

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

IN THE MATTER OF: :
 :
ADBHS, Inc., :
t/a Electric Cool-Aid :
512 Rhode Island Ave NW :
Retailer CT - ANC 6E :
License No. 112294 :
Case #19-PRO-00006 :
 :
(Application for a New :
License) :

Wednesday,
May 8, 2019

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

PRESENT:

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member

MIKE SILVERSTEIN, Member

JAMES SHORT, Member

REMA WAHABZADAH, Member

ALSO PRESENT:

ANGELA DELBROCCO, Applicant

BENJAMIN SCHWARTZ, Applicant

JESSE SCHWARTZ, Applicant

ANDREW KLINE, Applicants' Counsel

SIDON YOHANNES, Applicants' Counsel

ALEXANDER PADRO, ANC 6E

JAMES LOOTS, ANC 6E's Counsel

INVESTIGATOR KEVIN PUENTE, ABRA

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

2 2:03 p.m.

3 CHAIRPERSON ANDERSON: Okay. Good
4 afternoon, everyone. We are back on the record.

5 Our next case is a Protest Hearing,
6 Case No. 19-PRO-00006, Electric Cool-Aid, License
7 No. 112294.

8 Will the parties, please, identify
9 themselves for the record? I will start with the
10 licensee.

11 MR. KLINE: Yes, good afternoon.
12 Andrew Kline here for the applicant.

13 CHAIRPERSON ANDERSON: Good afternoon,
14 Mr. Kline.

15 MS. YOHANNES: Sidon Yohannes here for
16 the applicant.

17 CHAIRPERSON ANDERSON: Good afternoon,
18 Ms. Yohannes.

19 MS. DELBROCCO: Angela DelBrocco, one
20 of the three applicants.

21 CHAIRPERSON ANDERSON: Del?

22 MS. DELBROCCO: DelBrocco, D-E-L-B-R-

1 O-C-C-O.

2 CHAIRPERSON ANDERSON: Good afternoon,
3 Ms. Delbrocco.

4 MR. BEN SCHWARTZ: Benjamin Schwartz,
5 applicant.

6 CHAIRPERSON ANDERSON: Good afternoon,
7 Mr. Schwartz.

8 MR. JESSE SCHWARTZ: Jesse Schwartz,
9 applicant.

10 CHAIRPERSON ANDERSON: Good afternoon,
11 Mr. Schwartz.

12 Did everyone sign in on the sign-in
13 sheet in front of -- on the table, please? The--
14 who is -- just the ANC?

15 MR. LOOTS: James Loots, on behalf of
16 the ANC as counsel.

17 CHAIRPERSON ANDERSON: Mr. Loots, good
18 afternoon.

19 MR. PADRO: Alexander Padro, ANC-6E,
20 protestants.

21 CHAIRPERSON ANDERSON: Good afternoon,
22 Mr. Padro.

1 How do you spell your last name, Mr.
2 Loots?

3 MR. LOOTS: It's L-O-O-T, like in Tom,
4 S, like in Sam.

5 CHAIRPERSON ANDERSON: Good afternoon,
6 sir. Are you an attorney, sir?

7 MR. LOOTS: Yes, I am.

8 CHAIRPERSON ANDERSON: All right. And
9 the reason why I ask that is that I hold
10 attorneys to different -- I have a different
11 expectation of attorneys.

12 MR. LOOTS: I accept that
13 responsibility.

14 CHAIRPERSON ANDERSON: Okay. Thank
15 you. All right. All right. This is a Protest
16 Hearing. There is an application for a new
17 license. And are there any preliminary matters?
18 I mean, are we -- are there terms we can agree to
19 and we will -- or the parties are -- we are going
20 to have a Protest Hearing?

21 MR. LOOTS: I have one preliminary
22 matter which we can also just --

1 CHAIRPERSON ANDERSON: You don't have
2 to get up. It's not that formalized. Unless you
3 want to, but you don't have to.

4 MR. LOOTS: That's fine. I was
5 getting up partly because I wanted to hand up --
6 originally, the ANC had designated Michael Brown,
7 the ANC Single Member District Commissioner, to
8 appear on its behalf today. He has a work
9 conflict today. And Mr. Padro who is the Chair
10 of ANC-6E ABC Committee and also qualified to
11 speak on the subject.

12 CHAIRPERSON ANDERSON: So Mr. Padro is
13 the one who designated Mr. Brown?

14 MR. LOOTS: No. Mr. Brown was
15 originally designated.

16 CHAIRPERSON ANDERSON: No, no. Who
17 designated Mr. Brown?

18 MR. LOOTS: The ANC.

19 CHAIRPERSON ANDERSON: The ANC. And
20 the chair for the ANC?

21 MR. LOOTS: Correct.

22 CHAIRPERSON ANDERSON: And Mr. Padro

1 is the chair of the ANC?

2 MR. LOOTS: He is chair of the ABRA
3 Committee of the ANC.

4 CHAIRPERSON ANDERSON: But not -- he
5 is not chair of the ANC?

6 MR. LOOTS: Yeah.

7 CHAIRPERSON ANDERSON: Mr. Kline?

8 MR. KLINE: I presume there is a
9 letter that I haven't seen?

10 CHAIRPERSON ANDERSON: Can you show --

11 MR. LOOTS: What we have here --

12 MR. KLINE: Thank you.

13 MR. LOOTS: -- is the position letter
14 on behalf of Mr. Brown.

15 CHAIRPERSON ANDERSON: Thank you.

16 MR. LOOTS: I also believe that
17 because the ANC is represented by counsel, the
18 situation and our purpose of designating a person
19 to speak with one voice for the ANC, that that
20 requirement is actually also satisfied. But in
21 any event, Mr. Padro is here today on behalf of
22 the ANC.

1 CHAIRPERSON ANDERSON: So was --

2 MR. KLINE: I don't have any objection
3 to the ANC proceeding through counsel and through
4 his representative. I do have an objection to
5 the letter in as much as it -- we haven't seen it
6 until now as the hearing is starting. It appears
7 to be perhaps appropriately an exhibit, one
8 which, as again we haven't seen until now, so we
9 would object to it being used, but have no
10 objection to their proceeding through counsel and
11 through Mr. Padro.

12 CHAIRPERSON ANDERSON: Yeah, I mean,
13 the letter is -- yeah, I don't have a problem
14 with -- yeah, I thought the letter was going to
15 say something else. I didn't -- I wasn't
16 expecting that Mr. Brown would tell me what his
17 position is.

18 MR. KLINE: Nor did I.

19 CHAIRPERSON ANDERSON: That was what
20 I was expecting. I thought the letter was going
21 to tell me that I want -- did it -- does the
22 letter state that he wants Mr. Padro to --

1 MR. LOOTS: No. And in all truths, I
2 mean, it happened within the last 24 hours.

3 CHAIRPERSON ANDERSON: All right.

4 MR. LOOTS: I offered it just now for
5 the purpose of establishing Mr. Brown's
6 unavailability, a work conflict.

7 CHAIRPERSON ANDERSON: Yeah, I mean,
8 that's fine. I will take it at that, but I'm --
9 as counsel stated, I'm not going to admit this
10 document into evidence.

11 MR. LOOTS: Okay.

12 CHAIRPERSON ANDERSON: Because it's --
13 since he can't cross-examine Mr. Brown and I --
14 the ANC is being represented by counsel. So we
15 are fine with that.

16 All right. Any other preliminary
17 matters that we need to discuss?

18 MR. KLINE: No, not at this time.

19 CHAIRPERSON ANDERSON: Now, how many
20 witnesses does the applicant have?

21 MR. KLINE: We expect we will have no
22 more than six.

1 CHAIRPERSON ANDERSON: Six witnesses.
2 All right. And what about the --

3 MR. LOOTS: We expect to present four
4 witnesses in total.

5 CHAIRPERSON ANDERSON: As you know,
6 each side has 90 minutes to present its case. I
7 have been somewhat flexible in the sense that I
8 want each side to have an opportunity to present
9 its case. So we are not going to -- I'm not
10 going to say okay, 90 minutes, but it's 2:10, I
11 do intend for us to be gone by 6:00 at the
12 latest. And that's why I said the latest.

13 So I would hope that we try to be
14 expeditious. And since we have counsel on both
15 sides, I am not going to entertain redundant and
16 repetitive testimony. So I will give each side
17 an opportunity to present its case, but because
18 we have counsel, that's why I'm going to say that
19 I intend to be out of here by 6:00 today. All
20 right.

21 So that is giving us a little over --
22 that's more than the three hours that is usually

1 allotted for these protest hearings, but I think
2 with counsel we should be able to move through
3 these proceedings in an expeditious process.

4 All right. So the process -- hold on
5 one minute, please.

6 So the procedure that we will follow
7 today is that the applicant will be given an
8 opportunity to make an opening statement. Then
9 the protestant will have an opportunity to make
10 an opening statement. Then the Board will call
11 its witnesses, it's witness, which is our
12 Investigator. He will go through his report.

13 Once the Board's Agent gives his
14 report, then the Board will have an opportunity
15 to ask questions of its witness. Once the Board
16 has asked questions of its witness, then the
17 applicant will have an opportunity to ask
18 questions of the Board's witness. And then the
19 protestant will have an opportunity to ask
20 questions of the Board's witness.

21 Once both sides have had an
22 opportunity to ask questions, we might -- both

1 the applicant and the protestant will be given an
2 opportunity to recross, to redirect questions of
3 the Board's witness, based on the questions that
4 were asked of the Board.

5 And once that is done, then the
6 protestant will have an opportunity to present
7 its case. Once the protestant has presented its
8 case -- I'm sorry, once the applicant has had an
9 opportunity to present its case, then the
10 protestant will present its case.

11 Okay, so everyone, any questions?
12 Everyone understood the process? And also be
13 mindful of the time restraint that we have.
14 Okay.

15 All right. So does the -- since there
16 are no preliminary matters, does the applicant
17 wish to make an opening statement?

18 MR. KLINE: Yes, we do. Thank you,
19 Mr. Chairman, Members of the Board. We are here
20 on behalf of the applicants to pursue this
21 application for an on-premise license.

22 The location that we are talking about

1 has been called a source of visual blight for
2 decades and probably one of the most blighted
3 lots in the community. And the evidence will
4 show that this establishment at this location
5 will cause a transformation of this corner that
6 has been neglected for oh so many years.

7 The proprietors of the proposed
8 establishment, the evidence will show reside in
9 the neighborhood. They are of the neighborhood.
10 And the evidence will show they have substantial
11 support in the neighborhood. Other than the
12 protest of the ANC, at this point and a couple of
13 individuals, I mean, the evidence will show there
14 are a number of people that live right next to
15 the place, right in proximity that support the
16 application.

17 The evidence will further show we
18 think in terms of mirroring the issues and we
19 would hope that we would get a stipulation and
20 narrow the issues, but the only real issue here
21 seems to be the hours of the proposed
22 establishment and the entertainment endorsement.

1 We are not aware that there is really
2 substantive opposition to a license at this
3 location. And we believe the evidence will show
4 that.

5 You will find, we believe when you
6 hear the evidence, that the operators have
7 substantial experience running these types of
8 businesses and have -- there is a great deal of
9 trust in them from persons that reside in the
10 community.

11 And at the conclusion of the case, we
12 will ask that you approve the license, as applied
13 for, and hope that you will do so once you have
14 heard all the evidence. Thank you.

15 CHAIRPERSON ANDERSON: What are the
16 hours that are being requested?

17 MR. KLINE: They have requested to
18 operate the maximum hours until 2:00 a.m. Sunday
19 through Thursday and 3:00 a.m. Friday and
20 Saturday.

21 CHAIRPERSON ANDERSON: The protestant?

22 MR. LOOTS: Thank you and good

1 afternoon. On behalf of ANC-6E, I think it is
2 important to understand exactly what we are
3 dealing with here. This is not a typical bricks
4 and mortar establishment.

5 What they are proposing is to take an
6 open-air venue with no inside bricks and mortar
7 traditional seating, kitchen, any of that and use
8 this open lot with an entertainment endorsement
9 until 2:00 or on weekends 3:00 in the morning.

10 The lot is situated unimproved, and
11 will be substantially unimproved when they are
12 done with it, in the middle of literally adjacent
13 to multiple residential properties, surrounded
14 basically by residential properties.

15 And being an open-air establishment is
16 unique as it relates to ability even in the best
17 of all operator's world to limit the sound/noise
18 and other negative impacts and the community's
19 quality of life.

20 We also believe that the presence of
21 an open-air late night party venue at this
22 location is going to be a negative effect on

1 immediately adjoining and neighborhood property
2 values, particularly for residential.

3 And that the very limited parking that
4 is available on a zone permit basis to the
5 neighbors, particularly again with the late night
6 venue openings, will be further constrained. It
7 is important and you will hear testimony today as
8 to the exact reasons that the ANC opposes.

9 The ANC did vote unanimously to oppose
10 this application and does so very rarely. The
11 ANC is not an ANC that has a history or
12 prediction to oppose everything that comes along.
13 If you are interested in building a vibrant
14 community and recognize that that includes
15 restaurants and licensed establishments as well
16 as residential and other social opportunities.

17 However, by their own admission, this
18 particular venue and this choice of location
19 stretches the bounds of the entertainment
20 offerings in Shaw by several blocks. And again,
21 most important, has zero interior space, zero
22 ability to contain noise and particularly

1 entertainment at any hour of the day or night.
2 And particularly in a neighborhood as a late
3 night venue.

4 So the ANC will -- stands here in
5 opposition to the issue of the license and were
6 this Board to determine in its wisdom to go ahead
7 and issue a license for this location, we would
8 ask that you deny the request for an
9 entertainment endorsement and that it
10 specifically limit the hours to 10:30 p.m. on
11 weekdays and midnight on Fridays and Saturdays.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you. All right. The Board will call its
14 first witness, Mr. Kevin Puente. Mr. Puente, can
15 you raise your right hand, please?

16 Whereupon,

17 INVESTIGATOR KEVIN PUENTE
18 was called as a witness by the ABRA Board, and
19 having been first duly sworn, assumed the witness
20 stand and was examined and testified as follows:

21 INVESTIGATOR PUENTE: Yes, I do.

22 DIRECT EXAMINATION

1 CHAIRPERSON ANDERSON: Can you state
2 your name for the record, please?

3 THE WITNESS: Kevin Puente.

4 CHAIRPERSON ANDERSON: And where are
5 you currently employed, Mr. Puente?

6 THE WITNESS: The Alcoholic Beverage
7 Regulation Administration.

8 CHAIRPERSON ANDERSON: And how long
9 have you been employed by that Agency?

10 THE WITNESS: Approximately four
11 years.

12 CHAIRPERSON ANDERSON: And what are
13 your duties and responsibilities?

14 THE WITNESS: I conduct inspections
15 and investigations of licensed ABC establishments
16 in the District of Columbia.

17 CHAIRPERSON ANDERSON: And are you
18 familiar with this application Electric Cool-Aid?

19 THE WITNESS: Yes.

20 CHAIRPERSON ANDERSON: And how are you
21 familiar with this application?

22 THE WITNESS: I was assigned to the

1 protest investigation.

2 CHAIRPERSON ANDERSON: Now, can you
3 tell us what information were you able to gather
4 regarding this protest matter?

5 THE WITNESS: Yes. So I was assigned
6 to this investigation of the Class CT new
7 application for ADBHS, LLC t/a Electric Cool-Aid
8 located at 512 Rhode Island Avenue, N.W.

9 The new application for Electric Cool-
10 Aid was submitted by the owner, Benjamin
11 Schwartz. The application was only protested by
12 ANC-6E. ANC-6E submitted a letter to ABRA
13 opposing Electric Cool-Aid's new application on
14 the grounds that the establishment will have an
15 adverse impact on peace, order and quiet; adverse
16 impact of the establishment on real property
17 values; and the effect of establishment upon
18 residential parking needs and vehicular and
19 pedestrian safety.

20 On Tuesday, March 19, 2019, I received
21 a telephone call from ANC-6E02 Commissioner Mike
22 Brown who was representing the ANC. Commissioner

1 Brown stated to me that they do not want the
2 establishment operating until the early morning
3 hours. They would like to see the establishment
4 have the same operation and hours as the nearby
5 outdoor beer garden, Dacha Beer Garden.

6 Commissioner Brown stated that the ANC
7 wants the hours for the entertainment to be
8 restricted to midnight, so the community will not
9 be impacted by the operation.

10 Commissioner Brown also stated that
11 the community does not want to deal with patrons
12 making noise or music emanating into the early
13 morning hours.

14 Commissioner Brown lastly stated the
15 only issue the ANC had with the application was
16 just the proposed hours of operation, sale and
17 entertainment.

18 Electric Cool-Aid is located in a
19 Mixed-Use Zone, MU-4, according to the Zoning
20 Regulations. Mixed-Use Zones provide for mixed-
21 use development that permit a broad range of
22 commercial, institutional and multiple dwelling

1 unit residential development at varying
2 densities.

3 According to the Geographic
4 Information System, GIS, as of April 3, 2019,
5 there are 27 active ABC licensed establishments
6 operating within 1200 feet of Electric Cool-Aid.

7 Of those 27 establishments, four are
8 considered Class A retail licensed establishments
9 selling beer, wine and spirits. Eight are Class
10 CR restaurant licensed establishment. 14 are
11 Class CT Tavern licensed establishments. And one
12 Class CX multi-purpose use establishment.

13 Out of the 27 licensed establishments
14 in the area, four of the establishments have
15 summer gardens. They are: Dacha Beer Garden,
16 Ivy and Coney, BKK Cook Shop, and Rito Loco El
17 Techo.

18 There are no schools, recreation
19 centers or libraries within 400 feet of the
20 establishment.

21 Electric Cool-Aid is located in the
22 500 Block of Rhode Island Avenue, N.W., between

1 6th Street, N.W., to the west and 5th Street,
2 N.W., to the east.

3 Electric Cool-Aid is a corner parcel
4 lot located at 512 Rhode Island Avenue, N.W.
5 Electric Cool-Aid is located primarily in a
6 Mixed-Use District with residences directly
7 beside the establishment.

8 Electric Cool-Aid has a chain link
9 fence around it. The property is mostly vacant,
10 besides a school bus that sits on the property.

11 The establishment plans to have
12 seating capacity of eight on the inside of the
13 premises. The establishment plans to have a
14 summer garden with a seating capacity of 122, a
15 standing capacity of 103 in the outdoor beer
16 garden, with a total occupant load of 225.

17 There is no building interior since
18 the establishment has not been built. According
19 to the establishment's application, it tends to
20 be a neighborhood beer garden that offers frozen
21 adult beverages and limited spirits bar. Food
22 will be a variety of packaged ice cream and

1 popcorn.

2 Electric Cool-Aid has applied for an
3 entertainment endorsement for the summer garden.
4 The house of the entertainment will be Sunday
5 through Thursday 11:00 a.m. to 2:00 a.m., Friday
6 and Saturday 11:00 a.m. to 3:00 a.m. The same as
7 for the hours of operation and sale.

8 ABRA Investigators monitored the
9 establishment on three occasions from March 19,
10 2019 to April 3, 2019. During the hours that
11 ABRA monitored the area, there was no violations
12 or unusual activity observed.

13 There is one Metro Subway stop in the
14 vicinity of Electric Cool-Aid, that is the Shaw/
15 Howard University stop located on the northeast
16 corner of 7th Street, N.W., and south -- and S
17 Street, N.W., in between 7th and 8th Street, N.W.
18 and R Street, N.W.

19 There is one Metro Bus stop in the
20 vicinity of Electric Cool-Aid. The bus stop
21 services Rhode Island Avenue, N.W., in both
22 directions. The bus stop services the G-8 and G-

1 9 routes.

2 Electric Cool-Aid is located at 512
3 Rhode Island Avenue, N.W., and there is no
4 parking on-site for vehicles. There is also no
5 parking lots or garages in the area. Rhode
6 Island Avenue, N.W., spanning from the 500 Block
7 through the 600 Block offers on-street parking
8 for two hours, from 7:00 a.m. to 4:00 p.m..
9 There is a time limit. And from 6:30 p.m. to
10 12:00 a.m. for two hours.

11 6th Street, N.W., spanning from the
12 1600 Block through the 1700 Block offers Zone 1
13 and Zone 2 permit holder parking only.

14 ABRA personnel are not qualified to
15 address the issues of real property values.

16 On Wednesday, March 20th, I reached
17 out to the Office of Unified Communications
18 regarding for the calls for service. And at the
19 time of this report, they never got back to me
20 with the calls for service.

21 CHAIRPERSON ANDERSON: Okay. Now, are
22 there any exhibits attached to your report?

1 THE WITNESS: Yes.

2 CHAIRPERSON ANDERSON: And can you
3 identify for the record what these exhibits are?

4 THE WITNESS: Yes. Exhibit 1 is a
5 copy of the Protest Letter.

6 Exhibit 2 is the GIS Information Map
7 of the licensed establishments in 1200 feet.

8 Exhibit 3 is the GIS Information Map
9 of schools, recreation and libraries within 400
10 feet.

11 Exhibit 4 is a photograph of the
12 exterior of the establishment.

13 Exhibit 5 is another photograph of the
14 exterior.

15 Exhibit 6 is another photograph of the
16 exterior as well as Exhibit 7 and Exhibit 8.

17 Exhibit 9 is the applicant's
18 application that was submitted to ABRA.

19 Exhibit 10 is a photograph of the
20 Shaw/Howard University Metro stop.

21 Exhibit 11 is the photograph of the
22 Metro Bus stop.

1 Exhibit 12 is the parking on Rhode
2 Island Avenue, N.W.

3 And Exhibit 13 is the parking on 6th
4 Street, N.W.

5 (Whereupon, the above-
6 referred to documents were
7 marked as Government Exhibit
8 No. 1 through 13 for
9 identification.)

10 CHAIRPERSON ANDERSON: That's it?

11 THE WITNESS: Yes.

12 CHAIRPERSON ANDERSON: All right. You
13 stated that there were four identified
14 establishments with summer gardens. Is that
15 correct?

16 THE WITNESS: Yes.

17 CHAIRPERSON ANDERSON: What are these
18 establishments again, please?

19 THE WITNESS: Dacha Beer Garden, Ivy
20 and Coney, BKK Cook Shop and Rito Loco El Techo.

21 CHAIRPERSON ANDERSON: And do you know
22 that -- do you know what are the hours -- say for

1 Dacha Beer Garden, do you know what the hours are
2 that their summer garden is?

3 THE WITNESS: I know the hours are
4 7:00 to midnight seven days a week.

5 CHAIRPERSON ANDERSON: So midnight --

6 MEMBER SILVERSTEIN: Say again,
7 please.

8 THE WITNESS: Until midnight seven
9 days a week.

10 CHAIRPERSON ANDERSON: So Dacha is
11 midnight, seven days a week.

12 Do you know whether or not Dacha Beer
13 Garden if it has an entertainment endorsement?

14 THE WITNESS: It does not.

15 CHAIRPERSON ANDERSON: It does not.

16 All right. All right. What about -- let me see,
17 well, tell me the other establishments and what
18 are their -- like say BKK Cook Shop, do you know
19 what the hours are for their summer garden?

20 THE WITNESS: I do not, not offhand.

21 CHAIRPERSON ANDERSON: Hold on. Let
22 me see. What about Rito Loco El Techo?

1 THE WITNESS: I do not.

2 CHAIRPERSON ANDERSON: What about Ivy
3 and Coney?

4 THE WITNESS: I do not know that as
5 well.

6 CHAIRPERSON ANDERSON: All right.
7 Which is -- off the top of your head, do you know
8 which of these four establishments are the
9 closest to Electric Cool-Aid?

10 THE WITNESS: I'll say they are all
11 pretty close, all within two or three blocks from
12 the south.

13 CHAIRPERSON ANDERSON: Okay. I don't
14 have any other questions at this moment. Any
15 questions by any of the Board Members? Yes, Mr.
16 Short?

17 MEMBER SHORT: Good afternoon,
18 Investigator Puente. In doing your examination
19 of this applicant's property, I heard the figures
20 -- what -- repeat again the figures, the
21 occupancy load.

22 THE WITNESS: So according to the

1 application, there is supposed to be a seating
2 capacity of 8 on the inside of the premises. The
3 establishment plans to have a summer garden with
4 seating of 122, a standing capacity of 103 with a
5 total occupant load of 225.

6 MEMBER SHORT: Do you know the
7 measurements of this lot?

8 THE WITNESS: I do not.

9 MEMBER SHORT: Can you give me an
10 approximate?

11 THE WITNESS: No, I cannot, not
12 offhand.

13 MEMBER SHORT: Okay. Well, I guess I
14 would ask as being an Investigator and working
15 for this Agency as long as you have, the total
16 number again would be what?

17 THE WITNESS: 225.

18 MEMBER SHORT: 225. In your opinion
19 or your knowledge, would 225 in this lot be
20 conducive with one another?

21 THE WITNESS: Yeah, it's a very vacant
22 lot, so it's not -- there are no buildings on it

1 besides one in the back corner and the school
2 bus. I think it could have 225 on it.

3 MEMBER SHORT: Okay. All right.
4 That's all I have, Mr. Chair. Thank you.

5 THE WITNESS: Sure.

6 CHAIRPERSON ANDERSON: Any other
7 questions by any other Board Members? No? All
8 right. Mr. Kline?

9 MR. KLINE: Yes. Thank you.

10 CROSS-EXAMINATION

11 BY MR. KLINE:

12 Q Investigator, this proposed location
13 is on Rhode Island Avenue, correct?

14 A Yes.

15 Q Would you describe to the Board Rhode
16 Island Avenue and that area?

17 A There is a lot of cars driving by. It
18 is one of the main thorough-ways through D.C.
19 Traffic on both sides. It's a two-lane road on
20 each side in each direction and houses. There is
21 an autobody shop. There is a couple other
22 smaller businesses and markets on Rhode Island.

1 Q So it's pretty commercial?

2 A Yes.

3 Q And when you say on both sides, it's
4 a divided street, there is a median?

5 A Yes. There is like a little patch of
6 land right in the middle in some areas.

7 Q And it is basically the major
8 thoroughfare to get out to Hyattsville and those
9 parts of Maryland?

10 A Yes.

11 Q All right. You talked about the
12 zoning of the establishment, it's MU-4. Did you
13 look at the zoning of the adjacent properties?

14 A I did not, no.

15 Q And the other establishments, you were
16 asked about a number of other establishments that
17 have outdoor areas, did you focus on them at all
18 in terms of whether the characteristics of those
19 establishments might be in any way different than
20 this one?

21 A Just the one Dacha, I knew offhand was
22 very similar to this application.

1 Q Okay. But in fact, the areas behind
2 Dacha are residentially zoned, aren't they?

3 A Yes.

4 MR. KLINE: That's all I have.

5 CHAIRPERSON ANDERSON: All right. Mr.
6 Loots?

7 MR. LOOTS: Yes. It's actually Loots,
8 but I entertain anything reasonably close to
9 that.

10 CHAIRPERSON ANDERSON: Loots.

11 MR. LOOTS: Yes.

12 CHAIRPERSON ANDERSON: Mr. Loots.

13 MR. LOOTS: Thank you.

14 BY MR. LOOTS:

15 Q Good afternoon. I do have a couple of
16 questions.

17 You had mentioned of the other
18 establishments in the area that have summer
19 garden permits. Do any of those open onto the
20 street as opposed to being enclosed or open onto
21 the sidewalk?

22 A Offhand I know Dacha's is right on the

1 street.

2 Q Right. And you have testified, I
3 believe, with respect to Dacha that they were
4 open until midnight seven days a week. Is that
5 for the summer garden portion?

6 A It's their whole entire license is to
7 midnight, seven days a week.

8 Q Okay. How confident are you that the
9 summer garden is permitted to be open until
10 midnight seven days a week?

11 A I mean, I'm not 100 percent sure. I
12 don't have the license in front of me.

13 Q Okay. If I suggested to you that the
14 license, in fact, says Monday through Thursday,
15 they are restricted to 10:30 p.m. for the outdoor
16 portion, would that be --

17 A It sounds about right.

18 Q -- consistent?

19 A Um-hum, yes.

20 Q So now Dacha also has an indoor
21 portion, correct?

22 A Yes.

1 Q Okay. So with that indoor portion,
2 that could be open longer hours than the summer
3 garden, correct?

4 A I'm not sure offhand.

5 Q Okay. So but you are not confident
6 with your testimony that Dacha is permitted to be
7 outside until midnight?

8 A Not 100 percent sure about that.

9 Q Okay. So I would suggest to the Board
10 that the license itself says 10:30 p.m., Monday
11 through Thursday, that's of course easily viable
12 -- verifiable through the public record as well.
13 And midnight then on weekend nights.

14 Another question for you, you
15 indicated that it's primarily commercial, but yet
16 in your report, you note that there is
17 immediately adjacent residential to the site
18 proposed for Electric Cool-Aid. Is that correct?

19 A Yes.

20 Q Okay. In evaluating the site, did you
21 happen to count how many residential dwellings
22 there are?

1 A I did not, no.

2 Q Okay. Is it correct to say that on
3 the contiguous block that is the Block of Rhode
4 Island Avenue 500 Block, other than this lot that
5 is currently vacant and proposed for this use,
6 everything is -- every other building on that
7 block is residential, is it not?

8 A Yes.

9 Q Okay. And with respect to parking,
10 you had mentioned, again I believe the contiguous
11 block going around the block, restrictions on
12 residential parking.

13 Were there any unrestricted street
14 parking sites that you observed?

15 A Not from where I can locate.

16 Q All right. And you indicated that
17 there is no nearby public or commercial parking.
18 Is that correct?

19 A Yes.

20 Q Okay. And what do you consider nearby
21 for purposes of this evaluation?

22 A Within a block or two.

1 Q Okay. You also mentioned that there--
2 that the Shaw Metro stop is fairly near?

3 A Yes.

4 Q Okay. Did you take into consideration
5 in your evaluation the hours when Metro offers
6 service to that particular Metro stop?

7 A I did not, no.

8 Q Okay. So if, hypothetically or in
9 reality, Metro were to cease service at midnight
10 and the establishment remains open until 3:00
11 a.m., you did not factor that into your
12 consideration?

13 A No.

14 MR. LOOTS: I have no further
15 questions. Thank you.

16 CHAIRPERSON ANDERSON: All right.

17 MEMBER SILVERSTEIN: Mr. Chair?

18 CHAIRPERSON ANDERSON: Yes, Mr. Silver
19 -- yeah, go ahead, Mr. Silverstein.

20 MEMBER SILVERSTEIN: Thank you for
21 your report, your conciseness and your brevity.
22 Let's talk about another establishment where we

1 have had a lot of problems in that neighborhood
2 and I'm going to ask you to compare and contrast,
3 if you could, the proximity of residential
4 activity to this establishment and that of Dacha
5 where we had so much trouble.

6 Compare and contrast the two, because
7 we had problems at first with Dacha.

8 THE WITNESS: With Dacha, I know there
9 is residential right behind it. There is an
10 alleyway that separates it and then there is
11 residential neighborhood.

12 MEMBER SILVERSTEIN: There is actually
13 somebody overlooking the --

14 THE WITNESS: Yes, from what I recall,
15 yes. There is houses right -- that backs right
16 up to Dacha's property line.

17 MEMBER SILVERSTEIN: Compare that with
18 this.

19 THE WITNESS: There is houses that
20 back up to the property line as well of this
21 applicant, yes.

22 MEMBER SILVERSTEIN: How close?

1 THE WITNESS: Very close.

2 MEMBER SILVERSTEIN: So if there were
3 -- if there was a lot of loud activity, it would
4 affect them?

5 THE WITNESS: Yes, it possibly could.

6 MEMBER SILVERSTEIN: Any other
7 comparison? What about along Rhode Island Avenue
8 south, which is not behind it, but along side of
9 it?

10 THE WITNESS: It's a lot of traffic
11 usually for the cars during the daytime. In the
12 evening time, it's usually --

13 MEMBER SILVERSTEIN: So it's not
14 quiet?

15 THE WITNESS: Yeah, not during the
16 daytime.

17 MEMBER SILVERSTEIN: This is not
18 Sterling, Virginia or West Virginia.

19 THE WITNESS: No.

20 MEMBER SILVERSTEIN: Okay. Anything
21 else that you would want to add as far as the
22 potential for making this uncomfortable for

1 neighbors?

2 THE WITNESS: Not that I -- from what
3 is in my report.

4 MEMBER SILVERSTEIN: Thank you. No
5 further questions.

6 CHAIRPERSON ANDERSON: Any other
7 questions by any other Board Members? All right.

8 MR. KLINE: In light of those
9 questions, I do have a couple.

10 CHAIRPERSON ANDERSON: All right. Go
11 ahead, Mr. Kline.

12 RE-CROSS-EXAMINATION

13 BY MR. KLINE:

14 Q Investigator, in the next block from
15 this establishment, there is a liquor store, and
16 a gas station?

17 A Yes.

18 Q And a number of commercial
19 establishments, correct?

20 A Yes.

21 Q And when you say all of the buildings
22 in this block and all the properties other than

1 the proposed site are residential, isn't it a
2 fact that some of them are unoccupied?

3 A Yes, from my -- not sure if any -- I
4 didn't study if people were coming in and out,
5 but yes, that's a good assessment.

6 Q Thank you.

7 MR. KLINE: Great. That's all I have.
8 Thank you.

9 MR. LOOTS: Nothing here.

10 CHAIRPERSON ANDERSON: All right.

11 Thank you, Mr. Puente. You can step down.

12 (Whereupon, the witness was excused.)

13 CHAIRPERSON ANDERSON: Okay. Do you
14 have a witness, Mr. Kline?

15 MR. KLINE: I do.

16 CHAIRPERSON ANDERSON: Would you --

17 MR. KLINE: I call to the stand Dane
18 Winkleman.

19 CHAIRPERSON ANDERSON: The name?

20 Wink?

21 MR. KLINE: Dane Winkleman.

22 CHAIRPERSON ANDERSON: Winkleman. Mr.

1 Winkleman, can you raise your right hand, please?

2 Whereupon,

3 DANE WINKLEMAN

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

8 MR. WINKLEMAN: Yes, sir.

9 CHAIRPERSON ANDERSON: All right.

10 Thank you. You can have a seat. Your witness.

11 There is a microphone there, please, pull the
12 microphone and speak into the microphone. All
13 right. Your witness, sir.

14 DIRECT EXAMINATION

15 BY MR. KLINE:

16 Q Mr. Winkleman, where do you live?

17 A 616 R Street, N.W.

18 Q And where is that in relation to this
19 proposed establishment?

20 A I would say a block away. It is
21 catty-corner to the establishment.

22 Q It's catty-corner to the

1 establishment?

2 A Yes. There is a green space, if you
3 would call it that, a kind of triangle there, and
4 then I am on the corner of Marion, where Marion
5 and R and Rhode Island all intersect. And this
6 is at 5th -- excuse me --

7 Q 6th and Rhode --

8 A 6th and Rhode Island.

9 Q Okay. And so you are on the south
10 side of Rhode Island?

11 A Correct, yes.

12 Q And about how many feet would you say
13 you are from the boundary of the purposed
14 establishment?

15 A A stone's throw, maybe 150, 200 feet.

16 Q Okay. And you support this
17 establishment?

18 A Yes.

19 Q Any why is it that you support it?

20 A I have known Ben and Angela for
21 probably four or five years now. I -- they are
22 both upstanding members of the community. I have

1 known them personally and professionally. I have
2 recently come to know Ben's brother and trust
3 them to be people who will commit to this
4 community. They are people who live here and
5 take care of the investment they have made in the
6 community.

7 Q Okay. Now, what about the current
8 state of the lot? What's going on there now?

9 A I assume it's being cleaned up. It
10 looks much better than it did before. Before it
11 was kind of lots of trash was in there, broken
12 bottles, very dilapidated. I wouldn't walk my
13 dog down in that area. It's just not a very good
14 place to kind of be around.

15 Q Okay. And was the takeover in
16 connection with the commensurate of the
17 applicant's preparations to perhaps do business
18 there?

19 A Yes.

20 Q Okay. So that wasn't done under prior
21 ownership, that was what they did, right?

22 A No. That was done during -- by them.

1 Q And you are aware of the hours that
2 they are seeking at the location?

3 A Correct.

4 Q And do those trouble you at all?

5 A No. It's not a problem to me at all.

6 Q And do you see some positives in terms
7 of activity on this corner for you as a resident
8 there?

9 A Yes. In general, I think it is a
10 great addition to the community. Having another
11 place where people can kind of come and
12 socialize, I think, is a net benefit for the
13 community. And I think those are all great for
14 the community.

15 Q I think you have already heard that
16 the protestants seem to have concerns about late
17 hours and specifically noise.

18 A Um-hum.

19 Q What would you say in response to that
20 as a resident of the area? Why do you not share
21 those concerns?

22 A Honestly, living on Rhode Island, the

1 noise that bothers me more than anything is it's
2 all you can hear is traffic. During the day it
3 is -- if it's 5:00, it's horns honking throughout
4 the whole afternoon commute.

5 During the evening, you will get a
6 siren probably every, you know, 30 minutes to an
7 hour.

8 I don't see much covering that up.
9 And I'm not too worried about a beer garden down
10 the street from me.

11 Q And you are familiar with 7th Street?

12 A Yes.

13 Q Would you think that this street is
14 comparable to the activity on 7th Street?

15 A 7th Street is -- I would not say that
16 the traffic on 7th Street compares with the
17 amount of cars moving through Rhode Island
18 Avenue. So in certain ways I guess it's more --
19 there is more -- it's more busy than 7th Street
20 would be.

21 Q Okay. Great. Thank you.

22 A Um-hum.

1 MR. KLINE: I have no further
2 questions of the witness.

3 CHAIRPERSON ANDERSON: Mr. Loots, your
4 witness.

5 MR. LOOTS: Thank you.

6 CROSS-EXAMINATION

7 BY MR. LOOTS:

8 Q You mentioned that you were more
9 concerned with street noise than you are with the
10 potential of noise emanating from the applicant's
11 proposed establishment. Is the street noise that
12 bad between midnight and 3:00 a.m. as well?

13 A I guess I should rephrase that I'm not
14 necessary concerned about street noise. I chose
15 to live in the city and that's part of living in
16 the city. It is -- you -- unfortunately, Ashbury
17 Dwellings is right there and there are sirens
18 that go by quite a few -- quite often. So we do
19 hear that quite a bit.

20 I was using that as a reference to the
21 amount of kind of noise that comes through on
22 Rhode Island Avenue.

1 Q Okay. Would you agree with me though
2 that if you were to walk out on your front porch
3 now between the hours of midnight and 3:00 a.m.,
4 there would not be a great deal of ambient noise
5 from traffic or anything else?

6 A I don't know if I would make that
7 statement. It depends on the night. Some nights
8 are quieter than others, but there is always
9 sounds of the city.

10 MR. LOOTS: I have no further
11 questions.

12 CHAIRPERSON ANDERSON: Thank you. Any
13 questions by any Board Members? Mr. Short?

14 MEMBER SHORT: Good afternoon, Mr.
15 Dane Winkleman.

16 THE WITNESS: Yes.

17 MEMBER SHORT: So you live where
18 again?

19 THE WITNESS: 616 R Street, N.W.

20 MEMBER SHORT: 61 -- and that's not
21 far from Marion Street?

22 THE WITNESS: It's on the corner of

1 Marion and R and kind of the whole intersection
2 with Rhode Island.

3 MEMBER SHORT: And how long have you
4 been in the neighborhood?

5 THE WITNESS: Two years in August.
6 Before that, I was in Mount Vernon, so not far
7 away.

8 MEMBER SHORT: Okay. So Mount Vernon
9 is a little quieter in the evenings than Rhode
10 Island Avenue?

11 THE WITNESS: Not too much, a little
12 bit, yeah, I mean.

13 MEMBER SHORT: Okay. All right.
14 Well, I'll just say this. In your two years
15 there in the neighborhood, what can you -- what
16 could you say to myself as a Board Member about
17 businesses there and how you relate to businesses
18 there?

19 THE WITNESS: The most frequented
20 businesses I go to are Dacha and Ivy and Coney.
21 One of the great things about both of them is I
22 know both of -- I have met both of the owners

1 personally. They are residents around the
2 neighborhood. That's one of the biggest things
3 is kind of knowing the people who are here.

4 You don't always get that in other
5 kind of establishments around town with kind of--
6 I can't speak to where they are from, but if you
7 don't personally know them, it's a little bit
8 different when you do know the people who are
9 moving into your neighborhood. I think it makes
10 it a little bit more comfortable.

11 MEMBER SHORT: Yeah, I understand
12 that. Now, Dacha, when was the first time you
13 went to Dacha?

14 THE WITNESS: Oh, it has been probably
15 7 or 8 years, I'm not sure exactly.

16 MEMBER SHORT: So you weren't living
17 in the neighborhood when you were?

18 THE WITNESS: I have moved around D.C.
19 quite a bit, yeah.

20 MEMBER SHORT: Well, what was the
21 atmosphere of Dacha?

22 THE WITNESS: You know, lively, kind

1 of, you know, a beer garden, lots of
2 socialization, mostly ambient talking,
3 conversations moving around.

4 MEMBER SHORT: Now, we have heard
5 testimony that there are houses right behind
6 Dacha?

7 THE WITNESS: Yes, correct.

8 MEMBER SHORT: Would you have a
9 problem living in one of those?

10 THE WITNESS: You know, I wouldn't.
11 You know, I think it's a decision, when you move
12 into a place that has that, that you have to make
13 on your own.

14 MEMBER SHORT: Dacha, they are fairly
15 new, also, correct?

16 THE WITNESS: Excuse me?

17 MEMBER SHORT: Dacha is fairly new to
18 the community, also, isn't it?

19 THE WITNESS: I don't -- I couldn't
20 testify to when they opened.

21 MEMBER SHORT: Okay. Well, that's a
22 good answer. But I'll just simply say, okay, so

1 if they were to put a Dacha across the street
2 from where you live now, would you be -- how
3 would you feel about that?

4 THE WITNESS: As long as I trusted the
5 people who were opening it up, I think I would be
6 in favor of it.

7 MEMBER SHORT: And if they sold it to
8 someone you didn't trust?

9 THE WITNESS: Oh, I mean, I would take
10 the time to kind of do research on who the people
11 were, but I feel like that's part of the reason
12 for everything, you know, we are doing today.

13 MEMBER SHORT: Okay. Well, I have
14 seen some drastic changes in that neighborhood
15 myself and some of them for the better. And so I
16 just wanted to hear testimony from someone who
17 lives in the community, who has visited the
18 establishments and get a feel for what you feel.
19 So thank you very much for your testimony.

20 THE WITNESS: Yes, sir.

21 MEMBER SHORT: That's all I have, Mr.
22 Chair.

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

3 Mr. Kline, any questions?

4 MR. KLINE: I have nothing further.
5 Thank you.

6 CHAIRPERSON ANDERSON: Mr. Loots, any
7 questions?

8 MR. LOOTS: Nothing here. Thank you.

9 CHAIRPERSON ANDERSON: Okay.

10 MR. KLINE: Thank you, Mr. Winkleman.

11 CHAIRPERSON ANDERSON: Thank you. You
12 can step down.

13 (Whereupon, the witness was excused.)

14 CHAIRPERSON ANDERSON: Do you have
15 another witness?

16 MR. KLINE: Yes. I call to the stand
17 Rod Crider.

18 MEMBER SHORT: The name again?

19 MR. KLINE: Rod Crider.

20 CHAIRPERSON ANDERSON: Is it Clider?

21 MR. KLINE: Crider.

22 MR. CRIDER: C-R-I-D-E-R.

1 CHAIRPERSON ANDERSON: Crider. Can
2 you raise your right hand, sir, please?

3 Whereupon,

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

9 MR. CRIDER: Yes.

10 CHAIRPERSON ANDERSON: All right.

11 Thank you. Your witness. Have a seat.

12 DIRECT EXAMINATION

13 BY MR. KLINE:

14 Q Mr. Crider, where do you live?

15 A 1505 Marion Street.

16 Q And where is that in relation to this
17 proposed establishment?

18 A It's like two blocks southwest of the
19 establishment.

20 Q All right. And how long have you
21 lived in the neighborhood?

22 A I have owned that property for a

1 little over 15 years, but I didn't live in it
2 permanently until about 11 years ago.

3 Q What did you do with it before that?

4 A I rented it out and I lived in Logan
5 Circle, which is still pretty close.

6 Q Do you support this application?

7 A Yes.

8 Q Why?

9 A I know them personally and I trust
10 them to, you know, do a good job, to make sure
11 that the community is not affected by this in a
12 bad way. I know they live nearby, so they also
13 don't want to have any nuisances and I have just
14 kind of always been a proponent of having things
15 happen in the neighborhood. It has changed a lot
16 since I have been there. I have never been like
17 a nimbi person, so I just kind of -- I have
18 always welcomed new establishments that are going
19 to come and try and make the neighborhood better.

20 Especially if it's a vacant lot that
21 has been just kind of an eyesore for a while.

22 Q Let's talk about that for a minute.

1 A Um-hum.

2 Q That corner, you said has been kind of
3 an eyesore for a while.

4 A Um-hum.

5 Q You have owned property there 15
6 years?

7 A Yeah.

8 Q So what has been your experience with
9 that corner?

10 A It was just never very well-kept, I
11 guess. And I didn't -- I think there was like a
12 rib place that operated out of a bus right there.
13 That's the same lot? Do you know? Okay. Yeah.
14 Yeah, it just wasn't always the best looking
15 thing when you drive by on Rhode Island Avenue.

16 Q So you maintained this property as
17 rental property before you moved in, correct?

18 A Yeah.

19 Q Do you have other rental property?

20 A Yeah.

21 Q And are you concerned that the
22 location of this establishment will have a

1 negative effect on your property value there?

2 A No. I think any time you have
3 businesses coming in and people coming in and
4 enjoying themselves like that are just things to
5 do in the neighborhood. I think it's better for
6 the property values, at least that's what I have
7 been betting on. So, yeah.

8 Q The 15 years, have you seen a lot of
9 changes in that neighborhood over 15 years that
10 you have owned over there?

11 A Oh, yeah.

12 Q Are there as many as you would have
13 liked given other locations nearby?

14 A There were occasions that would have
15 more, you know. I don't think there is any place
16 that has had more than Shaw really. I can't
17 think of anything that has, but -- and we are
18 happy. I lived there with my wife and two kids
19 and so I didn't have kids when I first moved
20 there. And I do now and, you know, we enjoy the
21 kind of walking around the neighborhood having --
22 being by a place where we know all the neighbors.

1 We met just from hanging out at coffee
2 shops, bars and seeing each other on the street,
3 you know.

4 Q So you desire more amenities in the
5 neighborhood?

6 A Yeah.

7 Q How old are your children?

8 A 1 and about to be 4.

9 Q Do you think that you will stay in
10 that location for some time as they grow?

11 A That's our plan, yeah, um-hum.

12 Q Okay. Thank you.

13 MR. KLINE: That's all I have at this
14 time.

15 CHAIRPERSON ANDERSON: Mr. Loots?

16 CROSS-EXAMINATION

17 BY MR. LOOTS:

18 Q You mentioned one of the reasons you
19 are supporting this project is the property is
20 currently vacant and a community eyesore. Is
21 that correct?

22 A Yeah. Well, no. Currently, I know it

1 was a few years ago, I'm not exactly sure what
2 state it is in right now, but yeah.

3 Q Okay. Is there any -- wouldn't any
4 use of that property, whether it be built as an
5 apartment building or some other development,
6 equally answer your question about the current
7 state or the past state of it as an eyesore?

8 A Yeah. I don't know, I didn't know if
9 that -- I thought this was just about their's. I
10 don't know of any other potential projects that
11 are being put on hold for this.

12 Q No. I'm suggesting there are.

13 A Oh, okay.

14 Q I'm just saying --

15 A Yeah.

16 Q -- you know, anything, a restaurant or
17 any other use of that property would similarly
18 satisfy that concern. Is that correct?

19 A Yeah, that's true, yeah.

20 Q And have you frequented the Dacha Beer
21 Garden?

22 A Yes.

1 Q Okay. Have you been present at Dacha
2 when the noise levels were elevated?

3 A Yeah. There is only a couple of times
4 where I can hear noise from my house, either from
5 Ivy and Coney or from Dacha, it would be like
6 during very large sporting events.

7 Q Okay. But there have been instances
8 from where you are now -- how far away are you
9 from Dacha?

10 A About half the distance that I am to
11 their place, so like a little more than one
12 block.

13 Q Okay. And you have had instances
14 where you could hear crowds or human voices from
15 Dacha?

16 A I can't say for sure where it is
17 coming from, because Ivy and Coney and Dacha are
18 in the same direction, but -- and it's also -- I
19 mean people on the street that aren't in a venue
20 are making probably more noise, I think, because
21 they are just like, I don't know, on the street
22 and making noise sometimes. So it's hard to say

1 if they are inside Dacha or if they are talking
2 outside my window. I don't know.

3 Q Okay.

4 MR. LOOTS: I have no further
5 questions.

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

8 MEMBER SHORT: Yes, good afternoon,
9 Mr. Crider. You heard testimony earlier or there
10 was testimony earlier that the hours for this
11 proposed site, this applicant, would be to 2:00
12 a.m. during the week and 3:00 a.m. on the
13 weekends.

14 THE WITNESS: Hum.

15 MEMBER SHORT: Would that concern you
16 at all?

17 THE WITNESS: No, I don't think it
18 matters really how much later it goes, as long as
19 the noise levels aren't too loud, you know, at
20 any time.

21 MEMBER SHORT: And you did testify
22 just now that you heard noises coming from Dacha?

1 THE WITNESS: Nothing that I would
2 complain about, you know.

3 MEMBER SHORT: I know, but --

4 THE WITNESS: It's not -- yeah.

5 MEMBER SHORT: -- did you hear noise?

6 THE WITNESS: I don't know exactly
7 where, because I can't see it when it is
8 happening.

9 MEMBER SHORT: Okay. All right.

10 THE WITNESS: But I have heard noises
11 coming from that direction, yeah.

12 MEMBER SHORT: Do you think the hours
13 that Dacha has are suitable for your community?

14 THE WITNESS: I don't actually know
15 their hours. You said that they are midnight or
16 10:30 on weekdays and midnight on weekends?

17 CHAIRPERSON ANDERSON: You can't ask
18 the question. You either know or you don't know,
19 sir. If you don't know, say I don't know.

20 THE WITNESS: Yeah, I don't know.

21 MEMBER SHORT: I think the testimony
22 given today, I think, it's at 10:30 that they

1 close.

2 THE WITNESS: I don't have any problem
3 with that.

4 MEMBER SHORT: So knowing that 10:30
5 is the time that they close now --

6 THE WITNESS: Um-hum.

7 MEMBER SHORT: -- what time did you
8 hear the noise that you didn't know where it was
9 coming from?

10 THE WITNESS: Oh, I don't know.

11 MEMBER SHORT: Was it early? Did it
12 disturb your home?

13 THE WITNESS: No, no. Like I said, I
14 have never had anything that I felt like I needed
15 to complain about, you know.

16 MEMBER SHORT: Okay.

17 THE WITNESS: Yeah. I mean, I expect
18 to hear some noise. 7th Street has the, you
19 know, ambulances going up and down for Howard
20 Hospital at all hours of the night, so --

21 MEMBER SHORT: Okay. Thank you for
22 your testimony. It has been quite compelling.

1 Thank you very much.

2 THE WITNESS: Okay. Thank you.

3 MEMBER SHORT: Thank you, Mr. Chair.

4 That's all I have.

5 CHAIRPERSON ANDERSON: Okay. Any
6 other questions by any other Board Member? Mr.
7 Crider, you -- when I tell you you can leave,
8 that's when you can leave, sir. All right.

9 Any questions, Mr. Kline?

10 MR. KLINE: I don't have anything
11 else.

12 CHAIRPERSON ANDERSON: Mr. Loots?

13 MR. LOOTS: Nothing here. Thank you.

14 CHAIRPERSON ANDERSON: Now, you can
15 go, Mr. Crider.

16 THE WITNESS: Now I can go.

17 CHAIRPERSON ANDERSON: Thank you very
18 much for your testimony.

19 (Whereupon, the witness was excused.)

20 MR. KLINE: Thank you.

21 CHAIRPERSON ANDERSON: Any other -- do
22 you have any other witnesses?

1 MR. KLINE: I call to the stand Noele
2 Lewis.

3 CHAIRPERSON ANDERSON: Noele Lewis.
4 Mr. Lewis, can you raise your right hand, please?
5 Whereupon,

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

11 MR. LEWIS: Yes, I do, the truth.

12 CHAIRPERSON ANDERSON: All right.
13 Have a seat, sir. Your witness.

14 DIRECT EXAMINATION

15 BY MR. KLINE:

16 Q Mr. Lewis, where do you live?

17 A 1718 5th Street, N.W., Washington,
18 D.C.

19 Q How long have you lived there?

20 A Roughly well, I can say 20 years.

21 Q 20 years?

22 A Yes, sir.

1 Q That's a long time. Have you seen a
2 lot of changes in the neighborhood over those 20
3 years?

4 A Yes.

5 Q And you are familiar with this corner
6 where this establishment is to be located?

7 A Every day, sir. Right by me.

8 Q Right by you?

9 A Yes, sir.

10 Q How close are you to the
11 establishment, to the proposed establishment?

12 A It's like going down to the alley and
13 turn around the corner.

14 Q Okay. Tell us, because we have a
15 written record, approximately, how many feet do
16 you think?

17 A Let's see 200 to 300.

18 Q 200 to 300?

19 A It's like 300, but I just -- it's just
20 across the street from me.

21 Q All right. And the lot that is there,
22 do you have any thoughts or opinions as to what

1 is going on there over the last 10 years or so?

2 A Well, as far as I remember, it used to
3 be used car parking lot, a rental, it has been
4 changed hands a couple of times as far as I
5 remember. And there was a time the lot was
6 empty. People would string trash over by the
7 fence. And it was filthy. It was not up to
8 standard.

9 And then I think I spoke to the owner
10 one time and they told me he was going to open
11 something like a farmer's market, that was a
12 couple of years ago. Then things doesn't work
13 out. And then some of the demolition was going
14 on, you know.

15 Q And you support this establishment.
16 Is that correct?

17 A Yes, please.

18 Q Why do you support it?

19 A Because I do believe there will be
20 more changes and they are nice neighborhood.

21 Q And are you -- you have heard the
22 hours. Do the hours concern you in any way in

1 terms of how late they might operate?

2 A What hours do you have?

3 Q Until 2:00 a.m. and 3:00 a.m., 2:00
4 a.m. Sunday through Thursday and 3:00 a.m. --

5 A Well, as far as I live in this
6 neighborhood from here down, that's the regular
7 hours I find nightclubs open.

8 Q And are you concerned that people
9 might be bothered by noise from this
10 establishment because of those hours?

11 A There is always noise around this
12 neighborhood. Even down to my eating, it's like
13 somebody, the police, the ambulance all running
14 around every day, midnight, daytime, every day
15 going to Howard University Hospital, Childrens
16 Hospital, emergency always going on. I'm used to
17 it, so it doesn't bother me.

18 Q So that's a fact of life of living in
19 the city?

20 A Of course.

21 Q And this is a busy, busy street we are
22 talking about?

1 A Rhode Island is busy, New Jersey
2 Avenue is busy, Florida is busy, because all
3 merge at the same intersection.

4 Q And what do you do? Do you work?

5 A I retired from D.C. Government
6 Department of Public Works for 31 years.

7 Q Okay. So you worked for DPW for 20
8 years?

9 A Yes, sir.

10 Q All right. So you know many parts of
11 the city. Is that correct?

12 A Well, sort of.

13 Q Sort of?

14 A We got some type now which was island
15 now exists is residential area.

16 Q You are familiar with Mr. LeRoy Thorpe
17 who I think we are going to hear from later?

18 A LeRoy?

19 Q Thorpe.

20 A Yes, yes, yes.

21 Q Okay. And have you known him to be in
22 opposition to ABC license --

1 A Well, I realize his opposition, but I
2 know he is the newly elected Chairman for DWS.

3 Q I'm sorry, I didn't hear you.

4 A Yes.

5 Q I didn't understand you. Could you
6 repeat that, please?

7 A I didn't know if there is any
8 opposition to the proposal, but I know him very
9 well. Not very well, but sort of crossing
10 somehow. I know he live down the street from me.

11 Q All right. And you know these
12 operators that are proposing to open this
13 establishment?

14 A Well, I've known Mr. Ben for about a
15 year because we run into each other. And
16 sometime I miss him from his brother, I can't
17 tell which of them. And sometime if I got my
18 glasses, so then I call him Ben, I call the other
19 one, you know.

20 Q And do you have confidence that they
21 would address any issues that might arise in the
22 operation of the establishment?

1 A Well, talking to Ben, where was that
2 Ben? I was talking to him about a month ago. We
3 run into each other right in front of my house.
4 I find him to be a nice, decent gentleman and I
5 believe he will abide by the law and regulation
6 of Washington and the Alcohol Code.

7 And I find him to be respectful man.
8 I think we mention the other day about the crowd
9 and the traffic. I say I hope your customer
10 won't be double parking. And the crowd, control
11 your crowd and everything we talked about that.
12 And I find him to be a decent and a respectable
13 gentleman, which I do believe you respect the law
14 of the Washington, D.C.

15 Q All right.

16 MR. KLINE: I don't have anything else
17 of this witness.

18 THE WITNESS: Thank you, sir.

19 MR. KLINE: Thank you.

20 CHAIRPERSON ANDERSON: Mr. Loots, do
21 you have a question?

22 MR. LOOTS: Yes.

CROSS-EXAMINATION

BY MR. LOOTS:

1
2
3 Q You mentioned just a moment ago that
4 you had spoken with dealers of proposed
5 establishment about double parking and other
6 crowd control measures. Why is that important to
7 you?

8 A Why is it important to me?

9 Q Yes.

10 A Because I know what is going on from
11 here down all the way to New Jersey with all
12 these nightclub. They double park.

13 Q Okay.

14 A Even the police have to go there and
15 tell them move. So I mentioned that to him and
16 he mentioned that won't happen.

17 Q How is the owner of the establishment
18 to stop double parking?

19 A Well, some owner tell customer don't
20 double park.

21 Q How is parking in your neighborhood?
22 Is it easy?

1 A No. Right in front, it is not easy
2 because people park their cars, they go to the
3 Howard Theatre and where they are having
4 entertainment, especially Fridays and Saturday.
5 And even during the weekdays, people park there,
6 take the subway and take the G-8 Bus or the G-2
7 to go downtown.

8 As a matter of fact, like I don't own
9 a car because of parking.

10 Q So is it fair to say that the current
11 parking situation for you as a resident is very
12 tough?

13 A Yes. But what you got to remember
14 from talking to Ben, the hours the customer will
15 be coming over there will be after rush hour. I
16 mentioned that to him and he say anything between
17 6:00 to 7:00, after hours, after working out. So
18 I don't think that will cause any problem then
19 during the day, 12:00 where you get all the
20 traffic flowing back and forth, because most of
21 the time, people park on the Rhode Island Avenue
22 and cross the street to get to the Howard Theatre

1 or even go up to Florida Avenue where they got
2 the other restaurant and nightclub.

3 Q But I'm understanding you to say that
4 you believe it might be more of a problem in the
5 evening hours after rush hour?

6 A I don't think there will be any
7 problem, because after hours, after 6:00, you get
8 more parking on that side of Rhode Island Avenue,
9 which is vacant because during the day a lot of
10 people park their car there and go downtown. But
11 after rush hour, after working hours, they move
12 their car out and now we have the police officer
13 now on Thursday, who is there to control the
14 traffic for double parking.

15 Q So you will rely upon the police
16 department to enforce --

17 A Yes, yes.

18 Q -- the Parking Regulations?

19 A Yes, yes.

20 Q Perfect.

21 MR. LOOTS: I have no other questions.

22 CHAIRPERSON ANDERSON: Any questions

1 by any Board Members? Yes, Mr. Silverstein?

2 MEMBER SILVERSTEIN: Thank you very
3 much, Mr. Lewis, and thank you for coming. You
4 said you have no problem with 2:00 a.m. or 3:00
5 a.m. for closing, because this is the case with
6 all the other establishments in the neighborhood.

7 Would you have a problem with 2:00
8 a.m. and 3:00 a.m. with 103 people outside --

9 THE WITNESS: Um-hum.

10 MEMBER SILVERSTEIN: -- versus inside?
11 Would that create any more of an issue for you?

12 THE WITNESS: So even when they
13 inside, after the hours of closing, we're talking
14 the club people come outside and stand on the
15 sidewalk.

16 MEMBER SILVERSTEIN: No, I'm sorry.
17 I'm having trouble hearing you. Please, speak
18 slowly.

19 THE WITNESS: So in this case, whether
20 they are inside or outside, here in this part of
21 town from this building all the way down to New
22 Jersey Avenue, after hours 3:00, 2:00 or 3:00,

1 there is always a problem. People stand on the
2 sidewalk. People don't go in their car.

3 So what I mentioned to Ben the other
4 day when we were having general conversation, I
5 mentioned something to that and he said no, that
6 won't happen. And I believe him. I trust him,
7 because some owner operating nightclub in this
8 area, they are out of control to control their
9 customers.

10 MEMBER SILVERSTEIN: So do you think
11 that it is -- that noise is a problem with
12 outdoor at that hour or are you telling me that
13 just because there is so much noise, this
14 wouldn't make any real difference?

15 THE WITNESS: Well, it all depends on
16 the customer, the customer behavior and the owner
17 of the club.

18 MEMBER SILVERSTEIN: Okay.

19 THE WITNESS: Some owner of the club
20 like the customer to know that this is
21 residential area. Noise is not allowed there.
22 Some owner doesn't even bother, they just don't

1 care. But for finding Mr. Ben, I think he is a
2 man who is very much concerned about the
3 neighborhood, because where this -- his operation
4 will be at, you have residential area both side.

5 And I do remember the last time we
6 were talking, it started right there on the
7 street and we assessed the value of the
8 residential neighborhood. And he gives me the
9 assurance he is aware of that and he give me the
10 assurance that that won't happen. And I trust
11 it. You see I value it. Mr. Ben, this only is,
12 you know, statement or what he was telling me.

13 MEMBER SILVERSTEIN: Thank you. No
14 further questions.

15 CHAIRPERSON ANDERSON: Any other
16 questions by any of the Board Members? Mr.
17 Kline?

18 MR. KLINE: I don't have any further
19 questions of the witness.

20 CHAIRPERSON ANDERSON: Mr. Loots?

21 MR. LOOTS: Nothing further. Thank
22 you.

1 CHAIRPERSON ANDERSON: Mr. Lewis,
2 thank you very much for your testimony. You can
3 step down, sir.

4 THE WITNESS: Thank you, sir.

5 CHAIRPERSON ANDERSON: Thank you, Mr.
6 Lewis.

7 (Whereupon, the witness was excused.)

8 MR. KLINE: Have a good day. I'm
9 calling to the stand Ben Schwartz.

10 CHAIRPERSON ANDERSON: Mr. Schwartz,
11 can you raise your right hand, please?

12 Whereupon,

13 BENJAMIN SCHWARTZ

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

18 MR. BEN SCHWARTZ: I do.

19 CHAIRPERSON ANDERSON: Thank you.

20 Your witness.

21 MR. KLINE: Thank you.

22 DIRECT EXAMINATION

1 BY MR. KLINE:

2 Q Mr. Schwartz, what's your connection
3 to this establishment, that is proposed to open
4 at 6th and Rhode Island?

5 A I am the applicant, the owner, and
6 will be the general manager of the establishment.

7 CHAIRPERSON ANDERSON: Can you either
8 -- move closer to the microphone, please, sir.
9 Thank you.

10 BY MR. KLINE:

11 Q All right. So as general manager, you
12 will be responsible for day-to-day operations?

13 A Day-to day operations, hiring,
14 staffing. I will be there almost all of the
15 time.

16 Q Okay. What's your experience in the
17 industry?

18 A For the past three years, I have
19 worked in establishments in the neighborhood.
20 I'm currently a bartender at Ivy and Coney where
21 I have worked for about two and a half years.

22 I also work at Espita Mezcaleria on

1 9th and N, which also has a patio and a bartender
2 and barback there.

3 I have also been a bartender at Half
4 Smoke, which is on the corner of Georgia and
5 Florida.

6 Q And how long have you in the industry?

7 A On and off for about 12 years.

8 Q Where do you live?

9 A I live at 6th and S. 513 S Street,
10 N.W.

11 Q And how far is that from this proposed
12 establishment?

13 A 500 feet.

14 Q Why is it that you want to open this?

15 A Well, you know, I have lived in this
16 neighborhood for about eight years. And I have,
17 you know, worked in the industry. And I have
18 walked by this specific lot a number of times and
19 it's a combination of something I would like to
20 do and making my community better.

21 Q And how will this establishment make
22 your community better?

1 A I think it will be a -- extend the 7th
2 Street Corridor down Rhode Island Avenue. I
3 think it will help businesses in the area. I
4 think it will make -- it will help beautify the
5 corner. Right now, it is a vacant lot. We have
6 already taken steps to make it look much nicer.
7 We have had three internationally renowned street
8 artists come in and do murals.

9 We have -- are planning to put a fence
10 with a -- a painted fence with a skyline and some
11 live vegetation and landscaping. And I think it
12 will look exceptional on that corner and turn a
13 dirty corner into a place where people can come
14 and gather and a community gathering spot.

15 Q What's the concept? Tell the Board
16 what it is that this business will be.

17 A The concept is a frozen cocktail
18 garden. So what we plan to have is a variety of
19 frozen drinks and packaged goods and canned beer
20 in an open air environment. We are going to be
21 using a number of the restaurants nearby to
22 deliver and drop food on our tables. And we plan

1 to be a gathering spot for the community.

2 As members of the community and
3 members of the service industry, we feel it could
4 be a good spot for people to meet.

5 Q Now, you have heard and you have heard
6 during the course of the past few weeks and
7 perhaps months that there are concerns about
8 noise and the hours. What do you say about that?

9 A I have only heard those concerns in,
10 you know, a setting like this. I have gone out
11 and talked to people. I went door-to-door in the
12 neighborhood. I live about 500 feet away, so I
13 canvased the entire area, people directly next to
14 it, all up and down Rhode Island, up and down 6th
15 Street, R Street and talked to anyone I could
16 about what concerns they have.

17 I told them what our idea was, what
18 our concept was and asked what concerns they
19 have. Among those conversations I had, the most
20 common response I got was that people were happy,
21 elated that someone is finally doing something
22 with that lot.

1 The only other concerns I really had
2 were not really relevant.

3 Q Did you relay to them what your
4 intended hours would be?

5 A Yes, yes, I did.

6 Q And did that -- did you hear from
7 anyone concerns with respect to those?

8 A No.

9 Q And with respect to noise, how will
10 you react if there are complaints about noise?

11 A We will address it. In -- when I
12 canvased the neighborhood, I did present to them
13 a number of our plans, including some proactive
14 measures we would take to help contain noise.

15 One of those measures is an aluminum
16 fence, a perforated aluminum fence and along the
17 entire perimeter of the establishment, we are
18 going to have a live bamboo that will be --

19 CHAIRPERSON ANDERSON: You're going to
20 have what something? You're going to have what?

21 THE WITNESS: Live bamboo landscaped
22 around it. Now, we have done a substantial

1 amount of research in terms of how to mitigate
2 sound. We would like to not only -- Rhode Island
3 is a very loud -- Rhode Island Avenue is a very
4 loud place. We not only want to contain our
5 noise from getting in, we want to contain the
6 noise from the street from getting out.

7 So we have gone through significant
8 measures and thought about how we can contain
9 that.

10 BY MR. KLINE:

11 Q Now, you have applied for an
12 entertainment endorsement. What kind of
13 entertainment do you contemplate and during what
14 hours would you expect to do it?

15 A I think entertainment is something
16 that we want in terms of flexibility, in terms of
17 ability of doing events at the space.

18 One thing that we have thought about
19 doing is a Christmas market where we have
20 carolers and other things of that nature. We
21 have talked about doing a block party and having
22 some sort of entertainers there.

1 Generally, we anticipate any live
2 entertainment we would have to be during the day.

3 Q Okay. So if you were to be limited in
4 terms of hours of entertainment, would that pose
5 a significant challenge for your business plan?

6 A No.

7 Q No, it would not. Okay. With respect
8 to noise, you mentioned a couple of ideas that
9 you had or a couple plans that you have with
10 respect to mitigation. Is there anything else
11 with respect to noise?

12 A I know there was some other
13 measurements. I know we have reached out to
14 specific people with expertise on noise and how
15 we can mitigate it and what -- where would be
16 affected the most and how we can address that.

17 Q And one of your partners is going to
18 be prepared to talk about that, correct?

19 A Correct.

20 Q All right. How many employees are you
21 going to have?

22 A We plan to have about 15 employees.

1 At full capacity, we are going to have, I
2 believe, 5 bartenders, 2 servers and 2 full time
3 security staff along with a manager on duty.

4 Q And in terms of the -- you have talked
5 a little bit about the place being a gathering
6 place. I mean, what do you expect that people
7 will do? What's the plan? Are they going to
8 mill about? Are they going to be seated? What
9 do you anticipate?

10 A I think a large amount will be seated.
11 We have actually just talked recently about how
12 we can even address our situation to have more
13 seating. I think ideally we would like people to
14 be seated.

15 Q Okay. So --

16 A Plus, people will be milling around
17 and, you know, there will be standing.

18 Q But this is not a primary -- this is
19 not primarily a standing cocktail venue. Is that
20 right?

21 A No.

22 Q Is there any type of -- you said

1 frozen drinks.

2 A Correct.

3 Q Is really going to be your signature,
4 correct?

5 A Yes.

6 Q And how many different types of frozen
7 drinks do you expect to have?

8 A We plan on having six.

9 Q Okay. And you also have a full
10 complement of beers, is that correct?

11 A Canned beers and a limited spirits
12 menu.

13 Q And you said that you are going to
14 have steel fencing all around the --

15 A Aluminum fencing.

16 Q Aluminum fencing.

17 A Aluminum fencing. It's perforated
18 aluminum.

19 Q Okay. And then in front of that on
20 the inside of that, you also plan to install
21 bamboo?

22 A Correct, live bamboo.

1 Q And is that something you are
2 committed to doing before you open?

3 A Yes.

4 Q Now, what about people traveling to
5 and from the venue? How is it you expect that
6 people will get there?

7 A Well, I have worked in similar
8 situations and I've worked at Ivy and Coney,
9 which is right around the corner, and I know from
10 that that we expect people largely to travel by
11 foot, by Metro or by bus. Occasionally,
12 ridesharing as well.

13 Q What about bicycle?

14 A And bicycles, yeah. But, you know--

15 Q Now, there may be concerns about -- in
16 terms of ridesharing.

17 A Sure.

18 Q Have you thought about how you might
19 manage that?

20 A Sure. We have thought about how we
21 are going to manage it. We have already kind of
22 identified some contacts at ridesharing to how to

1 set where we can place, our drop off and pick up
2 points.

3 Q And what hours would you expect? When
4 would you expect to be the head of these terms of
5 drop off and pick up?

6 A Probably around the late -- early to
7 mid-evening, I would say.

8 Q From what, like 8:00, starting at
9 8:00?

10 A 8:00. Around 8:00 to 10:00.

11 Q Okay. And that would be after rush
12 hour, obviously?

13 A Yes.

14 Q And in talking to these ridesharing
15 companies, have they given an indication that
16 they are willing to cooperate in terms of --

17 A I have not reached out to them yet.

18 Q Okay.

19 A I intend to.

20 Q That's something you plan to do?

21 A Yes, correct.

22 Q And you commit that that's something

1 that you will do in terms of the operation?

2 A Absolutely.

3 Q To the extent that that's an issue?

4 A Yes, yes.

5 MR. KLINE: May I approach the
6 witness?

7 CHAIRPERSON ANDERSON: Sure. Go
8 ahead.

9 BY MR. KLINE:

10 Q I want to show you what has been
11 marked as Applicant's Exhibit 1 and ask if you
12 can identify what that is?

13 A Yes, this is our proposed floor plan
14 that we have submitted to DCRA.

15 (Whereupon, the above-
16 referred to document was
17 marked as Applicant Exhibit
18 No. 1 for identification.)

19 BY MR. KLINE:

20 Q All right. If you could walk the
21 Board through it in terms of how it lays out,
22 which side is which?

1 A Sure, absolutely. If you see the 6th
2 Street, our entrance will be there. There will
3 be an entranceway somewhat setback and we plan on
4 having the picnic tables, you will see, along the
5 course of the lot with seating along the
6 perimeter as well as landscaping.

7 And then towards the back if you go
8 down Rhode Island Avenue, you will see the bus
9 that is there currently, which we will use as a
10 branding point. And towards the back you will
11 see a structure that is currently there that we
12 are renovating to turn into permanent bathrooms.
13 And adjacent to that will be a full bar build-
14 out.

15 Q So just so we are clear and the record
16 is clear, as you are looking at the drawing, the
17 building area is to the left?

18 A Correct.

19 Q And the bus is towards the bottom?

20 A Correct.

21 Q Okay. And then where is the entrance
22 to the establishment?

1 A The entrance to the establishment is
2 on 6th Street.

3 Q Okay. And that's where you see the
4 doors and --

5 A Where it will say access plaza.

6 Q Okay. And what will go on in the
7 access plaza?

8 A It will just be -- we will have
9 security there. We plan on having security there
10 full-time checking IDs.

11 Q And have you already started thinking
12 about a security plan?

13 A Yes.

14 Q And you are committed to creating and,
15 if necessary, filing a security plan with the
16 Board?

17 A I am.

18 Q I'm going to show you what has been
19 marked as Applicant's Exhibit No. 3. It has a
20 number of pages. What is that document?

21 A This is a document we presented to the
22 ABC Board.

1 Q To the ABC Board?

2 A ABC Committee, excuse me.

3 Q Oh.

4 A The ANC ABC Committee.

5 Q Oh, the ANC.

6 A Yes.

7 (Whereupon, the above-
8 referred to document was
9 marked as Applicant Exhibit
10 No. 3 for identification.)

11 Q Okay. All right. And turning to the
12 third page.

13 CHAIRPERSON ANDERSON: I'm sorry, what
14 exhibit are we at?

15 MS. YOHANNES: 3.

16 MR. KLINE: No. 3.

17 CHAIRPERSON ANDERSON: Okay. I'm
18 sorry. Go ahead.

19 BY MR. KLINE:

20 Q So the first page, is that your logo?

21 A Yes, that is our logo, correct.

22 Q And the second page gives a

1 description of the establishment?

2 A Correct. That's our general concept.

3 Q All right. And the third page?

4 A Hum?

5 Q What is that?

6 A The third page is showing an initial
7 rendering of the transition of what it looked
8 like prior to what we are trying to do. This is
9 an initial rendering that we have since fleshed
10 out some.

11 Q Okay. But I mean, is this the general
12 feel in terms of the rendering --

13 A Yes.

14 Q -- that you have here?

15 A Exactly, yes, general feel, yes.

16 Q Okay. And where you see the -- to the
17 left of it is the bus and the drawing part of it,
18 correct?

19 A Correct, correct.

20 Q And that's Rhode Island Avenue?

21 A Yes.

22 Q And then where the two individuals or

1 the figures, the shadows --

2 A Um-hum.

3 Q -- that's the entrance?

4 A That would be the entrance, correct.

5 Q And then on the direct opposite side
6 of that is the building where the bathrooms are?

7 A Yes. The bathrooms would be adjacent
8 to the bar, correct.

9 Q Okay. And then the area, is this
10 accurate, is partially bounded by another
11 building?

12 A Correct.

13 Q Okay. And what is that building?

14 A Directly next to it that is one
15 building that houses two restaurants. One is
16 Golden China, which is a Chinese restaurant, and
17 next is Red Toque Kebob, which is a carryout, a
18 Northern Indian restaurant.

19 Q Okay. So those are obviously both
20 commercial?

21 A Correct. And to --

22 Q And then where the blue arrow is, the

1 aqua or --

2 A Sure.

3 Q -- blue arrow, there are buildings
4 there as well up Rhode Island, correct?

5 A There are, yes.

6 Q And what are those buildings?

7 A Immediately adjacent is a commercial
8 building and then followed by a number of
9 rowhouses.

10 Q Okay. What's in the commercial
11 building?

12 A It is vacant. Well, actually I
13 believe there is a liquor license there now. So
14 there is an on-premise liquor license.

15 Q Okay. And walking through this, the
16 rest of Exhibit 3, is just information on your
17 concept and who you are?

18 A Yep. As well as where we think --
19 what we bring to the neighborhood in terms of the
20 changing demographics, the growing retails in the
21 neighborhood, and how we can increase not only
22 the public good, but also kind of expand the 7th

1 Street Commercial Corridor. It also lists our
2 personal biographies, a list of advisors and
3 lastly our proactive neighborhood considerations.

4 Q All right. Let's talk for a minute
5 about your food offerings. Do you plan to serve
6 food in the premises?

7 A We do.

8 Q And how will that work?

9 A We are going to have packaged food, so
10 largely packaged ice cream, chips, popcorn, but
11 we will also be working in very close with the
12 surrounding restaurants, Red Toque, the one that
13 is to -- an adjacent building, will be ordering
14 food directly from us and then they will be
15 delivering food, dropping food onto our tables.

16 Q So in other words, you intend to have
17 an arrangement with them where they will supply
18 food to your patrons?

19 A Correct.

20 Q And that will be cooked food?

21 A Cooked food, yes.

22 Q Okay. And you already talked to them

1 about that and you have that arrangement in
2 place?

3 A The arrangement, I talked to them
4 multiple times about that. And we are waiting
5 until things are more concrete in terms of liquor
6 license, until we can kind of create a full plan
7 for that.

8 Q You said that you went door-to-door
9 and spoke to a number of people?

10 A Correct.

11 Q Approximately, how many people did you
12 speak to?

13 A Door-to-door, I probably talked to
14 about 15. I have also reached out to the local
15 neighborhood Listserv and sent an email
16 introducing myself to any neighbors that didn't
17 know me and explaining the concept as well as
18 emailing them this document.

19 Q Now, in terms of -- we talked about
20 the buildings that are adjacent to the proposed
21 premises --

22 A Yes.

1 Q -- on Rhode Island.

2 A Um-hum.

3 Q And some of those are residences,
4 correct?

5 A On Rhode Island, yes.

6 Q And did some of the people that live
7 in those residences support this establishment?

8 A Yes. So I have actually talked to --
9 we are at 512 on the corner. 510 is the
10 commercial space which currently, I believe, has
11 an on-premise liquor license. And then I got
12 Letters of Support from 508 and 506 as well as
13 others and then talked to other people on that
14 block.

15 Q In reality, aren't those the closest
16 residents?

17 A They are absolutely the closest
18 residents, yes.

19 Q And they support the establishment?

20 A Yes.

21 Q And they are aware of the hours that
22 you --

1 A Correct.

2 Q -- would like to operate?

3 A Correct.

4 Q I want to show you what has been
5 marked as Applicant's Exhibit 5 and ask you if
6 you can identify that for the record?

7 A Absolutely.

8 Q What is those?

9 A These are Letters of Support that we
10 had in preparation for our ANC meeting where we
11 presented to the full ANC.

12 (Whereupon, the above-
13 referred to document was
14 marked as Applicant Exhibit
15 No. 5 for identification.)

16 BY MR. KLINE:

17 Q And how did you -- how were you able
18 to gather this letter?

19 A By going door-to-door. In some
20 instances I reached out to them personally. You
21 know, it's a small neighborhood in a big city,
22 but, you know, I have lived here for over 10

1 years, so I know a good amount of people. So I
2 reached out to people who I thought would be
3 affected in the immediate vicinity.

4 Q Okay. Now, if you open and there are
5 complaints about noise at your establishment,
6 just how will you respond to that?

7 A I will address them immediately. I
8 have let my phone number be known to anyone I
9 talk to. I have given it out to them personally.
10 And if they have any concerns, you know, one of
11 the benefits of living 500 feet is if there is
12 any issues, I can address them immediately.

13 Q Okay. And you live 500 feet, do you
14 own or do you rent?

15 A It's a tricky question right there.

16 Q Okay.

17 A My business partner and girlfriend own
18 it.

19 Q Okay. All right. All right. Now, we
20 have talked about a security plan.

21 A Correct.

22 Q I'm going to show you what has been

1 marked as Applicant Exhibit 6 and ask you if you
2 can identify that?

3 A Yes.

4 Q What is that document?

5 A This is a security plan that I made in
6 -- proactively.

7 (Whereupon, the above-
8 referred to document was
9 marked as Applicant Exhibit
10 No. 6 for identification.)

11 BY MR. KLINE:

12 Q Is that sort of a work in progress?

13 A It is a work in progress, but I did
14 research into actually what are required for
15 security plans and kind of worked towards that,
16 as well as using my knowledge of TIPS training,
17 to kind of find some conflict resolution
18 protocols.

19 Q In terms of conflict resolution, what
20 will be your goals with respect to conflict
21 resolution?

22 A Well, all staff will be TIPS

1 certified, so we, obviously, want to mitigate any
2 conflict and reduce any conflict.

3 Q And will you also use that to be -- if
4 necessary to mitigate noise?

5 A Yes, absolutely.

6 Q I want to -- I'm going to hand you,
7 actually all together, Exhibit 7, 8 and 9. Let
8 me ask you if you can identify those three
9 documents?

10 A Absolutely. Exhibit 7 is the menu for
11 Red Toque. This is the restaurant where we have
12 had multiple conversations about serving food to
13 -- on our premises.

14 (Whereupon, the above-
15 referred to document was
16 marked as Applicant Exhibit
17 No. 7 for identification.)

18 THE WITNESS: Exhibit 8 is a mural
19 done by a world renowned street artist who goes
20 by the name Trasher. He is from Mexico City.

21 (Whereupon, the above-
22 referred to document was

1 marked as Applicant Exhibit
2 No. 8 for identification.)

3 THE WITNESS: The cat at the top was
4 going to be a permanent installation and where
5 you see the little flower with the skull, that
6 was -- will be our bathrooms, but that will be
7 the -- removed when we remodel.

8 BY MR. KLINE:

9 Q And you have already made the changes
10 that are reflected in terms of mural, that's
11 already done. Is that correct?

12 A It's done. These are there.

13 Q So you have already taken control of
14 the space?

15 A Yes.

16 CHAIRPERSON ANDERSON: Well, Mr.
17 Kline, I don't have Exhibit 8, so maybe --
18 Exhibit 7 is not marked, but I can figure what
19 Exhibit 7 is. But we don't have Exhibit 8. Do
20 you guys have it there?

21 MR. KLINE: All right.

22 CHAIRPERSON ANDERSON: I don't see it

1 up here.

2 MR. KLINE: I handed --

3 MEMBER SILVERSTEIN: Exhibit 7 is
4 very, very long.

5 CHAIRPERSON ANDERSON: Yeah, no, I'm
6 saying it is a menu, but --

7 MEMBER SILVERSTEIN: What's beyond
8 that, sir?

9 CHAIRPERSON ANDERSON: Yeah, we don't
10 have -- I don't have --

11 MR. KLINE: There are two photographs
12 beyond that.

13 CHAIRPERSON ANDERSON: No, I don't --
14 the Board doesn't have it. Do you have it?

15 MR. KLINE: Yes.

16 CHAIRPERSON ANDERSON: Does anyone
17 have it?

18 MR. KLINE: They have been identified.

19 CHAIRPERSON ANDERSON: Do you have it,
20 Mr. Loots?

21 MR. LOOTS: I do have copies of those,
22 yes.

1 CHAIRPERSON ANDERSON: So --

2 MR. LOOTS: Assuming that they are
3 actually not in like -- I think I know what they
4 are from that description.

5 CHAIRPERSON ANDERSON: All right. Go
6 ahead, please.

7 MR. KLINE: All right. That is all I
8 have of this witness, at this time.

9 CHAIRPERSON ANDERSON: Mr. Loots, your
10 witness.

11 MR. LOOTS: Thank you.

12 CROSS-EXAMINATION

13 BY MR. LOOTS:

14 Q What is Electric Cool-Aid?

15 A What is Electric Cool-Aid?

16 Q Right.

17 A In what sense? Like what is it?

18 Electric Cool-Aid is our proposed bar.

19 Q I understand that, but what is in --
20 if I were to say I'm going to pour myself a glass
21 of Electric Cool-Aid, what is that?

22 A Electric Kool-Aid is a novel by Tom

1 Wolfe.

2 Q Well --

3 A More accurately, I love any
4 opportunity to read one of my favorite novels.

5 Q Electric Kool-Aid Acid Test is a novel
6 by Tom Wolfe in which he refers to Electric Kool-
7 Aid. Do you know what his Electric Kool-Aid is?

8 A Ah, yes.

9 Q What is his Electric Kool-Aid?

10 A In Tom Wolfe's Electric Kool-Aid with
11 a K, is Kool-Aid with LSD in it.

12 Q Right. It's not just Tom Wolfe, it's
13 10 EZ --

14 A Sure.

15 Q -- and the entire 1960s
16 counterculture, Electric Kool-Aid refers to
17 spiked beverages that have LSD added to them,
18 correct?

19 A Correct.

20 Q Why choose that as a name for your
21 establishment?

22 A You actually have a great example. So

1 if you look at the jacket of that book, there is
2 a bus on it --

3 Q Um-hum.

4 A -- that is painted psychedelically.

5 Q Right.

6 A So when we inherited the property in
7 our lease, there was a bus on the property and we
8 were going to be selling frozen drinks. We
9 thought it would be an interesting play to have a
10 bus which has since been painted very similar to
11 our logo and sell frozen drinks. We thought it
12 was, you know, a clever name.

13 Q But a name that refers to consumption
14 and the illicit, sometimes addition of LSD into a
15 children's drink.

16 A First of all, I wouldn't call it
17 children's drinks and that was never a part of
18 our consideration nor would I -- it's in
19 reference to a piece of literature, not a piece
20 of -- not a psychedelic drug.

21 Q The Urban Dictionary would differ with
22 you, but we will move on.

1 MR. KLINE: Objection. Argumentative.

2 BY MR. LOOTS:

3 Q Oh, one other thing. Kool-Aid with a
4 K is a registered trade mark, correct?

5 A I'm not aware.

6 Q Okay. Do you -- have -- do you have
7 any permission of Kraftco or anybody to use the
8 name Cool-Aid?

9 MR. KLINE: Objection as to relevance.

10 CHAIRPERSON ANDERSON: Sustained.

11 Let's move on.

12 MR. LOOTS: I'll move on.

13 BY MR. LOOTS:

14 Q You mentioned a little while ago in
15 your direct testimony that you spoke with a
16 number of neighbors. And if I heard you
17 correctly, you indicated that none of the people
18 with whom you spoke registered objections to the
19 plan. Is that accurate?

20 A No, that is -- when I canvased the
21 area, no. I did also attend a number of
22 community meetings. At one such meeting, there

1 were a number of people who did have objections
2 to the establishment in general.

3 Q Okay. And did you speak with any of
4 those individuals one-on-one when you described
5 canvassing the neighborhood speaking with
6 neighbors at their front porch or wherever?

7 A I knocked on doors. Did I talk to
8 anyone who was at the ECCA meeting while I was
9 canvassing the neighborhood? Is that the
10 question?

11 Q Well, or anyone when you were
12 canvassing the neighborhood who had expressed an
13 objection to your plan?

14 A No.

15 Q Including people you had met at the
16 ECCA meeting?

17 A Oh, Mr. Thorpe.

18 Q That's the only one?

19 A I did not meet him on canvassing the
20 neighborhood, but, yes, Mr. Thorpe is the only
21 person who explained that he had an objection to
22 the establishment.

1 Q But other neighbors had independent of
2 that expressed objection? Is that correct?

3 A Objections to the establishment?

4 Q Yes.

5 A Other than that while canvassing? No.

6 MEMBER SILVERSTEIN: Repeat, please.

7 THE WITNESS: While canvassing the
8 neighborhood, no, I did not find any people
9 objecting to it.

10 BY MR. LOOTS:

11 Q Okay. In the numerous form letters
12 that you submitted, I believe it's your Exhibit
13 5, two of those are ones that I believe you are
14 referencing that are actually on Rhode Island
15 Avenue. Is that correct?

16 A Correct.

17 Q None of these seem to mention, in the
18 letters at least, the extended hours, the late
19 night hours. Do you have any reason or does the
20 Board have any reason to believe that these
21 individuals in expressing their support were
22 aware that he intended to keep open with the

1 entertainment license until 3:00 a.m.?

2 A I explicitly told them what our hours
3 were.

4 Q In each and every case you told them
5 the hours were until 3:00 a.m on weekends and
6 they said that's fine?

7 A I wouldn't say each and every case,
8 but in most cases, yes.

9 Q All right. And did you tell them you
10 were seeking an entertainment endorsement as
11 well?

12 A I don't think that most people know/
13 understand the minutia of liquor licenses and
14 would know what that meant.

15 Q Okay. Well, speaking of the
16 entertainment endorsement, you mentioned a couple
17 of fairly benign potential uses, including
18 possibly having Christmas carolers in. Let's
19 assume that that's limited to at least seasonally
20 and you are promoting yourself primarily as an
21 outdoor summer --

22 A Sure.

1 Q -- you know, warm weather venue.

2 A Sure.

3 Q I'm guessing you are not going to have
4 Christmas in July. What other types --

5 A We actually do put on having Christmas
6 in July.

7 Q Okay, well, there you go. With
8 carolers no doubt.

9 A Yeah.

10 Q My question though is once you have an
11 entertainment endorsement with your license --

12 A Um-hum.

13 Q -- even though you suggest today
14 potential benign uses such as Christmas caroling
15 or, you know, folk singing or whatever else you
16 had mentioned that, in fact, gives you the
17 opportunity and the right to have DJs, to have
18 live music with, you know, bands and things like
19 that as well, does it not?

20 A That is, I believe, the definition of
21 an entertainment endorsement.

22 Q Right.

1 A But we would -- yes.

2 Q And to have that, by your application,
3 go until 2:00 a.m. on week nights and until 3:00
4 a.m. on weekends, correct?

5 A We did apply for the maximum hours for
6 an entertainment endorsement.

7 Q Okay. So there is nothing that would
8 -- whatever your current intentions may be, if
9 you saw it in your best business interest to do
10 it, nothing could prevent you from offering live
11 entertainment in the form of live bands and DJs?

12 A I believe that is the --

13 Q At those hours.

14 A -- how an entertainment endorsement
15 works, yes.

16 Q Okay.

17 A We appreciate the flexibility to use
18 an entertainment endorsement as we see fit.

19 Q Now, you mentioned in terms of people
20 attending your establishment, Metro is one of the
21 options of how they would come there. Is that
22 correct?

1 A Correct.

2 Q Okay. Well, if Metro closes at
3 midnight, how does that affect the ability of
4 patrons to get to and from your establishment
5 between midnight and 3:00 a.m.?

6 A I don't see that affecting greatly.
7 I know working around the corner that does not
8 affect people coming to the establishment at --
9 later in the evening. There is buses that are
10 run all evening. We are on -- there is the 70.
11 There is also the 79. There is the G-2 bus that
12 also goes on P Street.

13 There is a number of -- two Capitol
14 Bikeshare docks within a block. And there -- it
15 is also, you know, large. It's very easy to walk
16 to this establishment.

17 Q In your Exhibit No., I believe it is,
18 3 and also in your testimony, you mentioned a
19 desire to extend the 7th Street Corridor.

20 A Correct.

21 Q Why do you believe the 7th Street
22 Corridor needs to be extended from its current

1 configuration?

2 A Well, honestly, I don't think it is
3 safe. And I think by extending people and
4 establishments down Rhode Island Avenue, it would
5 be much safer. I know from living a block away,
6 6th Street is littered with broken car windows.
7 We had personally at our -- where we live,
8 someone in the -- you know, late at night broke
9 into our property to steal a bike.

10 And I feel like extending the public
11 space down at least a block will help make it a
12 safer spot. It will increase the visibility of
13 the corner and, you know, make it easier for
14 people to live.

15 Q Have you done any research or studies
16 into how safe or unsafe the neighborhood is right
17 now?

18 A Yes, I have been to multiple ANC
19 meetings and listened to, you know, the
20 lieutenants give their reports.

21 Q Okay. Are you aware in the block that
22 you are proposing this establishment, have there

1 been any crimes in the last 12 months?

2 A Yes.

3 Q You think so?

4 A I mean, I just said we filed a report,
5 we are a block away, of someone who came up to
6 our property from the street and stole a bike.

7 MR. LOOTS: May I approach the
8 witness?

9 CHAIRPERSON ANDERSON: Sure.

10 BY MR. LOOTS:

11 Q I have handed you what we can, I
12 guess, mark for identification as the
13 Petitioner's Exhibit No. 9.

14 (Whereupon, the above-
15 referred to document was
16 marked as Applicant Exhibit
17 No. 9 for identification.)

18 BY MR. LOOTS:

19 Q And I'll represent to you that that
20 was a report from the Metropolitan Police
21 Department website that was drawn this morning.
22 And as it indicates, it is a map of all crime

1 during the preceding 12 months, ending today.

2 MR. KLINE: Objection. The attorney
3 is testifying.

4 MR. LOOTS: I'm telling him what --
5 explaining the document.

6 CHAIRPERSON ANDERSON: I think he was
7 telling him what --

8 MR. LOOTS: Yeah, I was --

9 CHAIRPERSON ANDERSON: -- the document
10 is.

11 MR. KLINE: Well, there is a way to do
12 that. If he is laying a foundation that is not
13 through his own testimony --

14 CHAIRPERSON ANDERSON: All right.
15 Okay.

16 BY MR. LOOTS:

17 Q I'm going to ask you, please, to look
18 at that document. Does that document indicate
19 the time period in what it is?

20 A I don't know how to read this document
21 or what it is.

22 Q Okay. Look at the document and let me

1 know if it's still your testimony that there --
2 that you know there has been crime in the block
3 where this establishment is proposed.

4 A From reading this document, it states
5 that there were 183 thefts from auto within 1,000
6 feet. It looks like there were 50 burglaries
7 within 1,000 feet. 89 thefts, 9 stolen cars and
8 296 property.

9 Q Right. And looking specifically at --

10 A I am not quite sure how this map reads
11 with that. All I can read is the Legend with the
12 information of how much crime is in there. I
13 don't -- not a -- I wouldn't know otherwise.

14 Q Okay. So your testimony there was
15 crime in the last 12 months?

16 A Within one block of that.

17 Q Yes.

18 A Yes, I can produce a police report
19 that I have from our house, which is a block
20 away. I also have -- know personally of three
21 car break-ins on 6th between Rhode Island and S.
22 I don't --

1 Q And in what way is the presence of
2 this establishment going to reduce crime in the
3 neighborhood?

4 A Because there will be more people on
5 the street there and available.

6 Q You mentioned in your direct testimony
7 that you had researched, I believe is the term
8 you used, ways of reducing noise from the
9 premises.

10 A Correct.

11 Q And you also, I believe if I
12 understood correctly, counsel indicated to you
13 there was another witness to address that issue?
14 Is that correct?

15 A Correct.

16 Q Well, let me just ask you specifically
17 about your personal research. I did not see in
18 any of the materials and certainly don't see in
19 your proactive neighborhood considerations any
20 statistical analysis or other, you know,
21 indication of exactly what you propose to do to
22 try to mitigate the sound. And here I'm speaking

1 both of any entertainment sound and the sound of
2 human voices of 225 human beings.

3 A If you look at --

4 MR. KLINE: Objection. There is no
5 question pending.

6 THE WITNESS: Okay.

7 MR. KLINE: At this point.

8 THE WITNESS: Okay.

9 MR. KLINE: There was a statement.

10 MR. LOOTS: My --

11 MR. KLINE: But there was not a
12 question.

13 BY MR. LOOTS:

14 Q My question is have you done any
15 empirical study and if so, what -- where is it?
16 What is the result of that as to proposed noise
17 mitigation efforts?

18 A Are you asking me if I have done
19 proprietary research?

20 Q If you will cause anyone to perform
21 such a study, anything other than your personal
22 online research?

1 A I don't quite understand the question.

2 Q Okay.

3 A If you --

4 Q Let me try again. Do you have any
5 documentation or have you caused any studies to
6 be done with respect to some of the ideas you
7 have and have testified to for possible noise
8 mitigation at the premises?

9 A I have done research and have multiple
10 studies. I still don't quite understand what
11 exactly you are asking.

12 Q Has anybody said here is the proposed
13 location. Here is what we are going to do. And
14 here is how much that is going to reduce the
15 sound?

16 A How much what is going to reduce the
17 sound?

18 Q Any noise mitigation efforts?

19 A Yes, we have had that.

20 Q Okay. And where is that study? And
21 what is the result?

22 A Again, I'm not quite sure what you

1 mean by study.

2 Q Where is that evidence?

3 A I do not have that evidence.

4 Q You say in your proactive neighborhood
5 considerations in Exhibit 3, that you retained an
6 acoustic engineer to consult with best ways to
7 insulate noise. Is that a correct statement?

8 A Yes.

9 Q Okay. And what did that acoustic
10 engineer determine?

11 MR. KLINE: I'm going to object. It's
12 beyond the scope of direct. And we already said
13 we had another witness that was going to
14 testify --

15 MR. LOOTS: Okay.

16 MR. KLINE: -- concerning this.

17 MR. LOOTS: I'll withdraw the question
18 for right now.

19 BY MR. LOOTS:

20 Q I do have one question of you though.
21 It says an acoustic survey found current readings
22 at the site to be below average noise in an

1 outdoor patio. What relevance does the current
2 reading at an empty lot have on the noise levels
3 that we might anticipate from your establishment
4 once open?

5 A It's set to baseline.

6 Q Okay. But a fairly quiet baseline,
7 according to this?

8 A According to this it says 80 -- 75 to
9 80, but I'm not going to -- I mean, that's -- it
10 depends what you consider quiet.

11 Q Okay. You had mentioned the security
12 plan that you have submitted and just testified
13 to as kind of a work in progress.

14 A Correct.

15 Q I have a very specific question and
16 this is concerning your capacity.

17 A Yes.

18 Q You indicate that you will limit
19 access to the capacity, whatever it turns out to
20 be, as is established, I assume, in your license
21 and in the Certificate of Use of the -- of your
22 space, correct?

1 A Correct.

2 Q Okay. What happens if more people
3 show up and they queue up on the sidewalk? What
4 happens then? Do they wait to get in?

5 A That's up to them.

6 Q Okay. Do you anticipate they are
7 going to go -- turn around and go home?

8 A In some instances, yes.

9 Q They will line up in front of the
10 neighbors?

11 A I don't anticipate that.

12 Q You don't think they will queue up
13 down the block?

14 A Down?

15 Q Down Rhode Island Avenue.

16 A I'm sure if we hit -- if we are lucky
17 enough to go have enough people that I want --
18 overflow capacity, yeah, I anticipate people
19 waiting to get in.

20 Q And how is that going to affect the
21 neighbors?

22 MR. KLINE: Objection. Assumes facts

1 not in evidence and it's based on speculation.

2 MR. LOOTS: He just --

3 MR. KLINE: I think the witness
4 testified if we are that lucky, then we will deal
5 with it. But I mean, there aren't any -- there
6 is no evidence that that is what is going to
7 happen at this point.

8 CHAIRPERSON ANDERSON: Mr. Loots?

9 MR. LOOTS: I believe he said he
10 anticipated they would line up down the block.

11 MR. KLINE: He said if we are lucky
12 enough to have overflow, then that's what would
13 happen. That's an if. It's speculation, at this
14 point. There aren't any facts to support that
15 that is what is going to happen.

16 CHAIRPERSON ANDERSON: All right.
17 I'll sustain the objection.

18 BY MR. LOOTS:

19 Q Finally, you said several times, I
20 believe, that there would be vacant dwelling or
21 building immediately next to the premises that
22 has a licensed establishment?

1 A That is correct.

2 Q Well, I reviewed, and we have the
3 witness from ABRA here, for other licensed
4 establishments and that certainly did not show up
5 on the Investigator's list.

6 A It did if --

7 MR. KLINE: Objection. Counsel is
8 testifying.

9 MR. LOOTS: Okay.

10 BY MR. LOOTS:

11 Q Did it -- was it on his Investigative
12 list?

13 A I don't know. I did not --

14 Q What is your basis for believing that
15 there is a currently licensed, vacant
16 establishment next to your premises?

17 A Retail license, because it is owned by
18 our landlord.

19 Q Therefore, it has an alcohol license?

20 A Yes, I believe so.

21 Q Okay.

22 A It was Grape & Hop that was

1 transferred from our premise, because our premise
2 512 Rhode Island Avenue the address we had as of
3 recently as five months ago, had an off-premise
4 liquor license. And it's my understanding that
5 that liquor license at those premise where we are
6 at was transferred to 510.

7 Q And that's based on something the
8 landlord told you?

9 A Well, it's based on -- I know because
10 we had to -- I know 512 had a liquor license and
11 I believe it was transferred, yes.

12 Q Okay. Well, obviously, the record is
13 the record. And including what the ABRA
14 Investigator reported, do you have any knowledge
15 of this immediately adjacent premises? Has it
16 been for sale in the last 12, 15 months?

17 A It has absolutely -- it is -- I don't
18 know. I don't. I know that it is for lease as a
19 commercial unit.

20 Q Um-hum. It hasn't been advertised for
21 sale as a residential unit?

22 A There is a sign on -- still on the

1 front that says for lease as a commercial unit.

2 MR. LOOTS: I have no further
3 questions.

4 CHAIRPERSON ANDERSON: Any questions
5 by any Board Members? Yes, Mr. Short?

6 MEMBER SHORT: Good afternoon.

7 THE WITNESS: Good afternoon.

8 MEMBER SHORT: I'm looking at Exhibit
9 No. 3.

10 THE WITNESS: Um-hum.

11 MEMBER SHORT: Exhibit No. 2, forgive
12 me. And it is a schematic of the rendering or
13 drawing that you submitted.

14 THE WITNESS: I don't believe I have
15 Exhibit No. 2 in front of me.

16 MEMBER SHORT: Could someone supply
17 him with that?

18 MR. KLINE: Yeah, I never had him
19 identify it, but I will if Mr. Short would --

20 MEMBER SHORT: Thank you.

21 MR. KLINE: -- like to.

22 (Whereupon, the above-

1 referred to document was
2 marked as Applicant Exhibit
3 No. 2 for identification.)

4 THE WITNESS: Yes, sir.

5 MEMBER SHORT: Okay. Great. So this
6 drawing was done by whom?

7 THE WITNESS: This drawing was done by
8 an architect.

9 MEMBER SHORT: Has it been submitted
10 to anyone in the District Government for
11 approval?

12 THE WITNESS: Yeah, yes, we are
13 currently in review for building permits.

14 MEMBER SHORT: Okay. Now, how many
15 people, the total number of occupancy you have?

16 THE WITNESS: 225.

17 MEMBER SHORT: How many exits and
18 egress do you have for this location?

19 THE WITNESS: Two points of egress.

20 MEMBER SHORT: According to the
21 Building Code, is that enough for 255 people?

22 THE WITNESS: I'm not an expert on

1 Building Code.

2 MEMBER SHORT: Okay. I understand.

3 All right. Well, that is going to be determining
4 whether you get a license if you can --

5 THE WITNESS: Yes, sir.

6 MEMBER SHORT: Okay. Fine. You know
7 that. All right. Now, and you say you have how
8 many restrooms?

9 THE WITNESS: Three restrooms.

10 MEMBER SHORT: Three restrooms?

11 THE WITNESS: Correct.

12 MEMBER SHORT: And they are located
13 where, according to this? Could you identify
14 them for the record on this drawing?

15 THE WITNESS: In the -- if you look at
16 the structure, there is a structure with a bar
17 adjacent to it. There are three restrooms on the
18 left side of the drawing.

19 MEMBER SHORT: And that would be
20 toward the second that says assembly or rear
21 entrance?

22 THE WITNESS: If you look at rear

1 entrance, if you follow that down, you will see
2 assembly which points to something and then below
3 that directly you will see the three bathrooms.

4 MEMBER SHORT: Okay. Great. I just
5 wanted them identified for the record.

6 THE WITNESS: Yes, sir.

7 MEMBER SHORT: And so where are you in
8 the process now with the drawings? Have you
9 heard anything? When were they submitted?

10 THE WITNESS: A month ago.

11 MEMBER SHORT: Okay. All right. It
12 does take some time, I do know that.

13 THE WITNESS: Yes, yes.

14 MEMBER SHORT: Okay. The only thing
15 I was wondering, if you had to have more exits,
16 where would they go?

17 THE WITNESS: More exits? If we have
18 to add more exits?

19 MEMBER SHORT: Yeah.

20 THE WITNESS: We would put one on
21 Rhode Island Avenue. We would put a break in the
22 fence. We already have a curb cut there.

1 MEMBER SHORT: How big is the curb?

2 THE WITNESS: The cut?

3 MEMBER SHORT: You have -- is there a
4 street section that the exit will enter into a
5 street exit or a street curb?

6 THE WITNESS: Right now, no. We are
7 trying to block it up, but there is a curb cut on
8 Rhode Island and there is a curb cut on 6th. We
9 will not be using the curb cut on Rhode Island,
10 but if we need another point of egress, we can
11 put a break in the fence and turn that into
12 another point of egress.

13 MEMBER SHORT: Okay. Well, that's
14 part of your planning?

15 THE WITNESS: It is not part of our
16 plan. No, because we don't want to use it as a
17 point of egress.

18 MEMBER SHORT: Okay. Well, we will
19 know when we see the drawings that have been
20 approved by the city. And you mentioned noise
21 mitigation.

22 THE WITNESS: Yes, sir.

1 MEMBER SHORT: And you mentioned
2 bamboo.

3 THE WITNESS: Yes, sir.

4 MEMBER SHORT: And that will be on
5 which side, according to this drawing?

6 THE WITNESS: The bamboo will be on
7 the complete perimeter of the establishment. The
8 entire perimeter.

9 MEMBER SHORT: Okay. And you say you
10 have had an expert to advise you on this or have
11 you or have you not had an expert to advise you
12 on?

13 THE WITNESS: On noise mitigation?

14 MEMBER SHORT: Yeah.

15 THE WITNESS: Yes.

16 MEMBER SHORT: And they recommended
17 the bamboo?

18 THE WITNESS: Bamboo was actually
19 recommended based on desk research and our own
20 research.

21 MEMBER SHORT: Okay. What did the
22 noise mitigation expert tell you about that?

1 THE WITNESS: He said it would be
2 useful.

3 MEMBER SHORT: Be useful?

4 THE WITNESS: And he said it would
5 work, yes.

6 MEMBER SHORT: So did he or did he not
7 say it would mitigate noise?

8 THE WITNESS: He did.

9 MEMBER SHORT: He did say it would
10 mitigate noise?

11 THE WITNESS: Yes.

12 MEMBER SHORT: Okay. So you may be
13 open until 3:00 a.m. on Saturdays and you said
14 Fridays and Saturdays?

15 THE WITNESS: Yes, sir.

16 MEMBER SHORT: And you are going to
17 have live entertainment, 255 people.

18 THE WITNESS: 225.

19 MEMBER SHORT: 225. Drinking alcohol.

20 THE WITNESS: Yes, sir.

21 MEMBER SHORT: And so the band is
22 going to be playing at a level that --

1 THE WITNESS: No band, sir.

2 MEMBER SHORT: What time will the band
3 stop playing if you were allowed?

4 THE WITNESS: We have no plans of
5 having bands or live music.

6 MEMBER SHORT: So that will be a part
7 of your agreement with the community?

8 THE WITNESS: Of a band?

9 MEMBER SHORT: Yeah, bands, yes.

10 THE WITNESS: We have never intended
11 to have a band. My understanding is that an
12 entertainment endorsement is necessary for all
13 entertainment. If we wanted to have a children's
14 magician there, we would need an entertainment
15 endorsement.

16 MEMBER SHORT: Okay. That is your
17 interpretation of what that --

18 THE WITNESS: That is mine, but I --
19 we want the flexibility, but we never had
20 intention of having live music.

21 MEMBER SHORT: So if you don't have
22 live music, what kind of music are you going to

1 have?

2 THE WITNESS: We plan to have some
3 amplified music.

4 MEMBER SHORT: Amplified music?

5 THE WITNESS: Sure. The speakers.

6 MEMBER SHORT: How big are the
7 speakers?

8 THE WITNESS: We haven't done our
9 sourcing of buying, but we have small speakers
10 along the base of the -- on the ground. I know
11 my business partner can testify more towards
12 that.

13 MEMBER SHORT: Are they going to
14 testify today?

15 THE WITNESS: Yes.

16 MEMBER SHORT: Okay. Well, again, I
17 was just worried about entertainment period,
18 because entertainment endorsement would allow you
19 to have a band, whether you intend to or not.
20 And if you were to sell the business to someone
21 else, they could put a band in.

22 THE WITNESS: Sure.

1 MEMBER SHORT: So is it an
2 entertainment endorsement really what you want to
3 do?

4 THE WITNESS: Yes.

5 MEMBER SHORT: That's all I have, Mr.
6 Chair. Thank you very much.

7 CHAIRPERSON ANDERSON: Thank you, Mr.
8 Short. Any other questions by any of the -- yes,
9 Mr. Silverstein?

10 MEMBER SILVERSTEIN: Thank you, Mr.
11 Schwartz, you have done a lot of work prepping.

12 THE WITNESS: Thank you.

13 MEMBER SILVERSTEIN: What restrictions
14 would you accept as part of an entertainment
15 endorsement?

16 THE WITNESS: I'm not quite sure. If
17 -- I don't know what the perimeters are or what
18 the possibilities are in terms of restrictions.

19 MEMBER SILVERSTEIN: I'm sorry?

20 THE WITNESS: I don't know what the
21 possibilities are in terms of restrictions. It's
22 an open-ended question. I don't know how to --

1 MEMBER SILVERSTEIN: Do you accept the
2 restriction that you could not have live bands?

3 THE WITNESS: We could accept that.

4 MEMBER SILVERSTEIN: Okay. That's the
5 type of thing I'm asking.

6 THE WITNESS: Okay.

7 MEMBER SILVERSTEIN: One of the
8 problems that we have in many areas, it's a
9 really serious problem at push-out time, is that
10 Uber and Lyft are an absolute nightmare compared
11 to Diamond Cab.

12 THE WITNESS: Um-hum.

13 MEMBER SILVERSTEIN: You get 25 cabs
14 and you line them up and everybody takes a cab.
15 You have 25 Ubers and Lyfts, everybody has to
16 find the right silver sedan.

17 THE WITNESS: Right.

18 MEMBER SILVERSTEIN: And when you are
19 down on M Street --

20 THE WITNESS: Um-hum.

21 MEMBER SILVERSTEIN: -- at 2:30 in the
22 morning, it's completely gridlocked. Rhode

1 Island Avenue there is a main thoroughfare for
2 ambulances to Howard University Hospital, to
3 Children's Hospital, to MedStar.

4 Where are you going to put the Uber
5 and Lyft stands?

6 THE WITNESS: Well, I think the
7 extended hours specifically is a reason to help
8 that. We don't want to dump out our entire
9 capacity at 10:30 p.m. We think, based on our
10 experience, that people gradually will leave and
11 we think it is safer for the community to have
12 people gradually leave than to have everyone, the
13 entire capacity dumped out onto Rhode Island
14 Avenue having to all call their Ubers at the same
15 time.

16 That's actually been a large
17 conversation we have had about why having
18 extended hours is important for us.

19 MEMBER SILVERSTEIN: My question was
20 where are you going to put your Uber and Lyft? I
21 mean, that's an excellent explanation of why you
22 want to have -- you know, you answered the

1 question you wanted to answer, but you didn't
2 answer the question that was asked.

3 Where are you going to put them?

4 THE WITNESS: Rhode Island Avenue.

5 MEMBER SILVERSTEIN: Okay. Simple
6 question, simple answer. No further questions.

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

9 MEMBER SHORT: I just have one follow-
10 up.

11 CHAIRPERSON ANDERSON: Yes, Mr. Short?

12 MEMBER SHORT: You -- according to
13 your attorney, there is a security plan?

14 THE WITNESS: There is a working
15 security plan.

16 MEMBER SHORT: Are you familiar with
17 the ABRA's plan that is given for -- to meet our
18 expectations?

19 THE WITNESS: For -- generally for
20 nightclubs? Is that correct?

21 MEMBER SHORT: For places of public
22 assembly.

1 THE WITNESS: Yes, I have looked into
2 it.

3 MEMBER SHORT: Did you use any of the
4 guide when you --

5 THE WITNESS: I did. For certain
6 aspects of it, I did.

7 MEMBER SHORT: Okay. And you know if
8 you do submit, well, it has to meet all of the
9 criteria that the Government says.

10 THE WITNESS: Yes, sir.

11 MEMBER SHORT: Okay. All right.

12 Thank you. That's all I have, Mr. Chair.

13 CHAIRPERSON ANDERSON: Thank you. Mr.
14 Kline?

15 REDIRECT EXAMINATION

16 BY MR. KLINE:

17 Q Mr. Schwartz, will you commit to
18 voluntarily submitting a security plan that
19 complies with the ABRA Code?

20 A Yes.

21 Q Thank you. Now, with respect to
22 entertainment, you were asked about what

1 restrictions you might live with. You also said
2 earlier in your testimony that in terms of hours,
3 you don't need an entertainment endorsement until
4 2:00 a.m. and 3:00 a.m., correct?

5 A That's correct.

6 Q All right. So would you also accept
7 a limitation on hours of entertainment?

8 A Yes.

9 Q Okay. Is there a specific hour in
10 terms of preserving your flexibility that would
11 be -- that you would find desirable that you
12 could communicate to the Board, at this time?

13 A 11:00 p.m. on -- across the board.

14 Q 11:00 p.m. across the board.

15 A Yes.

16 Q So you would be fine if you had the
17 flexibility to do entertainment no later than
18 11:00 p.m., correct?

19 A Yes, yes.

20 Q And you would be fine if you were not
21 permitted to have amplified live music or any
22 live music? We need to be clear about that.

1 A Any live music.

2 Q Any live music. Okay. But it is
3 anticipated you might perhaps have a DJ from
4 time-to-time for special events?

5 A We haven't really talked about DJs.
6 We wanted amplified music, but we never talked
7 about a DJ or anything of that nature.

8 Q Okay.

9 A It's more for events and again, for,
10 you know, maybe carolers, maybe -- again, maybe
11 I'm not understanding what an entertainment
12 endorsement is, but my understanding is anyone,
13 any kind of entertainment. Like for example, a
14 children's magician would be an entertainment
15 endorsement. Is that correct?

16 Q You are not allowed to ask me a
17 question.

18 A All right. That's my understanding of
19 it and that's what we --

20 Q And you want to be in compliance with
21 the law, correct?

22 A Absolutely.

1 Q All right. Now, you were also asked
2 about being in for plans and exits.

3 A Correct.

4 Q And so on. You understand that your
5 building permit plans get reviewed by DCRA,
6 correct?

7 A Yes, sir.

8 Q And you will abide by whatever
9 Certificate of Occupancy is issued by DCRA,
10 correct?

11 A Yes, sir.

12 Q And if there need to be changed in the
13 plans that have been submitted to accommodate
14 your occupancy or otherwise accommodate your use,
15 you will make this plan -- those changes,
16 correct?

17 A Yes.

18 Q Okay. Thank you.

19 MR. KLINE: That's all I have.

20 MR. LOOTS: I have just one question.

21 CHAIRPERSON ANDERSON: Yes, sir.

22 RE-CROSS-EXAMINATION

1 BY MR. LOOTS:

2 Q In terms of your security plan in its
3 current incarnation, which I realize is not a
4 final document, there does not appear to be any
5 provision for inclement weather. And since you
6 are an entirely outdoor venue, if there were
7 lightening or tornados or something like that,
8 what sort of plans would you have for the safety
9 of your patrons?

10 A That's -- in terms of lightening?

11 Q In terms of inclement weather that
12 would be life-threatening.

13 A There is an evacuation plan included
14 in the security plan. We would follow whatever
15 evacuation protocol is included in the security
16 plan. We want to operate a safe environment.

17 MR. LOOTS: I have no further
18 questions.

19 CHAIRPERSON ANDERSON: Mr. Schwartz,
20 thank you very much for your testimony. You can
21 step down, sir.

22 THE WITNESS: Thank you very much.

1 (Whereupon, the witness was excused.)

2 MR. KLINE: Thank you. I call to the
3 stand Angela DelBrocco.

4 CHAIRPERSON ANDERSON: Ms. DelBrocco,
5 could you raise your right hand?

6 Whereupon,

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

12 MS. DELBROCCO: I do.

13 CHAIRPERSON ANDERSON: Have a seat.
14 Your witness.

15 DIRECT EXAMINATION

16 BY MR. KLINE:

17 Q Ms. DelBrocco, where do you live?

18 A I live at 513 S Street, N.W.

19 Q And how far is that from the
20 establishment?

21 A Approximately, 500 feet.

22 Q And do you own your home there?

1 A I do.

2 Q Is that the home that we heard
3 referred to earlier?

4 A It is the home you heard of earlier.

5 Q Okay. And are you concerned that the
6 opening of your establishment at this location
7 will have a negative effect on the real estate
8 value of your home?

9 A Absolutely not. I believe it would be
10 an increase to the value of my home.

11 Q Okay.

12 A I -- before living in this home, I
13 lived in a home on 14th Street that I purchased
14 prior to 14th Street's revitalization. After
15 14th Street's revitalization, that property went
16 up tremendously in value. So I would hope that
17 something similar would happen in Shaw.

18 Q Is there quite a bit of difference
19 between the neighborhood where you live now at
20 this point in this potential evolution and where
21 you previously lived?

22 A Yes. I think that, you know,

1 previously I was on 14th Street, which was a more
2 commercial corridor. There was a lot more
3 density of entertainment that went in at once.
4 Right now, we are, you know, a block removed. We
5 are in a rowhouse that has many other neighboring
6 rowhouses. And you know, it does feel a little
7 bit more residential directly than when I lived
8 on 14th Street with a 14th Street address.

9 Q What about Rhode Island Avenue though
10 in terms of its current state of commercial
11 activity and 14th Street?

12 A Yeah. If anything, it is far more
13 commercial. It's wider. It's divided. It has
14 far more traffic and trucks going up and down it
15 than 14th Street certainly.

16 Q But in terms of businesses and
17 activity there, have those businesses and
18 activities developed to the point that they had
19 were you lived on 14th Street?

20 A Definitely not. It is -- you know,
21 especially the area we were looking, like there
22 is still that vacancy, the empty lots, the empty

1 lot kind of catty-corner to it and then there is
2 just -- you know, it's into more of the Truxton
3 Circle area before it -- and the intersection was
4 Florida before it actually -- there is a density
5 of businesses or even, you know, more than a
6 couple adjacent to each other.

7 Q And do you find the rows of businesses
8 in the neighborhood where you live something that
9 is desirable?

10 A Yes. I would love to see more of it.
11 you know, one of the things we even talked about
12 was, you know, Bloomingdale is developing a lot
13 of the 7th Street Corridor, but east of 7th
14 Street, things just really haven't moved in yet.
15 And so it does feel like a line right now where
16 there is less development and we would love to
17 see it grow more. And I, as a homeowner, would
18 love to see it grow more toward, you know, and
19 fill up the area more.

20 Q What will be your role in this
21 business?

22 A I am a co-owner. I will also be our

1 business manager.

2 Q And you have a background in the
3 industry?

4 A I do. I have been a bartender for 18
5 years in D.C. and then in Chicago. Before I have
6 -- I stayed bartender as kind of a catchall. I
7 have worked in many, many different roles in bars
8 and restaurants in those cities. And everything
9 from being a server and a bartender up through,
10 you know, being an owner and a manager and
11 opening new establishments as well.

12 Q And so will you continue to be
13 involved in the operations at this establishment?

14 A Absolutely. Yes, I do involve our
15 financial modeling and all of our art business.
16 Operations and I will continue to be on that role
17 here. I'll probably also be behind the bar a
18 couple nights a week and, you know, play a large
19 role in influencing management decisions and
20 being just, you know, part of the Decision and
21 Leadership Team with the bar.

22 Q How long have you lived in your

1 current residence?

2 A We moved there almost two years ago.

3 Q Okay.

4 A Prior to that, I lived in -- at a
5 couple different addresses all in Shaw. Prior to
6 that I was in -- on 14th Street.

7 Q And so you have been in Shaw what
8 about five years?

9 A About that, yeah.

10 Q And during that time, have you become
11 acquainted with a number of people that reside in
12 the neighborhood?

13 A Absolutely. I can't go to Giant or
14 out to eat without running into somebody that I
15 know or see, you know, kind of on the street.

16 Q Did that enter into your decision to
17 be involved in opening this particular
18 establishment?

19 A 100 percent. I, you know, helped open
20 a couple places on 14th Street, but really had no
21 desire to own them myself, but moving to Shaw and
22 being part of this neighborhood has really driven

1 me to want to put down a lot of roots, stay there
2 and, you know, own an establishment that I can,
3 you know, call a gathering place that is our own.

4 Q We have heard from Ben.

5 A Um-hum.

6 Q I would like for you to tell the Board
7 in terms of, in your eyes, what do you -- what is
8 this place going to be? What's it going to be
9 like?

10 A To me it is a gathering place to come
11 and in a lot of ways formed by the fact that it
12 is a block from my house. So I love that it can
13 be a place that is more casual, that is -- you
14 know, and we have talked about what we can be
15 doing with the space throughout, but we do want
16 to have a laid-back atmosphere.

17 I think, you know, we are not the type
18 of people who want to have something rowdy or
19 something that is like a club or any type of
20 environment like that. We want a place where you
21 can sit back with a can of beer or kind of an
22 interesting drink you couldn't get somewhere

1 else, sit on a picnic table, talk to your friends
2 and be part of the neighborhood.

3 We also have a lot of friends who are
4 in this industry, one of which at the Midlands if
5 you are familiar with that establishment, that
6 does a lot in the community at Parkview to hold
7 different events, to hold different things during
8 the day. They have like yoga on Saturday morning
9 for the community, things like that. That's the
10 kind of stuff that we want to take those cues
11 from our neighbors, our fellow residents and the
12 people that we know to make it a place that is a
13 gathering space and just a staple in the
14 community.

15 Q It has been suggested during the
16 course of questioning this afternoon that because
17 of what you seek in your application, you want to
18 operate a rager with live music until even 3:00.
19 Is that what you want to do there?

20 A No.

21 Q Given that, are there restrictions or
22 -- I mean, what assurances can you give or what

1 limitations might you and your business partners
2 be willing to accept to provide some comfort to
3 the Board and to the community, that that's not
4 what you are going to do there.

5 A Yeah, absolutely. We have had these
6 candid conversations with members of, you know,
7 our ANC about, you know, what our intentions are
8 and where we would like to see this end up.

9 We did apply to give us the most
10 flexibility in our model, but, you know, my
11 business partner spoke to you some of the
12 restrictions around the entertainment endorsement
13 hours. Again, that is something we want to have
14 the flexibility to have events that fit the needs
15 of the event planners, whether they be us or
16 someone else that we are letting -- you know,
17 partnering in the space with.

18 Around the hours, I don't anticipate
19 that we would be actually open until 2:00 and
20 3:00 every night. As Mr. Schwartz mentioned,
21 which I recognize is not part of the question he
22 was asked, but we want to be able to make it a

1 comfortable eating process. But those of you who
2 have been to establishments where there are
3 restricted hours or near them, it -- when they
4 close in -- at their restricted hours, it often
5 is chaotic.

6 Being that we live so close to Dacha,
7 we know when Dacha gets out. We know. When he
8 said that it was midnight, we're like no, it's
9 10:30, because 7th Street floods with people.
10 And we don't want that. So we want something
11 that can give us the flexibility to meet the
12 needs of the people safely, but I think we would
13 be amenable to having -- you know, being able to
14 stay open until around or 1:00 on weekdays and
15 until 2:00 on weekends.

16 Something that again doesn't feel like
17 we are falsely restricting the night and having
18 people have to terminate their night early
19 unexpectedly and abruptly.

20 Q All right. Now, you are familiar with
21 Dacha. Have you been there?

22 A Yes.

1 Q Now, your proposed establishment, are
2 there differences in terms of the zoning,
3 physical characteristics of the area? What's
4 different about this space? Can you contrast it
5 in some way?

6 A Sure. I think in some ways I'll be
7 compiling some statements that were made earlier,
8 but I think the biggest difference is the
9 difference between 7th Street and Rhode Island
10 are quite different. The difference between 6th
11 Street and Q Street are quite different.

12 Those streets are both dramatically
13 smaller than 6th and Rhode Island. And so we
14 anticipate that, you know, already as was
15 mentioned, there is a lot of noise on that
16 corridor.

17 Right now is the time of year when we
18 have our windows open, even one block up on S, it
19 is loud and the street noise is loud in a way
20 that, you know, having lived further down S is
21 not as loud. And so I think that that's a big
22 difference.

1 I think the other difference is right
2 now when you stand on our lot and look out, there
3 is a lot of white space. There is a blighted lot
4 or not a blighted lot. There is an auto repair
5 shop that is catty-corner and there is just a lot
6 of kind of -- it looks much more commercially
7 dense than Dacha.

8 Now, when Dacha did go in, it looked
9 a little different than it does now. Much has
10 grown up and developed around it, but even
11 standing at Dacha, you know, you are surrounded
12 kind of by trees from the neighbors. You can see
13 into neighbors' apartments in a way that just
14 isn't quite as close in as the lot that we are
15 looking at at 512.

16 Q Now, speaking of noise, you were the
17 person in your group that has looked at this
18 issue most closely, correct?

19 A Yes, I am.

20 Q And that, how -- what have you done?

21 A So I have done two things. One, I
22 have an associate who is a sound engineer

1 professionally. And so he and I met at the lot.
2 We discussed. We looked at our plans, how they
3 were drawn up and we discussed some of the noise
4 mitigation that we can do that resulted in some
5 further ideas, such as oh, you know that there
6 has been a lot of studies around adding live, you
7 know, buffers, something that is a plant that
8 absorbs noise, which led Ben to do the research,
9 find -- considerable research on bamboo being one
10 of those best options.

11 We talked about the fence materials,
12 how high it would need to be. We talked about
13 what areas would be most affected by noise going
14 up and out. And then we talked about some of the
15 mitigations, things like putting speakers in the
16 ground, not having them elevated.

17 Things around the types of speakers
18 that we could purchase that would be low-noise
19 and not -- and be much more easy to control.

20 He also did some decibel readings
21 while I was there and then, you know, asked me to
22 call DCRA to see if anything had been performed

1 recently, so I did get those readings as well.

2 We talked about some other future
3 things we can do in the lot in the neighborhood,
4 especially toward the back where we know that is
5 the only place where there is sort of exposure to
6 residential buildings immediately adjacent and we
7 talked about, you know, building some edifices
8 that will be very good at blocking noise from
9 rising up.

10 Q All right. And so of all the things
11 that you talked about, what is it that you intend
12 to do?

13 A Virtually, everything I mentioned
14 there. So installing the live bamboo, installing
15 a fence that is about 8 to 10 feet high that is a
16 more solid construction that is the perforated
17 metal that Mr. Short mentioned. And then adding
18 lower volume speakers with easier to control
19 levels in the ground looking at the options for
20 building out a large fence or sorry, a large
21 sound barrier in the back as well.

22 Q Okay. And you said that -- did you

1 have anyone come out and do -- you referenced
2 some music.

3 A Yes, yes, it was that audio engineer,
4 because it -- he is an associate, he was willing
5 to do that. There is no study that he wrote up
6 formally. You know, we are still in a place
7 where we don't have a guaranteed license, so we
8 are trying to save as much money as possible
9 right now. But certainly would be happy to
10 commission something once we knew that our
11 license was in place and we were actually going
12 to be moving forward.

13 But he did do a decibel reading. His
14 reading at the time was at about 10:00 at night.
15 We were there on a Tuesday in, I believe it was,
16 late February on a Tuesday at 10:00 p.m. Our
17 decibel reading was above 80. We did it about
18 three times over the course of 20 minutes and it
19 was consistently above 80 decibels.

20 When I did call DCRA, they had done
21 formal average readings as well. Their's was
22 lower, but they did -- they had both a morning

1 and an overnight one that were in the like 65 to
2 70 range. They were both very similar though.
3 The morning one was around 68, I want to say, and
4 then the one at 1:00 a.m. was still over 65
5 decibels.

6 MEMBER SILVERSTEIN: Excuse me, you
7 said over 80 at what time?

8 THE WITNESS: When we were doing ours
9 at 10:00 p.m., yes.

10 BY MR. KLINE:

11 Q So those would be the base ambient
12 noise level?

13 A That's the base ambient noise levels
14 of Rhode Island. And when I spoke to the
15 gentleman at DCRA, I asked about the
16 differential. He did say that, you know, it
17 varies because of what is going on and certainly
18 sirens are, you know, over 100 decibels and that
19 if there is horns honking, things like that, that
20 because that street pretty much constantly has
21 traffic, that he would expect it never really to
22 dip below 65.

1 Q In terms of residents that are in
2 proximity to your establishment --

3 A Um-hum.

4 Q -- there were a number of people on
5 Rhode Island that are in support, correct?

6 A Yes, sir.

7 Q And then the ones that would be
8 perhaps most exposed or impacted, where would
9 those be located?

10 A I would think they would be, you know,
11 the ones that are on 5th Street. There are two
12 and they share kind of an alley with us, so we
13 are separated by an alley.

14 Q And that would be Mr. Thorpe's house?

15 A Mr. Thorpe and Mr. Brown.

16 Q And there is just the two houses
17 there?

18 A Just those two houses, to my
19 knowledge.

20 Q All right. And is there anything that
21 you plan to do to mitigate noise from that end of
22 the establishment?

1 A We have spoken extensively to both Mr.
2 Thorpe and Mr. Brown about their concerns and
3 have talked about building a sound barrier that
4 would be protected. One of the things the
5 engineer said is truly it's the way that the
6 sound rises out of that, it's a third and fourth
7 floor that get the -- would be the receivers of
8 the most volume.

9 Those houses don't have that high of
10 a level, which we thought was a really big plus,
11 but would be -- we have mentioned how we would be
12 happy to be building a sound barrier to that.

13 Also Mr. Thorpe has concerns, you
14 know, just about seeing into the bar and things
15 like that and so we have offered to make that
16 solid and, you know, really try to talk to both
17 of them as much as possible about how we can
18 continue to monitor and minimize therein.

19 Q And was there -- we heard Mr. Schwartz
20 describe the outreach that was done to --

21 A Yes, sir.

22 Q -- address these issues --

1 A Um-hum.

2 Q -- with the community. Is there
3 anything that you want to add to that in terms of
4 what was done with the community and your
5 reference to familiarity to right the issues that
6 are anticipated.

7 A Sure. Again, as he mentioned, he can
8 list pretty extensively. We attended multiple
9 meetings, both of ANC and the other community
10 organizations. We have interacted with -- via
11 email via certain neighborhood listserv and then,
12 you know, I think maybe something that was
13 underscored is we just know a lot of our
14 neighbors.

15 You know, they are our friends. They
16 are in our phones. We go to their houses. And
17 so a lot of this was, you know, talking to them
18 and saying hey, you are our friends. Like tell
19 us your -- what would bother you? What would
20 concern you? Let us know. You know, they -- and
21 I would hope that they trust us enough to have
22 those conversations.

1 And you know, we have talked about
2 some of the things that have come up around, you
3 know, making sure that we don't exit onto Rhode
4 Island Avenue, that we exit the vast majority, if
5 it's an emergency okay, but the vast majority
6 ingress and egress is on the 6th.

7 Then other ways, you know, the
8 concerns have been very practical and ones that
9 we have incorporated throughout out months and
10 months of planning.

11 Q All right. And you attended the ANC
12 meeting?

13 A Yes.

14 Q The ABC Committee meeting?

15 A The ABC Committee meeting of the ANC,
16 yes.

17 Q Okay. And what was the primary
18 concern that you heard expressed there?

19 A The primary concern was that there was
20 a desire for uniformity of hours, so that our
21 hours echoed Dacha's. That was what we heard as
22 the concern. In fact, time and time again, we

1 are told we have no problem, we just want you to
2 conform to these hours. And we said okay, we
3 would really like to engage in a discussion
4 about, you know, how we are different than Dacha.
5 Compare and contrast and see if maybe this is a
6 different situation where we would like to extend
7 those hours.

8 We were even told at the time of the
9 vote that, you know, basically, the Motion to
10 Protest was basically procedural so that we could
11 come to an agreement and a settlement on hours.

12 MR. LOOTS: I'm going to object.
13 Obviously, she is testifying as to many things
14 beyond her personal knowledge, but with respect
15 to the ANC's intent, what the ANC did, she is in
16 no position to opine as to the reasons for the
17 unanimous decision of the ANC to mount this
18 protest or the reasons for it. We will have a
19 witness who will speak to that. But this witness
20 is in no position to speak to the ANC --

21 THE WITNESS: I was in attendance --

22 CHAIRPERSON ANDERSON: Hold on.

1 THE WITNESS: -- at the public ANC
2 meeting.

3 CHAIRPERSON ANDERSON: Hold on, hold
4 on. There is an objection and so --

5 THE WITNESS: Sure.

6 CHAIRPERSON ANDERSON: -- you don't
7 need to say anything until the attorneys have
8 stated their position, I mean.

9 MR. KLINE: The objection is late.
10 The question has been answered, at this point.

11 CHAIRPERSON ANDERSON: That is what I
12 was going to say, Mr. Kline. You can't object to
13 the answer. You have to object to the question.

14 MR. LOOTS: Yes, but further this line
15 of testimony.

16 CHAIRPERSON ANDERSON: All right.
17 Well, let me see where he is going. But, yes,
18 the cat -- the horse is already out of the barn,
19 so you have to object --

20 MR. KLINE: I'll move on.

21 CHAIRPERSON ANDERSON: -- to the
22 question. All right. Go ahead. And please be

1 mindful of the time.

2 MR. KLINE: I am.

3 BY MR. KLINE:

4 Q I'm going to show you what has been
5 marked as Protestant's Exhibit 11 and ask you if
6 you can identify that?

7 A Yes. Early in our planning, we
8 applied for a Great Streets Grant and this is the
9 Letter of Support we received from Mr. Padro.

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

14 BY MR. KLINE:

15 Q And he wrote that letter on behalf of
16 who?

17 A On behalf of Shaw Main Street in
18 support of Electric Cool-Aid.

19 Q And who is it directed to?

20 A It's directed to Deputy Mayor Kenner.

21 MR. KLINE: That's all I have of the
22 witness, at this time.

1 CHAIRPERSON ANDERSON: And we don't
2 have -- I don't see number -- well, I don't have
3 anything, any exhibit past 9, so if there is 10
4 and 11, if that's a part, I'll ask you to provide
5 us this, 10 or 11, if that's -- all right.

6 MR. KLINE: We didn't identify 10.

7 CHAIRPERSON ANDERSON: I know, but I'm
8 just saying if there are others, I don't have any
9 documents out past 9. So all right, your
10 witness, sir.

11 CROSS-EXAMINATION

12 BY MR. LOOTS:

13 Q You testified at some length about
14 things that you were told or ideas you had
15 through Internet research or other things about
16 the possible ways to mitigate noise.

17 You don't have any particular personal
18 expertise, you know, in noise abatement or
19 mitigation, do you?

20 A No, that's why we consulted an audio
21 engineer who is an associate of ours.

22 Q Okay. An associate of yours. Who is

1 that person?

2 A His name is Rick Furr.

3 Q Okay. And why isn't he here today?

4 A He was unable to be here. You know,
5 we tried. He also had a work commitment that he
6 couldn't get out of, but he, you know, was
7 someone we wanted to be here to testify.

8 Q Okay. So he gave you some ideas?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q Okay. And is there anything in
13 writing that shows, you know, what he said
14 implementing those ideas would have on noise
15 mitigation?

16 A Well, we put many of them in what we
17 presented to the Board, to the ANC. In terms of
18 a formal study, as I mentioned, we are trying to
19 save money until we know that we are going to get
20 our liquor license and so we have not
21 commissioned a formal report or study, but would
22 be happy to, again, once we feel certain that our

1 money is going toward a business that is going to
2 be viable.

3 Q Well, is that from the cart before the
4 horse? I mean, right now, the Board and
5 certainly the protestant have no assurance that
6 you are going to take any noise mitigation steps
7 at all or that the steps you are proposing to
8 take, such as planting some bamboo around the
9 perimeter are going to be effective in addressing
10 the noise that would otherwise emanate through
11 the premises.

12 A We do have a written study on the
13 effects of bamboo as an effective noise
14 mitigation. It is an exhibit in -- submitted.

15 Q Yeah, and where did that come from?

16 A I'm not sure of the source, but --

17 Q Oh, it's something about some
18 institute in Hamburg. Has anybody associated
19 with that study ever looked at your site?

20 A No, but I don't think that that's
21 always the way that research works.

22 Q Okay. Has anybody at this point

1 sitting here today, including your -- you call
2 him a partner, let's just say --

3 A An associate?

4 Q Associate. I'm sorry. Including your
5 associate and the sound engineer, if anybody
6 prepared any statistical analysis for how much
7 noise is to be expected from 225 human beings and
8 how much noise would be abated by bamboo or steel
9 slats?

10 A As we have mentioned, we do not have
11 a formal study.

12 Q Okay. So this is all speculation?

13 A Speculation informed by experts, yes.

14 Q Okay. What is the professional
15 qualification of this expert person, who is your
16 friend?

17 A He is an audio engineer for 9:30 Club
18 and for the Smithsonian. So he runs events at
19 Smithsonian, on the National Mall and at 9:30
20 Club and has for many years.

21 Q So when you say audio engineer, what
22 are you -- are you referring to somebody who runs

1 a control board?

2 A He usually sets up the events and then
3 controls the acoustics of the events and designs
4 the spaces, so that they are acoustically
5 pleasing.

6 Q Okay. So that's different from an
7 engineer who would advise you as to sound baffles
8 and noise mitigation, correct?

9 A No.

10 Q You're talking about somebody who runs
11 the sound board at a nightclub.

12 A No, I am not talking about the sound
13 technician. I'm talking about the audio
14 engineer, that's what he is. He is an acoustic
15 engineer. He is absolutely the same type of
16 person we would hire to do this. As a favor to
17 us, he came out and did what he normally charges
18 for and what he does on a daily basis in terms of
19 events to ensure that events have the acoustics
20 that are desired by the event planner.

21 Q Do you know what his professional
22 degrees are?

1 A I do not, no.

2 Q Professional certifications?

3 A I am unsure of what those are.

4 Q Professional society memberships?

5 A I do not know what those are. I do
6 not have his résumé.

7 Q If according to your time line you get
8 the liquor license and despite your best of
9 intentions, you are unable financially,
10 otherwise, to arrive at an effective noise
11 mitigation for -- particularly speaking about the
12 noise emanating from 225 human beings, what is
13 the remedy of the community then? You already
14 have your license.

15 A Well, we have to get it renewed.
16 There is also -- I know Dacha fields protests
17 from many other agencies as well regarding their
18 noise. And so I believe there is plenty of
19 recourse against us and I would always hope that
20 we would -- but not only stay in compliance as
21 abatement alone, but also be an acceptable
22 neighbor to our community.

1 So I believe the community would have
2 plenty of recourse as to our sound.

3 Q But you want the license first?

4 A Well, I do believe there is an element
5 of having trust and believing that we want to be
6 law-abiding citizens. And this is that display.

7 Q What specific plans do you have in
8 place for handling particularly organic waste
9 that emanates from using the facility?

10 A We have -- our third business partner
11 is a waste management expert. He can speak to
12 that.

13 Q Okay. Are you going to call him as a
14 witness today?

15 MR. KLINE: Objection.

16 MR. LOOTS: Well, I need to speak to--

17 THE WITNESS: I won't.

18 MR. LOOTS: -- him.

19 MR. KLINE: She doesn't call anyone as
20 a witness. I call the witnesses.

21 MR. LOOTS: Okay.

22 THE WITNESS: He is sitting at the

1 table and is on our witness list and I would
2 expect that he is going to be called immediately
3 after me.

4 BY MR. LOOTS:

5 Q Okay. Really my question is just if
6 he is the more appropriate person to direct the
7 questions to --

8 A He is the most appropriate person--

9 Q -- that is what I'm after.

10 A -- to direct those questions to.

11 Q What is the surface going to be of the
12 outdoor area?

13 A He will be the one who can speak
14 detailed to the surface. However, it will be a
15 crushed stone. He can speak beyond that phrase.

16 Q I'll defer my questions on that point.

17 A Thank you.

18 MR. LOOTS: I have no further
19 questions for this witness.

20 CHAIRPERSON ANDERSON: Any questions
21 by any Board Members? Mr. Short?

22 MEMBER SHORT: Good afternoon.

1 THE WITNESS: Good afternoon.

2 MEMBER SHORT: Since I have been on
3 the Board, I guess going on five years now, we
4 have heard a lot of applicants say we are going
5 to be really good stewards of our license and we
6 are going to run a very quiet, friendly, family-
7 type, only to find out that they are not open
8 with any time at all, because the find they can't
9 make any money being quiet and good neighbors.

10 The only way they can make money is
11 crowds, loud noise and then by the time we give
12 you your license and you come to us for renewal,
13 they have the licenses, nothing we can do. And
14 then finally what happens is they get enough
15 violations until they just can't stay in business
16 any longer, but by that time, it has done a lot
17 of damage to the communities.

18 And we trust you. You look like a
19 very honest person. But I would want to know
20 that the sound information would be totally taken
21 care of.

22 Just I want this on the record also.

1 Since I have been on this Board, we have had one
2 instance of a business in Ward 5 and the music
3 was heard in Prince George's County and the
4 people were calling and complaining. But this
5 was something that they said that would never
6 happen and it did. More than once, it happened a
7 couple of times.

8 So we want to make sure we protect the
9 community.

10 THE WITNESS: Yes.

11 MEMBER SHORT: We are not trying to
12 stop anybody from having a license. And anybody
13 who comes before this Board would know, most
14 people would know, your attorney would know this,
15 that they must bring those certificates that
16 produce that they are actually a sound person who
17 has graduated and recognized and has the
18 appropriate documents.

19 And you said some tests were done by
20 DCRA in what month?

21 THE WITNESS: I believe in April.

22 MEMBER SHORT: In April?

1 THE WITNESS: Yes, late April.

2 MEMBER SHORT: Okay. And you know
3 weather affects sound. So what you hear in
4 April, you won't hear in August on a hot steamy
5 night or on a windy evening. Sound is just
6 strange. And when you have how many -- how many
7 tall buildings do you have around your property?

8 THE WITNESS: Not many. I don't know
9 what is considered tall, but not many.

10 MEMBER SHORT: How many buildings do
11 you have that are four stories high?

12 THE WITNESS: I don't think there are
13 any that are four stories high immediately
14 adjacent.

15 MEMBER SHORT: They are not adjacent.
16 How about on Florida Avenue?

17 THE WITNESS: Um --

18 MEMBER SHORT: And the reason why I
19 asked that question --

20 THE WITNESS: -- I don't know.

21 MEMBER SHORT: -- before you answer,
22 is because sound bounces off and then --

1 THE WITNESS: Yes.

2 MEMBER SHORT: -- reverberates. So if
3 you are on ground level --

4 THE WITNESS: Um-hum.

5 MEMBER SHORT: -- even if you have
6 bamboo and you have a two story, it's going to be
7 affected by your -- there is nothing you can do
8 about that. That's just sound. So we have to
9 protect the community.

10 We want to make sure -- the business,
11 too, but you're talking about bands and you're
12 talking about live entertainment, DJs, there is
13 bamboo that is going to stop those speakers from
14 reverberating.

15 THE WITNESS: Yes, sir.

16 MEMBER SHORT: So the bottom line is
17 if and when you have some documents that state
18 that this person that you are relying on for your
19 sound mitigation, can you have that, those
20 documents, through your lawyer sent to this
21 Board?

22 THE WITNESS: Yes, sir.

1 MEMBER SHORT: Of all of his
2 qualifications that you testified about today?

3 THE WITNESS: Yes, sir.

4 MEMBER SHORT: You will do that?

5 THE WITNESS: Yes, sir.

6 MEMBER SHORT: Well, thank you.

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

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

10 Mr. Kline?

11 MR. KLINE: Yes.

12 REDIRECT EXAMINATION

13 BY MR. KLINE:

14 Q Ms. DelBrocco, you were asked on
15 cross, and it was suggested that there are no
16 assurances that you will address noise. You are
17 here today. Are there assurances that you wish
18 to make concerning sound?

19 A Yes. As I mentioned, we are doing all
20 of the things we said. We have the fence
21 ordered. We have the bamboo stored. We, you
22 know, have -- I would be happy to put into

1 writing that we guarantee to do these measures.
2 You know, whatever that needs to be.

3 I'm unfamiliar with what type of
4 assurances would make -- would satisfy, you know,
5 and I know that nothing is going to 100 percent
6 satisfy, you know, the future questions and that
7 there are still always, you know, room for error.
8 But I -- you know, whatever is being asked, we
9 would be happy to make those kind of assurances.

10 And like I said, we know some things
11 operationally are in place. Again, we researched
12 the speakers, too. So we can make those and if
13 there is anything specifically that is being
14 recommended, we would be happy to evaluate that
15 and commit to what we can, at this time.

16 Q At this point, all you have is the
17 business plan and concept, correct, in terms of
18 this business?

19 A In terms of this business, we have a
20 lease.

21 Q Right. But you don't have an
22 operating business.

1 A We don't have an operating business.

2 Q So when you open your doors --

3 A Yes.

4 Q -- it is quite possible, if not quite
5 likely, there are other issues that might arise--

6 A Yes.

7 Q -- that need to be addressed, correct?

8 A There will be.

9 Q All right. Now, it has been suggested
10 that if this license is approved and issued, the
11 neighborhood of which you are a part, has no
12 recourse. Now, do you believe that to be the
13 case as a resident of the neighborhood and the
14 number of people that you know in the
15 neighborhood?

16 A Absolutely not. They know our house
17 number, knocked on our door. They know our cell
18 phone numbers. They are stored in their cell
19 phones in many cases. And so, yeah, I think, you
20 know, probably even more of a personal recourse
21 than many of the other business owners in Shaw
22 who I know many of which don't live anywhere near

1 Shaw, but you know, I think again, I find it
2 really difficult to answer these, because I value
3 my word and I'm putting that forth.

4 If something in writing is required,
5 we are happy to do that. We have really tried to
6 accommodate any request that comes our way and we
7 will continue to do that, you know, within
8 reason.

9 MR. KLINE: That's all I have of this
10 witness.

11 MR. LOOTS: I just have one question.

12 RECROSS-EXAMINATION

13 BY MR. LOOTS:

14 Q Now, to be clear, I don't think any of
15 these question your word or your personal
16 integrity. But certainly, you are not the only
17 voice, you are not the only partner, you are not
18 always going to be the person who is in charge of
19 decision making.

20 (Lots of Laughter)

21 BY MR. LOOTS:

22 Q Okay. Decisions are made just among

1 you and your partners. But you know, there may
2 come a time when you sell the business and as the
3 saying goes, "The best laid plans often go
4 astray."

5 A Yes. Yes, sir.

6 Q So my question really is more focused
7 on, you know, the order in which you are seeking
8 things, because particular with respect to sound
9 mitigation, to say once we get a license we will
10 address that, rather than here is how we are
11 going to address it. We are going to commit to
12 doing it now and then we would like a license,
13 please.

14 It's very important from the
15 standpoint of the ANC and its opportunity to
16 object and to accommodate. So that -- I just
17 wanted to make that clarification. But again to
18 underscore and ask you the question, as of right
19 now, you said you will put this in writing or
20 whatever, as of right now, there is no
21 quantifiable plan for sound mitigation, other
22 than the general things you said you are

1 undertaking?

2 A Maybe we just feel differently about
3 what constitutes a plan. What we don't have is
4 specific number reduction. We were never asked
5 that. We have presented these options before.
6 No one has ever asked that of us until now.

7 I really wish they had, because we
8 could have come here today with that to show in
9 our good faith. We have really tried everything
10 we have been asked of to show our good faith and
11 what we are trying to do here.

12 Had we been asked prior to this
13 hearing, I can assure you we would have found a
14 way to pay the money, get what was needed. We
15 just were never asked. And we, you know, didn't
16 know.

17 Q All right. That's obviously not my
18 place to comment.

19 A Yep.

20 Q Thank you very much.

21 MR. LOOTS: I have no further
22 questions.

1 CHAIRPERSON ANDERSON: All right.
2 Thank you, ma'am. Thank you for your testimony.
3 you can step down.

4 THE WITNESS: Thank you.

5 (Whereupon, the witness was excused.)

6 MR. KLINE: I call to the stand Jesse
7 Schwartz.

8 CHAIRPERSON ANDERSON: It's 4:43, I
9 thought that we were going to leave here at 6:00.

10 MR. KLINE: I've got about three
11 questions.

12 CHAIRPERSON ANDERSON: And I'm not
13 trying to rush you. So I think I have been more
14 than flexible with the time. So I just want to--
15 and I'm not trying to rush the protestants, since
16 they have not presented their case already, but I
17 just want to keep everyone on their toes.

18 All right. What's your next --

19 MEMBER SILVERSTEIN: Mr. Chairman?

20 CHAIRPERSON ANDERSON: Yes.

21 MEMBER SILVERSTEIN: For your
22 information, the applicant has used 58 of the 90

1 minutes. The protestant 35 of the 90.

2 CHAIRPERSON ANDERSON: All right.

3 Thank you. That still doesn't help me.

4 MEMBER SILVERSTEIN: Right.

5 CHAIRPERSON ANDERSON: Because we have

6 been here since 2:30. All right. Since 2:00.

7 Mr. Schwartz, can you raise your right
8 hand, please?

9 Whereupon,

10 JESSE SCHWARTZ

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

15 MR. JESSE SCHWARTZ: I do.

16 CHAIRPERSON ANDERSON: Thank you.

17 Your witness, sir.

18 MR. KLINE: Yes.

19 DIRECT EXAMINATION

20 BY MR. KLINE:

21 Q Mr. Schwartz, what's your connection
22 with this proposed business establishment?

1 A I am one of the owners and the
2 operations manager.

3 Q And an operations manager, what was
4 your realm of responsibility?

5 A Facilities, equipment, landscaping and
6 waste and pest management.

7 Q All right. So tell us how you even
8 intend to deal with waste management.

9 A We are going to have an on-site
10 dumpster and collect all our waste and
11 disposables on a nightly basis, keep it in a
12 secured location, keep it away from rats and any
13 other vermin that might be attracted to that.

14 In the future we are hoping to apply
15 for a compactor grant to partner with the two
16 restaurants next door to even further deter
17 rodents from occupying that neighborhood.

18 Q And do you have a specific expertise
19 with respect to rodent control?

20 A Quite a bit. I have a bachelor's
21 degree in horticulture, which included extensive
22 course work in pest management. Then for years I

1 worked in Manhattan and then in San Francisco on
2 rodent control programs associated with Public
3 Works in San Francisco and Central Park in
4 Manhattan.

5 Q And do you intend to employ that
6 expertise at this establishment?

7 A Very much so.

8 Q Great.

9 MR. KLINE: I have no further
10 questions of this witness.

11 CHAIRPERSON ANDERSON: Mr. Loots?

12 MR. LOOTS: I just have a couple
13 questions.

14 CROSS-EXAMINATION

15 BY MR. LOOTS:

16 Q A question was deferred to you as to
17 the surface of the outdoor area. And I believe
18 it is going to be some sort of gravel. Is that
19 correct?

20 A It's a stabilized crushed stone.

21 Q Okay. Is there a way to remove
22 organic materials from stabilized crushed stone

1 in a manner that -- you know, like if you
2 powerwashed concrete, there are ways you can
3 clean debris and organic material still. Is
4 there a way to clean that from the stone?

5 A What do you mean by organic material?

6 Q Well, if somebody spills their
7 hamburger, spills their pasta. I don't know what
8 they are eating, possibly popcorn, you know.

9 A Yeah, it's a stabilized stone product,
10 so we add a binder to it that makes it -- the
11 best way to describe it is asphalt without the
12 tar. So it is fine grained stone that has a
13 polymer or another organic ingredient applied to
14 it that makes it a stable surface.

15 So you can still wash it. You can
16 sweep it. You can rake it. You can use a
17 flaming torch on it and you can sterilize it.

18 Q And are -- is it your intention to on
19 a daily or nightly basis take steps to remove any
20 spilled food or grease?

21 A Yes, we will be washing it down every
22 night. You can absolutely hose that thing, hose

1 that surface off.

2 MR. LOOTS: I have no other questions.

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

5 Hearing none, thank you for your
6 questions.

7 THE WITNESS: Thank you.

8 CHAIRPERSON ANDERSON: Thank you for
9 your testimony.

10 You can step down.

11 (Whereupon, the witness was excused.)

12 CHAIRPERSON ANDERSON: Does the
13 protestant -- I'm sorry, does the applicant rest?

14 MR. KLINE: We move Exhibits 1, 3, 5,
15 6, 7, 8, 9 and 11.

16 MR. LOOTS: Yes, I --

17 CHAIRPERSON ANDERSON: Hold on. 1, 3,
18 5, 6? Go ahead, Mr. Kline.

19 MR. KLINE: 1, 3, 5, 6, 7, 8, 9 and
20 11.

21 CHAIRPERSON ANDERSON: Yes, sir?

22 MR. LOOTS: I object to Exhibit, and

1 let me make sure I've got the right one here, No.
2 9.

3 MR. KLINE: I did not move that.

4 MR. LOOTS: You did not move that.

5 Okay. Well, then I don't.

6 CHAIRPERSON ANDERSON: So 1, 3, 5, 6,
7 7, 8, 9, and 11 are so moved.

8 (Whereupon, the above-
9 referred to documents were
10 received into evidence as
11 Applicant Exhibit No. 1, 3,
12 5, 6, 7, 8, 9 and 11.)

13 MR. KLINE: And then I would ask the
14 Board to take administrative notice of the fact
15 that the entire block is in the MU-4 Zone. It is
16 not addressed by the Investigator's report. He
17 references the zone of this particular property,
18 but I'm asking the Board to take administrative
19 notice that the entire block of 5th Street, 6th
20 Street and R, that the block bounded by those
21 streets and Rhode Island is all zoned MU-4.

22 CHAIRPERSON ANDERSON: What does that

1 mean, Mr. Kline?

2 MR. KLINE: That is Mixed-Use Zoning.

3 MR. LOOTS: The R standing for
4 residential?

5 CHAIRPERSON ANDERSON: I'm just saying
6 your mathematic, Mr. -- for the record --

7 MR. KLINE: It's MU-4, there is no R.

8 CHAIRPERSON ANDERSON: All right.

9 MR. KLINE: It's MU-4.

10 MR. LOOTS: Okay.

11 CHAIRPERSON ANDERSON: All right.

12 Okay.

13 MR. KLINE: Mixed-Use.

14 CHAIRPERSON ANDERSON: Okay. All
15 right. Thank you.

16 MR. KLINE: And we will leave it to
17 argument as to what it means.

18 CHAIRPERSON ANDERSON: All right. All
19 right. It's 4:48, we will take --

20 MR. KLINE: Without regress.

21 CHAIRPERSON ANDERSON: All right. All
22 right. Thank you. Okay. We will take a 10

1 minute break and at 5:00, we will --

2 MR. LOOTS: We're good.

3 CHAIRPERSON ANDERSON: -- you still
4 have your four witnesses?

5 MR. LOOTS: Yes.

6 CHAIRPERSON ANDERSON: Okay.

7 MR. LOOTS: I'll count. I am hoping
8 I still do.

9 CHAIRPERSON ANDERSON: Okay. Fine.
10 So 5:00 we will do your case. All right. Thank
11 you.

12 (Whereupon, at 5:00 p.m. the Protest
13 Hearing continued into the evening session.)

14 CHAIRPERSON ANDERSON: Okay. We are
15 ready.

16 Do you have a witness you want to
17 call?

18 MR. LOOTS: Yes. We call LeRoy
19 Thorpe.

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

1 LEROY THORPE

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

6 MR. THORPE: (No audible answer.)

7 CHAIRPERSON ANDERSON: I didn't hear
8 you, sir.

9 MR. THORPE: I do.

10 CHAIRPERSON ANDERSON: All right.
11 Thank you. Have a seat. Your witness.

12 DIRECT EXAMINATION

13 BY MR. LOOTS:

14 Q Good afternoon, Mr. Thorpe. Could you
15 state your home address for the record, please?

16 A 1704 5th Street, N.W., Washington,
17 D.C.

18 Q And how long have you lived at that
19 address?

20 A 39 years.

21 Q How long have you lived in the
22 District of Columbia?

1 A Oh, wow, probably about 40, 42.

2 Q Okay. Have you lived continuously at
3 that address since you moved in?

4 A I lived in the Shaw community since
5 1980. And at that particular address 1998 I
6 bought a house, so there in '98 I moved from
7 Marion Street.

8 Q And do you own that house, sir?

9 A Yes, yes.

10 Q Okay. Who also lives at that house
11 with you?

12 A My wife of 14 years and our 11 year-
13 old daughter.

14 Q Okay. Aside from just living in the
15 neighborhood, have you been active in community
16 affairs in the Shaw neighborhood?

17 A Absolutely. I was the ANC
18 Commissioner for 18 years serving two of the
19 years as the Chairman for ANC-2C, at the time,
20 prior to redistricting. I am also the pioneer of
21 the Citizen Patrol Group Movement in the city.
22 We got a group called citizen organized patrol

1 efforts known by Red Hats.

2 And which is still in operation. It
3 was founded in Shaw, still in operation, work
4 very closely with the Police Department. And I'm
5 also the president of the East Central Civic
6 Association, an Historic African-American Civic
7 Association founded in 1947. Due to segregation
8 in Washington, D.C. where white people had
9 associations and blacks weren't allowed to
10 operate or join, so they started the civic
11 associations.

12 So the ECC was very instrumental in
13 1968 calming the riots in Shaw on 7th Street
14 regarding the assassination of Martin Luther
15 King. And I currently serve as the president.

16 Q In your time living at your current
17 address, have you experienced changes in the
18 neighborhood?

19 A Absolutely.

20 Q Can you, very briefly, describe some
21 of the changes that have come to pass?

22 A Well, you know, displacement of

1 African-Americans through increased real estate
2 values, commercial property along 7th Street
3 pushing people out of the community. Amenities
4 that is for new coming or incoming people in the
5 District, bike lanes, school playgrounds usually
6 reserved for families and kids converted to dog
7 parks. And bike lanes and the closing down of
8 black-frequented clubs to accommodate the beer
9 gardens.

10 Q Okay. Specifically with respect to
11 crime, looking at your neighborhood today, would
12 you say the crime situation is better or worse
13 than it was five years ago?

14 A It's definitely better. I mean, you
15 know, I hit the streets back in '88, closing down
16 52 documented crack houses in Shaw. In fact, I'm
17 the guy that made it possible for more of the new
18 residents to come in and also to have business
19 and have their house.

20 Prior to that, they wouldn't come pass
21 the work, we don't go east of 16th Street. But
22 in the last past five years, I mean, you know,

1 it's a piece of cake compared to what it was back
2 in the 1980s, the 1990s and early 2000s.

3 Q I don't know if you heard earlier when
4 the applicant testified that one of the things
5 they hoped to improve is to reduce crime by the
6 proposed establishment. Do you have an opinion
7 on that?

8 A Absolutely. It's going to increase
9 crime and I'll tell you why. You're going to
10 have, you know, me just from experience in
11 looking at the other beer establishments in the
12 city, probably public lewdness in the alley. You
13 know, I can look out my back door/window, my back
14 door, my kitchen window, my back porch, my
15 daughter's window is directly looking over the
16 site and even my bathroom.

17 I can envision public lewdness in the
18 alley, urination, public drunkenness and the
19 adjacent apartment building is located at the
20 Westmoreland community robbing some of these
21 people. Late at night incapacitated and robbing
22 them. That's what I envision. And I'm pretty

1 sure it's going to happen.

2 Q Let me ask you this question. I
3 should have asked previously.

4 MR. LOOTS: May I approach the
5 witness?

6 BY MR. LOOTS:

7 Q If you could use this laser pointer,
8 what we've got is a blowup there of what has been
9 marked, the Board has copies, as Exhibit 2, which
10 is an aerial representation of the area.

11 (Whereupon, the above-
12 referred to document was
13 marked as Protestant Exhibit
14 No. 2 for identification.)

15 BY MR. LOOTS:

16 Q Where is the area? You may have to
17 get a little closer. But this would be the
18 proposed establishment right there. But I was
19 hoping you could identify that, where your house
20 is. Maybe you can locate it.

21 A Right there.

22 MEMBER SILVERSTEIN: If you are going

1 to talk, you are going to have to be by a
2 microphone providing the evidence.

3 MR. LOOTS: If it's easier for him
4 just to walk over and point at it and come back,
5 that works, too.

6 THE WITNESS: Yeah, I'm directly right
7 back there. I'm directly in the alley behind the
8 proposed establishment.

9 BY MR. LOOTS:

10 Q Okay. So it is your --

11 A Directly.

12 Q -- does your property physically abut
13 the proposed establishment?

14 A Absolutely. I mean, open up my gate,
15 I'm right there.

16 Q And you have windows in your house
17 that overlook the proposed establishment?

18 A Absolutely. My second floor -- look
19 out the restroom, I can look right into the
20 property. I see the bus and part of the
21 establishment location which really -- you know
22 what, nobody asked the question, it encompasses

1 320 square feet.

2 I can see it from my second floor
3 bathroom. I can also see from my second floor
4 daughter's bedroom into the establishment. My
5 back porch and my kitchen.

6 Q How many other -- currently use
7 residential properties are directly adjacent to
8 the proposed establishment?

9 A Contrary to testimony, there is more
10 than two and that tells me that they didn't do
11 their outreach to the community. You had 1700
12 Block of 5th Street, N.W., which is a Jamaican
13 family.

14 You have 1702 5th Street, which is the
15 current ANC Commissioner Mike Brown's property.

16 You got 1704 5th Street, which is my
17 property.

18 And you have 1706 5th Street, all
19 African-American impacted townhouses.

20 Q Okay. And with respect to the
21 neighborhood generally, would you characterize
22 this current use as primarily residential or

1 primarily commercial?

2 A Primarily, you know, residential. You
3 know, you have -- you know, you already had some
4 longstanding steps with the liquor store right
5 there at 5th and Rhode Island. Then you got two
6 restaurants, the carryout Chinese restaurant at
7 1703 6th Street and 1701 6th Street.

8 We have that establishment, the Red
9 Toque, I believe, so it's basically residential.

10 Q Okay. Your testimony earlier, I
11 believe, that the -- one of the -- that some of
12 your neighbors support this establishment is that
13 it removes an eyesore and it fills an empty lot.
14 How do you feel about that?

15 A It's an eyesore right now and a public
16 nuisance because the owner has been taking down
17 debris from the bus and throwing it on the lot,
18 cutting down trees and not removing it, which is
19 a public nuisance and eyesore.

20 Prior to that, the lot was vacant.
21 There was no glass or no crime on it, just a
22 vacant lot. Now, it's a public nuisance right

1 now and I wish the proprietor would clean up
2 after he is finished doing whatever he has to do.
3 With all the debris that is there right now, it's
4 really -- it's an eyesore.

5 Q Is the -- do you believe the proposed
6 establishment will solve that problem?

7 A No, I don't, because I don't --
8 because the reason I don't is because I'm
9 listening to the testimony. They didn't even
10 know that there was four African-American
11 families directly impacted through the alley.

12 Not only that, they didn't do canvas,
13 they didn't canvas the area. Then when I invited
14 them to the ECCA, they got voted down. They had
15 a chance to talk to -- and they had talked to
16 many of the people impacted at our meeting, the
17 civic association, including the chairman of the
18 ANC, Alex Marriott, and the current 6E02
19 Commissioner Mike Brown.

20 I invited them back again in April.
21 Mr. Schwartz never responded back, because he got
22 his hind part handed to him at that meeting

1 regarding the opposition to the project.

2 Q And again, just for clarity of the
3 record, your -- that organizational meeting was
4 held when?

5 A That was held, I believe, it was
6 March. March of this year.

7 Q March of 2019?

8 A Yeah, yes.

9 Q And approximately how many people
10 attended that meeting?

11 A Probably about 30 or 40 people.

12 Q And of those 30, 40 people, was there
13 a consensus of support or opposition?

14 A Oh, opposition. Clearly in
15 opposition, including the 3rd District Police
16 Sergeant Stephen Curry with the EDR, so we talked
17 about how that establishment is going to have a
18 lot of problems based on other beer gardens in
19 the city that are -- that have and are currently
20 causing problems.

21 Q So if the license were to be granted
22 as requested and as requested, that will be with

1 an entertainment endorsement, open until 2:00
2 weekdays and 3:00 on weekends.

3 What impact would that have on your
4 life?

5 A You know, let me just say when I
6 bought that house, I bought that house because it
7 is located in a nice, stable area.

8 MEMBER SHORT: Closer to the mike,
9 please.

10 THE WITNESS: It's quiet.

11 MEMBER SHORT: Closer to the mike.

12 CHAIRPERSON ANDERSON: Thank you.

13 THE WITNESS: Thank you. I apologize.

14 When I bought the house in 1990, I said okay,
15 this is a nice spot here. I've got off-street
16 parking, I can park my car relatively not that
17 bad, although I had to shutdown a couple of open
18 air drug markets to be able to make it safe.

19 But that establishment with the noise
20 level it's going to be very, very, very
21 devastating, not just affecting the four
22 properties behind the facility, but it is also

1 going to be devastating to those folks that live
2 even in the 600 Block of Rhode Island Avenue and
3 even further up, because you are going to have
4 lots of crowds standing out there probably going
5 around the corner to get in, like the desk
6 guards.

7 The noise is going to be just
8 unbearable. There is something that I'm looking
9 forward to just really tracking, documenting so I
10 can get the license taken away if it's granted,
11 because they are not going to be able to control
12 that noise. It's just going to be too much. And
13 I'm just worried about my daughter. She is an 11
14 year-old, good student, a good person, being able
15 to concentrate on her studies and myself and my
16 wife, who both work on getting a good night's
17 sleep. I mean, it's going to be devastating.

18 Q Well, focus specifically on your
19 daughter, what would the effect of having loud
20 noise and live music after 10:30 at night?

21 A Oh, I mean, she is going to definitely
22 be affected. I mean, right now, you know, 10:00

1 at night you don't hear the noise. I mean, you
2 hear from time-to-time a fire engine or something
3 like that, but the noise you can sleep. You
4 know, I could have my windows up, fresh air
5 coming in, no noise.

6 But with this establishment coming
7 there, it's going to be devastating. I mean,
8 it's going to not just affect the people like us
9 on 5th Street, it's going to be R Street, Rhode
10 Island Avenue. These folks that supported it,
11 are going to be in for a wide awakening when the
12 establishment open up. Trust me.

13 Q Do you drive a car?

14 A Yes.

15 Q Okay.

16 A I'm also concerned about parking.

17 Q Okay.

18 A Because I park in the back of my
19 house. I don't use the public street parking,
20 although I have a permit parking for the ward.

21 I'm concerned about the delivery
22 services coming there or the trash service coming

1 there and then I can't really -- I had the
2 liberty to go and come as I pleased with their
3 back -- they have a back gate right there that is
4 adjacent right to my house.

5 Q Do you have an opinion as to the
6 effect that the proposed establishment will have
7 on street parking in your neighborhood?

8 A (Laughing) On-street parking there is
9 wishful thinking, because you talk about the
10 street parking right now, it's -- from early
11 testimony, there is really no street parking. I
12 mean, because you have other people coming in and
13 parking and there is not going to be no on-street
14 parking. Actually, it's over-crowded right now.
15 If this was you, which would you --

16 Q Do you have an opinion on what you
17 believe may happen to your home value?

18 A Oh, absolutely. You know, I heard
19 earlier testimony say that property value --

20 MR. KLINE: Objection as to his

21 THE WITNESS: -- is going to --

22 CHAIRPERSON ANDERSON: Hold on, hold

1 on. Hold on, Mr. Thorpe.

2 THE WITNESS: Yes.

3 MR. KLINE: He is not qualified as an
4 expert to testify about that.

5 CHAIRPERSON ANDERSON: Well, I mean,
6 I'll take it for what it -- I'm going to overrule
7 the objection. I'll just take it. Based on his
8 home value, he can give his opinion of what he
9 thinks that --

10 THE WITNESS: Okay. Thank you.

11 CHAIRPERSON ANDERSON: -- will affect
12 the home value.

13 THE WITNESS: That's one reason --
14 thank you, Mr. Chairman. That's one of the
15 reasons why I bought the house is because a nice
16 quiet area, just had to knock out that open air
17 drug market and I could see my property value
18 increasing. It's going to decrease. Who is
19 going to want to live around -- I bet you people
20 start moving also.

21 Who is going to live in an area like
22 that with all that loud noise? All the in

1 communing on the street, people hanging out,
2 people who are publicly drunk. I mean, it's
3 going to decrease my property value, absolutely.

4 BY MR. LOOTS:

5 Q It's kind of implicit, do you oppose
6 the proposed project?

7 A Absolutely. I'm not, you know, I
8 certainly, you know, 2:00 -- operating 12:00,
9 2:00, 3:00, even 10:30 is going to be devastating
10 for us with that loud noise coming and all that
11 traffic. I oppose the project period with
12 knowing how -- I oppose the project period. I'll
13 keep their private -- the other thing to myself.
14 But I oppose. I do.

15 And there is a lot of people that
16 oppose it that don't have the money or the time
17 to come here, because of child care. I have
18 somebody right now picking my daughter up from
19 after care. There is a lot of people who say
20 they can be here, but they don't have the liberty
21 of having the finances to get here or child care
22 to get here. And that's just the norm, that's

1 how it is in the society.

2 You know, some people entitled and
3 some people are not.

4 Q Okay.

5 MR. LOOTS: I have no further
6 questions for this witness.

7 CHAIRPERSON ANDERSON: Mr. Kline?

8 CROSS-EXAMINATION

9 BY MR. KLINE:

10 Q MR. Thorpe?

11 A Yes, sir.

12 Q These people that couldn't be here, it
13 wouldn't cost them anything to write a letter to
14 the Board and express their concerns, would it?

15 A I can't say that, because these people
16 probably work all day, they are tired. Then many
17 of them probably don't even understand the
18 process to get here. A lot of our elected
19 officials, Mr. Kline, are not informing the
20 community of a lot of these projects.

21 You know, a lot of them probably don't
22 even know, some of them probably don't even know,

1 I'm pretty sure a lot of them probably don't even
2 know, because of the lack of our representation.

3 Q Your --

4 A And those that do know are inundated
5 with taking care of the kids or coming home
6 cooking. They might be on a tight budget, they
7 can't get here. And writing a letter maybe a lot
8 of them don't even know the process.

9 Q All right. But you are a community
10 representative, correct?

11 A Absolutely.

12 Q You are the president of --

13 A The ECCA.

14 Q -- the ECCA?

15 A Yes, sir.

16 Q And as president of the ECCA, you
17 could have easily assisted them in communicating
18 their concerns to the Board, correct?

19 A As president of the ECCA, I do, I did
20 have a meeting where 40 people --

21 Q But you're not being responsive to my
22 question.

1 A -- which is -- well, I am answering
2 your question the best way I can. I mean, you
3 know, I even --

4 Q The two of us --

5 CHAIRPERSON ANDERSON: Hold on, hold
6 on, hold on. Mr. Kline, allow him to answer the
7 question. Mr. Thorpe, be responsive to the
8 question. So, Mr. Kline?

9 MR. KLINE: Yes.

10 CHAIRPERSON ANDERSON: Let's start
11 again. Please, re-ask the question.

12 MR. KLINE: Yes.

13 BY MR. KLINE:

14 Q As a community assistant and a
15 community representative, could you have assisted
16 residents who had concerns in writing a letter to
17 the Board expressing their concerns?

18 A And, sir, I facilitated those
19 residents by having a meeting. And myself, I
20 even wrote a letter to the Board that got lost.
21 I even wrote a letter to the Board that got lost
22 and the only reason I'm testifying today is

1 because the ANC Commission is using me as a
2 witness. I even wrote a letter.

3 Q So --

4 A Either way, the letter got here.

5 Q -- is it your testimony that you
6 couldn't have assisted them? Because that's the
7 question, could you have assisted them in doing
8 that?

9 A I assisted the best way I can. I had
10 a meeting. I brought --

11 Q All right.

12 A -- the proprietor to the meeting. The
13 residents voted against the project.

14 Q All right.

15 A I think I did my due diligence.

16 Q Your house is actually adjacent to the
17 alley, which separates your house from where this
18 is going to be located, correct?

19 A Right.

20 Q All right. So it's not adjacent to
21 the business. It's adjacent to the alley.

22 A It's adjacent to the business. The

1 alley is basically separated, but it's basically
2 right there. I'm right behind the establishment.
3 I'm right behind their gate on the east side of
4 the project.

5 Q All right. Now you --

6 A Going towards 5th street.

7 Q -- mentioned a number of changes in
8 the community that you have witnessed. And you
9 mentioned that this establishment represents part
10 of that trend, correct?

11 A Yeah, it does.

12 Q And that includes increased real
13 estate values, doesn't it?

14 A No.

15 Q It doesn't?

16 A Normally not and I can also say that
17 this establishment is a polarizing establishment.
18 People are coming -- you are going to find 3
19 percent of people who come there are attending
20 these type of establishments.

21 MR. KLINE: Move to strike.

22 Completely unresponsive to the question.

1 THE WITNESS: I answered it.

2 CHAIRPERSON ANDERSON: Let's move on.

3 BY MR. KLINE:

4 Q Now, you said who is going to want to
5 live in this neighborhood with all that noise.

6 That was your testimony, correct?

7 A Absolutely.

8 Q Are you familiar with this
9 neighborhood?

10 A This neighborhood here?

11 Q Where you are located right now at
12 2000 14th Street?

13 A I'm not -- I'm somewhat familiar with
14 it.

15 Q You have lived in D.C. 40 years.

16 A Yeah, but I don't hang up here.

17 Q So you --

18 A I don't frequent this neighborhood to
19 know what's in it because I'm not one that is out
20 during the night frequenting clubs and whatever
21 it is. I mean they got restaurants up here and
22 that type of thing, but I don't frequent this

1 neighborhood. I stay in my own neighborhood or I
2 go around my own -- the places that I like to
3 hang out, which is the Mosques.

4 Q Okay. But isn't it true that people
5 have not fled this particular neighborhood?

6 A I don't know, because I told you I
7 don't know because I don't know. I don't
8 frequent -- I don't know. I answered the
9 question.

10 Q Okay.

11 A I don't know.

12 Q Mr. Thorpe, you have a long history of
13 civic engagement, which I think we all respect.
14 Isn't it true that part of that has been to
15 oppose all ABC licensed applications?

16 A Not at all.

17 Q On religious grounds?

18 A No. Not at all. Let me just tell you
19 that when you look at the Queen of Sheba
20 Restaurant, I abstained from that.

21 Q You abstained?

22 A Yes, sir.

1 Q Have you ever voted in support of an
2 ABC licensed establishment?

3 A Never.

4 Q Never?

5 A Never.

6 MR. KLINE: No further questions.

7 CHAIRPERSON ANDERSON: Any questions
8 by the Board? Mr. Short?

9 MEMBER SHORT: Mr. LeRoy Thorpe?

10 THE WITNESS: Yes, sir.

11 MEMBER SHORT: Thank you for the work
12 you have done in the community and for
13 Washington, D.C., District of Columbia. I do
14 know that you were recognized by several Police
15 Chiefs and other community groups for the work
16 you do in making and help keeping that
17 neighborhood stabilized at one of the worst times
18 in the District's history.

19 THE WITNESS: Yes, sir.

20 MEMBER SHORT: And so I just wanted to
21 recognize that. But I really would like to ask
22 you, sir, with the neighborhood changing and what

1 has changed, what could happen to make businesses
2 like this one acceptable to you? Is there
3 anything that could happen to make it acceptable?

4 THE WITNESS: Well, let me just say
5 this to you. You know, I can appreciate the
6 counselor claim -- question, because I dealt with
7 him before and he has always been respectful and
8 I have always been respectful to him.

9 Let me just say I am compelled by my
10 religion not to support or come close to alcohol.

11 However, I can say that if -- that you
12 guys have responsibility, I'm glad it's not me
13 because I would be -- I couldn't sit on this
14 Board, but you guys have the responsibility, the
15 question you asked and you have that
16 responsibility, you can basically make sure that
17 this establishment has the proper installation so
18 it does not impact the quality of other people's
19 lives that living here.

20 You guys also have the power to make
21 sure that the hours are kept at a minimum. I'm
22 just looking, putting myself in your -- you know,

1 somebody's shoes that is not me, because I told
2 you I don't support the establishment.

3 So your responsibility would have, I
4 would assume, somebody would assume that minimum
5 hours, installation that is not going to affect
6 the quality of life, the peace, break the peace,
7 the sound, security and, you know, that was that.

8 You know, if I wasn't a Muslim, I --
9 that's what I would be concerned about.

10 MEMBER SHORT: Okay. Well, thank you
11 very much for your --

12 THE WITNESS: Yes, sir. Yes, sir.

13 MEMBER SHORT: -- answer.

14 THE WITNESS: Yes, sir.

15 MEMBER SHORT: And that's all I have,
16 Mr. Chair.

17 THE WITNESS: Yes, sir.

18 MEMBER SHORT: Thank you very much.

19 THE WITNESS: Yes, sir.

20 CHAIRPERSON ANDERSON: Any other
21 questions? Yes, Mr. Silverstein?

22 MEMBER SILVERSTEIN: Mr. Thorpe, I

1 hear you especially regarding gentrification.
2 And I hear you regarding your faith, compelling
3 you to oppose or never support such an
4 application.

5 What Mr. Short was asking,
6 essentially, and I'll put it in another way, what
7 would make this tolerable for you?

8 You say proper insulation or proper
9 sound mitigation and the power to make sure the
10 hours are set at a minimum and security.

11 What do you mean by security?

12 THE WITNESS: Sir, let me just say
13 first of all, you didn't hear me correct. I said
14 that as a Muslim, I would never tolerate projects
15 like this. I would never be in support.

16 I said if I was not a Muslim, I would
17 be concerned about the three issues I named.

18 MEMBER SILVERSTEIN: Right.

19 THE WITNESS: And that you guys had
20 the responsibility. So you know, I could never--
21 you know, when you start talking about the
22 security, I mean, look you have those people that

1 is going to be -- and look, I'm just giving you a
2 hypothetical situation here, which I believe is
3 going to become a reality.

4 Those folks that is going to be
5 drinking in an establishment like this, leaving
6 the establishment, I don't care if it's 10:00,
7 11:00, when you look at that particular area and
8 you look at the housing, the poor folks that live
9 in Westmoreland and some of them just living over
10 there in LeDroit Park, they are going to be
11 coming over here looking for these folks, even
12 7th Street, they are going to be coming over here
13 looking for opportunities to rob these folks.

14 And I said the same thing regarding
15 the Be Bar, which closed down. I said the same
16 thing, Mr. Kline, they shut down and people got
17 shot robbing everything. It's going to happen
18 again right here.

19 Okay. They are going to need the
20 security. The only type of security you're going
21 to have -- you are going to need right there is
22 something that they can't afford to pay for.

1 They are not going to afford to pay for it, the
2 security that they need in the establishment like
3 this.

4 Them folks are going to tell those
5 folks they can't control it. It's human
6 behavior. They are going to come out there, some
7 of those folks are going to be intoxicated. Some
8 of those folks are going to be right there
9 talking to people they don't know, they are going
10 to get robbed.

11 Some of those folks are going to be
12 walking around the community throwing up, you
13 know, throwing up from that alcohol.

14 Some of those people are going to be
15 going to the alleys to relieve themselves. And
16 it's just going to -- it's that type of, I guess,
17 deplorable type of behavior that comes with the
18 association with alcohol, consumption of alcohol.
19 Particularly when you drink too much.

20 MEMBER SILVERSTEIN: Okay. Well, in
21 terms of insulation, we can mandate certain
22 things. In terms of hours, we can limit the

1 hours. In terms of security, what steps are you
2 asking of us? What you are telling us is a
3 litany of problems.

4 I'm asking if you have any
5 suggestions?

6 THE WITNESS: You know what, I'm not
7 going to even help. I'm not going to give you no
8 helpful suggestions regarding the security,
9 because I oppose the project. I'm just going to
10 sit back and let Allah do his will and all those
11 folks just engaging in alcohol and all those
12 folks that is breaking the peace and causing harm
13 to the people that want a drug-free safe and
14 clean community, noise-free, I'm just going to
15 let that take its course.

16 I'm not going to help you by giving
17 you some suggestions on how to increase security
18 for alcohol, because I'm a Muslim. And I would
19 never do that. And the angels are writing this
20 down as a witness because on the Day of Al-
21 Qiyamah, the Day of Judgment, I want to be right
22 there to say that I didn't support this.

1 So I would never help you in terms of
2 trying to -- how to increase security for an
3 establishment like this, which is deplorable,
4 immoral and un-Godly and not even divine.

5 MEMBER SILVERSTEIN: Thank you. No
6 further questions.

7 CHAIRPERSON ANDERSON: Any other
8 questions by any Board Members? Mr. Loots?

9 MR. LOOTS: Nothing here.

10 CHAIRPERSON ANDERSON: Mr. Kline?

11 MR. KLINE: Nothing further.

12 CHAIRPERSON ANDERSON: Mr. Thorpe,
13 thank you very much for your testimony.

14 THE WITNESS: And let it be written,
15 let it be said.

16 CHAIRPERSON ANDERSON: Thank you.

17 (Whereupon, the witness was excused.)

18 CHAIRPERSON ANDERSON: Do you have
19 another witness?

20 MR. LOOTS: Yes. We call William
21 McQuillen.

22 CHAIRPERSON ANDERSON: Mr. McQuillen,

1 can you raise your right hand, please?

2 Whereupon,

3 WILLIAM McQUILLEN

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

8 MR. McQUILLEN: Absolutely, I do.

9 CHAIRPERSON ANDERSON: All right.

10 Thank you. Your witness.

11 DIRECT EXAMINATION

12 BY MR. LOOTS:

13 Q Mr. McQuillen, can you state your full
14 name and address, please?

15 A William McQuillen. I live at 1526 5th
16 Street, N.W., in Washington, D.C.

17 Q And where is that address in relation
18 to the proposed establishment?

19 A Two blocks south. Although, I just
20 want to add I moved three months ago from 427 R
21 Street, which is one block from the
22 establishment.

1 Q Okay. So you are familiar with the
2 neighborhood?

3 A Yes.

4 Q Is that fair to say?

5 A Absolutely, yes.

6 Q Who do you live with at that address?

7 A With my wife and my 5 year-old
8 daughter.

9 Q Okay. Do you have a position with
10 respect to the application that is before us
11 today?

12 A Yes, I oppose it.

13 Q Okay. Why do you oppose it?

14 A Multiple reasons. A lot of them have
15 been discussed here today. One is parking, one
16 is safety, one is home values and the last one I
17 think that for Mr. Thorpe, the -- it would become
18 unconscionable what they would do to the houses
19 on that block just ruining the values of it.

20 Q Mr. --

21 A Providing noise here.

22 MR. KLINE: Mr. Chairman, this witness

1 is not on any witness list.

2 MR. LOOTS: Yes, he is. He was
3 identified by his wife's name. Originally, it
4 was going to be either --

5 THE WITNESS: I understand.

6 BY MR. LOOTS:

7 Q To be clear, who is your wife?

8 A My wife is Ms. Argetsinger, is my
9 wife.

10 Q Okay. And I had identified one or the
11 other, but not both of them.

12 CHAIRPERSON ANDERSON: Hold on.

13 THE WITNESS: We have different last
14 names, it confuses people.

15 MR. LOOTS: I bet it does.

16 CHAIRPERSON ANDERSON: Hold on, hold
17 on.

18 MEMBER SILVERSTEIN: How do you spell
19 your last name?

20 CHAIRPERSON ANDERSON: What was -- I'm
21 sorry, what's the name that is on the witness
22 list?

1 MR. LOOTS: The name that is on the
2 witness list is -- well, here you can spell it.

3 THE WITNESS: It's A-R-G-E-T-S-I-N-G-
4 E-R.

5 CHAIRPERSON ANDERSON: I have Bill and
6 Amy and I'm not going to try to --

7 MR. LOOTS: I think that's her last
8 name.

9 MEMBER SILVERSTEIN: Argetsinger?

10 MR. LOOTS: Yes, that's the last name.

11 CHAIRPERSON ANDERSON: And what's the
12 address?

13 THE WITNESS: 4 -- 1526 5th Street,
14 N.W.

15 CHAIRPERSON ANDERSON: Mr. Kline?

16 MR. KLINE: I mean, I would expect
17 that we would have the right names of the
18 witnesses on the list, I mean.

19 CHAIRPERSON ANDERSON: So what is --

20 MR. KLINE: I think it's only fair.

21 CHAIRPERSON ANDERSON: All right.
22 What is your name, sir?

1 THE WITNESS: William McQuillen, M-C-
2 Q-U-I-L-L-E-N.

3 CHAIRPERSON ANDERSON: And who is
4 Amy --

5 THE WITNESS: That is my wife.

6 CHAIRPERSON ANDERSON: How do you
7 pronounce the last name?

8 THE WITNESS: Argetsinger.

9 CHAIRPERSON ANDERSON: It appears that
10 it is the same person, Mr. Kline, with just the
11 name is incorrect. So I will allow the witness
12 to testify, because it's the correct address.
13 It's Bill rather than William, but I think that
14 it's the same witness with just an incorrect
15 name, so I'll allow it.

16 MR. KLINE: I wasted all that money on
17 a public investigator on the wrong name.

18 (Laughter)

19 CHAIRPERSON ANDERSON: Mr. Kline. All
20 right. Go ahead, sir.

21 THE WITNESS: All right. Thank you.

22 BY MR. LOOTS:

1 Q In any event, looking more
2 specifically at the objections you have, what is
3 it about parking that concerns you?

4 A It's already tough enough to find a
5 place to park. Throughout the neighborhood it
6 has gotten busier on R Street specifically just
7 in the past couple of years, a couple of -- a few
8 years.

9 Another condo building popped up,
10 which took a lot more of the parking, so it's not
11 uncommon especially in the evening to be circling
12 the block, parking further away, you end up on
13 New Jersey Avenue and waking up early in the
14 morning to move your car before it becomes rush
15 hour. It's just there is not enough parking
16 spaces right now for the people who live there
17 already, must less commerce.

18 Q The Board heard earlier from the ABRA
19 Investigator who testified that much of the
20 parking surrounding the proposed premises is
21 restricted to zone parking. How does that affect
22 your personal use of the parking space, if there

1 is a four hour limit for people who are not in
2 the zone?

3 A It just takes more away from it. And
4 frankly, it would keep our people getting tickets
5 busier, because they stay very active in our
6 neighborhood. But there is more people coming
7 into the neighborhood who don't live there and
8 use up the spaces. There is just fewer for the
9 residents.

10 Q Okay. Is the equation slightly
11 different if the establishment stays open until
12 midnight, 2:00, 3:00 in the morning?

13 A I don't think there would be much of
14 a chance of me going to move my car to a legal
15 parking space at 3:00 in the morning once the bar
16 crowds leave, so I don't think it -- the timing
17 changes much.

18 Q In other words, if a space were to
19 open up at 2:00 or 3:00 in the morning, that
20 doesn't, you know, do you no good?

21 A It might help somebody, but not me
22 certainly.

1 Q Okay. You had mentioned as one of
2 your concerns noise.

3 A Um-hum.

4 Q Can you elaborate on that?

5 A Sure. And I think for the houses
6 directly by it, there is just a constant mummer
7 that sometimes you have there. I mean, these are
8 houses, you know, rowhouses in Shaw and I can
9 think about where I live where I can be sitting
10 in my backyard or as Mr. Thorpe testified, I'll
11 literally be in my daughter's room and somebody
12 is having a cookout two yards down and I can hear
13 every bit of that conversation. They are all so
14 close to each other that a little bit of
15 conversation, a little bit of music carries a
16 long way and ends up into people's houses,
17 especially if the window is open.

18 Q If this license were granted and there
19 were 225 people at the proposed establishment, do
20 you believe you would be able to hear that at
21 your home?

22 A I don't know that. I have not seen

1 any sort of testing along those lines. People
2 have spoken quite a bit about Dacha, which is
3 three or four blocks away, I don't hear that from
4 where I currently live, so I can't speak to
5 whether I would hear anything from there. A
6 couple blocks is a good amount of distance, but
7 the -- I just don't know.

8 Q You also mentioned crime as a concern.

9 A Yes.

10 Q In what way is that a concern?

11 A Well, it's more safety is my concern.

12 And this is -- I know we have had a lot of people
13 who have come and spoken about the -- where
14 people are coming and people are going.

15 Comparing this to Dacha with its very small
16 sidewalks, the people are walking by, you have a
17 queue there. People are walking on the street.

18 I know I have spent a lot of time
19 pushing a baby stroller up and down that exact
20 same street. The safety that comes with that,
21 the safety of cars that race by there quickly,
22 especially at that corner with 5th where you see

1 cars all the time kind of whipping around onto
2 Rhode Island Avenue, it's just having a big crowd
3 of people there and not much room on the
4 sidewalk. Something like that worries me.

5 Q And finally, you mentioned home value
6 was another concern?

7 A Yes.

8 Q In what way does this proposed
9 establishment concern you for home values?

10 A Well, I would look at the further you
11 get away from it, I don't know what the value is,
12 but I think that for Mr. Thorpe and the people on
13 that block, I think there is no question that
14 there home value would go down.

15 And there you have that kind of effect
16 of the -- if that house value goes down, the
17 neighborhood other values go down and the price
18 points end up being a little bit different. I
19 don't know of anybody who wants to live right in
20 -- oh, I'm sorry, I don't know of a family who
21 wants to live in that area overlooking any sort
22 of place like a beer garden.

1 MR. LOOTS: I have no further
2 questions.

3 CHAIRPERSON ANDERSON: Mr. Kline?

4 CROSS-EXAMINATION

5 BY MR. KLINE:

6 Q Mr. McQuillen, are you familiar with
7 this neighborhood?

8 A Sure.

9 Q And you are aware of the number of
10 entertainment establishments that are in this
11 neighborhood?

12 A It seems like there is quite a bit,
13 yes.

14 Q Do you have any knowledge that home
15 prices have gone down in this neighborhood as a
16 result of the burgeoning of entertainment?

17 A I don't see a whole lot of families
18 walking around this neighborhood though. I see a
19 lot of -- and maybe I'm -- from where I'm
20 standing, I'm seeing a lot of people coming and
21 going from the bars. I'm seeing a lot of condos
22 and the one-bedrooms and the 500s. But as far as

1 the families, I don't think this is a place where
2 families want to live above a lot of these
3 restaurants here. Do you?

4 Q Have you been on T Street on the west
5 side of 14th Street and Swann Street on the south
6 side of 14th Street?

7 A Sure.

8 Q And you don't see families in those
9 locations?

10 A You're seeing fewer. You are seeing
11 fairly -- people moving away further from the
12 activity going on here.

13 Q And that's partially because those
14 people want to raise their children away from
15 entertainment and activity, correct?

16 A I would think they would want a
17 quieter place to raise kids, yes.

18 Q Right. But then there are plenty of
19 people that are willing to purchase their homes
20 at the prices that they list them for, correct?

21 A Well, I have not done a real estate
22 assessment of this area around here. I assume

1 people are buying them.

2 Q So your issue is not that home prices
3 will be negatively affected, your issue is the
4 composition of the people that live there,
5 correct?

6 A My concern is that families will not
7 want to be moving to these neighborhoods and it's
8 not an enticing place for a family to be raised.

9 Q Okay. But that's different than the
10 actual value of real estate, isn't it?

11 A Well, I don't think that's necessarily
12 true. For example, when I was recently sold a
13 house to move to where I was, it was important to
14 me to make sure that we were selling to a family,
15 because we enjoyed the community fabric we were
16 in.

17 We were willing to, from our
18 standpoint, make sure we were selling to a
19 family, rather than an air BNB or something which
20 is going to destroy the community fabric and kind
21 of lesser the value of what we thought was kind
22 of a rich neighborhood.

1 Q So if someone were willing to pay
2 more, you wouldn't have sold to them?

3 A No.

4 Q Do you have parking at your home?

5 A We do not.

6 Q Okay. Thank you.

7 MR. KLINE: I have no further
8 questions.

9 CHAIRPERSON ANDERSON: Any questions
10 by any Board Members? Thank you, sir, for your
11 testimony.

12 THE WITNESS: Thank you.

13 MR. LOOTS: Could I just ask one
14 question? I promise only one.

15 REDIRECT EXAMINATION

16 BY MR. LOOTS:

17 Q Mr. Kline proposed some hypotheticals
18 to you about, you know, what is happening in
19 other neighborhoods.

20 A Um-hum.

21 Q In your mind, it is a fact that this
22 proposed establishment is open air as opposed to

1 bricks and mortar business? Does that make a
2 difference to you in terms of its effect on the
3 neighborhood?

4 A Oh, absolutely it does. Yeah, there
5 are other restaurants and bars in the area which
6 are enclosed and that keeps the sound limited to
7 a certain area. And you can always close the
8 doors. It's a whole lot easier. It's the open
9 air aspect of it, which I think is really which
10 hurts the sound and, therefore, the neighboring
11 homes.

12 Q Okay. Thank you.

13 MR. LOOTS: No questions.

14 THE WITNESS: Thank you.

15 CHAIRPERSON ANDERSON: All right.

16 Thank you for your testimony, sir. You can step
17 down.

18 (Whereupon, the witness was excused.)

19 CHAIRPERSON ANDERSON: Do you have
20 another witness?

21 MR. LOOTS: I have two more witnesses.
22 I would like to call Mr. Alex Padro.

1 CHAIRPERSON ANDERSON: Padro. Well,
2 since we are being recorded, would you raise your
3 right hand?

4 Whereupon,

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

10 MR. PADRO: I do swear.

11 CHAIRPERSON ANDERSON: All right.

12 Thank you. Your witness.

13 DIRECT EXAMINATION

14 BY MR. LOOTS:

15 Q Mr. Padro, can you state for the
16 record your full name and address?

17 A Alexander Michael Padro, 1519 8th
18 Street, N.W.

19 Q And, Mr. Padro, do you currently hold
20 any elected offices?

21 A Yes, I do. I am the Advisory
22 Neighborhood Commissioner representing Single

1 Member District 6E01. I have been an ANC
2 Commissioner for the past 19 years representing
3 the Shaw neighborhood.

4 CHAIRPERSON ANDERSON: Let me ask you
5 a question. What capacity is Mr. Padro
6 testifying?

7 MR. LOOTS: He is testifying on behalf
8 of the ANC.

9 CHAIRPERSON ANDERSON: All right.
10 Okay.

11 MR. KLINE: Mr. Chairman, I would
12 object to that. ANCs act under the D.C. Code at
13 duly called meetings. Mr. Padro can certainly
14 testify as to facts within his personal
15 knowledge, but in terms of him being bestowed
16 with some sort of title when he takes the witness
17 stand, that is not appropriate and that is not
18 what the ANC statute contemplates.

19 Single Member District Commissioners
20 have one authority, that is to participate at a
21 duly called meeting and discuss the business that
22 is before that meeting and pass resolutions.

1 They don't have any other power other
2 than that under the D.C. Code, that's it.

3 MR. LOOTS: I would respectfully
4 disagree with counsel's characterization of ANC
5 powers, which clearly also includes the power to
6 designate a spokesperson to speak on behalf of
7 the ANC, including among other things at City
8 Council meetings, budget hearings and other
9 things affecting the community welfare.

10 That said, if it will satisfy Mr.
11 Kline's objection, Mr. Padro can also testify
12 based upon his personal knowledge and experience
13 and I think without any significant degradation
14 of the quality and import of his testimony.

15 CHAIRPERSON ANDERSON: Sure. All
16 right. Go ahead.

17 BY MR. LOOTS:

18 Q Mr. Padro, has the ANC, in fact, voted
19 to your knowledge on to take a position with
20 respect to the current application?

21 A Yes, the commission has.

22 Q And what was that vote?

1 A The commission voted unanimously to
2 oppose this application.

3 Q And did it take that vote following
4 community input and opportunity to speak?

5 A Yes. In addition to a presentation
6 which was made by the applicants to the ABC
7 Licensing Committee of which I am the Chair, they
8 also had the opportunity to make a public
9 presentation at a duly noted public meeting.

10 Q Okay. And as you said, the outcome of
11 that meeting was to protest the license, correct?

12 A That is correct.

13 Q Okay. What, in your opinion and to
14 your experience, are the reasons that the ANC
15 articulated for opposing this license?

16 A The stated reasons are adverse impacts
17 on peace, order and quiet; many of impacts on
18 property values and a negative impact on
19 availability of residential parking.

20 Q Okay. Well, let's start with the
21 parking component of that. Do you have personal
22 experience with residential parking in the

1 vicinity of the proposed establishment?

2 A Yes. Over the course of my services
3 as Advisory Neighborhood Commissioner, I have
4 worked to be able to establish residents only
5 parking areas throughout the community to be able
6 to balance the needs for parking of patrons of
7 establishments such as the Howard Theatre and the
8 many restaurants that are located in our
9 community.

10 Q Okay. You mentioned the many
11 restaurants already located in our community. To
12 your knowledge, has the ANC previously, and by
13 previously, let's just go back to the number of
14 years if you know, opposed, voted to oppose and
15 taken to Protest Hearing any establishments'
16 license before this?

17 A In the 19 years that I have served on
18 ANC-2C and ANC-6E, consecutively, these two ANCs
19 have never until now voted to oppose an initial
20 application by an ABC licensee.

21 Q And again, returning to the parking
22 issue, what specifically about the negative

1 impact on parking that this establishment may
2 have is of concern to you?

3 A I'm sorry, could you restate that?

4 Q What specifically about the negative
5 parking impact is of concern?

6 A Parking and transportation impacts
7 related to this particular site, this site is
8 located as can be seen on the map, the
9 photograph, at a location that is challenged in
10 terms of traffic patterns. So northbound 6th
11 Street, both of the traffic lanes that are
12 immediately adjacent to the establishment turn
13 onto Rhode Island Avenue, so there is no parking
14 on that portion of the block in front of the two
15 restaurants in the building immediately to the
16 south or in front of the establishment.

17 There is also no parking once you turn
18 onto Rhode Island Avenue on the 500 Block. In
19 general, the area is challenged as has been noted
20 by other witnesses during the day, by individuals
21 that park in the neighborhood and use public
22 transportation to commute to work.

1 Also in the evenings by a significant
2 number of non-neighborhood residents that are
3 competing with neighborhood residents for the
4 limited parking spaces when they choose to
5 patronize establishments in the neighborhood.

6 As the Investigator's report noted,
7 there are no public parking facilities in close
8 proximity to this location. So parking is at a
9 brink.

10 Q And were the license to be granted, is
11 it your expectation parking would deteriorate
12 further?

13 A I believe that it would. I live
14 around the corner from Dacha Beer Garden and a
15 number of the other restaurants that are on the
16 1500 and 1600 Blocks of 7th Street, N.W. and
17 since these establishments opened, there is
18 definitely significantly an increased number of
19 non-resident parkers, especially in the evenings,
20 even until the late hours.

21 I regularly, you know, do both walk
22 and drive through the neighborhood and also have

1 observed non-residents parking in residents only
2 parking areas and walking to these
3 establishments. And also, there are significant
4 challenges related to Rideshare vehicles trying
5 to make drop-offs and pick-ups in close proximity
6 to these establishments, which would be
7 complicated by the lack of ability for cars to be
8 able to even wait, as I mentioned, on the block
9 of 6th Street adjacent to the establishment.

10 There is no parking at any time, those
11 are active drive lanes, those are not really
12 areas where people can park or stand. Those are,
13 you know, through-lanes of traffic.

14 Q In your capacity as Chair of the ABC
15 Committee of ANC-6E, is there something about
16 this application that makes it different, in your
17 mind, from a bricks and mortar standard
18 application of a restaurant license?

19 A Well, yes. By virtue of the fact that
20 there is no inside for the establishment. There
21 is no capacity for the establishment to be able
22 to meet the requirement that sound generated by

1 the establishment not emanate from the
2 establishment, because there are no walls.

3 Well, there are two walls that are
4 adjacent, but it is not fully enclosed. There is
5 no roof, you know, for the establishment. With
6 the -- in hindsight, I certainly would never have
7 agreed to the establishment of Dacha Beer Garden.
8 While it is a popular amenity and certainly many
9 people come to the neighborhood as a result of
10 its presence, the impact that it has had on the
11 residents that live immediately adjacent, you
12 know, has been significant, even with not
13 insubstantial amounts of money that the owners of
14 Dacha Beer Garden has spent in trying to provide
15 for sound mitigation measures.

16 It's still very easy to hear the sound
17 of voices primarily if you were standing in
18 people's bedrooms and people's living rooms and
19 people's kitchens. In some cases, 10 feet away,
20 you know, from the establishment, which is
21 roughly the distance between the property lines
22 of Electric Cool-Aid's proposed location and

1 residences like the ones on the 5th Street side
2 of this particular block.

3 And I will amend my previous statement
4 about the ANC's past actions related to ABC
5 Licenses. I should have clarified that ANC-2C
6 and ANC-6E have never protested any licenses
7 within its own jurisdiction. There were licenses
8 that were applied for outside of our jurisdiction
9 in adjacent ANCs, which we have protested.

10 Q Okay. Thank you for that
11 clarification. You heard testimony from the
12 applicant about there is significant community
13 outreach. Based upon the public hearings before
14 the ANC and the ABC Committee, did you hear from
15 residents that were opposed to the project?

16 A Yes, certainly.

17 Q And can you characterize the nature of
18 their concerns?

19 A Primarily, related to noise issues and
20 the hours of operation and the proposal for an
21 entertainment endorsement. I know of at least
22 two individuals that were canvased by Mr.

1 Schwartz, Gretchen Wharton and Anthony Brown, who
2 are neighbors of him and his co-owner, who
3 expressed those concerns directly to them and
4 shared those concerns with me.

5 And also I have -- was party to
6 conversations between Mr. Schwartz and these two
7 individuals.

8 Q One of the other reasons for the ANC
9 protest is its effect on real property values.
10 What is your division and opinion as to that?

11 A I am aware of several property owners
12 in close proximity to Dacha Beer Garden who have
13 moved out of their houses and currently are
14 renting them out because they could not find, you
15 know, the ability to peacefully coexist and to
16 have the quiet enjoyment of their homes.

17 On the 1600 Block of 8th Street, N.W.,
18 in particular, a former civic association
19 president was one of those individuals that has
20 moved away, has not been able to sell the house
21 because of the adjacency to that business, among
22 other reasons, but, you know, has only been able

1 to rent it with some difficulty as a result of
2 the fact that the noise level from the
3 establishment, even with all the measures that
4 have been undertaken to try to mitigate sound
5 emanating from the site, is disruptive to the
6 peaceful enjoyment of those homes.

7 Q Okay. I am going to hand you a book
8 of exhibits. This will correspond with what the
9 Board already has and ask you, if you can, to
10 please identify, turning first to, what has been
11 marked as Exhibit 1. If you can identify that
12 photograph for purposes of the Board?

13 A Yes, it's a satellite image of the
14 area which includes the block in question which
15 is bounded by Rhode Island Avenue, R Street, 5th
16 Street and 6th Street, N.W., including the
17 residential buildings along Rhode Island Avenue
18 and 5th Street and the mixed-use buildings on the
19 6th Street side of the block and the combination
20 of commercial and institutional and residential
21 properties on Rhode Island Avenue.

22 (Whereupon, the above-

1 referred to document was
2 marked as Protestant Exhibit
3 No. 1 for identification.)

4 BY MR. LOOTS:

5 Q Can you turn, please, to the second
6 exhibit, which should be similar, but
7 highlighted? Your copy may not be highlighted.

8 A It is not. I do not see the
9 highlighting.

10 MR. LOOTS: Do the Board's copies have
11 highlighting?

12 CHAIRPERSON ANDERSON: What exhibit
13 are you talking about?

14 MR. LOOTS: It will be Exhibit No. 2.
15 Shaded areas.

16 CHAIRPERSON ANDERSON: What do you
17 have?

18 MR. LOOTS: Okay. I --

19 CHAIRPERSON ANDERSON: All right.
20 Hold on, hold on.

21 MR. LOOTS: Okay.

22 CHAIRPERSON ANDERSON: I'll tell you

1 in a minute.

2 MR. LOOTS: Yes, that is it.

3 CHAIRPERSON ANDERSON: Okay. Okay.

4 MR. LOOTS: So this is an

5 enlargement --

6 CHAIRPERSON ANDERSON: Yes.

7 MR. LOOTS: -- of that area.

8 CHAIRPERSON ANDERSON: We have -- I

9 have that.

10 MR. LOOTS: Okay.

11 BY MR. LOOTS:

12 Q I'm going to ask you, Mr. Padro, if
13 you would, please, point out on this exhibit
14 which are the residential buildings and tell me
15 if the shaded areas accurately identify the
16 residential as opposed to commercial buildings in
17 this photograph.

18 A So you are referring to the buildings
19 that are yellow?

20 Q Yes.

21 A In the shading?

22 Q Would those be residential?

1 A So yes, I do see, you know,
2 properties, both north of Rhode Island Avenue as
3 well as along Rhode Island Avenue on the south
4 side that are yellow. There are also
5 institutional buildings and commercial buildings
6 that are not highlighted in yellow. And then
7 also the residential properties along 5th Street
8 that are yellow.

9 However, I will note that the
10 buildings at 1601 and 1603, I believe, are the
11 addresses, are mixed-use and there have been
12 residents or uses on the second floor of those
13 buildings.

14 Q Very good. Is it fair to characterize
15 the neighborhood immediately adjoining the
16 proposed establishment primarily residential
17 regardless of zoning?

18 A In terms of its -- the current use of
19 the buildings, yes. They are primarily
20 residences.

21 Q Okay. I'll ask you to turn, if you
22 will, to Exhibit No. 3.

1 A Yes.

2 Q And can you describe that photograph
3 for the Commission, please?

4 A So it represents the north side of the
5 500 Block of Rhode Island Avenue and a portion of
6 the west side of the 1700 Block of 6th Street,
7 N.W.

8 (Whereupon, the above-
9 referred to document was
10 marked as Protestant Exhibit
11 No. 3 for identification.)

12 THE WITNESS: The -- with the
13 exception of one building that has had some
14 commercial uses in the past, the buildings on the
15 500 Block of Rhode Island Avenue on the north
16 side are all residential.

17 On the west side of the 1700 Block of
18 6th Street, N.W., there is an auto repair
19 establishment that is on the corner, so that is
20 seen as a vacant space to the immediate south of
21 a large blank wall and the rest of the buildings
22 on that block are all residential.

1 BY MR. LOOTS:

2 Q Okay. Turning next to Exhibit No. 4,
3 can you describe that photograph as well?

4 A Yes, this is the south side of the 500
5 Block of Rhode Island Avenue, N.W.

6 (Whereupon, the above-
7 referred to document was
8 marked as Protestant Exhibit
9 No. 4 for identification.)

10 THE WITNESS: To the right side of the
11 photograph is the site of the proposed
12 establishment followed by two buildings that have
13 had commercial activity in the past immediately
14 adjacent. To the east a number of residential
15 properties and then there is one institutional
16 building up the far end of the block.

17 BY MR. LOOTS:

18 Q And turning next to Exhibit No. 6, can
19 you describe that for the Board, please?

20 A Yes, this is the -- a portion of the
21 1700 Block of 6th Street, N.W.

22 (Whereupon, the above-

1 referred to document was
2 marked as Protestant Exhibit
3 No. 6 for identification.)

4 THE WITNESS: The 1700 Block is
5 divided into two parts by Rhode Island Avenue,
6 but this is the portion that has two restaurants,
7 Red Toque and Golden China above our spaces that
8 have been used either as offices or as apartments
9 in the past. And then to the left is the subject
10 property.

11 BY MR. LOOTS:

12 Q And turning next to Exhibit No. 7.

13 A Actually No. 7 is the north side of
14 the 500 Block of R Street, N.W., with an alley.

15 (Whereupon, the above-
16 referred to document was
17 marked as Protestant Exhibit
18 No. 7 for identification.)

19 THE WITNESS: The buildings to the
20 right are the residential properties. To the
21 left of the alley is a parking area behind the
22 aforementioned mixed-use buildings that have the

1 two restaurants on the ground floor.

2 And I guess outside of the immediate
3 view of the photograph is the site of the
4 proposed establishment. And immediately at the
5 end of the alley are the mixed-use buildings that
6 are immediately adjacent.

7 MR. LOOTS: Very good. I move
8 admission of Exhibits 1 through 7.

9 CHAIRPERSON ANDERSON: Mr. Kline?

10 MR. KLINE: I don't have any
11 objection.

12 CHAIRPERSON ANDERSON: So moved.

13 (Whereupon, the above-
14 referred to documents were
15 received into evidence as
16 Protestant Exhibit No. 1
17 through 7.)

18 BY MR. LOOTS:

19 Q In the course of soliciting input into
20 the ANC's position on this, did one or more
21 submit to the ANC letters in opposition to the
22 proposed action?

1 A I have seen a number of letters and
2 emails from our constituents. I have seen no
3 letters that were addressed to the ANC in support
4 of the establishment, but I have seen a number of
5 them in opposition. But I am aware that there
6 have been -- you know, I have been told that
7 there are letters in support.

8 Q Okay. I will direct your attention,
9 if I may, to what has been marked as Exhibit No.
10 8.

11 A Yes.

12 Q Is that one of those letters?

13 A This letter is not addressed to the
14 ANC. It is addressed to Mr. Thorpe as the
15 president of the East Central Civic Association.

16 Q Oh, I apologize.

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

21 BY MR. LOOTS:

22 Q Did this letter come into possession

1 or was it presented by Mr. Thorpe or someone else
2 to the ANC?

3 A Yes, I have seen the letter, but it
4 was not initially directed to the commission.
5 And it did make note of the concerns related to a
6 comparable beer garden, the Dacha Beer Garden in
7 our jurisdiction, which was provided as an
8 example of an establishment that had deleterious
9 effect on immediate residents and also makes
10 reference to the fact that the upcoming Northeast
11 Boundary Tunnel Project is going to have further
12 disruptions in terms of traffic and parking.

13 The 600 Block of R Street is going to
14 be closed for a number of periods over the next
15 three years as a result of construction staging
16 for that project, which will certainly make
17 parking and transportation challenges in the area
18 greater.

19 Q And finally coming to full circle, I
20 would like to direct your attention there is a
21 loose page at the end which we marked at the very
22 onset for identification as the Protestant's

1 Exhibit No. 9.

2 Have you seen that document?

3 A Yes, I have.

4 CHAIRPERSON ANDERSON: I don't have a
5 No. --

6 MR. LOOTS: Okay.

7 CHAIRPERSON ANDERSON: I don't have
8 that.

9 MR. LOOTS: It's the one I handed up
10 at the very beginning of the proceedings from Mr.
11 Brown.

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

16 MR. KLINE: Your Honor, we object to
17 that. This wasn't listed as an exhibit. It was
18 just created.

19 CHAIRPERSON ANDERSON: Well, that was
20 at --

21 MR. LOOTS: It didn't exist yesterday,
22 so that's correct.

1 CHAIRPERSON ANDERSON: Okay.

2 MR. LOOTS: So that's correct.

3 CHAIRPERSON ANDERSON: All right. So
4 you are doing No. 9?

5 MR. LOOTS: Yes.

6 CHAIRPERSON ANDERSON: Mr. Kline?

7 MR. KLINE: We object. I mean, it was
8 not listed as an exhibit. It could have been
9 procured at the time the Protest Information Form
10 was due. And he is not here. We have no
11 opportunity to cross-examine him, which is most
12 troubling given other things that he has made.

13 MR. LOOTS: And our position would be
14 that it didn't exist prior to now, because the
15 only reason it exists is he was scheduled to
16 testify and had to work emergency as explained.

17 But yet nonetheless, he wishes to be
18 heard.

19 CHAIRPERSON ANDERSON: I think that
20 Mr. Padro, basically, this is a letter that
21 states what is position as an ANC Commissioner
22 is. Mr. Padro is testifying. I'm not going to

1 admit this document.

2 MR. LOOTS: Okay. Very good. We do,
3 however, move admission of Exhibit No. 8.

4 CHAIRPERSON ANDERSON: Mr. Kline?

5 MR. KLINE: I would object on the
6 grounds that the letter is not signed and it's
7 not directed to Mr. Padro. We have no way --
8 there is even no address from the writer of the
9 letter.

10 MR. LOOTS: The address was provided
11 on the witness list.

12 CHAIRPERSON ANDERSON: I'm going to --
13 I'm not going to admit this. I think I better
14 wait to have moved the document into evidence, as
15 Mr. Thorpe was here. You could have asked him
16 about the -- you could have asked him to
17 authenticate the document. And so therefore,
18 this is not a witness who can bring this document
19 and since counsel has objected, I'm not going to
20 allow it in evidence.

21 However, I would have if Mr. Thorpe
22 had -- if you had asked that of Mr. Thorpe, since

1 he did testify today.

2 MR. LOOTS: Okay.

3 CHAIRPERSON ANDERSON: All right.

4 MR. LOOTS: I have no further
5 questions of this witness.

6 CHAIRPERSON ANDERSON: Mr. Kline?

7 MR. KLINE: Yes.

8 CROSS-EXAMINATION

9 BY MR. KLINE:

10 Q Good afternoon, Mr. Padro.

11 A Good afternoon or well, it's 6:00, so
12 perhaps it's good evening.

13 Q Good evening. Was it your testimony
14 that the ANC did not receive any correspondence
15 from anyone in support of the application?

16 A I'm trying to recall right now. This
17 is in Commissioner Brown's Single Member
18 District, so certainly there is -- there could
19 have been additional correspondence that I'm not
20 recalling, but off the top of my head, I don't
21 recall.

22 Q That correspondence would not have

1 come to you, would it? It would have either come
2 to the Chair or to the Single Member District
3 Commissioner, correct?

4 A Not necessarily. Generally
5 correspondence on a particular case that is
6 received by Single Member District Commissioners
7 is shared with the committee chairs of relevant
8 jurisdiction. And also they are generally shared
9 with all the commissioners in advance of the
10 public meeting, so that the members of the
11 commission have the opportunity to hear the
12 viewpoints of -- that have been expressed.

13 Q You were here earlier for the
14 testimony where there was a package of letters
15 that were identified as being addressed to the
16 ANC?

17 A Yes, I did hear that, but I did not
18 see them.

19 Q You have never seen them?

20 A No.

21 Q Okay. Isn't it a fact that Mr. Brown
22 was taking the lead on this matter up until he

1 was called away for the work emergency today?

2 A In terms of the protest, yes, but not
3 in terms of the overall handling of the
4 application. As the chair of the ABC Licensing
5 Committee, the case first comes to the committee
6 before it comes to the full commission.

7 Q Right. But you defer to the Single
8 Member District Commissioner, correct?

9 A When you say you, do you mean --

10 Q The ANC.

11 A -- the ANC does not always defer to
12 the ANC's Single Member District Commissioner.

13 Q But they did in this case, correct?

14 A In this instance Mr. Brown was
15 designated as the representative for handling the
16 protest.

17 Q Right. So he was the person with whom
18 the applicant communicated.

19 A Correct.

20 Q Correct?

21 A Correct.

22 Q He was the person --

1 A After the designation.

2 Q -- and that would have been after the
3 protest, correct?

4 A After the public meeting at which the
5 commission voted to protest.

6 Q So he was the person with whom they
7 would have negotiated, correct?

8 A Correct.

9 Q And he would have been the person who
10 presumably would have processed any
11 correspondence that the ANC received with respect
12 to the application also, correct?

13 A After that designation, yes.

14 Q Okay. So you deny that the support
15 letters were ever given to you?

16 A I do not recall having seen them.

17 Q Now, you testified earlier, I think
18 you said and I want to make sure that you -- I
19 have this right, that this is the first time --

20 CHAIRPERSON ANDERSON: He corrected
21 it. He corrected his testimony.

22 MR. KLINE: I know and I'm -- let me

1 state the question first.

2 BY MR. KLINE:

3 Q This is the first time the ANC has
4 protested a license within its boundaries.

5 A A new license.

6 Q A new license within its boundaries.

7 A In the time that I have been a
8 commissioner.

9 Q Which goes back 19 years?

10 A Yes.

11 Q Isn't it a fact that the ANC routinely
12 protests licenses to abstract settlement
13 agreements?

14 A Well, I will -- okay. Let me answer
15 your question. So your question is --

16 Q It's a yes or no question.

17 A -- is the question does this ANC
18 routinely, you know, protest licenses in order to
19 engage in negotiations with licensees to try to
20 obtain a settlement agreement?

21 In general, we try to always have a
22 settlement agreement in advance of the public

1 meeting, so that there is not a need to protest.
2 But if there are -- is an opportunity to try to
3 continue to negotiate with the applicant, we, you
4 know, do sometimes vote to protest, but we have
5 always resolved those matters prior to an actual
6 Protest Hearing being undertaken.

7 Q Is that a long-winded way of saying
8 that if you can't reach a settlement agreement
9 before the protest deadline, you file a protest?

10 A Yes.

11 Q Okay. So the statement that you made
12 earlier it's not true, is it?

13 A Ah, it -- when -- I would clarify --
14 I would distinguish between voting to protest and
15 actually protesting a license.

16 You know, in my opinion, when you
17 engage in a Protest, you know, Hearing like we
18 are today, that is a full-fledged protest. If
19 someone -- you know, if we decided to vote to
20 protest, but ultimately do not proceed with the
21 protest, because the matter is resolved, I don't
22 consider that a protest.

1 Q Well, not to belabor the point and not
2 to split hairs too finely --

3 MEMBER SILVERSTEIN: It's too late for
4 that.

5 BY MR. KLINE:

6 Q But it's your position that if it's
7 resolved before it gets to hearing, then you
8 never protested the license. Is that what I'm
9 hearing?

10 A That's how I would characterize it,
11 yes.

12 Q All right. Now, in this case, you
13 weren't able to reach agreement, correct?

14 A Correct.

15 Q And here we are.

16 A Yes.

17 Q All right. And the reason that you
18 weren't able to reach agreement was because you
19 wanted this establishment to agree that it would
20 close at 10:30, correct?

21 MR. LOOTS: I object to the question,
22 because whatever settlement negotiations went on

1 prior to this point, we are here today.

2 MR. KLINE: We are.

3 MR. LOOTS: And you know, the reasons
4 or, you know, what might or might not have
5 occurred in the settlement negotiations is really
6 not relevant to today's issues.

7 MR. KLINE: We are not talking about
8 what happened at settlement agreement. We are
9 talking about why we are here. We have had
10 testimony that the ANC never protests
11 applications and yet here we are. And then in
12 follow-up questioning, we get well, we do, but we
13 don't go to hearing, unless there is not an
14 agreement. And it's a very simple question. I'm
15 not getting into the process of negotiations.
16 It's a very simply question.

17 CHAIRPERSON ANDERSON: I'll -- I'm
18 going to overrule the objection. Answer the
19 question, Mr. Padro.

20 THE WITNESS: Could you restate the
21 question?

22 BY MR. KLINE:

1 Q The question is isn't it a fact that
2 if the applicant had agreed to close its
3 establishment at 10:30, then we wouldn't be here?

4 A If the application had agreed to the
5 hours of operation which we had proposed, which
6 were the same hours as Dacha Beer Garden, a
7 comparable establishment, then we still would
8 have had the issue of the entertainment
9 endorsement.

10 Q Okay. Now, in terms of the
11 entertainment endorsement, your concern about the
12 entertainment endorsement is late night operation
13 of entertainment outside, correct?

14 A An entertainment endorsement outside
15 at any time.

16 Q At any time?

17 A At any time.

18 Q So you object to a magician in the
19 outside area?

20 A We have -- the ANC has never
21 supported an entertainment endorsement for an
22 outdoor establishment.

1 Q Okay. So if I'm clear, if the hours
2 and the entertainment endorsement went away, we
3 wouldn't be here. Is that a fair statement?

4 A Yes.

5 Q All right. And it's likely if this
6 were -- if there were a building here and this
7 were an interior restaurant, we wouldn't be here,
8 correct?

9 A That's correct, because there would
10 not be the issues of the negative impacts on the
11 neighbors that result from an outdoor
12 establishment.

13 Q All right. And at that point, the
14 hours would be less of a concern, because it
15 would be interior?

16 A That is correct.

17 Q All right. Now, you mentioned that
18 someone had been unable to sell their house next
19 to Dacha, because of noise problems from Dacha?

20 A I did testify to that.

21 Q You are not an expert in real estate,
22 are you?

1 A I am not an expert in real estate, but
2 I am the economic revitalization professional in
3 my daytime concern, so I do have quite a bit of
4 knowledge about real estate.

5 Q And you would have bought that house
6 for a \$1, right?

7 A I would certainly have bought any
8 property in the District of Columbia for \$1.

9 Q All right. So you are not really in
10 a position to say why it -- isn't --

11 MR. KLINE: Let me withdraw that.

12 BY MR. KLINE:

13 Q Isn't the sale of real estate a
14 function of pricing?

15 A (No audible answer.)

16 Q Isn't it always a function of pricing?
17 you do enough --

18 A Pricing is --

19 Q -- of that to know.

20 A -- a consideration, but, you know,
21 location is also a very significant part of the
22 equation.

1 Q If --

2 A You could have a piece of free real
3 estate that is in a terrible location and you
4 don't have a perceived value for it.

5 Q So in other words, you retract your
6 statement that you would pay \$1 for any piece of
7 real estate in the District of Columbia?

8 A No, no. I would, but many people
9 would not.

10 Q Okay.

11 A And certainly many real estate
12 professionals would not if they were -- if there
13 was not a profit margin to be gained.

14 Q Now, we went through a lot of uses in
15 the neighborhood and there was lots of testimony
16 from you about how there are a number of uses or
17 a lot of uses that are residential, correct?

18 A In the block where the establishment
19 is located?

20 Q Yes.

21 A Is that what you are referring to?

22 Yes.

1 Q And this is a mixed-use. This is
2 Zoned Mixed-Use, correct?

3 A That is correct.

4 Q As is 7th Street, correct?

5 A Just checking, which blocks are you
6 referring to on 7th Street?

7 Q North of Rhode Island.

8 A North of Rhode Island, yes, correct.

9 Q Now, there was a time when the vast
10 majority of the buildings on that street were
11 residential, wasn't there?

12 A North of Rhode Island Avenue on 7th
13 Street? No. So historically, that has been a
14 Commercial Zone and a Light Industrial Zone,
15 rather than a residential on 7th Street.

16 Q Okay. But there are other streets in
17 your -- you are a head of Shaw Main Streets as
18 well, right?

19 A I'm the executive director.

20 Q Executive director. So you have
21 familiarity with most of the development, what
22 goes on in that neighborhood, right?

1 A Correct.

2 Q And you have done that for how long?

3 A I have been the executive director
4 since December of 2004.

5 Q Okay. So for 15 years. And over that
6 15 years, you have seen mixed-use streets that
7 have converted from primarily residential to
8 primarily commercial, correct?

9 A No, I would not say that that's an
10 accurate representation.

11 Q Okay.

12 A No. The zoning in the areas that are
13 now commercial, have been, you know, commercial
14 or mixed-use. I think there is one or two blocks
15 that would be exceptions to that.

16 Q So going back to the support of this
17 application, would it surprise you if I told you
18 that there were 21 people within three blocks
19 that took the time to express written support of
20 this application?

21 A It wouldn't surprise me because I was
22 also misled by Mr. Schwartz when he came to me in

1 my professional capacity about his intentions for
2 the establishment and his professed interest in
3 having an establishment that would not have any
4 negative impacts, but would only have positive
5 impacts.

6 Q And is it your position that this
7 establishment will not have any positive impact?

8 A I believe that there are positive
9 impacts, but those are mitigated by the adverse
10 effects that will result from the noise impacts
11 and the traffic impacts and the, you know,
12 potential impact on property values to neighbors.

13 MR. KLINE: I don't have any further
14 questions of the witness. Thank you.

15 CHAIRPERSON ANDERSON: Thank you. Any
16 questions by any Board Members?

17 Hearing none, thank you, Mr. Padro for
18 your testimony.

19 THE WITNESS: Thank you.

20 CHAIRPERSON ANDERSON: You can step
21 down.

22 (Whereupon, the witness was excused.)

1 MR. LOOTS: We call as our final
2 witness, Chuck Burger.

3 MEMBER SILVERSTEIN: Mr. Chair, the
4 applicant has 8 minutes left and the protestant
5 has 19.

6 MR. LOOTS: How many?

7 CHAIRPERSON ANDERSON: Well, this is
8 the last witness.

9 MEMBER SILVERSTEIN: 19.

10 Whereupon,

11 CHUCK BURGER

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

16 MR. BURGER: I do.

17 CHAIRPERSON ANDERSON: Thank you.

18 Your witness. Thank you, Mr. Silverstein.

19 DIRECT EXAMINATION

20 BY MR. LOOTS:

21 Q Mr. Burger, will you, please, identify
22 yourself for the record?

1 A My name is Chuck Burger. I live at
2 405 6th Street, S.E. I'm a realtor with Coldwell
3 Banker.

4 Q And how many years have you been a
5 realtor?

6 A Over 25 years.

7 Q Can you briefly share with the Board
8 your experience and qualifications as a realtor?

9 A As a realtor, I have been a realtor
10 citywide. In this particular area of the course
11 of 25 years, I have sold property everywhere,
12 including a number of properties around the -- in
13 this particular neighborhood in Shaw, Florida
14 Avenue, Rhode Island, 6th Street, 5th Street, so
15 I'm familiar with most areas in the city with
16 working in real estate.

17 And also I do a number of political
18 operations for the geography of the area.

19 Q Do you deal in both residential and
20 commercial real estate?

21 A Small commercial properties, yes.

22 Q And you have experience specifically

1 with the neighborhood and immediate economies of
2 the subject property here?

3 A Yes. And I do consider myself rather
4 versed in neighborhood economies being -- it was
5 primarily I have worked at Capitol Hill, H Street
6 on which I have been co-founder of the Chamber of
7 Commerce there. I also serve on the boards of
8 Eastern Market, which we have a Special-Use
9 District, which we have oversight over, and also
10 Barracks Row Main Street, which I'm on the board.

11 Q Okay. Have you had the opportunity to
12 view the subject property location that is part
13 of this application?

14 A Yes, I have.

15 Q And what were your observations upon
16 viewing the subject property?

17 A In which regard?

18 Q In this -- what did you see when you
19 went there?

20 A The property is MU, which allows --
21 primarily the MU is a new rating, which primarily
22 allows multi-use facility, which includes

1 multiple unit properties and commercial
2 properties. It would seem that my brief -- the
3 little research I was able to do on the property,
4 primarily has a residential majority. The
5 majority of the block is residential units, which
6 abut an alley.

7 The applicant is also the lot at 512.
8 There are two commercial establishments owned by
9 Wells, which is a small restaurant and a Chinese
10 restaurant. And also the current owner of this
11 particular lot also purchased two years ago the
12 property next door, 15 -- 510, excuse me.

13 Q That would be 510 Rhode Island Avenue?

14 A Correct.

15 Q Okay. Has the property, the subject
16 property where they are proposing the
17 establishment, has it been listed for sale
18 recently?

19 A What I can determine it had been
20 listed for \$4 million in 2017.

21 Q Based upon your experience in the
22 Washington, D.C. real estate market, does that --

1 and in the same neighborhood, did it strike you
2 as a reasonable asking price?

3 A No. Make -- to cut it -- the property
4 -- properties like that, there are two areas in
5 which one is that taxi/auto repair place
6 diagonally across, which ironically the house
7 next to that was the one of my first sales in the
8 District.

9 Properties as this particular owner,
10 he shelves properties. He stores properties. So
11 basically, he sits on a property until he can get
12 maximum value out of it.

13 In order not to be taxed at the vacant
14 rate or in some cases to be taxed at a blighted
15 rate, they seek exemptions which exemptions are
16 usually as a result of listing the property for a
17 year, year and a half creating leases, putting
18 Christmas trees on it one year. There are a
19 number of different techniques that basically
20 people like this just sit on property.

21 I would note the same owner has a
22 property on 8th Street, which is one of the most

1 popular blocks on Barracks Row and he has had
2 that vacant for 12 years right now.

3 Q Okay. So based upon your experience
4 and knowledge of the neighborhood, is the
5 establishment that is being proposed, that being
6 an open air beer garden, is that the highest and
7 the best use or would that be for a potential
8 highest and best use, the highest and best use of
9 the property?

10 A In general no. For this particular
11 owner of the property, it probably fits in with
12 his plans.

13 Q And why is that?

14 A Because, one, an establishment -- I
15 don't know the terms of the lease, so I can't
16 really address, but I'm sure it's not a long-term
17 lease-hold, but it's probably a short-term lease.
18 And with the success and failure rate of
19 establishments, it is probably -- it doesn't harm
20 the owner to take advantage of the situation.

21 Q Do you have experience in listings
22 where licensed establishments are in the

1 immediate proximity to a residential listing?

2 A My experience quite so, because I do--
3 I have been integrally involved in development
4 since I have been up there over 30 years of 8th
5 Street and development on Eastern Market,
6 Pennsylvania Avenue and I consult a great deal
7 with restauranteurs on H Street throughout Ward
8 6.

9 I would note I am not overly familiar
10 with the owners and establishments in this
11 particular area.

12 Q In Shaw?

13 A In Shaw, yes.

14 Q But putting aside the personal
15 relationships and the consulting, do you have
16 experience that shows you if there is a
17 relationship between having an alcohol licensed
18 establishment immediate and adjacent --
19 immediately adjacent to a residential property?

20 A Yeah, I am intimately aware of what
21 goes on in the neighborhood economy and that
22 relationship and also I did -- I served as Chair

1 of the ABC Board for five years and was on the
2 Board for about seven.

3 At the turn of the century, which was
4 seemingly a long time ago.

5 Q Only in my life. So in a situation
6 such as we have here where there is a proposed
7 open air beer garden with hours extending into
8 the wee hours of the morning, do you have an
9 opinion as to whether that would have an effect
10 on neighboring property values?

11 MR. KLINE: Objection. He has not yet
12 been qualified as an expert, so for him to give
13 an opinion it would be our position that that is
14 what is necessary.

15 MR. LOOTS: Okay. Point well-taken.
16 I move to qualify this witness as an expert in
17 the subject of real estate pricing.

18 MR. KLINE: May I examine the witness,
19 please?

20 CHAIRPERSON ANDERSON: Sure.

21 VOIR DIRE

22 BY MR. KLINE:

1 Q Mr. Burger, you are not a qualified
2 appraiser, correct?

3 A Correct.

4 Q And as a real estate agent, your
5 training is limited to conducting a comparative
6 market analysis to determine the appropriate
7 selling price of a property?

8 A Establishing market value.

9 Q Establishing market value. You don't
10 have any particular expertise that qualifies you
11 to predict future prices of real property, do
12 you?

13 A In regard to?

14 Q In regard to anything.

15 A I would regard -- I would have, I
16 think, a qualified opinion on whether or not a
17 property would appreciate depending on factors
18 that would be occurring or would occur in a
19 neighborhood.

20 Q Well, I mean, let's backup. So a
21 competitive market analysis means that you look
22 at a particular piece of property and evaluate

1 it, based upon its comparability to other
2 properties that have recently sold. Isn't that
3 the process that you go through?

4 A If the goal is to take market
5 evaluation, one of the tools we use is using a
6 comparable analysis of existing sales. Based on
7 that and other market conditions and our opinion
8 of the -- we form a -- we use that as one of the
9 basis of evaluating the value of the property,
10 which that is when we come up with the
11 recommended market value.

12 Q Right. And that's really the limits
13 of your expertise, isn't it?

14 A The limits?

15 Q Yeah.

16 A What I --

17 Q In other words, you are not in a
18 position to predict in the future what is going
19 to happen. What qualifies you to do that?

20 A I don't think anyone is in a position
21 to predict 10 years down the road what a property
22 is worth or one year or one week, because, one,

1 you can only take circumstances that exist. And
2 circumstances as they exist and you form your
3 evaluation.

4 Q Isn't it true that one could do a
5 study and look at a number of properties and do a
6 qualified statistical study in terms of what
7 factors would coincide with their appreciation?
8 So under those circumstances, if one had done
9 that and one had done such a study --

10 A Right.

11 Q -- and created a statistical model,
12 then you would be in a position to at least have
13 some guideline as to what it was that might cause
14 a particular piece of property to appreciate or
15 not appreciate.

16 A I think taking a comparable -- using
17 as one of the tools a comparable analysis, plus
18 basically looking at other factors, which might
19 include noise, might include crime, might include
20 parking, you add value or subtract value to come
21 up with a market evaluation.

22 Q Okay. But that's what you do on a

1 current piece of property, correct? We're
2 talking about two different things. On the one
3 hand --

4 A That's 00

5 Q -- my knowledge of real estate agents
6 is they evaluate the current value of a piece of
7 property by either using an income method, a cost
8 method --

9 A Um-hum.

10 Q -- or a comparative marketing
11 analysis, correct?

12 A Um-hum.

13 Q Is that right?

14 A Correct.

15 Q All right. And in this case, the cost
16 method is not really appropriate, right?

17 A Correct.

18 Q And income method would not be
19 appropriate, correct?

20 A (No audible answer.)

21 Q So we are left with --

22 A If we are talking about residential

1 properties, you are correct.

2 Q Okay. And -- no, we are talking about
3 commercial properties, so it's the same thing. I
4 mean, the only thing that you can do is look at
5 highest and best use and make a determination as
6 to what the property might be worth based on
7 that, correct?

8 A Not only based on income, but other
9 factors.

10 Q Okay. But as a real estate agent, you
11 are not qualified to isolate those other factors,
12 are you?

13 A People pay me to do it, so I --

14 Q But that doesn't make you qualified.

15 A -- I would hope that they continue to
16 me as in any profession are arguing cases or not
17 arguing cases, it's just based on the fact that
18 taking those facts into consideration, I'm -- I
19 come up with market valuations to property.

20 Q And that is the current market
21 valuation, correct?

22 A What is?

1 Q What you come up with.

2 A Current, yes, correct.

3 Q All right. Current. Not future,
4 current.

5 A My business is not picking future
6 valuations. My business is taking how a property
7 stacks up from comparable sales. And secondly
8 what other factors are involved to come up with
9 an evaluation of the market, the market value of
10 the property.

11 Q So that's the snapshot of a particular
12 point in time, correct? We are looking at the
13 value at a particular point in time?

14 A Correct.

15 Q That's different from what the
16 property is going to do in the future, isn't it?

17 A I don't understand. What is the
18 property doing? I don't understand the --

19 Q Well, I mean, it -- you have been
20 proffered as an expert.

21 A Well --

22 Q You will testify --

1 A -- will the property valuation be
2 different in the future? That seems to be your
3 question. It probably would.

4 Q Right.

5 A I -- but again, depending on how the
6 factors -- it would depend if it grew in value or
7 decreased in value.

8 Q But that's not your expertise, is it?

9 A I would consider that is my expertise.

10 Q And what training do you have for that
11 expertise?

12 A 30 years of doing this. And actually,
13 again, I have noted either through my work in
14 real estate or my work with the -- my experience
15 with Regulatory Alcohol, I have seen and my
16 experience is probably the best thing I can offer
17 as far as what gives me credit or an ability to
18 be a better realtor and be able to make those
19 judgments.

20 Q Right. But your job as a realtor is
21 to market properties and to determine what the
22 current value is, right?

1 A And also to assess or appraise
2 property. Not as an appraiser, but to establish
3 just for general knowledge market valuation for
4 clients.

5 Q Right.

6 MR. KLINE: I have no further
7 questions. I would submit that Mr. Burger,
8 although eminently qualified as a real estate
9 agent and as a civic activist and as someone who
10 is a former chair of the Board, is qualified in a
11 lot of things, but his qualifications are to
12 determine current market value not to determine
13 what the effect of any particular factor might be
14 in the future.

15 CHAIRPERSON ANDERSON: Mr. Kline and
16 I just found out that this Charles Burger was the
17 former Chair of the ABC Board. I was not aware
18 of that prior to that, so I was -- so it's all
19 news to me.

20 However, he has presented himself as
21 over 30 years of experience in real estate and he
22 has also presented himself as being chair of this

1 Board. I believe that he is eminently qualified
2 as an expert in the area. So I am going to make
3 that ruling that he is qualified to give expert
4 opinion.

5 MR. KLINE: Then I will move to
6 exclude him on another basis, which is that he is
7 a former chair of this Board and now that that
8 has come out, we would submit that that is
9 substantially prejudicial. And of all the real
10 estate agents in the District of Columbia, the
11 protestants decided to designate a former chair
12 of the ABC Board to testify.

13 CHAIRPERSON ANDERSON: Well, I think
14 the rules and regulations state that -- I think
15 you cannot appear before the ABC Board in, I
16 think it is, 12 months or I think it is about
17 maybe a year that you cannot appear in front of
18 the ABC Board.

19 And I have been as Chair of this Board
20 for four years now and I -- Mr. Burger was not on
21 the Board in the four years that I have been here
22 and I have seen his name on paperwork, so I

1 believe that he would not be excluded.

2 So let's move on. I am going to
3 qualify him as an expert. All right. Go ahead.

4 MR. LOOTS: Thank you.

5 MEMBER SILVERSTEIN: Mr. Chair, the
6 protestants have 13 minutes. The applicant has 1
7 minute.

8 CHAIRPERSON ANDERSON: All right. I
9 think that -- well, all right. Go ahead. You
10 have the time, sir, go ahead.

11 MR. LOOTS: Okay.

12 CHAIRPERSON ANDERSON: I think that,
13 unfortunately, we spent -- and I -- the time that
14 Mr. Kline utilized to voir dire the witness, that
15 should not be counted against his time, because
16 that is his right.

17 MEMBER SILVERSTEIN: Then he has 8
18 minutes.

19 CHAIRPERSON ANDERSON: Since we did
20 not -- no, I'm just saying since we did not -- it
21 was not done previously, so that's not taken away
22 from his time.

1 MR. KLINE: Okay. Understood.

2 CHAIRPERSON ANDERSON: Okay.

3 MEMBER SHORT: May I --

4 BY MR. LOOTS:

5 Q Mr. Burger, you testified earlier
6 partly I think in response to the voir dire
7 questions that part of your job as a realtor is
8 to take, you know, a market comparable analysis
9 and either add value or subject value based upon
10 certain conditions. Is that correct?

11 A Correct.

12 Q Okay. So for instance if you had
13 knowledge that they were going to build a garbage
14 dump next to a million dollar mansion, that would
15 be relevant to the valuation, even though there
16 are no garbage dumps there yet, correct?

17 A Correct.

18 Q Okay. So with that in mind, do you
19 have an opinion as to whether the construction
20 and granting of the liquor license as requested,
21 that being with hours extending to 2:00 a.m. in
22 an outdoor environment on weekdays and 3:00 on

1 the weekends would have a -- would add value or
2 subtract value from neighboring residences?

3 A From what I have been told as far as
4 the fact that it is the occupancy of over 200
5 people in an open air without a professional
6 sound or audio study and additionally without a
7 security plan in place to deal with the
8 particular nature of this type of operation, I
9 think that uncertainty and in addition to the
10 potential problems negatively impacts the
11 property value or surrounding property value.

12 I would only note when the listing
13 came up, which is right abutting or across from
14 the alley opening on R Street, 501 came out for
15 \$500,000, I, as a realtor, called the broker who
16 was handling the property and explained to her,
17 because as a realtor, we will be required to
18 disclose any substantive change like that to any
19 potential buyer.

20 I disclosed that to her, which would
21 be basically ethically and legally required and
22 thus legally are required and we both discussed

1 that issue. And she had -- she was -- she had
2 some serious -- more than serious renovations.
3 It was just a matter this would negatively impact
4 the sale of that property.

5 Only for the fact that there may be
6 someone that would want to live near that, but
7 the point is any time you decrease a buyer pool
8 for a particular property, be it families or
9 singles, it does negatively impact the value of
10 the property.

11 Q So in your professional opinion, just
12 to put a final point on it, would the granting of
13 the license as applied, negatively affect the
14 surrounding property values?

15 A As applied it is my opinion it would.

16 Q Okay. Is that opinion with the scope
17 of what you regard as your specialized expertise
18 in market analysis?

19 A Yes.

20 Q And is that opinion with the scope of
21 -- I'm sorry. Do you hold that opinion to a
22 reasonable degree of professional certainty?

1 A Yes.

2 MR. LOOTS: I have no further
3 questions.

4 CHAIRPERSON ANDERSON: Mr. Kline?

5 CROSS-EXAMINATION

6 BY MR. KLINE:

7 Q Mr. Burger, do you agree that a
8 property that has been a source of visual blight
9 for decades would likely have a negative effect
10 on real property values?

11 A Yes.

12 Q And would you also agree that the
13 elimination of a vacant lot that would
14 "jumpstart" the transformation of a highly
15 visible corner is likely to be at least neutral,
16 if not positive?

17 A No, I would not agree with that.

18 Q You wouldn't agree with that?

19 A Not necessarily. I don't know what
20 you define by jumpstart. I think it would
21 obviously change the dynamic, but it depends what
22 would replace the parking lot.

1 Q Okay.

2 A Or garage space, I think it is
3 labeled.

4 Q And if I told you that at least 21
5 people residing within a couple of blocks of the
6 proposed establishment were in support of it,
7 people who reside there, would that change your
8 opinion as to the effect of a business at a
9 particular location?

10 A Well, I think citizen input is
11 ultimately always important, but under the
12 circumstances in front of what I have heard
13 today, I would not be able to say that would sway
14 my opinion.

15 Q Are you familiar with the Saw
16 neighborhood? Very familiar with it?

17 A Um-hum.

18 Q Okay. And you are familiar with the
19 neighborhood that we are in, correct?

20 A Yes.

21 Q And you are a former ABC Board Chair?

22 A Correct.

1 Q And since you left the Board, have you
2 followed the goings on of --

3 A Yes.

4 Q -- the Board? At least generally?

5 A In general?

6 Q Yeah.

7 A As far as their rulings?

8 Q Yeah.

9 A Not specifically, no.

10 Q But I mean in terms of --

11 A Nothing personal.

12 Q -- major things that might come up,
13 you follow?

14 A (No audible answer.)

15 Q Are you aware, for example, that there
16 was an effort by a neighborhood association
17 called the Shaw/Dupont Citizens Alliance to push
18 for a moratorium on licenses in this
19 neighborhood?

20 A No.

21 Q You weren't aware of that?

22 A No.

1 Q And if that had happened, and it
2 actually did happen, if the Board found that
3 there was substantial opposition to such a
4 moratorium and the Board found that despite the
5 number of licenses in this neighborhood, home
6 prices had increased 7.5 percent a year. And
7 that this neighborhood was slated to experience
8 remarkable amounts of development in the near
9 future, would that have any bearing on the
10 opinions that you have given here today?

11 A I think if -- regarding the opinions
12 I have today, it's based on this particular
13 characteristics of this applicant. It is not --
14 and as we have successfully, as a number of areas
15 have successfully, developed with -- you want
16 certain standards in the regulatory atmosphere of
17 alcohol establishment have successfully developed
18 neighborhoods.

19 It is based on best practices that
20 each of the neighborhoods develop and the type of
21 -- you know, was U Street good when it had the U
22 Street Club down here? No. It depends on the

1 actors that you have in the neighborhood and the
2 type of establishments.

3 So, yes --

4 Q You have sat through the testimony
5 today.

6 A Excuse me?

7 Q You have sat through the testimony
8 today.

9 A Yes.

10 Q Do you have doubt as to the character
11 of these actors and their ability to --

12 A I have no doubt to their character,
13 intent and good will.

14 Q Okay.

15 A But my experience and if you want me
16 to draw -- if it's a question on my personal
17 opinion on intent and good will, that's another
18 subject.

19 Q You are here as an expert, so I don't
20 care about your personal opinion.

21 A Well, I'm not an expert on people's
22 characters, but I have found, and this goes more

1 -- this is outside of the scope. Am I allowed to
2 -- this is outside the scope of real estate,
3 but --

4 CHAIRPERSON ANDERSON: You are
5 answering a question.

6 THE WITNESS: -- I would say we have
7 always had -- we have had all these excellent
8 good intentions, but good intentions can be
9 thwarted if you are not prepared. So that's--

10 BY MR. KLINE:

11 Q Mr. Burger, now you are aware, even if
12 you are not aware of the attempted moratorium in
13 this neighborhood, of the explosive growth in the
14 number of licensed establishments in the
15 neighborhood that we are in, are you not?

16 A Right.

17 Q And are you also aware, and I presume
18 you are as a real estate agent, of the explosive
19 increase in pricing?

20 A Yes.

21 Q In this neighborhood?

22 A Um-hum.

1 Q So to conclude that a particular
2 establishment would have a negative effect on
3 real estate values runs contrary to that
4 experience, doesn't it?

5 A If H Street or Barracks Row, which is
6 successful as a restaurateur, if they put an
7 open air 200-person open air bar on the Eastern
8 Market Plaza, it would be detrimental to the
9 values of the property.

10 You keep referring that it is
11 different. It is -- all establishments are
12 different. You can reach a point from the types
13 of establishments that, and particularly this one
14 I feel, it is outside of the norm. It is an
15 interesting idea that needs to be explored, but
16 it has to be explored with caution.

17 And the fact that it's a different
18 type of establishment.

19 Q Are you familiar with the Garden
20 District down the street?

21 A Yes.

22 Q Is it your position that that has a

1 negative effect on the real estate adjacent to
2 that location?

3 A I would have to say particularly no,
4 it doesn't.

5 Q Okay. So it's only this location that
6 you have been enlisted to testify that you find
7 that it has a negative --

8 A Examining this location with this type
9 of application, I made my opinion. And I will
10 make it depending where it was or whoever it was.
11 I mean, I just can.

12 Q Mr. Burger, isn't it true that during
13 the course of your tenure on the ABC Board, you
14 had hostility towards establishments that did not
15 enter into settlement agreements?

16 A I think that's a very unfair
17 statement.

18 Q Mr. Burger, how many here -- how long
19 were you Chair of the ABC Board?

20 A Five years.

21 Q During that period, how many protests
22 were filed?

1 A I have no idea.

2 Q How many hearings did you hold?

3 A Oh, five years, probably a lot of
4 hearings.

5 Q Wasn't it true that most of the
6 applicants were required to settle because they
7 couldn't get a hearing date by the ABC Board?

8 A I think --

9 MR. LOOTS: I object to this.

10 MR. KLINE: It goes to bias and it is
11 appropriate.

12 CHAIRPERSON ANDERSON: I'm sorry, it
13 goes to what?

14 MR. KLINE: It goes to bias and it's
15 appropriate.

16 CHAIRPERSON ANDERSON: What did you --

17 MR. LOOTS: I object. I think it is
18 irrelevant and it's beyond the scope of direct.
19 And it is not the capacity in which he has been
20 brought here for.

21 CHAIRPERSON ANDERSON: I'm going to
22 sustain the objection.

1 MR. KLINE: It goes to bias, Mr.
2 Chairman. It's perfectly appropriate.

3 CHAIRPERSON ANDERSON: I am going to
4 sustain the objection. Let's move on. It's late
5 in the day, let's move on.

6 MR. KLINE: I have no further
7 questions of the witness, at this time.

8 CHAIRPERSON ANDERSON: Any questions
9 from any Board Members to Mr. Burger?

10 Mr. Burger, thank you for your
11 testimony. You can step down.

12 (Whereupon, the witness was excused.)

13 MR. BURGER: And thank you for your
14 time. Appreciate it.

15 CHAIRPERSON ANDERSON: All right.
16 Does the protestant rest?

17 MR. LOOTS: And we rest.

18 CHAIRPERSON ANDERSON: All right.
19 Does the -- well, we are still -- we are on the
20 extended time lines that are proposed.

21 So does the applicant wish to make a
22 closing argument? And one of the things that I

1 will ask both sides to do is to let me -- tell us
2 what it is that you are asking the Board to do.

3 MR. KLINE: Sure. Thank you, Mr.
4 Chairman and Members of the Board. I think that
5 it should be obvious from the first witness that
6 much of what you have heard today is a red
7 herring. And let me tell you why that is.

8 There is really one issue. There is
9 only one issue here. Mr. Brown was the
10 designated representative of the Advisory
11 Neighborhood Commission, the sole protestant, and
12 he was asked by the ABC Investigator what the
13 issues were.

14 And he said very clearly, the Board's
15 indulgence, that the ANC wants the hours of the
16 establishment to be restricted to midnight, so
17 that the community will not be impacted by the
18 operator; that the community does not want to
19 deal with patrons making noise.

20 Mr. Brown stated that the only issue
21 that the ANC has with the establishment is the
22 proposed hours of operation.

1 Now, Mr. Padro testified that Mr.
2 Brown was the designated representative. So
3 that's an admission that that's the issue. And
4 if you look at the history of this case, all of
5 this about parking, Mr. Padro testified well, if
6 they closed at 10:30, apparently there is
7 suddenly no parking problem, because they don't
8 have any opposition.

9 If the establishment were an enclosed
10 restaurant, presumably with the same capacity,
11 suddenly the parking problem goes away.

12 So I commend the protestants for the
13 case that they put on today. They put on a very
14 good case. But the point is if you look at the
15 facts, the only real issues here are concerns
16 about noise, which we appreciate and are
17 legitimate and associated with that concerns
18 about hours, because hours are frequently a
19 substitution for concerns about the effects of
20 noise. And that's it.

21 All this nonsense about real estate
22 values, we are in this neighborhood. I mean, we

1 -- seriously, the properties near Garden District
2 are affected and negatively impacted by this
3 outside venue? I don't think so. And I think
4 we all know better than that. And I think we all
5 know from Mr. Brown's statement to the ABC
6 Investigator the sole issue is really the hours.

7 So let's talk about that, because I
8 think that's what this case is really about and
9 in terms of noise.

10 You have heard from the witnesses,
11 they are part of the community. They live in the
12 neighborhood. They made it their business to go
13 out and meet people and they met quite a few
14 people. In fact, you have a stack of letters and
15 signatures from people who reside directly in the
16 neighborhood, presumably the people, the very
17 people who would be impacted by the supposed
18 negative effects of this establishment and they
19 support the establishment.

20 I believe that the witnesses'
21 testimony was very credible in their willingness
22 to address any of the issues that might arise.

1 Did they spend the money on a sound study before
2 they had the license? No. But are they
3 committed? Is there any doubt based upon the
4 testimony that you heard that they are committed
5 to addressing these issues?

6 The people that are complaining, the
7 few that we have seen and we didn't see a room
8 full of them today, aren't neighbors. And to say
9 that well, they are going to get the license,
10 there are no other recourse. You know what? The
11 people that have problems, they know where they
12 live. And that is probably more important than
13 the threat of a license being revoked or anything
14 else. They have to live in this community.

15 Mr. Thorpe testified and I understand
16 his concerns, he is immediately adjacent to the
17 establishment. However, much of his testimony
18 can be viewed in the light of, and I respect him
19 for it, it's his religion.

20 He is opposed to alcohol. He does not
21 support ABC establishments. Then for many, many
22 years that has always been the case. I respect

1 him, but his testimony must be viewed in that
2 light.

3 So let's talk about how this case
4 should turn out. We believe that the applicant
5 has met its burden, that this location is
6 appropriate for the issuance of a license. You
7 heard the applicants.

8 There were two concerns with the
9 application. One is an entertainment
10 endorsement. The applicant seeks the
11 entertainment endorsement to retain flexibility.
12 They would be fine with a restriction that they
13 can't do live music. They would be fine with a
14 restriction that limited the entertainment
15 endorsement to 11:00 p.m.

16 There was testimony to that. I'm just
17 giving it to you in closing, that's where they
18 are on that issue.

19 If the Board has other restrictions on
20 entertainment that it believes are beneficial, I
21 don't think we would be unduly offended by that,
22 recognizing that it's not their desire to run a

1 nightclub every Thursday, Friday and Saturday
2 night. They just want the flexibility to do
3 events and perhaps at those events have some form
4 of entertainment.

5 I would submit to you that the
6 witnesses are correct. A magician is live
7 entertainment. As silly as it may sound, it's
8 live entertainment. It requires an entertainment
9 endorsement, as are some of the other ideas that
10 they might have for programming this space.

11 Now, let's talk about hours. First of
12 all, the shadow that was hanging over most of
13 this hearing was Dacha. We heard it from several
14 witnesses.

15 Let's keep a number of things in mind.
16 The Board made no decision in Dacha concerning
17 its hours, that was a settlement agreement. So
18 in terms of their being some sort of precedent
19 well, the Board has already decided this, the
20 Board didn't decide it. That was the agreement
21 that the applicant made with the community, which
22 it was entitled to do, and the community was

1 entitled to enter into that agreement. That has
2 nothing to do with this case.

3 Now, the other issue that is very
4 different is the reason that I requested that the
5 Board take judicial notice of the zoning, the
6 zoning directly behind Dacha is all residential.
7 We don't have that here. This is a Mixed-Use
8 Zone.

9 Now, the fact that this establishment
10 may be here and that may cause, you know, some
11 issues with respect to the properties that are
12 there, ultimately, they are going to go up in
13 value because the highest and best use would be
14 commercial anyway in a Mixed-Use Zone.

15 So in terms of hours, you heard one of
16 the applicant's witness testify that they would
17 be comfortable with midnight, Sunday through
18 Thursday, and 2:00 a.m. Friday and Saturday,
19 which we think is perfectly appropriate.

20 On Rhode Island Avenue one of the most
21 major thoroughfares in the District of Columbia,
22 it's one of the few divided roadways that we have

1 within the city limits. And it is a major
2 street.

3 So we would suggest that that is
4 appropriate and we are asking the Board to
5 approve the license application with those
6 changes to the application and with those
7 restrictions.

8 CHAIRPERSON ANDERSON: Well, one last
9 question. What are the numbers? I was taking
10 notes earlier. I know that you told me the total
11 capacity, but I think there was some demarcation.

12 MR. KLINE: Yeah, what is proposed is
13 225. It's necessarily subject to DCRA. My
14 office, you know, we didn't do this application
15 actually, but we always try to aim high, because
16 the last thing we want to do is we go to DCRA and
17 the number is larger and we have to come back to
18 you and we think it is fair for the community to
19 estimate high, so that everyone is on notice and
20 it won't be any more than that.

21 But what has been applied for is the
22 total occupancy load of 225. 122 seated. There

1 was testimony and we expect that the seated
2 number will probably go up and the total
3 occupancy is a result of that will come down
4 slightly because the equation for seated patrons
5 requires more square footage per person than
6 standing patrons.

7 CHAIRPERSON ANDERSON: I know, but all
8 225 seats will be outdoors? That's what I
9 thought there was some enclosure for some
10 numbers?

11 MR. KLINE: Eight seats indoors.

12 CHAIRPERSON ANDERSON: Okay. All
13 right.

14 MR. KLINE: So it's 122 seats is what
15 was applied for with a total capacity of 225,
16 which would include the 8 seats on the interior.

17 CHAIRPERSON ANDERSON: So 217 would be
18 outdoors?

19 MR. KLINE: Right.

20 CHAIRPERSON ANDERSON: I know you've
21 given the numbers, but I did not break the number
22 down.

1 MR. KLINE: Okay.

2 CHAIRPERSON ANDERSON: Is that it?

3 That's it?

4 MR. KLINE: Yes.

5 CHAIRPERSON ANDERSON: Go ahead.

6 MR. LOOTS: Thank you all for your
7 attention and patience today. I would have to
8 begin by noting that Mr. Kline is trying to
9 narrow the issue beyond what is really before
10 this Board. And I understand why. And I
11 understand that in a perfect world we wouldn't be
12 here because we would have reached some kind of
13 accord.

14 But I think the ANC's position has
15 been consistent and has been strong and is
16 supported by the evidence you have heard today.

17 What the ANC wants to achieve is a
18 balance within in the community, a balance
19 between its residential needs, its commercial
20 needs, its establishments, indoors/outdoors,
21 taverns, restaurants, it's a balance. And
22 certainly this Board is well-aware of that as

1 well.

2 The proposal that is before you today,
3 regardless of what modifications Mr. Kline may be
4 verbally offering, is and must be considered 225
5 human beings in an outdoor space with
6 entertainment, which could be anything, until
7 2:00 or 3:00 in the morning. That's the
8 application they put in, that's what they are
9 asking for.

10 And if that is what is on the table,
11 the ANC emphatically has to say no. There are an
12 infinite number of permutations of what might or
13 might not be acceptable to the ANC, but none of
14 those are before you today.

15 That said, the ANC is, in fact, a fan
16 of consistency and a fan of diversity in
17 opportunities and recreational opportunities in
18 the neighborhood and would, with the hours
19 restrictions and without an entertainment
20 endorsement, respect certainly and accept this
21 Board's determination if you put substantial
22 restrictions on those two elements.

1 As far as entertainment, you know,
2 it's I think a little bit incongruous that they
3 would be advertising a children's magician and
4 simultaneously say in their proposal that no one
5 under 21 will be admitted to the premises.

6 But regardless of the broad definition
7 of what is entertainment, the fact of the matter
8 is once you issue that license with an
9 entertainment endorsement in it, the sky is the
10 limit. They can hire Led Zeppelin. They can
11 hire, you know, the Madrigal Singers. They can
12 hire Placido Domingo if he is still alive. It
13 doesn't matter.

14 An entertainment endorsement is an
15 entertainment endorsement. And you know,
16 although theoretically in some ways, they could
17 limit that in terms of types and amplification
18 and other things, that is too much to ask this
19 Board to do in terms of restricting an
20 endorsement.

21 The minutia of defining what -- where
22 that tipping point is between what is acceptable

1 as wholesome, incidental entertainment and what
2 is going to be disturbing the neighborhood in
3 terms of, you know, drums and amplifiers and
4 whatever else is not something this Board can
5 legislate in the form of an entertainment
6 endorsement.

7 Something that theoretically the ANC
8 could have done as part of a settlement
9 agreement, but we are not there. That didn't
10 happen.

11 So with respect to the entertainment
12 endorsement, we are asking that the Board deny
13 the entertainment endorsement entirely. If at
14 some point in the future they wish to come and
15 request a substantial change to add it and if
16 they have got a track record, certainly the ANC
17 would be duty-bound to consider that.

18 But as of today, with a new
19 establishment, with everything else we know in a
20 total open air environment, the concept of an
21 entertainment endorsement and that of the
22 proposed establishment open air in the community,

1 whatever the hours, are irreconcilable and the
2 ANC seriously requests that you deny the
3 entertainment endorsement.

4 With respect to hours, certainly there
5 is a difference between daytime and nighttime.
6 And there is a difference between night and late
7 night. The hours that have been suggested in the
8 course and, I believe, Mr. Padro indicated
9 theoretically what might be acceptable to the
10 ANC, if this Board were to limit the hours to
11 conform that with -- to conform with those of the
12 only other open air venue in the immediate
13 neighborhood, that being 10:30 on week nights and
14 midnight on weekends, Friday and Saturday, the
15 ANC would view that as a harmonious and balanced
16 approach.

17 That's what Dacha has. It's 10:30 on
18 Monday through -- I'm sorry, Sunday through
19 Thursday and midnight on Friday and Saturday.

20 Now, keep in mind Dacha also has an
21 indoor venue that they keep open later and that
22 they can have entertainment or something if they

1 want, but not outdoors. And that would -- that
2 is a key difference that there is no indoors
3 here. There is no place to retreat to. There is
4 no place to move inside at 10:30 and wait it out
5 so they can leave and trickle out later.

6 So if it's all or nothing, the ANC
7 respectfully requests you deny the application.

8 If you are willing to take a careful
9 look at restrictions, we would request that those
10 restrictions be equivalent to the only other
11 outdoor venue, which is 10:30 and midnight.

12 And with respect to entertainment
13 endorsement, we respect -- we request that the
14 Board deny that entirely.

15 I need not remind you that the ANC is
16 entitled to great weight in this decision. I
17 think the testimony that you have heard today
18 indicates that the ANC gave this a deliberate,
19 thoughtful and thorough airing. This is not a
20 step to proceed to protest.

21 Some day if you ever bother to read
22 the transcript, I think you will hear my

1 questions to Mr. Padro was actually has the ANC
2 ever taken this to a Protest Hearing before.
3 Regardless of his answer conflating the two, but
4 however you look at it.

5 This is not an ANC that is knee-jerk
6 reacting to something. They are responding to
7 very specific threats to their neighborhood. We
8 have expert testimony unrebutted that the
9 property values will be negatively affected were
10 the license as granted to go into effect.

11 We have testimony from neighbors. We
12 have no affirmative evidence of sound mitigation
13 that would be effective or that we could even
14 evaluate. So therefore, that's the relief we
15 request from the Board. Thank you.

16 CHAIRPERSON ANDERSON: All right.
17 Thank you very much for both of our
18 presentations. You are an hour over my 6:00 time
19 line, but I did move it to 7:00 and so we are
20 done. I want to thank you for both of your
21 presentations.

22 Now, do the parties wish to file

1 proposed findings of fact and conclusions of law
2 or waive their right to do so? You're going to
3 be looking at --

4 MR. KLINE: We will waive if the --

5 MR. LOOTS: We will waive.

6 CHAIRPERSON ANDERSON: I think as I --
7 Mr. Kline, you were being looked at to see what
8 your decision is before I asked.

9 MR. KLINE: I was looking at Mr.
10 Loots.

11 CHAIRPERSON ANDERSON: All right.
12 Okay.

13 As Chairperson of the Alcoholic
14 Beverage Control Board for the District of
15 Columbia and in accordance with DC Official Code
16 Section 2-574(b) of the Open Meetings Act, I move
17 that the ABC Board hold a closed meeting for the
18 purpose of seeking legal advice from our counsel
19 on Case No. 19-PRO-00006, Electric Cool-Aid,
20 pursuant to DC Official Code Section 2-574(b)(4)
21 of the Open Meetings Act and deliberating upon
22 Case No. 19-PRO-00006, Electric Cool-Aid, for the

1 reasons cited in DC Official Code Section 2-
2 574(b)(13) of the Open Meetings Act.

3 Is there a second?

4 MEMBER SHORT: Second.

5 CHAIRPERSON ANDERSON: Mr. Short has
6 seconded the motion.

7 I will now take a roll call vote on
8 the motion before us now that it has been
9 seconded.

10 Ms. Wahabzadah?

11 MEMBER WAHABZADAH: I agree.

12 CHAIRPERSON ANDERSON: Mr.
13 Silverstein?

14 MEMBER SILVERSTEIN: I agree.

15 CHAIRPERSON ANDERSON: Mr. Short?

16 MEMBER SHORT: I agree.

17 CHAIRPERSON ANDERSON: Mr. Cato?

18 MEMBER CATO: I agree.

19 CHAIRPERSON ANDERSON: Mr. Anderson?
20 I agree.

21 As it appears that the motion has
22 passed, I hereby give notice that the ABC Board

1 will recess these proceedings to hold a closed
2 meeting in the ABC Board conference room pursuant
3 to Section 2-574(b) of the Open Meetings Act.

4 Since this is a new license, the ABC
5 Board will issue a decision, I think, within 60
6 days. I was told for new licenses we have that
7 period.

8 So all right. Thank you very much for
9 doing so. I need to close the record, so if you
10 are just quiet for a moment, let me close the
11 record.

12 As Chairperson of the Alcoholic
13 Beverage Control Board for the District of
14 Columbia and in accordance with DC Official Code
15 Section 2-574(b) of the Open Meetings Act, I move
16 that the ABC Board hold a closed meeting on May
17 15, 2019 for the purpose of seeking legal advice
18 from our counsel on the matters identified on the
19 Board's Legal, Licensing and Investigative Agenda
20 for May 15, 2019 as published in the DC Register
21 on May 3, 2019.

22 Is there a second?

1 MEMBER CATO: Second.

2 MEMBER SHORT: Second.

3 CHAIRPERSON ANDERSON: Mr. Cato and
4 Mr. Short have seconded the motion.

5 I will now take a roll call vote on
6 the motion before us now that it has been
7 seconded.

8 Ms. Wahabzadah?

9 MEMBER WAHABZADAH: I agree.

10 CHAIRPERSON ANDERSON: Mr.
11 Silverstein?

12 MEMBER SILVERSTEIN: I agree.

13 CHAIRPERSON ANDERSON: Mr. Short?

14 MEMBER SHORT: I agree.

15 CHAIRPERSON ANDERSON: Mr. Cato?

16 MEMBER CATO: I agree.

17 CHAIRPERSON ANDERSON: Mr. Anderson?
18 I agree.

19 As it appears the motion has passed,
20 I hereby give notice that the ABC Board will hold
21 this closed meeting pursuant to the Open Meetings
22 Act. Notice will also be posted on the ABC Board

1 hearing room bulletin board, placed on the
2 electronic calendar on ABRA's website and
3 published in the DC Register in as timely a
4 manner as practicable.

5 It is 7:04 p.m. and we are adjourned
6 for the day. Thank you very much.

7 MR. KLINE: Thank you.

8 MS. YOHANNES: Thank you.

9 MR. LOOTS: Thank you.

10 (Whereupon, the Protest Hearing was
11 concluded at 7:04 p.m.)
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A

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This is to certify that the foregoing transcript

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Before: DCABRA

Date: 05-08-19

Place: Washington, DC

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