAIRPERSON ANDERSON: That was the  
14 decision made by Mr. Silverstein.

15 MS. DIENER: I see. Okay.

16 CHAIRPERSON ANDERSON: The licensee  
17 did not request for him to recuse himself.

18 MS. DIENER: I see.

19 CHAIRPERSON ANDERSON: It's just Mr.  
20 Silverstein volunteered at the last hearing to  
21 say if --

22 MS. DIENER: Okay.

1 CHAIRPERSON ANDERSON: -- a party  
2 wants me to recuse myself, I will.

3 MS. DIENER: I understand.

4 CHAIRPERSON ANDERSON: Now, if I was  
5 a party and a Board Member says that okay, if you  
6 want me to recuse myself, I will, I will ask.  
7 And so it was because -- Mr. Silverstein is the  
8 one who had put it in play. The licensee did not  
9 on his own and I don't recall during the last  
10 hearing that the licensee had even asked him to  
11 recuse himself, that was just Mr. Silverstein  
12 basically volunteering that he would.

13 And as any good licensee, that's one  
14 less Board Member that I have to convince, so if  
15 a Board Member says that I'll recuse myself and  
16 if I don't have to convince him, I'll take that  
17 offer myself. So I just want it to clear that it  
18 was not -- the recusal was not initiated by the  
19 applicant, by the licensee. It was initiated by  
20 Mr. Silverstein himself.

21 MS. DIENER: I understand, sir.

22 CHAIRPERSON ANDERSON: And he is the

1 one, so if he --

2 MS. DIENER: Thank you.

3 CHAIRPERSON ANDERSON: -- had not  
4 volunteered to recuse himself, I think that he  
5 would have been here today, but that -- he was  
6 here all day today.

7 MS. DIENER: I'm sure he was.

8 CHAIRPERSON ANDERSON: But he is not--  
9 but that was his -- he made the offer and the  
10 offer was accepted by the licensee. And I'm --  
11 so I don't take it negatively that the licensee  
12 did not want him to be there, but he said like if  
13 you want me not to be there, I'll step aside.  
14 Okay. All right.

15 Are there any preliminary for us to  
16 start this hearing, are there any preliminary  
17 issues that needs to be addressed?

18 Are the parties interested in settling  
19 this matter? We can memorialize if you tell me  
20 what the terms of the settlement agreement is, I  
21 can memorialize it right here. We don't have to  
22 go through a formal hearing. I don't have a

1 problem with people at the table telling me that,  
2 okay, you know, we have come to an agreement.  
3 This is what it is and can you -- we can  
4 stipulate to these facts and this is what it is  
5 and we don't need to have a hearing.

6 No? I have to ask. Okay. All right.

7 MS. NICHOLS: The last time you asked  
8 that it was a very successful ask.

9 CHAIRPERSON ANDERSON: So that's why  
10 I am always going to ask. All right. And as I  
11 have always said, this is your neighborhood and  
12 well, Mr. Silverstein is not here, so none of us  
13 live in this neighborhood and I always prefer for  
14 the neighborhood residents to make their  
15 decisions about what is in the best interest of  
16 their neighborhood.

17 But we are appointed by the Mayor and  
18 confirmed by the City Council to make what we  
19 believe is in the best interest of the city as a  
20 whole and trust and believe that the decision  
21 that will be made by this Board is that we are  
22 going to think and listen and make a decision

1 what we believe is in the best interest of the  
2 neighborhood.

3 And unfortunately, when it comes to  
4 the Board making a decision, someone is not going  
5 to be happy, because when -- that's always when a  
6 trier of fact has to make a decision, someone is  
7 not going to be happy, but that is not our -- we  
8 will listen intently to both sides and make a  
9 decision what we believe is in the best interest  
10 of the city as a whole.

11 Yes, Ms. Nichols?

12 MS. NICHOLS: I have not given the  
13 Board copies of our exhibits. Shall I give them  
14 to you now? I mean, we will introduce them, but  
15 if you have -- I think generally you like to have  
16 them in front of you in a pile, don't you?

17 CHAIRPERSON ANDERSON: But let me ask  
18 a question. The documents you -- the PIF that  
19 was supposed to be exchanged seven days in  
20 advance, was that provided to the other side?

21 MS. NICHOLS: Yes. Yes, we --

22 CHAIRPERSON ANDERSON: Well, it was

1 supposed to have been provided to the other side  
2 and the Board, so what did -- so what documents  
3 is it that doesn't -- I mean, whatever documents  
4 that you have not -- does Mr. Kramer have these  
5 documents?

6 MS. NICHOLS: Yes, I just -- he had  
7 emails and I just handed him a hard copy.

8 CHAIRPERSON ANDERSON: Well, I think  
9 if the -- whatever -- if you emailed them, I  
10 believe that we -- I believe that the Board has--

11 MS. NICHOLS: So you already have  
12 them? I didn't --

13 CHAIRPERSON ANDERSON: Yeah.

14 MS. NICHOLS: -- ask staff to provide  
15 copies and you are saying that's no longer  
16 necessary.

17 CHAIRPERSON ANDERSON: No. If you  
18 emailed them seven days before, so you emailed to  
19 the other side and emailed to the Board, I have a  
20 folder here so --

21 MS. NICHOLS: Great.

22 CHAIRPERSON ANDERSON: -- I am hoping

1 and assuming --

2 MS. NICHOLS: I understand.

3 CHAIRPERSON ANDERSON: -- that all the  
4 documents are here.

5 MS. NICHOLS: I understand.

6 (Simultaneous speaking.)

7 CHAIRPERSON ANDERSON: Because as you  
8 know, when you are --

9 MS. NICHOLS: But in the past, there  
10 was -- yeah, in the past maybe longer ago than  
11 even you, we were always bringing them copies.

12 CHAIRPERSON ANDERSON: All right. But  
13 as you know, when you assume --

14 MS. NICHOLS: I'm ready if you --

15 CHAIRPERSON ANDERSON: -- so --

16 MS. NICHOLS: -- don't have them.

17 CHAIRPERSON ANDERSON: All right.

18 Okay.

19 MS. NICHOLS: All right.

20 CHAIRPERSON ANDERSON: All right. All  
21 right. So there are -- does both sides, are you  
22 guys familiar with a protest, the process and how

1 it will go?

2 Basically, the way the process is,  
3 that the applicant goes first. So the applicant  
4 -- well, when I said the applicant goes first,  
5 basically what is going to happen is that the  
6 Board will call it's witness. The Board's  
7 witness will go through the -- his report. The  
8 Board will ask questions of the Board's witness.

9 Once those questions are asked, then  
10 the -- I'll have the applicant ask questions of  
11 the Board's witness. And then the protestant  
12 will have an opportunity to ask questions of the  
13 Board witness, based on the testimony that was  
14 given.

15 Once the Board has gone through that  
16 process, then the applicant will present its case  
17 and the other side will have an opportunity to  
18 cross-examine. The Board will ask questions and  
19 then we will go -- then the side will have an  
20 opportunity to ask cross-examining questions.

21 The -- I'm hoping that this is not  
22 going to stretch for the entire night. What --

1 the way the process is supposed to be, there is 5  
2 minutes for opening statement and each side will  
3 have 90 minutes to present its case.

4 What I will say is that when you ask  
5 cross -- when you cross-examine witnesses, that  
6 is taking away from your time. So be careful in  
7 the sense of you spend most of the time in your  
8 direct questioning, not necessarily cross-  
9 examining another person.

10 I'm not going to necessarily be a  
11 stickler for time, but I just want folks to know  
12 that you have an hour and a half, each side, to  
13 present its case and that's again, that's like 3  
14 hours, so that should take us to 8:00. I'm  
15 hoping that that's not going to take us to 8:00,  
16 but I want to let you know that I will listen to  
17 your side however long it takes.

18 But I wanted to make sure that -- we  
19 have a time -- we do have some time constraints.  
20 I'm not going to say okay, 90 minutes is up, so  
21 you run out of time and -- although you haven't  
22 done your case. But I just want you to know that

1 to be mindful that there are some time  
2 constraints.

3 And one thing I will also let you know  
4 that once this hearing is over, the Board is  
5 going to deliberate and make a decision tonight.  
6 You are not going to know what the decision is  
7 tonight, but we will make a decision tonight,  
8 because I prefer to make decisions when it is  
9 fresh in my mind, not next week when I -- so I  
10 couldn't remember who said what.

11 Yes, ma'am?

12 MS. NICHOLS: But you will accept  
13 findings of fact?

14 CHAIRPERSON ANDERSON: Yes, if the  
15 parties -- I will offer that and if the parties  
16 decide to do that, but I'll make a preliminary  
17 decision tonight.

18 MS. NICHOLS: Sure. I just wanted to  
19 check.

20 CHAIRPERSON ANDERSON: Yeah, yeah.  
21 I'm just saying I will make a preliminary  
22 decision tonight again and then --

1 MS. NICHOLS: While it's fresh, yes.

2 CHAIRPERSON ANDERSON: -- while it's  
3 fresh and if the parties decide to do that, then  
4 we are not going to make a final decision, of  
5 course, until that comes in. And the Board will  
6 review it and then we will revisit our decision  
7 based on what comes in and maybe we might change  
8 our mind, maybe not, but we will -- but that's --  
9 I just wanted to let the parties know.

10 At least that's how I operate, because  
11 I prefer not to put the initial deliberation off  
12 until a couple weeks, because we might forget  
13 some important facts. Okay? All right.

14 So does the applicant wish to make an  
15 opening statement?

16 MR. KRAMER: Sure. I'm sorry, I  
17 thought the Board's witness went first.

18 CHAIRPERSON ANDERSON: No, this is  
19 what -- basically, the notes they give me is  
20 that, you know, the applicant makes an opening  
21 statement and the protestant makes an opening  
22 statement. And then I call, the Board calls its

1 witness.

2 MR. KRAMER: Alrighty.

3 CHAIRPERSON ANDERSON: And then we do  
4 that. And so at least by you -- it just kind of  
5 sets the table.

6 MR. KRAMER: Yes, sir.

7 CHAIRPERSON ANDERSON: So at least  
8 I'll know what it is that I'm looking for.

9 MR. KRAMER: Mr. Chairman and Members  
10 of the Board, good afternoon. My name is Daniel  
11 Kramer. I'm the managing partner at Duke's  
12 Grocery, which is the establishment before you  
13 and also at Duke's Counter, which is across from  
14 the zoo and Woodley Park.

15 By way of quick background, co-  
16 organized, in addition to the hospitality duties,  
17 some nonprofit festivals in Dupont Circle  
18 involving soccer and dance, which are free and  
19 open to the public.

20 I have been in DC for 10 years all in  
21 Northwest. I have a plot in the local community  
22 garden. I used to coach and referee youth

1 Lacrosse. And in a separate line of business, as  
2 Mr. Chairman alluded to, I have applied for,  
3 received and produced, at least 30 special events  
4 requiring permits from this very Board with zero  
5 violations and zero denials.

6 I have a great deal of respect for the  
7 work that this Board does and especially as also  
8 was referenced the time that goes into the work  
9 that you do.

10 We are asking for this Board to  
11 consider this application for exactly what it is,  
12 the extension of our patio time by one hour per  
13 night, so that we can continue to serve our  
14 guests instead of kicking them out.

15 Of course, I have a stated and vested  
16 opinion and position in this case, so it is  
17 important to hear other people describe Duke's  
18 Grocery.

19 From the Dupont Circle ANC in their  
20 resolution of support for this exact proposal, "A  
21 valued and welcome neighbor." Our neighbor, Ms.  
22 Carmella Conti, with whom we share a direct wall,

1 we are located in the series of adjacent  
2 rowhouses, so we share -- our business shares a  
3 direct wall with her apartment that she shares  
4 with her partner.

5 "Nothing but gracious, considerate,  
6 deceptive and tuned into the needs of the  
7 neighbor. The noise level has never been an  
8 issue. Although Daniel checks in frequently to  
9 see that we have not been inconvenienced."

10 Mr. Alex Haskell, who lives directly  
11 across the street from us. "Three sets of  
12 windows in my condo face 17th Street and look  
13 directly down and across on Duke's Patio. I  
14 cannot recall a single instance when I was  
15 bothered by or frankly even noticed noise coming  
16 from Duke's."

17 Mr. Yoosup Chang of Grubb's Pharmacy,  
18 which is the business two doors down. "Duke's  
19 has been active in cleaning up the area,  
20 especially the back alley and I believe they make  
21 the block safer. I hope you look favorably upon  
22 their request."

1                   Mr. Yordano Lopez, who was going to  
2                   come, but is I guess late, who lives, again,  
3                   directly across the street, "Your team is  
4                   courteous, respectful and has always made a point  
5                   to keep noise levels reasonable, mostly  
6                   undetactable."

7                   Since we opened almost five years ago,  
8                   five years ago, Duke's Grocery has been fortunate  
9                   to win many awards and accolades for our food,  
10                  which include, according to The City Paper, The  
11                  Post, the Washingtonian and others, the best  
12                  burger in the entire District.

13                  I'm proud of our chef, Jillian  
14                  Catterton and her hard working team, who make  
15                  that happen every day.

16                  We have been positively engaged in our  
17                  community, participating and/or sponsoring a  
18                  large number of local festivals and  
19                  organizations: The 17th Street Festival; The  
20                  Friends of Stead Park; Ross Elementary School  
21                  fundraisers; the High Heel Race; The Taste of  
22                  Dupont; Stead Park Sports Day; The British

1 Embassy Open House; the annual Pride Parade;  
2 Historic Dupont Circle Main Streets; the co-ed  
3 and various sports leagues in Stead Park.

4 We were fortunate to win a grant from  
5 the DC Government for the Trash Compactor  
6 Program. The only, to my knowledge, business in  
7 Dupont, in all of Dupont Circle, that has  
8 successfully done that in the interest of rat  
9 abatement efforts and on and on.

10 Since we opened, like I said almost  
11 five years ago, zero, not one, zero noise  
12 complaints and zero major ABRA violations. I am  
13 -- I would invite a very, very thorough reading  
14 of Investigator Todd's report, which mentions no  
15 emergency calls, no noise, no trash and no  
16 problems.

17 As a hospitality operator, our  
18 disposition is to welcome guests in. The current  
19 restriction on hours requires us to kick people  
20 out. If we, as a community, are lucky, the walk  
21 the block to other venues on our very block that  
22 have longer patio hours than we do. Otherwise,

1 they leave the neighborhood entirely, especially  
2 during the summer months, residents and guests  
3 alike start their evenings later because of the  
4 heat and kicking guests out is not a long term  
5 recipe for vibrancy and vitality.

6 The technical term, according to the  
7 Board, is that we are applying for a substantial  
8 change. In reality, we are not going to change  
9 much of anything. We are not, emphasis on not,  
10 asking for an entertainment license. We are not  
11 asking for a substantial change to a tavern or a  
12 nightclub. We are not going to put a speak  
13 outside and we don't have one at the moment.

14 We have a total of two speakers in the  
15 entire building. To be clear and as ABRA audits  
16 and quarterly reports will verify, our food sales  
17 overwhelm our drink sales. We are a restaurant  
18 that happens to have a liquor license, not a bar  
19 that happens to serve food.

20 We keep our kitchen open until 1:00  
21 a.m. on Wednesdays and Thursdays and until 2:00  
22 a.m. Fridays and Saturdays. This was due to

1 repeated guest requests for more late night  
2 dining options in Dupont Circle.

3 The application before you is also due  
4 to repeated guest requests for us to keep the  
5 patio open longer. This extra hour of patio  
6 service will contribute to the overall character  
7 of 17th Street, provide a better late night  
8 dining option in a part of the city that is  
9 sorely lacking in this department. It will  
10 increase wages. It will increase worker take-  
11 home pay and it will increase tax receipts to the  
12 District of Columbia.

13 As I mentioned, I have a stated  
14 interest in this case. I would, please, ask you  
15 to read those letters of support from our five  
16 immediate direct neighbors, the ones who would  
17 theoretically be most affected if there was some  
18 sort of problem.

19 I would also point you to the long  
20 list of supporters in our community who have  
21 registered their support as well. We are an  
22 individual establishment making an individual

1 application. I would ask this Board to judge the  
2 application on our record and on our merits. I  
3 appreciate your consideration and I look forward  
4 to this conversation.

5 CHAIRPERSON ANDERSON: All right.  
6 Thank you. Ms. Nichols, if you want to make an  
7 opening statement or you want --

8 MS. NICHOLS: It sounded as if he  
9 presented his case, so I don't know where we are.

10 CHAIRPERSON ANDERSON: Well, an  
11 opening statement is he is telling me what is it  
12 that --

13 MS. NICHOLS: Okay.

14 CHAIRPERSON ANDERSON: -- you are  
15 telling me what is it that you are seeking and  
16 what is it that he is going to prove.

17 MS. NICHOLS: Okay.

18 CHAIRPERSON ANDERSON: I assume as we  
19 go by, he will --

20 MS. NICHOLS: I have an opening.

21 CHAIRPERSON ANDERSON: -- give more  
22 information about what he has presented, but it

1 was just an overview, so go ahead.

2 (Whereupon, at 5:00 p.m. the Protest  
3 Hearing continued into the evening session.)  
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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 MS. NICHOLS: All right. Good  
4 afternoon. I am Abigail Nichols. As I said  
5 before, I am a non-attorney representative of the  
6 Dupont Circle Citizens Association managing the  
7 presentation of their protest to the Board.

8 The Dupont Circle Citizens Association  
9 argues that longer hours of outdoor alcohol  
10 service at Duke's would be inappropriate under  
11 the clause of appropriateness with respect to  
12 licensing. Later hours would be injurious to the  
13 peace, order and quiet in a residential  
14 neighborhood.

15 Granting later hours is tantamount to  
16 licensing noise violations, because we do not  
17 think that this case is really about Duke's  
18 alone.

19 The -- we are going to talk about the  
20 history of the neighborhood, the standards that  
21 have been in place for the neighborhood for more  
22 than 20 years. We will describe the current

1 environment in which Duke's operates. We will  
2 show the existing noise situation appears to  
3 exceed the noise, the levels of noise called for  
4 in DC Law.

5 And we will show that the levels of  
6 noise from this patio will not be more of the  
7 same. Things get louder as the night progresses.  
8 And your decision will set a community standard.  
9 We think this is a very important case regarding  
10 hours on the 17th Street Corridor.

11 We will be emphasizing the block from  
12 P to Q, although the Moratorium Zone that you are  
13 familiar with goes another block more. That's  
14 it.

15 CHAIRPERSON ANDERSON: All right.  
16 Thank you. All right. The Board will call its  
17 first witness. I'll call Mr. DaVon todd.

18 Can you raise your right hand, please,  
19 Mr. Todd?  
20 Whereupon,

21 INVESTIGATOR DaVON TODD  
22 was called as a witness by the ABRA Board and

1 having been first duly sworn, assumed the witness  
2 stand and was examined and testified as follows:

3 INVESTIGATOR TODD: I affirm.

4 CHAIRPERSON ANDERSON: Okay. Have a  
5 seat, please. Make sure that you pull the  
6 microphone close to you, please.

7 INVESTIGATOR TODD: Thank you.

8 DIRECT EXAMINATION

9 CHAIRPERSON ANDERSON: Can you state  
10 your name for the record?

11 THE WITNESS: DaVon Todd, Investigator  
12 for ABRA.

13 CHAIRPERSON ANDERSON: And how long  
14 have you worked for ABRA?

15 THE WITNESS: Since April 18, 2018 --  
16 2017.

17 CHAIRPERSON ANDERSON: All right. And  
18 what are your duties and responsibilities, sir?

19 THE WITNESS: To conduct  
20 investigations and inspections of ABC-licensed  
21 establishments in the District of Columbia.

22 CHAIRPERSON ANDERSON: Have you ever

1 done a Protest Hearing before?

2 THE WITNESS: Yes, sir.

3 CHAIRPERSON ANDERSON: Okay. And are  
4 you familiar with this Protest Hearing, this  
5 protest case? This case?

6 THE WITNESS: Yes, yes, sir.

7 CHAIRPERSON ANDERSON: How are you  
8 familiar with this case?

9 THE WITNESS: I was assigned to  
10 investigate the protest of Duke's Grocery by the  
11 Dupont Circle Citizens Association.

12 CHAIRPERSON ANDERSON: Now, did there  
13 -- did you write a report regarding your  
14 investigation?

15 THE WITNESS: Yes, sir.

16 CHAIRPERSON ANDERSON: And can you  
17 share with us what it is that you were able to  
18 find out as a result of writing this report?

19 THE WITNESS: All right. Seeing as  
20 Mr. Kramer did a thorough overview of the  
21 establishment regarding Duke's Grocery, however,  
22 when I visited the establishment on multiple

1 occasions and speaking to Mr. Kramer on Thursday,  
2 June 14, 2018, approximately 11:00 a.m., I met  
3 with him at his establishment to discuss the  
4 issues pertaining to Duke's Grocery, which was  
5 pointed out by the DCCA as the appropriateness of  
6 an extra hour added to the sidewalk cafe.

7 When I met with Mr. Kramer, he stated  
8 that he was aware of the protest of the  
9 establishment application. Additionally, Mr.  
10 Kramer stated that DCCA issue for Duke's  
11 Grocery's protest is that they just don't want  
12 it.

13 Mr. Kramer stated that on several  
14 occasions members of the DCCA and himself met  
15 regarding the issues for the protest. And during  
16 those meetings, the members did not address the  
17 matters for the protest.

18 Mr. Kramer stated that DCCA described  
19 his grocery as a great addition to a  
20 neighborhood, as a model neighbor. Mr. Kramer  
21 stated that the establishment never received any  
22 complaints since opening or had any incidents of

1 MPD responding to the establishment.

2 Mr. Kramer stated that the Dupont  
3 Circle Advisory Neighborhood 2B, the Commissioner  
4 Randy Downs and Daniel Warwick have submitted a  
5 letter of support regarding Duke Grocery's  
6 substantial change application.

7 Mr. Kramer also provided a list of  
8 supporters along with emails from neighbors in  
9 the community. He is also committed to the  
10 community in many way by engaging in the  
11 community by associating and sponsoring a large  
12 number of local organizations, including the 17th  
13 Street Festival; Friends of Stead Park; Ross  
14 Elementary Fundraisers; the High Heel Race; The  
15 Taste of Dupont; University Club Stead Park  
16 Sports Day; the British Embassy Open House; the  
17 Pride Parade; Historic Dupont Circle Main Streets  
18 and Recreational Sports Leagues in Stead Park.

19 Of all of the establishments -- of all  
20 of the events that I just stated, Mr. Kramer did  
21 emphasize the fact that all of the sales were  
22 geared towards food and not alcoholic beverages.

1                   On that day also, Mr. Kramer provided  
2 a tour of the establishment, which I listed into  
3 my report as well.

4                   On June 14, 2018, I met with Ms.  
5 Nichols, Abigail Nichols, the representative for  
6 the DCCA regarding the communicating issues  
7 concerning the protest of Duke's Grocery  
8 substantial change application. I met with Ms.  
9 Abigail Nichols on the 22nd of June 2018  
10 regarding those issues.

11                   Ms. Nichols stated that the issue for  
12 Duke's Grocery is about the appropriateness,  
13 again, of late hours on the sidewalk cafe.

14                   Ms. Diener is also a representative,  
15 the President of DCCA, that I met with that day  
16 on the 22nd of June. She stated that at least 20  
17 years the ANC -- the ANC and the DCCA have been  
18 making sure that business in the area are working  
19 cooperatively, especially regarding the issue of  
20 noise. Ms. Diener also stated that there is a  
21 system in place that works, that simply works.

22                   Ms. Diener stated that the noise

1 coming from Duke's Grocery sidewalk cafe along  
2 with other surrounding establishments is  
3 currently tolerable. Only due to the nature of  
4 the business ending at an appropriate time.

5 Ms. Nichols stated that the noise that  
6 was coming from the sidewalk cafe is an ambient  
7 source and not because Duke's Grocery is playing  
8 loud amplified noise.

9 Later in my report, you will also find  
10 that Duke's Grocery has not been an issue for  
11 noise, according to the Noise Task Force in which  
12 DCRA and ABRA have visited, made visits to the  
13 establishment.

14 Again, the protest issues are adverse  
15 impact on the peace, order and quiet of the  
16 residents in the associating area. Duke's  
17 Grocery is currently located in an MU-18 Zone.  
18 If you are familiar with 17th Street, the 1500  
19 Block of 17th Street on, I want to say, the west  
20 location in front of Duke's Grocery is a row of  
21 residences on the 1500 Block, the same block as  
22 Duke's Grocery is a plethora of different

1 businesses and commercial stores.

2 The establishment was also visited at  
3 least eight times. During those visits,  
4 Investigators for ABRA did not find any  
5 violations.

6 CHAIRPERSON ANDERSON: Just a quick  
7 question. Like what time of day did you guys  
8 visit the establishment?

9 THE WITNESS: I visited the  
10 establishment twice during the daytime. However,  
11 after meeting with Ms. Nichols and Ms. Diener,  
12 the issue regarding the extended hours were  
13 geared towards the nighttime hours of the  
14 establishment. Therefore, the remaining times,  
15 six times, that were visited were at night.

16 CHAIRPERSON ANDERSON: So just tell  
17 me, as far as other establishments, what other  
18 establishments are in the area of Duke's?

19 THE WITNESS: So currently there are  
20 31 licensed establishments, ABC establishments in  
21 a 1,200 feet radius of Duke's Grocery.

22 CHAIRPERSON ANDERSON: And so this is

1 regarding the operation of a sidewalk cafe. What  
2 -- in this particular area, I think there -- what  
3 are Duke's current hours?

4 THE WITNESS: Duke's current hours of  
5 operation are 8:00 a.m. to 11:00 p.m., that's  
6 Sunday through Thursday, and 8:00 a.m. to 12:00  
7 a.m. on Friday and Saturday.

8 CHAIRPERSON ANDERSON: Okay. So  
9 regarding -- are there other places within that  
10 area that has a sidewalk endorsement?

11 THE WITNESS: Yes, sir.

12 CHAIRPERSON ANDERSON: And what are  
13 those? What are the hours, at least since this  
14 issue concerns sidewalk endorsements, so what are  
15 the hours for those other establishments as far  
16 as --

17 THE WITNESS: Well, it's 11  
18 establishments, ABC establishments that currently  
19 have sidewalk cafes and/or summer gardens with  
20 the establishment. Would you like all of them?

21 CHAIRPERSON ANDERSON: I'm just trying  
22 to find out like what are the hours?

1                   THE WITNESS:  It's basically it  
2 varies, because some of those establishments also  
3 have settlement agreements.  However, the main  
4 time, I would say, is about 10:00 a.m. to 12:00  
5 a.m. or 1:00 a.m.

6                   CHAIRPERSON ANDERSON:  But are there  
7 other establishments with -- who have sidewalk  
8 endorsements that has the hours that they are  
9 asking for or would this be the only place in the  
10 neighborhood that would have these hours?

11                   THE WITNESS:  Yes, sir.  Yes, sir.  
12 There is actually a hotel that is listed within  
13 those 11 ABC establishments that has operation  
14 for 24 hours.

15                   CHAIRPERSON ANDERSON:  Okay.  So you  
16 are saying out of the 11 -- so approximately, how  
17 many other places out of the 11 operate --  
18 approximately how many other places have hours  
19 consistent with what is being requested by this  
20 applicant?  I'm trying to be consistent with what  
21 is being -- I'm trying to figure out what is  
22 going on the neighborhood, that's what I'm trying

1 to ask you.

2 THE WITNESS: In terms of the  
3 operation on the sidewalk cafe, correct?

4 CHAIRPERSON ANDERSON: Yes, because  
5 remember they are asking for, at least what I'm  
6 hearing is that if we were to approve this, then  
7 we are setting a precedent for the area. So I  
8 don't know what --

9 THE WITNESS: Gotcha.

10 CHAIRPERSON ANDERSON: -- the area is  
11 like. So since you listed that there were 11  
12 facilities with sidewalk endorsements, I'm just  
13 trying to find out what are their hours  
14 generally? If you have that information, I mean,  
15 are their hours consistent with what is being  
16 asked by Duke or is it inconsistent with what is  
17 being asked?

18 THE WITNESS: It is being consistent  
19 to answer your question.

20 CHAIRPERSON ANDERSON: So it's  
21 consistent with the hours that are being  
22 requested by -- or inconsistent by what is being

1 asked by -- that has been -- well, let me ask you  
2 a question.

3 Tell me, not to confuse myself, all  
4 right, what the 11 establishments are and what  
5 are their hours for the sidewalk cafe, please.

6 THE WITNESS: No problem.

7 CHAIRPERSON ANDERSON: All right.

8 THE WITNESS: Dupont Italian Kitchen,  
9 it's 10:30 a.m. to 2:00 a.m. Sunday, 11:00 a.m.  
10 to 2:00 a.m. Monday through Thursday, 11:00 a.m.  
11 through 3:00 a.m. on Friday and 10:30 a.m.  
12 through 3:00 a.m. on Saturday.

13 Beacon Hotel and Corporate Quarters is  
14 7:30 a.m. --

15 CHAIRPERSON ANDERSON: All right. Let  
16 me ask -- all right. In your report --

17 THE WITNESS: Yes.

18 CHAIRPERSON ANDERSON: -- did you list  
19 in your report the operation hours of these  
20 establishment, of their sidewalk cafe  
21 specifically?

22 THE WITNESS: Yes, sir.

1 CHAIRPERSON ANDERSON: So I'm not  
2 necessarily asking you what are the hours --

3 THE WITNESS: What is the hours --

4 CHAIRPERSON ANDERSON: -- for the --

5 THE WITNESS: -- per se.

6 CHAIRPERSON ANDERSON: Yeah. But just  
7 the hours for the sidewalk cafe for these  
8 establishments. If you have it, if you don't, if  
9 it's not in your report, then you don't need to  
10 report it. Just say it's not in your report.  
11 I'm just asking did you list --

12 THE WITNESS: Well, I did not -- it is  
13 listed as far as how -- what hours of operation  
14 for each establishment.

15 CHAIRPERSON ANDERSON: Right.

16 THE WITNESS: That piece is listed and  
17 the hours of sale is listed in the report.

18 CHAIRPERSON ANDERSON: But you didn't  
19 specifically list the operation of the sidewalk  
20 cafe?

21 THE WITNESS: Yes, I did.

22 CHAIRPERSON ANDERSON: All right. The

1 reason I'm saying is because you are stating and  
2 I hear mumbling in the audience, so that's why,  
3 so I don't know, so I'm not trying to trick you.

4 THE WITNESS: Okay.

5 CHAIRPERSON ANDERSON: So if it's not  
6 listed in your report, then we can move on from  
7 this.

8 THE WITNESS: So --

9 CHAIRPERSON ANDERSON: Someone -- I  
10 assume someone will tell us what is the operation  
11 of the sidewalk cafe for the other facilities  
12 that you don't have that information on.

13 THE WITNESS: So what I was just  
14 basically stating regarding those 11  
15 establishments --

16 CHAIRPERSON ANDERSON: Yes.

17 THE WITNESS: -- those all have  
18 sidewalk cafes.

19 CHAIRPERSON ANDERSON: All right.

20 THE WITNESS: Out of that whole list,  
21 which can be also -- which can be found in my  
22 report, the hours of operation and the hours of

1 sales. What I did not is the hours of the seven  
2 establishments that have summer gardens that is  
3 also listed as the hours of operation and hours  
4 and sales.

5 CHAIRPERSON ANDERSON: Okay.

6 THE WITNESS: So both -- all of that  
7 information regarding both endorsements on an ABC  
8 License is listed.

9 CHAIRPERSON ANDERSON: Okay. All  
10 right. That's fine. All right. Is there  
11 anything else in your report that you want to  
12 share with the Board?

13 THE WITNESS: Mr. Kramer, on the visit  
14 that I had with him initially, spoke about trash  
15 issues. He has a trash compactor in the back of  
16 this establishment, which is also listed as an  
17 exhibit, which he received from the Government  
18 federal funding for a trash compactor to be in  
19 the back of the establishment, in which he has  
20 also spoke to different licensees in the area  
21 with collaboration on reducing trash in the alley  
22 And again, during those eight visits,

1 Investigators did not see any type of trash issue  
2 violations.

3 CHAIRPERSON ANDERSON: Okay. What  
4 about noise?

5 THE WITNESS: Say it again?

6 CHAIRPERSON ANDERSON: What about  
7 noise?

8 THE WITNESS: Noise. No, no noise as  
9 well, as it was stated earlier, no noise issues,  
10 especially from the nor any other ABRA  
11 Investigators that visited the establishment.

12 CHAIRPERSON ANDERSON: Okay. Is there  
13 anything else in your report that you want to  
14 bring to the attention of the Board?

15 THE WITNESS: In regards to the calls  
16 for service, I sent out an email to the MPD Crime  
17 Analysis Unit requesting the calls for service of  
18 1513 17th Street, which is Duke's Grocery and  
19 received -- and learned that no calls for service  
20 had been issued during the time frame requested,  
21 which was from June of 2017 to June of 2018.

22 CHAIRPERSON ANDERSON: Okay.

1 THE WITNESS: That's all.

2 CHAIRPERSON ANDERSON: All right. Are  
3 there exhibits attached to your report? So can  
4 you tell me what the exhibits are? Let -- can  
5 you identify them and just tell us what the  
6 exhibits are, please?

7 THE WITNESS: No problem. Exhibit 1  
8 is an acknowledgement letter from -- excuse me  
9 not from, but to Ms. Diener, the DCCA.

10 Exhibit 2 through 4 are exhibits of  
11 Duke's Grocery menu.

12 Exhibit 5 is a letter from the Dupont  
13 Circle Citizens Association based on the protest.

14 Exhibit 6 is the letter from the ANC-  
15 2B, Daniel Warwick.

16 Exhibit 7 are emails from supporters.

17 Exhibit 8 are lists of supporters.

18 Exhibit 9 is a photo of the front of  
19 the establishment.

20 Exhibit 10 is a photo of the first  
21 floor.

22 Exhibit 11 is a photo of the second

1 floor.

2 Exhibit 12 is a photo of the back of  
3 the establishment.

4 Exhibit 13 is an email to DCCA  
5 representative, Abigail Nichols.

6 Exhibit 14 is a copy of the Zoning  
7 Map.

8 Exhibit 15 is a copy of the zoning  
9 explanation.

10 Exhibit 16 is a copy of the GIS  
11 regarding the ABC establishments within 1,200  
12 feet.

13 Exhibit 17 is a copy of GIS regarding  
14 the rec center, schools and libraries.

15 Exhibit 18 is a photo of the  
16 neighboring establishments south of Duke's  
17 Grocery.

18 Exhibit 19 is a photo of the  
19 neighboring establishments north of Duke's  
20 Grocery.

21 Exhibit 20 is a photo of neighboring  
22 establishments north of Duke's Grocery.

1                   Exhibit 21 is a photo of residential  
2                   apartments.

3                   And Exhibit 22 is the MPD email  
4                   request for calls for service.

5                                   (Whereupon, the above-  
6                                   referred to documents were  
7                                   marked as ABRA Exhibit No. 1  
8                                   through 22 for  
9                                   identification.)

10                   CHAIRPERSON ANDERSON: All right. Is  
11                   that it?

12                   THE WITNESS: Yes, sir.

13                   CHAIRPERSON ANDERSON: All right.  
14                   Thank you. Do we have any questions for Mr. Todd  
15                   by any Board Members?

16                   MEMBER ALBERTI: I do.

17                   CHAIRPERSON ANDERSON: Mr. Alberti?

18                   MEMBER ALBERTI: Investigator Todd,  
19                   did you look at the DDOT endorsement for the  
20                   sidewalk cafe for this establishment?

21                                   (No audible answer.)

22                   MEMBER ALBERTI: Where I'm going with

1 this, I was wondering do you know what the  
2 capacity on the DDOT endorsement is?

3 THE WITNESS: No, I do not.

4 MEMBER ALBERTI: Thank you. So am I  
5 correct, I'm looking at your list of places, 11  
6 places, that have sidewalk cafe endorsements.  
7 And I see several that have -- is it true that  
8 Annie's Paramount Steak House has 24 hour  
9 operation for its sidewalk cafe?

10 MR. DOWNS: They close. Sorry.

11 MEMBER ALBERTI: Pardon?

12 MR. DOWNS: That was me.

13 MEMBER ALBERTI: No. I'm asking the  
14 Investigator.

15 MR. DOWNS: Yes. My apologies.

16 MEMBER ALBERTI: We will hear from you  
17 all later.

18 THE WITNESS: Say it again.

19 MEMBER ALBERTI: That's what you have  
20 listed here. Am I -- is that correct?

21 THE WITNESS: Yes.

22 MEMBER ALBERTI: Okay.

1 THE WITNESS: That's just for  
2 operation.

3 MEMBER ALBERTI: Right, right. I get  
4 that, but that means that people can be eating  
5 out there 24 hours a day at Annie's?

6 THE WITNESS: Yes, sir.

7 MEMBER ALBERTI: On the sidewalk cafe?

8 THE WITNESS: Yes, sir.

9 MR. DOWNS: No.

10 MS. NICHOLS: Yes, they can.

11 CHAIRPERSON ANDERSON: Well --

12 (Chair Bangs Gavel)

13 CHAIRPERSON ANDERSON: All right. All  
14 right. Okay.

15 MEMBER ALBERTI: I just wanted to --

16 CHAIRPERSON ANDERSON: Hold on. Hold  
17 on, Mr. Alberti. All right. What is going to  
18 occur, questions are being asked of the  
19 Investigator. The Investigator will respond. I  
20 don't know if you are a witness, but there will  
21 be an opportunity for cross-examination and for  
22 witnesses to testify what is going on in the

1 neighborhood.

2 I do not live in the neighborhood. I  
3 do not know what that is. And so at the  
4 appropriate time, if someone has information, if  
5 they are called as a witness, they can testify to  
6 that. I will -- I'm asking that we -- I know we  
7 are all concerned about the neighborhood and we  
8 want to make sure the information is provided, so  
9 I would just ask that, please, be mindful of  
10 these proceedings.

11 It is being transcribed, so we have  
12 the court reporter that is taking everything that  
13 is going on and if we have information in the  
14 background, then we can't have that. Okay? Go  
15 ahead, Mr. Alberti.

16 MEMBER ALBERTI: And you also have the  
17 Dupont Italian Kitchen that has sidewalk cafe  
18 hours until 2:00 a.m.?

19 THE WITNESS: Yes, sir.

20 MEMBER ALBERTI: That's correct?

21 THE WITNESS: Yes.

22 MEMBER ALBERTI: And that comes from?

1 Where did you get this information?

2 THE WITNESS: That information comes  
3 from ABRA records within the file.

4 MEMBER ALBERTI: Okay. Thank you. I  
5 have no further questions.

6 CHAIRPERSON ANDERSON: Any other  
7 questions by any of the Board Members? Yes, Mr.  
8 Short?

9 MEMBER SHORT: Good afternoon still,  
10 Investigator Todd.

11 THE WITNESS: Good afternoon.

12 MEMBER SHORT: During your  
13 investigation, how many night visits did you make  
14 and what hours were those during the night hours,  
15 evening hours?

16 THE WITNESS: Six occasions and all  
17 ranging from, approximately, 8:30 p.m. until --

18 MEMBER SHORT: Until when?

19 THE WITNESS: -- when the hours of  
20 operation on the sidewalk cafe ended, which is  
21 11:00 p.m., Monday -- Sunday through Thursday,  
22 and I believe one occasion was past the time of

1 operation on a weekend, which was Friday, which  
2 was 12:00 a.m. on Friday and Saturday.

3 MEMBER SHORT: Did you observe any  
4 noise violations or disruptive conduct at any of  
5 these locations?

6 THE WITNESS: No, I did not.

7 MEMBER SHORT: Would you describe the  
8 neighborhood as mostly peaceful and quiet?

9 THE WITNESS: Yes. Yes, sir.

10 MEMBER SHORT: Okay. During the day  
11 how many visits did you make?

12 THE WITNESS: Two occasions.

13 MEMBER SHORT: Would you describe the  
14 demeanor of the neighborhood on those occasions?

15 THE WITNESS: During those visits, the  
16 flow of traffic was pretty moderate. It is a  
17 busy commercial zone. It is a Mixed-Use Zone, so  
18 you have commercial vehicles that are traveling  
19 through that area. The flow of pedestrian  
20 traffic was pretty moderate, it was pretty much  
21 of a good flow during the day.

22 Again, no trash violations, any noise

1 issues. Most of the noise that I did hear was  
2 because of the ambient sound in the area at the  
3 moment. You have Stead Park that is behind,  
4 which is east of Duke's Grocery and which patrons  
5 are out there enjoying soccer games or any type  
6 of outdoor activities, that is an additional  
7 noise issue to -- not noise issue, but it is an  
8 additional cause for ambient noise.

9 MEMBER SHORT: Okay. Well, thank you.  
10 Your report seems to be pretty complete. Thank  
11 you for the information that is provided.

12 And did you talk to any of the  
13 community members?

14 THE WITNESS: Other than the DCCA, no,  
15 I did not.

16 MEMBER SHORT: Did you talk to any  
17 business community persons, other than the  
18 applicant?

19 THE WITNESS: I did not.

20 MEMBER SHORT: Okay. Thank you.  
21 That's all I have, Mr. Chair.

22 CHAIRPERSON ANDERSON: Any other

1 questions by any other Board Members? All right.  
2 Mr. Kramer, do you have any questions for the  
3 Investigator?

4 MR. KRAMER: Yeah.

5 CROSS-EXAMINATION

6 BY MR. KRAMER:

7 Q Investigator Todd, good to see you,  
8 sir.

9 A Likewise.

10 Q So I just wanted to clarify. I'm just  
11 looking at the days and hours of the eight visits  
12 that ABRA Investigators made to our premises.  
13 And I'm noting that the times were one during  
14 daylight hours. This is on page 9 of your  
15 report, sir. And that the other times were as  
16 late as 10:00 p.m., 11:10 p.m., 11:30 p.m., and  
17 12:50 a.m. Just confirming that those late night  
18 hours were indeed the correct times of the ABRA  
19 Investigator visits.

20 A Yes, sir.

21 Q And you also stated sir, thank you,  
22 that this is a Mixed-Use, by the Zoning it is a

1 Mixed-Use Commercial/Residential/Multiple-Use  
2 District, not a strictly Residential District,  
3 correct, sir?

4 A That's correct.

5 Q Thank you so much.

6 A MU-18.

7 Q Thank you so much.

8 CHAIRPERSON ANDERSON: That's it?

9 MR. KRAMER: Thank you.

10 CHAIRPERSON ANDERSON: Ms. Nichols,  
11 any questions for the Investigator?

12 MS. NICHOLS: And here I would seek  
13 your guidance. There are some points that I  
14 might offer information.

15 CHAIRPERSON ANDERSON: No, you can't.  
16 You have to -- all right. This is what you do.  
17 The report -- so if there is -- if you have  
18 concerns with the report, maybe you could ask him  
19 or if he has incorrect information on the report,  
20 then ask him about the report and ask him about--

21 MS. NICHOLS: Okay.

22 CHAIRPERSON ANDERSON: -- it. And if

1 he can't answer it, he can't answer it, but try  
2 to ask him questions about stuff in the report  
3 that if you disagree with, then ask him where he  
4 got the information from from that perspective.

5 Remember, you are not testifying. You  
6 are asking him questions. If he can't answer, he  
7 can't. All right.

8 MS. NICHOLS: Could I just bring  
9 points in the report to your attention that I  
10 will address aspects of that later when I  
11 testify?

12 CHAIRPERSON ANDERSON: Well, you don't  
13 -- I mean, the bottom line is that if -- the  
14 purpose of you asking him questions is asking him  
15 questions about his report and what was testified  
16 to.

17 MS. NICHOLS: Okay.

18 CHAIRPERSON ANDERSON: Now, if later  
19 on you have other witnesses that were going to  
20 testify to something differently, then that's  
21 fine, but I'm just saying if there are things in  
22 the report that you have concerns with, ask him

1 about where he got the information from or  
2 information from that and --

3 MS. NICHOLS: I'll try it and you can  
4 correct me as I go.

5 CHAIRPERSON ANDERSON: Well, that's  
6 Mr. Kramer -- I mean, all I know -- I know none  
7 of you are attorneys, so he can object --

8 MS. NICHOLS: Yes.

9 CHAIRPERSON ANDERSON: -- if he  
10 disagrees with it. And if I think that you are  
11 going places, I might --

12 BY MS. NICHOLS:

13 Q With respect to the question Mr.  
14 Kramer just asked you, is the Zoning across the  
15 street from Duke's the same as the Mixed-Use  
16 Zoning on the side of the street that Duke's is a  
17 member of, is seated in?

18 A Yes, I would believe so.

19 Q And I think your -- I would just --  
20 your own exhibits show the fact that it is  
21 different actually across the street.

22 On page 9 in -- at the time of your

1 visits, would you confirm that you saw a  
2 television on Duke's patio?

3 A The time that I seen a television on  
4 Duke's patio was Thursday, June 16th.

5 Q Okay.

6 A June 14th, excuse me, 2018. That was  
7 from 11:30 a.m. to 12:15 p.m.

8 Q And the -- your photography is much  
9 better than mine in my exhibits. The picture  
10 that you show from across the street --

11 CHAIRPERSON ANDERSON: Why don't you  
12 refer to the exhibit, please.

13 MS. NICHOLS: Okay. Sure.

14 BY MS. NICHOLS:

15 Q I'm talking about the Zoning Map is  
16 Exhibit 14, the issue of what the zoning is on  
17 each side of the street. It's a picture, it's  
18 got a -- it's this picture. Let's see, I got two  
19 PDI -- two PDFs. One was the report as a whole,  
20 which I'm thumbing through rather ineffectually  
21 now and then there were pictures that were  
22 separate. Let's see if they have -- I'm just

1 going to show you the picture, because otherwise  
2 -- this was some -- this -- these pages are from  
3 the PDF that came separate from --

4 CHAIRPERSON ANDERSON: Well, show that  
5 to Mr. Kramer.

6 MS. NICHOLS: Yes.

7 CHAIRPERSON ANDERSON: And so at least  
8 he will know what --

9 MS. NICHOLS: It's that picture.

10 CHAIRPERSON ANDERSON: Let me see, let  
11 me look and identify it.

12 MS. NICHOLS: It's a picture of a  
13 residence.

14 CHAIRPERSON ANDERSON: Let me see, ask  
15 Mr. -- let's see.

16 MEMBER ISAAC: I think it's Exhibit  
17 21.

18 MS. NICHOLS: Oh, thank you.

19 CHAIRPERSON ANDERSON: Yes, that's  
20 Exhibit 21.

21 MS. NICHOLS: Page 21.

22 CHAIRPERSON ANDERSON: Exhibit 21. So

1           okay, go ahead and ask him what about Exhibit 21.

2                           BY MS. NICHOLS:

3           Q           How -- would you just describe what is  
4           in that picture? Like if you start at the -- to  
5           the left and go to the right, what are we looking  
6           at?

7           A           Just to reiterate the question, did  
8           you ask what is presented from --

9                           CHAIRPERSON ANDERSON: What is --

10                          THE WITNESS: -- the left to the  
11           right?

12                          CHAIRPERSON ANDERSON: -- Exhibit 21?

13           Yeah. From yeah, tell us what is in the picture.

14                          THE WITNESS: Okay.

15                          BY MS. NICHOLS:

16           Q           What addresses are we looking at  
17           there?

18           A           We are looking at addresses considered  
19           to be even on the 1500 Block of 17th Street, N.W.

20           Q           I would just point -- I guess I can't  
21           say anything, but it's not the whole block. And  
22           part of it is not the area we are talking about,

1 but it's a good picture.

2 From Church Street and it includes  
3 from Church Street down to P going south, this  
4 building in the front is the Copley. If you go  
5 down the street, that turret is actually south of  
6 P. And then we have the Berkeley Apartments.

7 CHAIRPERSON ANDERSON: Hold on a  
8 minute, miss.

9 MS. NICHOLS: Yes.

10 CHAIRPERSON ANDERSON: All right. All  
11 right. You are asking Mr. Todd what is Exhibit  
12 21.

13 MS. NICHOLS: Um-hum. I --

14 CHAIRPERSON ANDERSON: And so --

15 MS. NICHOLS: -- do know what it is  
16 actually, so I don't --

17 CHAIRPERSON ANDERSON: So but -- so  
18 Mr. Todd, what is Exhibit 21? I think on page 8  
19 of the report --

20 THE WITNESS: It's a --

21 CHAIRPERSON ANDERSON: -- on page 8 of  
22 your report you state what Exhibit 21 is. So if

1 -- what is Exhibit 21?

2 MS. NICHOLS: Maybe it would be better  
3 to come back to this later, because we don't want  
4 to use up too much time.

5 CHAIRPERSON ANDERSON: All right.

6 MS. NICHOLS: Okay. I had some  
7 pictures that I thought well, I could introduce  
8 them now, but it sounds like I should do it  
9 later.

10 CHAIRPERSON ANDERSON: You can do it  
11 later then.

12 MS. NICHOLS: Yeah, okay.

13 CHAIRPERSON ANDERSON: So you don't  
14 have any -- you don't have any questions for  
15 Exhibit 21? Okay. Fine. Do you have any other  
16 questions for him?

17 BY MS. NICHOLS:

18 Q Are there any businesses across the --  
19 on the even numbered side, the west side?

20 A No, ma'am.

21 Q Thank you.

22 MS. NICHOLS: No more questions.

1                   CHAIRPERSON ANDERSON: You have no  
2 more questions? All right. Thank you. Do we  
3 have any questions by the Board based on the  
4 questions that were asked by both sides?

5                   Hearing none, thank you, Mr. Todd for  
6 your testimony. You can step down.

7                   THE WITNESS: Thank you.

8                   CHAIRPERSON ANDERSON: All right.

9                   (Whereupon, the witness was excused.)

10                  CHAIRPERSON ANDERSON: Now, we do the  
11 applicant's case in chief. Does the applicant  
12 have a witness that they wish to call?

13                  MR. KRAMER: Thank you, Mr. Chairman.  
14 I would like to introduce Mr. Randy Downs, who is  
15 the --

16                  CHAIRPERSON ANDERSON: You mean you  
17 want to call Mr. Randy Downs.

18                  MR. KRAMER: Oh, excuse me. Call.  
19 Like I said, I'm not a lawyer.

20                  CHAIRPERSON ANDERSON: All right.  
21 Well, that's why I'm saying you want to call Mr.  
22 Downs.

1 MR. KRAMER: Call.

2 CHAIRPERSON ANDERSON: So Mr. Downs,  
3 can you go on the table, please? Yes, Ms.  
4 Nichols?

5 MS. NICHOLS: I would like to know if  
6 there is anything in Mr. Downs' testimony as a  
7 representative of the ANC, other than a reading  
8 of the ANC's resolution?

9 CHAIRPERSON ANDERSON: I don't know  
10 who Mr. --

11 MS. NICHOLS: I would object.

12 CHAIRPERSON ANDERSON: -- Ms. Nichols,  
13 I do not know who Mr. Downs is. I think I might  
14 have remembered at some point that he came here,  
15 but is Mr. Downs listed in the PIF? Is he listed  
16 as a witness in the PIF?

17 MR. KRAMER: I sent an email to all  
18 the interested parties, including Ms. Jenkins,  
19 that Mr. Downs would be here and there was no  
20 objection, at that time.

21 CHAIRPERSON ANDERSON: When did you  
22 send that?

1 MS. NICHOLS: A couple days ago. I  
2 got it here.

3 MR. KRAMER: It was circulated to all  
4 the parties. I don't know the exact date of the  
5 email, sir. I'm sorry about that.

6 CHAIRPERSON ANDERSON: All right.  
7 So --

8 MR. KRAMER: It was replied to and  
9 acknowledged by ABRA Legal staff.

10 CHAIRPERSON ANDERSON: But there is no  
11 objection to Mr. Downs testifying, right? All  
12 right. So I don't know who --

13 MS. NICHOLS: I may be objecting. I  
14 don't know. There is some testimony I would  
15 allow and some I would not. I would object to.

16 CHAIRPERSON ANDERSON: Why would you--  
17 I don't know who Mr. Downs is and I don't know  
18 what Mr. Downs is going to testify to.

19 MS. NICHOLS: Oh, then Mr. Kramer  
20 should introduce that, because that --

21 CHAIRPERSON ANDERSON: That's what I'm  
22 saying. He just called a witness and I don't

1 know who the witness is, so --

2 MS. NICHOLS: I see.

3 CHAIRPERSON ANDERSON: -- this is what  
4 we are going to do.

5 MS. NICHOLS: I see.

6 CHAIRPERSON ANDERSON: Okay. That's  
7 why I said I don't know who this -- who Mr. Downs  
8 is.

9 MS. NICHOLS: Okay.

10 CHAIRPERSON ANDERSON: I might have  
11 remembered him being here at some point for  
12 another case.

13 MS. NICHOLS: I got it.

14 CHAIRPERSON ANDERSON: But I don't  
15 know, so when you are saying you're going to  
16 object, I don't know who he is. And so the first  
17 thing I'm going to do is ask him was he on -- was  
18 he identified as a witness. And so if he is  
19 identified as a witness, then you can't object to  
20 that.

21 Now, let me hear. He is going to  
22 introduce Mr. -- I'm going to swear Mr. Downs in.

1 Then he will ask questions and then we will hear  
2 who Mr. Downs is and what he is going to testify  
3 to. And you, of course, at any point, can raise  
4 an objection. He will respond and I will -- what  
5 I will -- if you are going to raise an objection,  
6 what I need you to do is to tell me. And I'm not  
7 going to ask you to know the nature of the -- why  
8 -- I'm not going to say well, hearsay or -- but  
9 if you are going to raise an objection, I'm going  
10 to ask you why are you objecting.

11 That's what -- so you can say I  
12 object. And then I'm going to ask you, you need  
13 to tell me why you are objecting to this person.  
14 So you don't need to tell me -- you don't need to  
15 frame it as an attorney, the type of objection  
16 you are calling. I just -- but you have to let  
17 me know why you are objecting.

18 Mr. Downs, can you stand up, please?  
19 Can you raise your right hand, please?  
20 Whereupon,

21 RANDY DOWNS

22 was called as a witness by the Licensee, and

1 having been first duly sworn, assumed the witness  
2 stand and was examined and testified as follows:

3 MR. DOWNS: I affirm.

4 CHAIRPERSON ANDERSON: Okay. Have a  
5 seat. Your witness, sir.

6 DIRECT EXAMINATION

7 BY MR. KRAMER:

8 Q Mr. Downs, could you, please, tell the  
9 Board where you live?

10 A Absolutely. I live at 1425 17th  
11 Street, approximately a half a block away from  
12 Duke's Restaurant.

13 Q Mr. Downs, can you tell the Board,  
14 please, your professional occupation?

15 A During my day job, I work for the  
16 National Sierra Club, an environmental  
17 organization. I am also the elected neighborhood  
18 commission for the Single Member District in  
19 which Duke's is located. And I'm also appointed  
20 by the Mayor to the Advisory Committee for LGBTQ  
21 Affairs.

22 Q Mr. Downs, do you have any roles in --

1 within the ANC that you were elected to by your  
2 neighbors?

3 A I'm a Single Member Commissioner for  
4 2B05. And then also serve as the chair for the  
5 Public Transportation and Public Infrastructure  
6 Committee.

7 Q Mr. Downs, are you the designated  
8 representative of the ANC listed on the ANC  
9 letters of support for this resolution in this  
10 matter?

11 A I am.

12 Q Mr. Downs, do you have any insights  
13 about the establishment, the character of the  
14 community that you would like to share with the  
15 Board, as a general thing?

16 CHAIRPERSON ANDERSON: Hold on one  
17 moment.

18 MS. NICHOLS: Objection.

19 CHAIRPERSON ANDERSON: What's the  
20 objection that you have, ma'am?

21 MS. NICHOLS: The ANC was not -- I  
22 cannot object to the entrance of the ANC's

1 resolution. However, the ANC was not a party to  
2 this protest. And if he is -- if Mr. Downs wants  
3 to talk as a Single Member Commissioner or as an  
4 individual about Duke's and his views, I just  
5 don't accept his representing the ANC giving  
6 insights about the ANC.

7 CHAIRPERSON ANDERSON: Why? I mean,  
8 Mr. Downs has been called as a witness. He has  
9 stated that he is the Single Member District ANC  
10 representative. And he also said that he is the  
11 designated representative of the ANC. Mr. Kramer  
12 can call whoever he wants to call as a witness  
13 and he can elicit whatever testimony.

14 MS. NICHOLS: Okay.

15 CHAIRPERSON ANDERSON: I don't -- so  
16 you can go ahead and answer. Go ahead and answer  
17 the question. If you need to re -- if you need  
18 to ask the question --

19 MR. KRAMER: It's right in front of  
20 him.

21 CHAIRPERSON ANDERSON: Nothing is  
22 wrong with the question.

1 MR. KRAMER: Okay.

2 CHAIRPERSON ANDERSON: Maybe -- you  
3 don't need to -- nothing is wrong with the  
4 question you are asking. If he can answer the  
5 question or if he needs you to repeat the  
6 question -- Mr. Downs, you can respond to the  
7 question that was asked of you.

8 THE WITNESS: Can you, please, repeat  
9 the question?

10 BY MR. KRAMER:

11 Q Yeah, I'll try. Mr. Downs, my  
12 question was as -- could you -- based on your  
13 familiarity as an elected representative, as a  
14 citizen, as a person who is constantly on 17th  
15 Street and in Dupont Circle, in general, can you  
16 give some insights to the Members of the Board  
17 who said that none of them live in our  
18 neighborhood, as to the general character of the  
19 community and the general character of the  
20 establishment?

21 A Absolutely. Dupont Circle, 17th  
22 Street, is a lively, youthful portion of our

1 wonderful District, median-age for residents  
2 there, 34 years-old and incredibly diverse folks  
3 enjoy the mix-use substance of the neighborhood.  
4 Go out to enjoy meals, the sidewalk cafes on 17th  
5 Street, live very close, enjoy Stead Park. It is  
6 really a wonderful community.

7 To Duke's, since they opened their  
8 establishment, I believe in 2013, they have been  
9 a valued member of the community. This -- they--  
10 Duke's was able to open after this Board raised  
11 the Restaurant License Moratorium in East Dupont  
12 Circle and because of that, we have had several  
13 wonderful restaurants come to 17th Street:  
14 Duke's as well as Brick Lane, Nazca Mochica,  
15 Hank's.

16 It has really given a lot of energy to  
17 the neighborhood, vitality, which had been  
18 missing for the last 30 years when the moratorium  
19 had been in place.

20 In terms of the ANC process, we had  
21 the application of Daniel Kramer come to the ANC.  
22 As we do on all applications, commissioners meet

1 with the applicant to understand their proposal  
2 and ask any answers. We review the applicant's  
3 ABRA history and record. We reach out to  
4 adjacent and nearby residents to hear any  
5 concerns or feedback from them.

6 We publish the application in the ANC  
7 Agenda and we, at the ANC meetings, hear a  
8 presentation from the applicant as well as hear  
9 community testimony. And as a duly voted -- duly  
10 elected neighborhood commissioner, we vote on the  
11 merit of that application. We are accountable  
12 representatives of the neighborhood and that is  
13 what happened in this case.

14 We went through the process as the ANC  
15 normally does and we felt that this application  
16 was -- had merit. And we supported it. I  
17 believe there is a resolution from ANC-2B as an  
18 exhibit. I will point out that at our regular  
19 meeting on April 11th, the Dupont Circle Advisory  
20 Neighborhood Commission considered the above  
21 matter with 7 of 8 commissions in attendance, had  
22 a quorum at a duly noted public meeting, the

1 commission approved that resolution by a vote of  
2 5-2-0.

3 Therefore it be resolved that ANC-2B  
4 supports Duke's Grocery's application for a  
5 substantial change to the establishment's Retail  
6 Class C License.

7 I would be happy to talk about any o  
8 the points. I don't feel I should reread  
9 everything, but essentially, ANC's bylaws allow  
10 for us -- it says "These guidelines are designed  
11 to supplement the Municipal Public Space  
12 Regulations. While these guidelines serve as a  
13 guide, the ANC and its commissioners have a  
14 responsibility to consider the merits of each  
15 individual public space application."

16 Also in that resolution, we indicate  
17 Duke's is a valued and welcomed neighbor. Duke's  
18 has taken leadership on many issues within the  
19 neighborhood, including ratification as well as  
20 the Waste Compactor Pilot Program.

21 But most importantly, in our  
22 resolution, Duke's Grocery has support for the

1 extension of hours from neighbors, including  
2 those adjacent to the property.

3 And so with that, I respectfully ask  
4 that this Board, in accordance with DC Official  
5 Code, the ANC's recommendation should be afforded  
6 great weight.

7 CHAIRPERSON ANDERSON: Well, I guess  
8 the only way -- this is -- you are referencing  
9 Exhibit 6 that was in the Board exhibits. So  
10 it's -- well, I know that we give great weight,  
11 but I think in this particular case, it came in  
12 as an exhibit, so it didn't necessarily come in  
13 as a formal notice to the Agency by -- yes?

14 MR. KRAMER: I was going to say I  
15 submitted that as an exhibit, so that -- I don't  
16 know if that was done with --

17 CHAIRPERSON ANDERSON: I don't have a  
18 problem with it.

19 MR. KRAMER: Okay.

20 CHAIRPERSON ANDERSON: I'm just  
21 correcting --

22 MR. KRAMER: Understood.

1                   CHAIRPERSON ANDERSON: I'm just  
2 pointing out for the record that that document is  
3 Exhibit 6 as a part of the Board report. If it's  
4 in your documents, you could also identify the  
5 document to say that in my PIF what the number it  
6 is and then you could ask for it to be moved into  
7 evidence.

8                   Yes, Ms. Nichols?

9                   MS. NICHOLS: We have no objection to  
10 it being considered. This was a resolution  
11 passed by the ANC. It was sent to you, so it has  
12 some standing other than an exhibit.

13                  CHAIRPERSON ANDERSON: Well, I know,  
14 but I was just -- well, all I'm trying to do is  
15 to keep the record. So when someone reads the  
16 transcript, we are talking about a resolution and  
17 so I just want the record to be clear that the  
18 resolution that was being spoken about is Exhibit  
19 6 in the Board report.

20                  You can go and if you have another  
21 question, Mr. Kramer, for this witness that you  
22 want to ask?

1 BY MR. KRAMER:

2 Q Mr. Downs, are you familiar with the  
3 ABRA application process overall as it comes  
4 before ANCs?

5 A Absolutely. I receive quite a few.

6 Q When there is an application, do you  
7 consider several at once under the same thing or  
8 do you consider each application on an individual  
9 basis, based on individual merits?

10 A Generally, we review application on  
11 each individual merits, absolutely.

12 MR. KRAMER: At this time, I don't  
13 have any --

14 CHAIRPERSON ANDERSON: You don't have  
15 any other questions for this witness?

16 MR. KRAMER: No, sir. Thank you, Mr.  
17 Chairman.

18 CHAIRPERSON ANDERSON: All right. Ms.  
19 Nichols, do you have any questions for this  
20 witness?

21 MS. NICHOLS: Yes.

22 CROSS-EXAMINATION

1 BY MS. NICHOLS:

2 Q You mentioned the support for Duke's  
3 Grocery's application. Can you identify any  
4 support other -- I mean, I'm aware of Duke's  
5 letters. I'm aware of the list of the petition  
6 and I was there for all the testimony at the ANC  
7 meeting. Is there other support that we should  
8 know about, because we want to be -- we want  
9 information.

10 A Sure, of course. As the ANC Single  
11 Member Districts are divided by 17th Street, I  
12 represent the east side of 17th Street. I'm most  
13 concerned with my constituents who live directly  
14 adjacent to Duke's. And so I reached out to each  
15 of them: Dino, Camille, Bill, to see what their  
16 thoughts were. They were supportive.

17 Duke's has been an incredible  
18 neighbor, welcomed. In fact, they think it  
19 brings a lot of safety to the neighborhood.  
20 Having people outdoors eating, eyes on the  
21 neighborhood, so they were very supportive of the  
22 application.

1           Q       And do some of those folks work in the  
2       hospitality industry?

3           A       I am -- yes, they do. I don't know  
4       how that is relevant.

5           Q       Well, I think it's --

6           CHAIRPERSON ANDERSON: Sir, sir.

7           MS. NICHOLS: -- it's just --

8           CHAIRPERSON ANDERSON: Hold on, hold  
9       on. She asked you a question. You answered the  
10      question. If you don't have an answer, you can't  
11      answer it, but you can't ask her a question.

12          THE WITNESS: Of course, I'm sorry.

13          CHAIRPERSON ANDERSON: Thank you.

14          BY MS. NICHOLS:

15          Q       And do the residents -- are there a  
16      substantial number of residents who are -- live  
17      across the street who are not in your Single  
18      Member District?

19          A       Yes.

20          Q       And are you aware of any additional  
21      information from them?

22          A       I am aware that Kari Cunningham, the

1 Single Member District Commissioner for that area  
2 did extensive outreach in the ANC approval  
3 process or application process. Kari Cunningham  
4 voted affirmatively with the resolution.

5 Q But you don't have any specific  
6 incidents of support from her, like a report of  
7 the support she would like entered?

8 A I have full faith in my fellow  
9 commissioner.

10 Q Never mind. That's it. Thank you.

11 CHAIRPERSON ANDERSON: That's it? All  
12 right. Any questions by -- any questions of this  
13 witness by any Board Members? Mr. Alberti?

14 MEMBER ALBERTI: So Commissioner  
15 Downs, the vote was 5-2 for this resolution. All  
16 right. So the commissioner who represents the  
17 area directly across the street, you mentioned  
18 that person's name, I don't remember, but that  
19 commissioner voted in the affirmative for this,  
20 in favor of it?

21 THE WITNESS: That is correct.

22 MEMBER ALBERTI: The two commissioners

1 who voted against this, do you -- can you  
2 summarize what their objections were?

3 THE WITNESS: I would --

4 MEMBER ALBERTI: Well, you are  
5 representing the ANC on this resolution, right?

6 THE WITNESS: Yes, right.

7 MEMBER ALBERTI: Okay. So I'm fair to  
8 ask you that.

9 THE WITNESS: Absolutely.

10 MEMBER ALBERTI: Go ahead and answer  
11 my question.

12 THE WITNESS: From memory, I would say  
13 they were just opposed to later hours. In the  
14 past, our standard ANC Guidelines have been 11:00  
15 and midnight. Noise, noise essentially from a  
16 sidewalk cafe was their objection.

17 MEMBER ALBERTI: Okay. So noise from  
18 the sidewalk cafe. And you spoke of standard  
19 policy, what's the ANC Standard Policy?

20 THE WITNESS: Absolutely. Currently,  
21 our Standard ANC Policy, which was put in place a  
22 number of years ago, states that sidewalk cafes

1 are to -- here I have it, one moment. That  
2 "closing hours for sidewalk cafes, outdoor  
3 restaurants across the street from or  
4 approximately to Residential Zones should be  
5 11:00 p.m. Sunday through Thursday and midnight  
6 Friday and Saturday."

7           Saying that after this conversation at  
8 the ANC meeting, our ANC is now moving through a  
9 process to review those guidelines and hopefully  
10 we will have a conclusion in the next few months.

11           MEMBER ALBERTI: Okay. Thank you.  
12 You preempted my next question. But are there  
13 any exceptions to that policy?

14           THE WITNESS: There are exceptions in  
15 which we supported Duke's. I know there are  
16 exceptions of other establishments on 17th Street  
17 that have much later hours.

18           MEMBER ALBERTI: Do you know -- can  
19 you -- offhand can you tell me what they are?

20           THE WITNESS: I believe Fox and Hound,  
21 Dupont Italian Kitchen, others I'm not sure.

22           MEMBER ALBERTI: Do you remember how

1 long ago those exceptions were -- well, were the  
2 -- those exceptions, were they sort of -- how do  
3 I want to say this, did they come about before or  
4 after the policy was put in place?

5 THE WITNESS: I do not know, sir.

6 MEMBER ALBERTI: So you don't know  
7 whether -- do you know whether or not the ANC  
8 objected to those applications for those later  
9 hours?

10 THE WITNESS: I would --

11 MEMBER ALBERTI: Or supported, either  
12 one.

13 THE WITNESS: -- assume we did not  
14 object, if they have the hours.

15 MEMBER ALBERTI: Okay.

16 THE WITNESS: But that's an  
17 assumption.

18 MEMBER ALBERTI: Okay. How long have  
19 you been a commissioner?

20 THE WITNESS: Nearly two years.

21 MEMBER ALBERTI: Okay.

22 THE WITNESS: And a resident of the

1 area for six years.

2 MEMBER ALBERTI: Okay. No further  
3 questions. Thank you.

4 CHAIRPERSON ANDERSON: Any other  
5 questions by any Board Members? Just a quick  
6 question. The two commissioners who voted  
7 against it, how far or close do they live to this  
8 establishment?

9 THE WITNESS: I know one commissioner  
10 lives five or four blocks away.

11 CHAIRPERSON ANDERSON: I'm trying to  
12 figure out what ANCs. Are they close? All  
13 right. Let me ask it this way.

14 THE WITNESS: Sure.

15 CHAIRPERSON ANDERSON: The two closest  
16 ANC commissioners to where this establishment is  
17 located, how did they vote on this matter?

18 THE WITNESS: Yes. Myself in the  
19 affirmative and across the street, Commissioner  
20 Cunningham in the affirmative. The next closest  
21 District is, I believe, half a block away or a  
22 block away.

1 CHAIRPERSON ANDERSON: How did that  
2 commissioner vote?

3 THE WITNESS: One of those  
4 commissioners voted negative and then the other  
5 commissioner voted positively, affirmatively.

6 CHAIRPERSON ANDERSON: All right.  
7 Thank you. All right. Any other questions by  
8 any of the Board Members? All right. All right.  
9 So Ms. Nichols, do you have any questions of this  
10 witness based solely on the questions that were  
11 asked by the Board?

12 MS. NICHOLS: No, thank you.

13 CHAIRPERSON ANDERSON: Mr. Kramer, do  
14 you have any questions of the witness based  
15 solely on the questions that were asked by the  
16 Board Members?

17 MR. KRAMER: Yes.

18 REDIRECT EXAMINATION

19 BY MR. KRAMER:

20 Q Can you -- Mr. Downs, when you  
21 discussed the suggested times, I just wanted to  
22 clarify that the -- did you use the word standard

1 in your -- correct me if I'm wrong, that you used  
2 the word standard as -- of times that ANC-2B has  
3 set for patios?

4 A I don't recall my exact words, no.

5 Q Okay. May I just guide you and the  
6 Board to the middle of your Exhibit 6, of Exhibit  
7 6, which is from the ANC that -- about the stated  
8 policy and is to -- if you -- can you read  
9 whether it says standards in there or does it use  
10 the word guideline?

11 A Sure. ANC's stated policy is to apply  
12 perspectively the following set of guidelines in  
13 considering public space applications.

14 Q Thank you. Could you just read the  
15 next thing about guidelines, not standards. The  
16 next whereas?

17 A Um-hum. Whereas, ANC-2B's policy also  
18 states "these guidelines are designed to  
19 supplement the Municipal Public Space  
20 Regulations. While these guidelines serve as a  
21 guide, the ANC and its commissioners have a  
22 responsibility to consider the merits of each

1 individual public space application.

2 MR. KRAMER: Nothing further. And  
3 thank you, Mr. Chairman.

4 CHAIRPERSON ANDERSON: All right.  
5 Thank you. Mr. Downs, thank you for your  
6 testimony. You can step down.

7 (Whereupon, the witness was excused.)

8 CHAIRPERSON ANDERSON: Do you have  
9 another witness?

10 MR. KRAMER: Mr. Yordano Lopez was  
11 here, but had another engagement. He had  
12 submitted a letter that I was going to ask him to  
13 read, but that is already in the record. I don't  
14 have the reference exhibit. It's one of the  
15 neighbors who lives in the place directly across  
16 the street.

17 CHAIRPERSON ANDERSON: If you don't --

18 MR. KRAMER: So unfortunately --

19 CHAIRPERSON ANDERSON: -- introduce  
20 the documents --

21 MR. KRAMER: -- that's why he left.

22 CHAIRPERSON ANDERSON: -- in the

1 record, then it's not in the record. So nothing  
2 is -- unless it is in -- is it in Mr. Todd's  
3 report?

4 MS. DIENER: Yes. Yes, it is.

5 CHAIRPERSON ANDERSON: All right. I'm  
6 just saying the only documents that are in the  
7 record right now is the Board's report. So if  
8 you have any other document, although it was  
9 submitted, if you don't move it through here --  
10 so if it's in Mr. Todd's report, it's in the  
11 record. If it's not in Mr. Todd's report, you  
12 have to physically offer the document to move it  
13 into the record.

14 MR. KRAMER: Thank you, Mr. Chairman.  
15 It is, yeah, Exhibit 7, so yes, it was in Mr.  
16 Todd's report and I did contact Mr. Haskell and  
17 Ms. Conti as well to see if they could attend,  
18 but due to their professional obligations, they  
19 could not.

20 Mr. Lopez was here to -- but the  
21 timing didn't work out.

22 CHAIRPERSON ANDERSON: So you don't

1 have -- do you have any other witness?

2 MR. KRAMER: No, sir.

3 CHAIRPERSON ANDERSON: So do you rest  
4 at this juncture?

5 MR. KRAMER: Um --

6 CHAIRPERSON ANDERSON: Do you want to  
7 call yourself as a witness or are you going to  
8 make a closing statement or what is it you want  
9 to do?

10 MR. KRAMER: I'm sorry, I was a little  
11 unfamiliar with the process. I didn't know that  
12 it was time to make a closing statement.

13 CHAIRPERSON ANDERSON: No, no, that's  
14 not what I said.

15 MR. KRAMER: Okay.

16 CHAIRPERSON ANDERSON: I'm asking you  
17 if you had another witness, you can call yourself  
18 as a witness, if you want to testify. If you  
19 want to testify, I will swear you in. You can  
20 testify. You could testify. However, Ms.  
21 Nichols will cross-examine you. The Board will  
22 also cross-examine you if you testify.



1 making a closing, at this moment, but you are  
2 testifying. So you can go ahead.

3 DIRECT EXAMINATION

4 MR. KRAMER: I just want to clarify  
5 something, because I have heard and seen both in  
6 paper the nature of the protest against this  
7 application. Today it was referred to that it  
8 was "inappropriate." In the official protest  
9 letter, it was referred to as peace, order an  
10 quiet. And then in emails that I have, I have an  
11 email that I received from the president of the  
12 DCCA, it has been referred to as a fear of, her  
13 words, "a domino effect."

14 And earlier today in Ms. Nichols'  
15 opening statement, she mentioned that this was  
16 "not about Duke's alone."

17 So I am trying to understand which of  
18 those varying explanations for the protest is the  
19 real reason. And if the Board -- that is my  
20 first question.

21 And then my second moment of confusion  
22 is whether the Board views this as a case about

1 Duke's alone or if it views this as something  
2 else.

3 CHAIRPERSON ANDERSON: Well, you can't  
4 really ask me a question. I mean, you are  
5 testifying, but -- so I'm not responding to your  
6 question per se, but it's a Protest Hearing on  
7 Duke's. And so the Board will make a  
8 determination on the protest that is in front of  
9 us. I don't know anything else about any other  
10 establishment, so this is a Protest Hearing on  
11 the peace, order and quiet.

12 And the Board will make a  
13 determination of your substantial change based on  
14 the testimony that is presented here today.

15 MR. KRAMER: Okay.

16 CHAIRPERSON ANDERSON: But I mean,  
17 it's not to ask questions. We ask questions.  
18 The Board asks questions, Ms. Nichols will ask  
19 questions. You do not ask questions, at least  
20 during this -- in this juncture.

21 So do you have any other statements  
22 that you want to make that -- you are still going

1 to have an opportunity to -- and I think the  
2 question that you made is that -- that you just  
3 raised in your closing, you can also bring that  
4 up. But I guess at this juncture, are there any  
5 other statements that you want to make, but that  
6 I -- as a reminder, Ms. Nichols can cross-examine  
7 you based on the statements that you make.

8 MR. KRAMER: No, sir. Like I said I'm  
9 just unfamiliar with this process. I have never  
10 been here. I'm sorry if I spoke out of turn or  
11 something.

12 Just one question of clarity. Who  
13 gives the last closing statement? Is it this  
14 side or that side?

15 CHAIRPERSON ANDERSON: You.

16 MR. KRAMER: Okay. So we go last.

17 CHAIRPERSON ANDERSON: It's your  
18 burden. The burden is on you, so you go --  
19 that's why you go last. Yeah, I mean, you  
20 present your case and then they go, but you have  
21 the last word.

22 MR. KRAMER: Thank you, Mr. Chairman.

1 CHAIRPERSON ANDERSON: So you rest?

2 MR. KRAMER: Rest.

3 CHAIRPERSON ANDERSON: All right. Ms.  
4 Nichols, do you have any questions, any cross-  
5 examination questions of Mr. Kramer, based on the  
6 statements that he just made?

7 MS. NICHOLS: No.

8 CHAIRPERSON ANDERSON: Does the Board  
9 have any questions of Mr. Kramer, based on the  
10 statements that he just made? Yes, Mr. Alberti?

11 MEMBER ALBERTI: Okay. So, Mr.  
12 Kramer --

13 MR. KRAMER: Yes, sir.

14 MEMBER ALBERTI: -- more of a  
15 statement first of all. You didn't give me much  
16 to work with here. And I'm actually going to go  
17 out on a limb and ask you questions probably  
18 beyond what your statement was, which I normally  
19 don't do and really isn't policy, so I hope you  
20 understand that I am trying to be fair to both  
21 sides --

22 MR. KRAMER: Yes, sir.

1                   MEMBER ALBERTI: -- with my questions  
2 and giving you an opportunity here.

3                   MR. KRAMER: Thank you.

4                   MEMBER ALBERTI: So all right. My  
5 questions are going to go to why do you think  
6 this isn't going to disturb peace, order and  
7 quiet. So let me start, we hear from your ANC  
8 Commissioner, Single Member District Commissioner  
9 that he has spoken to your immediate neighbors  
10 and they don't think it is going to -- my  
11 understanding is that they are not going to --  
12 they don't believe it is going to disturb peace,  
13 order and quiet.

14                   And you have presented letters from  
15 neighbors, your immediate neighbors, even though  
16 -- although we haven't heard testimony from them,  
17 which makes it kind of weak, but let me ask, so  
18 you can't fix it now.

19                   So let me ask, we haven't heard from  
20 the people across the street. And those would be  
21 the most immediate affected neighbors. That is  
22 residential across the street. Why do you think

1 that it will not disturb the peace, order and  
2 quiet for the residents directly across the  
3 street from you?

4 MR. KRAMER: Mr. Alberti, thank you  
5 for the question. The residents across the  
6 street, including those whose windows directly  
7 face out onto Duke's are some of our biggest,  
8 most consistent patrons and also two of the  
9 gentlemen who wrote letters of support, one of  
10 whom was here.

11 So respectfully, sir, there -- they  
12 have demonstrated their very, very firm support  
13 for this, because it has not been and we have not  
14 been a source of any noise complaints ever over 5  
15 years. And as Investigator Todd mentioned, there  
16 was a Joint DCRA ABRA Task Force, which also did  
17 noise monitoring and again found nothing.

18 We, by nature and I don't know if any  
19 of you have been to Duke's, so let me tell you,  
20 are not an unspanned club place. We -- not just  
21 because we don't have the license for it, but  
22 also because we have not the disposition for it

1 either to be a place where, you know, anybody  
2 would do anything more than maybe kind of nod  
3 their head to the background music. We have  
4 ambient music and again only inside.

5 Speaking specifically of 17th Street,  
6 it is a very busy commercial corridor that is a  
7 one-way two-lane street with traffic of all hours  
8 of the day and night. It is not a little side  
9 street that is surrounded by dense residential.

10 As you see in Exhibit 9, the picture  
11 of Duke's in our pride colors, you can also just  
12 see in the background the CVS Pharmacy that is  
13 not 20 yards from our front door. I actually  
14 paced it, it's 23 yards. That is a major CVS  
15 that takes deliveries of tractor trailers at all  
16 times, that create massive traffic and noise and  
17 their back -- you know, their reverse lights are  
18 always on.

19 We do not -- we are not a rowdy place.  
20 Unlike almost every other ABRA establishment in  
21 the District or like very many, we do not employ  
22 security guards to check IDs or anything like

1 that. We check them inside with bartenders.  
2 Why? With the exception of Halloween and New  
3 Year's, July 4th and the Pride Parade and the  
4 High Heel Race, high volume days, we do not  
5 attract a rowdy audience.

6 We don't have fights ever. We do not  
7 over-serve. We are not, you know, a 21 -- we  
8 don't primarily serve 21 to 25 year-olds. We are  
9 as far from Club Central both physically and  
10 schematically as possible.

11 So to answer Mr. Alberti and also way  
12 back I have tubes in my ears, a lot of ear  
13 infections, I am sensitive to noise myself, so  
14 maybe it's just selfish, but we keep our noises  
15 down. Our intent is to be a member of the Dupont  
16 Circle community for a very long time and that is  
17 why, as noted in the letters of support, and in  
18 the feedback that was given to our ANC  
19 commissioners and who we are in the community, we  
20 have always gone above and beyond in terms of  
21 responsibility, consideration of noise and all  
22 other community and neighbor related affects.

1                   And in some sense, Mr. Alberti, I  
2                   would say that, in all of those, the past is  
3                   prologue. If we had been the source of problems,  
4                   noises, unlicensed parties and DJs and the other  
5                   stuff that comes before this Board for licensees  
6                   who are, you know, going outside of the rules, I  
7                   -- and I know you, this Board, sees all of that.  
8                   In that case, if that was the case, there would  
9                   be cause for skepticism.

10                   However, in my opening statement and  
11                   again I asked you to judge this application on  
12                   the merits, on our record. And there has not  
13                   been a single problem, not one relating to noise.

14                   The ladies with whom we share a wall,  
15                   who would be the most sensitive, have written a  
16                   letter of support and talked about how  
17                   considerate we are.

18                   So I am fully confident that we would  
19                   maintain that level of respect, but if we did  
20                   not, I am fully aware of the power of this Board  
21                   and its various Task Forces and Investigators to  
22                   bring licensees in line should they get out of

1 line. And so it's not just confidence in our  
2 record, it is confidence in the observant nature  
3 of both the authorities that oversee our license  
4 and the neighbors who live with us and near us  
5 should there be any problems, which again I don't  
6 even expect, because we haven't had any.

7 MEMBER ALBERTI: Thank you, Mr.  
8 Kramer. I have a few other questions. So I'm  
9 going to ask some questions about the  
10 neighborhood and --

11 MR. KRAMER: Yes, sir.

12 MEMBER ALBERTI: -- like I don't know  
13 it, but I want to get it on the record, so --  
14 which is important.

15 MR. KRAMER: Yes, sir.

16 MEMBER ALBERTI: All right. So bear  
17 with me. So are there any other commercial  
18 establishments on your block, restaurant  
19 establishments?

20 MR. KRAMER: CVS, above CVS is Sushi  
21 Taro.

22 MEMBER ALBERTI: Okay.

1 MR. KRAMER: Next to Sushi -- next to  
2 us is, on to the left, Little Serow. To the left  
3 of that -- well, if you are facing the  
4 establishment to the right and to the left of  
5 that is Mr. Yogato, above them is Fiddleheads,  
6 which is a hair salon, above them is an Urban  
7 Masseur is I believe the name of the massage.

8 MEMBER ALBERTI: I'm looking for  
9 restaurants like -- that would be open late.

10 MR. KRAMER: Yes, so there is Little  
11 Serow, Komi and Sushi Taro.

12 MEMBER ALBERTI: Okay. And up on the  
13 next block from you?

14 MR. KRAMER: If you are facing Duke's,  
15 for instance, like --

16 MEMBER ALBERTI: I guess you are on  
17 the east side, right? So I'm facing Duke's and  
18 north of you, right?

19 MR. KRAMER: Correct. And then to the  
20 north JR's.

21 MEMBER ALBERTI: Um-hum.

22 MR. KRAMER: And then continuing --

1 MEMBER ALBERTI: North?

2 MR. KRAMER: -- up the block north,  
3 JR's, an establishment that has a pending license  
4 called, or they are in the application process,  
5 Astoria.

6 MEMBER ALBERTI: Sure.

7 MR. KRAMER: To the left of that was  
8 Pasha's Kitchen, which is under development. To  
9 the left of that is Agora. To the left of that  
10 is Fox and Hounds, which has a -- which is --  
11 then around the corner there is, because Fox and  
12 Hounds has that corner, Hank's Oyster Bar.

13 MEMBER ALBERTI: I see these are all  
14 establishments open past 12:00?

15 MR. KRAMER: All of those --

16 MEMBER ALBERTI: I'm guessing.

17 MR. KRAMER: -- let's see, all of them  
18 have liquor -- full liquor licenses. I don't  
19 know the exact -- I haven't looked at all of  
20 their individual licenses, but I know that  
21 several of -- I know that JR's and Trios all have  
22 the 2:00 a.m. and 3:00 a.m. hours on their

1 license. And that 17th Street is a vibrant  
2 restaurant and bar scene.

3 MEMBER ALBERTI: Yes.

4 MR. KRAMER: Before us --

5 MEMBER ALBERTI: And how far are you  
6 from Dupont Circle?

7 MR. KRAMER: From Dupont Circle you  
8 have to go south on 17th Street and then three  
9 blocks, three full blocks, on P Street into  
10 Dupont Circle. So --

11 MS. DIENER: Two blocks.

12 MEMBER ALBERTI: No, no, no, no.

13 MR. KRAMER: Maybe it's two blocks.  
14 You have to go from --

15 MEMBER ALBERTI: Mr. Kramer is  
16 testifying.

17 MR. KRAMER: -- 17th, 18th.

18 MEMBER ALBERTI: Okay.

19 MR. KRAMER: Two blocks.

20 MEMBER ALBERTI: How would you  
21 describe the pedestrian traffic?

22 MR. KRAMER: There is --

1                   MEMBER ALBERTI: In the early morning  
2 hours, we are talking, because you want to be  
3 open after 12:00. How would you describe  
4 pedestrian traffic in this area after 12:00?

5                   MR. KRAMER: It's present. I mean,  
6 there are -- we are in -- you know, the Dupont  
7 Circle is a downtown neighborhood and a downtown  
8 city and 17th Street is a busy residential/  
9 commercial, mixed-use, retail corridor. And  
10 there is constant traffic from taxis and Ubers  
11 and bicyclists all heading down that lane.

12                   There is conversation at the moment  
13 about a dedicated bike lane which would just --  
14 you know, a two-way bike lane like there is on  
15 15th Street, if that happens, that could be a  
16 positive addition and just add more types of  
17 traffic and humanity on 17th Street.

18                   So it's pretty busy whether it is  
19 cars, people, bikes, etcetera at all -- kind of  
20 all hours of the day and night. And that it was  
21 like that before Duke's opened and I'm sure it  
22 will be like that in the years ahead.

1                   MEMBER ALBERTI: Thank you. I have no  
2 further questions.

3                   CHAIRPERSON ANDERSON: Any other  
4 questions by any of the Board Members?

5                   MEMBER ISAAC: I've got one.

6                   CHAIRPERSON ANDERSON: Mr. Isaac?

7                   MEMBER ISAAC: Yes.

8                   MR. KRAMER: How are you, sir?

9                   MEMBER ISAAC: I'm fine. The seating  
10 capacity, what is the seating capacity currently?

11                   MR. KRAMER: I believe the listed  
12 seating capacity on the sidewalk cafe is 45, 43,  
13 46. It's somewhere in there. I'm sorry, I don't  
14 have that in front of me. We do not get there.

15                   MEMBER ISAAC: Okay. And what is the  
16 seating capacity inside?

17                   MR. KRAMER: The C of O, I believe, is  
18 45.

19                   MEMBER ISAAC: Okay. So about the  
20 same inside and outside?

21                   MR. KRAMER: Yes, but the reality,  
22 sir, is that we do not seat 45 people or whatever

1 the full thing is outside on the patio.

2 MEMBER ISAAC: Okay. And the current  
3 operations, the closing hours for the restaurant  
4 is 2:00 a.m.?

5 MR. KRAMER: And that is correct  
6 Sunday to Thursday. 3:00 a.m. Friday, Saturday.  
7 We don't stay open until those hours on most  
8 nights. That is the licensed full hours. The  
9 reality is truncated.

10 MEMBER ISAAC: Right.

11 MR. KRAMER: Again, because we are  
12 food and -- oriented before we are beverage-  
13 oriented. We don't have shot specials. We don't  
14 do combos. We don't have cheap domestic beers,  
15 not that there is anything wrong with them, it's  
16 just not who we are. We don't have, you know,  
17 plastic mixed shooters of -- you know, we are not  
18 a college bar and we are not in the college --  
19 you know, that's not our affect.

20 MEMBER ISAAC: Okay. Thank you.

21 That's it.

22 CHAIRPERSON ANDERSON: Mr. Alberti?

1                   MEMBER ALBERTI:  So I'm sorry, I  
2 forgot some questions.  So Mr. Isaac reminded me  
3 of one.

4                   So are you -- why are you requesting  
5 this?  Is it because of -- you think the  
6 customers want to be outside or is it because you  
7 have overflow and you need the overflow space at  
8 that hour?

9                   MR. KRAMER:  Well, to be honest, it's  
10 a lot of things, Mr. Alberti.  It's we are  
11 kicking people out.  And when we say I know you  
12 are having a nice night, you've got to go.  I  
13 mean, feel free to come inside, but you can't  
14 stay here or you are walking in at 10:20 for  
15 example on a Wednesday night, nice Wednesday  
16 night.  And hey, welcome to Duke's.  Just so you  
17 know, you are going to have to leave soon.

18                   So it -- we lose business because of  
19 it.  People leave 17th Street.

20                   MEMBER ALBERTI:  Let's stop right  
21 here.  So are you telling me that some nights  
22 that at 11:00 you can't accommodate them or that

1 you -- or is it that you can't accommodate them  
2 outside and they want to be outside?

3 MR. KRAMER: It -- both.

4 MEMBER ALBERTI: Oh, so you are so  
5 busy inside, but you can't --

6 MR. KRAMER: I mean, that's --

7 MEMBER ALBERTI: -- you have no space?

8 MR. KRAMER: -- not -- that's rarer,  
9 but that does happen, yes, sir.

10 MEMBER ALBERTI: Okay. Okay.

11 MR. KRAMER: And then they are like  
12 no, we will just take the check.

13 MEMBER ALBERTI: Okay. Oh, and I'm  
14 hearing this commitment and I just want to make  
15 sure I understand it. There -- you are sort of  
16 committing, I think, on the record that you won't  
17 have any amplified sound outside?

18 MR. KRAMER: We don't now and we  
19 won't.

20 MEMBER ALBERTI: Okay.

21 MR. KRAMER: That's not our thing.

22 MEMBER ALBERTI: All right.

1 MR. KRAMER: And it would not be in  
2 the spirit of who we are.

3 MEMBER ALBERTI: Okay.

4 MR. KRAMER: And we are not going to  
5 do it.

6 MEMBER ALBERTI: All right. Thank  
7 you. I have no further questions. Thank you.

8 MEMBER SHORT: I just have one.

9 CHAIRPERSON ANDERSON: Yes, Mr. Short?

10 MEMBER SHORT: I guess good evening,  
11 now, Mr. Kramer.

12 MR. KRAMER: Good evening, sir. Good  
13 to see you.

14 MEMBER SHORT: Okay. Mr. Kramer, you  
15 have been there five years?

16 MR. KRAMER: Almost.

17 MEMBER SHORT: And no ABRA violations  
18 in five years?

19 MR. KRAMER: We had a -- there was a  
20 no manager on duty two or three years ago, that  
21 was me. I was at the bank. I went to the TD  
22 Bank and when I came back, the Investigator said

1 I have been here for 9 minutes or 11 minutes, it  
2 was some number like that, and I said ma'am,  
3 that's on me. And there was a \$250 fine and that  
4 was paid.

5 MEMBER SHORT: Have you remedied that  
6 since that time? And how did you remedy it, if  
7 you have?

8 MR. KRAMER: Huh?

9 MEMBER SHORT: Have you remedied that  
10 situation?

11 MR. KRAMER: We -- just instead of me  
12 being -- you know, we, I think, now have a total,  
13 I don't know, but, somewhere on the -- 10 members  
14 of the staff who have ABRA Licenses in order to  
15 make sure that there is always someone. As it  
16 stands now, there is usually two people, such  
17 that in the even that an ABRA Investigator wanted  
18 to go upstairs and investigate on our second  
19 floor and then downstairs, they could have  
20 conversations with two different people.

21 Our chef, Jillian Catterton, who is  
22 here with us, also has a manager's license and is

1 familiar with your rules and regulations, so that  
2 was a warning shot. That warning should be -- it  
3 was a warning both technically and literally that  
4 we took very seriously and --

5 MEMBER SHORT: Thank you. Thank you  
6 for that. Now, how many years have you had your  
7 patio or had your outside?

8 MR. KRAMER: Well, not since we  
9 opened, because the patio was dug up with a  
10 backhoe right when we opened, because there was a  
11 drain in the lines and our -- I can't remember  
12 which DC Agency thought that our drainage lines  
13 drained out the front. So when we first opened,  
14 we had a backhoe dig out the entire front patio  
15 only to find that our lines actually drain out  
16 the back.

17 And when that was found and that was  
18 a problem not just affecting us and our  
19 neighbors, we had the entire back alley behind us  
20 resurfaced and cleaned out, because those pipes  
21 were older than anybody in his room, apparently,  
22 and so --

1                   MEMBER SHORT: I'm very familiar with  
2 your neighborhood. And I'll just say this,  
3 things have changed down there tremendously and  
4 thank goodness we have some great businesses down  
5 there and some new people in the community.

6                   So you had the patio for five years.

7                   MR. KRAMER: Almost, yeah. We opened  
8 in September.

9                   MEMBER SHORT: And no noise  
10 complaints?

11                  MR. KRAMER: Not one.

12                  MEMBER SHORT: Thank you very much.  
13 That's all I have to say, Mr. Chair.

14                  CHAIRPERSON ANDERSON: Any other  
15 questions by any of the Board Members?

16                  I told you I'm going to give you a  
17 chance. It's -- this is your opportunity to  
18 cross-examine Mr. Kramer, based on the questions  
19 that were asked by the Board.

20                  MS. NICHOLS: Exactly.

21                                   CROSS-EXAMINATION

22                  BY MS. NICHOLS:

1           Q       Mr. Kramer, does Ms. Conti, who has a  
2 shared wall with your building, have windows on  
3 the front of the building?

4           A       I don't know.

5           Q       And two, there was a discussion of  
6 amplified music outside. Do you have a bracket  
7 for a television on the front of your building  
8 and at some times a television there?

9           A       Yes.

10           MS. NICHOLS: No more.

11           CHAIRPERSON ANDERSON: Mr. Kramer,  
12 this is a little bit different, but based on the  
13 questions that were asked by the Board and by Ms.  
14 Nichols, do you need to make any clarification of  
15 any of the statements that were just made?

16                   REDIRECT EXAMINATION

17           MR. KRAMER: Yes. I would just like  
18 to clarify that we -- there is a television  
19 bracket to show the World Cup games, that is  
20 strictly during daytime hours. That was noted by  
21 Investigator Todd and he did not notice a problem  
22 with it. And it is never on at night. It's a

1 regular television that is smaller than that one.

2 CHAIRPERSON ANDERSON: All right.

3 Thank you very much for your testimony, sir. And  
4 I guess since you are the last witness, so yo now  
5 rest.

6 Ms. Nichols, do you wish to call a  
7 witness or do you guys want to take a short  
8 break?

9 MS. NICHOLS: Well, I think we would  
10 like to call at least one witness, because we  
11 have an ANC meeting tonight and because of that,  
12 we have got two commissioners here and I would  
13 like to call Nick DelleDonne first.

14 CHAIRPERSON ANDERSON: Sure.

15 MS. NICHOLS: Bear with us, because we  
16 had kind of a logical order, but you know the  
17 whole timing gets off, so --

18 CHAIRPERSON ANDERSON: Sure, that's  
19 fine.

20 MS. NICHOLS: But I call him.

21 CHAIRPERSON ANDERSON: Mr. DelleDonne,  
22 can you, please, raise your right hand, please?

1 Whereupon,

2 NICK DELLEDONNE

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

6 MR. DELLEDONNE: I do.

7 CHAIRPERSON ANDERSON: Have a seat.

8 Your witness.

9 DIRECT EXAMINATION

10 BY MS. NICHOLS:

11 Q Commissioner DelleDonne, would you  
12 identify yourself, please?

13 A I am the ANC Commissioner for 2B04 and  
14 I have been in the community since '92.

15 CHAIRPERSON ANDERSON: Let me ask a  
16 question, can you just spell your name for the  
17 record, please?

18 THE WITNESS: D-E --

19 CHAIRPERSON ANDERSON: Just to make  
20 sure that we spell it right for the --

21 THE WITNESS: It's clear.

22 CHAIRPERSON ANDERSON: Yes.

1 THE WITNESS: Capital D-E-L-L-E  
2 Capital D-O-N-N-E.

3 BY MS. NICHOLS:

4 Q And did you vote for or against the  
5 ANC Resolution?

6 A I voted against, yeah.

7 Q And where is your District?

8 A It's just north of 2B05. It's  
9 bordered by S & Q, 17th & 15th.

10 Q Is this application relevant to your  
11 residents? Your -- the people you represent?

12 A Yes, it is. As a commissioner, I  
13 represent all 2,000 of the residents and there is  
14 an important affect that occurs. I mean, we all  
15 live in the neighborhood. We all take part in  
16 the restaurants and whatnot and the nightlife.  
17 And so what happens down the street affects us as  
18 well.

19 We had a moratorium on alcohol  
20 establishments for two decades and it achieved  
21 the purpose that it intended, it quieted  
22 everything down and we just saw last year get --

1 expire. And this Board was responsible for  
2 issuing that expiration notice in August of last  
3 year.

4 And so we are concerned about the  
5 stability of the community, it has both  
6 residential and commercial, and both seem to be  
7 happy. We have reached what the Board itself  
8 called a delicate equilibrium and we want to try  
9 to maintain that.

10 It is something that in the history of  
11 the community was really contentious with the  
12 neighbors fighting the establishments because of  
13 the noise. For the most part, it was quite a  
14 noisy situation. And that over two decades it  
15 was calmed down and we have right now reached a  
16 point where it is -- both are happy and both can  
17 co-habit the neighborhood, the residents and the  
18 retail establishments.

19 Q Commissioner DelleDonne, you heard  
20 Commissioner Downs characterize the ANC  
21 deliberation before the 5-2 vote, do you have any  
22 observations from your position about the

1 deliberation, the information that went into that  
2 vote?

3 A Yes. I would say that the vote turned  
4 out to be 5-2 and almost every one of the  
5 commissioners remarked that the applicant here is  
6 a good neighbor and nobody had really a complaint  
7 about that. In fact, they favored him and they  
8 cast their vote because they liked him.

9 And of course, we do have a standard  
10 which says that although we have hours to 11:00  
11 during the week and 12:00 on the weekends, we can  
12 make an exception and we should evaluate  
13 opportunities for exception. But the problem is  
14 that once you crack the door, you have broken the  
15 standard and everyone on the block will be lined  
16 up asking for exactly the same extension of hours  
17 and you will no longer have a standard and you  
18 may very well disturb the delicate equilibrium  
19 that we pride so much here.

20 So that was the -- there was a second  
21 observation I would make, too, but the -- besides  
22 saying that Mr. Kramer is a good neighbor and

1 deserved a break in the standard, the observation  
2 was that -- sorry.

3 CHAIRPERSON ANDERSON: All right. I'm  
4 -- you shouldn't -- I'm trying to say in these  
5 proceedings, you can't really have anything to  
6 read. Albeit, I'm trying to be -- but I think  
7 you are taking a little bit too long to read the  
8 stuff you are not supposed to have, Mr.  
9 DelleDonne. Okay? So if you are going to read--

10 THE WITNESS: I apologize.

11 CHAIRPERSON ANDERSON: -- it, you need  
12 to like do it on the sly, but you can't let all  
13 of us know that you are reading something,  
14 because you are not supposed to have anything up  
15 there to read.

16 THE WITNESS: Okay. I'm sorry, I  
17 apologize.

18 CHAIRPERSON ANDERSON: Okay. So --

19 MS. NICHOLS: May I ask another  
20 question?

21 CHAIRPERSON ANDERSON: Yes. All  
22 right.

1 BY MS. NICHOLS:

2 Q There has been reference to the  
3 deliberation, the information that was provided  
4 on community support, community observation. And  
5 you and I were both at the hearing. We know what  
6 the oral testimony was and would you make any  
7 observations for the Board --

8 A Yes.

9 Q -- as to what information was  
10 available to you as a commissioner? I asked Mr.  
11 Downs about what he might have had from his  
12 constituents. But what did the commission as a  
13 whole have available in the way of information?

14 A Well, the comment was made by several  
15 of the commissioners that this is the opportune  
16 time to -- for outreach, to find out if after 20  
17 years of having a standard, is this the time to  
18 make an adjustment to the standard, relax it or  
19 whatever. And the comment was so common, each  
20 one of them seemed to justify their vote based on  
21 the fact that we should have outreach.

22 And you would expect from that that

1 the vote would be against extending the hours  
2 until we had the outreach. On the contrary, they  
3 all voted to extend the hours and then to  
4 undertake, you know, this on a whim and a promise  
5 that they were going to do outreach.

6 I don't understand what would the --  
7 what would be the conclusion if the outreach  
8 showed that we wanted to keep the standard as it  
9 is, would you go back to Duke's and say never  
10 mind, we are sorry, we made a mistake? Rescind  
11 our resolution?

12 So it seems really illogical for them  
13 to almost in unison say that we needed outreach  
14 and they went ahead and voted without the  
15 outreach. And I have heard the commissioners at  
16 citizen meetings even saying don't worry about  
17 it, you're going to get outreach. And I just  
18 don't understand what that means. At this point,  
19 it would be useless or it would be contradictory.

20 Q All right. Well, do we know that  
21 besides Mr. Kramer speaking and as -- I gather  
22 you did not have -- or did you have Mr. Kramer's

1 letters and list of supporters before?

2 A I did not. I understood afterwards  
3 that Mr. Kramer distributed a list of AD  
4 supporters or signatories to a petition, but I  
5 did not see that and I did not engage in a  
6 conversation with any of the other commissioners.  
7 I don't know if they spoke about it. I heard  
8 Commissioner Downs say that they get together and  
9 they talked about it or something. I did -- I  
10 was not party to any of those conversations.

11 I sent an email to Mr. Downs in  
12 advance of the meeting asking what he thought of  
13 it and he said he was waiting to make his  
14 decision, so that's the extent of my --

15 Q Do you recall show testified at the  
16 hearing? At the meeting.

17 A I do.

18 Q At the commission meeting.

19 A Yes, I do.

20 Q I keep calling it a hearing --

21 A Yes.

22 Q -- because it was like public input

1 before you decided.

2 A Well, Carl Nelson spoke at length  
3 about the noise and he is something of an expert  
4 in the neighborhood on the problems with noise.  
5 And then we had Robin Diener, who is here today.  
6 And Rob Halligan who was a former commissioner  
7 spoke with caution.

8 Q Were there supporters who identified  
9 themselves as living in direct proximity to  
10 Duke's?

11 A I -- there were a number of  
12 supporters, but they did not say that they lived  
13 on that block.

14 Q Thank you.

15 A In fact, it was -- they lived on the  
16 other side of the circle or at 18th and Q and  
17 things like that.

18 Q Did the commission discuss noise on  
19 the block?

20 A There was not extensive talk about --  
21 well, the commissioners did not take a lot of --  
22 did not speak among themselves about noise much.

1 Q Thank you.

2 MS. NICHOLS: No more questions right  
3 now.

4 CHAIRPERSON ANDERSON: All right.  
5 Well, it has to be -- I wanted to just --

6 MS. NICHOLS: Oh, I'm sorry. I don't  
7 have --

8 CHAIRPERSON ANDERSON: -- caution you.

9 MS. NICHOLS: -- questions.

10 CHAIRPERSON ANDERSON: No, no, no, no.  
11 I'm fine, no. No, I just want to caution you  
12 when you said no more questions right now,  
13 because this is your only opportunity to ask  
14 questions that you want to ask.

15 Moving further, moving forward, all  
16 the other questions that you are asking has to be  
17 based on questions that some --

18 MS. NICHOLS: That's fine.

19 CHAIRPERSON ANDERSON: So when you say  
20 no more questions right now, you are not going to  
21 have an opportunity to ask questions out of the  
22 box. It has to be based on questions that were

1 asked by others. So I just wanted to make sure  
2 that you know the process. Okay? So Mr. --

3 MS. NICHOLS: I understand.

4 CHAIRPERSON ANDERSON: All right. Mr.  
5 Kramer, question of the Commissioner, Mr.  
6 DelleDonne?

7 MR. KRAMER: Thank you.

8 CROSS-EXAMINATION

9 BY MR. KRAMER:

10 Q Good evening, Mr. Commissioner.  
11 Noting your vote against the application when it  
12 was before the ANC on which you sit, was your  
13 vote against the application against the  
14 application or was it a vote against the  
15 application against something else that some  
16 other establishment might do maybe at some other  
17 time in the future?

18 A It was more the latter than the  
19 former. I'm not sure what your question is, but  
20 there is a consequence to breaking the standard.  
21 And I -- since we have a standard, we have to  
22 live up to it, otherwise, we have nothing.

1                   And at this point, if this goes  
2 through, every one of the establishments on this  
3 block will line up and say they want the same  
4 thing and there will be absolutely no  
5 justification, at this point, to say no. The  
6 mold has been broken or will have been broken.

7                   The thing is that we cannot play  
8 favorites. We cannot say that we want you to  
9 have extra hours because we like you, which is  
10 essentially what the commission did.

11                Q       Mr. DelleDonne, have you seen the  
12 ANC's policy that states --

13                A       I have.

14                Q       -- that the guidelines --

15                           CHAIRPERSON ANDERSON: Hold on, hold  
16 on.

17                           BY MR. KRAMER:

18                Q       -- serve as a guide.

19                           CHAIRPERSON ANDERSON: Let him ask.  
20 Let him finish asking the question.

21                           BY MR. KRAMER:

22                Q       Yes, I just wanted to make sure that

1 the ANC-2B on which you state there is a policy,  
2 the stated policy doesn't refer to standards, but  
3 rather it refers to "These guidelines are  
4 designed to supplement the" -- I'm sorry.

5 "These guidelines serve as a guide.  
6 The ANC and the commissioners have a  
7 responsibility to consider the merits of each  
8 individual public space application."

9 So I guess my question is kind of a  
10 yes or no question, do you agree with that policy  
11 that each ANC -- I'm sorry, each application  
12 should be considered based on the "merits of each  
13 individual application?"

14 A I do.

15 Q Okay. The other question I had is if  
16 you had had a chance to look at the long list of  
17 people who have voiced their support for this  
18 application?

19 A I have not.

20 Q If you were to do so, sir, I would  
21 politely advise you that some of your residents  
22 are on that list. So --

1           A       My constituents?

2           Q       Some of the people who live in the  
3       area between P & Q -- I'm sorry, P and -- S & Q  
4       and 15th and 17th.

5                   MR. KRAMER:  Nothing further.  Thank  
6       you, Mr. Chairman.

7                   CHAIRPERSON ANDERSON:  Okay.  All  
8       right.  Thank you.  Any question of Mr.  
9       DelleDonne by -- based on -- I'm sorry, any  
10      questions by any Board Members?  Mr. Short, go  
11      ahead.

12                  MEMBER SHORT:  Good evening, Mr.  
13      DelleDonne.

14                  THE WITNESS:  Good evening.

15                  MEMBER SHORT:  A question we just  
16      asked recently and maybe you can clarify, but I'm  
17      looking at Exhibit No. 8 where there is a listing  
18      of person who live in your neighborhood or in the  
19      city who have sent support to this establishment.  
20      And on the very first page itself, I'm seeing  
21      that more than three-quarters, maybe seven-eights  
22      of the people on this list are in that immediate

1 neighborhood that support this establishment.

2 And the second page it looks like  
3 there is quite a few also, but can you explain?  
4 I mean, I understand that you are saying there is  
5 a standard and there has to be an equilibrium and  
6 a balance. And how many years have you lived  
7 there?

8 THE WITNESS: Since '92.

9 MEMBER SHORT: Since '92. So what was  
10 the standard before '92?

11 THE WITNESS: I don't recall.

12 MEMBER SHORT: Excuse me?

13 THE WITNESS: I don't know.

14 MEMBER SHORT: You don't know. Okay.

15 Well, I'll just say this. I know your  
16 neighborhood quite, quite well and the Dupont  
17 Circle area has had some roller coaster rides.

18 THE WITNESS: Yes.

19 MEMBER SHORT: And it is pretty much,  
20 as you say, now has a great standard and how  
21 would this one establishment's hours change, one  
22 way or the other, affect that standard that you

1 were talking and the equilibrium that you  
2 testified to?

3 THE WITNESS: Well, it's critical.  
4 The thing is that you have no standard at all if  
5 you break it, so what are you going to say to the  
6 next applicant? I mean, we heard even in the  
7 last 10 minutes the list of restaurants on that  
8 block, on the next block up the street, they are  
9 all going to get in line and say we want it, too,  
10 and then you will say to them what? What  
11 justification would you have to deny the next  
12 request?

13 MEMBER SHORT: Okay. Well, that's a  
14 good question. And now this question I'm going  
15 to ask you now leads up to that.

16 If you don't have a noise problem now  
17 with any of those establishment, correct, you  
18 don't have a problem with anybody complaining  
19 about sleeping or those other things.

20 THE WITNESS: Well, there will be more  
21 testimony that you will hear. I understand that  
22 Mr. Kramer has no noise complaints against him,

1 but there are other people that are going to  
2 testify this evening.

3 MEMBER SHORT: And so that standard,  
4 based on -- we can only go but one at a time.  
5 This particular case, and I just want you to be  
6 very honest now, do you really think that this  
7 one particular establishment, this applicant,  
8 asking to have his hours changed will be  
9 detrimental to the standard that you have been  
10 talking about, the kind of quality of life you're  
11 talking about?

12 THE WITNESS: We do. I absolutely do.  
13 I can't say it more certainly.

14 Now, if the commission undertakes a  
15 survey and finds out that the community itself  
16 wants to change the standard, that's a different  
17 matter. We haven't done that yet. Our  
18 commission is almost notable for not take --  
19 finding outreach until after they have made a  
20 vote to -- you know, first they vote and then  
21 they do the outreach if they ever do the  
22 outreach.

1                   So it really is putting the cart  
2 before the horse and it's -- we could have easily  
3 said to Mr. Kramer that night, we entertain your  
4 request. We are sympathetic to it. Give us  
5 three months and we will do the outreach and then  
6 we will give you an answer. But they didn't do  
7 that. They opened the door.

8                   MEMBER SHORT: Mr. DelleDonne, are you  
9 familiar with a neighborhood close to your  
10 neighborhood or fairly close that when the  
11 lottery first came, they didn't want the lottery.  
12 And then they didn't want a Subway. And they  
13 didn't want restaurants and they didn't want  
14 nightclubs.

15                   But now they are cramming for them.  
16 We are talking about Georgetown. So their  
17 standard of what they wanted at one time has  
18 changed. Why do you think that is?

19                   THE WITNESS: Well, people change.  
20 No, I am -- I live in the community, too, and I  
21 can understand how that would happen. We have  
22 not found that to be the case yet.

1 MEMBER SHORT: Okay.

2 THE WITNESS: And we cannot break the  
3 standard with one person just because we like  
4 him. And that I think has been established here.  
5 This is not a bad actor. But that has nothing to  
6 do with making a decision.

7 MEMBER SHORT: For the record, do you  
8 go to this business?

9 THE WITNESS: The Duke's?

10 MEMBER SHORT: Yeah.

11 THE WITNESS: I have been there.

12 MEMBER SHORT: You have been there.

13 Okay.

14 THE WITNESS: I ordered a hamburger.

15 MEMBER SHORT: Thank you. That's all  
16 I have. Thank you, Mr. Chair. That's all I  
17 have. Thank you very much, you have been very  
18 helpful.

19 CHAIRPERSON ANDERSON: Any questions  
20 by any of the Board Members? Yes, Mr. Alberti?

21 MEMBER ALBERTI: Commissioner  
22 DelleDonne, would you tell me again what your

1 Single Member District area is?

2 THE WITNESS: From 17th to 15th.

3 MEMBER ALBERTI: Um-hum.

4 THE WITNESS: From S to Q.

5 MEMBER ALBERTI: From S to Q. Okay.

6 THE WITNESS: My District includes  
7 Dupont Italian Kitchen, Prego, the Subway,  
8 Annie's, Annie's is in my District.

9 MEMBER ALBERTI: And I see that. So  
10 that is the segue to my next question. So the  
11 Dupont -- how long have you been a commissioner?

12 THE WITNESS: Since last March.

13 MEMBER ALBERTI: Since last March.  
14 Okay. Were you active as a citizen in the ANC  
15 prior to that?

16 THE WITNESS: No.

17 MEMBER ALBERTI: Okay. So -- well,  
18 I'll ask my question and take my chances on  
19 whether you can answer it or not.

20 Dupont Italian Kitchen, I think, would  
21 you -- is the information we have correct on  
22 Dupont Italian Kitchen that its sidewalk cafe is

1 open until 2:00 a.m. on Monday through Thursday  
2 and 3:00 a.m. on Fridays and Saturday?

3 THE WITNESS: I would hazard to say  
4 that none of the outdoor cafes are open after  
5 11:00 during the week or midnight on the weekend,  
6 except for one perhaps that is grandfathered in,  
7 because I told you that this has been contentious  
8 for two decades.

9 MEMBER ALBERTI: Sure. Which one is  
10 grandfathered?

11 THE WITNESS: I think it is Fox and  
12 Hounds.

13 MEMBER ALBERTI: Fox and Hounds, okay.  
14 Because we have -- I mean, and I will have to  
15 verify our information, but we have listed here  
16 from our Investigator that Annie's Steakhouse has  
17 a 2:00 a.m. on Sunday through Thursday for its  
18 sidewalk cafe.

19 THE WITNESS: The sidewalk cafe for  
20 Annie's is entirely enclosed. If they make a ton  
21 of noise in there, no one would ever hear it.  
22 The windows are closed.

1 MEMBER ALBERTI: Okay. All right. So  
2 it's -- I know it is enclosed.

3 THE WITNESS: I think they are open 24  
4 hours a day on the weekend. I'm not sure what  
5 that is.

6 MEMBER ALBERTI: All right. And the  
7 Italian Kitchen is it enclosed?

8 THE WITNESS: No, it's all open.

9 MEMBER ALBERTI: Okay.

10 THE WITNESS: It's all open and I  
11 don't think they are open until 2:00.

12 MEMBER ALBERTI: Okay.

13 THE WITNESS: I would be surprised.

14 MEMBER ALBERTI: So is Fox and Hounds  
15 causing a problem in the neighborhood, its late  
16 night for its --

17 THE WITNESS: I can't say that I'm  
18 personally aware of complaints that have come to  
19 my attention. But other people may, that are  
20 going to testify after me may have some concerns.

21 MEMBER ALBERTI: Thank you. I have no  
22 further questions.

1                   CHAIRPERSON ANDERSON: Any other  
2 questions by any other Board Members?

3                   The question that I have, Mr.  
4 DelleDonne, is that you have had a standard for  
5 20 years. You -- we have an applicant here who  
6 you have told me is a good licensee. There are  
7 no concerns. So if he is a good licensee, there  
8 are no concerns, you have had a standard for 20  
9 years, why should I not believe that the  
10 neighborhood has changed and give him the benefit  
11 of the doubt, because you have told me that he is  
12 a good actor?

13                   THE WITNESS: I would -- I give him  
14 the benefit. I give him everything. I'm not  
15 going to give him my vote. And the reason is  
16 simply that if you let one person have the  
17 exception, you have no longer a reason to deny  
18 everyone else who comes past -- after that.

19                   We cannot say we like you, you get our  
20 vote. It has to be something that is  
21 standardized and that we adhere to the standard.

22                   So in this case, the merit would not

1 be that we like him, but it was some other  
2 qualification or characteristic that would cause  
3 us to evaluate the merits.

4 If we want to maintain the  
5 equilibrium, that is an important word, it is a  
6 delicate balance that can be easily upset and we  
7 are not going to play Russian Roulette.

8 CHAIRPERSON ANDERSON: Well, the  
9 problem with that though is that you have a bad  
10 operator, so, yeah, you have the 11:00 -- right  
11 now the 11:00 or 12:00. And you have one of  
12 these sidewalk cafe folks and they are a menace  
13 to your neighborhood, so you are telling me that  
14 you would allow them to continue operating at  
15 12:00 --

16 THE WITNESS: No, I --

17 CHAIRPERSON ANDERSON: -- although  
18 they are a menace to the neighborhood?

19 THE WITNESS: -- have to rely on the  
20 policing efforts that we have to control that.  
21 But remember this, that if we like Mr. Kramer and  
22 we give him the benefit and he sells his

1 establishment, it is not for him alone, it is for  
2 the property and the establishment. He is gone  
3 and we are left with whoever takes his place with  
4 the same license. I don't think that that's a  
5 good idea.

6 CHAIRPERSON ANDERSON: All right.

7 THE WITNESS: If the standard is  
8 changed, if we make a survey, if we do the  
9 outreach first, we would have a justification for  
10 telling the neighbors, since they had spoken up,  
11 that they want to change their standard. We  
12 don't have that yet. We haven't undertaken it  
13 yet.

14 CHAIRPERSON ANDERSON: But isn't it  
15 the same neighborhood who relatively recently  
16 asked this Board to make a change in the  
17 moratorium that was listed for the area?

18 THE WITNESS: I voted against that.

19 (Simultaneous speaking)

20 CHAIRPERSON ANDERSON: But I know you  
21 did, but why is it that you believe that the  
22 request that was made --

1 THE WITNESS: Well, all of our  
2 protections are being washed away one by one. I  
3 mean, there will be no -- we will have no  
4 barriers against the --

5 CHAIRPERSON ANDERSON: But isn't it  
6 because, as you said, you have had this standard  
7 for 20 years, so things have changed.

8 THE WITNESS: Things may very well  
9 have changed. We don't have a reason to be  
10 assured of that yet. We haven't undertaken a  
11 survey.

12 CHAIRPERSON ANDERSON: All right. All  
13 right. Yes, Mr. Kramer, question based on the  
14 questions that were asked by the Board?

15 MR. KRAMER: Yes, sir.

16 RECROSS-EXAMINATION

17 BY MR. KRAMER:

18 Q Mr. DelleDonne, are you familiar with  
19 the renewal process for ABRA licensees, as a  
20 general matter?

21 A Yes.

22 Q And are you familiar with both the

1       ANC's and ABRA's ability to protest, sanction or  
2       deny renewals of bad actors?

3             A       Yes.

4             Q       Should that case occur?

5             A       Yes.

6             Q       And are you aware that in the, I  
7       guess, chance to which I have not considered  
8       leaving, that even if an ABRA licensee is to  
9       transfer or whatever their license, that the new  
10       licensee would still need to be approved as a  
11       viable operator by this Board and subsequently  
12       the ANC?

13            A       Well, they would have to establish a  
14       record that is below grade before action could be  
15       taken, right?

16            Q       My understanding is that no one just  
17       gets an ABRA License no matter how much money  
18       they have, but rather that the Board still needs  
19       to approve the transfer. That's my understanding  
20       of the way that this Board works.

21                    MR. KRAMER: Nothing further.

22                    CHAIRPERSON ANDERSON: Ms. Nichols?

1 MS. NICHOLS: No.

2 CHAIRPERSON ANDERSON: All right. Mr.  
3 DelleDonne, thank you very much for your  
4 testimony. You can step down.

5 THE WITNESS: All right.

6 (Whereupon, the witness was excused.)

7 CHAIRPERSON ANDERSON: What do you  
8 want to --

9 MS. NICHOLS: Do you want to take a --  
10 should we take the break now, so he --

11 CHAIRPERSON ANDERSON: We don't have  
12 to take a break. I mean, if you want to take a  
13 break, we will take a break.

14 MS. NICHOLS: Okay.

15 CHAIRPERSON ANDERSON: Yeah, we don't  
16 have to take a break.

17 MS. NICHOLS: Keep going. Our next  
18 witness is Phil Carney and this will follow-up on  
19 some of the questions you all had about the  
20 neighbors, the real neighbors.

21 CHAIRPERSON ANDERSON: Mr. Carney?  
22 Whereupon,

1 PHIL CARNEY

2 was called as a witness by the Protestant, and  
3 having been first duly sworn, assumed the witness  
4 stand and was examined and testified as follows:

5 MR. CARNEY: I affirm.

6 CHAIRPERSON ANDERSON: Have a seat.

7 Your witness.

8 DIRECT EXAMINATION

9 BY MS. NICHOLS:

10 Q Mr. Carney, would you identify  
11 yourself, tell us your name, address, a little  
12 bit about yourself?

13 A My name is Phil Carney. I live at  
14 1514 17th Street, N.W., and I have lived there 40  
15 years. I moved in when we started Whitman-Walker  
16 half a block away and I didn't want a long  
17 commute to work, so I could roll out of bed and  
18 go to work.

19 I am a long time member of Dupont  
20 Circle Citizens Association, been active with  
21 DCCA for over 20 years, involved with the League  
22 of 8,000 Voters, Rat Patrol, Tulip Project, all

1 kinds of Mother's Day Book Drive for Ross  
2 Elementary, Ross Elementary Christmas Tree Drive.

3 And I was an appointed Ward 2  
4 Commissioner for Environmental Planning and I was  
5 a three time elected ANC Commissioner, ANC-2B07.

6 Q Mr. Carney, do you live in an  
7 apartment within earshot of nightlife?

8 A Yes, I do.

9 Q And could you describe the noise  
10 environment in which you live now?

11 A Existing now, I actually live on 17th  
12 Street, but my apartment faces Church and for  
13 whatever reason, the acoustics -- I get more  
14 noise I think than 17th Street. I have double-  
15 paned windows. I do not open the windows in the  
16 evening or at night, because it's too noisy.  
17 When I go to bed, I turn on a white noise machine  
18 and when I get out of bed in the morning, I turn  
19 it off. And that's existing today.

20 Q Would you describe the sources of the  
21 noise that impinge you in your home? What kinds  
22 of noise you hear?

1           A        Mostly it's folks who have been  
2 drinking, louder voices, it's the noise from  
3 public space restaurants up and down the block.

4           Q        Okay.

5           A        It gets louder the later in the  
6 evening. It gets particular loud very late in  
7 the evening. The Fox and Hounds is grandfathered  
8 in. They are open later. They have the extra  
9 hour that is the application today. And it gets  
10 significantly louder as the evening goes on.

11          Q        Would you say there is a noise level  
12 difference between on the nights like the  
13 weekends between 10:00 and 11:00 and 11:00 and  
14 12:00, is there a difference in that hour? We  
15 are talking about adding that 11:00 to 12:00 hour  
16 on weekdays.

17          A        I think there is a noticeable  
18 difference, at least that I notice.

19          Q        Tell us about the history of the  
20 block. There is a lot about -- you have been  
21 asked about changing standards. You have lived  
22 there a long time. You have seen the business

1 environment change. Do you have some  
2 observations?

3 A Well, when I moved there, 17th Street  
4 was very quiet. If you wanted to have some fun,  
5 you went to the other side of the circle to  
6 party. Now, we have got lots of restaurants with  
7 a wide variety of the type of restaurants. You  
8 know, some of the top-rated restaurants in the  
9 city. And it's great to have that extra  
10 nightlife. It's great to have all that activity.

11 One of the problems again is the noise  
12 generated by people drinking outside. A good  
13 example is that you can't make a cell phone call  
14 on my side of the street during late afternoons  
15 on the weekends or at night, because there is too  
16 much noise from across the street from people in  
17 public space restaurants.

18 Q The Chairman asked a question of  
19 Commissioner DelleDonne, could you say why you  
20 see this as different in -- why this will have an  
21 impact separate from the ending of the  
22 moratorium?

1           A       I'm not quite sure I understand the  
2 question.

3           Q       Well, let's see, the question was  
4 posed we started with a moratorium on nightclubs,  
5 that covered all ABC Licenses, I think, and then  
6 night -- then taverns -- let's see, restaurants  
7 were taken out. And then taverns were taken out.  
8 And now there is no moratorium at all recently.

9           A       Yes, I understand that.

10          Q       So maybe this just doesn't matter at  
11 all that -- do you see this as having a further  
12 effect from the natural affects --

13          A       I think it is going to worsen the  
14 situation that we already have. I can't see it  
15 as being an improvement.

16          Q       Can you elaborate?

17          A       Just because of the late night noise.

18          Q       Um-hum.

19          A       The later the hour, the noisier it  
20 gets, that's the way it is. That's the price we  
21 pay for living in a great neighborhood. But  
22 enough is enough and I don't know how much worse

1 it's going to get and I don't want to find out.

2 Q Thank you.

3 CHAIRPERSON ANDERSON: Mr. Kramer?

4 CROSS-EXAMINATION

5 BY MR. KRAMER:

6 Q Mr. Carney, up front I want to say  
7 that as a fellow gardener I very much appreciate  
8 your beautification efforts in Stead Park.

9 A Thank you.

10 Q You said you live across the street  
11 from Duke's and have since before I was born. We  
12 -- one of the meetings that we all had between, I  
13 want to say, Team Duke's and the DCCA, we don't  
14 really have another -- I don't know if it's a  
15 made up name, but between some members of our  
16 leadership and Jillian and myself and our staff  
17 at the DCCA, we asked -- excuse me.

18 Do you recall me asking you -- or do  
19 you recall being asked at that hearing if you had  
20 ever been awakened by noises from Duke's? Do you  
21 recall that question?

22 A I don't recall the question, but the

1 answer would be thanks to the white noise,  
2 probably not.

3 Q So am I to understand correctly that  
4 there has never been a time where noise from  
5 Duke's has caused you a direct harm?

6 A No, but whether that is a result of  
7 closing earlier or not, I don't know. Staying  
8 open later is an open question and I do know that  
9 the later it gets, the louder people get outside.

10 Q And just for geographic purposes, I  
11 understand that you -- am I to understand that  
12 you live in the building that is across the  
13 street from Duke's?

14 A Directly across the street, yeah,  
15 Copley Plaza.

16 Q Correct. And that you do or do not  
17 live directly opposite Duke's?

18 A No, I --

19 Q You do not?

20 A -- my windows face Church Street and  
21 from whatever --

22 Q So you are around the corner?

1 A -- reason --

2 Q Correct?

3 A Yeah.

4 MR. KRAMER: Thank you, Mr. Carney.

5 THE WITNESS: Okay.

6 CHAIRPERSON ANDERSON: Any other

7 questions? Questions by any Board Members?

8 Hearing none, thank you, sir, for your testimony.

9 THE WITNESS: Okay.

10 CHAIRPERSON ANDERSON: You may step

11 down.

12 THE WITNESS: Thank you. And no

13 disrespect, but I have to go to work, so --

14 CHAIRPERSON ANDERSON: You are done

15 testifying.

16 THE WITNESS: Thank you.

17 CHAIRPERSON ANDERSON: Sir, that's

18 between you and your attorney.

19 THE WITNESS: Yes.

20 (Whereupon, the witness was excused.)

21 MR. KRAMER: Might we take a couple

22 minute bathroom break?

1 CHAIRPERSON ANDERSON: We can now.

2 MEMBER ISAAC: Absolutely not.

3 CHAIRPERSON ANDERSON: All right. We  
4 will take -- how much time do you guys want to  
5 take? It's 7:00.

6 MS. NICHOLS: 5.

7 CHAIRPERSON ANDERSON: 5 minutes? 10  
8 minutes?

9 MS. DIENER: 10.

10 CHAIRPERSON ANDERSON: I'll give you  
11 10 minutes. So we will --

12 MS. NICHOLS: 10 sounds good.

13 CHAIRPERSON ANDERSON: -- get back at  
14 7:11.

15 MR. KRAMER: Thank you so much.

16 (Whereupon, the above-entitled matter  
17 went off the record at 7:00 p.m. and resumed at  
18 7:10 p.m.)

19 CHAIRPERSON ANDERSON: All right.  
20 Okay. We're back on the record. Yes?

21 MS. NICHOLS: I would like to call  
22 Caroline Mindel.

1 CHAIRPERSON ANDERSON: All right.

2 MS. NICHOLS: As a witness.

3 CHAIRPERSON ANDERSON: Ms. Mindel, can  
4 you raise your right hand, please?

5 Whereupon,

6 CAROLINE MINDEL

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

10 MS. MINDEL: I do.

11 CHAIRPERSON ANDERSON: All right.

12 Have a seat. Your witness.

13 DIRECT EXAMINATION

14 BY MS. NICHOLS:

15 Q Ms. Mindel, would you identify  
16 yourself and where you live?

17 A Yeah. I don't live on 17th. I -- my  
18 --- Caroline Mindel. I've lived in Dupont Circle  
19 for 38 years, raised two children there. I live  
20 at 1760 Swann Street, which is within 1,200 feet  
21 of the restaurant in question.

22 I am -- I was a former vice president

1 of the DCCA. I'm the president and treasurer de  
2 facto of the 1700 Block of Swann Street. I teach  
3 at OLLI. I am -- was -- I am an officer at the  
4 Dupont Village. And I am speaking basically  
5 about the precedent of the outdoor spaces.

6 I live surrounded by restaurants of  
7 18th Street and I have double-paned windows in my  
8 house and yet when -- I can hear the noise, the  
9 outdoor noise from lots of restaurants around us.  
10 And as the previous gentleman who testified, as  
11 the evening gets worse, it -- the -- as the  
12 evening gets later, the sound gets worse.

13 It -- and as I said, I have nothing,  
14 no feelings about Duke's one way or the other,  
15 but I just think it's a bad precedent for the  
16 neighborhood, because I kind of look -- when it  
17 becomes April, I kind of get apprehensive,  
18 because the -- with the outdoor restaurants, the  
19 noise just gets worse and worse.

20 People leave the restaurants, they  
21 take our flower pots, they throw them on the  
22 ground. They then -- they use their cars to make

1 noise, all kinds of things.

2 And whereas, I heard very good things  
3 about Duke's, the restaurants around me are not  
4 necessarily quite as trustworthy and I think if  
5 the times change, it will be a real detriment to  
6 our neighborhood.

7 Q Thank you.

8 A You're welcome.

9 CHAIRPERSON ANDERSON: Mr. Kramer?

10 CROSS-EXAMINATION

11 BY MR. KRAMER:

12 Q Ms. Mindel, good evening. Could you  
13 explain to me something you just said --

14 A Um-hum.

15 Q -- about using cars to make noise.

16 A No, I was just --

17 Q What is --

18 A -- saying with -- as people drink,  
19 they get in their cars, they start playing the  
20 radios loud. They start screaming. We have not  
21 fights, but we have verbal fights. And as the  
22 drinking levels -- as the evening is late and

1 there are some restaurants around us that stay  
2 open pretty late, the noise gets pretty bad. But  
3 the outdoor noise is really a problem, because we  
4 can -- well, all of our immediate neighbors can  
5 hear the people at the tables, who are having a  
6 very good time. They are eating. They are  
7 drinking and it's really annoying.

8 As I said, I have double-paned windows  
9 and I can still hear the noise.

10 Q Ms. Mindel, did you just state  
11 something that Duke's is within 1,200 feet of  
12 where you live?

13 A Yeah, I'm just down kind of on the  
14 edge. I'm at 18th and S. When, I think, he was  
15 measuring, he was just measuring south, but I'm  
16 north.

17 Q All right.

18 A But as I said, my -- what I'm really  
19 speaking to is the precedent of if you get -- are  
20 able to have your outdoor later, then there is  
21 nothing to say that the people -- the restaurants  
22 around me won't say they want it. And it is a

1 real problem.

2 Q Ms. Mindel, are you familiar with the  
3 ABRA application and renewal process for liquor  
4 licenses?

5 A I am.

6 Q Are you aware that licenses are --  
7 have to go before the ANC and multiple processes  
8 and Government agencies and neighborhood  
9 commissions before they can be approved or  
10 renewed?

11 A I do, but very often, you know what,  
12 the neighbors just get tired. We fight and we  
13 fight and we fight and we just get tired.

14 Q Are you --

15 A And I have been there a long time. As  
16 I said, I raised two children there. I have  
17 children who are old -- much older than you. I  
18 have grandchildren who are reaching your age.  
19 I'm pretty well-familiar with the area.

20 Q Ms. Mindel, do you know how old I am?

21 A Well, I don't, but I -- you said you  
22 were under 40.

1           Q       Ms. Mindel, are you familiar with the  
2 Google Maps application?

3           A       I --

4           Q       Do you --

5           A       -- what on my cell phone?

6           Q       Sure.

7           A       Yes.

8           Q       Okay. Just -- I guess I am -- where  
9 did you get the 1,200 feet from your house to  
10 Duke's that you stated previously?

11          A       Well, I figured -- I was figuring it  
12 out, but when this gentleman back there, Mr. -- I  
13 don't remember his name, was saying 1,200 feet.  
14 But as I said, it's not -- what I am concerned  
15 about is basically the precedent in the area,  
16 that it's just a precedent that if you get it,  
17 then the people in my neighborhood are going to  
18 get it and it becomes a --

19          Q       Would you consider those bars, Lauriol  
20 Plaza, etcetera on 18th Street to be Adams  
21 Morgan?

22          A       No, they are not. We are Dupont

1 Circle.

2 Q Okay. Even though it's more than half  
3 of a mile away from Duke's?

4 A We are not a half mile.

5 Q Oh.

6 A But anyway, it doesn't matter. It's  
7 just -- but they --

8 Q Well, for the record, you are.

9 A Okay. Well, for the record, I'll  
10 accept that.

11 Q Ma'am, have you ever been to Duke's?

12 A No, I'm not saying any -- I'm not  
13 talking about anything negative about you. I'm  
14 just talking about the precedent. There is a  
15 difference. It's -- I have heard very good  
16 things about your restaurant and everything, but  
17 it's the precedent that -- the larger precedent  
18 in the area, that's what I'm concerned about.

19 Q Would it be safe to say, ma'am, that  
20 you are protesting not this individual  
21 application, but things that may happen or may  
22 not happen in the future?

1 A Probably, yes.

2 Q Thank you so much, ma'am.

3 A Okay.

4 CHAIRPERSON ANDERSON: Are you done,  
5 sir?

6 MS. NICHOLS: Oh, just to clarify --

7 CHAIRPERSON ANDERSON: No, no, no, no.

8 MS. NICHOLS: Well, I'm sorry.

9 CHAIRPERSON ANDERSON: It's not your  
10 time yet.

11 MR. KRAMER: I'm done.

12 CHAIRPERSON ANDERSON: So you're done?

13 MR. KRAMER: Yes, sir. Thank you.

14 Sorry I didn't clarify that.

15 CHAIRPERSON ANDERSON: Questions by  
16 the Board Members, any Board Members? Now, it  
17 is --

18 MS. NICHOLS: Just to clarify.

19 REDIRECT EXAMINATION

20 BY MS. NICHOLS:

21 Q Ms. Mindel, you are a resident of ANC-  
22 2B. Is that correct?

1           A       I am.

2           Q       And the existing patio -- public space  
3 policy applies to some restaurants and taverns  
4 more immediately in your vicinity?

5           A       They do, they do.

6           Q       And you have a lot of experience with  
7 those?

8           A       I have lots of experience with noise  
9 and patios.

10                   CHAIRPERSON ANDERSON: Thank you,  
11 ma'am. You can step down. Thank you very much  
12 for your testimony.

13                   THE WITNESS: Thank you.

14                   (Whereupon, the witness was excused.)

15                   CHAIRPERSON ANDERSON: Do you have  
16 another witness?

17                   MS. NICHOLS: Yes. I would like to  
18 call another immediate neighbor, Allen Greenberg.

19                   CHAIRPERSON ANDERSON: Mr. Greenberg?

20                   MR. GREENBERG: Greenberg, yes, like  
21 the color B-E-R-G.

22                   CHAIRPERSON ANDERSON: Raise your

1 right hand, please.

2 Whereupon,

3 ALLEN GREENBERG

4 was called as a witness by the Protestant, and  
5 having been first duly sworn, assumed the witness  
6 stand and was examined and testified as follows:

7 MR. GREENBERG: I do.

8 CHAIRPERSON ANDERSON: Thank you.

9 Your witness.

10 DIRECT EXAMINATION

11 BY MS. NICHOLS:

12 Q Would you give us your name and  
13 address?

14 A My name is Allen Greenberg. I'm at  
15 1526 17th Street, which is diagonally across the  
16 street. It's on the north -- I always get the  
17 east and the west confused. It's on the  
18 northwest side of 17th and Church.

19 Q And do you have some experience in the  
20 history -- how long have you lived in your  
21 residence?

22 A I've been there since 1994 and I was

1 in the neighborhood an additional year earlier  
2 than that.

3 Q And tell us a little bit about your  
4 background coming up today, both your  
5 professional background as it might inform your  
6 work and your community work related to ABC  
7 establishments.

8 A Sure. I have a masters in urban  
9 planning. I have passed the American Institute  
10 of Certified Planners Exam. I have a background  
11 in transportation planning. In particular, I  
12 have, just as a citizen and just generally, study  
13 -- a student of neighborhood vitality issues.  
14 And I don't mean professionally, but I mean just  
15 through this background, I observe these tensions  
16 and as a resident, I do as well.

17 Q And how have your interests involved  
18 you in the community?

19 A So I moved into the community because  
20 it has a certain vitality, but also balance. So  
21 I didn't go -- I neither went to the suburbs  
22 where there is not a lot going on, nor did I go

1 to live right next to a big nightclub that closes  
2 at 2:00 a.m.

3 This particular neighborhood had a  
4 certain balance that really appealed to me. And  
5 I think it is a very careful balance. I think as  
6 a resident, if I was just serving the residential  
7 purposes, I would probably shut the outdoor stuff  
8 an hour earlier, but I understand that this is  
9 something to keep the vitality of the area and so  
10 on and so forth.

11 So there is a very careful balance and  
12 I know that something that that's something we  
13 have to look at all the time. If --  
14 neighborhoods do change, areas change, but  
15 outdoor noise is a really particular important  
16 thing. Outdoor seating is really a particularly  
17 important thing.

18 I do not go -- I do not sleep -- I do  
19 not go to sleep until the establishments are  
20 closed. I cannot go to sleep until the  
21 establishments are closed. Sometimes it seems to  
22 get louder and I concur with the witnesses that

1 were talking earlier, things get louder the  
2 closer it gets to the closing time.

3 And so I'll say oh, geez, I'm trying  
4 to go to sleep and I'm like you know what, they  
5 are going to close in 10 minutes. And when I --  
6 and they do and then it gets quiet again and then  
7 it becomes much more livable.

8 We have, you know, one establishment  
9 that sometimes is often a little bit later and  
10 that is a problem. But this -- these hours are  
11 really important. This is kind of the deal, this  
12 is what makes people who have a job, who have to  
13 get to -- the residents are really important and  
14 we have to be able to get some sleep. And the  
15 hours we have now are correct.

16 And in response to the issue of  
17 whether this is just an isolated case or others,  
18 literally, we were just -- the new establishment  
19 coming in, Astoria, asked for the later hours.  
20 When we explained to them that this was an  
21 exception and that you were requesting this and  
22 we were contesting it, they dialed it back and we

1       agreed to it.

2                       If they are open later, I'm not going  
3       to sleep until midnight or 1:00 a.m. and that's a  
4       fact. And that makes it much more difficult for  
5       me to live in the neighborhood. And I'm not  
6       alone. I am the past president of our co-op  
7       board. The -- I was involved in the negotiations  
8       with three of the establishments and I'm not  
9       claiming that everything that was done before was  
10      done right. Sometimes we were involved in --  
11      people are involved in approving menus. I think  
12      that is crazy. I don't know why anyone was  
13      involved in approving the menu.

14                      So I'm always open to sort of  
15      revisiting past decisions. This is very  
16      different than just the moratorium. The  
17      moratorium is a different issue. I have mixed  
18      feelings about the moratorium, but this is very  
19      clear. This is about whether people can go to  
20      bed at 11:00 p.m. and at midnight. And I don't  
21      go to bed until these places shut their outdoor  
22      cafe. I can't.

1           We are old buildings. We don't have  
2           central air. We don't have the luxury of closing  
3           all the windows and I hear all the stuff. And I,  
4           too, am on the courtyard and there is something  
5           about the echo. I'm I guess opposite Mr. Carney,  
6           but it's absolutely true.

7           I don't always know where the noise is  
8           coming from. Occasionally I do. Occasionally  
9           I'm outside, I'm like oh, where is that coming  
10          from, you know, and it is all of the  
11          establishments.

12          It is not true that your establishment  
13          is a silent establishment. We have had other --  
14          I wouldn't say it's not a bad thing, people are  
15          on patios during the day. There are certain  
16          times I shouldn't expect silence, but there is  
17          ambient noise from all the establishments,  
18          including this one.

19          Q           Thank you, Mr. Greenberg.

20                   CHAIRPERSON ANDERSON: Mr. Kramer?

21                   MR. KRAMER: Yes.

22                   MS. NICHOLS: While he is thinking can

1 I ask another question?

2 CHAIRPERSON ANDERSON: Sure. Go  
3 ahead, go ahead.

4 BY MS. NICHOLS:

5 Q There was a lot of discussion about  
6 outreach to the community.

7 A Yes.

8 Q As a president and a neighbor who  
9 knows everybody in your building, your co-op, The  
10 Cavanaugh, were you aware of the ANC decision  
11 process?

12 A I was not and -- in advance. And I  
13 was the former president of our -- I was the  
14 outgoing president of our co-op board. As I  
15 noted, I was involved in the negotiation of three  
16 of these things. I had previously met  
17 Commissioner Cunningham and I was not aware of  
18 this. I learned about it after the fact and I  
19 was very surprised to learn about it after the  
20 fact.

21 And I am not aware of -- and I talked  
22 to others, my neighbors and none of them had been

1 aware of this either.

2 Q Thank you.

3 CHAIRPERSON ANDERSON: Mr. Kramer?

4 CROSS-EXAMINATION

5 BY MR. KRAMER:

6 Q Mr. Greenberg, good evening. Correct  
7 me if I'm wrong that you said that you had been  
8 involved in various negotiated -- let me  
9 backtrack. Excuse me.

10 Mr. Greenberg, based on your  
11 experience in the neighborhood and with  
12 restaurants, bars, etcetera, are you familiar  
13 with the ANC process for liquor license-related  
14 issued?

15 A I have some familiarity with the  
16 process.

17 Q Are you familiar with the Dupont  
18 Circle ANC's regularly scheduled publicly  
19 announced meetings?

20 A I had given Ms. Cunningham a card some  
21 time back and she had not put me on a list of --  
22 I was told that I would be informed of things and

1 had not been informed of things. I know I could  
2 go to -- I can Google the ANC. I can find the  
3 process, but despite my having communicated  
4 interest and had gone to other meetings and  
5 signed forms and put my email address, I was  
6 never put on the emailing list.

7 Q So am I to understand that you were  
8 not -- that you were somehow not aware of our  
9 application?

10 A Correct.

11 Q Even though it was publicly noted and  
12 posted in official District of Columbia  
13 Government and ANC publications?

14 A That is correct.

15 Q And websites?

16 A Yes.

17 MR. KRAMER: Nothing further.

18 CHAIRPERSON ANDERSON: Any questions--

19 THE WITNESS: Nor any of my neighbors,  
20 so I think that says something more about the  
21 process than about my own, but that's my own  
22 view.

1                   CHAIRPERSON ANDERSON: Any questions  
2 by any Board Members?

3                   Just a quick question, Mr. Greenberg.  
4 Do you normally go to ANC meetings?

5                   THE WITNESS: Well, I have gone to ANC  
6 meetings. Interestingly, I have been going more  
7 recently because they are dealing with issues  
8 that I have some expertise and interest in in  
9 transportation. But prior to this, I was not  
10 going to very many meetings.

11                  CHAIRPERSON ANDERSON: Okay. All  
12 right. All right. Any questions, Mr. Kramer  
13 based on the questions that I asked?

14                  MR. KRAMER: No, thank you, Mr.  
15 Chairman.

16                  CHAIRPERSON ANDERSON: Thank you. Any  
17 questions based on -- no, Ms. Nichols?

18                  MS. NICHOLS: Thank you. Thank you  
19 very much.

20                  CHAIRPERSON ANDERSON: Thank you for  
21 your testimony, sir. You can step down.

22                  (Whereupon, the witness was excused.)

1 CHAIRPERSON ANDERSON: Do you have any  
2 other witnesses?

3 MS. NICHOLS: Yes. The President of  
4 the Dupont Circle Citizens Association will be  
5 our last witness.

6 MS. DIENER: Ms. Diener, can you raise  
7 your right hand, please?  
8 Whereupon,

9 ROBIN DIENER  
10 was called as a witness by the Protestant, and  
11 having been first duly sworn, assumed the witness  
12 stand and was examined and testified as follows:

13 MS. DIENER: Yes, I do.

14 CHAIRPERSON ANDERSON: All right.  
15 Thank you. Your witness.

16 MS. NICHOLS: Ms. Diener, I know her  
17 so well, that I'm going to be calling her Robin.  
18 It won't work to call her Ms. Diener.

19 DIRECT EXAMINATION

20 BY MS. NICHOLS:

21 Q Robin, would you, please, introduce  
22 yourself to the Board?

1           A       Hi, good evening. I'm Robin Diener.  
2           I'm the President of the Dupont Circle Citizens  
3           Association. I live about a block and a half  
4           away from Duke's, just off of 17th Street. I  
5           have lived in this neighborhood for 26 years and  
6           I love it.

7           Q       And would you just -- you are the  
8           President of the Dupont Circle Citizens  
9           Association. This protest is being brought by  
10          the Dupont Circle Citizens Association.

11          A       Right.

12          Q       Would you describe -- well, describe  
13          the nature of the -- I'll ask about the nature of  
14          the protest separately, but would you describe  
15          the process by which a decision was made to  
16          protest this application?

17          A       Yes. So we are an incorporated and  
18          chartered civic association in the District of  
19          Columbia. I know you have relationships with  
20          many who appear before you on matters of ABRA.  
21          We notified Mr. Kramer that we would be meeting  
22          in a board meeting to have everyone in a decision

1 making position hear what he had to say.

2 We also met with him, I think, twice,  
3 but at least once in his establishment with some  
4 of his staff and very cordial meetings. I mean,  
5 as you can see, Mr. Kramer is a very charming man  
6 and very -- he is a great host. He really is.

7 And the process is to hear an  
8 applicant and to have an opportunity for them to  
9 present to us what they are planning and what  
10 they are thinking and then for us, as a board, to  
11 ask questions. Many board members have consulted  
12 with other members and so they have, you know,  
13 specific things in mind that they want to find  
14 answers to.

15 And we discuss a settlement agreement  
16 and, you know, what are the kinds of things that  
17 we thought might possibly be considered. I guess  
18 we could talk about that more, but the -- we  
19 didn't arrive at any ideas that were mutually  
20 acceptable and so the board then voted to  
21 protest. Is that all right?

22 Q Yeah. When you are talking about

1 possible settlement agreements, is there anything  
2 -- do you -- are you aware of anything that would  
3 prevent Duke's from operating its patio without  
4 alcohol?

5 A No.

6 Q That's kind of -- I'm just kind of  
7 throwing that out, because this discussion came  
8 up about what --

9 A Well --

10 Q -- asked us what could we agree to and  
11 we have --

12 A That's a great question. I don't know  
13 the answer. I mean, the alcohol -- the ABRA --  
14 no, I take that back.

15 Q Because there was discussion of --

16 A Like it's --

17 Q -- Annie's can operate all night.

18 A But Annie's is physically enclosed  
19 with windows and --

20 Q Well, right, yeah.

21 A -- walls. Yeah, but this is an  
22 outdoor cafe with a settlement agreement --

1 Q No, there's no --

2 A No, no settlement agreement. Okay.

3 But the hours are assigned on the ABRA License--

4 Q Yes.

5 A -- to the 11:00 and 12:00, which  
6 everyone in the neighborhood or almost everyone  
7 has signed on to settlement agreements for those  
8 hours. It has been an astonishingly great  
9 compromise to have in place.

10 The residents -- just as Allen said,  
11 those residents who need to go to sleep at a  
12 certain time can count on, frankly, the good  
13 operations of the retail restaurants, since they  
14 do, in fact, close up just -- they close up their  
15 outdoor cafes, just as they promised.

16 And so there may be a little bit of  
17 noise at 11:10 or something, but you know it's  
18 going to go away, because really everyone does a  
19 great job. And for the businesses, it's a  
20 compromise for them, of course, because they  
21 would rather stay open, but we have met each  
22 other in the middle, you could say, and it is

1 just working great for the past, I think it has  
2 been, 20 years since the ANC adopted the  
3 guidelines.

4 And they are only guidelines, but that  
5 they ask, uniformly ask, every new establishment  
6 or new license to subscribe to them in a  
7 settlement agreement. And that's how we have  
8 established this terrific compromise where I feel  
9 -- again, no complaints about the businesses.

10 So if somebody is being noisy on the  
11 patio before 11:00 on weeknights or before 12:00  
12 on Saturday and Sunday, nobody is going to report  
13 it. I mean, unless somebody is being murdered.  
14 So you probably don't have a list of infractions,  
15 because, frankly, people just put up with the  
16 noise until then. It's reasonable until 11:00 or  
17 12:00 on the weekends and then because everyone  
18 participates and does a great job, there is no  
19 need to be, you know, counting how many seats are  
20 occupied or measuring the noise, because we have  
21 got a compromise in place that works.

22 Q Yes. People keep asking about the

1 protest process, if there is some problem. Has  
2 that worked, the protest process?

3 A The protest process is laborious. One  
4 of the reasons DCCA opposed the ending of the  
5 moratorium was because then we would have to  
6 constantly come back either with the ANC or maybe  
7 sometimes we would not be in agreement with the  
8 ANC to redo settlement agreements if we thought  
9 so, instead of having these things in place.

10 So I find it to be a great burden on  
11 the citizens to have to do all these. And in  
12 Dupont Circle, 17th Street is one corridor, but  
13 we have the P Street Corridor, the 18th Street,  
14 Connecticut Avenue. We have got a lot of  
15 licenses, as you well know, as this Board well  
16 knows. So it's a lot of work for the ANC and for  
17 the citizens.

18 Q And you are doing this for the whole--  
19 are you representing citizens clear across ANC-  
20 2B?

21 A Right. So the Dupont Circle Citizens  
22 Association boundaries are consistent with the

1 ANC. We have over 300 members right now. And  
2 they come from all different areas of ANC-2B.

3 Q And you work in areas other than  
4 alcohol regulation, right?

5 A We do. The citizens association is  
6 very active in historic preservation, in zoning  
7 issues, in development issues. We also have a  
8 mission to provide charitable contributions to --  
9 you know, we replaced the bee hive at a church  
10 that had lost a bee hive. We raised money for  
11 new computers for the Ross School and for books  
12 for their library, all kinds of things like that.

13 And very similar to what Mr. Kramer  
14 has very charitably done with his business.  
15 Although ours is not a business. It's a civic  
16 association, a 501(c)(4) membership group.

17 Q Thank you.

18 CHAIRPERSON ANDERSON: Do you have any  
19 other questions? You're done?

20 MS. NICHOLS: All except I did speak  
21 wrong before, because I'm going to be a witness  
22 after her and I didn't consider myself when I

1 said she was the last witness.

2 CHAIRPERSON ANDERSON: All right. But  
3 you have -- all right.

4 MS. NICHOLS: But I'm done with Ms. --  
5 I have no more questions right now for Mrs.  
6 Diener.

7 THE WITNESS: Okay.

8 CHAIRPERSON ANDERSON: Mr. Kramer?

9 MR. KRAMER: Yes. Thank you, Mr.  
10 Chairman.

11 CROSS-EXAMINATION

12 BY MR. KRAMER:

13 Q Ms. Diener, good evening.

14 A Good evening.

15 Q Good evening. Can we agree that  
16 Annie's is the only physically enclosed structure  
17 protruding onto the patio on 17th Street that is  
18 a restaurant or a bar? Are you aware of any  
19 others?

20 A No.

21 MS. NICHOLS: There is a cafe.

22 THE WITNESS: I think so. What?

1 CHAIRPERSON ANDERSON: Ms. --

2 THE WITNESS: No, but the -- it's the  
3 only existing one, yeah.

4 BY MR. KRAMER:

5 Q The only existing. Okay. In your  
6 involvement in the DCCA and/or the ANC, have you  
7 supported or protested other applications for  
8 fully enclosed sidewalk cafe structures?

9 A Well, in my 10 years of being  
10 involved, I don't think we have protested any  
11 enclosed, because it's very hard to get  
12 permission to do that and I don't think they have  
13 been actually applied for.

14 There is one, I think, now being  
15 applied for by Brick Lane, but that actually  
16 hasn't come to us yet.

17 Q Would you view fully enclosed  
18 structures on public space, such as Annie's  
19 patio, in a generally speaking positive or  
20 negative light?

21 A Well, DCCA doesn't have a policy about  
22 it, but the Public Space Rules on enclosed cafes

1 would be what we would support.

2 Q Ms. Diener, did you -- in -- I can --

3 MR. KRAMER: Mr. Chairman, for  
4 clarification, I just want to play by the rules  
5 here. I can only ask her issues that were  
6 brought up by Ms. Nichols. Is that correct?

7 CHAIRPERSON ANDERSON: Yes. You can  
8 only ask her questions based on her testimony.  
9 So if it's not -- if she hasn't testified about  
10 something, then you can't break new area, unless  
11 someone else breaks that area.

12 MR. KRAMER: Okay.

13 BY MR. KRAMER:

14 Q Ms. Diener, do you -- I believe you  
15 mentioned the guidelines with -- that the ANC  
16 views applications. Do you know how old those  
17 guidelines are?

18 A I think they are more than 20 years-  
19 old.

20 Q So is it fair to say that if these  
21 guidelines were individuals, they would be old  
22 enough to drink?

1           A        I'm unsure what the drinking age is.

2           Q        It's 21, ma'am.

3           A        I think so.

4                   MR. KRAMER:  Nothing further, Mr.

5           Chairman.

6                   CHAIRPERSON ANDERSON:  Any questions  
7           by any Board Members?

8                   MEMBER SHORT:  I just have one.

9                   CHAIRPERSON ANDERSON:  Yes, Mr. Short.

10                   MEMBER SHORT:  You mentioned that --  
11           Ms. Diener, good afternoon.

12                   THE WITNESS:  Yes.

13                   MEMBER SHORT:  Good evening.

14                   THE WITNESS:  Hello.

15                   MEMBER SHORT:  You mentioned that  
16           there is a conglomerate of eateries and  
17           restaurants in your neighborhood?

18                   THE WITNESS:  Yeah, yes.

19                   MEMBER SHORT:  How many were there  
20           when you moved in?

21                   THE WITNESS:  Well, on 17th Street --  
22           thank you for asking that question.  I don't

1 think there had been but one or two more added,  
2 because --

3 MEMBER SHORT: Well, how many were  
4 there --

5 THE WITNESS: How many? I -- so from  
6 Q Street -- no, from P Street to R, which is, I  
7 think of as the moratorium area --

8 MEMBER SHORT: Um-hum.

9 THE WITNESS: -- I'm not sure, but I  
10 think there is about 25 or 30.

11 MEMBER SHORT: That were there when  
12 you moved in?

13 THE WITNESS: I would say but for two  
14 or three new ones, yes.

15 MEMBER SHORT: Okay. All right. Now,  
16 would you consider that something advantageous  
17 for the community or something detrimental to the  
18 community?

19 THE WITNESS: No, it's lovely to have  
20 the mix of restaurants and then other  
21 neighborhood-serving retail available. It's what  
22 makes the neighborhood that little mix, that

1 little short within walking distance of your  
2 residence to -- we have got a hardware store, as  
3 well as a Subway, as well as a McDonalds, as well  
4 as Komi and the delightful --

5 MEMBER SHORT: I'm very familiar with  
6 it --

7 THE WITNESS: Right, right. So we  
8 have --

9 MEMBER SHORT: -- and I can tell you  
10 a lot of --

11 THE WITNESS: -- a wonderful --

12 MEMBER SHORT: -- communities,  
13 including mine, are jealous.

14 THE WITNESS: I can imagine, yeah.  
15 And part of that, if you don't mind, excuse me I  
16 don't mean to interrupt, is it -- it's a Historic  
17 District that has grown up with these little  
18 pockets of commercial development and without any  
19 planning at all. So there is something to be  
20 said for sort of the organic development of a  
21 neighborhood.

22 But it has gone through some waves of

1 development and changes in the city and right now  
2 and for the past 20 or 21 years or so, we have  
3 just had a great balance that has worked, in my  
4 opinion, for everyone.

5 And in that time there haven't been a  
6 bunch of empty storefronts. Sometimes the ANC  
7 commissioner and others speak about the lack of  
8 vitality on our street and I don't think it has  
9 ever, since I have been there, not been vital.

10 Now, 14th Street has come along and  
11 that's a whole different animal and it may have  
12 drawn some businesses away, but they have been  
13 replaced. So it's -- and Connecticut Avenue, I  
14 think, is actually lacking in vitality right now,  
15 but we have created a BID and there is going to  
16 be a lot of work done there and I think that will  
17 come up to be a great street for residents --

18 MEMBER SHORT: Thank you for your  
19 service as --

20 THE WITNESS: -- and businesses.

21 MEMBER SHORT: -- president of the  
22 Dupont Circle Civic Association and thank you for

1 your compelling testimony.

2 THE WITNESS: Thank you, sir.

3 MEMBER SHORT: That's all I have, Mr.  
4 Chair.

5 CHAIRPERSON ANDERSON: Any other  
6 questions by any of the Board Members? Mr.  
7 Kramer, any questions? Any questions based on  
8 the questions that were asked by --

9 REDIRECT EXAMINATION

10 BY MS. NICHOLS:

11 Q Are there any vacancies on 17th Street  
12 now? Any retail vacancies?

13 A So based on my observation, I don't  
14 think so. I mean, Astoria now is going into a  
15 place that has been vacant for a long time.

16 We had two below-grade spaces for a  
17 long time that -- and those are typically  
18 difficult to get tenants for below-grade. I used  
19 to own a bookstore, so I am very interested in  
20 retail. And the one was turned into a  
21 restaurant, it formerly years ago had been a club  
22 where there was a lot of problems. It got closed

1 down. And finally now it has been reopened as a  
2 lovely Indian restaurant and retail kind of  
3 market.

4 And then underneath the CVS for a long  
5 time has been an empty space that doesn't -- it's  
6 not handicapped accessible. It's very difficult  
7 for deliveries and things, so that has been hard,  
8 but now that is going to be turned into a copying  
9 center by another neighborhood local retailer, so  
10 we are very excited about that. So I think we  
11 are going to be full up.

12 CHAIRPERSON ANDERSON: All right.

13 THE WITNESS: Thank you.

14 CHAIRPERSON ANDERSON: Mr. Kramer,  
15 unless --

16 MR. KRAMER: Yes, I just -- I'm sorry,  
17 Mr. Chair, I forgot one thing.

18 CHAIRPERSON ANDERSON: No, I'm sorry.

19 MR. KRAMER: Oh, too late. Sorry.

20 CHAIRPERSON ANDERSON: You lost your  
21 opportunity, so --

22 MR. KRAMER: Okay. Sorry about that.

1 CHAIRPERSON ANDERSON: Because if I  
2 allowed --

3 MR. KRAMER: My mistake.

4 CHAIRPERSON ANDERSON: -- the  
5 question, then we have to go back through the  
6 whole --

7 MR. KRAMER: Totally understood. My  
8 mistake.

9 CHAIRPERSON ANDERSON: -- process  
10 again. Thank you, Ms. Diener, for your  
11 testimony. You can step down.

12 (Whereupon, the witness was excused.)

13 CHAIRPERSON ANDERSON: So how are you  
14 going to do this? You said you have another  
15 witness.

16 MS. NICHOLS: I'm not quite sure. I  
17 have some information that I want to give to you  
18 that didn't fit anything that has been said so  
19 far. I -- for example, we sent -- gave you some  
20 -- I'll just ask myself questions if you like.

21 CHAIRPERSON ANDERSON: All right.  
22 Well, all right. Can you raise your right hand,

1 please?

2 MS. NICHOLS: Pardon?

3 MS. DIENER: Raise your right hand.

4 CHAIRPERSON ANDERSON: Can you raise  
5 your right hand, please?

6 MS. NICHOLS: Oh, yes.

7 Whereupon,

8 ABIGAIL NICHOLS

9 was called as a witness by the Protestant, and  
10 having been first duly sworn, assumed the witness  
11 stand and was examined and testified as follows:

12 MS. NICHOLS: I do.

13 CHAIRPERSON ANDERSON: Thank you.

14 DIRECT EXAMINATION

15 BY MS. NICHOLS:

16 THE WITNESS: First, I would like to  
17 introduce some exhibits that haven't been  
18 introduced yet. I hope you have them. If you  
19 don't, I have copies. There are four exhibits.

20 CHAIRPERSON ANDERSON: Hold on, hold  
21 on a minute, please. Let me see. Okay. Go  
22 ahead. What are the exhibits?

1 THE WITNESS: So do you want me to say  
2 what each of the exhibits is?

3 CHAIRPERSON ANDERSON: Yes, tell me  
4 what the exhibits are, yeah.

5 THE WITNESS: The first exhibit is  
6 something that I think is in the Investigator's  
7 report, it's the Zoning Map.

8 The second one is photos of the  
9 residences.

10 (Whereupon, the above-  
11 referred to documents were  
12 marked as Protestant Exhibit  
13 No. 1 and 2 for  
14 identification.)

15 THE WITNESS: The Investigator's  
16 pictures start -- were from Church Street south.  
17 This goes up between Q and --

18 CHAIRPERSON ANDERSON: So that's  
19 Exhibit --

20 THE WITNESS: 2.

21 CHAIRPERSON ANDERSON: -- that's  
22 Exhibit 2. So tell me what is Exhibit 2?

1 THE WITNESS: 2 is the residential  
2 homes on the east and the west side of 17th  
3 Street between P and Q.

4 CHAIRPERSON ANDERSON: So you are  
5 trying to move these into evidence?

6 THE WITNESS: Yes.

7 CHAIRPERSON ANDERSON: Mr. Kramer, do  
8 you have these documents?

9 MR. KRAMER: Yeah, I have seen those.

10 CHAIRPERSON ANDERSON: Do you have any  
11 objection?

12 MR. KRAMER: No. I think they are  
13 already there anyway, but no objection.

14 CHAIRPERSON ANDERSON: Now, as I said  
15 before, Mr. Kramer, whether or not I have them or  
16 not, until they are -- someone makes a motion to  
17 move them into evidence, they are not into  
18 evidence. So --

19 MR. KRAMER: Even if they are in the--  
20 from the -- I'm sorry, I didn't understand that.  
21 So if they are in the Investigator's report?

22 CHAIRPERSON ANDERSON: If they are in

1 the Investigator's report, but remember I went  
2 through the Investigator's report to identify the  
3 documents, so if there are in the Investigator's  
4 report, these documents are in evidence.

5 But if they are in your PIF or her PIF  
6 and unless someone moves them into evidence, then  
7 they don't move into evidence.

8 MR. KRAMER: Okay.

9 CHAIRPERSON ANDERSON: All right. So  
10 she is trying to move the Exhibit 2 into evidence  
11 and I asked if you have an objection and you said  
12 no. So I move in Protestant's Exhibit 2 into  
13 evidence, along with No. 1.

14 (Whereupon, the above-  
15 referred to documents were  
16 received into evidence as  
17 Protestant Exhibit No. 1 and  
18 2.)

19 CHAIRPERSON ANDERSON: What other  
20 documents do you have? What other documents?

21 THE WITNESS: I'm sorry?

22 CHAIRPERSON ANDERSON: What other

1 document?

2 THE WITNESS: Oh, the other documents?

3 CHAIRPERSON ANDERSON: Yes.

4 THE WITNESS: Exhibit 3 brings in a  
5 lot of questions today about the nature of the  
6 bars in the neighborhood. This is a table for  
7 the bar of alcohol licenses between P and Q on  
8 17th Street.

9 (Whereupon, the above-  
10 referred to document was  
11 marked as Protestant Exhibit  
12 No. 3 for identification.)

13 THE WITNESS: It includes Hank's,  
14 because, in my thinking, the Fox and Hounds, Trio  
15 Patio kind of morphs around the corner into  
16 Hank's.

17 CHAIRPERSON ANDERSON: So what is this  
18 supposed to -- so you are saying this is just a  
19 total of all the businesses on 17th Street?

20 THE WITNESS: Yes, and the point  
21 being, which I would testify to, is that there  
22 are a lot -- there is a lot of outdoor alcohol on

1 that block. And only -- and their hours, as you  
2 see here, this does not -- you have heard about  
3 an exception with the Dupont Kitchen, that's  
4 almost two -- a block --

5 CHAIRPERSON ANDERSON: Where -- oh,  
6 okay, I'm sorry. Go ahead. All right.

7 THE WITNESS: Yes.

8 CHAIRPERSON ANDERSON: That's fine.  
9 Okay.

10 THE WITNESS: And then the last  
11 exhibit is just showing --

12 MR. KRAMER: Mr. Chairman?

13 CHAIRPERSON ANDERSON: Yes?

14 MR. KRAMER: If that's being  
15 introduced into evidence, I would object. I'm  
16 not sure if that's what is happening or not.

17 CHAIRPERSON ANDERSON: Why are you  
18 objecting? Tell me.

19 MR. KRAMER: I haven't verified these  
20 hours as correct and I'm -- so I don't know that  
21 those hours are correct.

22 CHAIRPERSON ANDERSON: I'm going to

1 admit it for what it is.

2 (Whereupon, the above-  
3 referred to document marked  
4 as Protestant Exhibit No. 3  
5 was received into evidence.)

6 CHAIRPERSON ANDERSON: I mean, I'm not  
7 -- I think that we have our own records and so  
8 therefore we can verify what the records are for  
9 these establishments. So but I have heard your  
10 objection.

11 MR. KRAMER: Okay.

12 CHAIRPERSON ANDERSON: But I will put  
13 them in --

14 THE WITNESS: And I can only say I did  
15 the best I could.

16 CHAIRPERSON ANDERSON: Well, so I will  
17 take them for what it's worth, I mean, and give  
18 it the weight it should, if any, but our records  
19 are more -- we will look. If I need to see what  
20 the hours are in the neighborhood, I will review  
21 our own records to see what they are.

22 So I'll accept the document for what

1 it purports to state. Go ahead.

2 THE WITNESS: And then Exhibit 4 I'm  
3 not sure. It was in the PIF. I think the  
4 Investigator's pictures of the busy -- how many  
5 outdoor spaces they -- there are in that  
6 immediate vicinity are quite good. This is just  
7 another aspect, another picture, but I would like  
8 for reason -- for my testimony, I would like to  
9 admit it, one part of it is not in the  
10 Investigator's report.

11 CHAIRPERSON ANDERSON: Mr. Kramer, any  
12 objection?

13 MR. KRAMER: What exhibit number is  
14 it?

15 CHAIRPERSON ANDERSON: No. 4 of her  
16 PIF.

17 MR. KRAMER: Flash it to me. What is  
18 it? That's fine. That's fine.

19 CHAIRPERSON ANDERSON: Any other  
20 documents?

21 THE WITNESS: No.

22 CHAIRPERSON ANDERSON: All right.

1 (Whereupon, the above-  
2 referred to document was  
3 marked as Protestant Exhibit  
4 No. 4 for identification and  
5 was received into evidence.)

6 CHAIRPERSON ANDERSON: What else?  
7 Anything else you want to bring, you want to  
8 state, ma'am?

9 THE WITNESS: Yes.

10 BY MS. NICHOLS:

11 Q Ms. Nichols, who are you?

12 A I am Abigail Nichols. I'm a former  
13 commissioner. I have -- now have a task I do  
14 regularly for DCCA, which is to monitor alcohol  
15 applications around the neighborhood and make  
16 suggestions about what could be done.

17 As a result of this, I have gotten  
18 myself way more involved in the 17th Street than  
19 I was even when I was a commissioner. We went  
20 through one moratorium discussion when I was  
21 commissioner, but it has been very interesting.  
22 We pay more -- to look at big picture.

1           And one thing I would like to bring to  
2 your attention is that both the Investigator and  
3 Mr. Kramer have acknowledged a television and a  
4 television bracket on his public space. As I  
5 understand -- that would be a violation of his  
6 Public Space Permit.

7           The television is explicitly forbidden  
8 in DDOT Law. The bracket has to be approved, so  
9 I have to assume that it wouldn't be approved by  
10 DDOT, because its purpose isn't approved.

11           The next point I would like to talk  
12 about is just generally why this case is bring  
13 brought under the peace, order and quiet  
14 provision, because you have heard so much there  
15 is no peace, order and quiet or very little right  
16 now on 17th.

17           But that area that is zoned, that  
18 western area the Investigator didn't talk much  
19 about this, is all residential. It is zoned  
20 residential. And it has special protections in  
21 DC Law that, in general, we kind of acknowledge  
22 Ms. Diener's testimony I think acknowledged,

1 everything isn't being enforced.

2 Talking and watching, I myself I  
3 couldn't make a cell phone call along there. I  
4 spoke -- I was talking to one owner when his  
5 delivery truck was driving him nuts because he  
6 had blocked the alley, which was causing honking.  
7 Then he moved around and got -- so the whole  
8 delivery thing causes all kinds of backup with  
9 noise.

10 The Stead Park I think is better on  
11 their amplified music, but in the past that has  
12 been a concern.

13 There is a -- the traffic does -- it's  
14 like a thoroughfare. It is also a thoroughfare,  
15 as I understand it, Mr. Kramer may be able to say  
16 more about this, the police and fire trucks. If  
17 you are on 17th Street, you have got the noise of  
18 police and fire trucks. So this is -- I'm not  
19 arguing that this is a quiet environment.

20 It's just because right now there is  
21 this one control of stopping the outside, the  
22 late noise and you have to assume that this

1 request is based on the idea of more business,  
2 not reallocating the existing business, because  
3 so that means more deliveries, possibly more  
4 traffic, people leaving later, that whole  
5 picture.

6           And you have also heard residents talk  
7 about how they don't know how to get involved  
8 with these various problems they have. And this  
9 is one that they are getting involved with that  
10 they think the testimony I had seems to -- that  
11 we had tonight and people I have talked to this  
12 closing down things at 11:00 makes it possible to  
13 live with other things and not get too  
14 discouraged about the noise level.

15           I do not have a table for you on the  
16 bad effects of the noise on human health, but  
17 it's pretty -- it looks to be very bad on 18th  
18 Street. It's all about the appropriateness  
19 clause. I would like -- you know, just peace,  
20 order and quiet, this is a standard for peace,  
21 order and quiet. There has been a lot of  
22 discussion about --

1                   CHAIRPERSON ANDERSON: Let me ask you  
2 a question. Are you -- remember you are going to  
3 have an opportunity to do a closing.

4                   THE WITNESS: Um-hum.

5                   CHAIRPERSON ANDERSON: So --

6                   THE WITNESS: Maybe this is all  
7 getting rushed, put together. Okay.

8                   CHAIRPERSON ANDERSON: So --

9                   THE WITNESS: Okay.

10                  CHAIRPERSON ANDERSON: -- because if--  
11 so --

12                  THE WITNESS: Okay. Gotcha.

13                  CHAIRPERSON ANDERSON: -- we can have  
14 the testifying, which we can ask cross-examine  
15 questions or -- and then later on you still have  
16 an opportunity to wrap up and do a closing. So--

17                  THE WITNESS: I think this next thing  
18 will be --

19                  CHAIRPERSON ANDERSON: -- it sounds  
20 like --

21                  THE WITNESS: -- evidential.

22                  CHAIRPERSON ANDERSON: So that's why

1 I just want to make sure that --

2 THE WITNESS: I understand what you  
3 are saying.

4 CHAIRPERSON ANDERSON: Right.

5 THE WITNESS: Thank you.

6 CHAIRPERSON ANDERSON: All right.

7 BY MS. NICHOLS:

8 THE WITNESS: We haven't really talked  
9 about the admissability of evidence in this  
10 hearing. We have the -- the Investigator  
11 included without talking to any of the people  
12 listed, the list of supporters from Duke's or the  
13 letters from Duke's haven't been analyzed in  
14 terms of where they are.

15 My cross-examination questions would  
16 be where you live, are you in earshot of Duke's?  
17 Do you have a hearing impairment? Do you work in  
18 the hospitality industry? And some other things  
19 which might like -- I think it was Mr. Kramer  
20 mentioned Dino and I don't know his last name. I  
21 know he is an owner or manager of Floriana.

22 So I don't think his support for later

1 hours would constitute the same as someone who  
2 needs to sleep after 11:00, because he probably  
3 doesn't have to sleep after 11:00 if he is  
4 managing his restaurant, which has 3:00 a.m.  
5 hours.

6 So on the subject of cross-  
7 examination, I am willing to accept that because  
8 I have analyzed the 93 people on that list and I  
9 don't have to get to the cross-examination about  
10 hearing impairment or hospitality industry,  
11 because so few of the people on that list live in  
12 close proximity to Duke's. And I would like that  
13 to be entered as my analysis of that list entered  
14 as evidence.

15 CHAIRPERSON ANDERSON: Well, I mean,  
16 I guess I'm listening. You are just making an  
17 allegation and I can't really make an answer to  
18 that, because I don't know. I don't -- I have  
19 not -- we have not gone through the list to state  
20 or you have not gone through the list and  
21 provided us to say this person lives --

22 THE WITNESS: I have it.

1 CHAIRPERSON ANDERSON: Well --

2 THE WITNESS: I have done it.

3 CHAIRPERSON ANDERSON: -- but you  
4 haven't -- I mean, I -- in order for me to make a  
5 decision, you have to give me something to say  
6 this is not -- but you are just making a  
7 statement and I don't know. I don't live in the  
8 neighborhood, so I have the list.

9 And for me, when I make a decision, I  
10 have a list, I don't know who these people are.

11 THE WITNESS: Right.

12 CHAIRPERSON ANDERSON: Whether or not  
13 they are people who live in the neighborhood or  
14 where they live, so I take it for what it is.  
15 It's either people who --

16 THE WITNESS: Well, I would like to  
17 testify that my analysis, and I have a complete  
18 table and all the background, is that at most  
19 four people are in earshot of Duke's.

20 CHAIRPERSON ANDERSON: So why didn't  
21 you submit that information as --

22 THE WITNESS: Pardon?

1                   CHAIRPERSON ANDERSON:  -- part of your  
2                   PIF to say that since you -- I mean, you are  
3                   aware of this.  But anyway, that's neither here  
4                   nor there.

5                   THE WITNESS:  I wish that we could  
6                   have done everything we wanted to, because we are  
7                   so strongly, you can tell all of us testifying  
8                   and we are doing all the work we can, but -- and  
9                   this work was not done at the time of -- and plus  
10                  I didn't know how you were going to handle all  
11                  this hearsay evidence.

12                  CHAIRPERSON ANDERSON:  Well, I mean,  
13                  for me it's -- someone gave a list.  We will take  
14                  it for -- we will take it and give it the weight  
15                  that it is due.  I mean, at least for me, what is  
16                  going to guide me is the testimony that I'm  
17                  hearing today.  The applicant has the burden to  
18                  prove that -- the burden is on him to prove to us  
19                  that this is appropriate for the neighborhood.

20                  THE WITNESS:  Okay.

21                  CHAIRPERSON ANDERSON:  And so we are  
22                  going to make this determination on that.

1 THE WITNESS: I would back up and make  
2 the clearer point that this is not a majoritarian  
3 kind of decision.

4 CHAIRPERSON ANDERSON: But remember,  
5 Ms. Nichols, are you testifying or are you giving  
6 your closing argument? That's why I'm just  
7 saying you have an opportunity to give the  
8 closing and I think you are --

9 THE WITNESS: Okay.

10 CHAIRPERSON ANDERSON: -- some of the  
11 things that you are saying --

12 THE WITNESS: My testimony is this.

13 CHAIRPERSON ANDERSON: -- is more --  
14 yes, ma'am.

15 THE WITNESS: A list of 93 names have  
16 been submitted.

17 CHAIRPERSON ANDERSON: Yes, ma'am.

18 THE WITNESS: At most, 4 are directly  
19 -- likely to be directly impacted by noise from  
20 Duke's.

21 CHAIRPERSON ANDERSON: All right.

22 THE WITNESS: I would also like to

1 testify that the ANC testified that they was --  
2 and their resolution says their support at the  
3 hearing I attended, there were 4 community oral  
4 arguments against this. There were 5 in favor of  
5 it, one of whom was proposing support for  
6 business on the block, which I don't think is  
7 relevant to the appropriateness.

8 One that didn't live there and I would  
9 just argue that the -- any testimony that you  
10 have heard about that support, is in favor of  
11 this from an appropriateness criteria, meaning  
12 those people nearest who have to live with it,  
13 are -- there is not that support.

14 And remarks about DC Noise Law, I  
15 should do in my closing statement?

16 CHAIRPERSON ANDERSON: Well, when you  
17 do a closing, a closing is you are going to give  
18 a closing to say this is the evidence that was  
19 presented throughout the hearing. And this is  
20 what was proven and this is why you should not do  
21 -- so you can't bring in new information in the  
22 closing that we have not heard before. So --

1           THE WITNESS:  So the information is I  
2           think the -- as I interpret the appropriateness  
3           clause in the ABRA legislation, I interpret that  
4           within DC Noise Law.  That's something that  
5           hasn't come up in anybody's testimony, that DC  
6           Noise Law supports people sleeping.  There are --  
7           there is -- construction has to stop at 9:00.  
8           Trash pickup is curtailed.

9           There are different hours under the  
10          specific decibel part between, I don't know,  
11          10:00, whatever it is, but also there and then  
12          beyond that, the DC Noise Law says that people  
13          shall have the right to peace, order and quiet as  
14          a matter of right.  And I -- that's -- we just  
15          really haven't discussed that so far, I don't  
16          think, in this hearing.

17          And since I study that stuff, that's  
18          why I want to say something about it.

19          CHAIRPERSON ANDERSON:  Okay.  Anything  
20          else you want to say?

21          THE WITNESS:  I'm sorry?

22          CHAIRPERSON ANDERSON:  Anything else

1 you want to say?

2 (No audible answer.)

3 CHAIRPERSON ANDERSON: All right. Mr.  
4 Kramer, any -- based on what Ms. Nichols just  
5 stated, do you -- are there any questions that  
6 you want to ask her based on what she stated?

7 MR. KRAMER: Yeah, not -- I'm not sure  
8 that there are actually any questions there, so  
9 let me ask a couple.

10 CROSS-EXAMINATION

11 BY MR. KRAMER:

12 Q Did you, Ms. Nichols, mention just now  
13 in your statement that there was "no  
14 enforcement." Yes or no?

15 A No, I don't think. I meant -- did not  
16 mean to say that. I meant to say that people are  
17 not asking for enforcement of infractions that  
18 may exist, because of this. And several other  
19 people have testified to that, that if they --  
20 they can put up with a lot if they know that  
21 things are going to quite down at 11:00 and  
22 12:00. I do myself. I live with a sidewalk cafe

1 right outside my window.

2 Q Ms. Nichols, do you live closer to  
3 what is commonly referred to as Club Central in  
4 lower Dupont or do you live closer to Duke's  
5 Grocery?

6 A No, I live at -- I don't -- I'm doing  
7 this for DCCA. I live on 18th Street. As you  
8 know, I don't live close to 17th Street.

9 Q Have you ever been personally  
10 disturbed by a noise at any hour of the day or  
11 night from something at Duke's Grocery?

12 A No.

13 Q Has anybody in your extensive  
14 community network association hearsay, anybody  
15 mentioned a problem emanating from Duke's Grocery  
16 ever?

17 (No audible answer.)

18 Q Yes or no?

19 A I don't know. Because you would want  
20 to know the particulars and there are a couple of  
21 conversations that I can't very well recollect.  
22 It's not a lot, no. This case -- well, the case

1 is not about --

2 CHAIRPERSON ANDERSON: She is asking  
3 you a question.

4 THE WITNESS: Yes.

5 CHAIRPERSON ANDERSON: I'm sorry he is  
6 asking you a question.

7 THE WITNESS: Yes.

8 CHAIRPERSON ANDERSON: So --

9 THE WITNESS: I don't know.

10 CHAIRPERSON ANDERSON: -- if you don't  
11 know, you say you don't know.

12 THE WITNESS: I don't know.

13 CHAIRPERSON ANDERSON: Okay. Go  
14 ahead, Mr. Kramer.

15 BY MR. KRAMER:

16 Q Ms. Nichols, were you about to say  
17 that this case is not about Duke's Grocery?

18 A Nope. I was not about to say that.

19 Q Ms. Nichols, you mentioned that police  
20 and fire trucks make noise when they come down  
21 17th Street. Is that correct?

22 A Yes.

1           Q       Should they be outlawed or restricted  
2 to certain hours of the day or night?

3           A       No.

4           Q       Is 17th Street a very busy commercial  
5 corridor at all hours of the day and night for  
6 all sorts of vehicular, bicycle and pedestrian  
7 traffic?

8           A       Yes.

9           Q       Should it be -- should 17th Street be  
10 closed to vehicular, pedestrian or other traffic  
11 at any time of the day or night?

12          A       I know there is -- I don't have an  
13 opinion on that. There is some interesting  
14 proposals about it, but I have not looked at that  
15 at all.

16          Q       What proposals exist to cutoff or  
17 restrict free right of passage on 17th Street for  
18 cars, bicycles or pedestrians?

19          A       I think you would be in a better  
20 position to describe it. I don't know.

21          Q       Well, I am in no position to describe  
22 it.

1 CHAIRPERSON ANDERSON: Well, questions  
2 need to be asked and then answers need to be  
3 given.

4 MR. KRAMER: Okay.

5 CHAIRPERSON ANDERSON: And if there is  
6 an answer, if I can't answer the question, it's I  
7 don't have an answer or I cannot answer that  
8 question.

9 MR. KRAMER: Understood. Thank you,  
10 Mr. Chairman.

11 CHAIRPERSON ANDERSON: We are getting  
12 to the end, so I know that we are getting to the  
13 end and I'm on the time line that I thought we  
14 would have.

15 MR. KRAMER: Understood.

16 BY MR. KRAMER:

17 Q Ms. Nichols, in the interest of  
18 understanding how other licensees on 17th Street  
19 feel about this pending application, have you  
20 visited any of those establishments in the last  
21 week or so?

22 A Um-hum.

1           Q       Have you had any conversations with  
2 management or owners of those establishments  
3 about their position on this application?

4           A       Yes.

5           Q       Has the nature of your comments been--  
6 to those owners been to engender their support or  
7 their denial of this application?

8           A       A denial.

9           Q       Have you made any reference to  
10 conditioning their support or denial for said  
11 application on threatening seat counts of their  
12 patio or anything of the like?

13          A       No, no.

14          Q       Have you had any conversations with  
15 any other operators on 17th Street about how  
16 their position on this matter may or may not  
17 affect how DCCA or you as an individual monitor -  
18 -

19          A       No.

20          Q       -- the --

21          A       No.

22                   CHAIRPERSON ANDERSON: Let him finish

1 asking the question, ma'am, before you answer the  
2 question.

3 THE WITNESS: I'm sorry, sir.

4 CHAIRPERSON ANDERSON: Was -- were you  
5 done asking the question or -- Mr. Kramer?  
6 Questions are made to be answered, so you ask a  
7 question in a way the witness might not  
8 necessarily answer the question that you want  
9 them to answer it, but you ask a question the way  
10 to put them in a box to answer a question.

11 MR. KRAMER: Right. We were just  
12 looking for straightforward replies.

13 CHAIRPERSON ANDERSON: I don't miss  
14 the --

15 MR. KRAMER: Understood, understood.

16 CHAIRPERSON ANDERSON: -- you ask a  
17 question and she has answered.

18 MR. KRAMER: Understood.

19 CHAIRPERSON ANDERSON: She has  
20 answered the question to the best of her ability,  
21 so you do have an opportunity -- both sides will  
22 have an opportunity to call rebuttal witness if

1 you believe that someone is -- you have a witness  
2 that can rebut testimony that was -- but it has  
3 to be here today.

4 Go ahead, sir.

5 MR. KRAMER: Thank you, Mr. Chairman,  
6 we are going to -- I'm going to keep this  
7 application about our individual application.  
8 I'm going to keep this application just about us.  
9 I appreciate the opportunity.

10 BY MR. KRAMER:

11 Q Just a general question, Ms. Nichols,  
12 about the DCCA. Is it a publicly-elected  
13 Government Agency?

14 A No.

15 Q Are there any elections whatsoever?

16 A Yes.

17 Q Does the DCCA reflect the breadth of  
18 the entire community or does it -- well, you  
19 know, reflect a narrow group of long-time  
20 residents?

21 A Oh, well, I can't give -- may I read  
22 the purpose of the organization, which is part of

1 it, the purpose is not --

2 Q Is that --

3 A -- to serve only its members, even if  
4 you wanted to know who all our members were, we  
5 have members of all ages. I mean, I guess Ms.  
6 Diener should answer that, she knows the  
7 membership. But I know there has been some  
8 characterization and I don't think it is --

9 CHAIRPERSON ANDERSON: If you are  
10 unable to answer the question, ma'am, you can  
11 always say I cannot answer that question. I'm  
12 not --

13 THE WITNESS: Well, he asked me if it  
14 was long-time residents. No. I know residents  
15 who have only recently moved to the neighborhood  
16 who are members. What other question did you  
17 have? Were there elections? Yes, there are  
18 elections.

19 CHAIRPERSON ANDERSON: All right.

20 THE WITNESS: Was there anything else?

21 CHAIRPERSON ANDERSON: I don't know  
22 what -- but I'm just saying when questions are

1 asked --

2 THE WITNESS: Yes.

3 CHAIRPERSON ANDERSON: -- if you can't  
4 answer the question --

5 THE WITNESS: Well, maybe I --

6 CHAIRPERSON ANDERSON: -- he said --

7 THE WITNESS: -- can't. I'm sorry,  
8 yes.

9 CHAIRPERSON ANDERSON: -- you can say  
10 as you said that Ms. Diener was --

11 THE WITNESS: If he wanted a full  
12 analysis of every -- of -- I can't do that, but I  
13 said --

14 CHAIRPERSON ANDERSON: He had that  
15 opportunity to ask Ms. Diener when she was on the  
16 cross-examination, so --

17 THE WITNESS: Yes.

18 CHAIRPERSON ANDERSON: -- you can  
19 easily say that I'm not -- I cannot answer that  
20 question. And we will move on. Mr. Kramer?

21 BY MR. KRAMER:

22 Q Are there any members of the DCCA who

1 are under age 30?

2 A Yes.

3 CHAIRPERSON ANDERSON: Mr. Kramer?

4 BY MR. KRAMER:

5 Q Would you consider --

6 A Although I don't ask everybody their  
7 age, I happen to know the age of one of them.

8 CHAIRPERSON ANDERSON: There are no  
9 questions, Mr. Kramer.

10 BY MR. KRAMER:

11 Q Would you consider our strip of Dupont  
12 Circle to be a residential community or would you  
13 consider it to be a mixed-use community?

14 A I would call it a mixed-use community.

15 Q Do you believe that commercial spaces  
16 within a mixed-use community should be able to  
17 compete fairly in that in their chosen commercial  
18 market?

19 A Well, it depends on what the market  
20 is. If the market is neighborhood, yes. If it's  
21 city-wide possibly not.

22 Q Do you believe -- okay. Based on your

1 research, are there other alcohol-serving  
2 establishments that have later hours of service  
3 of food and drink on their public space than does  
4 Duke's?

5 A Yes.

6 Q When those particular licensees have  
7 applied for renewal of their license, has the  
8 DCCA protested?

9 A Not to my knowledge. Because I --  
10 well, I can -- no.

11 Q Is there a reason that you have not  
12 protested other licensees who have later hours  
13 than what we are asking for, but that you are now  
14 protesting our application to be in line with  
15 them?

16 A Yes. I have been studying settlement  
17 agreements as part of learning about 17th Street  
18 and we have talked about this 11:00 and 12:00  
19 p.m. policy as being 20-some years-old. But the  
20 -- I'm finding settlement agreements 10 years  
21 before that, 15 years before that that have those  
22 same hours.

1                   And I think it would be -- there was  
2                   a community agreement. I was not active when all  
3                   this was put in place and then would have been  
4                   the time to protest Trio and I don't know the  
5                   history. I know the history of Trio, it has been  
6                   there since 1940, so I have -- I don't know the  
7                   history of DC Liquor Laws and when they could  
8                   have gotten service that late, but it -- clearly  
9                   there was an agreement, a community agreement,  
10                  that's what we have been talking about at the  
11                  time.

12                  Since that policy has been put in  
13                  place, there have been no exceptions immediate to  
14                  residences.

15                  Q           Since your involvement in this issue,  
16                  have you protested renewals of liquor license  
17                  that included Public Space Permits with patio  
18                  service hours later than what we have?

19                  A           No, but I thought you asked --

20                  Q           So you --

21                  A           -- me why not.

22                  Q           -- just to clarify, you have not

1 protested --

2 A No, no.

3 Q -- similar hours requests --

4 A No.

5 Q -- in the past?

6 A No, no.

7 MR. KRAMER: Nothing further, Mr.

8 Chair. Thank you so much.

9 CHAIRPERSON ANDERSON: Any questions  
10 by any Board Members?

11 MEMBER ISAAC: I just have one  
12 question.

13 CHAIRPERSON ANDERSON: Yes, Mr. Isaac.

14 MEMBER ISAAC: Yes, sir. Ms. Nichols,  
15 on your Exhibit 3 where you had the sidewalk cafe  
16 hours.

17 THE WITNESS: Um-hum.

18 MEMBER ISAAC: What was the source for  
19 that information?

20 THE WITNESS: Hold on. The hours are  
21 from the ABRA Database. ABRA has an Excel  
22 Database that gives quite a bit of information.

1 I also have a lot of licenses at hand, so I can't  
2 be sure what I got from where, but that's what I  
3 used.

4 MEMBER ISAAC: Okay. Thank you.  
5 That's my only question, Mr. Chairman.

6 CHAIRPERSON ANDERSON: All right. Do  
7 you need, at this juncture, Ms. Nichols, to  
8 clarify any questions that was asked to you by  
9 Mr. -- well, no. No, that's not clarifying. Do  
10 you have any clarifications that you need to  
11 provide based on the questions that were asked by  
12 the Board? Because you are under cross-  
13 examination, so it's just the questions that were  
14 asked of you by Mr. Kramer.

15 I'm sorry, the questions that were  
16 asked of you by Mr. Isaac.

17 (No audible answer.)

18 CHAIRPERSON ANDERSON: Now, normally  
19 what happens then because you are the witness and  
20 it's -- we are in cross-examination --

21 THE WITNESS: Um-hum. Okay.

22 CHAIRPERSON ANDERSON: -- and so

1           therefore, if there was an attorney here and Mr.  
2           Isaac asked a question, I would give you an  
3           opportunity to ask -- to clarify whatever the --  
4           if you believe you need to clarify whatever  
5           answer you gave to Mr. Isaac.

6                         THE WITNESS:   These are the questions  
7           you think I haven't answered?

8                         CHAIRPERSON ANDERSON:   No, no.

9                         THE WITNESS:   Okay.

10                        CHAIRPERSON ANDERSON:   It's just  
11           process.   It's not --

12                        THE WITNESS:   Yeah, okay.   Thank you.

13                        CHAIRPERSON ANDERSON:   -- it's just  
14           process.

15                        THE WITNESS:   Okay.

16                        CHAIRPERSON ANDERSON:   And so I guess  
17           you are saying none is necessary.   All right.  
18           Fine.   Thank you.

19                                 (Whereupon, the witness was excused.)

20                        CHAIRPERSON ANDERSON:   Do you rest?  
21           Meaning that you have no more witnesses.

22                        MS. NICHOLS:   Right.   No more

1 witnesses.

2 CHAIRPERSON ANDERSON: All right.

3 Then we are going to do closing. Do you want a  
4 couple of minutes to gather your thoughts before  
5 you do closing or did -- are you ready to go  
6 closing?

7 And closing is basically you are going  
8 to wrap up your case to say this is what we have.  
9 This is what the evidence was. And this is what  
10 I want the Board to do. That's what I expect  
11 from you at this juncture. So are you ready to  
12 do that? Because you go first and Mr. Kramer  
13 goes last.

14 MS. DIENER: Would you want 2 minutes?

15 CHAIRPERSON ANDERSON: Want a couple  
16 of minutes?

17 MS. NICHOLS: I'll take 2 minutes.

18 CHAIRPERSON ANDERSON: All right.

19 It's 8:18, so -- oh, you know what, I'm sorry,  
20 I'm looking at my cheat sheet and the cheat sheet  
21 said that you go first, Mr. Kramer and that the  
22 protestant goes last. So I apologize. So maybe

1 I'll give you -- you can take a couple of  
2 minutes.

3 MR. KRAMER: Good to go, sir.

4 CHAIRPERSON ANDERSON: To --

5 MR. KRAMER: Shall I wait for Mr.  
6 Isaac?

7 CHAIRPERSON ANDERSON: Oh, I didn't  
8 realize he had stepped away. Right. So I'll  
9 wait for Mr. Isaac, so we have a couple of  
10 minutes. All right. We are off the record for a  
11 couple of minutes.

12 (Whereupon, the above-entitled matter  
13 went off the record at 8:18 p.m. and resumed at  
14 8:21 p.m.)

15 CHAIRPERSON ANDERSON: Are you ready,  
16 Mr. Kramer?

17 MR. KRAMER: Very.

18 CHAIRPERSON ANDERSON: All right. So  
19 closing is basically wrapping up your case and  
20 then you are then telling the Board what to  
21 approve and what is it that you want the Board to  
22 do. Okay. So go ahead, Mr. Kramer.

1                   MR. KRAMER: Good evening. I wanted  
2 to thank the Board and members of the community,  
3 both on our side and not, who have been here the  
4 whole time and who were here before to share in  
5 this process.

6                   I am a part of this community. More  
7 important than me is that Duke's is a part of  
8 this community and has been and will be. We have  
9 no intentions or designs to move along or sell.  
10 In fact, we are expanding in the District of  
11 Columbia. We are not going into Maryland or  
12 Virginia. We are staying here. The third Duke's  
13 -- or the second Duke's location is across from  
14 the National Zoo. The third Duke's location for  
15 which there will be an application in the near  
16 future is for 2000 Pennsylvania Avenue, N.W., the  
17 former Kinkead's.

18                   We are also doing the District's first  
19 Korean barbecue where you have the tabletop grill  
20 and that is applying for Shaw. So between those  
21 two and the two existing Duke's, to be very frank  
22 up front, I have a -- my livelihood before this

1 Board. And we are continuing to grow the tax  
2 base. We are continuing to create jobs within  
3 the District of Columbia. We are long-term  
4 committed and fully invested in the District.

5 We are going to do things the way that  
6 we have done things, which is as a part of the  
7 community, full of respect, considerate of our  
8 neighbors and we are going to do things the right  
9 way. That's what we have done and that's what we  
10 will do going forward, no matter how the Board  
11 decides on this matter.

12 And for that reason, I am going to --  
13 we are going to continue to being good actors,  
14 whether it is on putting out amazing food, which  
15 is more of Jillian's doing, of course, than mine  
16 to maintaining respectful noise levels at all  
17 hours of the day and night.

18 I am, for all of those reasons, very  
19 sympathetic to doing right by our community and  
20 to doing right by this Board.

21 I'm especially sympathetic to those  
22 members of the community who may have started

1 living or purchased homes in areas that were not  
2 once surrounded by nightclubs and taverns.

3 In an email I received from the DCCA,  
4 they mentioned that "they are the scars of a  
5 difficult era." And I asked Ms. Diener about  
6 those scars to which she replied "of course, you  
7 had no part in it. Decades ago, but I was  
8 referring to the era of nightclubs."

9 It is very important to understand  
10 that we are not a nightclub. We have no designs  
11 on being a nightclub. We are not a tavern. We  
12 are none of that. We are a restaurant and a  
13 neighborhood pub that happens to have a liquor  
14 license. We are not yelling and screaming. We  
15 are not going to be a club. We have no designs,  
16 interest on any of that.

17 We have no entertainment endorsement  
18 nor any application to seek one. That's not who  
19 we are, that's not what we are. And yet, I feel  
20 like we are being protested against as if we  
21 were.

22 The protestants have also mentioned

1 that this application be denied, based on what  
2 other applicants may do or may not do. That is  
3 totally beyond our control and any application  
4 will be judged just as ours, I hope will be,  
5 which is on the individual merits of the  
6 applicant.

7 It has -- surely could not be against  
8 any noise complaints or other complaints against  
9 Duke's, because despite almost four hours, you  
10 have heard none, that's because none exist.

11 I would urge this Board perhaps to  
12 ignore every single thing that I have said and  
13 don't listen to me for a second. I'm biased. My  
14 biases are plain, they are open, they are stated.

15 I would instead ask you to listen to  
16 our duly elected representatives at the ANC.  
17 This Board is very familiar I'm sure with ANCs  
18 protesting or voicing no opinion whatsoever, but  
19 the rarity of an ANC, especially in Dupont,  
20 supporting a substantial change like this is  
21 noteworthy because of that it is -- doesn't  
22 happen all the time and it has been judged -- we

1 have been judged by our elected representatives  
2 and members of our community on our merits.

3 It has been mentioned by witnesses on  
4 the other side that there are no licenses like  
5 this. The ANC has never supported anything like  
6 this, that's not true. It's just factually not  
7 true.

8 There are licenses that go later than  
9 this. There are patios, for instance, in Dupont  
10 Circle itself that go until 2:00 and 3:00 a.m.  
11 and so I urge you to listen to the elected  
12 representatives and their resolution from the  
13 ANC. I urge you to listen to the residents with  
14 whom we share a wall, the residents who have  
15 written in support of us who live directly across  
16 the street.

17 I urge you to read and listen to the  
18 report by your Investigator Mr. Todd who found,  
19 and other Investigators, on eight visits who  
20 found nothing. Absolutely nothing that is wrong  
21 with the way that we control trash, control noise  
22 and all the other measures on which we might be

1       judged.

2                       We are asking the Board to allow us to  
3 compete fairly in the market in which we operate,  
4 such that we can compete with our neighbors who  
5 already have later hours than we do and when  
6 given the opportunity, if these late hours were  
7 such a problem, it would occur to me that these  
8 hours would have been protested by the DCCA, by  
9 the ANC or both when they have been up for  
10 renewal as all licenses are. And yet, they  
11 haven't.

12                      So that we are now not being -- that  
13 we are now being protested for asking for what  
14 our neighbors already have strikes me as unfair  
15 at best and most charitable and more than strange  
16 otherwise. We are and will be a good and  
17 respectful and considerate neighbor.

18                      And like I said however this should  
19 turn out, we are not going anywhere. We are  
20 going to keep serving the best burger in the  
21 District of Columbia. And almost four hours into  
22 tonight's proceedings, I just wanted to thank

1 everybody for being here and for your time and  
2 for your consideration. And I hope you have a  
3 good night.

4 CHAIRPERSON ANDERSON: And so as part  
5 of your -- you are asking the Board to approve  
6 the substantial change by granting the extra  
7 hour?

8 MR. KRAMER: And to clarify, I am here  
9 to ask that the application for Shoreditch  
10 Cooperative, LLC d/b/a Duke's Grocery, ABRA  
11 License 092298, for this substantial change for  
12 an additional hour on our patio, sidewalk patio  
13 be approved and granted by this Board. Thank  
14 you.

15 CHAIRPERSON ANDERSON: All right. Ms.  
16 Nichols?

17 MS. NICHOLS: Thank you. This protest  
18 is and our request is that this application not  
19 be granted. But it is not because Duke's is not  
20 a great business, we all agree, that's been part  
21 of the conversation. I think I haven't said it  
22 somehow in the course of this, but Duke's is a

1 fine business, but it's not a perfect business,  
2 but it's a fine business and we all agree on  
3 that.

4 In terms of it not being perfect, in  
5 terms -- patios create an addition to the ambient  
6 noise of the neighborhood. You have heard  
7 testimony from people who go to sleep when the  
8 patios close. You have heard people testify when  
9 the patios stay open longer, even under existing  
10 law, things get noisier.

11 If there is a business unfair, Mr.  
12 Kramer referred to the process of protest. The  
13 businesses who have the shorter hours have an  
14 interest that I think they could -- would have  
15 standing to protest the renewal of those  
16 licenses, if the neighborhood is unfair.

17 I referred to decisions that were made  
18 long ago of how the neighborhood was going to  
19 handle this and we weren't prepared to protest  
20 those later hours. He sees it as unfairness and  
21 he has a venue for fixing that.

22 Noise -- the testimony says there will

1 be more noise. You have heard there is a lot of  
2 noise. This case is within the context of a lot  
3 of mixed -- discussion of mixed-use in the  
4 District. Mixed-use in the District cannot mean  
5 that residents are subject to unending noise at  
6 any decibel level.

7 And that seems to be -- there seems to  
8 be an undercurrent that trying to -- that we are  
9 trying to pull back progress, but mixed-use means  
10 that business and residents can live together in  
11 harmony, that people sleep, we all have to sleep.  
12 And the existing hours in Dupont Circle of 11:00  
13 and 12:00 are much later than granted -- much  
14 later though than the DC Noise Law, which has  
15 9:00 for construction, and something like that  
16 for trash pickup and then generally 10:00, I  
17 think, is the cutoff point for different decibel  
18 levels.

19 This whole business of ambient noise  
20 is something that needs to be dealt with because  
21 someone in their home is not knowing exactly how  
22 much Duke's is contributing to the whole thing.

1 You don't go out in your pajamas to look, but you  
2 have heard testimony.

3 We have many more letters of support  
4 than you have seen. They are inadmissible  
5 because Mr. Kramer can't cross-examine them, but  
6 I'm going to send them to you anyway and I'll  
7 send them to him, because, you know, it's sort of  
8 -- but and I'm sorry, I'm backing off.

9 It's not a majoritarian issue. It's  
10 specific to the people most affected on 17th  
11 Street, not the folks who want to drink.

12 Oh, another question, I have mentioned  
13 the questions I would cross-examine, one is what  
14 would be your attitude if someone were kept  
15 awake, because that -- I mean, are you saying  
16 they should just move or are you saying oh, my  
17 goodness, I didn't realize we were making that  
18 kind of noise.

19 And those are the kind of things  
20 cross-examination can bring out, but I think we  
21 have very little evidence of either -- of support  
22 and you have testimony here from several

1 residents of opposition. So this is not  
2 majoritarian.

3 And we have testified that yes, the  
4 ANC is an elected representative, but we need  
5 this kind of process to get information out for a  
6 fuller decision, a fuller, a more measured  
7 consideration than for -- the ANC has a lot of  
8 work to do fast and they do seem to have a  
9 perspective that doesn't include noise law or  
10 sleeping.

11 So bears the scars of a difficult era,  
12 we don't want another difficult era as -- because  
13 owners have said they will come in and apply for  
14 the later hours. We -- Mr. Kramer asked me about  
15 talking to another operator. He was the one that  
16 told me everybody will apply, which we assumed,  
17 but he said it.

18 So I think your decision here is about  
19 a community standard, but it has got to do with  
20 Duke's. They are not separable. Duke's will  
21 have an impact itself for later a later hour and  
22 each of those -- and you will see -- I haven't,

1 you know -- the other establishments have the  
2 similar good record to Duke's in terms of what  
3 happens before their patios close.

4 I guess that's about it.

5 CHAIRPERSON ANDERSON: That's it? All  
6 right.

7 MS. DIENER: Thank you.

8 CHAIRPERSON ANDERSON: The record is  
9 now closed. I know that you had said that you  
10 are going to provide information to us.  
11 Unfortunately, the record is closed. You cannot  
12 provide any information to us.

13 MS. NICHOLS: Okay.

14 CHAIRPERSON ANDERSON: Any further  
15 information.

16 Do the parties wish to file proposed  
17 findings of fact and conclusions of law or waive  
18 their right to do so?

19 MS. NICHOLS: I intend to apply -- to  
20 submit it.

21 MR. KRAMER: I missed that, sir, I'm  
22 sorry.

1                   CHAIRPERSON ANDERSON: I said do the  
2 parties wish to file proposed findings of fact  
3 and conclusions of law or waive their right to do  
4 that? The protestant said that she wants to do  
5 that.

6                   Basically, what that means is that  
7 once the transcript is issued, you will read it.  
8 You will state, you are extrapolating from the  
9 document what the facts -- what was proven and  
10 what the law is.

11                   This is not your -- this is basically  
12 writing a legal brief that the lawyer usually  
13 writes. This is not bringing in any outside new  
14 information. It's basically reading the  
15 transcript to say these are the facts that were  
16 proven at this hearing today and this is what the  
17 law is and this is why the -- though the  
18 applicant has proven his or her case or the  
19 licensee or the protestant has proven his or her  
20 case.

21                   MR. KRAMER: I reserve the right, I  
22 guess.

1                   CHAIRPERSON ANDERSON: Well, they are  
2 doing it, so basically what will happen is that  
3 90 days -- the transcripts are usually available  
4 in about, approximately, three weeks. And the  
5 Board will issue a decision within 90 days after  
6 that process.

7                   MS. NICHOLS: And do you have a  
8 deadline for how long after the transcript  
9 becomes available that you want any other filings  
10 from us?

11                   CHAIRPERSON ANDERSON: All right. 30  
12 days after. Once the transcript is available, in  
13 approximately, three weeks, then you have 30 days  
14 to provide the Board with these proposed findings  
15 of fact and conclusions of law. And 90 days  
16 after that, the Board will issue a written  
17 decision, which we probably will do shorter, but  
18 we do have 90 days to issue that decision.

19                   MR. KRAMER: So just to clarify, Mr.  
20 Chairman, the Board can issue its decision as  
21 soon as tomorrow or as late as 90 days?

22                   CHAIRPERSON ANDERSON: No. The Board

1 is not going to issue its decision tomorrow. And  
2 the reason why the Board is not going to issue  
3 its decision tomorrow is because I'm now being  
4 told by the parties that they want to write --  
5 they are going to provide the Board with proposed  
6 findings of facts and conclusions of law.

7 And so what that means is that the  
8 transcript will become available in,  
9 approximately, three weeks. Once both sides have  
10 received the transcript, then they have to --  
11 each side has to provide us the proposed findings  
12 of facts and conclusions of law within 30 days  
13 and we will give you the deadline to say it has  
14 to be provided to us within that period of time.

15 Once we have received that, then we  
16 will review it and then we will -- I am going to  
17 make a preliminary decision today. The Board  
18 will make a preliminary decision today. The  
19 Board, however, will not make a final decision  
20 until we receive the proposed findings of fact  
21 and conclusions of law.

22 And but again, it's not bringing new

1 information in. It's just reviewing the  
2 transcript to say this is what the facts that  
3 came out of the hearing and what the law is and  
4 you believe why that based on the evidence that  
5 was presented today, why you believe that you  
6 should receive your -- the extra hour or the  
7 protestant will say why they do not -- why it  
8 should not be granted.

9 Normally, in Protest Hearings when we  
10 have them, because these are not attorneys, folks  
11 normally waive it, because you are asking the  
12 person to write something formal to say this is  
13 what the facts are. You have to read the  
14 transcript. This is what the facts that we  
15 proved in the transcript and this is what the law  
16 is.

17 So normally, folks waive that, but it  
18 is your right that you have. So I know that Ms.  
19 Nichols had talked about it earlier and I guess  
20 she is now saying that she wants to do that, so  
21 unless she changes her mind.

22 MR. KRAMER: If that side does it,

1 does that mean that we have to do something?

2 CHAIRPERSON ANDERSON: You don't have  
3 to do anything.

4 MR. KRAMER: Okay.

5 CHAIRPERSON ANDERSON: I mean, you  
6 don't have to do anything. I mean, the bottom  
7 line is that you don't have to do anything. They  
8 are asking for an opportunity to do it. You  
9 don't have to do it. It's not a yay or nay,  
10 because the bottom line is that, as I said  
11 before, this is not -- you are not bringing in  
12 anything new.

13 This is reading the transcript and  
14 saying this is what the facts and this is what  
15 the law is and this is why you should -- so I  
16 don't think -- that's not --

17 MR. KRAMER: Understood.

18 CHAIRPERSON ANDERSON: Yeah.

19 MR. KRAMER: Okay. Thank you, Mr.  
20 Chairman.

21 CHAIRPERSON ANDERSON: All right.

22 MS. NICHOLS: I would like a chance

1 to.

2 CHAIRPERSON ANDERSON: All right.

3 Okay.

4 As Chairperson of the Alcoholic  
5 Beverage Control Board for the District of  
6 Columbia and in accordance with Section 405 of  
7 the Open Meetings Amendment Act of 2010, I move  
8 that the ABC Board hold a closed meeting for the  
9 purpose of seeking legal advice from our counsel  
10 on Case No. 18-PRO-00024, Duke's Grocery, per  
11 Section 405(b)(4) of the Open Meetings Amendment  
12 Act of 2010, and deliberating upon Case No. 18-  
13 PRO-00024, Duke's Grocery, for the reasons cited  
14 in Section 405(b)(13) of the Open Meetings  
15 Amendment Act of 2010. Is there a second?

16 MEMBER SHORT: Second.

17 CHAIRPERSON ANDERSON: Mr. Short has  
18 seconded the motion. I will now take a roll call  
19 vote on the motion before us now that it has been  
20 seconded.

21 Ms. Wahabzadah?

22 MEMBER WAHABZADAH: I agree.

1 CHAIRPERSON ANDERSON: Mr. Short?

2 MEMBER SHORT: I agree.

3 CHAIRPERSON ANDERSON: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIRPERSON ANDERSON: Mr. Isaac?

6 MEMBER ISAAC: I agree.

7 CHAIRPERSON ANDERSON: Mr. Anderson?

8 I agree.

9 As it appears that the motion has  
10 passed, I hereby give notice that the ABC Board  
11 will hold a closed meeting in the ABC Board  
12 conference room pursuant to the Open Meetings  
13 Amendment Act of 2010 and issue an order within  
14 90 days of us receiving the proposed findings of  
15 fact and conclusions of law.

16 All right. I want to thank everyone  
17 for your participation today. I know that it was  
18 a long hearing, but it shows that folks are  
19 concerned about the neighborhood and we will make  
20 a decision.

21 And I'm -- hopefully in our wisdom, we  
22 will make the decision that we believe is in the

1 best interest of the neighborhood. All right.

2 Thank you very much.

3 MS. NICHOLS: Thank you.

4 CHAIRPERSON ANDERSON: Have a good  
5 night.

6 MR. KRAMER: Have a nice night.

7 MEMBER SHORT: Good night.

8 CHAIRPERSON ANDERSON: We are --

9 MR. KRAMER: Thank you very much.

10 CHAIRPERSON ANDERSON: -- we have  
11 adjourned for the day.

12 MR. KRAMER: Thank you.

13 CHAIRPERSON ANDERSON: Thank you.

14 (Whereupon, the above-entitled matter  
15 went off the record at 8:42 p.m. and resumed at  
16 8:48 p.m.)

17 CHAIRPERSON ANDERSON: We are back on  
18 the record.

19 As Chairperson of the Alcoholic  
20 Beverage Control Board for the District of  
21 Columbia and in accordance with DC Official Code  
22 Section 2-574(b), closed meetings, and Section 2-

1 574, Notice of Meetings, of the Open Meetings  
2 Act, I move that the ABC Board hold a closed  
3 meeting on July 18, 2018 for the purpose of  
4 discussing and hearing reports concerning ongoing  
5 or planned investigations of alleged criminal or  
6 civil misconduct or violations of law or  
7 regulations and seeking legal advice from our  
8 counsel on the Board's Investigative, Legal and  
9 Licensing Agenda for July 18, 2018 as published  
10 in the DC Register on July 13, 2018. Is there a  
11 second?

12 MEMBER SHORT: Second.

13 CHAIRPERSON ANDERSON: Mr. Short has  
14 seconded the motion. I will now take a roll call  
15 vote on the motion before us now that it has been  
16 seconded.

17 Mr. Alberti?

18 MEMBER ALBERTI: I agree.

19 CHAIRPERSON ANDERSON: Mr. Short?

20 MEMBER SHORT: I agree.

21 CHAIRPERSON ANDERSON: Mr. Anderson?

22 I agree.

1                   As it appears that the motion has  
2                   passed, I hereby give notice that the ABC Board  
3                   will hold this aforementioned closed meeting  
4                   pursuant to the Open Meetings Act. Notice will  
5                   also be posted on the ABC Board hearing room  
6                   bulletin board, placed on the electronic calendar  
7                   on ABRA's website and published in the DC  
8                   Register in as timely a manner as practicable.

9                   It is 8:50 p.m. and we are officially  
10                  adjourned for the day. Thank you. All right.

11                  (Whereupon, the Protest Hearing was  
12                  concluded at 8:49 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Shoreditch Cooperative, LLC

Before: Alcoholic Beverage Control Board

Date: 07-11-18

Place: Washington, DC

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