

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

2 10:36 a.m.

3 CHAIRPERSON ANDERSON: All right.

4 We're back on the record. Our next case is
5 basically a fact finding hearing on Rodman's
6 Discount Spirits, License number 108215. And
7 who's representing Rodman?

8 MR. KLINE: Andrew Kline, on behalf of
9 Rodman's.

10 CHAIRPERSON ANDERSON: Good morning,
11 Mr. Kline.

12 MR. KLINE: Good morning.

13 CHAIRPERSON ANDERSON: Who'd here with
14 you, Mr. --

15 MR. NOLAN RODMAN: Nolan Rodman.

16 MR. ROY RODMAN: Roy Rodman.

17 CHAIRPERSON ANDERSON: Good morning.

18 MR. KLINE: And as you may tell from
19 their names, they are the principles of the
20 application.

21 CHAIRPERSON ANDERSON: All right.

22 Good morning, Mr. Kline. And who are you, sir?

1 MR. BIANCO: Good morning, Mr.
2 Anderson. Richard Bianco. I represent Paul's
3 Wine and Liquor, which is a establishment to the
4 north of Rodman's, that is the subject matter of
5 the measurement. And I have Rick Bellman, who is
6 the owner of Paul's.

7 CHAIRPERSON ANDERSON: The reason I'm
8 asking is because this is a fact finding hearing
9 that was requested by Rodman's. So, you're not a
10 party in this case. So therefore, you have no
11 role. So, I'm not quite sure why you're here.

12 MR. BIANCO: Well, if I could go into
13 that for a moment, Mr. Anderson, I'd appreciate
14 to be heard on that specific issue.

15 CHAIRPERSON ANDERSON: Well --

16 MR. BIANCO: As this is a -- I'm
17 sorry. I didn't mean to interrupt.

18 CHAIRPERSON ANDERSON: Well but, so,
19 what I'll say is that, why don't you step back?
20 If you need, based on the information that's been
21 presented by Rodman, and if you believe that you
22 need to step forward, then you can let me know.

1 But currently, you're not a party.
2 So, let me hear from Rodman. And then, based on
3 how that develops, if that impacts you then you
4 can come forward. Okay? So, you can step back,
5 sir. Thank you.

6 MR. BIANCO: Very well, Mr. Chair.
7 Thank you very much.

8 CHAIRPERSON ANDERSON: All right. And
9 you are, sir?

10 MR. PERU: Supervising Investigator
11 Jason Peru, with ABRA.

12 CHAIRPERSON ANDERSON: Good morning,
13 Mr. Peru.

14 MR. PERU: Good morning, sir.

15 CHAIRPERSON ANDERSON: All right. The
16 Board has before it today a fact finding hearing
17 on a request from Nolan Rodman, holder of a
18 Retailer Class A license, which is sitting in
19 safekeeping.

20 ABRA's licensing database record
21 indicated, indicates that Mr. Nolan's license is
22 attached to 914 Rhode Island Avenue Northeast.

1 Mr., I believe Mr. Nolan Rodman had also shared
2 to other addresses with ABRA staff, 4936
3 Wisconsin Avenue Northwest, and 5100 Wisconsin
4 Avenue Northwest.

5 There's currently a Retailer Class B
6 at 5100 Wisconsin Avenue Northwest, held by Roy
7 Rodman, and operating as Rodman's Discount Drugs.

8 By way of background, in 2011 the
9 Rodman's sought to convert their Class B license
10 located at 5100 Wisconsin Avenue Northwest to a
11 Class A license.

12 This request was denied by the Board
13 on March 23rd, 2011, because it violated Section
14 25333, which provides that no new off premises
15 license, Retailer's License Class A shall be
16 issued for an establishment which is located
17 within 400 feet from another establishment
18 operating under an off premises Retailer's
19 License Class A.

20 The Board determined at the time that
21 the Rodman's address of 5100 Wisconsin Avenue
22 Northwest was within 400 feet of Paul's Liquor,

1 operated at 5205 Wisconsin Avenue Northwest.

2 Mr. Nolan Rodman acquired his Class A
3 license through an involuntary transfer in 2017.
4 And the license has been kept in safekeeping
5 since then.

6 In March 2019 Mr. Rodman and his
7 attorney, Andrew Kline, contacted ABC Board
8 requesting for a third time that the Class A
9 license be extended in safekeeping for an
10 additional six months. The reason for the
11 requested extension is because the license is
12 working on finalizing a location.

13 On April 10th, 2019, on a vote of five
14 to zero, the ABC Board approved the request to
15 extend the safekeeping until September 30th,
16 2019. Following that request, in an undated
17 letter, Mr. Rodman requested this hearing. This
18 brings us to today.

19 Now, in 2011 you requested a Class A.
20 We told you that because of the 400 foot, within
21 400 feet you cannot have this license. So, you
22 went and got another license that was at Rhode

1 Island Avenue Northeast. It's been in
2 safekeeping.

3 And now you're asking us to approve
4 this license in this location, that we've already
5 told you in 2011 that you cannot have a Class A
6 license in this location, based on the 400 foot
7 violation, the 400 foot rule. So --

8 MR. KLINE: Let me --

9 CHAIRPERSON ANDERSON: What's
10 different?

11 MR. KLINE: All right. So, Mr.
12 Chairman, if I may? We are not at this point
13 asking the Board to approve the transfer to this
14 location. What we are merely asking, and
15 although this hearing is labeled a fact finding
16 hearing, it's really a legal determination
17 hearing.

18 And the sole issue from our standpoint
19 is the method of measurement. It's our
20 understanding that the measurement has been done
21 to the address, 5100. 5100 is an office building
22 with a mixed use, well, office building with

1 retail on the first floor.

2 To the south side of the south side of
3 the building is Rodman's. To the north is Wells
4 Fargo Bank. And to the north of that is Crunch's
5 Fitness.

6 Now, I've seen Mr. Peru's
7 measurements. And today we're not here to get
8 into a battle of measurements. We're merely
9 seeking clarity as to how the measurement is to
10 be done, and what's the appropriate method.

11 It would appear that, based on
12 Investigator Peru's report, that the measurement
13 was done to the property line of the building in
14 which Rodman's is located. And we would submit
15 that that's improper. And that's what we're to
16 get a determination on.

17 And if the Board agrees with our
18 position with respect to the construction of 23
19 DCMR 101, then we'll undertake to do a formal,
20 hire a surveyor and make sure that everyone's
21 clear as to what the distance is.

22 And if it's less than 400 feet, then

1 certainly understand the statute. That's an
2 issue. But if it's more, under those
3 circumstances if the Board agrees with our
4 construction of the statute, then the Rodman's
5 would be able to proceed to apply for a transfer
6 of the license at that location.

7 CHAIRPERSON ANDERSON: So, my question
8 to you, Mr. Kline, what is it, at least from your
9 experience in that? What is it? What analysis
10 has the Board utilized to come up with distance?

11 What has been the, what has the Board
12 done, or the Agency done in establishing whether
13 or not an establishment is 400 feet from another
14 establishment?

15 MR. KLINE: Sure. We believe that the
16 controlling finding, legal finding by the Board,
17 legal conclusion by the Board, which controls is
18 Weygandt Wines. It was heard in a fact finding
19 hearing on February 4th of 2009.

20 And we don't believe that the Board
21 has ever overruled that position. And we think
22 it's controlling. And what the Board said

1 pretty, that case involved, let me set the
2 background, so it will make it clearer.

3 In that case we were talking about
4 Sam's Park & Shop, up on Connecticut Avenue.
5 It's one of the few shopping centers in
6 Northwest. If you're familiar with it, it's up
7 near the Uptown Theater, in that neighborhood.

8 And there's a shopping center there.
9 And the issue there was, did you met, there was a
10 premises that was sought to be leased for a
11 location of a liquor store.

12 And the issue was, since it was all
13 one lot, and there was a parking lot in front of
14 it, do you measure to the parking lot in the
15 front? Or do you measure to the leased premises,
16 where the store sought to be located?

17 And in considering that issue the
18 Board ruled that it was the Board's position that
19 the requirement to ensure that the Class A stores
20 are more than 400 feet apart from each other
21 should be measured from the leased property line,
22 leased, L-E-A-S-E-D, leased property line, rather

1 than the record lot of the strip mall in which
2 the applicant seeks to open this business.

3 Now, in that case it was a parking
4 lot. In this case it's analogous. We're talking
5 about a office building. And the policy is to
6 have liquor stores at least 400 feet from one
7 another. That's the policy that's in the law.

8 Now, it's the Board's job to figure
9 out what's the best way to implement that policy,
10 which is what we think the Board did in Weygandt.
11 And if we can take a couple of examples, I think
12 we can make the point.

13 If we look at this building that we're
14 in, at 14th and U Street, it's an office
15 building. It takes up almost a whole block.
16 It's presumably one lot.

17 Directly across the street, on 14th
18 Street, there are a number of individual lots
19 that are smaller, call them mom and pop
20 buildings, call them what you want. They're low
21 rise buildings. But there are several lots.

22 Now, let's presume that down 14th

1 Street there is a liquor store 380 feet from the
2 corner of this building. And it's also
3 approximately 380 feet from Lost Society on the
4 other, which is the building on the other side of
5 the street.

6 The effect of that would be that one,
7 if the Board ruled that we measured to the
8 property line of the lot, the effect of that
9 would be, there could be no liquor store anywhere
10 on the ground floor of this building, going north
11 on 14th Street.

12 Yet, on the other side of the street
13 one would only need to move to the next building
14 to be more than 400 feet from the store 380 feet
15 down 14th Street. Now, that's just arbitrary.

16 I mean, it would seem that in one case
17 we're requiring that the store be at least 400
18 feet away. In the other, because of the size of
19 this lot, and the size of this building, it has
20 to be 450, 460 feet away to get the lot past this
21 building.

22 So, we believe what the Board did in

1 Weygandt is consistent with the purposes of the
2 statute in requiring stores to be 300 feet apart.
3 And that construe it as to the property line, the
4 legal property line, that's arbitrary.

5 Now, there's a legal basis for this as
6 well. And it's very clear. Property is, what
7 we're looking at here is, in looking at 101.2,
8 and we say that the distance shall be measured
9 linearly by the Board. And shall be the shortest
10 distance between the property lines of the
11 places.

12 There are two questions. One, what
13 are the property lines? What's the property?
14 And second, what's the place?

15 Now, we would submit that the place is
16 the liquor store. And a lease is an estate and
17 land. It is no different than a sale, in terms
18 of it being estate and land.

19 So, if one leases a portion of
20 property that is part of a larger parcel, then
21 they have an estate and land. And the boundaries
22 of their piece of land are the boundaries of

1 their leased premises, which is exactly what we
2 believe should control here.

3 I would cite for that proposition
4 Camalier & Buckley-Madison, Inc. v. the Madison
5 Hotel, at 513 F2nd 407. It's a D.C. Circuit 1975
6 case.

7 And it says that a lease endows the
8 leaseholder not only with rights of contract, but
9 also with a form of ownership. And I think, we
10 think that's critical. And this is the Board's
11 decision.

12 But as I said before, we think
13 Weygandt is controlling. And if the Board were
14 to deviate from that, the Board, which the Board
15 can. I mean, we acknowledge that the Board can
16 re-look at the statutes and make different
17 decisions.

18 It's not strictly bound by precedent.
19 But in order to vary from previous precedent the
20 Board would have to articulate some reason for
21 doing so. And we believe that the policy reasons
22 that we've laid out as to why Weygandt is correct

1 still control, or are still appropriate.

2 So, all we're asking for the Board to
3 do today is to rule that the measurement to be
4 conducted from this premises runs from the
5 boundaries of the store, of the leased premises,
6 and not from the property on which the leased
7 premises is located.

8 CHAIRPERSON ANDERSON: The reasons I
9 was smiling, Mr. Kline, because as you know, as
10 an attorney we go by precedent. And so,
11 therefore the way the Court has ruled, that would
12 give you a road map of how the Court is going to
13 rule.

14 But I, there are some cases that the
15 Supreme Court overruled a 40 year precedent that
16 they overruled recently. So, I believe as
17 lawyers we, I'm not sure if we can go by
18 precedent anymore, to say that because the Court
19 has ruled that way in one way, that we're going
20 to move the other way.

21 I'm not familiar with the Weygant
22 decision. And I will make sure that I will

1 revisit it, to see what decision. I'm assuming,
2 as they say, we should never assume. But I'm
3 assuming that if we, if the Board was to go by
4 the decision in Weygandt that your client would
5 be able to have an A license. Is that correct?

6 MR. KLINE: I think the answer is, we
7 don't know. Because we don't know that the
8 measurement. I mean, it's close. And the
9 question, the measurement has not been conducted
10 that way --

11 CHAIRPERSON ANDERSON: Okay.

12 MR. KLINE: -- to my knowledge, by
13 ABRA staff at this point. So, that would be the
14 first step. And if we had some issue with that,
15 then we may hire in a surveyor to determine what
16 we believe.

17 CHAIRPERSON ANDERSON: Do you have
18 anything? I just want to say, I'm going to ask
19 some questions of our investigator.

20 MR. KLINE: No. Just, you know, I
21 want to make clear, in terms of the point on
22 precedent, I agree with you. Yes, you can

1 overrule precedent.

2 But I want to stress that the Court of
3 Appeals has said, if an administrative agency
4 does that, which it's free to do, it must
5 articulate why the old policy shouldn't control.
6 It just can't say, well we did it that way then,
7 now we're going to do it this now.

8 CHAIRPERSON ANDERSON: As I said, Mr.
9 Kline, and as you know, with the way the Supreme
10 Court is ruling these days, that everything,
11 nothing is ever sure.

12 MR. KLINE: Understood.

13 CHAIRPERSON ANDERSON: You know, with
14 change, the makeup of the Court, the makeup of
15 the Board. And we just decide that we didn't
16 agree with what the folks made that decision, was
17 made ten years ago. And so, there's a new Board.
18 And we see it differently.

19 But I will, I appreciate you bringing
20 that to my attention. And I will make sure that
21 whatever decision that's made by the Board, that
22 we look at that case. Now you, this Camalier

1 case that you're referring, where is that from?

2 MR. KLINE: This is --

3 CHAIRPERSON ANDERSON: Is that a D.C.
4 case?

5 MR. KLINE: Sorry. It's D.C. Circuit.

6 CHAIRPERSON ANDERSON: It's a D.C.
7 Circuit Court? Okay. Mr. Peru, can you identify
8 yourself for the record, please, and how you're
9 familiar with this facility?

10 MR. PERU: Supervising Investigator
11 Jason Peru, with ABRA. And I'm familiar, I
12 received an email stating that there was going to
13 be a fact finding hearing --

14 CHAIRPERSON ANDERSON: Yes.

15 MR. PERU: -- in reference to this
16 discussion about the measurements.

17 CHAIRPERSON ANDERSON: Right.

18 MR. PERU: So, I decided to handle
19 this myself, and go out there in person, and look
20 into the establishments.

21 CHAIRPERSON ANDERSON: Now, what
22 address is it that, what address was given to

1 you?

2 MR. PERU: So, there was a couple of
3 addresses. Paul's Discount Wine and Liquors was
4 one, 5205 Wisconsin. And the 5100, where
5 Rodman's Discount Drug is currently at was given
6 to me. And I was also given 4936 Wisconsin
7 Avenue, which is a retail space for lease.

8 CHAIRPERSON ANDERSON: So, please
9 describe the building, namely where will the
10 Class A go, and what other stores or businesses
11 are located in the, in this complex?

12 MR. PERU: So, the building, as Mr.
13 Kline described, is a mixed use building, primary
14 medical from what I can tell, in that center
15 building, at 5100 Wisconsin.

16 If you look at the building, on the
17 south side, at the south end of the building is,
18 facing the building is going to be Rodman's
19 Grocery. On the north end of that building is
20 going to be, Crunch Fitness, I believe, or a
21 fitness center. And next to that is a Wells
22 Fargo Bank, all sitting on one big property lot,

1 all, you know, as one attached, built building,
2 is what you're described at the 5100 block.

3 CHAIRPERSON ANDERSON: So all, do all
4 these buildings, do they all have the same
5 address?

6 MR. PERU: Correct. According to
7 maps, and online, and records, they're all at
8 5100. And there's no, I did ask the question to
9 Mr. Nolan, in reference to, Mr. Nolan Rodman, in
10 reference to the spaces being defined by a letter
11 or number. And currently they are not.

12 CHAIRPERSON ANDERSON: All right. So,
13 what was the purpose of your visit to Rodman's?

14 MR. PERU: So, it was a couple of
15 things. For the record, I am not a surveyor, or
16 have been trained in the art of surveying.
17 However, I do have a measuring wheel and tape
18 that we use frequently to, when we're doing
19 investigations that require some measurements.

20 And I was also looking to see, to
21 confirm that Paul's Liquor is in fact operating
22 as it was. On multiple visits I visited Paul's,

1 and they're a fully operating establishment. I
2 spoke with one of the owners in Paul's, and a
3 manager.

4 So, I determined that Paul's was
5 operating. And also, to get a approximate
6 measurement of the distance between Rodman's
7 Grocery at 5100, and Paul's Liquors.

8 So, I took, I walked the block several
9 times, taking different paths, just to see if my
10 route would change the numbers. And Mr. Kline is
11 correct. My measure, I did measure from property
12 line to property line of the main building,
13 according to what I'm seeing, 5100. And that
14 number did fall short of 400 feet, approximately
15 339 feet.

16 CHAIRPERSON ANDERSON: Three, you said
17 339?

18 MR. PERU: 339, yes.

19 CHAIRPERSON ANDERSON: Okay.

20 MR. PERU: I measured that a couple of
21 times. And it came, with the approximate same
22 number.

1 CHAIRPERSON ANDERSON: Right.

2 MR. PERU: I then, I did in fact
3 measure door to door. And in fact Mr. Nolan was
4 at the establishment. And I welcomed him to walk
5 with me, to see what the measurements would be
6 for both measurements, which he did.

7 So, Mr. Rodman saw the property line
8 to property line measurement while he was with
9 me. And he also saw the door to door
10 measurement, which is approximately 543 feet, is
11 what I got from door to door.

12 CHAIRPERSON ANDERSON: You said 500
13 and how much?

14 MR. PERU: And 43. So yes. So, I
15 got, I did take into consideration what Mr. Nolan
16 was stating. And just to see for myself what the
17 distance would look like.

18 I then also measured the 4936
19 location, which Mr. Nolan Rodman stated that that
20 was the location they were looking at as a backup
21 plan option. It's a vacant retail space.

22 And that retail space was within 1,200

1 feet of Paul's Liquor, so well outside the 400
2 mark, which is further south down the street from
3 Rodman's Grocery Drug.

4 CHAIRPERSON ANDERSON: All right. So,
5 what else can you tell us about this seemingly
6 controversy about exactly how far is Rodman's
7 from Paul's Liquor Store?

8 MR. PERU: I think the measurements
9 are pretty accurate, in the sense of using the
10 measuring tape, and walking those distances. I
11 think Mr. Kline's argument is, I understand where
12 he's coming from.

13 I think if the building, if Rodman's
14 Grocery held a different address than the actual
15 main structure of the building we might be having
16 a different conversation, or maybe no
17 conversation at all.

18 But based on it all falling under one
19 site plan, and one address property, with my
20 experience as, being at the Board, that's what
21 we're basing these measurements off of.

22 So, I'm, you know, I, if that could be

1 re-zoned and changed, that's a different
2 discussion I would say, Chairman. But it's
3 pretty clear to me that it is falling, property
4 line to property line is falling under 400 feet,
5 if they do stay at that location.

6 CHAIRPERSON ANDERSON: Okay. I, let
7 me, I want to ask you another question, Mr.
8 Kline, about, in 2011 clearly I, this, the Board
9 used the same analysis when we denied the license
10 application, in the sense of the measurement.

11 And it's not up, and that was in 2011.
12 And that was, I don't know whether or not they
13 were represented by counsel. I don't know. But
14 it was never challenged.

15 And so, to me it would be maybe an
16 easier analysis if Rodman's was here today
17 challenging the ruling that was made in 2011,
18 saying that I'm applying for a license. You
19 should apply, you should approve the license
20 based on your methodology of measurement. But
21 that's not the case that we have.

22 I mean, they're not challenging the

1 denial, the decision that was made by the Board
2 in 2011, that it was within the 400 feet. What's
3 been challenged today is that since the Board
4 wouldn't offer me a license, I went outside and
5 bought another license from a location that is
6 clearly, with a less clearly, not within the 400
7 feet.

8 And what I'm trying to do is to force
9 the Board to say, well okay, I now have this
10 license. I want to bring it into this location.
11 And the Board refused to grant a new license in
12 this location. So, I don't see the difference.

13 MR. KLINE: Well, I mean, the
14 difference is, we think the Board erred in 2011.
15 And were this application, I mean, perhaps if
16 this application were sought to be filed within
17 five years, then perhaps it's an issue.

18 But since it's more than five years,
19 I mean, is this location now barred forever
20 because of that ruling? I don't think so. I
21 mean, it seems to me that we have a new
22 application. It's an application to transfer a

1 license into that location.

2 And under the circumstances it's a
3 fresh look. I mean, I think arguably where we
4 hear, what are we up to, three years ago, four
5 years ago, when we were within the five years,
6 then I can hear the argument that we're perhaps
7 barred, because the license was denied at that
8 location.

9 Even though I don't think it was
10 really denied. I mean, I think we're stretching
11 in terms of saying it was denied. What the Board
12 ruled was that, I believe that the application
13 couldn't proceed at that point, because of the
14 measurement issued. I wasn't involved.

15 CHAIRPERSON ANDERSON: But to me that
16 sounds like a denial, Mr. Kline.

17 MR. KLINE: Well, my point is, it
18 doesn't matter.

19 CHAIRPERSON ANDERSON: All right.

20 MR. KLINE: Because it's more than
21 five years later. And I don't think the Board
22 would take the position, I would hope that the

1 Board wouldn't take the position, well, that
2 means that there could never be a license at this
3 location. Because other circumstances could
4 change.

5 And at this point we think that the
6 Board was incorrect in 2011. Why it wasn't
7 challenged, I don't know. But that was then, and
8 this is now.

9 And there isn't anything in the
10 statute that say -- Had we sought to revive that
11 application, yes, it's, you know, it's binding at
12 that point. But this is a new application that
13 involves a transfer of a license to that
14 location.

15 CHAIRPERSON ANDERSON: All right.
16 Let, but, and I have a distinction now.

17 MR. KLINE: And just if I may, on the
18 measurement, before I lose it. Our, so our, we
19 have a measurement from the corner.

20 Mr. Rodman did a measurement from the
21 corner of the building to the northernmost wall
22 of the Rodman's premises. And that's 132 feet.

1 And if you add that to the 339, that's 471.

2 Now, it would be a little shorter than
3 that, because what we've done is link this and
4 this. And obviously the straight line would cut
5 some of that distance. But it's not going to cut
6 71 feet, under those circumstances.

7 So, I mean, you know, but we're not
8 asking the Board to make that ruling today.
9 We're only asking the Board to rule as to the
10 appropriate way to measure. And then we can
11 figure out what that measurement is.

12 CHAIRPERSON ANDERSON: Just, and maybe
13 it's not relevant. But you had, Rodman's has had
14 this license since 2017. And they've asked us,
15 this license has been in safekeeping until 2017.

16 So, and at least each time the request
17 to the Board is that we are trying to find a
18 location. Because it appears that Rodman's has
19 been aware since 2017 that I cannot operate this
20 A. So therefore, I need to look for a license.

21 And so, why is it that Rodman's have
22 been telling us since 2017 that I'm looking for

1 an alternative location? And now, 2019 they're
2 saying, no, I'm not looking for an alternative
3 location. I believe that your measurement is
4 wrong.

5 And so, therefore, I need to have this
6 license in my location, because your measurement
7 is wrong. Although, for the past two years
8 they've been telling us that I agree with you.
9 I'm looking for another, a location. Because I
10 agree with you that your measurement is correct.
11 What has changed? And that's exactly where we
12 are.

13 MR. KLINE: I don't think they were
14 saying they agree with you. I mean, I think the
15 point is, the ruling that had been made was that
16 they could not move it into that location. And
17 they did in fact look for another location.

18 You heard Mr. Peru state that he
19 looked at another location, which is one that the
20 Rodman's had looked at and considered, in terms
21 of opening a store at that location.

22 So, in terms of their efforts, once

1 they acquired the A, to move it into a different
2 location, those were verified. I mean, you know,
3 that's not made up.

4 But then there was a decision made,
5 well, let's re-look at this measurement issue.
6 And is it right? And then, in consideration of
7 that, well, maybe it's not right. And in looking
8 at it, and in looking at Weygandt, it appears
9 it's not right.

10 So, I mean, you know, it's not as if
11 they were, oh, you know, we're trying to pull a
12 fast one. I mean, certainly if that was their
13 intent they would have done it a few years ago.

14 And yes, they would have been in and
15 said, yes, let's, you know, let's look at the
16 measurement. But it didn't come to light until
17 more recently, in the last couple of months, that
18 perhaps that hadn't been looked at properly. So,
19 I mean, that's the reason.

20 But, I mean, their efforts to locate
21 another premises to move the license were real
22 and genuine, as you can hear. Mr. Peru even

1 indicates there was a specific premises that was
2 identified, and he was asked to also look at, in
3 the event that the Board were to rule adverse
4 with respect to the measurement from this
5 location.

6 CHAIRPERSON ANDERSON: The problem
7 that I'm having with it, and it's that the rule
8 is clear that it has to be 400 feet. And I
9 assume the controversy that we're having is like
10 the measurements. How is it that if we, if it's
11 measured in one, if it's --

12 Mr. Peru has measured it. And it
13 doesn't, based on one measurement that he does,
14 it's not within, it's within 400 feet. There's
15 another measurement. So, I'm not sure, how is
16 it, I don't believe that when the rule is, it, we
17 need to have some clear guidelines of, it can't
18 be this is my interpretation of how it needs to
19 be measured.

20 It's either, there has to be one
21 measurement that we all agree, how is it that we
22 measure the 400 feet. Because if, depending on

1 how the Board rules in this particular case, then
2 someone's going to say, you know, if you measure
3 it from this other way you're going to get 401,
4 or 400.

5 And that's, I'm just, I know what you
6 present today is that you presented this Weygandt
7 Wines case, to say that at least the way the
8 Board looks at how the measurement, that's the
9 way we should go.

10 MR. KLINE: Right. In other words, I
11 don't, I mean -- Look, I'm a math guy mostly,
12 even though I'm here as a lawyer. But, I mean,
13 you know, my head is math. And there's always a
14 right answer.

15 And as long as we know going in what
16 the variables are, and what the formula is,
17 there's always a right answer. It isn't, you
18 know, it isn't 401 or 399. It is what it is. We
19 can count it.

20 The issue is, what's the formula? And
21 as I stated before, if you look at 101.2, I mean,
22 we're really construing a very small number of

1 words in 101.2, which says that the distance
2 shall be measured linearly.

3 We know what that means. It means in
4 a straight line. It means not going across a
5 crosswalk, and up and down the street as was done
6 in the Metro Foods cases by a prior Board many
7 years ago. It means in a straight line.

8 And that law was changed in response
9 to the Metro Foods case, where, you know, the
10 Board in those days ignored a regularly marked
11 crosswalk, and they went up and down the street.
12 And, you know, and the Council said, we're not
13 doing this. It's a straight line. It's as the
14 crow flies. So, linearly is clear.

15 Shortest distance. That's clear.
16 That's consistent with linearly. Then it's
17 between the property lines of the places. So,
18 what we're talking about today is what's the
19 place? What are the places that we're talking
20 about, number one. And then number two, what are
21 the property lines of those places?

22 Now, we believe that the places that

1 we're talking about today, on the one hand are
2 the, is the Paul's Wine and Beer, I think it's
3 called, the Paul's Liquor Store location, which
4 is a leased premises in another building that has
5 other tenants.

6 So, we believe the property lines of
7 Paul's are the boundaries of its store. Because
8 when the landlord leased that property to Paul's
9 it conveyed an interest in land, in property to
10 Paul's. And that interest in land has
11 boundaries. And those boundaries are defined by
12 the boundaries of its leased premises.

13 Then we go down the street. The other
14 place that we're looking at is the Rodman's
15 store. And same thing. It's part of a larger
16 building, medical suites upstairs, and other
17 offices. To the south a lobby. And then Wells
18 Fargo Bank. And then Crunch Fitness.

19 So, we don't believe the place, with
20 respect to Rodman's, is Crunch Fitness. We
21 believe the place is the Rodman's store. And the
22 boundaries of the Rodman's store, another estate

1 and land, are the boundaries of the premises that
2 were leased by the owner of the building to
3 Rodman's. And that's the property lines of the
4 Rodman's place. And the property lines of the
5 Paul's place are the boundaries of its leased
6 premises.

7 CHAIRPERSON ANDERSON: Okay.

8 MR. KLINE: We think it's pretty
9 clear. I mean, we don't think there's -- And we
10 think Weygandt says exactly that. And we think
11 that there --

12 Well, let's, and let's talk policy.
13 Because this Board ultimately makes these
14 decisions based on public policy. I was thinking
15 of some examples.

16 We got a big project, a lot of
17 controversy, you know, it's how it ends up. But
18 I was trying to think of the most extreme
19 example. But let's look at McMillan Reservoir,
20 okay, in terms of redevelopment.

21 Let's presume that the McMillan
22 Reservoir piece is not subdivided. It's one

1 piece of property with boundaries going all the
2 way around it. And someone acquires that. They
3 own it. And they're going to build, you know,
4 various things on it.

5 Well, if the Board construed it as the
6 property lines of the parcel on which the store
7 is located, that could block out a large swath of
8 area in the District of Columbia if there were
9 just one store within 400 feet of the entire
10 McMillan Reservoir piece.

11 Now, we don't think that's good
12 policy. I mean, we understand the policy of
13 disbursing stores. But the 400 feet is, it's 400
14 feet. It's not meant to be 1,000 feet. It's
15 meant to be 400 feet. So, we believe what we're
16 arguing is more consistent with the policy that's
17 intended under the statute, than measuring --

18 Because, I mean, it's just, it's
19 serendipitous in terms of whether your, the store
20 is in a mom and pop 35 linear footage location,
21 like maybe across the street of the old Subway,
22 or whatever was across the street location, or in

1 this building where, you know, the building's 100
2 feet, linear feet, or whatever it is.

3 And that doesn't make any sense from
4 a policy standpoint. Because it's not making 500
5 feet apart, or 600 feet apart. Or in the
6 McMillan Reservoir case, who knows, you know,
7 1,000 feet apart. It's 400 feet.

8 And the closest way to get there is to
9 use the boundaries of the individual store,
10 rather than the larger parcel.

11 There was a grocery store uptown
12 somewhere where there were similar issues. And
13 if you look at that it's kind of like, well, you
14 have a whole parcel.

15 And is that really in the intent, to
16 make it so that there couldn't be any stores in
17 that greater distance? We don't think so. We
18 think 400 feet means 400 feet.

19 And construing the statute, the
20 regulation in this way most consistently moves
21 forward the intent and the public policy that was
22 intended by the Council.

1 CHAIRPERSON ANDERSON: I think it
2 would have been a much easier analysis if
3 Rodman's had a different address, if Rodman had,
4 their address was A, B, C --

5 MR. KLINE: I respectfully disagree.
6 Because missing from 101.2 is any mention of
7 address. I mean, addresses are assigned by DCRA.
8 And you can, as in this space, have an entire
9 building where there are several businesses on
10 the ground, or at least three businesses on the
11 ground floor, four if you count the entrance to
12 the office building, where there's one address.

13 And there are other landlords that
14 choose to do it differently, where each store
15 would have a sub address. Now, if the Board is
16 saying, well, go get 5100A on your C of O, all
17 right, we'll do it. I mean, it seems kind of
18 silly to me. But we'll do it, I mean, if that's,
19 you know, if that's --

20 CHAIRPERSON ANDERSON: But if it was
21 5100A, where would the measurement be?

22 MR. KLINE: We don't think it makes

1 any difference. The measurement is still to the
2 conveyed property, which is the leasehold
3 premises. We don't think it makes any
4 difference.

5 The statute, the regulation doesn't
6 say anything about what the street address is.
7 The regulation says, the property lines of the
8 places. And if there were an A next to their
9 address it doesn't change their property lines at
10 all. It's still the same property lines.

11 CHAIRPERSON ANDERSON: But if the
12 address were 5100A, wouldn't, I believe that the
13 Board would be wrong if we are -- And I'm just, I
14 don't know.

15 But I'm just saying, say for example
16 if the address was 5100A, and the Board went and
17 measured the distance from 5100, and but from
18 5100A it's more than 400 feet. I guess from what
19 I was just told from door to door.

20 It's fine if the measurement is from
21 door to door. But it appears that we're doing
22 the address, meaning the property line of 5100.

1 And that's, I think that's the difference, from
2 what I'm being told.

3 MR. KLINE: Well, I, you know, I'm not
4 going to argue that it's door to door. Because
5 that's not what the --

6 CHAIRPERSON ANDERSON: But I'm saying,
7 that's what -- Door to door you're fine, from
8 what I'm told.

9 MR. KLINE: Yes. But I don't think
10 that's -- I'm not going to argue. I can't sit
11 here as a lawyer and argue that that's terribly
12 relevant, knowing what the regulation says. It
13 doesn't say door to door.

14 And in the past, before this was
15 changed, you know, yes, the Board had a lot more
16 leeway. And as I said, and they had that one
17 case where they literally ignored the clearly
18 marked crosswalk.

19 You know, they said you couldn't drive
20 between the two stores. So therefore, you go
21 down the block, across the street, and then back
22 up the block, and it was more than 400 feet.

1 And the Court of Appeals said, what
2 are you talking about? And the Council said,
3 what are you talking about? We're not letting
4 you do this again. And that's when they wrote
5 this.

6 And we think this is very clear. The
7 only issue is, what are the property lines?
8 That's all we're talking about.

9 And if it's the Board's position that
10 we need a separate address, I respectfully
11 disagree. But we'll do that. I don't think that
12 that's so hard. We'll go to DCRA and we'll
13 petition to have the address changed. And we'll
14 make it 5100A.

15 But I don't see how, what that has to
16 do with the regulation. But if that were the
17 Board's ruling, that's what we would do.

18 CHAIRPERSON ANDERSON: And that's, we
19 were, I was just having conversation. That's
20 not, I'm not, I was just asking conversations,
21 meaning, how would we measure the location?

22 MR. KLINE: I don't think it changes.

1 I think it's still, to quote the regulation, the
2 property lines of the places. And, you know,
3 even if they changed the name of the street, the
4 property lines of the place, in this place
5 Rodman's, doesn't change.

6 I mean, the only thing that would
7 change the property line of Rodman's is if they
8 expanded the size of the store, or contracted the
9 size of the store. Or in some other way change
10 the property line of the place.

11 Otherwise, we don't see where what
12 address it is, or what number it is, or what
13 street it's on, has any bearing as to the
14 property line of the place, which is the limits
15 of the leased premises, leased by the landlord to
16 this particular tenant.

17 CHAIRPERSON ANDERSON: Thank you. Any
18 questions by any of the Board Members? Any
19 other, any questions?

20 MR. PERU: I have a question for Mr.
21 Kline. Maybe you know this or not. The,
22 Rodman's I believe, it's been awhile though, has

1 a basement, correct?

2 MR. ROY RODMAN: Yes.

3 MR. KLINE: Yes, correct.

4 MR. PERU: Does that basement fall
5 within the same space? Or does it, we're talking
6 about property lines, so I'm just curious. Does
7 the basement fall within the same space? Or is
8 the basement going into the underground areas of
9 --

10 MR. ROY RODMAN: Basement is further
11 away from the, from Paul's liquor. It's --

12 MR. PERU: The basement is south of
13 your location? How is that possible? It's not
14 possible?

15 MR. ROY RODMAN: It's within --

16 MR. NOLAN RODMAN: It's within the
17 location.

18 MR. PERU: It's within the same space?
19 Okay.

20 MR. NOLAN RODMAN: It's within the
21 same space.

22 MR. KLINE: But it doesn't extend to

1 the boundaries of the first floor, I'm gathering.

2 MR. PERU: That's what I'm asking --

3 MR. KLINE: Right.

4 MR. PERU: -- Mr. Kline.

5 MR. KLINE: It doesn't extend beyond
6 the boundaries.

7 MR. PERU: Yes.

8 MR. KLINE: That's a fair question.

9 I think it's a good question. Because if they
10 had underground space that extended beyond the
11 first floor, yes, I think that's fair.

12 MR. ROY RODMAN: It's the same walls

13 --

14 MR. PERU: Okay.

15 MR. ROY RODMAN: -- as the upstairs.

16 MR. PERU: Okay. That's, okay. Okay.

17 MR. ROY RODMAN: That answers that
18 question, yes.

19 MR. PERU: Thank you.

20 CHAIRPERSON ANDERSON: And there's no
21 question that Paul's Liquor Store is a viable
22 business in the location? Is that correct? So,

1 we all agree that Paul's Liquor Store is at A.
2 And that it's operated in the location where
3 Paul's is.

4 MR. KLINE: I mean, they've been
5 operating. There's no dispute about that.

6 CHAIRPERSON ANDERSON: Any other
7 questions by any other, any final comments? No?

8 MR. KLINE: I think we've covered
9 them. And I think in terms of the issue as to
10 the measurement, I think we've told the Board.
11 We would advise the Board of Weygandt. And we've
12 told the Board why it is we believe Weygandt is
13 correct.

14 And that why the underlying public
15 policy is fulfilled by the Board's ruling in
16 Weygandt. And that we don't see any reason why
17 the Board at this point would choose to deviate
18 from its ruling in Weygandt.

19 And in terms of what may have happened
20 in 2011, it's eight years ago. And it was a, as
21 I understand, a request to convert. And it's
22 not, it doesn't have any bearing on this request

1 to transfer an existing license in this location.

2 CHAIRPERSON ANDERSON: All right.

3 Thank you very much for your presentation.

4 MR. KLINE: Thank.

5 CHAIRPERSON ANDERSON: And the Board

6 will take it under advisement.

7 MR. KLINE: Thank.

8 CHAIRPERSON ANDERSON: All right.

9 Thank you. Have a good day. We'll be in a
10 recess.

11 (Whereupon, the above-entitled matter
12 went off the record at 11:21 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Discount Drug Wisconsin, Inc.

Before: Alcoholic Beverage Control Board

Date: 05-15-19

Place: Washington, DC

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