

IN THE MATTER OF: :
 :
Wyoming Cube & Bale, LLC, :
t/a Sandbox Restaurant :
3251 Prospect Street, NW : Protest
Retailer CR - ANC 2E : Hearing
License No. 110062 :
Case #18-PRO-00081 :
 :
(Application for New :
License) :

Wednesday,
February 13, 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:

MARK BRASHEARS, ABRA Investigator

KAREN TAMMANY CRUSE, CAG

BENJAMIN DOWER

KEVIN EDGAR

ROBERT ELLIOTT, APPLICANT

ELIZABETH EMES

RONA LEFF, APPLICANT

RICK MURPHY, ANC 2E

JAKE YOON, APPLICANT

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

1:38 p.m.

CHAIRPERSON ANDERSON: All right. And so the one and only hearing that we now have on our calendar for the rest of this afternoon is a Protest Hearing, Case No. 18-PRO-00081, Sandbox Restaurant, License No. 110062.

Would the parties, please, approach and identify themselves for the record, please?

It's informal, so you can have a seat unless you -- you can stand if you want to introduce yourself, but these proceedings are informal. So I'll start with the licensee.

MR. ELLIOTT: Yes, Robert Elliott and with Ms. Rona Leff and Jake Yoon. I am the owner and both of them are officers.

CHAIRPERSON ANDERSON: So you are the owner. There is a sign-in sheet there, sir. You can sign your name on it.

MR. ELLIOTT: Yes.

CHAIRPERSON ANDERSON: But I'll have-- what are the names of the other folks? I'm

1 sorry. They can introduce themselves.

2 MR. YOON: Jake Yoon.

3 CHAIRPERSON ANDERSON: Jake who?

4 MR. YOON: Jake Yoon.

5 CHAIRPERSON ANDERSON: Can you spell

6 your name for the record, please?

7 MR. YOON: J-A-K-E Y-O-O-N.

8 CHAIRPERSON ANDERSON: Y-O-O?

9 MR. YOON: N.

10 CHAIRPERSON ANDERSON: N.

11 MR. YOON: Yes.

12 CHAIRPERSON ANDERSON: Okay. And you,

13 ma'am?

14 MS. LEFF: Rona, R-O-N-A, Leff, L-E-F-

15 F.

16 CHAIRPERSON ANDERSON: All right. So

17 who are the Protestants?

18 MR. MURPHY: The Protestant, I am Rick

19 Murphy. I'm ANC Commissioner in Georgetown. I'm

20 here representing ANC-2E. To my right is --

21 MS. CRUSE: Karen Tammany --

22 MR. MURPHY: -- Karen. I'm sorry.

1 MS. CRUSE: Karen Tammany Cruse with
2 the Citizens Association of Georgetown.

3 MR. MURPHY: And seated behind us we
4 have representatives of a Group of Seven who have
5 also protested.

6 MS. CRUSE: Abutting neighbors.

7 MR. MURPHY: Abutting neighbors.

8 CHAIRPERSON ANDERSON: Why are they
9 not -- because we have -- so the Protestants are
10 the ANC, the Citizens Association of Georgetown
11 and a Group of?

12 MR. MURPHY: Seven.

13 CHAIRPERSON ANDERSON: So who is the
14 designated representative for the Group of Seven?
15 Well, you can come up who -- the designated
16 representative, you can come up, pull a chair up
17 and then you guys can as a preliminary matter --
18 because remember you have your own standing, so
19 all the -- all right.

20 And so I'm sorry, who is the
21 designated representative for the group? I'm
22 sorry again, your name again, ma'am, please?

1 MS. EMES: Elizabeth Emes, E-M-E-S.

2 CHAIRPERSON ANDERSON: Your last name
3 again? I know you spelled it, but I was writing
4 your first name.

5 MS. EMES: That's okay. It's Emes, E,
6 as in Edward, M-E-S.

7 CHAIRPERSON ANDERSON: Okay. All
8 right. Let's take a -- we will be off the record
9 for a minute, please.

10 (Whereupon, the above-entitled matter
11 went off the record at 1:40 p.m. and resumed at
12 1:42 p.m.)

13 CHAIRPERSON ANDERSON: All right.
14 We're back on the record. Sorry for that pause.
15 All right. I know that when we had -- all right.
16 This is a Protest Hearing and so let me explain
17 the process. I know that I have done that during
18 the Protest Hearing (Status), but we are here
19 today.

20 And so basically, what will occur is
21 that we will start with the introduction of
22 parties. I'll ask for if there are any

1 preliminary issues. If miraculously you guys
2 decide that, because we are now here, you want to
3 -- you have agreed to terms and the Board can
4 memorialize it, if folks want to do that, that's
5 fine with me. We can do that or we can do the
6 hearing. I always give options.

7 But anyway, we will do that. Then we
8 will have the Protestant can -- will -- we will
9 start with the Applicant. The Applicant gives
10 his opening statement. Then the Protestant will
11 give their opening statement. Then the Board
12 will call its witness. The Board's witness is
13 the ABRA Investigator. He will go through the
14 report that he has written.

15 The Board will ask questions of the
16 Investigator. Once the Board has asked questions
17 of the Investigator, then we will -- I'll have
18 the Protestant have -- the burden is on the
19 Applicant, but what I'll do is that I'll have the
20 Protestants ask questions of the Investigator
21 first and then we will have the Applicant ask
22 questions of the Investigator.

1 No, I'll have the Applicant ask
2 questions of the Investigator first. And then
3 the Protestant will ask questions. If based on
4 the questions that were asked, then the Board
5 will ask, might ask some other questions and I'll
6 give you an opportunity to follow-up.

7 Once that is done, then the Applicant
8 will present its case. And after the Applicant
9 presents its case, then the Protestant will
10 present their case.

11 And so basically what I'll ask when
12 you do your opening statement is basically tell
13 me what it is that you are seeking and what is it
14 that you are asking the Board to do from the
15 Applicant's perspective and from the Protestant's
16 perspective.

17 So just as a preliminary issue, for
18 the Applicant, how many witnesses do you have?

19 MR. ELLIOTT: Three.

20 CHAIRPERSON ANDERSON: You have three
21 witnesses. And I know there are three
22 Protestants, so many the Protestants can tell me

1 how are -- is it -- are you doing one case, are
2 you working jointly or are you doing separate
3 cases? How is it you are going to present your
4 case?

5 MR. MURPHY: We are doing one case.

6 CHAIRPERSON ANDERSON: You are going
7 to do one case. Okay. That's more efficient.
8 And how many witnesses do you have?

9 MR. MURPHY: We have three witnesses.

10 CHAIRPERSON ANDERSON: You have three
11 witnesses.

12 MR. MURPHY: Well, three witnesses,
13 plus myself. I'm going to authenticate a
14 photograph that I took.

15 CHAIRPERSON ANDERSON: How are you --
16 how do you -- tell me, are you an attorney, sir?

17 MR. MURPHY: I am.

18 CHAIRPERSON ANDERSON: Fine. All
19 right. You are an attorney.

20 Well, are you an attorney, sir?

21 MR. ELLIOTT: I am.

22 CHAIRPERSON ANDERSON: Well, then now

1 that I'm dealing with attorneys on both sides,
2 then I have different expectations. So when I'm
3 dealing with attorneys, then I have different
4 expectations. If there were no attorneys here,
5 then I have a -- but so we have attorneys and
6 attorneys know how -- it's an administrative
7 hearing. It's not as formalistic as a court, but
8 there are still -- it's still formal.

9 This is what I do in my other job.
10 I'm an -- I do Administrative Law, so I'm
11 familiar with the practice. So but as I said
12 before, we still have objections, but it's not as
13 formalistic as when we are in Court.

14 All right. So there is a time line.
15 Each side is supposed to have 90 minutes to
16 present its case. For the most part, I am not
17 going to necessarily stick to the 90 minutes.
18 I'll give you an opportunity to present your
19 case. But I don't -- if it is not, there is
20 really no reason for us to have the same, being
21 redundant.

22 So spend your time -- don't spend 20

1 minutes cross-examining a witness, because that
2 takes away from your time. Your best -- unless
3 the witness says something that is just so -- you
4 need to spend 20 minutes cross-examining him or
5 her, then that's fine. But I think the best
6 evidence is you spend most of the time presenting
7 your case from your light. So just keep that in
8 mind.

9 But each side is supposed to have 90
10 minutes. So that's three hours, so I'm glad that
11 it's a Protest Hearing that starts at 1:30, 2:00,
12 so it should be heard at a reasonable period of
13 time. We will take as much time as we need for
14 everyone to testify, but just be mindful that
15 there is really no reason for us to have
16 redundant testimony by each witness.

17 So what we will start then is that we
18 will have the Applicant can give us an opening,
19 his opening statement.

20 MR. ELLIOTT: And, Mr. Chairman --

21 CHAIRPERSON ANDERSON: And speak up.

22 There is a microphone there.

1 MR. ELLIOTT: Yes.

2 CHAIRPERSON ANDERSON: He needs to
3 hear you and so just, please, speak up, so we can
4 hear.

5 MR. ELLIOTT: Yes, please, if you
6 can't hear me, please, let me know.

7 So I'm pleased to be here. I'm Robert
8 Elliott. I filed the application for the same
9 number of seats as are in our Certificate of
10 Occupancy, which is 121 indoors and 168 outdoors.

11 I actually acquired the control of the
12 real estate in 1983 and it housed as many as
13 seven restaurants. Right now, there are five:
14 Captain Milano, Peacock Cafe, Bangkok, well now,
15 Mai Thai, this one and the one replacing Morton's
16 after 37 years.

17 But when I acquired this property,
18 there was only one restaurant. And it was based
19 on a trial and error experience to try and make
20 the property work, but I think it is a property
21 important to the community and important to
22 Georgetown because it is an acre and a quarter

1 and 40 percent of it is open, so it has this main
2 courtyard and it has five other outdoor places.

3 And when I first acquired it, I tried
4 to use it various ways. One of the first times I
5 did, actually was have the Georgetown Symphony,
6 which I think no longer exists, I had them do a
7 full symphony concert in this courtyard and many,
8 many people came.

9 I traveled all over Georgetown and put
10 out notices. At one time for a couple of years,
11 we had a nursery in there with plants and shrubs
12 and so forth, Bloomin Newman.

13 We had two large sculpture exhibits,
14 one in the '80s and one I think about 15 years
15 later. The first one over a period of weeks had
16 6,000 visitors, including a bus load of people
17 from Pennsylvania, it was a spectacular exhibit.
18 I have in this space where the restaurant is,
19 which is replacing Chinese Disco, and that
20 replaced Georgetown Billiards, I originally put
21 Georgetown Court artist space and it was an art
22 gallery that we ran for more or less the public

1 benefit. It hardly sold anything, but it was
2 judged by the Washington Post to be the biggest
3 event in the art world of Washington that year.
4 That was around 1984.

5 So we also at times had a coffee house
6 operating in one of the courtyards, but largely
7 for the last 33 years, the courtyards have been
8 unused. They have been sitting there pretty
9 sterile and unused. And part of the reason for
10 that is that as each restaurant applied for its
11 license and this was 20 years ago or more,
12 because these restaurants that are there are 20
13 to 26 years old now.

14 At that time, it took a year to go to
15 Protest Hearing. And so Mr. Emes, and his wife,
16 Mrs. Emes is here, and Mrs. Cruse, and at that
17 time, Ms. Harney from the citizens association
18 would say to the restaurant well, either agree to
19 what we want or wait a year and restaurants can't
20 wait a year.

21 So they all signed agreements that
22 they wouldn't use the courtyard. And the issue

1 of whether they should or shouldn't never came
2 before the ABC Board, because of this history of
3 making these agreements.

4 What we are facing now is that
5 Georgetown really has slipped and this affects
6 this application and it affects what we are
7 trying to do. I went up this morning and I
8 walked from M Street to P and there were 15
9 vacancies, 15 vacancies all around us. And the
10 restaurants have been working harder just to hold
11 their own. One of the reasons that we have these
12 restaurants for 20 to 27 years and even 37 is our
13 rents are not substantial. We do not press for
14 high rents.

15 The rents, I just removed Cafe Milano
16 at about \$42 a foot for 17 years. The other
17 restaurants are similar. And we see that a lot
18 of times restaurants are going out of business
19 because they are in a \$75 or \$100 a foot space
20 and restaurants just can't pay that. They
21 usually can't pay more than 7 percent of their
22 gross revenue and be healthy.

1 So as stores have come along through
2 Georgetown, they have tended to fail to pay more
3 and they have replaced restaurants. Restaurants
4 are -- numbers of restaurants are down.

5 And I'll show you this experience,
6 too, because -- well, let me say this. So we got
7 to June last year and Chinese Disco's 10-year
8 lease was up. They presented a buyer, Samuel
9 Gobrial, all I had to do was sign-off, he would
10 keep on going with Chinese Disco, replace
11 existing ownership, pay rent. I wouldn't have to
12 pay a cent. And we interviewed them and I took
13 him and his wife to dinner and I really looked at
14 them. There was no problem with them, but there
15 was a problem with that business.

16 And they wanted to continue it and
17 improve it. And so we took the plunge and we did
18 not allow that transfer. And so since then, we
19 have had an empty space. I have invested over
20 \$400,000 between lost income since then and over
21 \$200,000 of renovations trying to do something
22 better. And we are excited about doing something

1 better.

2 Two years ago, the old Georgetown
3 board said to us, it's one of our exhibits, in a
4 hearing that they wanted to see some life in this
5 courtyard. And if you go from the top of
6 Georgetown all the way to the river, you will
7 find that the sidewalks are narrow, that it is
8 difficult to walk. There is no place to sit.
9 There is one front yard of a church, south of M,
10 this is the only place that is a fairly large
11 open space, just off of N and Wisconsin that
12 could be the kind of place you find in lots of
13 other cities here and abroad.

14 So this is where we are going. We are
15 trying to accomplish something to the community
16 that would put some life in the courtyard. This
17 raises questions about the nearby residents and
18 we recognize that. And when you hear our
19 evidence, you are going to hear all the things we
20 are trying to do and have proposed to you to keep
21 them from suffering adverse impacts.

22 The residents we are talking about are

1 really 7 of the 35 condominium units facing the
2 main courtyard. There are Protestants from M
3 Street, Mrs. Emes and her daughter and Mr. Emes
4 own two apartment houses and Mr. and Mrs. Emes
5 live in the lower level of those properties and
6 have large backyards.

7 But we will show you that they can't
8 see this, there is a three story building,
9 masonry building between them and this. They
10 can't see it. And we have taken a decibel meter
11 and they can't hear it. We cranked the sound up
12 to the level of an airplane going overhead with
13 intense sound in the courtyard yesterday, we took
14 our decibel meter and we walked all the way
15 around the back to the lot line and there is a
16 school, which we also own, and past to the west
17 boundary of that school and there is no
18 difference in the ambient sound level with that
19 sound on and off nor can it be heard over there,
20 because sound is blocked by masonry.

21 So we don't think they can hear it or
22 see it, so I come back to the fact that it is the

1 residents who have the real interest here. They
2 are the ones that, of the condominium, are the 7
3 looking down and the other 28. And there 22 have
4 signed to support this application, including a
5 full 168 seats. Five of the seven facing that
6 courtyard approve of this and support this
7 application.

8 Now why are we thinking to have these
9 seats out there? Here is what we want to do. We
10 want to have an art-walk through the property.
11 We want to have sculptures in various places. We
12 want to have these restaurant seating at the
13 ground level. We want people to come in there
14 and have a very pleasant, quiet experience. We
15 have no music, no loudspeakers and we will clear
16 it out completely at 10:00 p.m., that's the exact
17 same time that National Airport closes.

18 And we don't think that this will have
19 adverse impacts on the residents. I think all of
20 these factors, I have never been here before I
21 have to say, I did look at the statute 25-312 and
22 the Board considers the overall characteristics

1 of the area, including population, density and
2 general commercial and residential activities,
3 this property is zoned mixed-use MU-4.

4 It is the only block, I think, in
5 Georgetown where the entire block on both sides
6 is MU-4 at Prospect Street where the four
7 restaurants are that have sidewalk dining, MU-4.

8 And the reason the residents support
9 this is there are people who didn't move to
10 Potomac, Maryland or some place on a leafy side
11 street. In fact, one of them just moved from
12 Potomac to this property and they want urban
13 life. It comes with some cost, but this is a
14 mixed-use property and it has -- it is close to
15 the public transportation. You go right down the
16 stairs and have dinner at four or five
17 restaurants, there are things around.

18 What Georgetown doesn't have is,
19 except for Blues Alley, any quality
20 entertainment. So another aspect of our
21 application is that we want to be a venue indoors
22 only up to 10:00 p.m. for young musicians and to

1 have them come there professionally, have them
2 get an opening here to be exposed professionally.

3 And we have been looking for such
4 musicians. We have already had two, one singing
5 group and one saxophonist perform there because
6 last November we ran the restaurant without a
7 liquor license for a little while just to get the
8 kinks out of it and because DCRA said I'm still
9 uncomfortable finishing up your restaurant
10 inspection if you are not about to open. Okay,
11 we will open.

12 And in that context, we have some very
13 good entertainment. And I think that the very
14 important thing to understand about this place,
15 this space is not our primary -- our prime real
16 estate. It is in a basement. It's in the
17 street, it is a story above Prospect, but when
18 you come through that courtyard and you go into
19 that restaurant, you are in basement space on
20 three sides. And on the fourth side half is
21 glass, half is part going into the rest of the
22 building.

1 In addition, to go in and out of that
2 space, you go in left, go back to the back, turn
3 right, turn right, come back into the space. And
4 when people open the door, sound does not come
5 out and I think that Mrs. Emes would acknowledge
6 that there is no sound problem as to what is done
7 indoors.

8 But we do not intend to have, and by
9 any addition that we put on, rock bands, this is
10 not what we want. We don't want loud noisy
11 entertainment. And as an indication of our
12 sincerity on this, we put in that the
13 entertainment would stop at 10:00 p.m. Chinese
14 Disco didn't even start having customers until
15 11:00 p.m., that's a different crowd. They would
16 come in there at 11:00, 12:00, 1:00, 2:00, that's
17 not what this is about.

18 I probably have used up more than you
19 are used to having for a time limit.

20 MEMBER SILVERSTEIN: Say whatever you
21 have.

22 MR. ELLIOTT: Far more. Okay. I

1 think I can stop there and I had more to say, but
2 I'll save it.

3 CHAIRPERSON ANDERSON: Well, you can
4 weave that into the questions that you ask
5 witnesses and then maybe in closing you can wrap
6 that up.

7 MR. ELLIOTT: That's readily apparent.
8 I am an attorney, but I'm appearing as a
9 principal here. I am a key witness.

10 CHAIRPERSON ANDERSON: No, I'm fine.
11 When I said -- when I asked who is an attorney, I
12 know that there are certain things that --

13 MR. ELLIOTT: Yes.

14 CHAIRPERSON ANDERSON: -- generally
15 and this might not be your practice area, but as
16 an attorney, there are just certain things that
17 we know that we do. I mean, if someone -- you
18 can do an objection. You can do cross-exam. You
19 can do objections, you can raise objections.
20 From that perspective, I mean, not that -- yeah,
21 so, yeah. Yes, sir?

22 MR. MURPHY: Okay. All right. There

1 is a preliminary matter that I have to note that
2 Mr. Elliott did a fair amount of testifying
3 during his opening statement. Did that count
4 against his 90 minutes?

5 CHAIRPERSON ANDERSON: Well, no. One
6 of the things I said is that although each side
7 has 90 minutes, I'm not -- I don't -- I am not
8 going to say -- I'm not timing you. We are not--
9 you are not being timed. I'm just asking folks
10 to be mindful.

11 MR. MURPHY: Sure.

12 CHAIRPERSON ANDERSON: So but he did--
13 his opening statement was probably around 10 or
14 11 minutes, so I mean, I'm not going to tell you
15 to speak for 20 minutes, but if you speak for
16 longer than 5 minutes, I'm not going to say 5
17 minutes. But so you can use it as a guide.

18 MR. MURPHY: Well, I can assure you
19 that the Protestants will not push the envelope
20 on time here.

21 CHAIRPERSON ANDERSON: If this hearing
22 had started at 4:30 maybe, but since it started

1 earlier, we do have a lot more flexibility.

2 Okay. So go ahead. And this is -- we don't have
3 any other hearings for today.

4 MR. MURPHY: Chair Anderson, Members
5 of the Board, my name is Rick Murphy. I am the
6 Chair of ANC-2E and the representative of Single
7 Member District 3 in Georgetown, which is the
8 district in which the premises at issue here is
9 located.

10 I have been an ANC Commissioner in
11 Georgetown for a little over two years. During
12 those two years, I have successfully negotiated
13 voluntary agreements with four current or
14 perspective ABRA licensees, two of which operate
15 or will operate establishments in the 3200 Block
16 of Prospect Street right in the same complex.

17 We were not able to negotiate a
18 settlement agreement in this case, because the
19 Applicant is not willing to compromise in any way
20 his insistence upon being permitted to stay open
21 24 hours a day, seven days a week and to operate
22 an open-air 168 seat summer garden on the floor

1 of what could fairly be described as a box canyon
2 where sound ricochets off the canyon walls
3 flowing upward to the windows of numerous
4 residents who directly overlook this courtyard.

5 Let me be perfectly clear, while I am
6 not certain the Applicant's operation will
7 qualify as a restaurant, because it won't have a
8 kitchen with a stove, I am certain that ANC-2E
9 would like to see a successful restaurant in this
10 location.

11 For that reason, ANC-2E does not
12 oppose the issuance of a Retailer's Class C
13 Restaurant License to the Applicant.

14 However, ANC-2E does oppose the
15 Applicant's request to be granted permission to
16 operate a summer garden in a uniquely
17 inappropriate space as well as Applicant's
18 request to be allowed to draw patrons to that
19 space 24 hours a day, seven days a week, they
20 will proceed through the neighborhood and through
21 these overlooking residences.

22 Applicant's request to be permitted --

1 we also oppose Applicant's request to be
2 permitted to impose a cover charge, which implies
3 the intention to draw large numbers of patrons to
4 the space for events for which he will charge
5 admission.

6 Granting the Applicant's request would
7 radically change the neighborhood. Awarding a
8 summer garden endorsement to this Applicant could
9 have a domino effect in the immediate vicinity.
10 As Mr. Elliott pointed out, there are two
11 restaurants located at the same address, who hold
12 ABRA licenses, Peacock Cafe and Mai Thai, they
13 share an adjoining courtyard behind their
14 restaurants. It is connected with the courtyard
15 addition in this case.

16 Their licenses do not permit them to
17 serve patrons in that courtyard. If the pending
18 application were to be granted, as sure as night
19 follows day, you would be looking at applications
20 for substantial changes for those two licenses so
21 they would be permitted to serve patrons in their
22 courtyard.

1 ANC-2E believes that once you have
2 considered all of the evidence presented today,
3 you will conclude that issuing a license with a
4 summer garden endorsement that allows an
5 establishment to operate 24 hours a day, seven
6 days a week and impose a cover charge, would have
7 a seriously negative effect on the peace, order
8 and quiet in our community.

9 Our presentation will be brief and
10 limited to matters that are clearly relevant. I
11 will authenticate the Protestant's Exhibit 2 and
12 I will call three witnesses, all of whom are
13 residents of the Madelon Condominium, that's the
14 building that directly overlooks within 50 feet
15 of this courtyard. They will each testify
16 briefly about how noise in the courtyard affects
17 them.

18 I also intend to briefly cross-examine
19 Mr. Elliott and Inspector Brashears. Thank you
20 all.

21 CHAIRPERSON ANDERSON: All right. I
22 just want to point out, remember if, say for

1 example, they weren't asking for a liquor
2 license, they could operate 24/7 and there would
3 be nothing that this Board could do, so we -- our
4 jurisdiction, we can limit the hours that they
5 can operate, the hours that they can serve
6 alcohol because it is inside. If I'm being an
7 attorney being maybe -- but if they -- if by
8 10:00 they decide that they are no longer serving
9 alcohol, then -- but --

10 MR. MURPHY: We understand it, but the
11 placard pointed out 24/7, so we had to approach
12 that as well.

13 CHAIRPERSON ANDERSON: Well, we will
14 address it later on.

15 MR. ELLIOTT: Mr. Chair?

16 CHAIRPERSON ANDERSON: Sir, you can
17 address it later on.

18 MR. ELLIOTT: I think it may help to
19 clarify, the 24 hours is not too important. We
20 get a trickle of people. This is not the issue.

21 CHAIRPERSON ANDERSON: Well, I don't--

22 MR. ELLIOTT: The issue --

1 CHAIRPERSON ANDERSON: Well, I don't
2 the hours, that's why at some point I need to
3 make sure that it is clear specifically what is
4 it that the -- and I see that there are certain
5 things that you had made in your opening that was
6 not addressed in the opening from the Applicant.
7 So I want to make sure that, at least at the
8 closing, it is clear that the Applicant will say
9 to the Board specifically this is what I am
10 seeking.

11 MR. ELLIOTT: Um-hum.

12 CHAIRPERSON ANDERSON: And then as you
13 have done in your opening, you are saying what it
14 is that you oppose. And then you were very
15 specific in the sense that we do not want the
16 Board or we do not want the Board to say, for
17 example, if they want to operate 24 hours and
18 then you are going to say that we do not -- we
19 are not going to -- we do not agree to that.

20 If there is a compromise that can be
21 met, if you want to say that we are willing to,
22 as you said, you are not opposed to the granting

1 of the license. I guess what you are saying is
2 that if the license is granted, then these are
3 the conditions that we are asking. That there
4 should be no summer garden or things like that.

5 MR. MURPHY: Right.

6 CHAIRPERSON ANDERSON: So yeah, but I
7 just want to make sure that when I leave here
8 today, when the Board leaves here today, it is
9 clear what it is that both sides are asking the
10 Board to do. Okay. All right.

11 So the Board will call its first
12 witness and that is Investigator Brashears.

13 Mr. Brashears, can you raise your
14 right hand, please?

15 Whereupon,

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

20 INVESTIGATOR BRASHEARS: I do, sir.

21 CHAIRPERSON ANDERSON: Okay. You can
22 have a seat.

1 DIRECT EXAMINATION

2 CHAIRPERSON ANDERSON: Can you,
3 please, identify yourself for the record, please?

4 THE WITNESS: Supervisory Investigator
5 Mark Brashears with ABRA.

6 CHAIRPERSON ANDERSON: Mr. Brashears,
7 how long have you been working for the Agency?

8 THE WITNESS: Approximately, five and
9 a half years.

10 CHAIRPERSON ANDERSON: And what have
11 been your duties and responsibilities working for
12 the Agency?

13 THE WITNESS: ABRA Investigators
14 conduct inspections and investigations of ABC-
15 licensed establishments throughout the District
16 of Columbia.

17 CHAIRPERSON ANDERSON: Okay. All
18 right. You did introduce yourself as Supervisory
19 Investigator, so how long have you had that
20 position, sir?

21 THE WITNESS: Approximately, five
22 months.

1 CHAIRPERSON ANDERSON: Okay. Have you
2 testified in Protest Hearings before, Mr.
3 Brashears?

4 THE WITNESS: Yes, sir, I have.

5 CHAIRPERSON ANDERSON: In,
6 approximately, how many Protest Hearings have
7 you, do you recall, testified in?

8 THE WITNESS: I would say probably 10.

9 CHAIRPERSON ANDERSON: Okay. Thank
10 you. Now, are you familiar with this
11 establishment called the Sandbox Restaurant?

12 THE WITNESS: Yes, sir, I am.

13 CHAIRPERSON ANDERSON: And how did you
14 become familiar with this establishment?

15 THE WITNESS: I was assigned the
16 protest investigation of a Class CR new
17 application for Wyoming Cube & Bale, LLC t/a
18 Sandbox located at 3251 Prospect Street, N.W.,
19 Washington, D.C.

20 CHAIRPERSON ANDERSON: Okay. Did
21 there come a time that you wrote a report
22 regarding your observations?

1 THE WITNESS: Yes, sir, I did.

2 CHAIRPERSON ANDERSON: So can you
3 share with us what, can you share with the Board,
4 information, who you have spoken with and what
5 information you were able to gather as a result
6 of this application?

7 THE WITNESS: Yes, sir. The new
8 license application for Sandbox Restaurant was
9 submitted by Wyoming Cube & Bale and was received
10 by ABRA and subsequently assigned to me.

11 The license application was being
12 protested by: ANC-2E represented by Mr. Joe
13 Gibbons; the Citizens Association of Georgetown
14 represented by Ms. Pamela Moore; and a Group of
15 Seven or more represented by Ms. Elizabeth Emes.

16 The Protestants submitted letters to
17 ABRA opposing Sandbox Restaurant's alcohol
18 license application, based on the grounds of
19 adverse impact on peace, order and quiet.

20 On Friday, September 21, 2018, I
21 visited the Sandbox Restaurant and I interviewed
22 the owner, Mr. Robert Elliott. During that time,

1 the establishment was under renovation.

2 Accordingly, Mr. Elliott, his understanding was
3 with the protest of the various groups was
4 concerning noise and the fact that he had
5 requested to operate 24 hours a day and the use
6 of the summer garden and the courtyard.

7 Mr. Elliott also stated that he had
8 originally had the idea to have somewhat of a
9 hangout for college students from Georgetown and
10 to give those individuals an opportunity to get
11 away from campus and a place to study and come to
12 at night.

13 He initially spoke of having study
14 spaces, lamps, USB ports and things and to set up
15 an area where alcohol could be had, but not
16 heavily consumed and possibly have a kitchen
17 operation utilizing food service professionals,
18 but the operation being managed and, basically,
19 ran or at least the operation ran by college
20 students employing young people from the
21 university.

22 He also stated that it was his

1 intention, at that time, to use the courtyard as
2 a summer garden and that he has requested the
3 hours of the courtyard end at 10:00 p.m. daily.

4 I interviewed from the Group of Seven
5 or more telephonically and then I later in-person
6 spoke with Ms. Elizabeth Emes regarding the Group
7 of Seven or more's issues, the concerns for the
8 Sandbox Restaurant's alcohol license application.

9 In addition, peace, order and quiet
10 and Ms. Emes stated that the establishment, in
11 her opinion, should not be licensed as a
12 restaurant as the building is not equipped with a
13 proper vent hood in the kitchen.

14 Ms. Emes stated that the establishment
15 is not allowed to use the outdoor space for
16 anything other than maintenance and trash, yet
17 the Applicant has requested a summer garden.

18 Ms. Emes stated the Applicant had
19 plans to remove an existing row of windows and
20 replace them with a moveable glass structure.
21 Ms. Emes stated that this was a concern as the
22 Applicant had requested an entertainment

1 endorsement and then the possibility would be
2 that music would flow unabated from inside the
3 establishment into the courtyard.

4 Ms. Emes also questioned the necessity
5 of the licensee to serve alcohol 24 hours a day
6 and to operate over 16 hours a day. And Ms. Emes
7 stated that the use of the summer garden would
8 adversely impact the neighborhood, especially
9 those tenants of the condominium that look down
10 into the courtyard.

11 Ms. Emes concluded by saying that the
12 only way she would be okay with the summer garden
13 is if it were totally enclosed with soundproof
14 materials and the Protestants could sign-off on
15 the plans.

16 I also interviewed a Mr. Rick Murphy
17 via email concerning ANC-2E's issues and concerns
18 with Sandbox Restaurant's alcohol license
19 application. Mr. Murphy indicated to me that the
20 concerns that the Applicant proposed to construct
21 the facility with a moveable front wall that
22 could be opened into the courtyard where the

1 Applicant proposed to have, at that time, 166
2 patrons in the summer garden.

3 Mr. Murphy stated that the courtyard
4 is bordered on the south by a residential
5 building with multiple units that directly
6 overlook the courtyard that the Applicant
7 proposes to fill with patrons 24 hours a day.

8 Mr. Murphy stated the Applicant is
9 also seeking an entertainment endorsement. Mr.
10 Murphy stated that over the years several other
11 ABRA licensees have occupied the proposed
12 premises, but to his knowledge none of the prior
13 licenses have included a summer garden
14 endorsement.

15 Mr. Murphy stated that the
16 establishment is not equipped with a stove or
17 equipment required to exhaust the heat and odors
18 generated by cooking and Mr. Murphy concluded by
19 saying that the proposed premises will not have a
20 kitchen in the traditional sense and should not
21 be considered a restaurant for the purpose of the
22 proposed license.

1 Finally, I spoke telephonically with
2 Ms. Karen Cruse regarding the Citizens
3 Association of Georgetown's concerns with the
4 Sandbox Restaurant's alcohol license application.
5 According to Ms. Cruse, the main concern she had
6 was the potential for noise and disruptive
7 behavior in the courtyard of the establishment.

8 Ms. Cruse also stated that even more
9 unsettling was that the Applicant has applied for
10 a 24-hour operating use of the summer garden.
11 Ms. Cruse also stated that even if there were no
12 entertainment on the summer garden, general noise
13 from the patrons, such as talking, clattering of
14 plates and silverware combined to create noise
15 that ABRA and DCRA do not regulate.

16 Ms. Cruse also stated that the entire
17 patio area is constructed of brick and any noise
18 in the patio would reverberate and go straight
19 up, ultimately bothering the people in the
20 condominiums overlooking the courtyard.

21 Toward the end of the protest period,
22 I revisited the Sandbox Restaurant in February,

1 early February 2019. I again spoke with Mr.
2 Elliott. I wanted to follow-up with Mr. Elliott
3 since the last time we had spoken concerning the
4 establishment it was under construction and had
5 not been completed.

6 When I entered the establishment, it
7 looked very different from what Mr. Elliott and I
8 had initially discussed. Mr. Elliott informed me
9 that since completing the renovations, the
10 restaurant had opened briefly and after operating
11 for one week, Mr. Elliott realized that he could
12 not sustain the operation of the restaurant
13 utilizing the previous business model that we had
14 discussed.

15 Mr. Elliott stated that he had decided
16 to run a normal restaurant operation utilizing a
17 professional chef, management staff and waiters.
18 Mr. Elliott also stated that in addition to the
19 previous food offerings, the menu would be
20 expanded. Mr. Elliott also stated that he would
21 be able to accomplish this as he was in the
22 process of adding a vent hood to the kitchen.

1 Mr. Elliott stated that he would still
2 hire local college students to work his baristas,
3 to run a coffee operation and allow college
4 students to frequent the establishment as
5 previously discussed.

6 Mr. Elliott further stated that he
7 believed that the establishment became more like
8 a standard restaurant that it could be a success.
9 He also stated that it was his intention to use
10 the outside courtyard area as a summer garden,
11 but stated he would not have music or
12 entertainment outside.

13 He also stated that the concerns the
14 neighbors had with the summer garden was due to
15 the clattering of cups, plates and silverware.
16 Mr. Elliott stated that he would be willing to
17 utilize new items that would help minimize the
18 noise and mitigate the noise created by these
19 types of items.

20 He also stated that although the hours
21 of operation requested for the establishment had
22 been extended, he would still request the outdoor

1 operation to end at 10:00 p.m. daily.

2 Lastly, Mr. Elliott stated that he no
3 longer had plans to open the front window of the
4 establishment, it would remain closed.

5 I spoke to Mr. Elliott concerning the
6 entertainment that the establishment would be
7 offering. He stated that classical guitar,
8 singers, poetry readings and book readings would
9 be offered. He also stated that this
10 establishment would hire and pay local performers
11 to assist with their musical careers to get them
12 started with paying gigs.

13 He also stated that there would be no
14 hard rock music performed at the establishment
15 and that the establishment would end
16 entertainment at 10:00 p.m. daily. And Mr.
17 Elliott reiterated that there would be no live
18 entertainment on the summer garden.

19 As to the cuisine, Sandbox Restaurant
20 plans to offer or originally planned to offer
21 foods prepared via sous vide, a method of
22 treating the food by partially cooking, followed

1 by vacuum packing it and chilling.

2 Mr. Elliott also stated that the
3 establishment would offer a variety of other
4 items that could be prepared by oven. And
5 although the establishment is not currently
6 situated to have a vent hood, there are still
7 items that could be cooked in the oven, at this
8 time, but again, Mr. Elliott did state that he
9 was in the process of adding the vent hood.

10 Throughout the course of my protest
11 investigation, ABRA Investigators visited the
12 establishment, approximately 20 times. For the
13 duration or the largest part of the duration, the
14 establishment was under construction, so there
15 were no ABRA violations noted. There were also
16 no recent calls to service or noise complaints at
17 the establishment.

18 And it was determined that over the
19 previous year from 1 January 2018 through
20 September 25, 2018, there were approximately 25
21 calls to service to 3251 Prospect Street, N.W.
22 None of those calls for service that we could

1 find were attributed to Sandbox Restaurant. They
2 was under the previous licensure of the Chinese
3 Disco.

4 We also substantiated or went to 20 --
5 or I'm sorry, eight calls to service for the
6 Noise Taskforce from September 1, 2017 through
7 January 1, 2019. Again, all of those instances
8 were due to calls for the Chinese Disco.

9 And in reference to the issues raised
10 by the Protestants with regard to the lack of a
11 vent hood in the kitchen, I reached out to DCRA
12 concerning that matter and according to the
13 representative I spoke with, a restaurant is not
14 required to have cooking equipment. If the menu
15 does not offer cooked food items, there is no
16 need for the stove or vent hood. The
17 establishment may use an oven, microwave oven or
18 other means in which to cook the food.

19 That concludes my report, sir.

20 CHAIRPERSON ANDERSON: Just let me ask
21 you a quick question. About how many other
22 establishments are close to this area, where this

1 restaurant would be, would operate?

2 THE WITNESS: According to the GIS Map
3 System, 37 ABC-licensed establishments are within
4 1200 feet of the Sandbox Restaurant, sir.

5 CHAIRPERSON ANDERSON: And are you
6 aware of the establishments that are around, how
7 many of them have summer gardens?

8 THE WITNESS: According to ABRA
9 records, of those 37 licensed establishments, 13
10 have summer garden endorsements. 17 have
11 entertainment endorsements and 5 have cover
12 charge endorsements.

13 CHAIRPERSON ANDERSON: Okay. Now, I
14 know that you have stated that you thought the
15 establishment was open for a week. Were you able
16 to view it while it was open?

17 THE WITNESS: I was not, sir.

18 CHAIRPERSON ANDERSON: Okay.

19 THE WITNESS: That fell between a
20 period when the establishment -- the
21 establishment initially was set up to get a
22 license and protest. A substantial change was

1 put in for the summer garden, so the
2 establishment was replacarded and it was during,
3 I believe it was during, that time that the
4 establishment operated.

5 CHAIRPERSON ANDERSON: Now, what
6 specific hours was it that the establishment was
7 seeking for the operation of the restaurant and
8 the summer garden?

9 THE WITNESS: Yes, sir. The hours of
10 operation and sales of alcohol, the establishment
11 was asking for 24-hour operating, 7 days a week,
12 hours of sales from 8:00 a.m. to 2:00 a.m.,
13 Sunday through Thursday.

14 MEMBER SILVERSTEIN: What hours again?

15 THE WITNESS: 8:00 a.m. to 2:00 a.m.,
16 Sunday through Thursday and on Friday from 8:00
17 a.m. to 3:00 a.m., Saturday 8:00 a.m. to 3:00
18 a.m.

19 The hours for the summer garden, hours
20 of operation and hours of sales were requested
21 8:00 a.m. to 10:00 p.m. Sunday through Saturday.

22 And the entertainment hours of 12:00

1 p.m. to 10:00 p.m. Sunday through Saturday.

2 MEMBER SILVERSTEIN: Okay. The
3 entertainment is indoors, not outdoors?

4 THE WITNESS: Correct, sir.

5 MEMBER SILVERSTEIN: Okay.

6 CHAIRPERSON ANDERSON: For the hours
7 of sales, are those consistent or are those
8 outside the hours that are similarly situated
9 establishments in the vicinity?

10 THE WITNESS: I am not sure as far as
11 the hours in the vicinity, but 8:00 a.m. to 2:00
12 a.m. and 8:00 a.m. to 3:00 a.m. are fairly
13 standard operating hours for most ABC
14 establishments.

15 CHAIRPERSON ANDERSON: Okay. Thank
16 you. Mr. Brashears, are there any exhibits
17 attached to your report? And if there are
18 exhibits attached to your report, let us know
19 what those exhibits are, please.

20 THE WITNESS: There are,
21 approximately, 49 exhibits attached to the
22 report.

1 CHAIRPERSON ANDERSON: So I would like
2 to identify them, so I can move them into the
3 record.

4 THE WITNESS: Okay, sir. Exhibit 1 is
5 the Protestant's letter to ABRA from the ANC-2E.

6 Exhibit 2 is the Protestant's letter
7 to ABRA from the Citizens Association of
8 Georgetown.

9 Exhibit 3 is the Protestant's letters
10 to ABRA from the Group of Seven or more.

11 Exhibit 4 are Court documents provided
12 by Protestant Elizabeth Emes.

13 Exhibit 5 are also Court documents
14 provided by Protestant Elizabeth Emes.

15 Exhibit 6 is the Sandbox Restaurant
16 zoning information.

17 Exhibit 7 is the GIS System Map of
18 ABC-licensed established within 1200 feet of the
19 Sandbox Restaurant.

20 Exhibit 8 is the GIS System Map of
21 schools, recreation centers or libraries located
22 within 400 feet of the Sandbox Restaurant.

1 Exhibit 9 is a photo of Cafe Milano on
2 Prospect Street.

3 Exhibit 10 is a photo of Peacock Cafe
4 on Prospect Street, N.W.

5 Exhibit 11 is a photo of Mai Thai on
6 Prospect Street, N.W.

7 Exhibit 12 is a photo of Boeeymonger
8 on Prospect Street, N.W.

9 Exhibits 13, 14, 15 and 16 are all of
10 Colonial Parking on Prospect Street, N.W.

11 Exhibit 17, 18, 19 and 20 are photos
12 of the Sandbox Restaurant.

13 Exhibit 21, 22, 23 and 24 are photos
14 of the Sandbox Restaurant Summer Garden proposed
15 area.

16 Exhibit 25 through 46 are photographs
17 of the interior of the Sandbox Restaurant.

18 Exhibit 47 is a photo of the Sandbox
19 Restaurant trash storage area.

20 Exhibit 48 is a photo of Sandbox
21 Restaurant's recycle area.

22 And Exhibit 49 are the calls to

1 service from MPD for 3251 Prospect Street, N.W.

2 (Whereupon, the above-
3 referred to documents were
4 marked as Government Exhibit
5 No. 1 through 49 for
6 identification.)

7 CHAIRPERSON ANDERSON: All right.

8 Thank you. Do we have any questions by any Board
9 Members? Go ahead, Mr. Short.

10 MEMBER SHORT: Good afternoon,
11 Investigator Brashears. Thank you for an
12 excellent report. I'm still trying to go through
13 it here as we go along.

14 But some things that come to my mind
15 is 3251 Prospect Street, for the record, can you
16 briefly describe exactly what -- how it is laid
17 out geographically and how all of these
18 businesses and restaurants are associated with
19 this new summer garden?

20 THE WITNESS: Yes, sir. I'll get to
21 my notes on that, sir. So the characteristics of
22 the neighborhood, as the Applicant had stated,

1 the area is a mixed-use MU-4 Zone. It is
2 situated kind of in the center of the block on
3 Prospect Street across from a parking area. It
4 is a relatively, for that area, large-sized
5 facility. There are four ABRA establishments
6 near the Sandbox.

7 To the right of the Sandbox on
8 Prospect is Cafe Milano, to the left is Peacock
9 Cafe. Mai Thai and Boeymonger are near the
10 intersection of Prospect Street, N.W., and
11 Potomac Street, N.W. Across the street from the
12 entrance of Sandbox is a pay parking lot.

13 The outside of Sandbox, has the
14 Applicant has stated, the establishment itself is
15 mostly underground. The area is made of
16 concrete, brick and steel. The front of the
17 establishment has a set of large almost one-story
18 high glass windows.

19 To get to the Sandbox Restaurant it is
20 recessed into a courtyard off the main road. You
21 basically have to walk down a corridor which
22 opens up into a large summer garden and the

1 establishment is at the very back of that area.

2 The summer garden is such that it is
3 in front of the establishment a considerable
4 length in front of the establishment and there is
5 also an upstairs area kind of to the right. And
6 there is also an overhead, a walkway-style bridge
7 that crosses over.

8 So basically, you can cut through, you
9 can go up the stairs and pretty much all the way
10 past the establishment through to the next street
11 on an overhead walkway. But the establishment
12 does set back off of Prospect Street.

13 MEMBER SHORT: Okay. Now, you
14 described the commercial area. The residential
15 area, how close is it to, in proximity, all of
16 this?

17 THE WITNESS: There are some, as
18 everyone, as both parties have testified or have
19 spoken about in their opening, condominiums that
20 look down into the courtyard. And then there are
21 homes on the next street behind the
22 establishment, townhomes and things.

1 MEMBER SHORT: Okay. If there were an
2 outside cafe or the area they are requesting, and
3 you have been an Investigator how long?

4 THE WITNESS: With ABRA almost 15
5 years, overall 25.

6 MEMBER SHORT: Okay. Now, your
7 professional opinion of a summer garden for 128
8 seats in an open space, how could or would an
9 Applicant when it comes to service, sales and
10 consumption, how is it going to control 128 seats
11 out there in the middle of that court?

12 THE WITNESS: Well, just to clarify,
13 sir, the Applicant is requesting 168 seats in
14 that area.

15 MEMBER SHORT: Okay.

16 THE WITNESS: The area itself is
17 fairly enclosed on all sides with the exception
18 of the entryway that you have to, like I said,
19 kind of walk down a walkway to get to it.

20 MEMBER SHORT: Is it off of Prospect
21 Street itself?

22 THE WITNESS: Yes, sir. And at one

1 point, the summer garden does kind of spread over
2 into establishment behind the Peacock and Mai
3 Thai, some of the establishments. So it's a very
4 large brick area, courtyard area that runs behind
5 all of those establishments in front of the
6 Sandbox and then up some stairs to another level
7 near the condominiums.

8 So you would have to have someone
9 basically monitoring the entrance and exit as it
10 goes through to Prospect Street.

11 MEMBER SHORT: So could other clubs in
12 the area use that same area and bring their
13 drinks out into the area or is that -- how would
14 someone control the coming and going of who
15 drinks and who doesn't drink?

16 THE WITNESS: I mean --

17 MEMBER SHORT: Who serves and who gets
18 served?

19 THE WITNESS: -- obviously, sir, they
20 would have to cordon off the access to the other
21 summer gardens from their main patio. And you
22 know, there is a number of ways they could do

1 that. You know, they could put up stanchions.
2 They could put up a wall, if DCRA allowed it.
3 They could have someone stationed there. It
4 would just really be dependent on how many seats,
5 how many people and, you know, how the crowd was.

6 MEMBER SHORT: Okay. Also you
7 described one portion of the restaurant, proposed
8 restaurant, has a glass window, a large glass
9 window?

10 THE WITNESS: Yes, sir.

11 MEMBER SHORT: And they are proposing
12 to take that glass window out, so they can open
13 to the outside?

14 THE WITNESS: No, sir. Mr. Elliott
15 originally had talked about having that, an
16 accordion-style configuration where it could be
17 opened, but when we later spoke about it, he was
18 not permitted to do that by DCRA. So the window
19 will be staying in place.

20 MEMBER SHORT: Okay. Do you have any
21 idea why DCRA would have refused that?

22 THE WITNESS: I do not, sir.

1 MEMBER SHORT: Okay. All right.
2 Well, I thought you might have. But anyhow,
3 teaching and cooking, you described that they
4 don't have a kitchen right now, but DCRA said
5 they didn't have to have. They don't have to
6 have a hood induct in commercial-type cooking.

7 THE WITNESS: On my initial visit, the
8 kitchen was under renovation. When I went back
9 in early February, there was a convection oven, a
10 microwave, what appeared to be a warming table
11 and a couple of refrigerators. And when I spoke
12 to Mr. Elliott about that, you know, they had
13 made -- he had stated they had made some meals in
14 the oven, but he stated that he had the materials
15 for the vent hood and that he understood that he
16 would be allowed to put the vent hood up. It
17 would actually go through the building and not on
18 the outside.

19 So my understanding is a vent hood
20 would be forthcoming and eventually, you know,
21 other cooking devices to go along with it. But
22 as you have mentioned, sir, DCRA stated that an

1 establishment would not have to have a vent hood
2 to be considered a restaurant or to have a
3 kitchen.

4 MEMBER SHORT: Okay. And as far as
5 the history of this establishment and the big
6 courtyard and all the restaurants, I would
7 imagine you have been there on several occasions
8 or many occasions?

9 THE WITNESS: Yes, sir.

10 MEMBER SHORT: And was the issue with
11 noise there before?

12 THE WITNESS: There were in the last
13 year, as I stated -- well, prior to it becoming
14 the Sandbox, there were approximately eight noise
15 complaints at the establishment. Interestingly
16 enough, I believe over half of those were made by
17 Mr. Elliott contacting us that, you know, people
18 were in the courtyard making noise as they were
19 entering and exiting Chinese Disco. And of
20 course, there was a large number of calls to
21 service there for MPD.

22 MEMBER SHORT: So in this area, it

1 would be the same area with a summer garden?

2 THE WITNESS: The area that was
3 getting the noise complaints was an open summer
4 garden at that time that was used passing through
5 an entrance and egress into the establishment
6 that used to be Chinese Disco.

7 MEMBER SHORT: So I guess the question
8 I'm asking, would they be using the same location
9 for their summer garden where we had the noise
10 complaints?

11 THE WITNESS: Yes, sir.

12 MEMBER SHORT: And my last question,
13 at least for right now, this hearing is about
14 peace, order and quiet. And we know there are
15 several locations there where there are
16 commercial restaurants and we know that there are
17 residences just above that.

18 So I'm just asking now the same thing
19 I'm reading about the protest. The noise with
20 168 people in the courtyard, which is not there
21 now, how would that affect the residential area
22 or would it have any -- make any difference?

1 THE WITNESS: I'm not a trained sound
2 engineer. I know when it comes to noise
3 violations, having worked the Noise Taskforce,
4 there are certain things that have to be taken
5 into consideration. And typically, noise of
6 patrons is not one of those things that DCRA will
7 violate it for.

8 It typically has to be amplified
9 sound. So I can certainly understand the
10 concerns of the neighbors with the noise of
11 patrons and plates and whatnot, but I couldn't
12 speak to, you know, how loud they could -- it
13 could get, sir.

14 MEMBER SHORT: Okay. And it was also
15 mentioned in opening statements that a lot of
16 young people from the universities close by would
17 be frequenting that area. Is that -- did you
18 hear that same testimony?

19 THE WITNESS: Well, yes, sir. In my
20 talks with Mr. Elliott, basically, he stated
21 that, you know, obviously he wanted to change to
22 a more standard restaurant model, but would still

1 have some of the young people involved to give
2 them a place to go to to study at night and
3 things.

4 So my understanding would be yes, they
5 would be coming and going.

6 MEMBER SHORT: And lastly, the history
7 of this address and the location, in underage
8 drinking or sale to minor violations, is it a
9 history that you think might be good for this
10 area in regards to 3251 Prospect Street and sale
11 to minors?

12 THE WITNESS: I would have to say in
13 respect to that, the previous establishment was
14 more of, as Mr. Elliott stated, a lot of the
15 time, the young people didn't arrive until after
16 10:00 p.m. and it went right through until 3:00
17 a.m. on the weekend. It was a place that
18 routinely had, you know, loud music and drinking.
19 It was also an establishment that, for the most
20 part, operated minimally as a restaurant in the
21 fact that they were written up for not having
22 quarterly statements or not filing alcohol and

1 food sales.

2 So I guess what I'm saying is that the
3 previous establishment was more of a bar and the
4 understanding that I'm getting from Mr. Elliott
5 and just seeing how the establishment is now laid
6 out, there is no DJ booth. There is no
7 loudspeakers. It appears to be more of a sit-
8 down style restaurant with a coffee operation.

9 And compared to the last location, he
10 has actually installed quite a few surveillance
11 cameras with a very high resolution monitoring
12 screen and recording device to basically capture
13 what goes on at the establishment.

14 So from everything that I am looking
15 at, it appears to be a functional restaurant that
16 appears that it would be managed and operated
17 properly.

18 MEMBER SHORT: Thank you very much for
19 your testimony. Thank you, Mr. Chair.

20 CHAIRPERSON ANDERSON: Any other
21 questions by any other Board Members? Mr.
22 Silverstein?

1 MEMBER SILVERSTEIN: Yes, thank you
2 for a fine report and you pretty much answered my
3 question at the tail end of what you just said,
4 but if you could very briefly go over how similar
5 this is in what ways to the predecessor, Chinese
6 Disco, and in what ways it differs.

7 THE WITNESS: The --

8 MEMBER SILVERSTEIN: Based on the
9 latest iteration that we have, of course.

10 THE WITNESS: Well, just in my times
11 walking through when it was the previous
12 establishment, Chinese Disco, there were a
13 handful of booths in the main area across from
14 the bar, but everything else was pretty much
15 standing room. And the times that I went in when
16 they were operating, that's essentially what it
17 was.

18 It was wall-to-wall people standing
19 and drinking. I don't recall seeing anyone
20 dining there. And a lot of times it was very
21 darkly lit. The music was very loud. And now I
22 go in, the floors are polished. It is nicely

1 painted. The establishment is filled with tables
2 and chairs.

3 The proposed bar area is a very small
4 area in the back. The large bar area now, the
5 Applicant has proposed, that it is going to be a
6 food service operation and coffee bar.

7 The plan for entertainment, Mr.
8 Elliott stated that there is a small riser,
9 probably a 10 x 10, that is going to go into the
10 rear corner of the establishment, approximately a
11 few inches off the floor, for poetry readings,
12 musicians and things.

13 In addition, as I said, there seems to
14 be a very good camera system. It is very well-
15 lit. It is -- in walking in and going through,
16 it appears to be a totally different
17 establishment.

18 MEMBER SILVERSTEIN: Pardon?

19 THE WITNESS: It appears compared to
20 the layout, the furnishings, the paint, it
21 appears to be a totally different establishment
22 from the last time I visited when it was Chinese

1 Disco.

2 MEMBER SILVERSTEIN: Thank you.

3 CHAIRPERSON ANDERSON: All right. Mr.
4 Elliott, do you have any questions for the
5 Investigator?

6 MEMBER SILVERSTEIN: Your time starts
7 now.

8 MR. ELLIOTT: Thank you, Inspector
9 Brashears, for all that work, the tremendous
10 amount of work you did.

11 CROSS-EXAMINATION

12 BY MR. ELLIOTT:

13 Q I have just one question. I attended
14 a seminar here at ABRA about compliance a couple
15 of months ago. Could you verify what the policy
16 is with respect to neighbors hearing sounds and
17 whether they -- something in that seminar didn't
18 really follow about assuming that windows are
19 closed.

20 A Oh, I assume you are referring to the
21 Noise Regulation. The Noise Regulation as it
22 pertains to ABRA and an ABRA Investigator

1 substantiating a noise violation would be an ABRA
2 Investigator or actually two Investigators would
3 go into the residence and if they can hear the
4 music from the licensed establishment, it could
5 potentially be a noise violation, but that would
6 also be based on the zoning involved and if the
7 resident was an abutting property, so there are a
8 lot of moving parts.

9 It is typically a case-by-case basis
10 where you would have to check the zoning, make
11 sure it wasn't abutting property owner, go into
12 the establishment. It would -- so it's never cut
13 and dry.

14 And as per like noise things, an ABRA
15 Investigator has the authority to basically have
16 an establishment close their doors and windows if
17 they are making too much noise. But as far as
18 substantiating any other type of noise complaint,
19 typically that requires the Noise Taskforce,
20 which is an actual DCRA Inspector with a
21 calibrated piece of equipment taking into account
22 all of the variables.

1 Q Just I don't want to belabor it, but
2 I was wondering about was there was something
3 about in a residence when it is checked, they
4 close the windows of the residence. Is that not
5 so?

6 A No, I believe you are correct, sir.
7 I would have to double check the regulations.

8 Q Thank you. That's what I understood.
9 All right. Thank you.

10 A Yes, sir.

11 CHAIRPERSON ANDERSON: Do you have any
12 other questions?

13 MR. ELLIOTT: No, I have no more.

14 CHAIRPERSON ANDERSON: All right. Mr.
15 Murphy?

16 MR. MURPHY: I do have a few. Thank
17 you, Chairman Anderson.

18 BY MR. MURPHY:

19 Q You just -- thank you for your work,
20 Inspector Brashears, and it is very illuminating,
21 but I do have a couple of questions.

22 A Yes, sir.

1 Q You just testified at length about how
2 the proposed establishment in this premises would
3 differ from the predecessor establishment,
4 Chinese Disco, correct? And you also in your
5 report and I think in your testimony, you
6 mentioned that Mr. Elliott has promised that
7 there would be no hard rock entertainment in the
8 new establishment. Did I hear that correctly?

9 A That's correct, sir.

10 Q Okay. Now, if the Applicant were to
11 obtain the license applied for, including the
12 entertainment endorsement, would it be a
13 violation of that license if one night he decided
14 to put on Metallica say instead of quiet jazz?

15 A Unless it was a provision in a
16 settlement agreement, my understanding is an
17 entertainment endorsement is just that, an
18 entertainment endorsement and he would be allowed
19 to play whatever type of -- have any type of
20 entertainment within the hours that are set forth
21 on the ABC License.

22 Q And so in fact, he could change the

1 format from what he is now proposing back to
2 something similar to what Chinese Disco had as
3 long as he stayed within the ambit of the license
4 in terms of hours?

5 A That's correct, sir.

6 Q And you also testified that the area
7 that is really the focus of the neighborhood's
8 concern, the courtyard is fairly enclosed.

9 A To a degree, yes, sir.

10 Q Yeah, right. Do you know how many
11 passageways that would allow people from off the
12 street to come in and go out that courtyard
13 there?

14 A The passageways that I observed, there
15 was one from the front. There was an overhead
16 that went from the front all the way through to
17 the back side. And I believe there was another
18 one that came, the bridge that came across. So
19 from what I could see, at least three. And then
20 exits out of the back of the ABC establishments
21 that came onto the courtyard.

22 Q I actually may have missed one, but I

1 count more than that. Would it be possible for
2 someone walking on Prospect Street to turn north
3 between what was the Morton space and Cafe
4 Milano, which will soon be another restaurant, go
5 down that passageway and access the courtyard?

6 A Yes, sir.

7 Q Okay. Then moving west, there is a
8 fairly narrow passageway that you counted as the
9 front door address of this establishment, so
10 someone could come through there. How far is it
11 from the sidewalk on Prospect Street to the front
12 door of the proposed establishment?

13 A You know, I didn't take a measurement,
14 but I did take a photograph from the street back
15 to the establishment and it's a considerable way.
16 It's probably further than the length of this
17 room.

18 Q All right. And you have someone
19 coming off Prospect Street would have to walk
20 underneath the residential building to get to the
21 courtyard and then onto the establishment,
22 correct?

1 A Yes, sir.

2 Q Now, there is another passageway over
3 between Mai Thai and Peacock Cafe, correct?

4 A I'm not aware of that, sir.

5 Q Well, if you didn't look to see
6 whether someone could come up Prospect Street, go
7 between Mai Thai and Peacock Cafe to access the
8 courtyard behind those operations and then walk
9 over to the courtyard?

10 A I did not as I believed that -- well,
11 I noted that the establishment had rear doors
12 that opened onto a long narrow summer garden that
13 fed into the main courtyard.

14 Q Well, did you not notice that if you
15 came out, if you were to come out of the
16 establishment, go through the courtyard and turn
17 right, there is an opening there that goes
18 straight into this courtyard behind Mai Thai and
19 Peacock Cafe.

20 A I did not note that.

21 Q You did not notice that. Well, I'm
22 not under oath, but I'll represent that there is

1 such a thing.

2 CHAIRPERSON ANDERSON: Well --

3 BY MR. MURPHY:

4 Q And that connects to a passageway that
5 goes between Mai Thai and Peacock Cafe that is
6 open to the public.

7 A Yes, sir.

8 Q Okay. And then off M Street on the
9 north side is it not possible for a patron of
10 some establishment like say Martin's over there
11 to come from M Street pass by the retail
12 establishment up top or above and walk down
13 stairs to get into the courtyard?

14 A Yes, sir.

15 Q Okay. So that's another way to get
16 in. Okay. And that's all I have on that.

17 Now, referring to your report, you
18 said you reviewed the records of the Noise
19 Taskforce relevant to 3251 Prospect and you found
20 eight complaints.

21 A Yes, sir.

22 Q During the period between September 1,

1 2017 and January 1, 2019.

2 A Yes, sir.

3 Q Now, did I understand your testimony
4 correctly that you said all of those complaints
5 were associated with Chinese Disco?

6 A Yes, sir, 3251 Prospect, yes, sir.

7 Q Okay. And were they all attributable
8 to the noise emanating from the courtyard that we
9 have been discussing here in front of the old
10 Chinese Disco and in front of this establishment?

11 A I personally responded to four of
12 those.

13 Q All right.

14 A And those were actual -- basically, it
15 was a combination of a settlement agreement
16 situation for the use of the courtyard and the
17 fact that people were being loud and rowdy
18 leaving the establishment.

19 Q Now, before you came here today, did
20 you know that Chinese Disco ceased operations in
21 June of 2018?

22 A I did.

1 Q Okay. So in fact, the four noise
2 complaints that you are personally aware of, they
3 call took place between September 1, 2017 and
4 June of 2018, correct?

5 A I believe so.

6 Q It would have to if it's Chinese
7 Disco.

8 A Yes, sir.

9 Q It's closed, right? Okay. And the
10 other four that you were not personally involved
11 with, those would have had to had taken place in
12 that nine month period, correct?

13 A Yes, sir.

14 Q So that's eight Noise Taskforce visits
15 in just nine months. Is it fair to say it gets
16 quite noisy in that courtyard if a number of
17 people get out there?

18 A You could say that, sir.

19 Q Now, did you ever, in your visits and
20 you have got a long list of visits to the
21 establishment in your report, you spent a lot of
22 time over there, actually observe customers being

1 served in the restaurant?

2 A I did not, sir.

3 Q Now, you do make reference to the fact
4 that 13 establishments within 1200 feet of the
5 Applicant's premises have summer gardens. Now,
6 are any of those summer gardens in the space
7 north of the residential building and south of
8 the proposed establishment, which is the
9 courtyard at issue in this place?

10 A To my knowledge, no, sir.

11 Q Are any of those summer gardens north
12 of any of the buildings at 3251 Prospect Street?

13 A I'm not sure, sir. Most of the ones
14 that I'm listing that have summer gardens are not
15 in the immediate environment of the
16 establishment.

17 Q Okay. Thank you, Inspector.

18 MR. MURPHY: That's all I have.

19 CHAIRPERSON ANDERSON: Any questions,
20 any follow-up questions by any Board Members?
21 All right. Hearing none, thank you very much,
22 Mr. Brashears, for your testimony. You can step

1 down.

2 (Whereupon, the witness was excused.)

3 INVESTIGATOR BRASHEARS: Thank you.

4 CHAIRPERSON ANDERSON: Mr. Elliott, do
5 you wish to call a witness?

6 MR. ELLIOTT: Yes, I do, Ms. Rona
7 Leff. And we have some blown up photographs, so
8 I would like to set up the tripod where everyone
9 can see it.

10 CHAIRPERSON ANDERSON: Except for us.
11 I said except for us.

12 MR. ELLIOTT: I'm sorry?

13 CHAIRPERSON ANDERSON: If you set it
14 up there, we can't see what it is.

15 MR. ELLIOTT: Oh, my sorry.

16 CHAIRPERSON ANDERSON: So I would
17 say --

18 MR. ELLIOTT: So where should it be?

19 CHAIRPERSON ANDERSON: Well, maybe you
20 can set up on the side.

21 MR. ELLIOTT: I could just show them.

22 CHAIRPERSON ANDERSON: Yeah, in order

1 for --

2 MR. MURPHY: Yeah, sure.

3 CHAIRPERSON ANDERSON: -- us to -- I
4 know it would have been great to set it up there,
5 but we are behind, so we would not be able to see
6 those.

7 MR. ELLIOTT: I realize that, yeah.

8 CHAIRPERSON ANDERSON: All right.

9 MR. ELLIOTT: Okay.

10 CHAIRPERSON ANDERSON: So you are
11 first. Ms. Elliott, can you raise your right
12 hand, please?

13 MS. LEFF: Leff.

14 CHAIRPERSON ANDERSON: Ms. Leff, can
15 you stand up please, ma'am? Stand up, yes.
16 Whereupon,

17 RONA LEFF
18 was called as a witness by the Licensee, and
19 having been first duly sworn, assumed the witness
20 stand and was examined and testified as follows:

21 MS. LEFF: Yes, I do.

22 CHAIRPERSON ANDERSON: Thank you.

1 Your witness, sir.

2 DIRECT EXAMINATION

3 BY MR. ELLIOTT:

4 Q State your name, please.

5 A Rona Leff.

6 Q And could you state your role with
7 respect to the Applicant, Sandbox Restaurant?

8 A I do whatever work is needed on it.
9 Sometimes I work full-time on it. I have taken
10 the food handler's class and passed it. I have
11 worked with the chef, Chef Will, and with a sous
12 vide expert, a liaison he trusts, who I crack
13 down. I have worked with the students to do
14 various things that they are working on, getting
15 vendors and deciding on certain equipment, things
16 like that.

17 I have also been part of the
18 renovation work, which was extensive, and doing
19 whatever was necessary to get the Certificate of
20 Occupancy, health inspection, etcetera, all the
21 documents. And I worked on the interior
22 decoration and lighting.

1 Q And could you describe the role that
2 this restaurant has in the immediate vicinity,
3 including the --

4 MEMBER SILVERSTEIN: Excuse me, Mr.
5 Chairman?

6 CHAIRPERSON ANDERSON: Yes?

7 MEMBER SILVERSTEIN: I'm looking here
8 for the Applicant's PIF and can't find it.

9 CHAIRPERSON ANDERSON: I don't know
10 why you don't have it, Mr. Silverstein. I have
11 it in front of me. Maybe you weren't given the
12 right copy. You have Exhibits 1 through 36 and
13 Exhibit 37 through 59?

14 MEMBER SILVERSTEIN: Oh, yeah, there
15 we go. I'm sorry.

16 CHAIRPERSON ANDERSON: Go ahead, sir.
17 Go ahead.

18 MR. ELLIOTT: Okay.

19 BY MR. ELLIOTT:

20 Q Ms. Leff, would you describe the plan
21 for this restaurant in terms of how it fits into
22 the retail complex and the immediate vicinity in

1 Georgetown?

2 A Well, working with you, since I do
3 work full-time with you --

4 MEMBER SILVERSTEIN: Please, speak
5 closer to the microphone.

6 THE WITNESS: Yes, sure. We have been
7 working to create a new vision for the property,
8 3251 Prospect, with the turnover of Morton's
9 Restaurant after 37 years and the decline of
10 retail in Georgetown due to online shopping.
11 It's not just Georgetown, but also the
12 development of other areas of the District.

13 There has been the quieting of
14 Georgetown and now seems to be really the time
15 for established properties, such as what is often
16 called Georgetown Court, 3251, to morph and
17 respond to changes impacting the business
18 community, but also just generally the atmosphere
19 of this section of the city.

20 BY MR. ELLIOTT:

21 Q And in trying to morph into that, what
22 you described, what concept did you and I and

1 others working with us come up with?

2 A Well, we don't want to just turn over
3 the property, meaning just lease it out again.
4 To be thoughtful, what do we want there? And
5 what do we want to create? So we want to breathe
6 life into this courtyard, which is a very large
7 portion of the property. It sat there largely
8 unused for a very long time, as you mentioned.

9 We were emphatically urged by the Old
10 Georgetown Board to enliven it several years ago
11 when we presented some structural changes to the
12 property. And we want to enliven it and make it
13 a wonderful place.

14 I think of other cities I visited
15 where there are thriving plazas and streetscapes
16 and courtyards and really they are the memorable
17 part of my trip. It's not just a monument
18 somewhere. And that is a vision, we want to
19 create an atmosphere on the property.

20 So one way we saw doing this is
21 creating an art walk or a sculpture walk. It is
22 one exciting element, something a little bit

1 different that we were working on. But this kind
2 of feature has proven to be demanding, as
3 demonstrated by similar kind of outdoor sculpture
4 exhibit in Foggy Bottom. That is biennial
5 exhibit and of an outdoor sculpture. It happens
6 to be in front yards of people's homes, but it
7 has gotten very big, very popular.

8 And also like Georgetown BID's GLOW
9 event where there are light sculptures during the
10 Christmas season sprinkled in various areas of
11 Georgetown. It brings people in. It adds some
12 dynamism, it adds a little excitement, a little
13 culture.

14 So this, besides that it is exciting,
15 is a project that is very doable for our property
16 in terms of cost, space, timing, artists. We
17 plan to focus on outdoor sculpture and located in
18 various parts of the property, because the
19 property is so large, 1 and 1/4 acres with 40
20 percent open space, which is required by zoning,
21 there is plenty of area to do this.

22 We would like to have people enter

1 from one side of the property, let's say M
2 Street, and walk through some of the sculpture,
3 having a seat at the restaurant for service in
4 the main courtyard and then exiting out onto
5 Prospect. Well, of course, they can do it vice
6 versa, too, go from Prospect to M and then out to
7 Wisconsin.

8 Q I would like to have you look at
9 Exhibit 7 -- 17. It's in the book, but this is a
10 blow up of it. And could you identify this
11 exhibit?

12 A Yeah, that's a composite of
13 photographs that I put together of possible
14 sculptures, similar kinds of art that we will
15 think about for inclusion in this art walk. Now,
16 I'm --

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

21 BY MR. ELLIOTT:

22 Q Can you identify any of the particular

1 photographs that you --

2 A Yeah, we're not looking to have
3 anything stately and really solemn. We are
4 looking for something that is fun and got a
5 little zip to it. So up in the top left corner
6 is Apex Sound by a local artist, Melissa Hill.
7 On the other side the blue spikes, that's by a DC
8 artist Michael Sirvet.

9 Q That's the one all the way to the
10 right on the top?

11 A All the way to the right on the top,
12 three blue spikes.

13 Down on the bottom left is what is
14 called yarn bombing, which is kind of a new thing
15 and you know it's just a modern way to infuse
16 some art. Some of it is more high-end, high-
17 world art, some of it is lower. But the notion
18 is to have local, regional and international
19 artists, established and emerging, tap style art,
20 some projection art, light art, as well as, you
21 know, metal and ceramic pedestal kind of art, but
22 that gives some personality to the space and I

1 guess what we're seeking would be in the back of
2 the seating and so people could wonder through
3 it.

4 Q Ms. Leff, do you have the exhibits at
5 the witness table there?

6 A No, I do not.

7 Q I'm going to pass you Exhibit 18 and
8 ask you to identify that.

9 A This is an email summarization of some
10 logistics and budget concerns that --

11 MEMBER SILVERSTEIN: I'm sorry?

12 THE WITNESS: Logistics and budget
13 concerns that was provided by the Washington
14 Sculptors Group.

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

19 BY MR. ELLIOTT:

20 Q And what is the Washington Sculptors
21 Group?

22 A They are a professional about 400-

1 person group in D.C., but they have members
2 internationally, too, D.C., Maryland, Virginia.
3 We have been in discussions with them to help us
4 do this art walk, both curator and market it.
5 They do their own. They have worked on the Foggy
6 Bottom Biennial Exhibit Exhibition.

7 And so this was the first step to
8 start fleshing out, as I said, budget and
9 logistics that we need to follow-up with to
10 create such an art walk.

11 Q And did you and I meet with them?

12 A Yes, we met with them.

13 Q And have they in this given --
14 generally given you some idea of a budget for an
15 annual art program and sculpture program if they
16 were to assist with it?

17 A Well, they gave -- in this proposal,
18 what they were reciting is the costs, budget that
19 the Foggy Bottom Biennial Art Exhibit does and
20 there's would be probably about double the size
21 of what we are thinking about, so you would have
22 to extrapolate.

1 But yes, in fact, there is a budget,
2 you know, curator's cost, cost for artists,
3 stipends, things like that.

4 Q And approximately how much?

5 A They are saying \$50,000, but again,
6 that's for about double the size of what we would
7 do.

8 Q Um-hum.

9 A So you would extrapolate it about 25.

10 MR. MURPHY: Sir, I would like to
11 change the --

12 CHAIRPERSON ANDERSON: I'm sorry.
13 Hold on. Yes, sir?

14 MR. MURPHY: May I object? I mean, we
15 all want this to be informal and continue, but
16 this is so far beyond bounds of relevance in this
17 proceeding, it just seems to be that a lot of
18 time is being wasted.

19 CHAIRPERSON ANDERSON: It's his time.
20 I mean, it's his 90 minutes and if he believes
21 this is the way he wants to present his case, I
22 mean, I can't tell him how to present his case,

1 sir. Go ahead.

2 MEMBER SILVERSTEIN: I certainly --

3 CHAIRPERSON ANDERSON: Yes?

4 MEMBER SILVERSTEIN: -- agree with the
5 Chair, but again, this has about peace, order and
6 quiet and other than things bouncing off the
7 sculpture, I'm not sure where you are going, sir.

8 CHAIRPERSON ANDERSON: Well, hold on.
9 All right. I understand where you are going. I
10 think that --

11 MR. ELLIOTT: All right.

12 CHAIRPERSON ANDERSON: -- but I think
13 the issue, sir --

14 MR. ELLIOTT: It's --

15 CHAIRPERSON ANDERSON: -- talking the
16 issue --

17 MR. ELLIOTT: -- the nature. We are
18 finished with that.

19 CHAIRPERSON ANDERSON: Right. The
20 issue is that maybe rather than 10 minutes, 5
21 minutes, I see you are giving some background
22 information that you are trying to create a

1 sculpture garden, I see that. I think I hear
2 that. But I don't think we need to go through
3 the many --

4 MR. ELLIOTT: We are done with this.

5 CHAIRPERSON ANDERSON: All right.

6 MR. ELLIOTT: But it is at the core of
7 the restaurant kind of outdoors that we have.

8 CHAIRPERSON ANDERSON: Okay.

9 BY MR. ELLIOTT:

10 Q Ms. Leff, I'm going to switch to the
11 subject of a -- that Mr. Murphy raised whether
12 the facility constitutes a kitchen. And this is
13 Exhibit 47, can you identify what that is?

14 A That is you holding one of our big 30
15 pound pieces of brisket, that something very
16 similar to that had been cooked in the kitchen
17 along with rock chicken, quiches were baked,
18 empanadas made, sweet breads made in that
19 kitchen. Food is very able to be cooked in our
20 kitchen.

21 (Whereupon, the above-

22 referred to document was

1 marked as Applicant Exhibit
2 No. 47 for identification.)

3 BY MR. ELLIOTT:

4 Q And in developing the concept of the
5 food, can you identify this Exhibit 39?

6 A That is a photo of a student tasting
7 that was held as the menu was being developed,
8 the initial menu was being developed.

9 (Whereupon, the above-
10 referred to document was
11 marked as Applicant Exhibit
12 No. 39 for identification.)

13 THE WITNESS: People -- we had our
14 chef come in. We ate dishes. The students gave
15 a lot of feedback.

16 BY MR. ELLIOTT:

17 Q And I wanted to show you Exhibit 45,
18 which says menu on it, and ask you briefly to
19 state what this menu is.

20 A Well, that's our initial proposed
21 menu. I think as with most establishments it's
22 an evolving menu, a work in process. Once you

1 see what is popular, see what is available,
2 seasonally things change.

3 (Whereupon, the above-
4 referred to document was
5 marked as Applicant Exhibit
6 No. 45 for identification.)

7 THE WITNESS: But that's the basic of
8 it is vegetarian and meat dishes, daily specials,
9 pastas, and then food trends. Avocado toast and
10 acai bowls, which students were very insistent
11 on. They really like the acai bowls and the
12 avocado toast. So that's --

13 BY MR. ELLIOTT:

14 Q Thank you. Let me change the subject.
15 I want to show you Exhibit 15, which is I think
16 pertinent --

17 CHAIRPERSON ANDERSON: What number?

18 MR. ELLIOTT: 15. I think it is
19 upside down in the exhibit book, unfortunately.

20 BY MR. ELLIOTT:

21 Q But could you identify Exhibit 15?

22 A This is the purchase agreement, the

1 proposed purchase agreement that was under
2 advisement from Mr. Gobrial to purchase Chinese
3 Disco, the business and the assets, the personal
4 property there.

5 (Whereupon, the above-
6 referred to document was
7 marked as Applicant Exhibit
8 No. 15 for identification.)

9 BY MR. ELLIOTT:

10 Q To your knowledge, was he prepared to
11 buy the business and go straight forward July 1st?

12 A Oh, he was very prepared. He had
13 substantial means and had spent hours in Chinese
14 Disco surveying the operation, seeing what he
15 wanted to change, yes.

16 Q Do you recall how many hours he said
17 he spent in the establishment studying it?

18 A I don't remember exactly, but the
19 number like 40 somehow relates to me. He spent a
20 lot of time there.

21 Q Ms. Leff, did you have occasion to
22 test the sound between the main courtyard and the

1 lot line of the backyard of Mr. and Mrs. Emes?

2 A Yes, I did.

3 Q And I want to show -- well, it's not
4 an exhibit, but did you -- what device did you
5 use?

6 A We used a decibel meter.

7 Q And how -- tell the Board how you
8 conducted this sound test.

9 A Well, what we did is we set up a
10 source of sound in the middle of the courtyard.
11 It was an amplifier and it was turned on. So do
12 you see where it says Sandbox Restaurant?

13 MR. ELLIOTT: Well, let me just for
14 the record here, I am going to show you Exhibit
15 12. And I think we can just stipulate that that
16 is a diagram of the courtyard in front of the
17 property.

18 (Whereupon, the above-
19 referred to document was
20 marked as Applicant Exhibit
21 No. 12 for identification.)

22 CHAIRPERSON ANDERSON: Okay.

1 MR. ELLIOTT: Mr. Murphy?

2 MR. MURPHY: Um-hum.

3 BY MR. ELLIOTT:

4 Q And so you were saying that you set up
5 a sound device to produce sound.

6 A Um-hum. About where the N is of the
7 word Sandbox. And then we put it at its peak
8 level.

9 Q This is the outdoor area.

10 A Yeah, I'm sorry, down there.

11 Q So you are pointing to --

12 A In the middle.

13 Q -- the area just outside the front
14 window of Sandbox?

15 A Yes, on the brick patio.

16 Q Okay.

17 A And --

18 Q This is -- upward is north, correct?

19 A Upward is north, yes, towards Sandbox.

20 Q And so you have the Sandbox Restaurant
21 and to the south an area opening up onto the
22 courtyard, correct?

1 A Yes.

2 Q And then there is a bridge?

3 A There is a bridge.

4 Q That's a bridge. And then just below
5 that is a larger block and just below it, it says
6 Cafe Milano Kitchen?

7 A Yes.

8 Q And that is what we are talking about
9 the main courtyard, correct?

10 A Yes.

11 Q This area from Sandbox down to the --

12 A Yes.

13 Q -- Cafe Milano Kitchen. And then
14 where are the Emes' properties?

15 A The Emes' properties are to the left.
16 You can see 3230N and 3226N.

17 Q Yes. So --

18 A And --

19 Q -- and then 3224, that's a preschool,
20 correct?

21 A Yes.

22 Q Now, you put the sound producing

1 device here just outside of the restaurant and
2 what was the decibel level generally at that
3 location?

4 A It was about 75 there.

5 Q And did you also hear planes go over?

6 A We did hear airplanes go over, yes.

7 Q And what did they register at their
8 maximum?

9 A They registered at their maximum 77.

10 Q Now, with the sound going, tell the
11 Board where you went with the meter.

12 A So I walked toward --

13 Q South.

14 A I walked south, but I walked toward
15 the building, so toward the Emes, but going
16 south. And past where it says three-story high
17 building, I just walked southwest, also south and
18 then when we got to that other passage, so where
19 it says Cafe Milano Kitchen, I turned left there.

20 Q Right.

21 A Right, yes. I don't know direction.

22 CHAIRPERSON ANDERSON: All right. Are

1 you --

2 MR. ELLIOTT: I could try to shorten
3 it, Mr. Chairman.

4 CHAIRPERSON ANDERSON: No, no, I'm not
5 -- no. I want to make sure that you are asking
6 her a question and you are not leading her to
7 answer, because --

8 MR. ELLIOTT: Okay.

9 CHAIRPERSON ANDERSON: -- I'm trying
10 to figure out if she said she made a left and you
11 are saying right, are you saying that she is
12 correct that she made a left or are you
13 correcting her by telling her, no, she didn't
14 make a left, she made a right?

15 MR. ELLIOTT: I --

16 CHAIRPERSON ANDERSON: So I need you
17 to --

18 MR. ELLIOTT: -- too much --

19 CHAIRPERSON ANDERSON: -- ask her a
20 question. Let her identify what it is --

21 MR. ELLIOTT: Yes.

22 CHAIRPERSON ANDERSON: -- for us and

1 you identify it.

2 BY MR. ELLIOTT:

3 Q Why don't we start over. Just tell
4 them briefly where you went to make a reading
5 near the --

6 A Okay. So I started where we said in
7 the middle of that small courtyard. I headed
8 south and then I turned left past the three-story
9 high building and went into the yard of the
10 school all the way to the property line that
11 divides the school and the 3226 and right about
12 10 feet before the structure of the building. So
13 I was in the backyards.

14 Q And what decibel readings did you
15 observe at that location?

16 A There it was, hold on let me see
17 because I wrote it down, 47 or 48, it fluctuated
18 a little bit.

19 Q And then did you make readings when --
20 did we go back and turn the sound off?

21 A Yes, we did.

22 Q And did you make a reading in the same

1 location with the sound off?

2 A Yes, I did.

3 Q And what was the decibel reading?

4 A 47, 48. You could hear the church
5 bells ringing.

6 Q Including yourself here, the sound
7 machine over here at 70 some decibels, when you
8 were standing in the backyard of the school?

9 A Nothing. I could hear nothing.

10 Q All right. I have one final question,
11 Ms. Leff. There was quite a bit of testimony.
12 I'm going to show you Exhibit 11, which I think
13 Mr. Murphy can stipulate as a diagram of the
14 eastern end of this block.

15 (Whereupon, the above-
16 referred to document was
17 marked as Applicant Exhibit
18 No. 11 for identification.)

19 BY MR. ELLIOTT:

20 Q And in Exhibit 11, there was this
21 testimony about access to the main courtyard,
22 there are various ways to come into it. And I am

1 going to point out various locations and ask you
2 if there is or is not a wrought iron gate that
3 can be locked.

4 First of all, on the northeast corner
5 of that larger rectangle, there is a stair coming
6 down. Is there a wrought iron gate that can be
7 locked there?

8 A Yes, there can be, um-hum.

9 Q And incidentally did Chinese Disco
10 always lock that when they were operating?

11 A Yes.

12 Q And then if you go down to what Mr.
13 Murphy was referring to where you come in between
14 Cafe Milano and Morton's, is there a passageway
15 into the courtyard in that corner?

16 A Yes, there is.

17 Q And is there a wrought iron gate there
18 that can be locked?

19 A Yes.

20 Q And is that locked at night?

21 A I don't know that it is still locked
22 at night.

1 Q When Chinese Disco operated?

2 A Right, yes, but not now.

3 Q And then Mr. Murphy -- when we can
4 just stipulate that there is an entrance here
5 where Mr. Murphy was asking between Peacock Cafe
6 and Bangkok Bistro, there is an entrance in
7 there, but when you come back to this narrow
8 courtyard behind those two restaurants, is there
9 a wrought iron gate between that smaller
10 courtyard and the big courtyard?

11 A Yes.

12 Q And can that be locked?

13 A Yes, and it was locked.

14 MR. ELLIOTT: No further questions.

15 CHAIRPERSON ANDERSON: Mr. Murphy, do
16 you have any cross-examination?

17 MR. MURPHY: Yes. If I could, please,
18 borrow Exhibit 11, Mr. Elliott?

19 MR. ELLIOTT: Yes.

20 MR. MURPHY: Thank you very much.
21 That's the one I want.

22 CROSS-EXAMINATION

1 BY MR. MURPHY:

2 Q Okay. Before we get to that, Ms.
3 Leff, you testified that back in 2017 the Old
4 Georgetown Board encouraged you, meaning Mr.
5 Elliott and his operation, to, I think the word
6 was, enliven the courtyard.

7 Okay. Now, for the benefit of the
8 folks here who don't live under the aegis of the
9 Old Georgetown Board, could you explain what the
10 Old Georgetown Board is?

11 A Well, Georgetown is a Historic
12 District, so if you want to do changes to
13 property, physical changes that can be seen from
14 the street, there are certain parameters and/or
15 signage, for example, you need to bring your
16 proposal in front of the Old Georgetown Board and
17 make a presentation.

18 Q All right. And the members of the Old
19 Georgetown Board are three architects, correct?

20 A Yes.

21 Q Yes.

22 A I believe.

1 Q And they are charged with the
2 obligation of just giving advice to the D.C.
3 Government before construction permits are
4 issued, correct?

5 A I don't know if they are just charged
6 with advice. I think there are some legal
7 implications of what you can do because it is a
8 Historic District, but they do give advice.

9 Q Well, their job is to give advice to
10 the D.C. Government. Only the D.C. Government
11 can issue or refuse to issue building permits.

12 Now, did the Old Georgetown Board
13 specifically encourage you to enliven the
14 courtyard by opening a restaurant with a summer
15 garden, an entertainment endorsement and a cover
16 charge endorsement?

17 A No, Mr. Murphy, they did not do that.

18 Q Now, let me ask you about your sound
19 machine. As I understand it, you placed it what
20 here?

21 A No.

22 Q Initially up? It was --

1 A There or a little bit higher.

2 Q -- closer to the restaurant than the--

3 A Bridge.

4 Q -- bridge.

5 A It was, I think, right under the

6 bridge.

7 Q Right under the bridge?

8 A Right under the bridge. Actually, now
9 when you are saying that, because it was raining.

10 Q Okay. Now, did it point in any
11 particular direction or did it let out sound in
12 all directions?

13 A It was cocked and I believe that it
14 was, hold on let me try to recall, pointing -- it
15 was at an angle pointing west like this.

16 Q Like this?

17 A So last -- yeah, like that.

18 Q Okay. Okay. Okay. Now, and --

19 A I mean, yes.

20 Q -- did you ever move it? Was that the
21 only place you put it?

22 A That's, I believe, where it was.

1 Q Okay. And so you took readings. I
2 believe you said you took readings over here,
3 right?

4 A We went into the school.

5 Q You went into the school? So you took
6 readings from the school.

7 A Into the school backyard.

8 Q Backyard, okay.

9 A Um-hum.

10 Q From here, correct?

11 A By the fence.

12 Q Okay.

13 A As close to the Emes' property as I
14 could get there.

15 Q Okay. And where else?

16 A All the way around, all along the
17 path.

18 Q All along this path?

19 A That I -- no, that I walked, that I
20 showed you, that we walked south. I walked
21 south.

22 Q Through the --

1 A There.

2 Q Okay.

3 A Then can I just get up and show you?

4 I think it is quicker.

5 Q It's up to the Board and to the

6 Chairman.

7 CHAIRPERSON ANDERSON: Sure.

8 MR. MURPHY: Okay. That might be

9 easiest.

10 THE WITNESS: So I walked here.

11 BY MR. MURPHY:

12 Q Okay.

13 A The gate is here, so --

14 Q Where you went in the school.

15 A -- I think it was here.

16 Q And Mr. Elliott, presented owns the
17 school building, correct?

18 A Yes, he does.

19 Q Okay. So that's how he had access
20 then.

21 A Yes.

22 Q Okay. And the sound machine was

1 taping all the time. Now, over here is, in fact
2 right here, where the condominium units and that
3 is what is called the Madelon Condominium are
4 located, right?

5 A Well, across --

6 Q And they run --

7 A -- the hall.

8 Q Yeah, the run all the way for us here.

9 A Um-hum.

10 Q Okay. Did you go into any of those
11 units to take readings?

12 A No, I did not.

13 Q Okay. What time of day did you do all
14 this?

15 A Afternoon. I think it was probably
16 about 3:30, between, hold on, 2:30 and 4:00.

17 Q Okay.

18 A 4:15.

19 Q Okay. And how warm was it?

20 A It was not warm.

21 Q It was not warm? Are you a sound
22 engineer? Do you know how atmospheric conditions

1 can affect sound readings?

2 A No, I do not.

3 Q You don't know anything about that.

4 Okay. Now, did you ever place a sound machine
5 here behind Mai Thai and Peacock?

6 A No, I did not.

7 Q You did not. So you don't have any
8 indication though if some day we got a summer
9 garden behind these locations, what kind of
10 effect that would have on the ANC?

11 A I'm talking -- I'm just doing
12 information for this hearing.

13 MR. MURPHY: No further questions.

14 MR. ELLIOTT: I have one redirect.

15 CHAIRPERSON ANDERSON: No, not yet.

16 Any questions by any Board Members? Yes, Mr.
17 Short?

18 MEMBER SHORT: Ms. Leff?

19 THE WITNESS: Yes.

20 MEMBER SHORT: Good afternoon, still.

21 We have had people that testify before this Board
22 about sound. And normally those persons when

1 they are put on the stand are asked how are they
2 trained? Do they have an engineering degree?
3 Was their machine calibrated? Did any of that
4 occur?

5 THE WITNESS: No, I am not sound
6 expert by any means.

7 MEMBER SHORT: So where did you get
8 the instrument from that you used for your test?

9 THE WITNESS: Purchased it at retail.

10 MEMBER SHORT: Okay. Well, the
11 District Government has regulations about giving
12 testimony that we are to take in as evidence if
13 you are not trained and you are not an engineer
14 and you haven't had your device calibrated to
15 D.C. standards, then I would just make the
16 suggestion to the Chair that we can't take that
17 testimony as a part of our deliberation.

18 CHAIRPERSON ANDERSON: Mr. Short --

19 MEMBER SHORT: I'm just asking.

20 CHAIRPERSON ANDERSON: -- it's up to--
21 the witness was -- the testimony was given. It
22 is up to counsel to -- opposing counsel to object

1 to the nature of the testimony.

2 MEMBER SHORT: Okay. I have a
3 question on another line.

4 CHAIRPERSON ANDERSON: Right. The
5 counsel didn't object to the nature of the
6 testimony, so therefore the testimony she has
7 given will --

8 MEMBER SILVERSTEIN: We will give it
9 the weight it deserves.

10 CHAIRPERSON ANDERSON: -- we will give
11 it the weight that it is -- but you can't object
12 now, sir.

13 MR. MURPHY: No, I'm not going to
14 object. I do -- if I may?

15 CHAIRPERSON ANDERSON: Yes, no.

16 MR. MURPHY: I did not object at the
17 giving of the testimony, but I did raise the
18 issue of the competence of the witness with
19 respect to --

20 CHAIRPERSON ANDERSON: All right.
21 Well, hold on, hold on. You -- during cross-
22 examination, you are asking questions, so that's

1 there. Mr. Short is asking questions. It's the
2 Board's opportunity to ask questions.

3 The way the process works is the Board
4 will ask questions. I will give you an
5 opportunity to ask any follow-up questions you
6 want to ask, based on the questions that were
7 asked by the Board and then the last word goes to
8 the Applicant. You can ask -- and we are not
9 going into new areas.

10 Whatever questions that you have, have
11 -- are directly related to questions that the
12 Board -- that were asked by the Board. So go
13 ahead, Mr. Short.

14 MEMBER SHORT: Okay. You still have
15 a copy of Exhibit 11?

16 THE WITNESS: I don't have it. I can
17 see it there.

18 CHAIRPERSON ANDERSON: Could someone
19 give her a copy of Exhibit 11, please?

20 THE WITNESS: Could I just get my
21 exhibit --

22 CHAIRPERSON ANDERSON: No, you can't

1 have --

2 THE WITNESS: -- book there?

3 CHAIRPERSON ANDERSON: You can't have
4 anything, ma'am. The only books you can have is
5 when someone gives you something. So someone
6 show her these exhibits.

7 MEMBER SHORT: Okay. Yes, that's
8 fine. Okay.

9 MR. MURPHY: Here it is.

10 MEMBER SHORT: Okay. Okay. No
11 problem. I have a copy in front of me, so if she
12 needs it --

13 MR. MURPHY: For?

14 CHAIRPERSON ANDERSON: The witness
15 needs it, so you can give it to her.

16 MR. MURPHY: All right. Okay.

17 CHAIRPERSON ANDERSON: She can hold on
18 to it, please.

19 MEMBER SHORT: Thank you so very much.
20 Okay. There was some mention about steel gates--

21 THE WITNESS: Yes.

22 MEMBER SHORT: -- that lead from and

1 into the area that you want to have the sidewalk
2 cafe. Are those gates exit or egress to the --
3 away from the proposed site where you want to
4 have the sidewalk cafe?

5 THE WITNESS: It would be ingress and
6 egress.

7 MEMBER SHORT: I understand that. So
8 the reason why that was put there is because if
9 something happens inside one of the
10 establishments or if something happens in the
11 courtyard, people can get out and get away,
12 correct?

13 THE WITNESS: (No audible answer.)

14 MEMBER SHORT: Other than that, they
15 would be trapped if the gate is locked and --

16 THE WITNESS: Um-hum.

17 MEMBER SHORT: -- they can't get out?

18 THE WITNESS: Yes.

19 MEMBER SHORT: So what is going to
20 happen if you get your -- this is granted, is
21 someone going to be there to open that gate or
22 let people out or how is that going to work?

1 THE WITNESS: Well, there isn't a
2 gate. Hold on. There isn't a gate, Mr. --

3 MEMBER SHORT: Okay. But the reason
4 why there are so many, and I say this because I'm
5 a retired public safety person, and so the gates
6 are there because if something happens on one
7 side, you can get out the other side. So there--
8 how many gates altogether are there?

9 THE WITNESS: One, two, three, four,
10 I think four.

11 MEMBER SHORT: Okay. Most likely
12 there are, because one from the east side of
13 the --

14 THE WITNESS: Yeah, but there are
15 more.

16 MEMBER SHORT: Let's stick to my
17 question, just bear with me.

18 THE WITNESS: Okay.

19 MEMBER SHORT: Again, and I had asked
20 this question of the Investigator when he was
21 there, how are things going to be controlled if
22 you have locked gates? And if the gates are

1 open, how are things going to be controlled in
2 this space if people can just walk in through
3 either four of those directions and walk out any
4 four of those directions? What is in place to
5 keep people safe there and that somebody just
6 doesn't -- well, service and sales and the
7 consumption, what controls are they going to have
8 in that space?

9 THE WITNESS: Well, the --

10 MEMBER SHORT: If you don't know, you
11 can say you don't know.

12 THE WITNESS: -- one thing I do want
13 to just say this, there is one very large
14 passageway that the Investigator mentioned that
15 does not have a gate on it.

16 MEMBER SHORT: Okay. And that leads
17 out to which street?

18 THE WITNESS: Prospect.

19 MEMBER SHORT: Correct. Now, but
20 going back towards the residential areas, if
21 there is a car on fire on Prospect Street or if
22 there is -- if someone has it blocked up, and I

1 know -- I hate to mention this word, but this
2 city is a target for terrorism.

3 THE WITNESS: Um-hum.

4 MEMBER SHORT: So if a terrorist were
5 to put something in that path and block all those
6 people in and all the other gates are locked,
7 what is going to happen?

8 THE WITNESS: Well, there is exit onto
9 M Street through the actual restaurant.

10 MEMBER SHORT: Well, ideally, the
11 reason why there are so many is because when this
12 was done, I would imagine the fire department had
13 to sign-off on it, DCRA had to sign-off on it,
14 zoning had to sign-off on it. And that was a
15 part of the reason why that was allowed to be
16 there, because people could get out and not be
17 trapped by a locked gate.

18 So if you have 168 chairs out there
19 and something happens, how are those people going
20 to get out? If you don't know, you can say you
21 don't know. I mean --

22 THE WITNESS: Well, there is -- I

1 don't have an exact plan in terms of I think that
2 not all the iron gates would have to be locked.
3 My vision of this is that there are seats. It's
4 an outdoor seating area, so yeah, there are
5 stanchions and cords, people aren't just --

6 MEMBER SHORT: I understand. Again,
7 I have a lot of training in public safety.

8 THE WITNESS: Right.

9 MEMBER SHORT: What a lot of times
10 people would do is bring their own chain and lock
11 and put on the gate. It might sound not
12 realistic to you, but those kinds of things
13 happen when somebody has something on their mind
14 that is not in the best interest --

15 THE WITNESS: Um-hum.

16 MEMBER SHORT: -- of the citizens or
17 people they are trying to hurt. So we need to
18 start thinking about those kind of things and
19 that's something that I try, as best I can not
20 every entity, but I try to bring that to the
21 attention, to the public's attention.

22 THE WITNESS: Right.

1 MEMBER SHORT: Because when you start
2 planning for 180 some seats, 160 some seats and
3 you have all these other places, so we are just
4 talking about 168 for what you want to do there.
5 What about the other restaurants and things that
6 are there and if something happens on either M
7 Street or any of the other streets that they can
8 get out to, then we need to have as much access
9 to that street. That's the reason why I'm saying
10 what plans do you have in place?

11 Because if you say to me well, we are
12 going to have someone at this gate and we will
13 have someone at that gate, we are going to have--
14 these are the kind of things I would like to
15 hear, as a public safety person, that you are--

16 THE WITNESS: Right.

17 MEMBER SHORT: -- planning for
18 success. And so that someone coming there to do
19 harm, they say we can't do it at that gate,
20 because somebody is going to be there.

21 THE WITNESS: Well, I think that there
22 are existing steel gates, but, like you said, at

1 the school they have a push bar gate, maybe we
2 have to switch to a push bar gate.

3 MEMBER SHORT: That is required on all
4 exit doors, that's a requirement.

5 THE WITNESS: But that would be --

6 MEMBER SHORT: In any building when
7 people have to -- when you go to a place of
8 public assembly, you have to push to get out,
9 correct? And you can't push to get in, because
10 they don't want people jamming against it. They
11 want people to be able to get out.

12 But I'll leave that alone. And
13 basically what I'm -- my questions pretty much
14 were around --

15 THE WITNESS: The safety.

16 MEMBER SHORT: -- yes, pretty much
17 safety. And that's all I have for right now, Mr.
18 Chair. Thank you. Thank you very much, Ms.
19 Leff.

20 CHAIRPERSON ANDERSON: Any other
21 questions by any other Board Members? All right.
22 Mr. Murphy, do you have any questions? Do you

1 have any questions of the witness based on the
2 questions that were asked by the Board?

3 MR. MURPHY: I do not, Mr. Chair.

4 CHAIRPERSON ANDERSON: All right. Mr.
5 Elliott, do you have any questions of the witness
6 based on the questions that were asked by Mr.
7 Short?

8 BY MR. ELLIOTT:

9 Q Ms. Leff, Mr. Murphy asked you about--

10 CHAIRPERSON ANDERSON: By Mr. Short.
11 You can only do -- you are only doing questions
12 based on questions that were asked by the Board
13 Members.

14 MR. ELLIOTT: Oh, I'm sorry. Okay.
15 No more questions.

16 CHAIRPERSON ANDERSON: Okay. Thank
17 you. Thank you, Ms. Leff, for your testimony.

18 (Whereupon, the witness was excused.)

19 CHAIRPERSON ANDERSON: Do you have
20 another -- I thought I had explained to the
21 parties that you will call your witness. The
22 other side has questions to -- can cross-examine

1 them. Then the Board will have -- then the Board
2 will ask questions.

3 MR. ELLIOTT: Yes, Mr. Chair.

4 CHAIRPERSON ANDERSON: Then we will
5 keep on going and then we will -- we have to find
6 some mechanism to end it. We don't just keep on
7 giving each side an opportunity to clarify the
8 record. So it's cross-examining, you ask
9 questions from the Board and then you can ask on
10 those.

11 All right. Do you have another
12 witness, sir?

13 MR. ELLIOTT: Yes, I do. Jake Yoon.

14 CHAIRPERSON ANDERSON: All right. Can
15 you raise your right hand, sir?
16 Whereupon,

17 JAKE YOON
18 was called as a witness by the Licensee, and
19 having been first duly sworn, assumed the witness
20 stand and was examined and testified as follows:

21 MR. YOON: Yes.

22 CHAIRPERSON ANDERSON: All right.

1 Your witness. And, please, speak in the
2 microphone. Okay?

3 MR. YOON: Okay.

4 CHAIRPERSON ANDERSON: Thanks.

5 DIRECT EXAMINATION

6 BY MR. ELLIOTT:

7 Q State your name, please.

8 A Jake Yoon.

9 Q And what do you do?

10 A I'm a senior at Georgetown University
11 studying political economy.

12 Q And how long have been involved in the
13 Sandbox Restaurant?

14 A Since last year.

15 Q I'm going to ask you only one
16 question.

17 MR. ELLIOTT: I think we are running
18 a little late here. I don't know and I do want
19 Mr. Chairman to reserve 10 minutes for rebuttal.
20 I know we are not exactly measuring it, but I
21 don't want to use more than my 90 minutes.

22 And I --

1 CHAIRPERSON ANDERSON: Don't worry
2 about that, sir, you will --

3 MR. ELLIOTT: Okay.

4 CHAIRPERSON ANDERSON: -- be fine.

5 BY MR. ELLIOTT:

6 Q You have with you there, Mr. Yoon,
7 Exhibit 38. Could you tell the Board what that
8 is?

9 A Exhibit 38 is the list of types of
10 entertainment that we plan on hosting at Sandbox.

11 (Whereupon, the above-
12 referred to document was
13 marked as Applicant Exhibit
14 No. 38 for identification.)

15 CHAIRPERSON ANDERSON: Can I say you
16 don't -- can I say this? The Board cannot tell
17 an establishment what type of entertainment they
18 can have. So you don't necessarily need to have
19 testimony on that, because we can't say you can't
20 have -- we cannot tell you to have rap music. We
21 cannot tell you to have classical music. We
22 cannot tell you to have Indian music.

1 So I don't really need testimony on
2 the type of music, because the Board cannot
3 legally tell you. And I know that even in
4 settlement agreements, people put in settlement
5 agreements that you can only play this type of
6 music and we will take that.

7 So you don't necessarily need to have
8 testimony on the type of music. If you want to
9 give a flavor of or background on what it is that
10 you are going to present, but we don't need to go
11 into -- we don't -- because even if you are doing
12 hard rock and they don't like it, I can't tell
13 you not to play hard rock music.

14 But if you just want to give a flavor
15 of the atmosphere or the ambiance, you can do
16 that, but we don't -- I don't need a lot of
17 testimony on that end.

18 MR. ELLIOTT: Well, yes, Mr. Chairman,
19 it is just flavor. And we are not going to be
20 Sandbox and that was my only question. I have a
21 lot more for Mr. Yoon, but I think I'm running
22 too late, so I have no further questions.

1 CHAIRPERSON ANDERSON: All right. Let
2 me say this. Although I've said you have 90
3 minutes, I am not going to tell you that you have
4 run out of time, you can't present your case.
5 Okay? So I don't want you to say well, you know,
6 I'm running out of time.

7 I need you to present your case to the
8 best of your abilities. I am not -- so I don't
9 want you to say well, you know, I'm running out
10 of time. I don't want to, because I want for
11 both sides -- and what I'm going to do for you,
12 I'm going to do for the Protestant.

13 That's not my tenure. Since I have
14 been here as Chair, I personally don't have a
15 clock there to say that, okay, you only have 5
16 more minutes and I try to give you some leeway.

17 I'm telling you that there is a time
18 line because I don't want you to spend three
19 hours and we haven't gotten anywhere. But so I
20 don't need you to -- I don't want you to think
21 that okay, I'm running out of time.

22 I want you to present your case. I

1 just interjected by saying to you that --

2 MR. ELLIOTT: Yeah.

3 CHAIRPERSON ANDERSON: -- it's not --
4 if you just want to give testimony about the
5 atmosphere and the ambiance, but as I said as far
6 as the specific type of music you are going to
7 play there, the Board cannot order you to play
8 any specific type of music.

9 And even if you had, as I said before,
10 a settlement agreement and you had agreed that
11 you were going to play classical music or
12 whatever type of music, we would not, because we
13 would not -- we would take that out of the
14 settlement agreement. Okay? Because that's --

15 MR. MURPHY: Oh, you would? Okay.

16 CHAIRPERSON ANDERSON: All right.

17 MR. ELLIOTT: So while I appreciate
18 the generosity with your time, because I know you
19 could limit it to exactly three hours --

20 CHAIRPERSON ANDERSON: Right. Yes,
21 sir.

22 MR. ELLIOTT: -- but I don't want to

1 burden the Board. And so I will ask one more
2 question.

3 BY MR. ELLIOTT:

4 Q Mr. Yoon, what do you see that the
5 Sandbox has currently planned contributing to the
6 Georgetown community?

7 A I see it as a way to revitalize the
8 local economy in the Georgetown neighborhood.
9 Given the decline in the national economic
10 growth, it has affected our Georgetown
11 neighborhood particularly restaurants and by
12 hosting the list of activities shown on the
13 Exhibit 38, we could increase the foot traffic in
14 the area and students and residents alike in the
15 community are looking for more high-quality
16 entertainment.

17 As of now, only Blues Alley is one of
18 the more prominent entertainment venues in the
19 area. And so Sandbox aims to channel the energy
20 of all the generations of D.C. community through
21 entertainment.

22 MR. ELLIOTT: No further questions.

1 MR. MURPHY: Mr. Chairman, I would
2 move to strike that answer. Mr. Yoon appears to
3 be presenting himself as an expert in urban
4 planning without any foundation following on your
5 earlier comment about sound engineers.

6 CHAIRPERSON ANDERSON: Do you have any
7 questions that you want to ask him, sir?

8 MR. MURPHY: I do not.

9 CHAIRPERSON ANDERSON: All right. I
10 haven't been given Mr. -- I'm sorry, your last
11 name again?

12 MR. YOON: Yoon.

13 CHAIRPERSON ANDERSON: Mr. Yoon's
14 résumé. He wasn't qualified as an expert. And
15 so therefore, I'll give it the weight that I
16 think it is due. All right. If you have any --
17 does the Board have any questions of the witness?
18 All right. Thank you, sir, for your testimony.
19 You can step down.

20 (Whereupon, the witness was excused.)

21 MR. YOON: Thank you.

22 MR. ELLIOTT: Your Honor?

1 CHAIRPERSON ANDERSON: Yes, do you
2 have another witness you want to call?

3 MR. ELLIOTT: Mr. Chairman, I'm
4 calling myself.

5 CHAIRPERSON ANDERSON: All right. All
6 right. So can you raise your right hand, please?
7 All right. You can sit at the table. You can
8 sit at the table. You don't have to go over
9 there. You can sit right there at the table.

10 MR. ELLIOTT: Actually, I would
11 prefer, because then I could see the exhibits.

12 CHAIRPERSON ANDERSON: It's fine then.
13 All right. Raise your right hand, please.
14 Whereupon,

15 ROBERT ELLIOTT
16 was called as a witness by the Licensee, and
17 having been first duly sworn, assumed the witness
18 stand and was examined and testified as follows:

19 MR. ELLIOTT: I do.

20 CHAIRPERSON ANDERSON: All right. So
21 let me see how we are going to do this. Go
22 ahead.

1 DIRECT EXAMINATION

2 THE WITNESS: Now, Mr. Chairman and
3 Members of the Board, first of all, I would like
4 to put under oath my opening statement.
5 Everything I said is part of my testimony and is
6 true. And I think that will help everybody move
7 things along.

8 I would like to have Ms. Leff show you
9 Exhibit 14. You asked about the OGB or what they
10 actually -- Mr. Murphy, could you come up here
11 where people can read and hold it high, Ms. Leff?

12 CHAIRPERSON ANDERSON: Well, she can
13 do that. We have the exhibits in front of us.

14 THE WITNESS: Okay.

15 CHAIRPERSON ANDERSON: So you don't
16 necessarily -- she doesn't have to hold it if you
17 have it. I think you can just identify what it
18 is, but we have --

19 THE WITNESS: Well, maybe I can use it
20 then.

21 CHAIRPERSON ANDERSON: -- 14. We will
22 have the exhibits in front of us.

1 THE WITNESS: All right. So
2 basically, we went to the OGB and because they --

3 CHAIRPERSON ANDERSON: What is the
4 OGB, sir?

5 THE WITNESS: We went to the Old
6 Georgetown Board on some modifications in the
7 courtyard. And the two members, there were only
8 two of the three present, they said things like
9 the courtyard is really quite lovely, very under-
10 used, that improvements on the space would
11 enhance the street life and get -- make it easier
12 to get back there. And that it is very charming,
13 it is quite unfortunate a missed opportunity.

14 And then Acting Chairman Richard
15 Williams said I agree, yeah, I certainly agree
16 with that. And if you have an opportunity to
17 consider even expanding the project to do just
18 that, that would go hand-in-hand with our
19 endorsement.

20 So I think we are encouraging and we
21 would certainly love to see the inner courtyard
22 enhanced by just greater circulation from this

1 restaurant, from this dining facility. It could
2 do remarkable things to enliven that and make it
3 a great place to discover.

4 And then at the end he says so they
5 gave us concept approval on something for the
6 Morton's replacement restaurant, he said with
7 strong encouragement to think about enlivening
8 that courtyard, we will welcome you back. That
9 is what really pushed us in the direction of
10 trying to do more with this courtyard and taking
11 the plunge of turning down a perfectly good sale.
12 And believe me, it is hard these days to sign up
13 for a vacancy when you have got vacancies all
14 around you. We are full up.

15 And as I said in my opening statement,
16 it's because we don't charge too much rent and we
17 help these restaurants stay in business and they
18 stay in business long-term, 20 years to 37.

19 So another thing to consider is
20 Exhibit 21 that is a Zoning Map.

21 (Whereupon, the above-

22 referred to document was

1 marked as Applicant Exhibit
2 No. 21 for identification.)

3 THE WITNESS: What is the purpose of
4 Mixed-Use Zoning? This -- all of the commercial
5 area in Georgetown is Mixed-Use Zoning. The
6 intention of it is not, in those areas, to
7 separate out whole areas. They can only be
8 residential. Whole areas can only be commercial.
9 It brings them together. It brings people who
10 want to have urban life and be in an urban place.

11 And I'll go a little quicker and I'll
12 just say more about that, but I mean there is a--
13 in our exhibits, we have some description of the
14 purpose of urban -- of Mixed-Use Zoning. It is
15 really a reversal of everything that happened
16 since 1920 when zoning really started and started
17 separating not only communities, but races and it
18 ended up with residential areas at various
19 economic levels and then commercial in the
20 middle.

21 And Mixed-Use Zoning, the predominant
22 thrust of it is to bring everybody back together

1 to have people living above restaurants. And
2 everybody who bought in there and lives there
3 chose to live in a place that has restaurants
4 under it. And the entire property, I mentioned
5 that obviously I won't repeat it, the full block
6 being any floor and both sides.

7 And then with that, under that zoning
8 we get 40 percent more ability to build if you
9 have a residential project. It is 1.5 x the land
10 for commercial, but if you include residential
11 you get 2.5 and if you had Inclusionary Zoning,
12 which I proposed at the Domino site, you have 3 x
13 the land area. So that is all on purpose, not
14 only to bring everybody together, but to provide
15 for low income cost people.

16 Then why are we asking for 168 seats?
17 It sounds like a big number. Well, first of all,
18 you never fill them all. You have somebody that
19 comes in and takes a table for two, one person.
20 You have a table for four with two or three
21 people, sometimes four. So it is going to
22 probably max out in a busy period at 120.

1 120 people spread over that area is
2 not a big area. Ms. Leff, could you pull up
3 Exhibits 2 and 3?

4 So we set it up for DCRA and by the
5 way, I take to heart the fire issue you raised,
6 the DCRA -- maybe it's 3 and 4. It's the above
7 the courtyard and at the courtyard level.

8 We had a second inspection and the
9 DCRA said we want to inspect the upper seating.
10 We set it up and they didn't comment on the gate,
11 but I think you are right. The gates have to
12 have push bars.

13 Now, when we set it up, the one on the
14 left, which one is it, I don't see that one.

15 MS. LEFF: This is 6 and 7.

16 THE WITNESS: Okay. 6 is a view from
17 above, that's what residents would see looking
18 from their apartments.

19 (Whereupon, the above-
20 referred to document was
21 marked as Applicant Exhibit
22 No. 6 for identification.)

1 THE WITNESS: It is down there. It is
2 30 to 50 feet below. And at ground level, this
3 exhibit on the right, which is, Ms. Leff?

4 MS. LEFF: 7.

5 THE WITNESS: 7. And there is the
6 gate. A gate at the bottom there is one of the
7 three gates.

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

12 THE WITNESS: So if you pick up the
13 other gate -- so what actually we did was we put
14 191 seats in there just to show the Inspector
15 that 168 seats fit easily. You can sit down the
16 other one, just pick up the one on your right
17 hand.

18 So you can see in there we had 191
19 seats there and so he came in and said we are
20 going to have to flunk you. I said why? He said
21 you are over. Never mind, we will take them
22 away. So he came back and he said okay, now, you

1 have 168. But this was with 191, there is a lot
2 of room in that courtyard.

3 You can have a dining room area toward
4 the back, dining area toward the front, a walk-
5 through. You can have sculpture places along the
6 walk and you can have cordoned off and definitely
7 you have to have a service out there. You have
8 to have waiters. You have to have a manager to
9 do this. You can't do it right without that.

10 So the whole question of are people
11 just going to be wandering around, is this going
12 to be out of control? No, this is going to be
13 properly run. Thank you. You can set that down.

14 So as I mentioned, it's a tough time
15 now at least from our -- we had three people even
16 look at Morton's in three years. Three people in
17 three years. If the third one hadn't taken it,
18 and he did, and you issued him a license, I would
19 probably still be sitting there with a vacancy.
20 It is very hard to lease to restaurants in
21 Georgetown.

22 The restaurateurs aren't coming. They

1 won't come. They won't look. And they have gone
2 elsewhere. So that is why we are doing this
3 ourselves, because we want to operate it, but how
4 are we going to do that by just leasing it to
5 somebody? It wouldn't happen and just it's not
6 as good as our other spaces.

7 So we took the plunge to try to make
8 this a better place. And in that process, if you
9 look at Exhibit 16, I detailed over \$400,000 I
10 spent on that so far.

11 (Whereupon, the above-
12 referred to document was
13 marked as Applicant Exhibit
14 No. 16 for identification.)

15 THE WITNESS: And we took this, we
16 took the rent off of what they would have paid,
17 if we had done the transfer, and we took the
18 other expenditures of \$299 off of our books, so
19 we spent this money and it is going up every
20 month.

21 And this is -- we are hoping
22 Georgetown is open for business. We are hoping

1 that we are treated in a businesslike fashion.
2 We are hoping that there is not going to be some
3 overwhelming suspicion that this is all
4 subterfuge to have some Chinese Disco in there
5 again, because believe me, nobody in his right
6 mind would shut down Chinese Disco, spend all
7 this money all to have Chinese Disco again. This
8 is not what we want.

9 I did not like Chinese Disco. And as
10 the Inspector said, more than half the calls on
11 them were from me. And I talked to the owners
12 constantly about people are coming in with too
13 much to drink and you are serving them. You
14 can't do that. I went down there and sat with
15 kids when they weren't feeling well at 2:00 in
16 the morning.

17 I went down and talked to the security
18 personnel, you are not asking people to be quiet.
19 They just stood there with their arms closed.
20 The kids would come out 2:00 in the morning and
21 they had too much to drink. We don't want that.
22 We are not doing that. And that's why I tried to

1 indicate in our hours that we are not going to be
2 a bar. We are not going to be a late night rowdy
3 place.

4 As I mentioned, the inside there is no
5 sound issue. There really isn't a sound issue.
6 The outside we have to look at. And I think that
7 I would like to show you what we did with the
8 inside. Ms. Leff, if you could show Exhibit 2?

9 We are the landlord, so we have two
10 full-time maintenance people on staff. We have--
11 and we have power washed that place from top to
12 bottom. We have, I'll show you a picture of it,
13 a steam pressure power washer and we have two
14 full-time maintenance people.

15 (Whereupon, the above-
16 referred to document was
17 marked as Applicant Exhibit
18 No. 2 for identification.)

19 THE WITNESS: The first thing we did
20 was we power washed from the ceiling to the floor
21 the whole kitchen. We really cleaned it out. We
22 have security people all but 40 hours a week,

1 that costs a lot of money. And we also provide
2 security to the residents at no cost.

3 The only 40 hours we don't have is
4 when we have our maintenance men. So 24 hours a
5 day, we have people on-site. As landlord, Rona
6 and I work overlooking this courtyard. Our
7 office looks over that courtyard.

8 So this has been something I have been
9 working on for 33 years this property. Now, if
10 you would just show them the exhibits, I don't
11 have the list here, but the ones that show the
12 renovation. Well, I do have the list. Excuse me
13 one minute, Mr. Chairman.

14 I think they start at 26, 26 on. So
15 what we tried to create was a lot of our
16 students, we are very much into this idea of
17 students being a part of this, but our model is
18 really more like Peacock Cafe where students are
19 less than half the business.

20 CHAIRPERSON ANDERSON: Why don't you
21 identify the exhibits? So what is exhibit 26?

22 THE WITNESS: Yes, okay. So 25 is--

1 CHAIRPERSON ANDERSON: What is Exhibit
2 25?

3 THE WITNESS: -- a picture of the
4 front part with the coffee area at the time that
5 we opened.

6 CHAIRPERSON ANDERSON: All right.

7 THE WITNESS: And there are customers
8 in there. And there are polished floors that
9 were ground off and epoxied that the Inspector
10 mentioned. You can see all new lighting and to
11 the right is a \$16,000 espresso machine we
12 bought.

13 CHAIRPERSON ANDERSON: And what
14 exhibit is that, sir?

15 MS. LEFF: 26.

16 CHAIRPERSON ANDERSON: I need you to
17 identify. Remember everything is being -- we
18 have a court reporter, so I need you to identify
19 what the exhibit is.

20 THE WITNESS: Oh, I'm sorry. Yes,
21 that is Exhibit --

22 MS. LEFF: 26.

1 THE WITNESS: -- 26. And let's just
2 go right through the next 10 one-by-one, Ms.
3 Leff. So 27 is seating in the main dining room.
4 And you could move closer to the Board if you
5 like.

6 And 28 --

7 CHAIRPERSON ANDERSON: No, we have
8 them here. You just -- I just want you to
9 identify them for the record, that's all.

10 THE WITNESS: Oh, okay. 28 is seating
11 toward the back of the main dining room.

12 29 is a second room. The Inspector
13 mentioned a small area for the handling and
14 service of alcohol, that small bar is where we
15 intend to put that. And there is about 30 seats
16 in there.

17 30 is a reflecting room. It's only 7
18 feet by 7 feet and Ms. Leff actually designed
19 this and built it herself. It is based upon an
20 artist from Japan who does that kind of work and
21 has an exhibit here in Washington.

22 31, we have really -- we totally

1 cleaned up, they were already in good condition.
2 large -- lift that up a little higher, Ms. Leff,
3 restrooms, two larger restrooms that are in very
4 fine quality.

5 32 is the kitchen. Here we have done
6 a lot of work. We replaced completely the three
7 compartment sink. We -- one of the tests done at
8 DCRA of whether you are a restaurant or a
9 sandwich shop is do we wash dishes? We have
10 commercial dish washing equipment toward the back
11 there. We have hot surfaces, but yes, we don't
12 have a hood.

13 The kitchen is spotless. It is
14 beautiful. And we had a full-time chef working
15 in there with a high degree of training. He was
16 sous chef to Trabocchi and that's why we are
17 experienced.

18 The next exhibit is the machine I
19 mentioned, 33. This is a serious machine. Hot
20 steam blasting with pressure. We use that to
21 clean things and we use that to clean that entire
22 restaurant.

1 34 is a photograph of one of the
2 really fine entertainment groups that we brought
3 in when we were briefly open, Chamille and her
4 group from Howard University. And they performed
5 just beautifully, that is her group.

6 And the stage that the Inspector
7 mentioned is removable. I built it myself. It
8 is only -- it only has like a 6 foot height to
9 it. It is just 2 x 6 and then plywood in two
10 sections, so it's removed when it isn't in use.
11 Just to raise people up a little bit, so they can
12 be seen. So that's Exhibit 35 the performer.

13 Exhibit 36 is the kind of event we
14 would like, that is a chess event of 14 colleges
15 that we had after we closed. We opened it that
16 one night for this event. And incidentally, the
17 former chairman of the ANC in Georgetown was
18 there playing chess, Roger Pauley.

19 37 is another kind of thing we like,
20 that is a lecture to a lot of people about the
21 last Grand Master or World Championship Chess
22 Match. And on his computer he had all the moves

1 of the chess game and he explained it all. There
2 is a much bigger crowd around than was gotten in
3 that picture.

4 (Whereupon, the above-
5 referred to documents were
6 marked as Applicant Exhibit
7 No. 25 through 37 for
8 identification.)

9 THE WITNESS: Okay. That's enough of
10 those. In the exhibits, I --

11 CHAIRPERSON ANDERSON: Well, I need
12 you to identify, if you are going to -- if you
13 want all of these exhibits to go in the record,
14 then you will need to go through all of the
15 exhibits, so I need you to identify all of them.

16 THE WITNESS: Do you want me to go
17 through the whole list?

18 CHAIRPERSON ANDERSON: If you want --
19 if you are going to move them into evidence.

20 THE WITNESS: Okay. We will do it.
21 Going back to the beginning, we have the
22 signatures of about 22 units in the Madelon in

1 support of this application.

2 CHAIRPERSON ANDERSON: And what
3 exhibit is that, sir?

4 THE WITNESS: Number 1.

5 (Whereupon, the above-
6 referred to document was
7 marked as Applicant Exhibit
8 No. 1 for identification.)

9 CHAIRPERSON ANDERSON: All right.

10 THE WITNESS: No. 2 you have seen,
11 it's the facade of the restaurant.

12 MR. MURPHY: Mr. Chairman, a
13 procedural question?

14 CHAIRPERSON ANDERSON: I'm sorry?

15 MR. MURPHY: A procedural question?

16 CHAIRPERSON ANDERSON: What is that,
17 sir?

18 MR. MURPHY: Will the Protestants get
19 an opportunity to object to the entry of these
20 exhibits?

21 CHAIRPERSON ANDERSON: I'm going to --
22 I will ask -- before I move them into evidence, I

1 will ask you, that's one of the reasons I'm
2 asking him to go through all the documents.

3 MR. MURPHY: Okay. Thank you.

4 CHAIRPERSON ANDERSON: And then once
5 he wants to move them into evidence, then I'll
6 ask if you have any objection and the nature of
7 your objection.

8 MR. MURPHY: Thank you.

9 CHAIRPERSON ANDERSON: Go ahead.

10 THE WITNESS: Included in Exhibit 1,
11 Mr. Chairman, is -- are copies of three letters
12 sent to the Board by residents in support.

13 We have already covered 2.

14 3 is the summer garden permit hours of
15 several other Georgetown restaurants.

16 (Whereupon, the above-
17 referred to document was
18 marked as Applicant Exhibit
19 No. 3 for identification.)

20 THE WITNESS: Could I briefly cover
21 that by testifying to it, at this point, or you
22 just want me to go through all the exhibits?

1 CHAIRPERSON ANDERSON: You can do it
2 whichever way you want to do it.

3 THE WITNESS: Okay. I mean, I don't
4 need to testify at this time.

5 CHAIRPERSON ANDERSON: I think the
6 bottom line is that these are -- I think I see
7 the licenses are there, so you don't need to go
8 through that, because --

9 THE WITNESS: All right.

10 CHAIRPERSON ANDERSON: -- obviously,
11 these are ABRA establishments that were approved
12 by ABRA. So you don't need to go through. You
13 don't need to say what they are, sir.

14 THE WITNESS: No, I'm not going to
15 tell you that. But, you know, Mr. Chairman, I
16 was going to point out that we are the only one
17 that is closing at -- our outdoor at 10:00 p.m.

18 CHAIRPERSON ANDERSON: Okay.

19 THE WITNESS: Reverie is at noon and
20 these others are 1:00 and 2:00 in the morning.

21 CHAIRPERSON ANDERSON: Okay.

22 THE WITNESS: Exhibit 4 is the Reverie

1 voluntary agreement.

2 (Whereupon, the above-
3 referred to document was
4 marked as Applicant Exhibit
5 No. 4 for identification.)

6 THE WITNESS: In the Reverie case, ANC
7 was fine with having a summer garden 1 inch from
8 people's backyards directly in view, 22 feet,
9 from a front door of a townhouse right into the
10 summer garden and four of the backyards on the
11 top of the restaurant and they look right over it
12 1 inch away into the summer garden.

13 So in addition, there are bedrooms
14 about 12 feet away one floor up looking right
15 into that summer garden. So the settlement
16 agreement of Reverie is paragraph 4, Exhibit 4.

17 Exhibit 5 is the voluntary agreement
18 of Brasserie, the replacement of Morton's.

19 (Whereupon, the above-
20 referred to document was
21 marked as Applicant Exhibit
22 No. 5 for identification.)

1 THE WITNESS: We have covered 6 and 7
2 already, the photographs from above and at ground
3 level of the courtyard area.

4 Exhibit 8, this is interesting, if you
5 look at Exhibit 8, yeah, that row of windows just
6 above the ground is bedrooms, seven apartments
7 with bedrooms.

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

12 THE WITNESS: People prefer to buy
13 those units than the ones on the back where the
14 garden is not used and this comes back to the
15 fact that people are looking for urban life.

16 And we have an exhibit that I'll come
17 to of the value, relative values are higher where
18 there is outdoor dining than where there isn't.

19 Exhibit 9 is four exhibits from
20 Reverie.

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

1 marked as Applicant Exhibit
2 No. 9 for identification.)

3 THE WITNESS: And the first one,
4 Exhibit 9, the first photograph shows the summer
5 garden in front of you there right up to that
6 wooden fence and 12 foot backyard and there are
7 bedrooms right there looking right into it. And
8 those gardens are right next to it.

9 The next one, please. Then if you
10 look at this one, this is the summer garden below
11 and that wooden fence is the roof of the
12 restaurant at Reverie, which is just off of Grace
13 Street, and those are backyards. Those are
14 attached to condominium units, so they are right
15 above the restaurant and they look right over the
16 edge to the summer garden, plus balconies up to
17 the third story looking down on that one and yet
18 that -- it's that summer garden permit was
19 authorized by the Board a year ago and the ANC
20 had no problem with it.

21 This is the kind of porous roof of the
22 Reverie backyard, so it doesn't kill any sound or

1 anything, it just keeps the sun off of it.

2 And finally the fourth diagram is the
3 -- a shot we made from Reverie and it is the
4 northeast -- it's straight up or off to the right
5 and you can see the summer garden is that whole
6 dark area, yeah, pointing to the lower -- that
7 area, yes, just to the lower right hand is the
8 summer garden going up about 80 feet and then you
9 have the townhouses around it to the south,
10 townhouses to the east, condominiums to the north
11 and houses to the west.

12 This is much more enclosed, it is much
13 closer. These people aren't at the fourth and
14 fifth floor. These people are at the second
15 floor. These people are at the ground floor and
16 this one is allowed to go to midnight. What we
17 are asking for is 10:00 p.m. when National
18 Airport shuts down.

19 The next exhibit is our entire block.
20 I just -- we don't need to move that into
21 evidence, but if an issue comes up about it, that
22 would be useful.

1 Then Exhibit 11 you have already seen,
2 that's the eastern part of our block. And it is
3 an architect's diagram which was done in
4 connection with my processing something to OGB
5 that is unrelated.

6 And 12 is the diagram that you saw
7 which I think it's helpful to the Board in all
8 this discussion, because it shows where the Emes'
9 apartment houses are, where the school is, where
10 Sandbox is, where the three-story building
11 dividing courtyard from the Emes is, where Cafe
12 Milano is, at least the back of the kitchen, the
13 restaurant itself is where it says Exhibit 12 and
14 where our main courtyard is. I think that's a
15 helpful exhibit.

16 Exhibit 13 is -- did you pull Exhibit
17 13? Exhibit 13 will actually show you the three-
18 story building which blocks all the sound.
19 Anybody can go there.

20 (Whereupon, the above-
21 referred to document was
22 marked as Applicant Exhibit

1 No. 13 for identification.)

2 THE WITNESS: You don't have to be an
3 engineer to see that no sound from that courtyard
4 can get that area where the trees are, which is
5 the Emes' lot line, you just can't do it. You
6 are in the main courtyard. It is at 70 decibels.
7 You walk around the back. We filmed it all. We
8 can show it to the neighbors. I have it on my
9 iPhone. We filmed all of the readings. It
10 dropped right now from 70 coming in that backyard
11 to 46 to 48. We turned it off at 46 to 48. So
12 take it for what it's worth. I'm not an
13 engineer, but anybody could go there and see the
14 same thing.

15 Exhibit 14 is the votes from the OGB,
16 but also we filed electronically the whole
17 hearing from OGB, because those folks are out of
18 that hearing.

19 (Whereupon, the above-
20 referred to document was
21 marked as Applicant Exhibit
22 No. 14 for identification.)

1 THE WITNESS: Exhibit 15 was the
2 agreement with Mr. Gobrial, which we turned down
3 that sale and that's a true and correct copy of
4 that agreement.

5 Exhibit 16 I have already covered.
6 It's the investment I have made in this effort so
7 far, over \$400,000.

8 Exhibit 17 is the sample sculptures
9 and art work that this covered.

10 Exhibit 18 was the Washington
11 Sculptor's Group, essentially, a proposal to us,
12 the beginning of a proposal to us.

13 Exhibit 19 is some academic material
14 on the purpose of Mixed-Use Zoning.

15 Exhibit 20 shows the real estate
16 values.

17 (Whereupon, the above-
18 referred to documents were
19 marked as Applicant Exhibit
20 No. 19 and 20 for
21 identification.)

22 THE WITNESS: And I want to spend a

1 moment on this. Would you pull Exhibit 20,
2 please? I had a realtor send me all of the sales
3 for the last 10 years. And I can tell you that
4 the values in the building are about constant
5 through that 10 years.

6 It started out in the range you see
7 there \$650 to \$750 and they have stayed there.
8 So on the left is the units facing Prospect
9 Street and those don't have balconies and people
10 love those units and they don't mind having
11 bedrooms right above the sidewalk dining. And so
12 those average the sale of \$729 per square foot.

13 If you go around the back side where
14 there is balconies that are 5 feet deep, which
15 are nice, only sterile courtyard up until now,
16 and those sell or sold for an average of \$678 and
17 that's that exhibit.

18 And I can testify that those are the
19 numbers that came off the multiple listing report
20 for closed sales, actual closed sales and actual
21 square feet. That is our evidence on real estate
22 values.

1 I have shown you Exhibit 21, which is
2 the Zoning Map.

3 And Exhibit 22, Mr. -- I'm not going
4 to dwell on this, but the fact is we have sent
5 all of those estimates, two drafts of a voluntary
6 agreement. One is in -- the second one is in
7 this exhibit.

8 CHAIRPERSON ANDERSON: All right. I'm
9 going to -- that document, we -- I don't -- for
10 hearings, we don't discuss settlement -- what was
11 discussed in settlement. So I'm not necessarily
12 going to -- you can talk about --

13 THE WITNESS: Okay.

14 CHAIRPERSON ANDERSON: -- so I don't
15 know what folks refused, but you could -- I mean,
16 you could talk about what --

17 THE WITNESS: I understand, Mr.
18 Chairman.

19 CHAIRPERSON ANDERSON: -- you are
20 seeking.

21 THE WITNESS: Let me strike from the
22 exhibit the settlement agreement. But on the

1 record, we were told by the ANC they will not
2 negotiate unless as a pre-condition, we give up
3 all outdoor seating, so they refused to negotiate
4 adamantly.

5 (Whereupon, the above-
6 referred to document was
7 marked as Applicant Exhibit
8 No. 22 for identification.)

9 THE WITNESS: And that was repeated by
10 Mr. Murphy last week when I handed him these
11 exhibits. So while he is asserting that we
12 didn't negotiate, we wanted to negotiate. We
13 wanted to talk about all these things like what
14 kind of entertainment, what the concept is, what
15 we could work out with the neighbors, but ANC and
16 the Citizens Association were adamant that they
17 won't talk to us.

18 And that was on the record, that
19 wasn't settlement discussion. The correspondence
20 the first page of that exhibit is on the record.

21 23 -- I'm sorry, 25, I think I have
22 lost my train of thought. Bear with me a moment.

1 And 38, Mr. Yoon testified to the
2 types of entertainment.

3 39, Ms. Leff testified to, the Tasting
4 event.

5 40 consists of some information about
6 decibels.

7 (Whereupon, the above-
8 referred to document was
9 marked as Applicant Exhibit
10 No. 40 for identification.)

11 THE WITNESS: Every time decibel
12 doubles in sound intensity and anyone can tell
13 that an airplane going over there goes from an
14 ambient level of about 50 to 70, so that's four
15 times the normal sound. I made the graph. I'm
16 not a scientist, but I'm sure you have been over
17 there and so I'm taking into account what effect
18 the people quietly talking in the courtyard have
19 when you have an airplane going every two minutes
20 drowning out the conversation. That is a big
21 factor. And we will close when they close.

22 And 41 is the official website of the

1 National Airport that they close at 10:00.

2 42, we made a recording of the Emes'
3 lovely two little Jack Russell dogs which bark
4 morning and night. And we are all kind of used
5 to it.

6 43 is something I want to show you,
7 because I did this for these residents and I did
8 it in response to something which Ms. Emes said.
9 We will put on these tables a metal, a thin
10 metal, covering. This is from one of our bake
11 pans. And we will put under it some type of
12 padding. This is a cloth. And the reason is
13 dishes.

14 This is a wood surface table. Clang,
15 clang, clang, clang, that's what they don't want
16 to hear. I understand that, we don't want them
17 to hear that. You put the cloth, you put another
18 level, clang, clang, clang, clang, it's like one-
19 tenth of what it is if you have hard surface.
20 Clang, clang, clang. We could probably make it
21 quieter. But that's what we are going to do. We
22 are not going to have people clanking stuff down

1 on a metal table out there, so that's that
2 Exhibit 43.

3 44, we -- there is malnutrition on the
4 campus of Georgetown University. There is
5 serious malnutrition and so we hoped -- our chef
6 has an honors degree in nutrition and we think
7 that we could contribute to the solution to the
8 malnutrition up there.

9 (Whereupon, the above-
10 referred to documents were
11 marked as Applicant Exhibit
12 No. 41 through 44 for
13 identification.)

14 THE WITNESS: 45 is the menu Ms. Leff
15 testified to.

16 46 is Will Harner's résumé and a
17 picture of him. And he has worked in quite a few
18 places and he is a very outstanding person, 10
19 years of experience, magna cum laude from Johnson
20 and Wales. He is a seriously well-trained chef
21 and I was going to have him testify here today,
22 but he is doing a large event contracted by the

1 Ritz Hotel at 23rd Street, so he is unavailable.

2 (Whereupon, the above-
3 referred to document was
4 marked as Applicant Exhibit
5 No. 46 for identification.)

6 THE WITNESS: You saw 47, which is all
7 ingredients which show that we do cook. We don't
8 just buy some sliced brisket and stick it in a
9 bun.

10 48, the installation of a hood.

11 (Whereupon, the above-
12 referred to document was
13 marked as Applicant Exhibit
14 No. 48 for identification.)

15 THE WITNESS: We have gotten very far
16 on this. We had a structural engineer examine
17 our structural dwellings. There is a report from
18 him in here and he found a route to go through
19 the structure and up the back of the building.
20 We have as was mentioned by the Inspector an 8
21 foot hood. We have a ventilation unit. We have
22 Caliber, a very fine mechanical engineer. We

1 have complete systems, a very good installer of
2 hoods and that's as far as we have gotten. We
3 don't have a price. We want to do it. We don't
4 know what it would cost.

5 The rest of the exhibits were only in
6 case there were certain kinds of testimony that
7 we would use for cross-examination.

8 And then 58 is a letter that the
9 former chairman, who is still on the ANC Board,
10 wrote to me, a copy to others, in which he talked
11 about my contributions to Georgetown.

12 (Whereupon, the above-
13 referred to document was
14 marked as Applicant Exhibit
15 No. 58 for identification.)

16 CHAIRPERSON ANDERSON: What exhibit
17 you said?

18 THE WITNESS: 58. I'm not going to
19 move it into --

20 CHAIRPERSON ANDERSON: No, the reason,
21 just that I'm numbering them. Okay.

22 THE WITNESS: 58 is a letter from the

1 chairman saying as a longtime resident, you are
2 very active in the community affairs, an
3 activist, you wear many hats and so forth.

4 And 59 just good to know who you are
5 dealing with. I have been an attorney for 52
6 years in the District of Columbia. I was the
7 General Counsel hired who implemented the Section
8 8 program.

9 (Whereupon, the above-
10 referred to document was
11 marked as Applicant Exhibit
12 No. 59 for identification.)

13 THE WITNESS: I have been involved in
14 moderate and low income housing all my life. I
15 have been involved in civil rights litigation
16 from 1968 when I sued the D.C. General Hospital,
17 the requirement to perform abortions, all the way
18 up to 2005 when Bill Quigley and I filed a suit
19 in New Orleans to block the destruction, we
20 represented 10,000 black public housing families
21 and we filed a suit in Federal Court to block the
22 destruction of all of their housing.

1 CHAIRPERSON ANDERSON: What exhibit is
2 that?

3 MS. LEFF: 59.

4 CHAIRPERSON ANDERSON: What exhibit
5 are you talking about?

6 THE WITNESS: I'm telling -- that's
7 testimony. So that leads up to Exhibit 59.

8 CHAIRPERSON ANDERSON: Okay.

9 THE WITNESS: Which is two -- eight
10 years later, when the hurricane started, I got
11 people together and I said we lost that suit. We
12 lost our trial. We lost our appeal, southern
13 judges kicked out. It was a tragedy. Very good
14 housing where people went out in the hurricane be
15 safe was torn down for no reason.

16 So 59 and finally is just a sample of
17 recent civil rights work where I was the key
18 person to get together a very large working group
19 to present the misuse of relief money as to
20 minorities, renters and low income people. There
21 is a lot more I could offer if there is any need
22 to do that.

1 But the final thing I would mention as
2 to all that is I have a good record at the store.
3 I have personally owned and operated a restaurant
4 for that long, about 14 months, it was called
5 Chefs Restaurant Uncorked Restaurant, Inc., never
6 complained and, in fact, Mrs. Emes -- Mr. Emes
7 and the late Virginia Emes ate there as
8 customers. I can testify to that, all the
9 neighbors ate there as customers. It was a
10 French restaurant. It was properly run and I
11 never ever had any complaint before the ABC Board
12 or from neighbors about this restaurant. So I
13 have a good record here, it's from 1989/90.

14 So those are my exhibits.

15 CHAIRPERSON ANDERSON: Any other
16 testimony? That's the extent of your testimony,
17 sir?

18 MR. ELLIOTT: It wasn't the way I was
19 going to do this. So if you will give me one
20 second, I could -- could we just take like -- I
21 just have to see, because I know I didn't give
22 some -- I had planned to go in a different order.

1 CHAIRPERSON ANDERSON: You can take a
2 minute to wrap up.

3 MR. ELLIOTT: Thank you. I'll just
4 look through here. I'm sure there are some
5 things I meant to say.

6 CHAIRPERSON ANDERSON: Well, remember
7 we have cross-examination, so it might come out
8 then.

9 MR. ELLIOTT: Mr. Murphy has an
10 exhibit and it is part of the building facing the
11 courtyard. On the third level are three
12 residences: a one bedroom, a two bedroom, a two
13 bedroom; all three signed Exhibit 1 in support of
14 this application. They are the closest to the
15 seating.

16 The next floor up there are four, two
17 of them are here and they are opposed: Mr. Edgar
18 and Mr. Dower. The other two have signed in
19 support of this application. So 5 out of 7
20 support it, 2 are against it as to the people
21 looking straight at that courtyard.

22 And let me give you an example, also

1 this is something I want to include in my
2 testimony. I converted that building to a
3 condominium and at a time when all the units were
4 for sale, a medical doctor and his wife wanted to
5 buy one. Their daughter lives at Eden Place, the
6 next block.

7 Where did they choose? They chose of
8 all things a two bedroom apartment right over the
9 patio outdoor dining of Cafe Milano. They didn't
10 want to live some place where they looked at an
11 evergreen. They wanted to see people coming and
12 going.

13 And that, I mean, it just speaks the
14 fact that they chose that one, they must have
15 wanted it. And that's what we have experienced
16 is this is a negative to have these courtyards
17 enlivened and be part of a vibrant place instead
18 of looking like they are abandoned is not a
19 negative and it is not a negative on real estate
20 values.

21 Let me just take one more second and
22 page through here. Oh, the 24 hours. Now, as I

1 mentioned when we first started, it's not
2 critical. We have dining against ourselves to
3 ask for less, we put in the application, it's not
4 critical. We will never get a lot of people in
5 the middle of the night.

6 So if you prescribe hours that end at
7 2:00 or 3:00 or whatever you decide, that's what
8 we are going to live with. The other thing I
9 would say is we want to be a coffee business, so
10 as to starting up again, these coffee houses
11 start at 6:00 in the morning, at latest 7:00.

12 So if we were to be pushed to 8:00, we
13 won't have a breakfast/coffee business. It's all
14 up to you. The 24 hour thing is not critical.
15 It's something that accommodated the students
16 because they wake up in the middle of the night,
17 they are really jammed in in dorm rooms, there is
18 about 6,000 of them up there. I don't know,
19 three-quarters of the undergrads are in dorm
20 rooms. When they wake up in the middle of the
21 night or they have to get up at 4:00 to do a term
22 paper, sometimes they go to the library. It's

1 open 24 hours a day.

2 A lot of them said we would like to go
3 to this place, have coffee, play with our laptop,
4 get our books out and we are there 24 hours a day
5 anyway. So we thought well, it easy, we can do
6 that, but this is not a big make or break issue.

7 Having 168 seats really is a critical
8 mass and is critical to what we are trying to do
9 and that is very important to us. Again,
10 whatever you do, we will have to see what you
11 decide. We have got very opposing views here,
12 but I think that we have gone a long way to
13 assure the residents with the hours, with no
14 amplified sound, with no outdoor entertainment,
15 even with this little invention of mine, I have
16 worked with these residents for 10 years and we
17 are not there to bother residents.

18 So we will just -- whatever you decide
19 on, it's our application and it's up to you. You
20 have broad --

21 CHAIRPERSON ANDERSON: Remember you
22 have closing --

1 THE WITNESS: -- discretion.

2 CHAIRPERSON ANDERSON: -- and so you
3 are -- this is you testifying, so that's more so
4 towards closing, sir.

5 THE WITNESS: Okay. I think I have
6 covered the past use of the courtyards. And one
7 more, just one more second, please. All right.
8 That concludes my testimony.

9 CHAIRPERSON ANDERSON: All right. We
10 are going to take a 10 minute break and during
11 the 10 minute break -- for a 10 minute break and
12 then we will have cross-examination.

13 You are under oath, sir, so I'm going
14 to ask that you do not discuss -- I'm going to
15 ask for you not to have any conversations with
16 anyone for this 10 minute break that we have.

17 MR. ELLIOTT: I will not.

18 CHAIRPERSON ANDERSON: Thank you, sir.
19 As an officer of the Court, so don't have any --
20 we are going to just not have you have any
21 conversations with anyone during the break. So
22 we will be back. We are off the record 10

1 minutes.

2 (Whereupon, the above-entitled matter
3 went off the record at 4:26 p.m. and resumed at
4 4:36 p.m.)

5 CHAIRPERSON ANDERSON: All right. We
6 are back on the record. So it's cross-
7 examination, so Mr. Murphy?

8 MR. MURPHY: Yes. Thank you, Chairman
9 Anderson. Unfortunately, this may take a few
10 minutes longer than I had anticipated now that I
11 have heard Mr. Elliott's testimony, but I will
12 try and shorten it up.

13 CROSS-EXAMINATION

14 BY MR. MURPHY:

15 Q Mr. Elliott, I was going to march you
16 through the various entities that I know of
17 involved in Prospect, but maybe make it simpler.

18 Is it fair to say that you control the
19 entity that it would be the landlord to the
20 Applicant?

21 A Are you asking if I control the
22 landlord entity?

1 Q Yes.

2 A I do.

3 Q You do. And you control the Applicant
4 as well?

5 A I do.

6 Q And at what point was -- at some point
7 the residential building was converted from an
8 apartment building to a condominium building,
9 correct?

10 A 2006.

11 Q In 2006. Now, did you control the
12 entity that did the conversion to the conduits?

13 A Well, I took the major role. I had
14 partners up until then. And but it was my idea
15 and my partner getting a loan, so I took the lead
16 on it.

17 Q You took the lead on it and when the
18 units in the residential building were sold, you
19 were taken away when you did the negotiating of
20 the sales?

21 A I actually sold about a third of them
22 and then realtors sold about two-thirds, that's

1 correct.

2 Q Yeah, but you were representing the
3 entity that sold them, correct?

4 A Actually by then I owned that entity.

5 Q You owned them.

6 A Yeah, that's -- in -- at the end of
7 2006, I became 100 percent owner and the partners
8 took back the mortgage.

9 Q Okay.

10 A So yes, so but during all of the
11 condominium, there was only one person, me.

12 Q So you are the man who, at least since
13 2006 or '07, is in charge of everything that goes
14 on?

15 A In fairness, I am in charge of the
16 whole thing from 1983, it's just I had an
17 involvement of partners.

18 Q Okay. Fair enough. So you are in
19 charge of the entity that would lease the
20 premises to the three restaurants that are
21 currently operating in the complex, correct?

22 A Yes.

1 Q Okay. That would be Cafe Milano,
2 Peacock Cafe and Mai Thai?

3 A Yes.

4 Q Okay. Now, none of these restaurants
5 is currently permitted to serve customers on the
6 patio at the rear of their establishments,
7 correct?

8 MR. ELLIOTT: Mr. Chairman, I'm going
9 to object that this is going far afield and it
10 gets us into some complexity.

11 CHAIRPERSON ANDERSON: Well, it's a
12 yes or no answer, sir, so --

13 MR. ELLIOTT: It is not correct.

14 CHAIRPERSON ANDERSON: -- you just
15 answer yes or no.

16 MR. ELLIOTT: Your facts are not
17 correct.

18 CHAIRPERSON ANDERSON: Well, at this
19 point --

20 MR. MURPHY: Well, wait a minute.
21 Which --

22 CHAIRPERSON ANDERSON: -- the attorney

1 will --

2 MR. MURPHY: -- let me explore that
3 then.

4 BY MR. MURPHY:

5 Q Which of those entities has permission
6 from ABRA to offer table service on the patio
7 behind their establishments?

8 A They all -- none of them have summer
9 garden permits out there, none of them.

10 Q So that was my question.

11 A No, it wasn't. There is more to ABRA
12 than just summer garden permits.

13 CHAIRPERSON ANDERSON: Well, I think
14 the question was which of the three
15 establishments can operate a summer garden. So--

16 THE WITNESS: There are no summer
17 garden permits out there.

18 CHAIRPERSON ANDERSON: I'm sorry, you
19 said what?

20 THE WITNESS: There are no summer
21 garden permits for any of those three courtyards.
22 That's your question. That answers the question.

1 CHAIRPERSON ANDERSON: All right.

2 Let's move on. All right.

3 MR. MURPHY: Okay.

4 BY MR. MURPHY:

5 Q Now, what was the name of the
6 establishment? Well, we have already heard it,
7 Chinese Disco operated an ABRA-licensed
8 establishment on the premises where you are
9 planning to put the Sandbox, correct?

10 A Yes, it was actually Prospect Fine
11 Dining, Inc., I think, and it had two trade names
12 at the time, something called George and then it
13 changed to Chinese Disco.

14 Q Okay. Did Chinese Disco or Prospect
15 Fine Dining have a cover charge endorsement?

16 A Not to my knowledge.

17 Q Okay. Was Chinese Disco open seven
18 days a week?

19 A I think it had authority to, but it
20 really operated, to my knowledge, Wednesday to
21 Sunday.

22 Q Was Chinese Disco open 24 hours a day?

1 A Never.

2 Q Now, did Chinese Disco have a permit
3 to serve patrons in the courtyard where you are
4 planning to put 168 seats?

5 A In other words, a summer garden
6 permit?

7 Q Yes.

8 A Never.

9 Q Now, isn't it true nevertheless that
10 residents who resided in units that overlooked
11 that courtyard complained about noise generated
12 by patrons of Chinese Disco who passed through
13 that courtyard?

14 A Yes, I was one of them.

15 (Simultaneous speaking.)

16 Q Well, I'm happy.

17 A I live there.

18 Q Pretty noisy in that courtyard --

19 (Simultaneous speaking.)

20 A -- simply noisy, but when they let out
21 at 2:00 in the morning and some of them --
22 there'd be some rowdy kids and they would be

1 sitting on their hands, the security people and
2 the off-duty police would be sitting on their
3 hands and nobody asked those kids to be quiet and
4 that was a part of the problem.

5 I told the owner that over and over,
6 these are not bad people, but you are serving
7 them too much and then your security people are
8 doing nothing.

9 Q Now, your application for Sandbox
10 would allow Sandbox to remain open until 2:00
11 a.m. from Sunday to Thursday and 3:00 a.m. on
12 Friday and Saturday, correct?

13 A That's correct.

14 Q Okay. So what is to prevent there
15 being kids hanging out in the courtyard at that
16 time of night when you are the licensee?

17 A Well, I guess from what the Chairman
18 said, this is a dilemma because you have an
19 application. You know what you want to do. And
20 then as a turning point, what if you just come in
21 and have hard rock? And I don't know the answer
22 to that and I think he said that even if you put

1 the type of music in the voluntary agreement, the
2 ABC Board will knock it out.

3 So I guess every application, that is
4 every license that is granted, there is always
5 the possibility that somebody will do something
6 completely different and completely worse than
7 what was presented to the ABC Board. We have
8 every incentive to have this operated properly.
9 It does not create value there and it's not well-
10 received on the part of the public if it is not a
11 very good establishment.

12 And for that matter, I mean, if the
13 Board felt nervous enough about people leaving
14 there at 2:00 or 3:00 in the morning, they could
15 shorten the hours. They have broad authority, I
16 think, to grant the license subject to such
17 conditions as they think is appropriate.

18 Q Now, Mr. Elliott, Chinese Disco closed
19 in June of 2018, correct?

20 A They went right to the last day, I
21 think. They -- June 30, they ran right to the
22 end, I think, and then they gave us the keys.

1 Q Okay. Now, as part of the problems at
2 Chinese Disco, did it occasionally occur that
3 patrons would line up in the courtyard extending
4 all the way out to Prospect Street waiting to get
5 in?

6 A Well, what I saw was they did two
7 things. One, they would put a desk partly into
8 the courtyard and they would line up to there.
9 Other times they could put it under -- 50 feet
10 from the sidewalk, which was entirely under a
11 building, that was a better arrangement, because
12 once they got out in the courtyard, then there
13 was noise that, you know, kids just talking there
14 and lined up.

15 And so I would go down and ask them to
16 move the desk back to the edge of the building.
17 Don't bring it into the courtyard.

18 Q To your knowledge, did Chinese Disco
19 have an endorsement that allowed them to have a
20 cover charge for events at their establishment?

21 A I don't know. They have got a public
22 record. I never heard of it.

1 Q Now, and I'll represent to you they
2 did not have a cover charge endorsement.

3 A Um-hum.

4 Q Now, if there are events in your
5 restaurant for which there is a cover charge,
6 might that result in patrons lining up in the
7 courtyard waiting to pay the cover charge and
8 enter the facility, much as was true during
9 Chinese Disco days?

10 A I really don't think so. The idea is
11 to charge \$5 or \$10 in order to pay entertainers
12 and musicians such as Chamille and her group from
13 Howard and we would be lucky if we could get a
14 lot of people to that, but the pricing of the
15 restaurant would be such there is not a lot of
16 extra money there to pay people, but we wanted to
17 pay these musicians. We wanted them to have a
18 professional engagement.

19 And we have been talking to a lot of
20 these young musicians and that's what they want.
21 They want a venue in which they can perform with
22 dignity and professionally. And that's the only

1 reason we want the cover charge.

2 And I noticed there was something in
3 the voluntary agreement about promoters. We
4 don't want promoters. We don't want someone
5 coming in and like running the place. All we
6 want in a cover charge is a modest charge that
7 could fund paying the musicians and whoever else
8 performs. That's the idea.

9 Q Well, let me follow-up on that. If
10 this proves not to work, if the concept you have
11 described in such detail to the Board proves not
12 to be profitable, is there anything that would
13 prevent you from changing the marketing focus, so
14 long as Sandbox remains in compliance with the
15 license ABRA grants?

16 A I honestly don't know. The most I
17 know about the ABC Laws is what I have learned
18 here today from the Chairman, that there is a
19 problem there, that people can end up doing
20 something different than what they say. I don't
21 really know. It's a legal question you are
22 asking, I don't want to answer it.

1 Q We have had some testimony about the
2 loitering and gates --

3 A Correct.

4 Q -- that are attached at three of the
5 points ingress and egress, correct?

6 A Right.

7 Q Those wrought iron gate that -- in the
8 passage way between the courtyard that is at
9 issue in this proceeding and the courtyard behind
10 Peacock and Mai Thai, correct?

11 A There is, yeah. It's right -- when
12 you come through that 50 foot long entrance, just
13 off to the left about 10 feet is a big wrought
14 iron gate that I put in. I do not current use
15 actually, because it enables us to lock off that
16 courtyard.

17 Q Well, to your knowledge, Mr. Elliott,
18 is that iron gate, was it ever locked while
19 Chinese Disco was operating?

20 A Well, the problem was trash. The
21 trash room is in the main courtyard, so Peacock
22 Cafe had to bring their trash through there.

1 Q So you got to leave the wrought iron
2 gate open?

3 A Well, we could close it, but we were
4 locking it until they were closed and we did lock
5 it and we locked the other three -- the other
6 two. That's a tricky operation problem. I also
7 put a date -- there is another entrance into that
8 courtyard and I put a little wrought iron gate
9 there, too.

10 Q Now, you said again you have applied
11 for the right to operate a summer garden up to
12 10:00 p.m. in the evening, correct?

13 A Yes.

14 Q Okay. And you said you are going to
15 close it at 10:00 p.m. How are you going to go
16 about doing that?

17 A We wouldn't serve after 9:00.

18 Q All right.

19 A And by 10:00 we would tell people it's
20 all over, so we have to clear the courtyard.

21 Q Okay.

22 A That's what I'm undertaking. I mean,

1 that's the -- the strongest thing I can do to
2 assure residents that there won't be any problem
3 here is to have that completely closed down and
4 not used by 10:00 every night.

5 Q Okay. Well, at 10:00 every night, by
6 10:00 every night will you move all the tables
7 and chairs inside?

8 A Well, there are several ways, things
9 to do. You tip them up, you can cordon off so
10 people can't even go into those areas. It's
11 impossible to move all those tables every night,
12 but you can put the chairs up on the tables. The
13 public doesn't go to a place where all the chairs
14 are sitting upside down on the tables and take
15 them back down, I mean.

16 Q But it's true, is it not, that there
17 will be, at the very least, two points of ingress
18 into that courtyard from other establishments in
19 the neighborhood after 10:00 at night? The
20 passageway from Prospect Street straight in and
21 the passageway from behind Peacock and Mai Thai
22 will be open and people can come in and do what

1 they want to do at those tables and chairs,
2 correct?

3 A Well, first of all it isn't necessary
4 to keep the gate, the second gate open for one
5 thing. And we can move the peacock trash back to
6 where it used to be, which is to the west of that
7 gate. At that point, we can lock that gate.
8 That would have to require Cafe Milano to go into
9 their supplementary kitchen through a different
10 door.

11 The only reason we left it open was
12 they kept going back and forth to their prep
13 kitchen through that gate, but there is a door
14 facing the main courtyard that they could use
15 instead. So if we made those two changes, we can
16 lock that gate.

17 Q Now, if you were to -- you testified
18 at length about your concept here and you talked
19 about chess tournaments here, if you were to get
20 an ABRA License here, would you be required to
21 continue holding chess tournaments in the space?

22 A Morally. I mean, that's what I told

1 them I'm going to do. But as the Chairman
2 pointed out, it doesn't work that way legally. I
3 don't know what to tell you about that, Rick. I
4 mean, how -- what is anybody supposed to say if
5 you are going to be a doubting Thomas and say
6 well, maybe you are going to do something totally
7 different?

8 This is what we plan to do. This is
9 what we have invested in. This is what works for
10 us. And as you say, it has to work commercially,
11 but this is where we are going with this. And we
12 have been steady on this ever since last summer.

13 Q Okay. Mr. Elliott, when you ran
14 through your exhibits, you referred to Exhibit 4,
15 which is the voluntary agreement between ANC-2E
16 and the entity that owns the Reverie, correct?

17 A I did.

18 Q Okay. I'm just curious is there a
19 reason why you didn't include the attachment to
20 that agreement when you included in the books for
21 the Board?

22 A I guess I don't have it. I don't know

1 if I ever saw it. I have this agreement up to
2 the signature page, 505. If you show me more,
3 probably the first time I saw it.

4 Q Well, I'll just ask you a question
5 first. You definitely said, and I direct your
6 attention to paragraph 4, summer garden,
7 subparagraph (b) and it says, and correct me if
8 I'm wrong, "At all times the summer garden will
9 be covered," current plans attached hereto. Is
10 that what it says?

11 A Yes it does.

12 Q Is it true or is it not, Mr. Elliott,
13 that the plans attached are detailed plans of a
14 covering that is intended to prevent sound being
15 dispersed into the neighborhood adjoining
16 Reverie?

17 A That is absolutely not going to
18 happen, because I've seen the material rolled up
19 down there and it is not going to stop sound.
20 And it is sort of -- I had a picture of it. The
21 picture is --

22 Q Are you a sound engineer?

1 A I know enough about sound, Mr. Murphy,
2 that you can't stop sound with that material.
3 It's about this thick. It's rolled up back
4 there. I looked at it. It will help. But the
5 fact is that the residences nearby are 12 feet
6 away to 1 inch away, it's not going to stop the
7 sound. That's why probably they have the 12 hour
8 -- the midnight limit on their outdoor service.

9 Q All right. Is it true, Mr. Elliott,
10 that the voluntary agreement between Reverie and
11 ANC-2E requires that all ingress/egress into the
12 summer garden be through the restaurant?

13 A Yes, it does.

14 Q So it's unlike your summer garden
15 where you've got other points of ingress and
16 egress?

17 A Yeah, I noticed that and I was trying
18 to think how could we do that, but since we are
19 all the way to the back, I don't know who to do
20 that. I don't think it makes much difference,
21 because once someone comes in, they are there in
22 the summer garden whether they come in through

1 the alley or they came in through the restaurant,
2 they are in the area dining.

3 And when you come out of Reverie, you
4 come out into an alley, you don't come out to the
5 street. You come out into an alley and then
6 people can hear you there. It's a stone alley.
7 It's masonry buildings, but they did the best
8 they could with their agreement.

9 Q Well, and let me ask you a question,
10 because you have also testified that on behalf of
11 the ANC, I refuse to negotiate.

12 A That's correct.

13 Q Now, you have seen that Reverie got a
14 settlement agreement that required them to do a
15 covering to prevent noise from going into the
16 adjoining townhouses. Do you disagree with about
17 how effective it will be?

18 A They haven't shown me. I am not
19 familiar with what the covering is, but I know
20 that they have a summer garden very close to
21 neighbors.

22 MR. MURPHY: Well, it's a matter of

1 record it is the -- but I'll be happy to hand Mr.
2 Elliott a copy of a complete agreement since he
3 didn't include a complete agreement among his
4 exhibits.

5 CHAIRPERSON ANDERSON: Is the
6 agreement in your disclosure?

7 MR. MURPHY: The agreement was not in
8 my disclosure. I didn't know he was going to do
9 this until I saw his.

10 CHAIRPERSON ANDERSON: Then --

11 MR. MURPHY: It is in your records
12 however.

13 CHAIRPERSON ANDERSON: It's in ABRA's
14 records. Okay.

15 MR. MURPHY: But the point is they
16 agreed to do some sort of a covering.

17 BY MR. MURPHY:

18 Q Now, you testified that I refused to
19 negotiate with respect to a summer garden.

20 A On the record, there wasn't settlement
21 discussions. You told me in writing that unless
22 we drop the whole outdoor seating, you weren't

1 negotiating. That was a non-starter, that's why.

2 Q Do you recall, Mr. Elliott, the first
3 time you took me over in the courtyard and
4 described what you intended to do that I said,
5 Mr. Elliott, that might work if you put a top on
6 it so the sound won't go up. Do you remember me
7 saying that?

8 A I remember the conversation, yes.

9 Q Yes, I did say that.

10 A You were -- yeah, you were receptive
11 to using the outdoors if we put a top on it and I
12 said but the problem is we already have so much
13 indoor space and --

14 Q I did offer to do something very
15 similar to what Reverie did, correct?

16 A That's the only conversation we ever
17 had about it was would I be willing to cover it?
18 Cover the outdoor area.

19 Q We had two conversations like that,
20 Mr. Elliott.

21 A Well, I invited you to my home and you
22 met the French couple, I remember that.

1 Q There was another --

2 A I walked you through and showed you
3 the outdoor dining of the Brasserie Liberte, The
4 Chanterelle Restaurant, but when it came down to
5 negotiating --

6 (Simultaneous speaking.)

7 Q Now --

8 A -- well, let me finish my answer.

9 Q Okay.

10 A When it came down to negotiating the
11 voluntary agreement, you wanted me to produce --

12 Q You didn't answer the question.

13 A -- if I didn't drop --

14 CHAIRPERSON ANDERSON: Gentlemen,
15 gentlemen, gentlemen?

16 MR. MURPHY: Thank you.

17 CHAIRPERSON ANDERSON: All right. You
18 ask a question. Sir, you answer. No back and
19 forth.

20 MR. MURPHY: I'll move on.

21 CHAIRPERSON ANDERSON: So all right,
22 let's move on.

1 BY MR. MURPHY:

2 Q Exhibit 23, would you, please, look at
3 Exhibit 23?

4 A Yes.

5 Q All right. You had represented to the
6 Board that Exhibit 23 is a resolution passed by
7 the ANC objecting to the proposal you made to the
8 Old Georgetown Board. Would you explain to me
9 exactly where it says that?

10 A Well, no, it says defer action. And
11 I think the ANC was present at the OGB meeting
12 and probably said something like that, too. That
13 is fair. It wasn't a flat out opposition, it was
14 defer action, but then the OGB turned it down.

15 Q But in fact if you read the
16 resolution, the ANC is in opposition.

17 A I stand corrected.

18 Q Now, during your direct testimony you
19 had a demonstration with cup on a piece of wood
20 and said that well, if we put table cloths on the
21 tables, it will deaden the sound. That's the
22 short form, is that close to what your testimony

1 was?

2 A We were thinking of thin metal and a
3 pad under it.

4 Q Okay.

5 A Because if you put table cloths, you
6 are in a whole different expense level.

7 Q Okay. So --

8 A We aren't thinking tablecloths out
9 there.

10 Q -- if you get the license you have
11 applied for, would there be anything to keep you
12 from changing out the tables and not having a
13 thin pad in the table on top of it, on the flat
14 surface on top?

15 A It's the same question over and over
16 that I'm not going to come in here and say A and
17 then do the opposite. I don't know what to say
18 to that. I mean, this is what we have proposed
19 to do. I am going to do what I said I am going
20 to do.

21 Q Well, what recourse would your
22 neighbors have if you were to come in here and

1 say A and then do the opposite?

2 A That's a legal question. I don't have
3 the answer to, Mr. Murphy. I don't really know
4 how this works, but I do think that that would
5 happen, that would be the case in every ABC
6 application and that's why I think the quality of
7 the Applicant really matters.

8 Q Now, you also both during your opening
9 and during your testimony here, you made the flat
10 statement that National Airport closes at 10:00
11 p.m. Is that what you said?

12 A To refine that, it's heavy aircraft.

13 Q Heavy aircraft?

14 A Yeah, the little light planes can go
15 all night.

16 Q It states -- well, in fact, isn't it
17 true, Mr. Elliott, that National Airport does not
18 close at 10:00. What happens is if an airline
19 flies a Stage 3 Aircraft into National Airport
20 after 10:00, they get fined?

21 A I'm unfamiliar with that.

22 Q Oh.

1 (Simultaneous speaking.)

2 A But --

3 Q Are you saying --

4 A -- they --

5 Q -- the last time a Stage 3 Aircraft
6 ever flew into National Airport was three years
7 ago?

8 A I'm just unfamiliar with the
9 technicality. I looked at their website and it
10 indicates that --

11 Q But you represented that the airport
12 closes at 10:00.

13 A Except for light aircraft and I think
14 -- I thought it did. I thought that's what the
15 thrust of their website thing is. And living on
16 the top floor of a building, that's when I hear
17 it stop. But I know small aircraft can go in
18 there later, can go in there all night.

19 Q Is it your testimony that a full-size
20 Boeing 737 is not going to be able to fly into
21 National Airport after 10:00?

22 A That I don't know, Mr. Murphy. But

1 the planes that do fly there, the heavy planes
2 that do fly there that we hear all day long, they
3 seem to stop around 10:00. Last night they
4 stopped at 10:15 for some reason.

5 MR. MURPHY: I have no further
6 questions.

7 THE WITNESS: Thank you.

8 CHAIRPERSON ANDERSON: All right. Any
9 questions by any Board Members? Go ahead, Mr.
10 Short.

11 MEMBER SHORT: Again, really good
12 evening still or afternoon still, not evening
13 yet.

14 You say you have been at this property
15 for how long?

16 THE WITNESS: 1983.

17 MEMBER SHORT: 1983. Okay. Again, I
18 had some work with public safety and I could tell
19 you there are some other public assembly
20 establishments in Georgetown that have the gates.
21 But they have the panic hardware.

22 THE WITNESS: Yes.

1 MEMBER SHORT: And that's for people
2 to be able to get out. And if anybody comes in,
3 you put a security code on the outside of the
4 gate.

5 THE WITNESS: Yes.

6 MEMBER SHORT: And then you would be
7 totally legal.

8 THE WITNESS: Right.

9 MEMBER SHORT: If you have anybody who
10 had to work there or had that code, they can come
11 and go and anybody that has to get out in an
12 emergency, they can go.

13 THE WITNESS: Right.

14 MEMBER SHORT: And then there are some
15 other things you could do to keep those from
16 chaining it, but we don't have to go through that
17 today.

18 THE WITNESS: I understand that.

19 MEMBER SHORT: I would simply say to
20 you there are a lot of things that could happen
21 and one might be to totally have control of that
22 space out there. If every patron had to have a

1 wristband on, so that means if the ABC
2 Investigators came by and people were sitting
3 there drinking that didn't have a wristband on,
4 that means that you didn't authorize them to come
5 there to drink or they were a younger age or
6 whatever else. That could help your crowd
7 control and get stanchions.

8 So if the inside of those stanchions
9 they don't have a bracelet on, then you've got
10 problems.

11 THE WITNESS: Okay.

12 MEMBER SHORT: And you've got problems
13 if the Investigator comes.

14 THE WITNESS: Right.

15 MEMBER SHORT: So there is things you
16 can do and I'm quite sure if you were to work
17 some things out with the citizens, I have heard
18 you talk about a few things today and settlement
19 agreements normally take care of those issues
20 where you can't go back. Once you sign that
21 agreement and it goes into your file, you can't
22 say A and B and do B.

1 THE WITNESS: Right.

2 MEMBER SHORT: Because once everybody
3 signs that you will do A, close at 10:00,
4 stanchions, wristbands, no loud music outside,
5 that might be something that maybe, you know, you
6 could work on, but I'm just a person who knows
7 the business in the city needs to function, but
8 not at the expense of the citizens who pay their
9 taxes.

10 And if I bought a condo over top of a
11 restaurant, then I know that there are certain
12 things that happen, but I was expected to be
13 controlled to a point where I could tolerate or I
14 could live with it.

15 And so we mentioned Chinese Disco and
16 you are right, they sat in this same seat that
17 you are in now and it was really a problem that
18 the attitude they had. And I was wondering if
19 anybody had talked to them, because they just
20 seemed like they didn't care.

21 So as a landlord, I hope we don't ever
22 have to go through that again in that space. I

1 can tell you a lot about Grace Street and that
2 other whole area up there, but again, it has
3 functioned well for a lot of years and we
4 shouldn't let it fall off now.

5 And again, I really think that pretty
6 much if you work with our Investigators, work
7 with the community, there should be some way --
8 it sounds like everything was working pretty
9 well, other than the outside area, the summer
10 garden.

11 But again, I hope you take the advice
12 on the panic bars and the security code.

13 THE WITNESS: Yes.

14 MEMBER SHORT: And stanchions and
15 crowd control.

16 THE WITNESS: I will. I will. We
17 have put panic bars before.

18 MEMBER SHORT: You put the tables and
19 the chairs and at night you chain them up.

20 THE WITNESS: Yeah.

21 MEMBER SHORT: You can't take down the
22 chairs off the tables --

1 THE WITNESS: Thank you.

2 MEMBER SHORT: -- because they are
3 chained together.

4 THE WITNESS: Exactly.

5 MEMBER SHORT: That happens at 10:00
6 everybody knows that you are gone. So again
7 working with the community, there's a long of
8 things that could probably happen. If the chess
9 games are going on, and by the way I love chess
10 myself just for the record, but if chess games
11 are going on and you have folks, forgive me I'm
12 sorry, but at any rate, chess games and you have
13 the groups coming in and you have the art and
14 those things going on, it doesn't sound like the
15 Chinese Disco to me.

16 THE WITNESS: Yeah.

17 MEMBER SHORT: And I'm glad to hear
18 that. Thank you. That's all I have, Mr. Chair.

19 CHAIRPERSON ANDERSON: Any other
20 questions? Yes, Mr. Silverstein?

21 MEMBER SILVERSTEIN: And first I would
22 say to my friend, Mr. Short, there is no reason

1 to be off the record about loving chess. You can
2 be interruptive and I'll always love you for it.

3 Mr. Elliott, tell me what you think of
4 the previous tenant, Chinese Disco. What did
5 they do wrong? And how are you going to right
6 that?

7 THE WITNESS: The first thing they did
8 wrong was they sold us a Bill of Goods. They had
9 a list of like 40 organizations and this was
10 going to be a private event place and they had
11 corporations, they had International Development
12 Bank, they had the Obama Campaign.

13 Then they opened and after a few
14 months, we said where are these organizations?
15 No answer. And after about six months, where are
16 these meetings? When are you going to do what
17 you promised you were going to do? And they said
18 you know what it's a bar.

19 I think Mrs. Cruse probably had the
20 same experience. We all got taken. And once you
21 have a 10-year lease, and they paid their rent,
22 and what are you going to do? What I did was I

1 did call them in here. I did talk to the off-
2 duty police. I talked particularly with security
3 people. I talked to those owners. There is
4 something really worrying me. I got them on the
5 phone at 2:00 in the morning.

6 And I helped a girl that was in
7 distress out there. And I sat with her for 25
8 minutes, got her up on a chair and she said I
9 want to go to sleep. I said you go to sleep, I'm
10 calling 911. Then she started coming around and
11 I had our security guy sit with her until she was
12 healthy enough to go home. And I told him if she
13 falls asleep, you call 911.

14 Because there is nobody in this room
15 more opposed to excessive drinking. My oldest
16 son is in serious trouble over a drinking problem
17 that developed over 25 years and he has had two
18 operations from falls and, you know, this is not
19 on my watch. I'm not having anybody drink too
20 much. It's the worst thing.

21 And those people who come tottering in
22 there, you know what they do? They are young and

1 they don't have much money, some of them, and so
2 what they do is they get a bottle in somebody's
3 apartment and they have a lot to drink, but
4 that's not entertaining. So what do they do? Go
5 over to Chinese Disco at 11:00 at night and buy
6 one drink, but they already came in over the
7 limit.

8 And you know, it's too bad they don't
9 blow an alcohol test on the way in to a place and
10 just not let them in, because I saw people who
11 are not walking in a straight line trying to get
12 through the door. And the security people won't
13 do anything. And when that guy was checking out
14 that sale, that purchase, he told me a girl went
15 up to have a drink, five bartenders and they were
16 all on their iPhones and she couldn't even order
17 a drink. And somebody else ordered in pizza. A
18 pizza delivery to the door and they are reporting
19 to you 40 percent food sales. How could they
20 possibly have had 40 percent food sales, but I
21 guess their book showed it.

22 So from A to Z that was just a

1 nightmare for me for 10 years and I took the
2 plunge and stopped it. And now I'm here and I am
3 over \$400,000 into this trying to do something a
4 lot better and something that would be a focal
5 point for the community. Not a noisy, busy
6 place. Not Disneyland. But people should go
7 into that courtyard, that's what it is for.

8 MEMBER SILVERSTEIN: Well, we have
9 been here for three hours and I think that your
10 description of what went wrong with Chinese Disco
11 is the one thing I hope everybody in this room
12 agrees with. I have no further questions.

13 CHAIRPERSON ANDERSON: Any last
14 questions? I guess the only question I want to
15 ask you, sir, regarding the summer garden, you
16 said the summer garden, the seating was 30 feet
17 below. So how close is -- would the summer
18 garden -- how close it is to the apartments, the
19 residences?

20 THE WITNESS: Okay. Every -- so the
21 slab in there I think is 13 feet on the first
22 floor and then 12, 12, 12. So when you get to

1 the third floor, the floor is 25 feet, so if
2 someone is standing who is 5 feet tall and he is
3 hearing it at 30 feet on that level and if you go
4 up to the next floor and 12, so instead of 30,
5 it's 42. And we never see anybody on those
6 balconies.

7 Ron and I, our offices look right out
8 on those seven balconies, never is anybody ever
9 out there. So it's really indoors and they keep
10 their doors closed.

11 CHAIRPERSON ANDERSON: But I'm saying
12 but do people -- but the balconies you are
13 talking about, folks can be out on their
14 balconies?

15 THE WITNESS: They could be, but they
16 never use them. You can go from one end of the
17 week to the other, I work weekends, too, and I
18 never see my neighbors two of whom I face are
19 here. I never see them out there.

20 CHAIRPERSON ANDERSON: Well --

21 THE WITNESS: Never. Mr. Emes has a
22 lot of plants out there, but I never see Mr.

1 Emes. So I mean, but they are entitled to be out
2 there and I don't think this will interfere with
3 them, particularly closing at 10:00. No music
4 and so forth.

5 CHAIRPERSON ANDERSON: So was it -- is
6 it correct that you are stating that you never --
7 if you were to be granted a license, that you
8 will never use promoters?

9 THE WITNESS: That's correct. No
10 promoters.

11 CHAIRPERSON ANDERSON: Now, are you
12 saying that if you were to be granted a license,
13 you would put these paddings on the table to --

14 THE WITNESS: I would plan to use
15 things, actual metal over a pad, so it would act
16 just like that. You wouldn't hear the glasses
17 and silverware and stuff. I mean, it's a thin
18 metal, because we leave them out there as you
19 wipe them off in the morning.

20 CHAIRPERSON ANDERSON: All right.
21 Now, tell me about this Exhibit 48, that is this
22 installation of a hood. What's that about?

1 THE WITNESS: Oh, okay. So it would
2 be better if we could have a hood.

3 CHAIRPERSON ANDERSON: I can't hear
4 you, sir.

5 THE WITNESS: Is this better?

6 CHAIRPERSON ANDERSON: Yeah.

7 THE WITNESS: A hood would definitely
8 be a good thing. And the problem had been when
9 people who have looked at it is going laterally a
10 long distance and going up the middle of the back
11 of the office building. It can be done. Cafe
12 Milano goes about 70 feet laterally.

13 But now, we have discovered that the
14 slab above the kitchen is not post-tensioned.
15 This means that you don't risk severing a post-
16 tensioned cable and you have an explosion and you
17 have about a 6 to 10 foot hole through the
18 concrete slab. This is very dangerous.

19 That whole building is not post-
20 tensioned. Until last week, for 33 years, I
21 thought it was, but an engineer came in and
22 studied the drawings and he said it's not post-

1 tensioned.

2 So then in the report he has got a
3 little diagram from the structural drawings and
4 he has indicated exactly where we can go through
5 that slab without any structural problem and that
6 could handle a 12 to 18 foot hood opening that
7 size. So now we have the hood and we have the
8 ventilation machine for the roof, so now we are
9 working with Caliber, a mechanical engineer, who
10 has done the replacement of Morton's Restaurant.

11 They are very good. And they
12 originally -- recently did renovation of Cafe
13 Milano's HVAC, so they are computing cubically
14 per minute in order to have a vent that could go
15 all the way up to the roof. And then nobody is
16 going to smell that. It's going to be five
17 stories up and going in the air.

18 So it's not going to have any impact
19 on the community to have that hood, so that would
20 expand the culinary possibilities, because as
21 Rona pointed out, we have these other ways of
22 cooking, but they do confine us. We are still a

1 restaurant.

2 DCRA passed the same issue. I went
3 down there at Christmas for a C of O and the
4 zoning guy said tell me your menu and he asked
5 all the same questions. They -- that's exactly
6 what they do. They decide if you are a
7 restaurant or not. And they said we were, but
8 the hood would help.

9 CHAIRPERSON ANDERSON: I guess what
10 I'm saying is that is there something that you
11 are going to do or is it something that you are
12 thinking about doing?

13 THE WITNESS: As far -- here is as far
14 as we have gotten. It is now doable. We have
15 professionals working on it. We don't have any
16 cost. We don't know if it is \$50,000 or
17 \$150,000. Without the cost information, we can't
18 make a decision. I know Inspector Brashears put
19 in his report that I said I was going to do it,
20 that wasn't my wording.

21 I told him what I'm telling you that
22 we are making good progress on this and it looks

1 like we could be able to do it. He I guess heard
2 me say we are going to do it. I can't tell you
3 we are going to do it without knowing what it
4 costs.

5 CHAIRPERSON ANDERSON: All right.

6 THE WITNESS: We would like to do it.

7 CHAIRPERSON ANDERSON: All right.

8 Would this prevent you from operating a
9 legitimate restaurant?

10 THE WITNESS: Operating?

11 CHAIRPERSON ANDERSON: A legitimate
12 restaurant.

13 THE WITNESS: Legitimate restaurant.

14 CHAIRPERSON ANDERSON: Legitimate
15 restaurant.

16 THE WITNESS: No way. You can do
17 fantastic cooking without a hood. I went down --
18 the DCRA people sent me over to the Health
19 Department. A very senior woman there, sorry I
20 don't remember her name, she has been there for
21 like 35 years, and she actually knew all of these
22 kitchens, she had been in them all. She knew

1 every kitchen in our place. We once had seven
2 restaurants.

3 And we talked a long time and she said
4 without a hood, here are the rules: No excess
5 smoke, no fumes, no excess heat, no excess odors.

6 MEMBER SHORT: No deep frying.

7 THE WITNESS: No deep frying. No gas.
8 No gas, no deep frying. No heavy frying, these
9 are the rules.

10 MEMBER SHORT: Oh, I know them quite
11 well. If the Chair will permit me?

12 CHAIRPERSON ANDERSON: No. It's --
13 I'll tell you --

14 MEMBER SHORT: Your plan would have to
15 be approved.

16 CHAIRPERSON ANDERSON: Sir?

17 MEMBER SHORT: And for your plan to be
18 approved, you know the price of everything.

19 CHAIRPERSON ANDERSON: Okay.

20 MEMBER SHORT: You have to have the
21 engineer do the drawings on that and make sure
22 that --

1 THE WITNESS: Correct.

2 MEMBER SHORT: -- because the fire
3 department has to sign-off. The building
4 inspector would have to sign-off. And the health
5 department would have to sign-off.

6 CHAIRPERSON ANDERSON: All right.

7 THE WITNESS: Yes, I am very familiar,
8 because we replaced the whole fire suppression
9 system in our building about eight years ago and
10 we met with the Fire Marshal in south end and
11 then --

12 MEMBER SHORT: The EPA requires you
13 have the filter so when it goes out, you won't
14 see any smoke or smell anything outside.

15 THE WITNESS: All right.

16 MEMBER SHORT: It's expensive, but
17 it's well worth it to the community.

18 THE WITNESS: Yeah.

19 CHAIRPERSON ANDERSON: All right.

20 Thank you, sir. I don't have any other
21 questions. Do you have any follow-up questions
22 based on the questions that we asked?

1 MR. MURPHY: Just one other follow-up,
2 if I may.

3 RECROSS-EXAMINATION

4 BY MR. MURPHY:

5 Q Mr. Elliott, when you were testifying
6 to a question from, I believe, Board Member Short
7 discussing Chinese Disco, you said, and this is
8 paraphrase, I couldn't write fast enough to get a
9 precise quote, once they get a 10-year lease and
10 they paid their rent, what can you do? Did you
11 say something like that?

12 A I did.

13 Q Okay. Now --

14 A Well, I did what I could, but you
15 can't just --

16 Q Yeah.

17 A -- what I meant is will they terminate
18 it?

19 Q What do you say to the neighbors once
20 you get a license with 168 seat summer garden
21 endorsement and a cover charge endorsement, what
22 can they do if you change your format, change the

1 marketing, the kind of patrons you have coming
2 into that summer garden? What will the recourse
3 for the neighbors and the community be?

4 A Well, first of all that's really why
5 you should have negotiated with us to try to work
6 out those details. Instead, we are here and we
7 don't have an agreement. We never had any
8 negotiations. And I don't know what to say to
9 that.

10 I mean, you have asked about it quite
11 a few times, what if something else happens in
12 that space? And I don't know what to say to it.
13 This is what we plan to do.

14 MR. MURPHY: I have no further
15 questions.

16 CHAIRPERSON ANDERSON: Do you have any
17 -- and do you need to clarify anything, any
18 statements you made before or are you fine?

19 MR. ELLIOTT: Let's see as to clarify
20 what we --

21 CHAIRPERSON ANDERSON: I'm not -- it's
22 -- the reason I'm going there, is because

1 normally if there was another witness, you would
2 have had a chance to --

3 MR. ELLIOTT: Yeah.

4 CHAIRPERSON ANDERSON: -- as some
5 follow-up questions to what the Board asked. So
6 I'm just asking you and then we will just end
7 this.

8 MR. ELLIOTT: I think that I've said
9 everything that I came here to say.

10 CHAIRPERSON ANDERSON: All right.

11 MR. ELLIOTT: And I might have missed
12 a few points.

13 CHAIRPERSON ANDERSON: All right.

14 MR. ELLIOTT: But I think I have been
15 clear.

16 CHAIRPERSON ANDERSON: Okay. Fine.

17 MR. ELLIOTT: And thank you very much.

18 CHAIRPERSON ANDERSON: All right. So
19 do you rest? Meaning that, you have no more
20 witnesses to present.

21 MR. ELLIOTT: We don't. And as far as
22 moving things in evidence, I don't know what the

1 procedure is.

2 CHAIRPERSON ANDERSON: Well, we will--
3 at the end we will discuss that.

4 MR. ELLIOTT: Okay.

5 CHAIRPERSON ANDERSON: All right.

6 MR. ELLIOTT: Thank you very much.

7 CHAIRPERSON ANDERSON: All right.
8 Thank you.

9 (Whereupon, the witness was excused.)

10 CHAIRPERSON ANDERSON: I am going
11 to --

12 MR. ELLIOTT: We didn't identify
13 Exhibit 24. I see that it kind of -- it's a
14 stray here.

15 CHAIRPERSON ANDERSON: I don't know
16 what -- I don't remember if we did, but --

17 MR. ELLIOTT: It should have went in.

18 CHAIRPERSON ANDERSON: -- at the end
19 of the case, I will -- we will talk about that.
20 We will talk about the documents. All right.

21 Mr. Murphy, do you have -- do you wish
22 to call a witness?

1 MR. MURPHY: I do wish to call
2 witnesses.

3 CHAIRPERSON ANDERSON: Who is your
4 first witness?

5 MR. MURPHY: I think my first witness
6 is myself solely for the purpose of
7 authenticating, identifying and authenticating
8 Protestant's Exhibits 1 and 2.

9 Exhibit 1 is a picture I took of the
10 courtyard with my camera facing --

11 (Whereupon, the above-
12 referred to document was
13 marked as Protestant Exhibit
14 No. 1 for identification.)

15 CHAIRPERSON ANDERSON: I guess what I
16 was saying, why is it necessary to do that at the
17 beginning of your case? You can do that later
18 on. I mean --

19 MR. MURPHY: Okay.

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

22 MR. MURPHY: Well, that's fine. I --

1 CHAIRPERSON ANDERSON: No, I'm just
2 asking why is it that --

3 MR. MURPHY: I mean, I will be showing
4 this exhibit to some of my witnesses, so I just
5 thought it would be good.

6 CHAIRPERSON ANDERSON: You can ask
7 some witness.

8 MR. MURPHY: Okay.

9 CHAIRPERSON ANDERSON: And let them
10 identify what it is.

11 MR. MURPHY: That's fine. Then I call
12 as my first witness Mr. Ben Dower.

13 MEMBER SHORT: Last name?

14 MR. MURPHY: Dower, D-O-W-E-R.

15 CHAIRPERSON ANDERSON: Mr. Dower,
16 raise your right hand.
17 Whereupon,

18 BENJAMIN DOWER
19 was called as a witness by the Protestant, and
20 having been first duly sworn, assumed the witness
21 stand and was examined and testified as follows:

22 MR. DOWER: I do.

1 CHAIRPERSON ANDERSON: Okay. Your
2 witness.

3 DIRECT EXAMINATION

4 BY MR. MURPHY:

5 Q Mr. Dower, could you state your full
6 name for the record, please?

7 A Benjamin Dower. B-E-N-J-A-M-I-N D-O-
8 W-E-R.

9 Q Okay. Are you a resident of the
10 Madelon Condominium?

11 A I am.

12 Q Okay. And which unit do you live in?

13 A 410.

14 Q Okay. Now, I'm going to hand you a
15 copy of Protestant's Exhibit 1, which all Members
16 of the Board have a copy of this in their
17 notebooks. Could you show it to them and point
18 to where your unit is, please?

19 CHAIRPERSON ANDERSON: Hold on, hold
20 on a minute, please. Okay. Go ahead, yeah. Go
21 ahead.

22 THE WITNESS: Yes, it's the one in the

1 top right corner on the fourth floor with the --
2 there is some lavender on the left there. You're
3 might not be in color.

4 CHAIRPERSON ANDERSON: All right.

5 BY MR. MURPHY:

6 Q Okay. So you overlook the courtyard,
7 correct?

8 A I do directly.

9 Q Could you estimate how many feet it is
10 between your windows and the floor of the
11 courtyard?

12 A I think the Applicant's estimate was
13 fairly correct at about 40 feet.

14 Q Okay, about 40 feet. When did you
15 purchase Unit 410?

16 A August 2007.

17 Q At the time you purchased Unit 410,
18 were any representations made to you about
19 outdoor seating in the courtyard?

20 A Yes, one was.

21 Q Who made the representations to you?

22 A One of the selling agents of the

1 Applicant, Jessica DuBose.

2 Q So Ms. DuBose worked for Mr. Elliott,
3 is that correct?

4 A That was my understanding.

5 Q Have you resided in Unit 410 ever
6 since you purchased it?

7 A I have.

8 Q Okay. At the time you purchased Unit
9 410, were the premises that are currently
10 occupied by the Sandbox Restaurant occupied by
11 another establishment?

12 A I believe there was a billiard parlor
13 there, at the time.

14 Q Okay. It was not a bar?

15 A No, not to my understanding.

16 Q At some point did a bar or restaurant
17 move into the space?

18 A Yes, that was George or Chinese Disco
19 in the summer of 2009, two years after I moved
20 in.

21 Q Did George, later Chinese Disco, sell
22 alcoholic beverages to customers?

1 A Yes.

2 Q Did those two entities have live
3 entertainment?

4 A I know they had DJs.

5 Q Okay. Now, did either George or
6 Chinese Disco ever seat customers in the
7 courtyard?

8 A Yes. I'm sorry, no, did not seat
9 customers in the courtyard.

10 Q During the time George and Chinese
11 Disco occupied the premises, were you ever
12 disturbed by any noise in the courtyard?

13 A Yes, frequently.

14 Q Would you explain to the Board what
15 caused the disturbance?

16 A Well, the courtyard was a place where
17 customers would congregate. We have talked a lot
18 about the layout of the courtyard and it is
19 complicated. There is a lot of different choke
20 points, as I think Mr. Short was correct to point
21 out. The places where IDs were checked. There
22 is places you can go out beyond if you wanted to

1 be able to get back in, so people that hang out,
2 they would bring their drinks out. They would
3 smoke.

4 When they were leaving, they would
5 stop to urinate or vomit on the way out quite
6 frequently. And sometimes the establishment was
7 not so good at keeping order for people that were
8 coming and going. And so they would just hang
9 out in the courtyard drinking.

10 Q Now, just to be clear, Mr. Dower, you
11 are not opposing the issuance of an ABRA License
12 to this Applicant, correct?

13 A No, I am not.

14 Q Okay. What is it that you oppose
15 about the application?

16 A The combination of the courtyard
17 seating for a beer garden, the 24 hour operation
18 and the idea of having a cover charge that would
19 kind of exacerbate the problems related to choke
20 points managing customers going in and out,
21 having them wait in line to collect their money
22 and serving alcohol as early as 8:00 a.m. when

1 customers perhaps haven't even left from the
2 night before.

3 I disagree with what the Inspector
4 said that is a standard alcohol service hour for
5 the neighborhood. I think you would be hard-
6 pressed to find an alcoholic drink at 8:00 a.m.
7 in that neighborhood.

8 Q Thank you, Mr. Dower.

9 MR. MURPHY: Your witness, Mr.
10 Elliott.

11 CROSS-EXAMINATION

12 BY MR. ELLIOTT:

13 Q Mr. Dower, I'm going to pass you what
14 is identified as Exhibit 29, at least the first
15 several pages of it pertaining to your sale
16 contract. Take a look at that and see if you can
17 identify those pages.

18 Do you recognize that?

19 A I do.

20 Q So would you look at paragraph -- so
21 could you tell the Board what that document is?
22 It's an excerpt from what document?

1 A It is titled Purchase Agreement. I
2 believe it was a Letter of Intent or a term sheet
3 that was signed in the summer of 2007 for me to
4 purchase my unit from the Applicant.

5 Q If you look at the last of the pages
6 I gave you, a signature page with your name on
7 it, would you look at that?

8 A Yes.

9 Q And does that refresh your
10 recollection that this was actually a settlement
11 agreement?

12 A I don't think the sale happened on the
13 25th day of February 2007.

14 Q Right. But the -- all right. Well,
15 you said what you think it is.

16 So would you look at paragraph 22 on
17 page 24? And partway down, about 10 lines down
18 I'll read this to you: "Purchaser further
19 acknowledges that the condominium is located in
20 an area of the District of Columbia that is known
21 for its vibrant nightlife and is adjacent to or
22 near commercial, retailers, restaurants, bars,

1 hotel, entertainment and/or parking facilities
2 and activities and is a mixed-use project located
3 in an urban setting that may be subject to
4 certain street and neighborhood noises, light
5 sources and odors."

6 Do you see that?

7 A I do.

8 Q And isn't it correct that that was
9 part of the agreement made with you?

10 A Yes.

11 MR. ELLIOTT: No further questions.

12 Thank you.

13 CHAIRPERSON ANDERSON: Are there any
14 questions by any Board Members? No questions?
15 All right.

16 MR. MURPHY: Well, can I ask a
17 question on redirect after --

18 CHAIRPERSON ANDERSON: No one asked a
19 question.

20 MR. MURPHY: Okay.

21 CHAIRPERSON ANDERSON: No one up here
22 asked a question. Thank you very much, sir.

1 Please, step down.

2 (Whereupon, the witness was excused.)

3 CHAIRPERSON ANDERSON: Do you have
4 another witness?

5 MR. MURPHY: Yes, we do, a Mr. Kevin
6 Edgar, please.

7 CHAIRPERSON ANDERSON: Edgar?

8 MR. MURPHY: Yes.

9 MEMBER SHORT: Is it Kevin Edgar?

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

12 Whereupon,

13 KEVIN EDGAR

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

17 MR. EDGAR: Yes, I do.

18 CHAIRPERSON ANDERSON: All right. Go
19 ahead, please.

20 DIRECT EXAMINATION

21 BY MR. MURPHY:

22 Q Okay. Would you state your full name

1 for the record, please, Mr. Edgar?

2 A Kevin Edgar.

3 Q Okay.

4 A Last name spelled E-D-G-A-R.

5 Q Are you a resident of Madelon
6 Condominium?

7 A I am.

8 Q Which unit?

9 A I live in Unit 314.

10 Q 314. Now, I will hand you a copy of
11 Protestant's Exhibit 1 and ask you if you can --
12 if it's possible to point where your unit is and
13 show it to the Board Members. They have their
14 own copies.

15 CHAIRPERSON ANDERSON: All right. I'm
16 sorry, what exhibit is this?

17 MR. MURPHY: Exhibit -- Protestant's
18 Exhibit 1, Mr. Chairman.

19 CHAIRPERSON ANDERSON: Okay.

20 THE WITNESS: Members of the Board, my
21 unit is to the right of the bridge. You cannot
22 see it directly from this photo.

1 BY MR. MURPHY:

2 Q So it's just a wee bit outside of the
3 walk --

4 A Just a little bit outside the walkway,
5 the covered walkway.

6 Q So you are beyond the covered walkway.
7 You overlook the passageway that goes through the
8 other courtyard, correct?

9 A I agree. Yes, I agree.

10 Q Okay. Now, where is your bedroom?

11 A My bedroom on my side of the building,
12 my unit entrance is on the third floor, but my
13 bedroom is on the second floor or right above the
14 Peacock Cafe Restaurant, so about 12 feet above
15 ground level.

16 Q Okay.

17 A And I can hear all the noise from the
18 courtyard from my bedroom.

19 Q Now, when you purchased Unit 314, when
20 did you purchase Unit 314?

21 A In July of 2007.

22 Q And have you resided there ever since?

1 A I have.

2 Q Okay. Now, at the time you purchased
3 exhibit -- I mean, Unit 314, did you sign a
4 purchase agreement?

5 A I did.

6 Q Okay. And did that purchase agreement
7 contain a paragraph 22? Well, first, let me go
8 and ask a foundation question.

9 Did you hear --

10 A I did.

11 Q -- Mr. Dower's testimony?

12 A Yes, I did.

13 Q Did your purchase agreement include
14 the same paragraphs?

15 A Yes, it did.

16 Q Okay. Now, did you see anything in
17 that paragraph, in that purchase agreement that
18 would commit you to not opposing an application
19 to put a summer garden, you know, no more than 30
20 feet from your bedroom window?

21 A I did not.

22 Q Now, after you purchased Unit 314, did

1 there come a time when the premises that are
2 currently occupied by the Sandbox Restaurant were
3 occupied by another establishment?

4 A Yes.

5 Q And there were two establishments,
6 correct?

7 A Correct.

8 Q And what were their names?

9 A The first was George, which opened in
10 2009 and then became Chinese Disco at some point
11 thereafter.

12 Q Now, during the time that George and
13 Chinese Disco occupied the premises, were you
14 ever disturbed by noise in the courtyard?

15 A I was.

16 Q What caused the noise?

17 A Drunk people, people coming and
18 leaving, people trying to leave through the
19 courtyard that backs up to my bedroom in back of
20 the Peacock Cafe and Mai Thai Restaurant.

21 Q So is your testimony that there would
22 be frequently people coming from the courtyard in

1 front of George or Chinese Disco, as the case may
2 be --

3 A Yeah.

4 Q -- passing through where we heard
5 there is a gate that is never locked into the
6 space right under your bedroom window?

7 A That is correct.

8 Q Okay. Now, how does noise travel in
9 that area?

10 A It travels in every direction.

11 Q Okay. Now, the space you overlook,
12 it's adjacent to the homes on M Street and the
13 street that are occupied by Mr. and Mrs. Emes?

14 A It is.

15 Q And Madelon, correct?

16 A Correct.

17 Q Now, just to be clear as Mr. Dower
18 was, you do not oppose the issuance of an ABRA
19 License to Mr. Elliott's entity, correct?

20 A I do not.

21 Q Okay. What you oppose is -- what do
22 you oppose about this application?

1 A I oppose the amount of seating
2 proposed, 168 beer garden seating, in the
3 courtyard as well as the length of time that
4 alcohol would be served into the courtyard.

5 Q Now, how many times over the course of
6 the time that George and Chinese Disco were there
7 could you estimate you were awakened by noise in
8 the courtyard?

9 A Many. I can't put a number of it. I
10 am not a heavy sleeper, but Thursday nights,
11 which for most of us is a work day, you know, a
12 work night, they were open. That would be a
13 frequent problem. The weekend it all -- it just
14 depended. It depended on the time of year. It
15 depended on the amount of the crowds. There were
16 times when I would go down and speak to their
17 security, who didn't do anything.

18 I would agree with Mr. Elliott, the
19 police whether they were on duty or off duty, did
20 not do much at all. I emailed, Mr. Elliott was
21 on some of those emails, their ownership. Their
22 ownership became hostile toward people that

1 complained about noise. It was very frustrating.

2 Q I have --

3 A One person tried to scale a wall
4 behind my bedroom and impaled himself once, that
5 was a fun night. Anyway, there was a lot of
6 problems with the people from that restaurant,
7 excuse me, bar.

8 MR. MURPHY: I have no further
9 questions for Mr. Edgar.

10 CHAIRPERSON ANDERSON: Mr. Elliott?

11 MR. ELLIOTT: I just have one
12 clarification.

13 CROSS-EXAMINATION

14 BY MR. ELLIOTT:

15 Q Mr. Edgar?

16 A Yes.

17 Q I want to show you what has been
18 marked as Exhibit 12.

19 A Yes.

20 Q And I put a little dot on it right to
21 the left and downward where -- is that correct
22 that that is where your apartment is? There is a

1 turret in the middle and then right behind the
2 Emes' apartment building, 3226 is your residence,
3 correct?

4 A I would say it is further to the
5 right, the dot that you placed.

6 Q It goes right out to the corner of
7 this, right?

8 A Yes.

9 Q Yeah, it does.

10 A Yes.

11 Q It goes out.

12 A Yes, that is correct.

13 MR. ELLIOTT: No further questions.

14 That's showing where it is.

15 CHAIRPERSON ANDERSON: All right. Any
16 questions by any Board Members? Yes, Mr. Short?

17 MEMBER SHORT: Mr. Edgar, your
18 testimony so far has been quite compelling and it
19 sounds like you don't oppose the license. And it
20 sounds like probably if they reduced the number
21 of seats out there and they had security guards,
22 a certain number, which could be in an agreement,

1 whenever they open up they would have to have
2 that certain number of -- whenever they are open,
3 outside, they would have to have security out
4 there, a certain number and stick with that
5 number.

6 If they ever get caught without that,
7 then it would be something they would have to
8 answer to the Board about. But again, it sounds
9 like this might be able to work, but if he closes
10 every night at 10:00 out there, those chairs are
11 chained down, and security, even when it's open
12 on the inside, they make sure nobody bothers
13 those chairs and if all of that is in the
14 agreement and he doesn't live up to it, there are
15 some things that this Board could help the
16 residents out with.

17 THE WITNESS: I think you are correct,
18 yes.

19 MEMBER SHORT: Okay. That's all I
20 have, Mr. Chair.

21 CHAIRPERSON ANDERSON: Any questions,
22 Mr. --

1 MEMBER SILVERSTEIN: No.

2 CHAIRPERSON ANDERSON: -- Elliott,

3 based on the question that Mr. Short asked?

4 MR. ELLIOTT: No questions.

5 CHAIRPERSON ANDERSON: Mr. Murphy?

6 MR. MURPHY: No questions.

7 CHAIRPERSON ANDERSON: Thank you, Mr.

8 Edgar, for your testimony. You can step down.

9 MR. EDGAR: Thank you.

10 (Whereupon, the witness was excused.)

11 CHAIRPERSON ANDERSON: Do you have

12 another witness, sir?

13 MR. MURPHY: I have one more, Mr.

14 Philippe Reines.

15 CHAIRPERSON ANDERSON: Can you raise

16 your right hand, sir?

17 Whereupon,

18 PHILIPPE REINES

19 was called as a witness by the Protestant, and

20 having been first duly sworn, assumed the witness

21 stand and was examined and testified as follows:

22 MR. REINES: I do.

1 CHAIRPERSON ANDERSON: Thank you.
2 Your witness.

3 DIRECT EXAMINATION

4 BY MR. MURPHY:

5 Q Mr. Reines, would you state your full
6 name for the record, please?

7 A It's Philippe, P-H-I-L-I-P-P-E,
8 Reines, R-E-I-N-E-S.

9 Q I apologize.

10 A No one gets it right.

11 Q Do you own a unit in Madelon
12 Condominiums?

13 A I do.

14 Q Which unit?

15 A No. 414.

16 Q Where is Unit 414 located in relation
17 to the courtyard in front of the Sandbox
18 Restaurant? And here again, I will show you a
19 copy of Exhibit 1. If you could point out to the
20 Board Members where your unit is?

21 A These four windows.

22 Q Come again, please?

1 A It's a duplex, so the four windows.

2 Q Okay. When did you purchase Unit 414?

3 A I moved in mid-August 2014 and I
4 closed on the sale in the spring of 2015.

5 Q And so you rented before you moved in?

6 A We had a contract but it was just
7 cleared in 2015.

8 Q Have you resided in Unit 414 ever
9 since you purchased it?

10 A Yes.

11 Q At the time you purchased Unit 414,
12 were the premises that are currently occupied by
13 the Sandbox Restaurant, occupied by another
14 entity, another establishment?

15 A I believe it was. I remember the
16 shift in time, but it was George/Chinese Disco.

17 Q Now, did George or Chinese Disco ever
18 seat customers in the courtyard?

19 A I don't recall. I don't recall paying
20 attention to what they were doing unless they
21 found their way into my eardrums.

22 Q Okay. Well, tell us about them

1 finding their way into your eardrums.

2 A Well, it was on occasion. I'm sorry
3 to belabor the point of the previous two
4 witnesses, but it would depend on the night. It
5 would typically be towards the weekend, certainly
6 the weekend nights. And it is hard to describe,
7 except it is noise one would expect from an
8 outside seating area.

9 Q So well, maybe you could expand on
10 that a little bit for the Members of the Board.
11 Describe the courtyard and how noise travels in
12 that courtyard.

13 A So the courtyard is roughly squared,
14 but it in no way is it square in that it is
15 confined in terms of egress and ingress. It has
16 -- the way I see it and, please, tell me to stop
17 seeing it this way, I, back in the days when I
18 would go out, would have loved a space like that,
19 because it would have been very hard to monitor
20 and enforce what Mr. Elliott is outlining as
21 very, you know, genuine attempts on his part to
22 mitigate behavior.

1 But as I -- it has been a while since
2 I have been a college student. I wasn't a
3 Georgetown student, but I would have done what
4 many of them do now, which is congregate, stay
5 later, be loud, not that they are doing anything
6 completely out of the ordinary, they are doing
7 what kids do, but it is loud.

8 And you know, in a former life I was
9 also a bartender who worked in a restaurant. I
10 know there are some spaces that are more
11 conducive to it. Usually outdoor seating is in
12 front of a restaurant. There is a host, a
13 hostess stand where it's easier to monitor.

14 This is just -- was not built for this
15 purpose and therefore it is not suited for this
16 purpose and it is almost folly to think that it
17 could be controlled.

18 You know, for my time working in
19 restaurants, I know that customers get a say in
20 how the restaurant is run. If you are playing
21 Bach and someone says hey, it's a little boring,
22 can you put on Billy Joel? You are going to put

1 on Billy Joel.

2 If someone says I, you know, want to
3 sit outside even after you are closed, you are
4 going to look the other way. And again, that
5 isn't what they do with any ill-intent. I don't
6 think anyone is saying anyone has ill-intent, but
7 it is the reality of it.

8 And I do think restaurants who have
9 those kind of spaces typically employ personnel
10 and security to enforce it to make sure things
11 stay within their own rules. And you would be
12 talking in this space about a significant number,
13 given that you -- I mean, not to -- I get lost
14 back there, you know, sometimes when I'm trying
15 to walk to P Street. There is a UPS store.
16 There is like four or five ways in and out.

17 There are staircases up and I think
18 one aspect that might not have been explored is
19 that people are going to naturally -- you know,
20 if I spilled lots of water, the water is going to
21 go to its lowest point without my say so. There
22 are also doors into our condominium. There are

1 several doors that, yes, they are locked, but
2 people are going to try.

3 They are going to buzz. There are
4 going to be people who are drinking and again,
5 that's understandable, but this is not the
6 location for it. And it is giving you -- I was
7 listening to the questions you were asking Kevin,
8 Mr. Edgar, and I think everyone would love a
9 scenario where you could say if this happened at
10 this time, this didn't happen after that time.

11 It's very hard in practice to affect
12 those restrictions. And again, that's not
13 imputing anyone's intent or ability. I think Mr.
14 Elliott has been very honest in admitting that
15 you can't control. And he has acknowledged, you
16 know, he can't -- you don't know what you don't
17 know.

18 But I do think the one that I haven't
19 heard a lot today is the factor of the people
20 themselves and human nature and it could be good
21 human nature, but problematic.

22 Q Well, and my question was also

1 directed to the configuration of you have got
2 courtyard with a tall building on the south. A
3 fairly tall building on the west. Another tall
4 building on the east. How does sound travel
5 within that courtyard?

6 A I am not an audio expert. I do know
7 that it travels into my unit, whether I'm outside
8 on the balcony or not. I also heard Mr. Elliott
9 say that he doesn't see me outside. I hope you
10 are not looking at midnight outside.

11 But I am, you know, and I also would
12 note that whatever audio testing was done, was
13 not certainly done from inside my unit, which I
14 think is the relevant part of it. You just hear
15 it. I mean, I grew up in New York City. I'm
16 not, you know, a stranger to noise, but there is
17 a difference between a fire truck going by, a bus
18 stopping and people congregating.

19 That last group is just very
20 different, because it's not going anywhere. And
21 it is very hard to control. I don't think I am
22 going to look at this space and say oh, audio

1 only travels up into the clouds. I mean, it is
2 like talking to a box. I mean, it's sort of
3 this, imagine if I lived here, we lived here and
4 you had this as the courtyard.

5 You know, it's also we live on the
6 third and fourth floor, but there really is no
7 second floor. You are talking about a really
8 short distance here. I mean, if there was a
9 fire, I think we would all jump out the window
10 and land pretty well.

11 Q Now, let me ask a question. We have
12 heard from Mr. Elliott that his plan is to close
13 the summer garden and sweep it of patrons at
14 10:00 every night and that would prevent any sort
15 of noise.

16 Do patrons sometimes leave restaurants
17 to come outside and smoke and hang out?

18 A Yeah. I mean, usually. I think we
19 have all been in a place where the lights come on
20 as that sort of signal time to leave and everyone
21 -- their eyes adjust and you don't run out and
22 say okay, time to leave. You linger. You might

1 still have a drink in your hand. You might be
2 halfway through a cigarette. You might still be
3 talking to someone.

4 It just doesn't -- I have worked in
5 four restaurants again long ago, but I don't
6 think much has changed. That is just not human
7 nature for people to wrap up immediately.

8 Q Okay. And I'm going to assume without
9 looking, but you tell me if I'm wrong, that you
10 have paragraph 2 in your purchase agreement, just
11 like everybody else?

12 A I assume so.

13 Q Yeah. All right. At the time you
14 purchased your unit, did Mr. Elliott or Mr.
15 Elliott's representatives give you any reason to
16 believe that he would put a summer garden in the
17 courtyard?

18 A I don't recall actually having an
19 interaction with Mr. Elliott or any
20 representative, just the seller's agent.

21 Q Well, did you -- as you looked through
22 the unit and looked out the window, did you have

1 any reason to think there would be a summer
2 garden out there?

3 A Absolutely not. I felt like because
4 of all the restaurants, it felt like a common
5 utility area. Utility might be the wrong word,
6 but I know what goes on, you know, behind
7 restaurants. You have got garbage. You have got
8 people doing all sorts of things. You have
9 people in the restaurant smoking. It did not
10 feel like a communal area.

11 And I do remember being told by the
12 seller's agent that it was never used for
13 anything like that. And I wasn't surprised
14 because it didn't seem -- it just seemed kind of
15 behind the curtains, not exactly built as stage.

16 Q And just to be clear with you as well,
17 do you oppose the issuance of an ABRA License to
18 the Applicant?

19 A No.

20 Q But you do oppose a summer garden
21 endorsement, correct?

22 A Yes, because I don't think that there

1 is a way to reasonable ameliorate the sound.

2 Q Okay. And do you also oppose an
3 endorsement to allow the Applicant to charge --
4 place a cover charge for events?

5 A Yes. As Mr. Dower said, that
6 compounds the problem.

7 Q Okay.

8 MR. MURPHY: I have no further
9 questions.

10 CHAIRPERSON ANDERSON: Mr. Elliott,
11 any questions?

12 MR. ELLIOTT: No questions. Thank
13 you.

14 CHAIRPERSON ANDERSON: Any questions
15 by any Board Members? Yes, Mr. Short?

16 MEMBER SHORT: Okay. Mister?

17 MEMBER SILVERSTEIN: Reines.

18 MEMBER SHORT: Reines, okay. Mr.
19 Reines, you don't oppose it and suppose the
20 number were lower and there was no music ever to
21 be out there, no amplified music, no speakers, no
22 anything, and they had to close every night at

1 10:00 and secure it and it would have to have
2 security while they are open because the bottom
3 line is we know they won't be open in February.
4 There was no one out there.

5 And we know it's probably going to be
6 as soon as the cherry blossoms come out until the
7 end of October or early November and no music. I
8 think I heard some people say that. And the
9 number maybe not 168, maybe something they can
10 work out in an agreement, something manageable.
11 And then what happens is maybe in a year or when
12 it comes down to renew the license, if he wants
13 to ask for a larger number, with no complaints
14 from the community.

15 But just like the people that were
16 there before him or before this applicant, it
17 took us a while, but the Government does work and
18 we -- Chinese Disco carried this to the very end
19 and so any licensee that comes in there in that
20 space or any space inside sooner or later, the
21 District of Columbia, I know this Agency, will
22 due its due diligence in making sure that they

1 don't stay there and continue disruptions.

2 So I would just like to say I have
3 only been on the Board now maybe four going on
4 five years, but I have seen a lot of Chinese
5 Discos come and go. And I would like to think as
6 long as everyone is on board, I want the citizens
7 to have every assurance that if the license is
8 issued, that they are making an agreement with
9 you, they are going to look to that agreement,
10 because if we find that they aren't, then there
11 are some consequences.

12 But thank you for your testimony.

13 THE WITNESS: Thank you. In fact, I
14 should note something you had said earlier. You
15 were asking about hypothetical terrorism. For
16 those who live there, it's actually not a
17 hypothetical.

18 There was an incident a few years ago
19 where it was reported that it was -- there was an
20 elaborate attempt on the Saudi Ambassador to the
21 United States' life that involved a bombing at
22 Cafe Milano.

1 MEMBER SHORT: Um-hum.

2 THE WITNESS: I know that sounds
3 crazy, but for those who remember it, it was
4 crazy.

5 MEMBER SHORT: Well, let me say this
6 again. Some of the recommendations and maybe
7 some of the things that I think we have agreed
8 upon is that the panic bar has to go on all those
9 gates, so people just can't come and go. If you
10 live there, you will have the code. You can
11 always come in and the panic bar will always let
12 you go out.

13 And there are some other things you
14 can do to keep from chaining the gates together,
15 little meshes, which can make it decorative, but
16 I do know in Georgetown there are some places
17 like that right now. And so they don't seem to
18 have any problems. Once those gates go up, you
19 can't come and go like you want to.

20 If you don't have wristbands and you
21 are sitting at his outside place, then you don't
22 get served. And if the Investigator comes in and

1 finds somebody without that wristband, once you
2 guys make an agreement, if you agree to that,
3 then you have a lot more control. It can happen.

4 There are some places in town that
5 were problems before and once they came forth and
6 we talked about it and went through the same kind
7 of -- we haven't heard from the people since. So
8 it works.

9 MEMBER SHORT: Thank you. That's all
10 I have, Mr. Chair.

11 CHAIRPERSON ANDERSON: Mr. Elliott,
12 any questions you want to ask the witness based
13 on the --

14 MR. ELLIOTT: No questions.

15 CHAIRPERSON ANDERSON: Mr. Murphy, any
16 questions you want to ask the witness based on
17 the comments made by --

18 MR. MURPHY: No, thank you, Mr.
19 Chairman.

20 CHAIRPERSON ANDERSON: Thank you, sir.
21 You can step down.

22 (Whereupon, the witness was excused.)

1 CHAIRPERSON ANDERSON: Do you have any
2 other witnesses, sir?

3 MR. MURPHY: I do not.

4 CHAIRPERSON ANDERSON: Do you rest?

5 MR. MURPHY: We rest.

6 CHAIRPERSON ANDERSON: All right.
7 Let's talk about the -- hold on. Does the
8 Applicant -- do you have a rebuttal witness that
9 you're trying to call or do you need --

10 MR. ELLIOTT: No, we're done.

11 CHAIRPERSON ANDERSON: Okay, fine.
12 All right.

13 So, we'll do closing. The Applicant
14 goes first and Protestant goes last. Are you
15 ready for closing or you want a couple of
16 minutes?

17 MR. ELLIOTT: I'm going to waive
18 closing. I think you've heard our whole case and
19 you know the principal points --

20 CHAIRPERSON ANDERSON: All right.
21 What I want to tell you, as part of closing, tell
22 me what you want, so you don't have to wrap up,

1 so just tell me what is it that you're asking the
2 Agency Board to give to you? You're applying for
3 a license, and tell me what specifically you're
4 asking for, so --

5 MR. ELLIOTT: All right.

6 CHAIRPERSON ANDERSON: -- when we make
7 a decision, I will know what it is that I'm
8 looking at when the -- and I'm asking the same as
9 the Protestant also, but one of the things that I
10 will do -- let me -- before you do that, let's go
11 through the documents, all right?

12 So, let's go to the documents to see
13 what documents you're going to introduce in the
14 record, so I'll start with you, all right, so
15 let's go through the documents, sir.

16 So, we had testimony in Number 1, so
17 I know Mr. Elliott -- I'm sorry, Mr. Murphy, you
18 said that you have issues with Number 1. What
19 are you concerned with Number 1?

20 MR. MURPHY: My concern with Number 1
21 is it is total hearsay. None of the alleged
22 signatories in these petitions are here to be

1 crossed examined. We don't know what they were
2 told at the time they were asked to sign those
3 documents or the letters. We don't -- we didn't
4 have an opportunity to cross-examine them about
5 precisely what their experiences are and what the
6 relevance might be to this proceeding. I think
7 it would be inappropriate to allow them into
8 evidence.

9 CHAIRPERSON ANDERSON: Mr. Elliott?

10 MR. ELLIOTT: The -- each of them
11 signed under a clear statement that they
12 supported the 168 seats to ten, used only to ten
13 p.m. and support entertainment endorsement and
14 the liquor license. Each of them had that --
15 right at the top of the signature page, they all
16 signed in front of me. And these are all proper
17 signatures, and nobody said they didn't support
18 it.

19 These are the 22 I found, and every
20 one of them supported it, so I think for what
21 it's worth, I agree with Mr. Murphy. It's not
22 the same as cross-examining, but I think the

1 Board does receive letters from the public and
2 requests from the public in this form, and it's
3 given whatever weight you all may decide to give
4 it, and I don't think it should be excluded.

5 It's very important to this proceeding
6 to know that 5 out of 7 facing that main
7 courtyard supported us, and 22 out of 35
8 supported us, and there's 5 against.

9 CHAIRPERSON ANDERSON: I'm going to
10 admit it, but I'll give it the weight that it is.
11 The Board is not going to make the decision based
12 on the statements.

13 (Whereupon, the above-referred to
14 document was received into evidence as
15 Applicant Exhibit No. 1.)

16 CHAIRPERSON ANDERSON: All right, so
17 Number 2?

18 MR. MURPHY: No objection.

19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Applicant Exhibit No. 2.)

22 CHAIRPERSON ANDERSON: Number 3?

1 MR. MURPHY: No objection.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Applicant Exhibit No. 3.)

5 CHAIRPERSON ANDERSON: Number 4?

6 MR. MURPHY: I object. The document

7 --

8 CHAIRPERSON ANDERSON: Because it's
9 not complete?

10 MR. MURPHY: It's not complete.

11 CHAIRPERSON ANDERSON: All right.

12 Then, and the only thing that's missing from the
13 document is the drawing.

14 MR. MURPHY: Is the architectural
15 drawings that showed that there was a sound
16 baffling device required before this voluntary
17 agreement was signed.

18 CHAIRPERSON ANDERSON: And I hear your
19 objection, and this is the only reason I'm going
20 to admit it, because within the paragraph, it
21 states that -- I think I'll go specific to the
22 paragraph that talks about the summer -- it makes

1 reference to it, so there's a specific reference,
2 I think, in B. Let me go back. All right.

3 When I went -- after looking at it, I
4 think it's subparagraph B that talks about some
5 of that, yes. It's -- I'm sorry. Yes, B.
6 Covered -- oh, no, I'm sorry, no. Summer garden,
7 yes.

8 MR. MURPHY: Mr. Chair, it does make
9 reference to covered per the plans attached, but
10 without the plans, it's not clear to the reader
11 that the plans are -- or that the cover is
12 designed to protect the residents that are nearby
13 from the sound.

14 CHAIRPERSON ANDERSON: I'll exclude
15 it. And -- I'll exclude that, but it's part of
16 ABRA's records because it's the settlement
17 agreement to say, because it's not the complete
18 document, but it's a settlement agreement that's
19 a part of ABRA's records, but there is an
20 objection, because a complete document is not
21 here, so I'll exclude Number 4, okay, so I will
22 exclude Number 4. And the reason I'm excluding

1 it because it's not the complete document.

2 All right, Number 5.

3 MR. MURPHY: No objection.

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

7 CHAIRPERSON ANDERSON: Number 6?

8 MR. MURPHY: No objection.

9 (Whereupon, the above-referred to
10 document was received into evidence as
11 Applicant Exhibit No. 6.)

12 CHAIRPERSON ANDERSON: Number 7?

13 MR. MURPHY: No objection.

14 (Whereupon, the above-referred to
15 document was received into evidence as
16 Applicant Exhibit No. 7.)

17 CHAIRPERSON ANDERSON: 8?

18 MR. MURPHY: No objection.

19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Applicant Exhibit No. 8.)

22 CHAIRPERSON ANDERSON: 9?

1 MR. MURPHY: Object for the same
2 reason. We've got an incomplete document talking
3 about what's been agreed between the neighborhood
4 and Reverie, so any reference to how things were
5 laid out there is, it's --

6 CHAIRPERSON ANDERSON: What number are
7 we talking about? 9?

8 MR. MURPHY: 9, Reverie summer garden
9 seating borders adjacent to residences. It's a
10 picture and it's a picture that doesn't show the
11 cover that Reverie has been required to place to
12 protect those residents.

13 CHAIRPERSON ANDERSON: All right.
14 What was the purpose -- what's the purpose of
15 Number 9?

16 MR. ELLIOTT: It's actually four
17 photographs, and the four photographs show you
18 the, that the residents nearby that summer garden
19 are closer, are very close to the summer garden,
20 much closer. They're an inch away in some cases.
21 They're above the restaurant looking down,
22 they're across the street looking straight in at

1 ground level, so I think these photographs are
2 important together with my testimony to show that
3 there's an instance where the ABC Board issued a
4 summer garden permit with the ANC agreeing with
5 the restaurant.

6 CHAIRPERSON ANDERSON: I'm going to
7 admit for -- I'm sorry. I'm going to admit
8 Number 9 for the reasons stated.

9 (Whereupon, the above-referred to
10 document was received into evidence as
11 Applicant Exhibit No. 9.)

12 All right, Number 10?

13 MR. MURPHY: No objection.

14 (Whereupon, the above-referred to
15 document was received into evidence as
16 Applicant Exhibit No. 10.)

17 CHAIRPERSON ANDERSON: 11?

18 MR. MURPHY: No objection.

19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Applicant Exhibit No. 11.)

22 CHAIRPERSON ANDERSON: 12?

1 MR. MURPHY: No objection.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Applicant Exhibit No. 12.)

5 CHAIRPERSON ANDERSON: 13?

6 MR. MURPHY: No objection.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Applicant Exhibit No. 13.)

10 CHAIRPERSON ANDERSON: 14?

11 MR. MURPHY: I'm going to object to
12 that, because as Mr. Elliott has testified, it
13 didn't represent what he didn't say what he
14 represented it to say.

15 CHAIRPERSON ANDERSON: Yes, I was
16 confused, so what's Number 14? I'm sorry.

17 MR. MURPHY: Number 14 is --

18 CHAIRPERSON ANDERSON: No, no, I'm
19 siding with you. I'm agreeing with you, so
20 that's what I'm asking.

21 Mr. Elliott, what is Number 14?

22 MR. ELLIOTT: It's very important to

1 see what the OGB said to us, and we've filed
2 electronically and served on all the Protestants
3 the full hearing, so then we typed up the quotes
4 that we wanted to read to you, but the full
5 hearing was submitted to, and to Mr. Murphy and
6 CAG and the Group 7 electronically.

7 MR. MURPHY: My mistake, Mr. Chair.
8 I was thinking it was the resolution we
9 introduced.

10 CHAIRPERSON ANDERSON: Okay.

11 MR. MURPHY: All right. I'm going to
12 object to this one on the grounds of relevance.

13 CHAIRPERSON ANDERSON: Which one?

14 MR. MURPHY: This is 14. What the OGB
15 may have urged Mr. Elliott to do architecturally
16 with the courtyard is irrelevant to this Board's
17 consideration about what you should be doing.

18 CHAIRPERSON ANDERSON: All right, I
19 agree with you, so I'm going to exclude Number 14
20 on the basis of relevance.

21 15?

22 MR. MURPHY: No objection.

1 (Whereupon, the above-referred to
2 document was received into evidence as
3 Applicant Exhibit No. 15.)

4 CHAIRPERSON ANDERSON: 16?

5 MR. MURPHY: No objection.

6 (Whereupon, the above-referred to
7 document was received into evidence as
8 Applicant Exhibit No. 16.)

9 CHAIRPERSON ANDERSON: 17?

10 MR. MURPHY: No objection.

11 (Whereupon, the above-referred to
12 document was received into evidence as
13 Applicant Exhibit No. 17.)

14 CHAIRPERSON ANDERSON: 18?

15 MR. MURPHY: No objection.

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

19 CHAIRPERSON ANDERSON: 19?

20 MR. MURPHY: No objection. Although,
21 I question the relevance.

22 CHAIRPERSON ANDERSON: Well, I'll

1 admit that, so I'll overrule the objection.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Applicant Exhibit No. 19.)

5 CHAIRPERSON ANDERSON: Number 20?

6 MR. MURPHY: No objection.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Applicant Exhibit No. 20.)

10 CHAIRPERSON ANDERSON: 21?

11 MR. MURPHY: No objection.

12 (Whereupon, the above-referred to
13 document was received into evidence as
14 Applicant Exhibit No. 21.)

15 CHAIRPERSON ANDERSON: Is there a 22?

16 MR. MURPHY: 22?

17 CHAIRPERSON ANDERSON: Is there a 22?

18 I don't have a 22. It jumps from 21 to 23.

19 Does anyone have a 22? Does someone
20 have a 22 based on what's on the record? So,
21 there's no 22 --

22 CHAIRPERSON ANDERSON: Protestant's

1 refusal to negotiate.

2 CHAIRPERSON ANDERSON: I'm sorry,
3 what's Number 22?

4 MEMBER SILVERSTEIN: Protestant's
5 refusal to negotiate.

6 CHAIRPERSON ANDERSON: Oh, okay, all
7 right. I know why there's no 22. I eliminated
8 Number 22, because 22 was on my settlement from
9 our discussions, so I already eliminated Number
10 22, because that's why I don't have Number 22 in
11 my records.

12 MR. ELLIOTT: Mr. Chairman, I would
13 like to admit the first two pages. That's an
14 authentic --

15 CHAIRPERSON ANDERSON: I'm not going
16 to -- the purpose of it is to say that these are
17 the settlement discussions that we have had, and
18 I'm not going to admit that into evidence. You
19 did testify, because settlement -- when you have
20 settlement conferences, folks might agree to do
21 certain things to settle the matter, so I'm not
22 going to --

1 MR. ELLIOTT: I'm not going to belabor
2 it, but the point was if it were known that they
3 wouldn't negotiate, so I don't --

4 CHAIRPERSON ANDERSON: Well, you
5 testified to that, and so, therefore, I don't
6 think we need -- you already put the best
7 evidence, so there's no need for us to have this.

8 No, ma'am, you can't say anything at
9 this moment, so I'm going to -- Number 22, I'm
10 excluding 22.

11 23?

12 MR. MURPHY: 23 that's where Mr.
13 Elliott represented the resolution passed by the
14 ANC as being, as urging the Old Georgetown Board
15 to disapprove his concept design, and as Mr.
16 Elliott has admitted, that's simply not true. We
17 can leave it in, but I wanted to make sure the
18 Board understands that that was misrepresentation
19 of what the ANC did.

20 CHAIRPERSON ANDERSON: So, but what is
21 Exhibit 23? I'm sorry, Mr. Elliott. I'm sorry.
22 Mr. Elliott, what is Exhibit 23?

1 MR. ELLIOTT: It's a resolution by the
2 ANC, and I think, Mr. Murphy just said it's okay
3 to come in, but as was clarified in testimony, it
4 didn't urge the disapproval. It urged deferral.

5 CHAIRPERSON ANDERSON: Are these the
6 actual minutes of the ANC?

7 MR. ELLIOTT: We typed it.

8 MR. MURPHY: Oh, yes, it came from
9 them.

10 CHAIRPERSON ANDERSON: Mr. Murphy, is
11 this the actual minutes of the ANC?

12 MR. MURPHY: It is the actual minutes
13 of the ANC.

14 CHAIRPERSON ANDERSON: All right.

15 MR. MURPHY: It's a correct
16 representation of the resolution.

17 CHAIRPERSON ANDERSON: Then, I'm going
18 allow 23. All right.

19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Applicant Exhibit No. 23.)

22 CHAIRPERSON ANDERSON: 24?

1 MR. MURPHY: No objection.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Applicant Exhibit No. 24.)

5 CHAIRPERSON ANDERSON: 25?

6 MR. MURPHY: No objection.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Applicant Exhibit No. 25.)

10 CHAIRPERSON ANDERSON: 26?

11 MR. MURPHY: No objection.

12 (Whereupon, the above-referred to
13 document was received into evidence as
14 Applicant Exhibit No. 26.)

15 CHAIRPERSON ANDERSON: 27?

16 MR. MURPHY: No objection.

17 (Whereupon, the above-referred to
18 document was received into evidence as
19 Applicant Exhibit No. 27.)

20 CHAIRPERSON ANDERSON: 28?

21 MR. MURPHY: No objection.

22 (Whereupon, the above-referred to

1 document was received into evidence as
2 Applicant Exhibit No. 28.)

3 CHAIRPERSON ANDERSON: 29?

4 MR. MURPHY: No objection.

5 (Whereupon, the above-referred to
6 document was received into evidence as
7 Applicant Exhibit No. 29.)

8 CHAIRPERSON ANDERSON: 30?

9 MR. MURPHY: No objection.

10 (Whereupon, the above-referred to
11 document was received into evidence as
12 Applicant Exhibit No. 30.)

13 CHAIRPERSON ANDERSON: 31?

14 MR. MURPHY: No objection.

15 (Whereupon, the above-referred to
16 document was received into evidence as
17 Applicant Exhibit No. 31.)

18 CHAIRPERSON ANDERSON: 32?

19 MR. MURPHY: No objection.

20 (Whereupon, the above-referred to
21 document was received into evidence as
22 Applicant Exhibit No. 32.)

CHAIRPERSON ANDERSON: 33?

MR. MURPHY: No objection.

(Whereupon, the above-referred to document was received into evidence as Applicant Exhibit No. 33.)

CHAIRPERSON ANDERSON: 34?

MR. MURPHY: No objection.

(Whereupon, the above-referred to document was received into evidence as Applicant Exhibit No. 34.)

CHAIRPERSON ANDERSON: 35?

MR. MURPHY: No objection.

(Whereupon, the above-referred to document was received into evidence as Applicant Exhibit No. 35.)

CHAIRPERSON ANDERSON: 36?

MR. MURPHY: No objection.

(Whereupon, the above-referred to document was received into evidence as Applicant Exhibit No. 36.)

CHAIRPERSON ANDERSON: 37?

MR. MURPHY: No objection.

1 (Whereupon, the above-referred to
2 document was received into evidence as
3 Applicant Exhibit No. 37.)

4 CHAIRPERSON ANDERSON: 38?

5 MR. MURPHY: No objection.

6 (Whereupon, the above-referred to
7 document was received into evidence as
8 Applicant Exhibit No. 38.)

9 CHAIRPERSON ANDERSON: 39?

10 MR. MURPHY: No objection.

11 (Whereupon, the above-referred to
12 document was received into evidence as
13 Applicant Exhibit No. 39.)

14 CHAIRPERSON ANDERSON: 40?

15 MR. MURPHY: Let me look.

16 CHAIRPERSON ANDERSON: It's a menu.

17 It was giving examples of the menu.

18 (Simultaneous speaking.)

19 CHAIRPERSON ANDERSON: Oh, yes, 40.

20 What about 40?

21 MR. MURPHY: Object on the grounds of
22 relevance.

1 CHAIRPERSON ANDERSON: I -- we did not
2 -- I can't substantiate where 40 came from, so I
3 will exclude 40.

4 MR. MURPHY: 41 -- pardon me.

5 CHAIRPERSON ANDERSON: Hold on,
6 please.

7 41?

8 MR. MURPHY: Object on the grounds of
9 relevance.

10 CHAIRPERSON ANDERSON: Mr. Murphy,
11 what is 41?

12 MR. MURPHY: Mr. Murphy or Mr.
13 Elliott?

14 CHAIRPERSON ANDERSON: I'm sorry. Mr.
15 Elliott. I apologize.

16 MR. ELLIOTT: It's information from
17 the national airport saying -- I don't want to
18 misstate it -- that they closed noisy operations
19 basically at ten p.m. I thought it was relevant
20 when you're trying to judge the sound impact of
21 the courtyard dining, then have the airplanes
22 going over until then, and once they stopped, the

1 dining is gone too, so it seems relevant.

2 CHAIRPERSON ANDERSON: Where did this
3 come from? Where --

4 MR. ELLIOTT: It came off their
5 website. Yes, the website link is right there.
6 Yes, we took it off their website.

7 MR. MURPHY: Mr. Chairman, if I may
8 point out? It is not what Mr. Elliott represents
9 it to be. In fact, in the highlighted language,
10 it says, "The DCA Nighttime Noise Rule is not an
11 operational curfew at Reagan National."

12 CHAIRPERSON ANDERSON: I'm going to
13 exclude 41, because it was -- I remember
14 specifically the discussions, and it's been
15 introduced the same way. The airport closed at
16 ten o'clock, and based on the testimony, that was
17 that, so.

18 All right, 42, Mr. Murphy?

19 MR. MURPHY: I won't object to it only
20 because it proves that noise travels very well in
21 that neighborhood.

22 CHAIRPERSON ANDERSON: You know what?

1 I think it's relevant.

2 (Whereupon, the above-referred to
3 document was received into evidence as
4 Applicant Exhibit No. 42.)

5 MR. ANDERSON: 43?

6 MR. MURPHY: No objection.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Applicant Exhibit No. 43.)

10 CHAIRPERSON ANDERSON: 44?

11 MR. MURPHY: Irrelevant. Object on
12 the grounds of relevance.

13 CHAIRPERSON ANDERSON: I don't think
14 that's relevant too.

15 And the only reason that I ask you,
16 Mr. Elliott, is because I heard you -- you made
17 the statement, and I don't think that was
18 irrelevant. That's something that Georgetown
19 needs to take care of themselves, and so I don't
20 think that's relevant to this hearing.

21 45?

22 MR. MURPHY: Again, I don't see what

1 the relevance is.

2 CHAIRPERSON ANDERSON: I mean, this is
3 a menu, a proposed -- this is a menu, so I think
4 that -- I mean, you're not objecting that for
5 them having a restaurant, and this doesn't --

6 MR. MURPHY: No, that's correct.

7 CHAIRPERSON ANDERSON: Right.

8 (Whereupon, the above-referred to
9 document was received into evidence as
10 Applicant Exhibit No. 45.)

11 CHAIRPERSON ANDERSON: So, 46?

12 MR. MURPHY: No objection.

13 (Whereupon, the above-referred to
14 document was received into evidence as
15 Applicant Exhibit No. 46.)

16 CHAIRPERSON ANDERSON: 47?

17 MR. MURPHY: No objection.

18 (Whereupon, the above-referred to
19 document was received into evidence as
20 Applicant Exhibit No. 47.)

21 CHAIRPERSON ANDERSON: 48?

22 MR. MURPHY: No objection.

1 (Whereupon, the above-referred to
2 document was received into evidence as
3 Applicant Exhibit No. 48.)

4 CHAIRPERSON ANDERSON: 49?

5 MR. MURPHY: No objection as long as
6 the redacted versions have all been substituted
7 so the social security numbers --

8 CHAIRPERSON ANDERSON: The document
9 that I have -- the document -- at least that I
10 was looking at, it was redacted. There are no
11 personal -- at least when I looked at it -- let
12 me look. Let me make sure.

13 The documents that I looked at, yes,
14 the social security number was redacted. Yes, it
15 was redacted in the documents that I have in
16 front of me.

17 (Whereupon, the above-referred to
18 document was marked and received into
19 evidence as Applicant Exhibit No. 49.)

20 CHAIRPERSON ANDERSON: All right. 50?

21 MR. MURPHY: Mr. Chairman, we're not
22 offering 50 to 57, because that was just going to

1 be rebuttal evidence and didn't come up.

2 CHAIRPERSON ANDERSON: Okay, so we'll
3 take out 50 to 57. Hold on one minute.

4 All right. 58?

5 MR. MURPHY: Object on the grounds of
6 relevance.

7 CHAIRPERSON ANDERSON: Mr. Elliott,
8 what is 58?

9 MR. ELLIOTT: That's basically just
10 character evidence. The Chairman of the ANC had
11 a very nice thing to say about me, and I would
12 like to put that in evidence.

13 MR. MURPHY: If I may, Mr. Chairman?
14 Mr. Elliott's character has not been introduced
15 as an issue in this proceeding.

16 CHAIRPERSON ANDERSON: Oh, I'll allow
17 that. It's -- a lot of people like to have nice
18 things in the public record about themselves, so
19 we're not disputing that it is.

20 (Whereupon, the above-referred to
21 document was received into evidence as
22 Applicant Exhibit No. 58.)

1 CHAIRPERSON ANDERSON: 59?

2 MR. MURPHY: Object on the grounds of
3 relevance.

4 CHAIRPERSON ANDERSON: Mr. Elliott,
5 what is 59?

6 MR. ELLIOTT: Same as 58. It's a
7 major thing, 150 people on a conference call from
8 the Gulf area plus Puerto Rico, and it's
9 character evidence.

10 CHAIRPERSON ANDERSON: All right. Is
11 59, is that titled, "DHRC Policy Working Group?"
12 Is that what it's titled?

13 MR. ELLIOTT: Yes. It's an example of
14 what we were seeing, sent back and forth over
15 time, several times --

16 CHAIRPERSON ANDERSON: Because I don't
17 know -- I don't see -- all I saw -- all I'm
18 looking at is an email sent to a bunch of people,
19 and that doesn't -- this doesn't tell me
20 anything, so I don't know why this is in the --

21 MR. ELLIOTT: Right.

22 CHAIRPERSON ANDERSON: I don't know

1 why this is in the record.

2 MR. ELLIOTT: But with my testimony,
3 I was explaining some of my civil rights work for
4 the last 52 years, and this was the latest thing
5 I did was organize this very large -- it just
6 grew and grew. It started out with five people.

7 CHAIRPERSON ANDERSON: I'm going to
8 exclude 59, Mr. Elliott.

9 So, I have gone through the records,
10 and we have submitted Applicant's documents 1
11 through 59, and the record has mentioned what
12 documents are being excluded.

13 So, the Protestant, I know we didn't
14 necessarily go through your -- what documents did
15 you have, sir? Because I know we didn't
16 necessarily go through --

17 MR. MURPHY: Yes. The only two I had
18 were Protestant's Exhibit 1, which is a
19 photograph of the condominium building taken from
20 immediately under the bridge and essentially the
21 middle of the summer garden that Mr. Elliott
22 proposes.

1 MR. ELLIOTT: And I can authenticate
2 it. I took it myself.

3 CHAIRPERSON ANDERSON: We can move on,
4 Mr. Elliott.

5 MR. ELLIOTT: I have no objection to
6 1 and 2.

7 (Whereupon, the above-referred to
8 document was received into evidence as
9 Protestant Exhibit No. 1.)

10 CHAIRPERSON ANDERSON: Number 2?

11 MR. MURPHY: That's just the diagrams.
12 Mr. Elliott's diagrams with an X on it from where
13 I was standing to take the other picture.

14 CHAIRPERSON ANDERSON: Okay, that's
15 fine. All right, so I will include your two
16 documents. They're included. All right.

17 (Whereupon, the above-referred to
18 document was marked and received into
19 evidence as Protestant Exhibit No. 2.)

20 CHAIRPERSON ANDERSON: That was the
21 records, okay. Let's -- all right. So, what I
22 need then from you then, Mr. -- I know you don't

1 want to do a formal, the formal closing at this
2 time, so all I need from you is to tell us, just
3 tell me briefly what is it that you want the ABC
4 Board to do.

5 MR. ELLIOTT: Yes. We think that the
6 -- well, we would like what we applied for, but I
7 think that we wouldn't serve alcohol in the
8 morning. It's just everybody gets those hours,
9 so number one is we would be okay with alcohol
10 starting at 11:30 a.m. all days instead of the
11 earliest legal hour.

12 Number 2, as I --

13 CHAIRPERSON ANDERSON: So, you're
14 asking alcohol to be served from 11:30 till what
15 time?

16 MR. ELLIOTT: Until the maximum hours
17 that we've applied. Everybody seemed to get two
18 and three, and so we would stay with that.

19 CHAIRPERSON ANDERSON: So, you're
20 asking for 11:30, all right. What time are you
21 asking to serve? So, you're asking to serve
22 alcohol from 11:30 a.m. until 2:00 a.m., Monday

1 through Friday.

2 MR. ELLIOTT: Yes.

3 CHAIRPERSON ANDERSON: I'm sorry.

4 MR. ELLIOTT: Sunday through Thursday.

5 CHAIRPERSON ANDERSON: I'm sorry. So,
6 you're asking for alcohol service 11:30 a.m.
7 until 2:00 a.m. when?

8 MR. ELLIOTT: Sunday through Thursday.

9 CHAIRPERSON ANDERSON: Sunday through
10 Thursday. And what about Friday?

11 MR. ELLIOTT: Actually, that will be
12 fine seven days a week.

13 CHAIRPERSON ANDERSON: Seven days a
14 week, okay.

15 MR. ELLIOTT: And I wish that we could
16 make an offer of shorter hours if we got the full
17 168 seats, but I don't think it works that way.

18 CHAIRPERSON ANDERSON: You tell me
19 what it is that you want, so what about -- okay,
20 so that's for your establishment. What are the
21 hours that you're asking for your establishment
22 to?

1 MR. ELLIOTT: So that's it, and then
2 the hours of what I testified to for the summer
3 garden, stopping at ten, completely cleared.

4 CHAIRPERSON ANDERSON: So, summer
5 garden, what are the hours for the summer garden?

6 MR. ELLIOTT: Eight a.m.

7 CHAIRPERSON ANDERSON: Eight a.m.

8 MR. ELLIOTT: Yes.

9 CHAIRPERSON ANDERSON: Till what time?

10 MR. ELLIOTT: It's eight a.m. to ten
11 p.m.

12 CHAIRPERSON ANDERSON: In the summer
13 garden, all right.

14 MR. ELLIOTT: But, you know, if the
15 Board wants to move the eight up, that would be -
16 -

17 CHAIRPERSON ANDERSON: Well, we said
18 by sharp.

19 MR. ELLIOTT: If the Board decides --
20 (Simultaneous speaking.)

21 CHAIRPERSON ANDERSON: You said that
22 you want to serve breakfast. That's what I

1 thought you said, correct?

2 MR. ELLIOTT: We want to.

3 CHAIRPERSON ANDERSON: So, you said
4 that you want to be open from eight a.m. to ten
5 p.m. That's what you're asking --

6 MR. ELLIOTT: Correct. Now, the next
7 thing I could tell you is on the 24-hour service,
8 as I said all along here, we're not that keen on
9 that. If you don't want us to do that, we would
10 like to start serving coffee and food at 6:30
11 like all the other coffeehouses do, and then not
12 have the 24 hours, but we're still asking for 24
13 hours.

14 We don't think it's going to be
15 harmful at all, but in your discussion you don't
16 want to have that, then we would close the
17 operation at the latest at the alcohol service
18 limit, which we just said would be two a.m. every
19 day, but we would like to open for basically
20 coffeehouse type food and beverage at 6:30 in
21 order to do a coffee thing.

22 If you don't give us that, then, I

1 guess, we would have operational hours the same
2 as the alcohol, which would be eight to two, so
3 all this up to you, but that's our position.

4 CHAIRPERSON ANDERSON: Okay. That's
5 what you're seeking, all right. Okay. Thank
6 you.

7 You have an opportunity, Mr. Murphy,
8 to do the regular type of closing, so --

9 MR. MURPHY: I think I need a drink.

10 (Laughter.)

11 CHAIRPERSON ANDERSON: All right.

12 MR. MURPHY: I will not go into
13 closing here. I think the evidence make it clear
14 that this is a unique space. It's not like
15 summer garden on a sidewalk. It's not like
16 summer garden confined behind a single
17 restaurant. It's a unique space both in terms of
18 multiple points, egress and ingress.

19 It's unique space in terms of the way
20 it is constructed, the topography, so to speak,
21 in the way noise carries. It's a unique space in
22 a sense of the number of residents that are

1 really, really, really close to where these
2 tables are going to be.

3 Beyond that, it's a space that has
4 been there since 1980-some odd before Mr. Elliott
5 acquired it, and there's never been a summer
6 garden back there despite the fact there have
7 been several ABRA license for some of these in
8 the space where he wants to put the Sandbox
9 Restaurant, so what we are really here opposing
10 is putting a summer garden in this space, because
11 it's going to make a radical change to our
12 neighborhood.

13 We also oppose the cover charge
14 endorsement, because we think that is just going
15 to regenerate the old Chines Disco problem.
16 We'll be right back with patrons lining up
17 through the summer garden out the passageway and
18 onto Prospect Street.

19 Mr. Elliott has agreed to give up on
20 the 24/7 operation. We've opposed that as well,
21 which obviously, if he didn't serve alcohol, they
22 wouldn't have any limits on that, but we opposed

1 that as well, because that's an opportunity for
2 people that have been drinking to continue to be
3 in the location or in the courtyard causing
4 commotion that affects the residents.

5 So, that's it, short and sweet. You
6 know, if -- as I said when I started, my goal,
7 Board Member Short, is always to settle these
8 things, and I've successfully and amply settled
9 four out of five since I've been an ANC
10 Commissioner.

11 We just can't get over the hump of the
12 summer garden unless something's done that we can
13 be sure is going to prevent any noise from flying
14 into these residential units.

15 CHAIRPERSON ANDERSON: All right. Let
16 me ask -- I was going to ask my question by
17 general counsel. What are -- going back to the
18 Applicant. You had asked for a capacity in the
19 summer garden. What was the capacity you had
20 asked for?

21 MR. ELLIOTT: Same as the -- well,
22 outdoors -- we were told by DCRA, outdoor doesn't

1 have capacity, just seats, and we have the same
2 seats as in the COO 168 indoors capacity --

3 CHAIRPERSON ANDERSON: So, what does
4 the -- all right. What does the certificate of
5 occupancy for the indoor states?

6 MR. ELLIOTT: It states 200 capacity,
7 121 seats.

8 CHAIRPERSON ANDERSON: All right.
9 That's indoor?

10 MR. ELLIOTT: That's indoor.

11 CHAIRPERSON ANDERSON: And, so -- but
12 there's no certificate of occupancy for outside?

13 MR. ELLIOTT: Yes, we do. We have
14 that in the certificate of occupancy. It's noted
15 right there, 168 seats outdoors.

16 CHAIRPERSON ANDERSON: So, the
17 certificate of -- your certificate of occupancy
18 said 168 outdoors?

19 MR. ELLIOTT: Yes, it does.

20 MEMBER SHORT: Mr. Chair, can I
21 correct about something?

22 CHAIRPERSON ANDERSON: Yes, Mr. Short.

1 MEMBER SHORT: Outside, because you
2 have 168 seats, you can't have any more unless --
3 that's what's granted to you?

4 MR. ELLIOTT: That's it.

5 MEMBER SHORT: But you can't have
6 people standing out there, because you'll get --
7 the investigator will come down on you pretty
8 hard, so one seat, one person.

9 MR. ELLIOTT: I see.

10 MEMBER SHORT: Interior might be a
11 little different, but the exterior -- and again,
12 I've heard both of you talk about maybe limiting
13 that to more manageable hours, but anyway, you
14 guys would have to work it out.

15 One thing this Chairman said that I
16 really liked when he says, "If you guys can't
17 work it out, you're not going to like the
18 opposite in either one of you," so you when come
19 in together and work something out you both can
20 agree to, it normally leaves everybody with a
21 smile on your face, because we're going to do
22 what we think is right if you guys can't come to

1 a settlement.

2 MR. MURPHY: If I may interject in
3 response to that? Mr. Short, it's well to note
4 that the predecessor ABRA license holder here,
5 the now infamous Chinese Disco, had a settlement
6 agreement that limited occupancy on the inside to
7 99. We've agreed to allow Mr. Elliott to have
8 200 on the inside. Now, I just want to offer
9 that as an indication that this is not scorched
10 earth as far as the ANC is concerned.

11 MEMBER SHORT: Okay, I understand. I
12 understand.

13 CHAIRPERSON ANDERSON: But they're
14 saying you have a certificate of occupancy for
15 the -- it said the outdoor facility 168.

16 MR. ELLIOTT: It's right in there.

17 CHAIRPERSON ANDERSON: Okay.

18 MR. ELLIOTT: And you have that, of
19 course, in the application.

20 CHAIRPERSON ANDERSON: All right. And
21 the record is now closed.

22 Do the parties wish to file proposed

1 findings of fact and conclusion of law or waive
2 their right to do so?

3 MR. MURPHY: You go first.

4 CHAIRPERSON ANDERSON: It appears that
5 you folks don't want to do it, because you're
6 both are looking at each other, so I'll make the
7 decision for you. You don't want to do it.

8 MR. ELLIOTT: I don't.

9 CHAIRPERSON ANDERSON: Because you're
10 looking at each other and saying, "Okay, let me
11 see who's going to..." All right, so the parties
12 waive it, so then the Board will issue a decision
13 within 90 days. All right. All right.

14 So, hold on one minute, please.

15 All right. As Chairperson of the
16 Alcoholic Beverage Control Board for the District
17 of Columbia, and accordance with Section 405 of
18 the Open Meetings Amendment Act of 2010, I move
19 that the ABC Board hold a closed meeting for the
20 purpose of seeking legal advice from our counsel
21 on Case Number 18-PRO-00081, Sandbox Restaurant.
22 Per Section 405(b)(4) of the Open Meetings

1 Amendment Act of 2010, and deliberating upon Case
2 Number 18-PRO-00081, Sandbox Restaurant, for the
3 reasons cited in Section 405(b)(13) of the Open
4 Meetings Amendment Act of 2010.

5 Is there a second?

6 MEMBER SHORT: Second.

7 CHAIRPERSON ANDERSON: Mr. Short has
8 second the motion.

9 I will now take a roll call vote on
10 the motion, of course, now that it's been second.

11 Ms. Wahabzadah?

12 MEMBER WAHABZADAH: I agree.

13 CHAIRPERSON ANDERSON: Mr.
14 Silverstein?

15 MEMBER SILVERSTEIN: I agree.

16 CHAIRPERSON ANDERSON: Mr. Short?

17 MEMBER SHORT: I agree.

18 CHAIRPERSON ANDERSON: Mr. Anderson?
19 Yes, I agree.

20 As it appears that the motion has
21 passed, I hereby give notice that the ABC Board
22 will hold a closed meeting in the ABC Board

1 Conference Room pursuant to the Open Meetings
2 Amendment Act of 2010, and issue an order within
3 90 days.

4 I want to thank both parties for being
5 here today to present. And the Board will look
6 at the evidence, and we will make the decision
7 and we'll issue an order accordingly. Thank you
8 very much.

9 (Whereupon, the above-entitled matter
10 went off the record at 6:23 p.m.)
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In the matter of: Wyoming Cube & Bale, LLC, t/a
Sandbox Restaurant

Before: DC ABRA

Date: 2-13-19

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