

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

IN THE MATTER OF: :

:

Cornerstone Bar Group, :

LLC :

t/a The Pub and the :

People :

1648 North Capitol Street:

NW : Protest

Retailer CT - ANC 5E : Hearing

License No. 94086 :

Case #19-PRO-00095 :

:

(Substantial Change :

[Expansion to the :

Basement Space and :

Requesting an Increase :

in Occupancy]) :

Wednesday  
November 6, 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  
RAFI ALIYA CROCKETT, Member  
BOBBY CATO, JR., Member  
JAMES SHORT, Member

**ALSO PRESENT:**

**MATTHEW MURPHY, APPLICANT  
BRITTANY RYAN, APPLICANT  
JEREMY GIFFORD, APPLICANT  
NICHOLAS BERNEL, APPLICANT  
KARLA LEWIS, PROTESTANT  
SUKHMOHINDER MUTNEJA, PROTESTANT  
RODNEY POWELL, PROTESTANT  
INVESTIGATOR JEREMY ZOLOKOFER, DC ABRA  
FELICIA LYNCH, WITNESS  
JEANNE WATKINS, WITNESS  
KATHIE SHAHAN, WITNESS**

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

2 1:31 p.m.

3 CHAIR ANDERSON: Good afternoon,  
4 everyone. We're back on the record. Our next  
5 case is Case No. 19-PRO-00095, The Pub and the  
6 People, License No. 94086. Would all parties  
7 please approach and identify themselves for the  
8 record, please. The licensee sits here and the  
9 protestants sits there. So we'll start. Let me  
10 have the licensee identify themselves for the  
11 record.

12 MR. MURPHY: My name is Matthew  
13 Murphy. I'm one of the owners of The Pub and the  
14 People.

15 CHAIR ANDERSON: And who else is with  
16 you, Mr. Murphy?

17 MS. RYAN: My name is Brittany Ryan.  
18 I'm also one of the owners of The Pub and the  
19 People.

20 CHAIR ANDERSON: Brittany Ryan.

21 MR. GIFFORD: My name is Jeremy  
22 Gifford. I'm also one of the owners of The Pub  
23 and the People.

24 CHAIR ANDERSON: Gifford. There's  
25 also sign-in sheets. Everyone should sign in,

1 please. Your name, sir?

2 MR. BERNEL: Nick Bernel. I'm one of  
3 the owners as well.

4 CHAIR ANDERSON: Bernel?

5 MR. BERNEL: That's spelled --

6 CHAIR ANDERSON: How do you spell  
7 that, please?

8 MR. BERNEL: -- B-E-R-N-E-L.

9 CHAIR ANDERSON: B-U-R?

10 MR. BERNEL: B-E-R-N-E-L.

11 CHAIR ANDERSON: B-E-R-N-E-L. We'll  
12 start with the protestants.

13 MS. LEWIS: Yes, my name is Karla  
14 Lewis. I'm the ANC Commissioner for ANC 5E06,  
15 and I'm representing ANC 5E.

16 MR. MUTNEJA: My name is Sukhmohinder  
17 Mutneja. I am the abutting party -- abutting  
18 owner. My address is 4 R Street, Northwest.

19 CHAIR ANDERSON: How do you spell your  
20 last name, sir?

21 MR. MUTNEJA: Mutneja, M-U-T-N-E-J-A.

22 CHAIR ANDERSON: M-U-D-N-E-J-A?

23 MR. MUTNEJA: M-U-T as in Thomas.

24 CHAIR ANDERSON: I'm sorry. M-U?

25 MR. MUTNEJA: T as in Thomas.

1 CHAIR ANDERSON: Oh, M-U-T? Okay.  
2 I'm sorry. M-U-T?

3 MR. MUTNEJA: N-E-J-A.

4 CHAIR ANDERSON: N-E-J-A. And you're  
5 an abutting property owner?

6 MR. MUTNEJA: Yeah.

7 CHAIR ANDERSON: Who else do we have?

8 MR. POWELL: I'm Rodney Powell. I  
9 represent the group of 11 participants.

10 CHAIR ANDERSON: All right. I know  
11 it's a protest hearing, and I know that we're  
12 here today because the parties, I guess, have  
13 tried to settle and couldn't. And I guess this  
14 is an application for substantial change.

15 Is there -- I don't know where you  
16 guys are in the protest. And one thing I've said  
17 to folks is that I prefer when you have  
18 settlements because if you settle the matter,  
19 then at the end of the day this establishment is  
20 going to remain beside your place of abode.

21 And so if you can come to an  
22 agreement, then that's fine. I prefer that. But  
23 of course the Board doesn't have a problem making  
24 a decision if we can.

25 So are you guys close? Are there

1 outstanding issues? Or, like, is there --  
2 because I don't know anything about this case.  
3 And so we're going to do -- but is there anything  
4 that this Board can do to help the parties come  
5 to closure? Or it's, like, you know what? We  
6 cannot agree. We're going to go to -- we're  
7 definitely going to do this protest and let the  
8 Board -- we'll let the Board decide what needs to  
9 be done.

10 MR. MURPHY: Unfortunately, there are  
11 a handful of items that neither side will budge  
12 on.

13 CHAIR ANDERSON: Will budge on? All  
14 right. Have you guys ever been to a protest  
15 hearing before?

16 MR. MURPHY: No.

17 CHAIR ANDERSON: All right. So the  
18 way the protest hearing -- I know that when you  
19 guys came before me for the status, I gave some  
20 instructions. And I would hope that everyone  
21 listened to my instruction because I haven't  
22 looked in this binder yet. But I assume both  
23 sides have their documents and witnesses in  
24 there. They say you should never assume. But  
25 since I gave instructions and I saw a binder in



1 front of me, I'm hoping everything I need is in  
2 here. All right. That's fine.

3 All right. The way this process is  
4 going to work is that -- hold on one minute. So  
5 of course, I just did opening statements. So are  
6 there any preliminary issues that needs to be  
7 addressed?

8 MR. MURPHY: Before opening  
9 statements?

10 CHAIR ANDERSON: Before, anything  
11 preliminary on either side. No? All right. So  
12 what will occur then, I'll have -- the applicant  
13 will make an opening statement. And your opening  
14 statement, you've seen court cases. You'll  
15 basically let me know what it is that you're  
16 asking for and what it is that you intend to  
17 prove. At the end of the day, after you present  
18 your documents and witnesses, this is what you  
19 want the Board to do. So that's what the  
20 applicant will do. You go first.

21 Then the protestants, now there are  
22 three protestants, three separate groups. Is one  
23 person your designated representative, or are you  
24 guys having three separate presentations? How  
25 are we presenting this?

1 MS. LEWIS: Three separate  
2 presentations.

3 CHAIR ANDERSON: So are the issues not  
4 overlapped? Are they separate issues that --  
5 what I'm asking, why are we doing three separate  
6 presentations? Are there three separate issues  
7 or are they the same issues?

8 MS. LEWIS: They are the same issues.  
9 But we know that if the ANC comes to an agreement  
10 with the --

11 CHAIR ANDERSON: The only person who  
12 would fall out, it would be him.

13 MS. LEWIS: Exactly.

14 CHAIR ANDERSON: Right. But he would  
15 still --

16 MS. LEWIS: So then we still have two  
17 separate.

18 CHAIR ANDERSON: He would still be  
19 there.

20 MS. LEWIS: Yes.

21 CHAIR ANDERSON: But if the ANC came  
22 to an agreement, he could be -- you could -- he  
23 could join onto your agreement. I can force you.  
24 Automatically, he would fall. But you could sign  
25 an agreement and the group could also be a party

1 to the agreement.

2 Mr. Mutneja, I'll get it. Because  
3 he's an abutting property owner, he's separate.  
4 But I'm just trying to figure how -- so how many  
5 witnesses do you have?

6 MS. LEWIS: Three.

7 CHAIR ANDERSON: How many witnesses do  
8 you have, sir?

9 MR. MUTNEJA: I have --

10 CHAIR ANDERSON: They're the same  
11 witnesses. So all three of you are relying on  
12 the same witnesses?

13 MR. POWELL: I have three witnesses  
14 that are separate.

15 CHAIR ANDERSON: So how many separate  
16 witnesses do we have here today? So the ANC has  
17 three. The abutting property owner, is it the  
18 same three witnesses you're relying on?

19 MS. LEWIS: No.

20 CHAIR ANDERSON: So you have there.  
21 You, sir, you have three separate?

22 MR. MUTNEJA: These two guys.

23 CHAIR ANDERSON: Oh, so they are your  
24 two witnesses? Okay. Who are your three  
25 witnesses? Who are your three witnesses, ma'am?

1 MS. LEWIS: Kathie is one of them and  
2 Rodney and Sukhmohinder.

3 CHAIR ANDERSON: Oh, so there's only  
4 one. So basically, all the witnesses are  
5 basically sitting here today. So one, two,  
6 three.

7 MR. POWELL: There are two on the way.

8 CHAIR ANDERSON: Oh, so you have two  
9 witnesses --

10 MR. POWELL: I have Jeanne and two on  
11 the way.

12 CHAIR ANDERSON: And two? So -- well,  
13 not -- but I guess what I'm saying is that the  
14 only witnesses -- only two witnesses are not in  
15 the room currently. Is that correct?

16 MS. LEWIS: Yes.

17 CHAIR ANDERSON: Okay. That's all  
18 right. We need to try to figure out how to do  
19 this easier because I don't want to have three  
20 cross examinations. Well, what I want to do --  
21 because you only have an hour and a half to do  
22 this. We also have another protest hearing at  
23 4:30. But you do have an hour and a half, so I'm  
24 not trying to not give you your time.

25 But I don't want redundant testimony.

1 So if one property -- and I mean, the issues  
2 couldn't be that different for the different  
3 parties. The issues are probably similar.

4 So what I'm going to say if you're  
5 going to call a witness to testify over something  
6 that I just heard, I'm going to cut you off  
7 because we've already heard that. So if you're  
8 calling witnesses, then you should have a witness  
9 testify on something that we have no heard  
10 before.

11 MS. LEWIS: Yeah.

12 CHAIR ANDERSON: So I'm not going to  
13 have you do redundant witnesses, redundant  
14 testimony because I've heard it. I mean, I've  
15 heard it the first time. I don't need to hear it  
16 three other times. So that's what I want -- I  
17 just want you to be mindful of that.

18 MS. LEWIS: Yes.

19 CHAIR ANDERSON: Yes, sir?

20 MR. POWELL: Can I say something?

21 CHAIR ANDERSON: Yes.

22 MR. POWELL: Some of us have had  
23 different experiences. And also based upon what  
24 we submitted, some of our evidence and documents  
25 vary. So I'm her witness, right? It's to talk

1 about evidence or things that she submitted. And  
2 if someone else is my witness, they're talking  
3 about things that I've submitted. So there would  
4 be the same people but possibly talking about  
5 different things.

6 CHAIR ANDERSON: Well, but what I'm  
7 saying is that if a witness is on the stand,  
8 okay, and that's a witness that you're going to  
9 call also. So this is what I prefer that you do.  
10 The witness is on the stand, then everyone needs  
11 to -- if that's a witness that that person  
12 identifies. While that person is testifying, I  
13 want the other party to also ask some questions  
14 here.

15 I'm not going to have the person go  
16 down and then you do your case and you call that  
17 person. So the person is on the stand, and if  
18 it's your witness then, then Ms. Lewis can call -  
19 - say, Ms. Lewis goes first and she calls John  
20 Doe as a witness. When John Doe is on the stand,  
21 if Mr. -- what?

22 MR. MUTNEJA: Mutneja.

23 CHAIR ANDERSON: Mutneja.

24 MR. MUTNEJA: Or you can call me Sam.

25 CHAIR ANDERSON: No, sir. We're going

1 to be here for a while. I'm going to get it.  
2 Okay? And it's important to me. It's important  
3 to me because this is a formalized process. It's  
4 important to me that -- Mr. Mutneja, it's  
5 important to me that I refer to you as your  
6 proper name.

7 So if John Doe is testifying, then I  
8 want Ms. Lewis to ask questions of John Doe. I  
9 want Mr. Mutneja to ask questions of John Doe.  
10 And I want you, Mr. Powell, to ask questions of  
11 John Doe if that was someone that you also  
12 identified as one of your witnesses.

13 Okay. That's how I want it because I  
14 don't want, okay, John Doe comes to testify.  
15 Then we'll have cross examination. And then you  
16 call John Doe as a witness. Okay? So I don't  
17 want that. So the person is on the stand. Then  
18 all three persons, if they have identified that  
19 person as their witness, then they can call that  
20 person. Okay? They can ask questions and I'll  
21 give you an opportunity to cross examine.

22 So I want to make sure that everyone  
23 has an opportunity. But I also want to make sure  
24 that we preserve as much time so that we don't --  
25 that this doesn't take the rest of the afternoon

1 or into the evening.

2 All right. So that's what -- so the  
3 applicant goes -- so the applicant will do the  
4 opening statement. Then the protestants can do  
5 their opening statements. They'll do their  
6 opening statements. You can either do three or  
7 just if you want to do one.

8 Then what would happen is that the  
9 Board will call its next witness. The Board's  
10 witness is the investigator who went out and  
11 interviewed all -- I believe should have  
12 interviewed everyone.

13 And so we'll call that person because  
14 that is our witness. We will ask questions of  
15 our witness of the report that he wrote. After  
16 the Board has asked questions of our witness,  
17 then the applicant will have an opportunity to  
18 ask questions of our witness. Once the applicant  
19 has asked questions of our witness, then the  
20 protestants will have any opportunity of asking  
21 questions of our witness.

22 The Board, if it so desires, will also  
23 -- can ask follow-up questions based on the  
24 questions that you ask. And I might give you a  
25 round if you want to clarify to ask questions



1 again. But I'm not going to keep on going too  
2 much because time is of the essence. So that's  
3 what will happen.

4 Once the Board has presented its  
5 witness, then the applicant will go and present  
6 its case after the applicant. Then you'll have  
7 an opportunity to cross examine the applicant's  
8 witnesses. Once that's done, then you'll present  
9 your case. Okay? All right.

10 So with that said, as I said before,  
11 each side is supposed to have an hour and a half.  
12 I'll state to folks use your time -- and I'm not  
13 going to time you. But I'm saying that I don't  
14 want to be here all afternoon.

15 But use your time, not necessarily  
16 cross examining witnesses, but presenting direct  
17 evidence. Because you can get more if you have a  
18 witness who's testified, they can talk more, give  
19 better information rather than you spend all your  
20 time cross examining someone else. Because it  
21 can be frustrating. Okay? All right.

22 So let's start. And what I'll have  
23 then is that I'll have the applicant will give us  
24 an opening statement, tell us what it is that  
25 they want, and the protestant. Then they'll give

1 their opening statement.

2 Your opening statement basically is  
3 saying, this is the case. This is what's going  
4 on. And at the end of the day, this is what I  
5 want the Board to do. Okay. So we'll start with  
6 the applicant. You can sit. You don't have to  
7 stand up. Whatever is comfortable for you.  
8 That's fine, yes.

9 MR. MURPHY: Okay. Well, thank you  
10 for hearing us, Board members. Today we are  
11 requesting permission to expand into an  
12 underground sound insulated basement space with  
13 28 seats. This represents less than a 15 percent  
14 increase in seating capacity. And this  
15 relatively small increase in seats will have no  
16 adverse impact on matters of peace, order, quiet,  
17 safety, or parking.

18 The remainder of the occupancy  
19 increase in the application which is 14 on the  
20 main floor and a total of 46 including the seats  
21 in the new basement space is due exclusively to  
22 DCRA's formula for determining occupancy load to  
23 accommodate staff, deliveries, contractors. And  
24 we have no plan to change any of the way that we  
25 operate the grade level.

1 Today we will describe in detail for  
2 you the method used to soundproof the basement  
3 space.

4 CHAIR ANDERSON: Hold up. I'm sorry.  
5 You're asking -- what are the total numbers  
6 again? Repeat that because I was taking notes  
7 and I did not get what you're asking for, yeah.

8 MR. MURPHY: So this is the -- it's a  
9 public hearing. It says, expansion to the  
10 basement space that formerly served as storage,  
11 adding 28 seats and increasing occupancy load by  
12 46.

13 CHAIR ANDERSON: Okay.

14 MR. MURPHY: Also requesting that the  
15 occupancy load for the first floor be raised from  
16 84 to 98. The number of seats on the first floor  
17 will remain the same at 67. Overall total  
18 occupancy load will expand from 84 to 144.

19 CHAIR ANDERSON: From what to what?

20 MR. MURPHY: Eighty-four to one  
21 hundred and forty-four.

22 CHAIR ANDERSON: Which is what your  
23 CFO says?

24 MR. MURPHY: I'm sorry?

25 CHAIR ANDERSON: Your CFO says --

1 MR. MURPHY: The CFO currently says  
2 84.

3 CHAIR ANDERSON: No, but I'm saying  
4 you have a new --

5 MR. MURPHY: Yes.

6 CHAIR ANDERSON: -- certificate that  
7 says 144. Because we cannot give you more than  
8 what your CFO says. We can cut the number, but  
9 we can't give you more. I was just saying that  
10 for clarification. Okay, okay.

11 MR. MURPHY: So the point that I was  
12 making about the 28 seats is that so we're adding  
13 -- effectively adding 28 seats. The increase in  
14 occupancy load upstairs was a consequence of it  
15 was either a change in DCRA code or it was  
16 something that our architect missed the first  
17 time around.

18 But he suggested -- he noticed when he  
19 ran those numbers again when we did the drawings  
20 for the basement that the occupancy load  
21 should've been different upstairs. But  
22 effectively, we're not making any changes. But  
23 it was his suggestion that we should ask for the  
24 allowed maximum.

25 So 28 seats in the basement. And

1 today we're going to describe for you in detail  
2 the methods used to soundproof that basement  
3 space which was done voluntarily before we had  
4 any knowledge of planning for a protest.

5 There will be a few themes that we'd  
6 like you to take away today. Theme No. 1 is that  
7 our team makes a practice of going out of our way  
8 to be responsible neighbors and to make  
9 Bloomingdale and Eckington a nice place to live.

10 The protestants are presenting today  
11 some evidence which paints us in a fairly nasty  
12 light and some of which is objectively untrue.  
13 Thus we would like to shine some light on a few  
14 of the things that we do as good neighbors.

15 Our building is on North Capitol and  
16 R. North Capitol is primarily commercial where  
17 we are and R is primarily residential. Even  
18 though we're not required to, we do not keep any  
19 patio tables on the R Street side out of  
20 consideration for our neighbors.

21 The same goes for patio speakers which  
22 we keep on the loud commercial side as so not to  
23 bother the neighbors. We voluntarily keep no  
24 speakers there. We also routinely donate time  
25 and resources to the development of the

1 neighborhood such as fundraisers for North  
2 Capitol Main Streets and Crispus Attucks Park.

3 Additionally, we keep prices lower  
4 than market rate because there are not a lot of  
5 options in our neighborhood. And we have a  
6 policy of not allowing the restaurant to be  
7 rented out so that folks who live in the  
8 neighborhood always have that space option.

9 We will also review letters written  
10 from our neighbors which describe their positive  
11 experiences living next to and nearby a  
12 restaurant. And so we believe it's no  
13 coincidence that we've been voted the best  
14 neighborhood bar in D.C. for the past three  
15 years.

16 Thus, we're sad to hear that there are  
17 some neighbors who have a problem with our  
18 restaurant. And the truth is hearing or no  
19 hearing, we will remain open to working with our  
20 neighbors to try to resolve ongoing issues  
21 associated with operating a commercial space on a  
22 busy city artery like North Capitol Street.

23 However, while we have already  
24 voluntarily complied with a number of their  
25 initial requests such as training our staff to be

1 quieter with trash, not allowing a motorcycle to  
2 be parked on our patio. We've also halted all  
3 live music upstairs since September 30th. And we  
4 also no longer move stools at night to mop.  
5 That's done in the morning.

6 While we also expressed willingness to  
7 compromise on some of the other requests during  
8 mediation such as keeping the occupancy load the  
9 same upstairs which was never important to us.  
10 This is all about the basement. The fact remains  
11 that the protestants have dug in their heels on a  
12 handful of demands that we feel are unreasonable  
13 and unfeasible for our little restaurant.

14 That brings us to Theme No. 2 which is  
15 while a restaurant on the corner of North Capitol  
16 Street, which is a very loud street with lots of  
17 competing noise, is never going to be completely  
18 noiseless. Existing law already protects  
19 neighbors from hearing restaurant noise in their  
20 home.

21 Section 25-725 of the D.C. Code states  
22 that a licensee shall not produce any sound,  
23 noise, or music of such intensity that it may be  
24 heard in any premises other than the licensed  
25 establishment by use of any instrument for

1 amplification or musical instrument. Section 20-  
2 2701 of the D.C. Municipal Regulations provide  
3 for maximum permissible sound levels in given  
4 zoning locations.

5 As you will hear, and this is stated  
6 in Investigator Zolokofer's report, ABRA  
7 investigators have come by The Pub and the People  
8 and the abutting property on a number of  
9 occasions and have found no violation.

10 Which brings us to Theme No. 3. No  
11 problem presently exists that can be rectified  
12 here and now in this venue. That's not to say  
13 that some neighbors may not like the cooking  
14 smells that come out of our restaurant. But we  
15 are a restaurant and we cook food. And the  
16 abutting buyer, current owner of the abutting  
17 property knew that when he bought the property.

18 He now wants us to build an  
19 approximately four story chimney to bring the  
20 food smells above his building. We don't believe  
21 that that's financially feasible. And I'm not  
22 sure that's a problem that can be addressed here.

23 It's also not to say that noise on the  
24 sidewalk and the streets doesn't happen. It  
25 certainly does sometimes, and usually it's noise



1 that we don't like either. But unfortunately,  
2 that's not something we have control over.

3 And that's also not to say that taking  
4 out trash late at night is a completely silent  
5 operation. We have trained staff on the matter,  
6 however, and are looking into alternative spaces  
7 for trash that would be less noisy for the  
8 neighbors. But we feel keeping food waste in the  
9 building overnight would create a sanitation and  
10 health problem.

11 Finally, with regard to the new owner  
12 of the abutting property at 4 R, with respect to  
13 his noise concerns, they are theoretical.  
14 Despite numerous requests, he did not agree to  
15 meet with us to perform sound checks on the  
16 basement which makes it difficult for us to  
17 mediate a problem that is only a potentiality.  
18 And again, existing law would address that  
19 problem were to exist in the future.

20 Lastly, while we appreciate the ANC's  
21 efforts to provide representation to the  
22 residents of the neighborhood, we are somewhat  
23 concerned that this particular ANC single member  
24 district commissioner's general reputation in the  
25 neighborhood is for opposing businesses and

1 activities in Bloomingdale.

2 There's no hard evidence on this.  
3 This is just anecdotal. But we do know that she  
4 oppose the Bear Cafe's expansion into operations  
5 past 6:00 p.m. as well as the very existence of  
6 the farmer's market, a block away from us, and  
7 now us. So we can't help but see a pattern of  
8 opposing every change in development, not just  
9 the ones with significant problems.

10 So in summary, we are asking for a 15  
11 percent increase in seating capacity which will  
12 have no adverse impact on the matters of peace,  
13 order, quiet, safety, or parking.

14 And the three things we'd like you to  
15 keep in mind are, number one, that the applicant  
16 goes out of our way to be good, responsible  
17 neighbors. Theme No. 2, that exist law already  
18 protects the neighbors. And Theme No. 3 is that  
19 no problem presently exists which can't be  
20 rectified here, now in this venue.

21 Great effort has been taken to  
22 soundproof the basement which we will review  
23 shortly. And for these reasons, we urge the ABRA  
24 Board to allow us to open this space for the  
25 neighborhood in the North Capitol corridor.

1 Thank you.

2 CHAIR ANDERSON: Thank you. And Ms.  
3 Lewis, you want to make an opening?

4 MS. LEWIS: Members of the Board, we  
5 are not here today to discuss whether or not  
6 having a pub in a neighborhood is good. We all  
7 know and like having businesses in a neighborhood  
8 to make our streets walkable. We are here today  
9 to ask the Board to help the residents by  
10 ensuring that the pub will adhere to the law and  
11 keep the peace, order, and quiet of the  
12 neighborhood.

13 We try to work with them for  
14 amendments to the current settlement agreement,  
15 but they refuse to add simple things such as  
16 keeping a door and windows shut of the  
17 establishment closed when patrons and workers  
18 were not entering or exiting.

19 The pub has not been a good neighbor  
20 to the previous abutting property owner. Moving  
21 forward, we are hoping that the new neighbors  
22 will not have to experience the same issues.

23 We are asking the Board to consider  
24 adding stipulations to the pub's license that  
25 have been ordered in other ABRA cases such as

1 trash. We would like them to keep the trash in a  
2 container indoors so they will not disturb the  
3 neighbors putting trash out at 1:00 and 2:00  
4 o'clock in the morning. Or even place the trash  
5 in an easement near the North Capitol side of the  
6 street.

7 As far as parking is concerned, we're  
8 asking them to place signs in the establishment  
9 and on their website to encourage their staff and  
10 workers to use public transportation.

11 In terms of soundproofing and noise,  
12 we are asking to have an independent sound  
13 engineer certify and validate that the pub has  
14 made architectural improvements to the property  
15 and has taken actions to ensure that music,  
16 noise, and vibration from the premises are not  
17 heard.

18 We are asking to decrease the  
19 occupancy. We feel that more people will be more  
20 noise. We are requesting that the upstairs load  
21 remain the same, and we are asking them to  
22 restrict all live music to the basement which is  
23 what they have stated to their ANC and community.

24 Section 25-725 says in terms of noise  
25 from a licensed premises that they should not

1 have any type of mechanical device, machine  
2 apparatus, or instrument amplification of human  
3 voices and sounds.

4 We already know that for the past four  
5 years they have been in violation of that by  
6 having a motorcycle on the patio of their  
7 establishment which would wake up the previous  
8 owner 3:00 o'clock in the morning. And she had  
9 to get up 4:00 o'clock in the morning. They have  
10 not been good neighbors, and we will prove this  
11 to the Board.

12 They are asking -- stating that they  
13 are asking for a 15 percent increase. But  
14 according to my math calculations, 84 over 144 is  
15 a 58 percent increase in occupancy load. So we  
16 are asking for restrictions to the occupancy.

17 We ask that all live music is to be  
18 restricted to the basement space. No increase in  
19 occupancy load on the first level. Decrease the  
20 occupancy load of the basement space. To have  
21 the exterior doors and windows remain closed  
22 except for entry and exit. For proper  
23 soundproofing to be verified and certified by an  
24 independent specialist and engineer. And no  
25 production of live music outside.

1           MR. MUTNEJA: I would like to add --  
2 she covered most of the stuff. I would like to  
3 add a couple of things about the smell of the  
4 property. That's not new. The smell has been  
5 there before.

6           One of the reasons why the previous  
7 property owner could not handle the sound and the  
8 smell, she left the property. That was one of  
9 the reasons she left the property and sold it to  
10 us.

11           So I would like to add we are not  
12 talking about, like, big extension. The chimney  
13 remains the same. All we are requesting of them  
14 is to put an extension on top of it so the fumes  
15 -- smell goes. And the smell is not just a  
16 concern for the abutting property owner. It's a  
17 concern for pretty much -- and anybody go and  
18 smell. I don't have to give any witness.

19           It's a restaurant, so the smell is  
20 supposed to be there. All we are asking is to  
21 put it up in the air much higher so that it  
22 doesn't cause any problems with the neighborhood  
23 and the abutting property owner.

24           MR. POWELL: Good afternoon, Board.  
25 I'm here today representing the group of 11

1 protestants to talk about The Pub and the People.  
2 I want to explicitly state that we have no  
3 problem with The Pub and the People. This is not  
4 about them. This is about how they operate.

5 And I want to explicitly state that  
6 there has been a history of problems with noise,  
7 peace, quiet, and parking. So at the point you  
8 ask for a substantial change, the residents and  
9 protestants came forward and wanted to voice  
10 their concerns.

11 And so specifically, we are certainly  
12 asking for verifiable soundproofing, a decrease  
13 in occupancy. Because occupancy, the number of  
14 people, not just number of chairs, the number of  
15 people contribute to the sound, the parking, the  
16 noise, the peace, the quite. Not just for the  
17 abutting property owners but for the rest of the  
18 neighborhood.

19 We have evidence where we can show  
20 that there have been times where the noise can  
21 project down the street. There have been --  
22 there are incidents where there's a current  
23 settlement agreement and things that have  
24 happened that have been in violation of the  
25 current settlement agreement.

1                   We've had neighbors who have called  
2 ABRA repeatedly about things in the current  
3 settlement agreement that have not happened. And  
4 so all those things together brought the  
5 protestants here today to talk about not the pub  
6 but how they operate.

7                   What stood out to me in their opening  
8 statement is that they said as of September 30th  
9 they stopped live music upstairs. They stopped  
10 the motorcycle. They stopped moving the stools  
11 at night. Those were absolutely part of the  
12 issue that the abutting property owner had for  
13 the two or three years that she was next door.

14                   So it is now that we are here  
15 protesting that they're saying, we voluntarily  
16 done these things because we've come to the point  
17 of a protest. The motorcycle as well, we have  
18 evidence of the motorcycle, where it was, how it  
19 disturbed the abutting property owner. And now  
20 as of September 30th of this year, that has now  
21 been taken away.

22                   So it's that reluctance, that the  
23 inclination to believe everything is an attack on  
24 the pub which it's not, and that reluctance to  
25 address the concerns in an absolute way as



1       opposed to an objective way. In the mediation,  
2       they talked about training and talking and making  
3       a best effort, all this soft language.

4               We need objective language and results  
5       that happen when there are violations that have  
6       happened in the past. We're concerned about the  
7       occupancy because not only is there noise, people  
8       coming to the neighborhood. We have incidents of  
9       public urination, people coming from the pub.  
10      And these are concerns about what comes with a  
11      bar and grill on the corner, not the existence of  
12      a bar and a grill.

13              We all like to have a good burger and  
14      a beer. That's not the issue. But it's those  
15      additional things that have gone on since it  
16      started with the existence of the pub and have  
17      gone on till now which is what we object to and  
18      what we're going to present today.

19              CHAIR ANDERSON: All right. Just as  
20      an FYI and maybe I'm missing something. But  
21      we're talking about a substantial change in the  
22      sense of expanding into the basement and  
23      expanding the total occupancy.

24              Now maybe I'm missing something and  
25      maybe someone needs to present this clear to me

1 during the presentation of the case. But I don't  
2 see the relevancy of a motorcycle because I'm  
3 just saying we're talking about a restaurant.  
4 And I don't see how this Board can order about a  
5 motorcycle which unless you're telling me that  
6 the motorcycle is a part of the restaurant.

7 So if that's what it is, it's attached  
8 to the licensee. So if that's attached to the  
9 license, then we can have testimony. But if this  
10 is somebody parking a motorcycle on a patio or on  
11 a corner, I'm not quite sure.

12 You don't need to respond. But I'm  
13 just saying, like, I'm hearing about this  
14 motorcycle. I mean, and one of the things I've  
15 said to folks, there are a lot of things that you  
16 can put in a --

17 MEMBER SHORT: Be careful. That's the  
18 front door. That's the motorcycle.

19 CHAIR ANDERSON: Yeah, I know. But  
20 I'm just saying if this is about somebody parking  
21 a motorcycle at the front door, I'm not quite  
22 sure if this Board can say, you can't park your  
23 motorcycle. So that's what I'm just saying.

24 MS. LEWIS: No, the motorcycle is  
25 parked underneath somebody's bedroom window.

1 CHAIR ANDERSON: Hold on. I'm saying  
2 it has --

3 MS. LEWIS: And it's part of the noise  
4 concern.

5 CHAIR ANDERSON: But I'm saying this  
6 has nothing to do with this hearing. I can --  
7 it's, like, I'm not quite sure how this Board can  
8 get into a motorcycle -- that someone park a  
9 motorcycle. That's all I'm saying. Okay? All  
10 right. That's all I'm saying.

11 MS. LEWIS: But if the noise ordinance  
12 says that --

13 CHAIR ANDERSON: Hold on. You don't  
14 need to respond. I'm just saying this is about  
15 them requesting a substantial change. So I'm not  
16 quite -- right now, I'm not seeing a motorcycle.  
17 That's what I'm just saying. When we have  
18 testimony, we need to focus on the issue, that  
19 it's a substantial change that you're asking us  
20 to -- they want to expand into the basement and  
21 they want to expand the total occupancy.

22 One of the things that I've always  
23 said to folks when you do a settlement agreement,  
24 in a settlement agreement, you can put in a  
25 settlement agreement, you're not going to park

1 your motorcycle on the patio. And maybe if  
2 that's what you guys decide to do, we'll agree  
3 with it on a settlement agreement. But I don't  
4 think the Board is going to address a motorcycle.

5 So I'm saying there's a lot of things  
6 one could do in a settlement agreement that the  
7 Board wouldn't order that. That's all I'm  
8 saying. But in an agreement, you can put a lot  
9 of things in an agreement. And if it's  
10 enforceable, the Board will agree to it.

11 And asking the Board to -- since this  
12 hearing is about a substantial change, they want  
13 to expand into their basement and they want to  
14 increase the occupancy inside the building, it's  
15 not -- at least to me right now, it is not  
16 relevant that there's a motorcycle parked on the  
17 side of the building. I just want to say that.

18 So unless -- in the presentation of  
19 your case, unless you can directly tie that into  
20 them asking us for a substantial change, I don't  
21 want to hear unless you can specifically tie  
22 that. Or if you can specifically tie that by  
23 putting 28 people -- by adding to the occupancy  
24 that more people there will add more noise, yes.

25 So if that's the case, I don't want to

1 hear no testimony on a motorcycle because I don't  
2 see how a motorcycle -- having a motorcycle, how  
3 that is related to their request to increase  
4 their occupancy. Okay? But you can respond to  
5 that.

6 I'm telling you what thinking so when  
7 you present evidence, that's where it needs to  
8 tie into. Because if it doesn't tie into, I'm  
9 going to say to you that it's not relevant. And  
10 I don't want to hear evidence on that. Okay?

11 So with that said, the Board will call  
12 its first witness. And we'll call Jeremy  
13 Zolokofer. Mr. Zolokofer, can you raise your  
14 right hand, please?

15 MR. ZOLOKOFER: Yes, sir.

16 WHEREUPON,

17 JEREMY ZOLOKOFER

18 was called for examination by Counsel for the  
19 District of Columbia, having been first duly  
20 sworn, assumed the witness stand, was examined  
21 and testified as follows:

22 DIRECT EXAMINATION

23 CHAIR ANDERSON: Have a seat, sir, and  
24 pull the microphone. Pull it close to you when  
25 you testify. And what I'll ask folks, please,

1 the microphone in front of you is just everything  
2 has been transcribed. So make sure you don't  
3 have papers running across the microphone,  
4 please. Okay?

5 Mr. Zolokofer, can you state your name  
6 for the record, please.

7 MR. ZOLOKOFER: Investigator Jeremy  
8 Zolokofer.

9 CHAIR ANDERSON: And where are you  
10 currently employed?

11 MR. ZOLOKOFER: ABRA.

12 CHAIR ANDERSON: And how long have you  
13 been employed at ABRA?

14 MR. ZOLOKOFER: Less than a year.

15 CHAIR ANDERSON: And what are your  
16 duties and responsibilities here at ABRA?

17 MR. ZOLOKOFER: I conduct inspections  
18 and investigations for licensed ABC  
19 establishments within the District of Columbia.

20 CHAIR ANDERSON: Now are you familiar  
21 with -- there's a protest hearing for the  
22 establishment, The Pub and the People. Are you  
23 familiar with this establishment, The Pub and the  
24 People?

25 MR. ZOLOKOFER: Yes, sir.

1 CHAIR ANDERSON: And how are you  
2 familiar with this establishment?

3 MR. ZOLOKOFER: Well, I was assigned  
4 the protest. I conducted a protest investigation  
5 of Cornerstone Bar Group, LLC trading as The Pub  
6 and the People which is located at 1648 North  
7 Capitol Street, Northwest.

8 CHAIR ANDERSON: And so just tell us  
9 what it is that you're able to find out. I mean,  
10 who are the protestants and what it is that  
11 you're able to find out as a result of the  
12 investigation?

13 MR. ZOLOKOFER: Well, there's three  
14 entities protesting. The establishment at 1648  
15 North Capitol Street is located on the southbound  
16 side of 1600 Block of North Capitol Street and is  
17 bounded by R Street to the north and Quincy Place  
18 to the south.

19 The substantial change application for  
20 1648 North Capitol was protested by three  
21 entities, the Advisory Neighborhood Commission  
22 led by ANC Commissioner Karla Lewis, the abutting  
23 property owner, Mr. Sukhmohinder Mutneja, and a  
24 group of five or more led by Mr. Rodney Powell.

25 There are six ABC establishments that

1 are within 1,200 feet of 1648 North Capitol  
2 Street with one being on the same block, Engine  
3 Company 12 and Spark at 12.

4 The protest issues for all protestants  
5 involved are the following: adverse impact on  
6 peace, order, and quiet including noise and  
7 litter provisions, residential parking and  
8 vehicular and pedestrian safety, and adverse  
9 impact on real property values.

10 On October 9th, 2019, I received an  
11 email from the owner of the establishment, Mr.  
12 Matthew Murphy, who stated that the protestants  
13 have essentially stopped communicating with him  
14 and he has attempted to communicate with the  
15 protestants for several months with minimal  
16 feedback.

17 Mr. Murphy stated that he expressed  
18 the willingness to make some concessions  
19 following the mediation, but some of the  
20 protestants presented demands that Mr. Murphy  
21 feels are not feasible.

22 Mr. Murphy stated that one of the  
23 requests for him to build a 40 to 50-foot  
24 freestanding chimney above the establishment's  
25 kitchen. Mr. Murphy stated that the abutting



1 property owner added two floors onto his  
2 residential apartment building and wants  
3 clearance from the kitchen smoke for his future  
4 tenants.

5 Mr. Murphy stated that he goes out of  
6 his way to be considerate to the neighbors  
7 regarding potential noise issues by not allowing  
8 patio tables on the residential side of his  
9 sidewalk café. Mr. Murphy stated that The Pub  
10 and the People consulted with three sound  
11 engineers to make sure that the basement was  
12 sound insulated properly to reduce any  
13 significant amount of noise that could be heard  
14 from outside of the establishment.

15 On October 15th, 2019, I spoke with  
16 ANC Commissioner Karla Lewis via telephone in  
17 regards to the concerns and issues of The Pub and  
18 the People substantial change application.  
19 Commissioner Lewis stated that she is  
20 representing the residents in the neighborhood,  
21 specifically the address of 4 R Street, Northwest  
22 in regards to the substantial change protest.

23 The concerns revolve around the  
24 following: live bands performing on weekends  
25 ranging from 10:00 p.m. to 3:00 a.m., patrons

1 standing on the corner of North Capitol Street  
2 and R Street talking loudly into the neighborhood  
3 at early morning hours, the dumping of bottles  
4 and trash late at night and early hours of the  
5 morning which wake up the surrounding neighbors,  
6 the establishment sometimes leaving their windows  
7 and front door open causing loud music to be  
8 heard from outside.

9 Commissioner Lewis stated that the  
10 previous owner at 4 R Street, Ms. Debbie Multree,  
11 sold her home two years ago due to loud music and  
12 noise coming from The Pub and the People.

13 On October 16th, I spoke with the  
14 abutting property owner, Mr. Mutneja, through  
15 telephone. And Mr. Mutneja stated that his main  
16 concerns regarding substantial change is on  
17 peace, order, and quiet in the surrounding  
18 neighborhood and the residential parking and  
19 safety.

20 He also stated there's a heavy smell  
21 of cooking coming from the establishment  
22 smokestack going right into his residential  
23 building and has requested that the owner of The  
24 Pub and the People construct a two to three-floor  
25 extension to their current chimney so that the

1 cooking smell goes up and away from the windows  
2 of his apartment building.

3 He also stated that he purchased a  
4 residential building on June 20, 2017 and the  
5 apartment building has been unoccupied for the  
6 last two years. Mr. Mutneja stated that his  
7 building is currently still under construction  
8 and scheduled to have five apartment units  
9 available for rent by January 2020.

10 On October 16th at approximately 1:50,  
11 I briefly spoke with Mr. Rodney via telephone.  
12 And Mr. Powell stated that he was not available  
13 to talk at the moment but would reach back out to  
14 me at his earliest convenience to provide a  
15 statement on his concerns and issues regarding  
16 the substantial change application.

17 The establishment at 1648 North  
18 Capitol Street was monitored by ABRA personnel a  
19 total of five times from October 6th, 2019 to  
20 October 28th, 2019 with no ABRA violations found.  
21 The occasions I monitored 1648 North Capitol, I  
22 did not observe issues with peace, order, and  
23 quiet.

24 However, this block is extremely busy  
25 due to the area and heavy traffic volume on North

1 Capitol Street. Residential parking and  
2 vehicular and pedestrian safety seem to be an  
3 issue due to the residential permit parking only  
4 and loading zones for commercial vehicles only.

5 And finally, there are four noise  
6 complaints reported to ABRA and six calls for  
7 service from the Office of United Communications  
8 that were associated with 1648 North Capitol  
9 Street between October 10th, 2018 and October  
10 10th, 2019. None of these calls resulted in ABRA  
11 related violations.

12 CHAIR ANDERSON: Okay. Are there  
13 exhibits attached to your report?

14 MR. ZOLOKOFER: Yes, sir.

15 CHAIR ANDERSON: Can you identify the  
16 exhibits, please?

17 MR. ZOLOKOFER: Just a minute, please.  
18 Exhibit 1 -- would you like me to go through  
19 them?

20 CHAIR ANDERSON: Yes.

21 MR. ZOLOKOFER: Exhibit 1 is the  
22 application, I believe, from Mr. Matt Murphy in  
23 regards to the extension of the basement space  
24 for the substantial change.

25 Exhibit 2 is the protest letter from

1 ANC 5E protesting the proposal here.

2 Exhibit 3 is also a protest letter  
3 from the abutting property owner, Mr. Mutneja  
4 addressing the three main concerns on peace,  
5 order, and quite, residential parking, and real  
6 property values.

7 Exhibit 4 is the group of five or more  
8 led by Mr. Rodney Powell indicating two of the  
9 similar protest issues, peace, order, and quiet,  
10 residential parking and safety.

11 Exhibit 5 is the sidewalk café that  
12 abuts the property of 4 R Street. That space  
13 right in front is considered a sidewalk café.  
14 And that also goes along the other side of the  
15 establishment as well.

16 Exhibit 6 is a front view of the  
17 abutting property during construction. As you  
18 can see, they're still working to get it  
19 complete. But on the left side is -- gray part  
20 is the establishment and right in front is 4 R  
21 Street.

22 Exhibit 7 just indicates the  
23 additional two floors that were added to the  
24 residential space at 4 R Street.

25 Exhibit 8 is a regulatory inspection

1 that I conducted on October 17th when I met with  
2 ABC manager, Walter Thomas, and discussed some of  
3 the issues in regards to the protest. There were  
4 no ABRA violations found at this time.

5 Exhibit 9 is a photograph of the front  
6 entrance, the front door kind of as you're  
7 walking into the establishment from North Capitol  
8 Street and R Street would be on your right.

9 Exhibit 10 is a photograph of the  
10 sidewalk café facing north. Looking north,  
11 that's the south side of the sidewalk café. The  
12 entrance to the basement is right over to the  
13 left. As you go down, that's the proposed  
14 entrance to the basement where they want to have  
15 the additional space for the seating downstairs.  
16 And the side door is another side door to enter  
17 the establishment.

18 Exhibit 11 is a photograph of the main  
19 level, Level 1, facing -- looking towards the  
20 front door and the bay windows looking out  
21 towards the sidewalk café.

22 Exhibit 12 is a photograph of the  
23 stereo equipment that they use. They use an iPad  
24 player and they hook it up to their stereo. And  
25 that's how they play their music.

1                   Exhibit 13 is a photo of the kitchen  
2 vent where they do the cooking. And the smell  
3 goes up through that vent and goes up outside.

4                   Exhibit 14 is a photograph of the side  
5 hallway leading out to the side door. It's an  
6 enter and exit, another way to get into the  
7 establishment.

8                   Exhibit 15 shows a picture of the  
9 sidewalk café and the potential entrance to the  
10 space downstairs in the basement which they're  
11 applying for.

12                   Exhibit 16 is a photograph of the  
13 basement when you walk in looking to the right.  
14 This is temporarily used for storage, I guess,  
15 right now. But this is the basement that they're  
16 proposing to use.

17                   Exhibit 17 is also another view of the  
18 basement looking south with a gentleman standing  
19 there. He's at the entrance right there. So  
20 we're kind of looking from the other side of the  
21 room with the bar to the right.

22                   Exhibit 18 is a photograph of the bar  
23 that's downstairs currently.

24                   Exhibit 19 is the hallway leading back  
25 up to the kitchen from the basement. There's

1 another flight of stairs that can go upstairs to  
2 the first floor.

3 Exhibit 20 is a photograph of the  
4 dumpster that they use which is behind the Engine  
5 Company 12. They use a space. They use  
6 Tenleytown and they share a dumpster temporarily.  
7 The building that was directly next to this I  
8 guess is knocked down for construction. And this  
9 is the dumpster that they use. They share this  
10 dumpster with Engine 12.

11 Exhibit 21 is just another photograph  
12 of the dumpster, and it's behind a locked fence  
13 right here.

14 Exhibit 22 indicates the six ABC  
15 establishments within the 1,200 feet radius.

16 Exhibit 23 indicates that there's no  
17 public schools or libraries or childcare within  
18 400 feet of the establishment.

19 Exhibit 24 is the ABC license with  
20 their current capacity for a sidewalk café, 125.

21 Exhibit 25 is a copy of the  
22 certificate of occupancy, the current one that  
23 they have.

24 Exhibit 26 is a photograph of the  
25 parking available on North Capitol Street



1 directly in front of the establishment.

2 CHAIR ANDERSON: You said twenty-what?

3 MR. ZOLOKOFER: Exhibit 26, sir.

4 CHAIR ANDERSON: No, I think that's  
5 mislabeled. We have different -- I think Exhibit  
6 26 was previously identified as RDA, yeah. So  
7 that's mislabeled.

8 MR. ZOLOKOFER: I apologize for that.  
9 This is the one that I was referring to.

10 CHAIR ANDERSON: That's 27.

11 MR. ZOLOKOFER: These are the photos  
12 of the parking.

13 CHAIR ANDERSON: That's identified as  
14 27.

15 MR. ZOLOKOFER: So 27. So I'll move  
16 27 forward, I guess. They're all going to kind  
17 of be out of order then.

18 Exhibit 27 is indicating the parking  
19 available on North Capitol Street indicating it's  
20 a loading zone, two-hour --

21 CHAIR ANDERSON: What we'll do is  
22 we'll forget about Exhibit 26. So let's drop  
23 Exhibit -- well, Exhibit 26 is the stereo  
24 equipment behind the bar. That's what -- in the  
25 document that everyone has, Exhibit 26 is the

1 stereo equipment behind the bar. So why don't  
2 you move forward with the numbers that you have  
3 so you identify. So the -- I'm sorry. So you  
4 probably need to change.

5 So Exhibit 27 then is the loading --  
6 this is what we have as Exhibit 27. What number  
7 do you --

8 MR. ZOLOKOFER: I have it for 26.

9 CHAIR ANDERSON: All right. So why  
10 don't you forward all the numbers.

11 MR. ZOLOKOFER: Okay.

12 CHAIR ANDERSON: Okay. So why don't  
13 you rename that Exhibit 27 and then change all  
14 your numbers. And then you can identify them for  
15 the record.

16 MR. ZOLOKOFER: Okay.

17 CHAIR ANDERSON: All right. So  
18 Exhibit 27 then is the loading zone, two-hour.

19 MR. ZOLOKOFER: Two-hour for  
20 commercial vehicles only.

21 Exhibit 28 is a photograph on R Street  
22 indicating the available two-hour parking just on  
23 that side of the road. They currently have some  
24 parking bins right there because of the  
25 construction or some of the work that they're

1 doing on the street as of right now.

2 Exhibit 29 is a photograph of the Zone  
3 5 resident parking which is on the opposite side  
4 of R Street away from the establishment. That's  
5 the available parking on that side of the street.

6 Exhibit 30 is calls for service from  
7 United Office of Command indicating the last  
8 calls for service for the last year from October  
9 10, 2018 to October 10, 2019 requesting MPD  
10 assistance.

11 CHAIR ANDERSON: Do you know whether  
12 or not any of these were directly attributed to  
13 this address? Or was it just a general one, do  
14 you know?

15 MR. ZOLOKOFER: They were addressed to  
16 that address.

17 CHAIR ANDERSON: But when I say -- but  
18 is it -- do you know whether or not it was just  
19 was this address used or was it a call -- or do  
20 you know whether or not it was specific to this  
21 establishment? Because sometimes one will do a  
22 call for service and they just give an address.  
23 So I'm saying do you know whether or not it was  
24 because of any specific disturbances in this  
25 establishment or it was just the address?

1 MR. ZOLOKOFER: I'm not sure, sir. I  
2 requested the information for that address, and  
3 there was no ABRA -- there's no violations.  
4 There's no history for the establishment.

5 CHAIR ANDERSON: Okay. That's fine.

6 MR. ZOLOKOFER: Exhibit 31 is a copy  
7 of the certificate of occupancy.

8 CHAIR ANDERSON: This is a new one or  
9 the old one?

10 MR. ZOLOKOFER: I believe this is the  
11 one on file.

12 CHAIR ANDERSON: So this is the --

13 MR. ZOLOKOFER: This is the current  
14 one.

15 CHAIR ANDERSON: -- one that they're  
16 asking to be changed. Okay. All right. That's  
17 the last one? All right.

18 (Whereupon, the above-referred to  
19 documents were marked and accepted as  
20 Government's Exhibits 1-31, for  
21 identification.)

22 CHAIR ANDERSON: Did you I know that  
23 you said that ABRA monitored the establishment a  
24 couple times. Did you personally monitor this  
25 establishment for any potential violation?

1 MR. ZOLOKOFER: I did monitor this  
2 establishment, and I didn't have any.

3 CHAIR ANDERSON: Tell me when did you  
4 -- which one of the observations did you do  
5 personally?

6 MR. ZOLOKOFER: Okay. One second,  
7 please. Thursday, October 17th, I was conducting  
8 the inspection during the daytime. And I also  
9 returned on October 28th.

10 CHAIR ANDERSON: Okay. All right.  
11 Okay. I don't have any other questions. Does  
12 any other Board member have any other questions?  
13 Go ahead, Mr. Short.

14 MEMBER SHORT: Good afternoon, Mr. --  
15 forgive me.

16 CHAIR ANDERSON: Zolokofer.

17 MEMBER SHORT: Investigator Zolokofer,  
18 when you did your inspection of the  
19 establishment, you entered through the front door  
20 on North Capitol Street?

21 MR. ZOLOKOFER: Yes, sir.

22 MEMBER SHORT: If you had to leave out  
23 of a second exit -- or do they have a second exit  
24 first of all?

25 MR. ZOLOKOFER: Yes, they do.

1                   MEMBER SHORT: Where did that take you  
2 to?

3                   MR. ZOLOKOFER: Takes you out to the  
4 sidewalk café. There's a hallway towards the  
5 rear of the establishment with restrooms and a  
6 side exit to the --

7                   MEMBER SHORT: But there's no rear  
8 exit? There's a side exit but no rear exit?

9                   MR. ZOLOKOFER: Essentially, yes,  
10 that's correct.

11                   MEMBER SHORT: So did you go into the  
12 kitchen area?

13                   MR. ZOLOKOFER: I did go into the  
14 kitchen area.

15                   MEMBER SHORT: Is there an exit from  
16 the kitchen?

17                   MR. ZOLOKOFER: No.

18                   MEMBER SHORT: Okay. And in the  
19 basement, how many exits are there from the  
20 basement?

21                   MR. ZOLOKOFER: Just that one exit-  
22 enter point.

23                   MEMBER SHORT: One way in and one way  
24 out?

25                   MR. ZOLOKOFER: Yes, sir.

1                   MEMBER SHORT: And that comes out on  
2 the side of the patio?

3                   MR. ZOLOKOFER: Yes, sir.

4                   MEMBER SHORT: So if everybody has to  
5 evacuate, you've got to evacuate the people off  
6 the patio after the people in basement after you  
7 get the patio cleared. Is that correct?

8                   MR. ZOLOKOFER: That's correct. You  
9 could go -- you could essentially go back  
10 upstairs, up through the back of the  
11 establishment's kitchen area. But that's the  
12 only exit door right there.

13                   MEMBER SHORT: But when you're exiting  
14 the building, you can't go back into the  
15 building, can you?

16                   MR. ZOLOKOFER: That's right.

17                   MEMBER SHORT: Okay. All right.  
18 That's all I have, Mr. Chair. Thank you very  
19 much.

20                   CHAIR ANDERSON: Any other questions  
21 by any of the Board members? All right. Mr.  
22 Murphy, do you have any questions of the  
23 investigator based on the report that he  
24 provided?

25                   MR. MURPHY: Yes, thank you.

1 Investigator, Zolokofer, how are you doing?

2 MR. ZOLOKOFER: Good. How are you  
3 doing, sir?

4 MR. MURPHY: In your report, does it  
5 say whether anyone -- you or the other  
6 investigators observed anyone using rideshares  
7 like Uber or anything like that when they were  
8 entering or exiting The Pub and the People?

9 MR. ZOLOKOFER: Yes, sir. Our  
10 investigators did observe them using rideshare  
11 companies, yes.

12 MR. MURPHY: Thank you. And in your  
13 report, did you or any other investigators  
14 observe any patrons using their own personal  
15 vehicle before entering or after exiting The Pub  
16 and the People?

17 MR. ZOLOKOFER: Just a handful. Most  
18 of the people were using rideshare companies.

19 MR. MURPHY: Thank you. That's all.  
20 Thank you.

21 CHAIR ANDERSON: Ms. Lewis, any  
22 questions for the investigator?

23 CROSS-EXAMINATION

24 MS. LEWIS: Yes. Do you know why  
25 there weren't any visits scheduled on a Friday,



1       Fridays or weekend? I know when we spoke you  
2       asked me the busy times. And I told you  
3       basically the weekends.

4               MR. SHORT: Speak up a little, please.  
5       Yeah, there you go.

6               MS. LEWIS: So there weren't any  
7       visitations scheduled on a Friday. But there  
8       were two visits on a Saturday. I was just  
9       curious as to why there wasn't any visitation  
10      scheduled on a Friday.

11              MR. ZOLOKOFER: No particular reason,  
12      just we had been assigned to monitor --

13              CHAIR ANDERSON: Speak up --

14              MR. ZOLOKOFER: We had been assigned  
15      to monitor. No particular reason.

16              MS. LEWIS: Okay.

17              MR. ZOLOKOFER: We tried to get over  
18      there as much as we could, Saturdays and Sundays,  
19      to monitor.

20              MS. LEWIS: And was there any attempt  
21      made to visit the establishment during some type  
22      of event like a Nats game or -- you know, did you  
23      check the website to see whether or not there  
24      would be any events that would, basically  
25      because, basically they're a bar and a grill.

1 People go and hang out, watch games or -- so did,  
2 were there any attempts made to visit the  
3 establishment during an event?

4 MR. ZOLOKOFER: Not specifically, no.

5 MS. LEWIS: Okay. Did the pub mention  
6 at all that we were communicating even by email  
7 on, and trying to work on a settlement agreement  
8 with them?

9 MR. ZOLOKOFER: Yes, he did.

10 MS. LEWIS: Okay. Because in the  
11 report, I thought that you mentioned that he said  
12 that we stopped all communications with them,  
13 which was not true.

14 MR. ZOLOKOFER: There was a point  
15 where, I guess there was a space where the  
16 communication was lacking. He did mention, Mr.  
17 Murphy mentioned that you guys weren't  
18 communicating, but it was kind of touch and go.

19 MS. LEWIS: Did you ask the  
20 establishment for their busy hours? Did they  
21 give you any suggestions as to when their  
22 heaviest traffic flow was?

23 MR. ZOLOKOFER: No, ma'am.

24 CHAIR ANDERSON: Mr. Mutneja.

25 MR. MUTNEJA: Did you observe any

1 cooking smell at the time?

2 (Off mic comments.)

3 MR. ZOLOKOFER: No, I haven't, sir,  
4 just --

5 MR. MUTNEJA: There was no smell at  
6 all?

7 MR. ZOLOKOFER: Just, during my visit  
8 there, nothing jumped out to me to be excessive.

9 MR. MUTNEJA: And how many people --

10 CHAIR ANDERSON: You have to speak up,  
11 Mr. Mutneja.

12 MR. MUTNEJA: Sure. And how many  
13 people were there in the restaurant?

14 MR. ZOLOKOFER: Just very few. I want  
15 to say 25, 30.

16 MR. MUTNEJA: Twenty-five. And when  
17 you visited the kitchen, there was cooking going  
18 on and there was no smell.

19 MR. ZOLOKOFER: Just a normal kitchen  
20 smell, nothing, from outside, it didn't indicate  
21 that I could smell food from outside. When I  
22 walked in, I could smell food. You could smell  
23 the bar.

24 MR. MUTNEJA: Were you able to go to  
25 the abutting property owner and get the smell

1 idea from that location?

2 MR. ZOLOKOFER: No, sir.

3 MR. MUTNEJA: So the times which you  
4 were, most of the visits were done, those are not  
5 like very busy hours for the pub. Was there any  
6 live music going on at that time when you visited  
7 the pub?

8 MR. ZOLOKOFER: There's no live music.

9 MR. MUTNEJA: Okay. So, when you went  
10 there, how many parking spaces were available at  
11 that time around the area?

12 MR. ZOLOKOFER: Not many at all.

13 MR. MUTNEJA: Not many at all.

14 MR. ZOLOKOFER: It was, most of the  
15 people that I seen were using ride shares, ride -  
16 -

17 MR. MUTNEJA: Yeah, but there were no  
18 parking available at that moment also. And when  
19 you were saying there were only 25 people in the  
20 pub, and still there was no parking outside of  
21 the building.

22 MR. ZOLOKOFER: Correct.

23 MR. MUTNEJA: Okay. That's it.

24 CHAIR ANDERSON: Mr. Powell, do you  
25 have any questions?

1 MR. POWELL: I do have questions.  
2 Thank you, Investigator Zolokofer. And you did  
3 call me and I was not able to talk.

4 CHAIR ANDERSON: Speak up, sir.  
5 You're not, remember, you're not having a  
6 personal conversation with him.

7 MR. POWELL: Okay.

8 CHAIR ANDERSON: You're asking us  
9 questions, because the reason I said so, because  
10 you're chit-chatting to him and we can't hear  
11 what you're talking about.

12 MR. POWELL: Yeah, noted, noted,  
13 noted, noted.

14 CHAIR ANDERSON: That's why I said  
15 you're not having a personal conversation with  
16 him.

17 MR. POWELL: You did call me. I was  
18 not able to talk. I was actually on a business  
19 trip. But I'm glad we can talk now because I do  
20 have some questions.

21 Just to revisit the parking situation  
22 for, briefly, you said that you noticed that  
23 there weren't many parking spaces. Is that  
24 correct?

25 MR. ZOLOKOFER: That's correct.

1                   MR. POWELL: Okay. So, if someone  
2 were to write a letter and say that they don't  
3 perceive parking to be a problem in the  
4 neighborhood, what you saw would contradict that,  
5 correct?

6                   MR. ZOLOKOFER: That's correct.  
7 There's not many parking, there's not much  
8 parking available in that area.

9                   MR. POWELL: Okay. Thank you so much.  
10 Just I noted the times that, the actual days that  
11 you went to see that. So the Washington  
12 Nationals just won the World Series. None of  
13 those dates and times were on the day of a Nats  
14 game, was it?

15                   MR. ZOLOKOFER: No.

16                   MR. POWELL: Okay. You did go by on  
17 a Sunday. But that was not at a time during  
18 Sunday football, was it?

19                   MR. ZOLOKOFER: No.

20                   MR. POWELL: You went by on a Monday.  
21 That was not during a time for Monday Night  
22 Football, was it?

23                   MR. ZOLOKOFER: Nope.

24                   MR. POWELL: When you were in the pub,  
25 did you see televisions and screens on the wall?

1 MR. ZOLOKOFER: Yes, I did.

2 MR. POWELL: Okay. And so, if a game  
3 or event was happening, they would probably be  
4 watching it on TV, right, would you suspect?

5 MR. ZOLOKOFER: I would assume so.

6 MR. POWELL: Okay. Great. When you  
7 completed your report, did you email your report  
8 to Mr. Mutneja?

9 MR. ZOLOKOFER: No, sir.

10 MR. POWELL: Why not?

11 MR. ZOLOKOFER: It was supposed, it  
12 will be given to you at this -- we don't forward  
13 our reports to -- you wait for it to be assigned.

14 CHAIR ANDERSON: Gentlemen, remember,  
15 you're talking to us. I need to hear you. And  
16 I'm more so speaking to the investigator, because  
17 I --

18 MR. ZOLOKOFER: Okay.

19 CHAIR ANDERSON: -- I need everyone to  
20 talk so the Board can hear. We're older. At  
21 least I am older. So I might have hearing  
22 problems. So I'm speaking for myself. So,  
23 please, speak so I can hear.

24 MR. ZOLOKOFER: Yes, sir.

25 MR. SHORT: We can move the mic a

1 little closer to the gentleman who's asking  
2 questions. We can move the mic a little closer -  
3 -

4 MR. MUTNEJA: And one thing on this  
5 report I would like to add is I was left out  
6 throughout the whole process. Nobody  
7 communicated through email --

8 CHAIR ANDERSON: Mr. Mutneja, you had  
9 an opportunity to cross examine him, sir. During  
10 that time, that was the time you could ask him  
11 whatever questions you had. You can't ask any  
12 questions. You have lost your opportunity.

13 MR. MUTNEJA: Got it.

14 CHAIR ANDERSON: This is cross  
15 examination. The witness is on the stand. This  
16 is your -- whatever problem that you had with the  
17 witness, whatever testimony the witness gave that  
18 you disagree with, that is your opportunity to  
19 confront the person and ask them.

20 You should have asked him why did he  
21 not contact you or if you have whatever dispute  
22 you have had. Unfortunately, sir, you have lost  
23 the chance. So --

24 MR. MUTNEJA: Got it.

25 CHAIR ANDERSON: -- now it's Mr.



1 Powell's time to cross examine him.

2 MR. POWELL: Okay.

3 CHAIR ANDERSON: All right.

4 MR. POWELL: Back to my question, did  
5 you send a copy of the report to Mr. Mutneja?

6 CHAIR ANDERSON: It's asked and  
7 answered, sir. The investigator stated that they  
8 don't provide, the agency doesn't provide it. It  
9 was provided as part of the protest. So let's  
10 move on.

11 MR. POWELL: I guess I missed that,  
12 because there was some --

13 CHAIR ANDERSON: Yeah, he did answer.

14 MR. POWELL: Okay. I trust you. I'm  
15 just saying I didn't --

16 CHAIR ANDERSON: I did hear that part.  
17 Okay. Thanks. I'm proving to you that I'm  
18 following what's going on.

19 MR. POWELL: I believe you. I believe  
20 you.

21 CHAIR ANDERSON: Okay.

22 MR. POWELL: In your observation of  
23 the pub, did you -- you have a picture of the  
24 dumpster. But did you observe any trash  
25 disposal?

1 MR. ZOLOKOFER: No.

2 MR. POWELL: Okay. Those are all my  
3 questions for him.

4 CHAIR ANDERSON: Okay. Do you have  
5 any other questions?

6 MR. POWELL: I do not.

7 CHAIR ANDERSON: All right. Thanks.  
8 Any other questions from any of the Board members  
9 based on the questions that were asked?

10 I just want the record to declare, Mr.  
11 Zolokofer, who did you investigate? I'm sorry.  
12 Who did you contact as part of -- what were the  
13 parties, who were the parties that you contacted  
14 as part of your investigation, sir?

15 MR. ZOLOKOFER: The three protestants,  
16 Mr. Powell from, representing a group of five or  
17 more, the abutting owner, Mr. --

18 MR. MUTNEJA: Mutneja.

19 MR. ZOLOKOFER: -- Mutneja, and  
20 Commissioner Karla Lewis, from 5E, and the owner,  
21 Mr. Matthew Murphy.

22 CHAIR ANDERSON: So, from each of the  
23 protestants, what response? Were you able to  
24 speak to Mr. Powell?

25 MR. ZOLOKOFER: Briefly, yes. I did

1 reach out to him via email. And by the time we  
2 made contact, he was on vacation. And we weren't  
3 able to speak at the time.

4 CHAIR ANDERSON: All right. Were you  
5 able to speak to Ms. Lewis?

6 MR. ZOLOKOFER: Ms. Lewis? Yes, sir.

7 CHAIR ANDERSON: All right. Were you  
8 able to speak with Mr. Mutneja?

9 MR. ZOLOKOFER: Yes, sir.

10 CHAIR ANDERSON: What do you call  
11 speak to him? Explain to me. Explain to me what  
12 was the nature of your contact with him?

13 MR. ZOLOKOFER: I made contact with  
14 him via telephone and to go over some of the  
15 concerns of the protest, which he addressed the -  
16 - the main thing that jumped out was the smell.  
17 He kept on kind of going back to the smell of the  
18 establishment. And, yeah, he was focusing on the  
19 smell of it, some noises issues. And I was kind  
20 of just gathering some information on what the  
21 concerns were with it.

22 CHAIR ANDERSON: So it's your  
23 testimony today that you did reach out and spoke  
24 to all the protestants in this case. Is that  
25 correct?

1 MR. ZOLOKOFER: Yes, yes, sir.

2 CHAIR ANDERSON: All right. All  
3 right. Any other questions by any of the Board  
4 members? All right. Thank you, Mr. Zolokofer.  
5 Thank you for your testimony. You can step down.

6 MR. ZOLOKOFER: Thank you.

7 CHAIR ANDERSON: All right. Mr.  
8 Murphy, who's your first witness?

9 MR. MURPHY: Chair, as you said --

10 CHAIR ANDERSON: I'm sorry?

11 MR. MURPHY: I'm sorry. This is about  
12 the vacant space. Our first witness will speak  
13 to that. His name is Nick Bernel.

14 CHAIR ANDERSON: Mr. Nicholas Bernel.  
15 Okay. Mr. Bernel, if you would raise your right  
16 hand, please. Do you swear or affirm to tell the  
17 truth and nothing but the truth?

18 MR. BERNEL: I do.

19 CHAIR ANDERSON: All right. Have a  
20 seat. Your witness, sir.

21 MR. MURPHY: Should I stay seated?

22 CHAIR ANDERSON: However you feel  
23 comfortable.

24 MR. MURPHY: Okay. I suppose I'll  
25 stay seated until I don't feel comfortable.

1                   Okay. Nick, could you first explain  
2 to the Board your educational background and work  
3 experience --

4                   CHAIR ANDERSON: Why don't you start  
5 for him to identify himself for the record? And  
6 then you can go there.

7                   MR. MURPHY: Could you please state  
8 your name?

9                   MR. BERNEL: My name is Nick Bernel.  
10 I'm one of the owners of The Pub & The People.

11                   CHAIR ANDERSON: Mr. Bernel, pull the  
12 microphone up to you because you're taller, so we  
13 can --

14                   MR. BERNEL: There. Is that better?

15                   CHAIR ANDERSON: Yeah. You don't have  
16 to be that close. But, yeah, just, yeah. Okay.  
17 Go ahead.

18                   MR. MURPHY: Okay. Could you please  
19 explain for the Board your educational background  
20 and work experience as it pertains to  
21 construction and design?

22                   MR. BERNEL: Yes. I've been working  
23 in architecture or construction related fields  
24 since 2000, the year 2000. I went to  
25 architecture school at Notre Dame, and since then

1 have spent the last 12 years before owning this  
2 restaurant as either an architect or an engineer.

3 And I've been in the restaurant  
4 industry overlapping with that a total in 11  
5 years, 5 as an owner of a restaurant.

6 MR. MURPHY: Thank you. And is it  
7 true that you principally organized the design of  
8 the new basement space?

9 MR. BERNEL: Yes, that's correct.

10 MR. MURPHY: How did you develop the  
11 design plan for the basement space? This is  
12 rather not to explain the plan itself, but how  
13 did you develop the plan?

14 MR. BERNEL: I used my background as  
15 an architect and skill in designing by using  
16 AutoCAD design software and talking to several  
17 different professionals that were going to help  
18 me build the space.

19 MR. MURPHY: And what do those  
20 professionals do for a living?

21 MR. BERNEL: Most of them were  
22 subcontractors, some carpenters, but also two  
23 sound engineers, one of which was at a national  
24 radio station nearby the pub, another who runs a  
25 practice and recording studio, also nearby the

1 pub.

2 MR. MURPHY: And did you use your --  
3 did you do any research?

4 MR. BERNEL: Yes. And I did many,  
5 many hours of research just on sound attenuation  
6 and separation of spaces, et cetera.

7 MR. MURPHY: Could you please explain  
8 the general theory behind the soundproofing in  
9 the interior of the basement?

10 MR. BERNEL: Yes. The idea, in order  
11 to mitigate sound between spaces, is to try to  
12 build a room within a room, and then wherever the  
13 inside room touches the outside room, try to use  
14 some sort of materials to reduce the amount of  
15 vibration and sound that can transfer through  
16 that.

17 MR. MURPHY: I see. At this time, I  
18 would like to introduce Exhibits 1 through 9.

19 CHAIR ANDERSON: Just to, well, just  
20 -- why don't you just do them individually?

21 MR. MURPHY: Okay.

22 CHAIR ANDERSON: So why don't you, for  
23 Exhibit 1 and ask him to identify what it is and  
24 explain what it is? Yes, ma'am.

25 MS. LEWIS: Can we object?

1 CHAIR ANDERSON: I don't know what  
2 you're going to object to. So --

3 MS. LEWIS: Him introducing the  
4 exhibits.

5 CHAIR ANDERSON: Well, did you receive  
6 the exhibits seven days prior to the hearing?

7 MS. LEWIS: Yes, we did.

8 CHAIR ANDERSON: Okay. Well, all  
9 right. What's the nature of your objection?

10 MS. LEWIS: That they have these  
11 materials, but there's no proof that any of these  
12 materials have been implemented in the  
13 construction of the basement space.

14 CHAIR ANDERSON: Well --

15 MS. LEWIS: So why is it relevant?

16 CHAIR ANDERSON: I haven't heard any  
17 testimony. So your -- he's going to -- all  
18 right. So he's going to identify the document.  
19 And during cross examination, then it's your job  
20 to further explore what it is.

21 So you can ask him all those  
22 questions. He's on the witness stand. So you  
23 can ask him all those questions about what it is  
24 or what proof does he have that this was actually  
25 there. You can ask him questions.



1 I would have hoped that if the person  
2 said that they did sound mitigation that in your  
3 negotiation you would have him play music and the  
4 person next door would stay in their apartment to  
5 hear whether or not they could hear the noise.

6 So, but where we are right now is that  
7 I'm going to object to the objection. So you can  
8 let him identify the document. Let him ask  
9 questions of the witness to the, on the document.

10 Once questions are asked, then he is  
11 going to ask to move the exhibit into evidence.  
12 You can also object at that time and tell me why  
13 you're going to object to it. And then I'll make  
14 a ruling whether I'm going to allow the document  
15 to be moved into evidence.

16 MS. LEWIS: Okay.

17 CHAIR ANDERSON: So you can call the  
18 exhibit, say what the exhibit is and have him  
19 identify the document. And then you can ask him  
20 questions on each exhibit that way.

21 And at the end if you want to, after  
22 he has testified, if you want him, if you want to  
23 move the exhibit into evidence, then you say you  
24 want to move it into evidence. She'll say yea or  
25 nay. And then I'll make a ruling. Okay?

1 MR. MURPHY: Yes, sir.

2 CHAIR ANDERSON: Go ahead.

3 MR. MURPHY: So, Mr. Chair, these  
4 exhibits are somewhat interactive where --

5 CHAIR ANDERSON: So you want to do all  
6 nine. All right. So you can have him look, you  
7 can give him all nine. But when you're asking  
8 him, then for the record, because everything is  
9 being transcribed, you need to specifically state  
10 which one of the documents that he is testifying,  
11 you're asking him questions about, and which one  
12 he's testifying on.

13 All right. So you can show him all  
14 nine --

15 MR. MURPHY: Okay.

16 CHAIR ANDERSON: But then have him  
17 individually go through all the documents.

18 MR. MURPHY: Yes, sir. I didn't see  
19 whether you brought up copies. Do you have  
20 copies?

21 MR. BERNEL: Yep.

22 CHAIR ANDERSON: No, you're not -- no,  
23 no, no. You have to give him -- I don't know  
24 what -- he shouldn't have anything up there. So  
25 you need to -- I want to make sure that what he

1 has is the stuff that you have given him and so  
2 everyone knows what it is, because I don't know  
3 what he has up there. All right.

4 MR. MURPHY: Okay. So are they  
5 numbered here? Or should I go through 1 through  
6 7 or 1 through 9 and explain what they are for  
7 the record?

8 CHAIR ANDERSON: No, he's the one  
9 who's going to. So did you number them here?

10 MR. MURPHY: Yes.

11 CHAIR ANDERSON: Well, the documents  
12 I have, they don't have a number on them. So I  
13 don't know what it is. So why don't you give it  
14 to him? And then he's the one who's supposed to  
15 explain to us what they are.

16 MR. MURPHY: All right.

17 CHAIR ANDERSON: And once he has them,  
18 then you can let him know what document and what  
19 exhibit that is, because the documents I have  
20 here, they don't have any numbers on them.

21 MR. MURPHY: Okay.

22 CHAIR ANDERSON: So, to make sure that  
23 I know and Ms. Lewis and the other parties know  
24 what documents for you, because I don't know  
25 which, I don't know -- the documents I have don't

1 have a -- they don't have any numbers on them.

2 MR. MURPHY: I understand.

3 CHAIR ANDERSON: Okay. So what  
4 document is the first exhibit?

5 MR. MURPHY: So the first exhibit is  
6 the Roxul specifications sheet.

7 (Whereupon, the above-referred to  
8 document was marked as Protestant  
9 Exhibit 1 for identification.)

10 CHAIR ANDERSON: Well, does it --

11 MR. MURPHY: It looks like this. It  
12 says Rockboard, and then it says Roxul in the  
13 corner of the image.

14 CHAIR ANDERSON: I have a color  
15 document. So I want to make sure. Is this the  
16 same document?

17 MS. CROCKETT: Yes.

18 CHAIR ANDERSON: It is? Okay. So  
19 this is Exhibit 1. All right. So why don't you  
20 ask him what Exhibit 1 is then? All right.

21 MR. MURPHY: So then, if we,  
22 procedurally if we do it this way, then I'm going  
23 to need to go back through the entire thing  
24 again. Is that okay?

25 CHAIR ANDERSON: What do you mean go

1 back?

2 MR. MURPHY: So, well, ultimately, I'm  
3 going to ask him to identify where they are on  
4 Exhibit 7.

5 CHAIR ANDERSON: All right. We have  
6 to move the documents into evidence. So why  
7 don't you just have him identify all the  
8 documents? So just have him identify the  
9 documents first.

10 MR. MURPHY: Okay.

11 CHAIR ANDERSON: And then you can have  
12 him testify on the documents.

13 MR. MURPHY: Okay.

14 CHAIR ANDERSON: So show him Exhibit  
15 1 and ask him what it is.

16 MR. MURPHY: So this is Exhibit 1.  
17 Can you please identify what, like what Exhibit 1  
18 is?

19 MR. BERNEL: Yes, that's a spec sheet  
20 for a Roxul sound attenuation.

21 MR. MURPHY: All right. And this is  
22 Exhibit 2.

23 (Whereupon, the above-referred to  
24 document was marked as Protestant  
25 Exhibit 2 for identification.)

1 MR. BERNEL: That's a spec sheet for  
2 Green Glue Dampening Compound.

3 CHAIR ANDERSON: Is this the one that  
4 says technical data sheet?

5 MR. MURPHY: It says Green Glue  
6 Dampening Compound technical data sheet at the  
7 top, right, but more than one says that.

8 CHAIR ANDERSON: So that's Exhibit 2.

9 MR. MURPHY: Green Glue Dampening  
10 Compound tubes.

11 CHAIR ANDERSON: Because they are not  
12 numbered, I want to make sure. I'm numbering  
13 them, so that's why. So that's Exhibit 2.

14 MR. MURPHY: I'm sorry. They were  
15 labeled. The attachments were clearly labeled,  
16 but the pictures themselves were not. I'm sorry.

17 CHAIR ANDERSON: Okay. So what's  
18 Exhibit 3?

19 MR. MURPHY: So this is Exhibit 3.  
20 (Whereupon, the above-referred to  
21 document was marked as Protestant  
22 Exhibit 3 for identification.)

23 MR. BERNEL: It is a Resilient Sound  
24 Isolation Clip.

25 CHAIR ANDERSON: All right. Ms. Lewis

1 and everyone, you're following along what the  
2 exhibits are?

3 MS. LEWIS: Yes.

4 CHAIR ANDERSON: Okay, okay.

5 MR. MURPHY: This is Exhibit 4.

6 (Whereupon, the above-referred to  
7 document was marked as Exhibit 4 for  
8 identification.)

9 MR. MURPHY: Could you please identify  
10 it?

11 MR. BERNEL: Exhibit 4 is the EZ-Spray  
12 wall foam information packet.

13 CHAIR ANDERSON: All right.

14 MR. MURPHY: This is Exhibit 5.

15 (Whereupon, the above-referred to  
16 document was marked as Protestant  
17 Exhibit 5 for identification.)

18 CHAIR ANDERSON: How many pages is  
19 Exhibit 4?

20 MR. BERNEL: Four pages.

21 CHAIR ANDERSON: All right. So the  
22 first page is 4. The second page is 4A. So the  
23 first page is Exhibit 4. The second page is 4A.  
24 The third page is 4B. And the fourth page is 4C.  
25 Okay. So I need you to mark those so if someone

1 was to pull them, they would know what they are.

2 MR. MURPHY: Okay.

3 CHAIR ANDERSON: Okay. So that's how  
4 they're labeled. So the first page is 4, and the  
5 other pages are 4A, 4B, 4C. That's Exhibit 4.  
6 What's Exhibit 5?

7 MR. MURPHY: This is Exhibit 5.

8 MR. BERNEL: Exhibit 5 is a Owens  
9 Corning high-density soundproofing insulation  
10 spec sheet. And there are two pages. So there's  
11 a 5 and 5A.

12 CHAIR ANDERSON: So there's 5 and 5A.  
13 All right.

14 MR. MURPHY: This is Exhibit 6.

15 (Whereupon, the above-referred to  
16 document was marked as Protestant  
17 Exhibit 6 for identification.)

18 MR. BERNEL: Exhibit 6 is Acoustical  
19 Solutions Vibration Isolation Pad data sheet, one  
20 page.

21 CHAIR ANDERSON: All right.

22 MR. MURPHY: This is Exhibit 7.

23 (Whereupon, the above-referred to  
24 document was marked as Protestant  
25 Exhibit 7 for identification.)



1 MR. BERNEL: Exhibit 7 is an  
2 architectural drawing that I did of the design  
3 for the wall section between the pub basement and  
4 our abutting neighbor. This drawing highlights  
5 all of the construction we did and all the  
6 materials referenced in Exhibits 1 through 6.

7 MR. MURPHY: Okay. I have Exhibits A  
8 through C. We'll start with Exhibit A, I'm  
9 sorry, 8A.

10 (Whereupon, the above-referred to  
11 document was marked as Protestant  
12 Exhibit 8 for identification.)

13 CHAIR ANDERSON: Hold on. No, that's  
14 Exhibit 8. That's the first page.

15 MR. MURPHY: Okay.

16 CHAIR ANDERSON: So that's Exhibit 8.  
17 So how many pages is Exhibit 8?

18 MR. MURPHY: It's three.

19 CHAIR ANDERSON: 8A and 8B.

20 (Off mic comments.)

21 CHAIR ANDERSON: What's Exhibit 9? Is  
22 there another one?

23 MR. MURPHY: So is Exhibit 8 already  
24 in?

25 CHAIR ANDERSON: It's not in yet, but

1 we're just identifying the documents. And you  
2 said Exhibit 8. Is 8 three pages?

3 MR. MURPHY: Yes.

4 CHAIR ANDERSON: A, B, C, yes.

5 MR. MURPHY: Okay. So we're calling  
6 this 8A, 8B, and 8C?

7 CHAIR ANDERSON: 8A, B, and C.

8 MR. MURPHY: Okay.

9 (Off mic comments.)

10 CHAIR ANDERSON: I'm sorry. It's 8A  
11 and 8B, yes, those three pages.

12 MR. MURPHY: So this is Exhibit 8.  
13 Could you please identify?

14 MR. BERNEL: Exhibit 8 is a picture of  
15 the northeast corner of the basement space during  
16 construction.

17 MR. MURPHY: This is Exhibit 8B.  
18 Could you describe please? I'm sorry, 8A, my  
19 mistake.

20 MR. BERNEL: 8A is a picture of the  
21 west wall of the basement during construction,  
22 which we share with Singh (phonetic).

23 MR. MURPHY: And this is Exhibit 8B.

24 MR. BERNEL: 8B is a picture of the  
25 entire space during construction of the basement

1 facing the west wall, which we share with our  
2 neighbor.

3 MR. MURPHY: And this is Exhibit 9.

4 (Whereupon, the above-referred to  
5 document was marked as Protestant  
6 Exhibit 9 for identification.)

7 MR. BERNEL: Exhibit 9 is a picture of  
8 the entrance to the basement restaurant. That's  
9 on North Capitol Street.

10 MR. MURPHY: Okay. Thank you, Nick.  
11 Let's start with Exhibit 1, the Roxul spec sheet.

12 MR. BERNEL: The reason that we are  
13 including this spec sheet is because we lined  
14 three of the walls of the basement space with  
15 this Roxul Soundboard, which is designed to  
16 absorb bass frequency sounds. And it goes hand  
17 in hand with Exhibit 5 and Exhibit 5A, which does  
18 treble frequency sounds.

19 If you ever see anyone in like a  
20 recording studio, that stuff on the wall, that's  
21 something similar to that. It absorbs sound  
22 within the space, so it's easier to hear music or  
23 people talking or your bartender or server.

24 MR. MURPHY: Why was it only -- well,  
25 was this applied to the construction site in the

1 basement?

2 MR. BERNEL: Yes. You can actually  
3 see in Exhibit A, you can see the two different  
4 materials here in the corner. This is the  
5 yellow, which is the treble. And this is the  
6 green, which is the bass, in the corner on the  
7 walls before the other walls went up.

8 MR. MURPHY: You said it was applied  
9 to three of the walls. Which wall was it not  
10 applied to?

11 MR. BERNEL: It was not applied to the  
12 wall that we share with our neighbor because  
13 instead we used a lot of density and, in the form  
14 of plywood and drywall and spray insulation and  
15 space, which I was informed by my sound engineer  
16 contacts was necessary to isolate spaces.

17 The other three walls in the building  
18 only go into basically just soil, dirt, because  
19 we're subterranean. So those three walls are  
20 taking care of absorbing the noise in the space  
21 and the wall that we share with him is supposed  
22 to be, is there to separate our space from his  
23 space with all the known products and design  
24 specs that I could find out.

25 MR. MURPHY: So, if I understand you

1 correctly, the general theory was that the three  
2 walls that do not abut 4 R Street were designed  
3 to absorb sound, whereas the wall that does abut  
4 4 R Street, well, the room inside the wall that  
5 abuts 4 R Street was designed to deflect noise.  
6 Is that correct?

7 MR. BERNEL: Correct, and separate,  
8 right, separate our space from his.

9 MR. MURPHY: Okay. Thank you. Let's  
10 move to Exhibit 2, please.

11 MR. BERNEL: Exhibit 2 is just like in  
12 any building project, you use constructive  
13 adhesive so that materials touch each other. In  
14 this case, we used something called Green Glue,  
15 which when applied separates those materials  
16 glued to each other from each other so that  
17 vibration and sound can't transfer through as  
18 easily as if they're just touching each other.

19 And so we used that not only on the  
20 wall between us and our neighbor, but also on the  
21 ceiling so that the upstairs pub space and the  
22 downstairs pub space can't hear each other.

23 MR. MURPHY: So it's a dense  
24 deflective material. Is that correct?

25 MR. BERNEL: It's more like, like the

1 whole theory was to separate spaces, build a room  
2 within a room. This is one of the things you can  
3 use to separate the materials, the old from the  
4 new, so that vibration and sound waves don't  
5 transfer through.

6 MR. MURPHY: Thank you. And can you  
7 show us on 7, the diagram, where the Green Glue  
8 was applied?

9 MR. BERNEL: Yes. It's shown in the  
10 note not only on the ceiling here, which is to  
11 separate different pub spaces, but also on this  
12 wall that shares, that's between us and our  
13 neighbor.

14 And I also would like to note that  
15 only about four feet of the neighbor's property  
16 and space actually overlaps with our new basement  
17 space. The rest is subterranean and soil, which  
18 will help with the sound not transferring as  
19 well.

20 MR. MURPHY: Thank you. And on  
21 Exhibit 8A, the one with the man in the, looks  
22 like a Hazmat suit --

23 MR. BERNEL: Yeah, this is --

24 MR. MURPHY: -- if you can show us  
25 where the Green Glue was applied.

1                   MR. BERNEL: First, yeah, this is the  
2 spray on insulation that looks like cotton candy.  
3 And then the Green Glue was applied to all these  
4 vertical studs before putting on the next layer  
5 and then would be applied again before putting on  
6 the next layer, which we have two of, for that  
7 density.

8                   MR. MURPHY: Thank you. Let's move to  
9 Exhibit 3.

10                  MR. BERNEL: Exhibit 3, oh, these are  
11 the -- and going along with the theme of  
12 separating spaces from each other, these clips  
13 basically make the ceiling separate from the  
14 floor above it by hanging it off of these rubber  
15 little clips. You can see it in the, it's on the  
16 spec sheet itself.

17                  Basically, we're just hanging the  
18 ceiling off of little rubber standoffs so that  
19 the vibrations from the ceiling don't transfer to  
20 the floor above and thus to the walls or the  
21 space above.

22                  MR. MURPHY: Thank you. And can you  
23 show us on Exhibit 7 where, or an example of  
24 where these clips were used during the  
25 construction of the basement?

1 MR. BERNEL: Yes, you can see up at  
2 the top here these little, there's two of them  
3 shown.

4 MR. MURPHY: Thank you. Let's move to  
5 Exhibit 4.

6 MR. BERNEL: Exhibit 4 is the spray  
7 insulation that I pointed out that looked like  
8 cotton candy. We did that on the entirety of the  
9 western wall that we share with Singh, this stuff  
10 right here, and on the ceiling between us and the  
11 space above, but not on the walls that are just  
12 dirt behind them because it's unnecessary.

13 MR. MURPHY: Thank you. And can you  
14 show us on Exhibit 7 where the absorbent spray  
15 was applied?

16 MR. BERNEL: Yeah, it's shown as a  
17 symbol, this like little criss-crossy lines that  
18 go back and forth.

19 MR. MURPHY: And once again to confirm  
20 on Exhibit 8A, that is the spray foam.

21 MR. BERNEL: Correct, being installed,  
22 yes. And you can see it in 8B as well on the  
23 left side and on the ceiling.

24 MR. MURPHY: Thank you. Let's move to  
25 Exhibit 5.



1                   MR. BERNEL: Exhibit 5 I mentioned  
2 when I was talking about Exhibit 1. It's just  
3 the same type of sound absorbing panel. It just  
4 absorbs treble frequencies. And the other one  
5 absorbs bass frequencies.

6                   MR. MURPHY: And can you show us on  
7 Exhibit 7 where this material was applied?

8                   MR. BERNEL: It was this picture.  
9 It's the yellow, kind of the lighter color/yellow  
10 paneling. But this continues along the entire  
11 wall. This is mid-installation.

12                   This is the bass in the corner, and  
13 then this, the lighter one is the treble, because  
14 bass frequencies gather in corners. That's why  
15 that's there.

16                   MR. MURPHY: Thank you. And finally,  
17 Exhibit 6.

18                   MR. BERNEL: Exhibit 6 is the, it's  
19 basically like a big, thick rubber pad that was  
20 placed where any wall touched any ceiling or any  
21 wall touched any floor or any bar touched any  
22 floor.

23                   And it's to reduce any sort of  
24 vibrations that will transfer to the existing  
25 shell that was there before we started as well --

1 like, for example, when someone puts their drink  
2 down on the bar, this rubber padding should  
3 deflect that sound from transferring through the  
4 bar and through the floor into the wall.

5 Also, all of our chairs have rubber  
6 bottoms and our tables as well for this purpose  
7 so that there's no, like it's not loud when you  
8 drag chairs and stuff across the floor because  
9 that can also transfer into the wall.

10 MR. MURPHY: Thank you. Can you show  
11 us on Exhibit 7, please, where?

12 MR. BERNEL: It's really hard to see  
13 unfortunately. But it's above here right where  
14 the wall meets the ceiling and where the wall  
15 meets the floor. There's a note on both of them.

16 MR. MURPHY: Thank you. And when you  
17 showed this plan to the professional sound  
18 engineer --

19 CHAIR ANDERSON: Can you speak up,  
20 sir?

21 MR. MURPHY: When you showed this plan  
22 to the sound engineer, how would you describe his  
23 opinion of it?

24 MR. BERNEL: This plan was worked on  
25 with them and developed with them. So the

1 ultimate design was with their input.

2 MR. MURPHY: Thank you. Exhibit 8B,  
3 this is the entire room. Do you know what the  
4 dimensions are of the room?

5 MR. BERNEL: Yes, it's 30 feet by 15  
6 feet, 14 feet, sorry, 30 feet by 14 feet.

7 MR. MURPHY: Thank you. Exhibit 9,  
8 the photo of the exterior, the exit, can you  
9 describe where this is oriented, the orientation  
10 of this photograph?

11 MR. BERNEL: Yes, this stairway is  
12 parallel with North Capitol Street, yes.

13 MR. MURPHY: And can you describe what  
14 the silver poles are on the left?

15 MR. BERNEL: Oh, that's the supports  
16 for the tent that we have on our patio during the  
17 winter months from November through March. It's  
18 an enclosed summer garden.

19 MR. MURPHY: Great. And --

20 MR. BERNEL: -- café.

21 MR. MURPHY: -- given what you know  
22 and learned about sound, when this door opens,  
23 what's your opinion as to how much sound would be  
24 able to escape this enclosure?

25 MR. BERNEL: Well, minimal when the

1 door is closed, and when the door is opened, you  
2 will be able to hear things in the stairwell.  
3 However, the stairwell faces busy North Capitol  
4 Street and shouldn't be heard on any residential  
5 streets.

6 MR. MURPHY: And when the tent is in  
7 place, would that increase or decrease the amount  
8 of sound that could escape?

9 MR. BERNEL: Decrease.

10 MR. MURPHY: Okay. All in all, in  
11 your opinion, do you think that the basement will  
12 increase the amount of volume emanating from the  
13 building?

14 MR. BERNEL: No.

15 MR. MURPHY: All right. Thank you.  
16 All right. So I'd like to change subjects,  
17 moving on to the previous abutting owner. Her  
18 name was Ms. Debbie Multree. Did you know her?

19 MR. BERNEL: Sort of. We had  
20 communicated several times, yes. She was our  
21 neighbor.

22 MR. MURPHY: Were you ever inside her  
23 home?

24 MR. BERNEL: Yes.

25 MR. MURPHY: Do you recall the first

1 time?

2 MR. BERNEL: We turned on the stereo  
3 after we installed it at the pub to the loudest  
4 level that it would go, and she invited us in to  
5 listen to see if it was too loud.

6 MR. MURPHY: And what did you find?

7 MR. BERNEL: And we found that we  
8 could not hear any of the music. And both of us  
9 were satisfied with that result.

10 MR. MURPHY: Were you ever present at  
11 The Pub & The People when ABRA responded to a  
12 noise complaint by Ms. Multree?

13 MR. BERNEL: Yes.

14 MR. MURPHY: And can you describe for  
15 the Board what happened?

16 MR. BERNEL: According to the  
17 investigator that showed up, they went into her  
18 house while we were open, reported that noise  
19 levels were not heard, then came to the pub to  
20 tell us so.

21 MR. MURPHY: Do you know how Ms.  
22 Multree made a living?

23 MR. BERNEL: She owned a flower shop  
24 that went out of business.

25 MR. MURPHY: Do you know of anything

1 else that may have contributed to financial  
2 stress for Ms. Multree?

3 MR. BERNEL: She had health problems  
4 that I, that she mentioned.

5 MR. MURPHY: Do you know how much Ms.  
6 Multree paid for her home?

7 MR. BERNEL: 120-some thousand dollars  
8 I think, around the real, yeah, the tax database.

9 MR. MURPHY: And do you know how much  
10 she sold it for?

11 MR. BERNEL: 650-some thousand  
12 dollars.

13 MR. MURPHY: So it's been asserted by  
14 the protestants that Ms. Multree moved because of  
15 the pub. Do you think it's possible that  
16 financial stresses may have played a factor in  
17 her decision to sell her house?

18 MR. BERNEL: It's possible.

19 MR. POWELL: Can we object to that?

20 MS. LEWIS: Yeah.

21 CHAIR ANDERSON: Asked and answered.

22 You need to object when he asks the question --

23 (Simultaneous speaking.)

24 MR. POWELL: Well, see, I didn't know.

25 Last time --

1 MS. LEWIS: Yeah.

2 MR. POWELL: -- object, they told us  
3 we had to wait till they put it in evidence.

4 MS. LEWIS: Right, right.

5 CHAIR ANDERSON: I know you folks --  
6 maybe I'm a little old. Everybody watched Perry  
7 Mason. I mean, this is how it goes. The person  
8 asks the questions. You object asking him the  
9 question it's open, not when the person answers  
10 the question. You already lost your chance. So  
11 if --

12 MR. POWELL: Wish we had known that.

13 (Simultaneous speaking.)

14 CHAIR ANDERSON: This is what -- all  
15 right. The person is going to ask a question.  
16 Okay? And you ask a question. You said  
17 objection. I'm going to tell the witness not to  
18 respond until I tell the witness he can respond.  
19 So that's how it works.

20 So, if he asks a question, you can say  
21 objection. Then I will ask you the basis of the  
22 objection. And I will tell the witness not to  
23 respond once there's an objection. And then I  
24 will listen to the basis of your objection. And  
25 then I will make a ruling on the facts. Okay.

1 All right. So --

2 MR. POWELL: So don't you think we  
3 should have known that first, because now we've  
4 gotten to a point where --

5 CHAIR ANDERSON: Sir, I can't advise  
6 you how to run your case. I mean, the bottom  
7 line is that you, I tried to give you some  
8 guidance, but it's not my job to say you need to  
9 object. There are a lot of things I heard here  
10 that you could object to if you wanted to. But  
11 that's not my job to say so.

12 MR. POWELL: It was the process of  
13 objecting. We didn't know.

14 CHAIR ANDERSON: Sir, it's not my job  
15 to tell --

16 MR. POWELL: Got you. Okay.

17 CHAIR ANDERSON: I'm not trying to  
18 lecture you. But it can't be my job to tell you  
19 to object to certain things because I'm not  
20 trying to impose myself into the case.

21 MR. POWELL: I guess it was about when  
22 to object, because you did tell us with the  
23 exhibits --

24 CHAIR ANDERSON: The exhibits --

25 MR. POWELL: -- when we could object.



1 MS. LEWIS: Yeah, that's right.

2 CHAIR ANDERSON: You can object to the  
3 exhibits once he tries to move the exhibits into  
4 evidence.

5 So all we have had so far is testimony  
6 on the exhibits. They're not into evidence. He  
7 has to, when he's done, he has to say I want to  
8 move them into evidence. You can object. You  
9 can tell me why you want to object.

10 And then I will make a ruling if I  
11 agree with. If I disagree with you, I will say I  
12 overrule the objection and I'm going to move them  
13 into evidence, or I will sustain the objection  
14 and not.

15 But you have to give me a reason. You  
16 can't say, well, I object because I don't like  
17 them. You have to give me a reason why it is I  
18 should not move them into evidence.

19 MR. POWELL: But my point is I was  
20 using that same principle for the testimony. So  
21 once he said an answer, we were going to object.

22 CHAIR ANDERSON: Well, I'm sorry, sir.  
23 But I will say this. I know everyone in this  
24 room has watched a television show and they see  
25 how lawyers perform on TV. And everyone knows

1 that if someone says something, you object as  
2 soon as the lawyer asks the question not when the  
3 witness answers. That's elementary on TV. I  
4 will say that's one of the things that you'll see  
5 on TV that works here.

6 MR. POWELL: So I didn't know that.

7 CHAIR ANDERSON: All right --

8 MR. POWELL: I'm the exception. I'm  
9 the exception.

10 (Simultaneous speaking.)

11 CHAIR ANDERSON: -- watch on TV is the  
12 objection. The same way the lawyers object on TV  
13 you can object here.

14 MR. POWELL: Okay.

15 CHAIR ANDERSON: The other stuff I  
16 might say you can't follow TV. But the  
17 objection, that's when the person asks the  
18 question, if you, someone says object. But  
19 again, you need to tell me why you object. You  
20 can't say I object, because I'm going to say why  
21 do you object.

22 MR. POWELL: So do we get a do-over?

23 CHAIR ANDERSON: No.

24 (Laughter.)

25 CHAIR ANDERSON: Moving forward you'll

1 -- and remember, you are, you're still going to  
2 have an opportunity to cross examine him. So  
3 everything that he has said, he has made certain  
4 assumptions. He has testified to certain things.

5 You are going to cross examine him.  
6 So you can ask him how did you come to this  
7 conclusion. So, if you believe that you missed  
8 something, you'll have an opportunity to cross  
9 examine him and try to say to me, try to prove to  
10 me that everything that he said doesn't worth  
11 listening to. That's your job when you cross  
12 examine him.

13 Okay. So whatever the objections you  
14 have, whatever testimony that he had that you  
15 disagree with, you'll write them down. When you  
16 get the chance, you're going to ask him about it.  
17 You're going to ask him. You can ask him to  
18 prove everything that he said. You can ask him  
19 questions to prove everything that he just said.

20 MR. MUTNEJA: Got it.

21 CHAIR ANDERSON: Okay?

22 MR. MUTNEJA: Got it, sir.

23 CHAIR ANDERSON: All right. Go ahead,  
24 sir.

25 MR. MURPHY: Thank you. And I'll

1 happily state for the record that that was not  
2 comfortable for me. I know how that sounds.

3 CHAIR ANDERSON: Well, you don't need  
4 to -- sir, just ask questions --

5 MR. MURPHY: Yep.

6 CHAIR ANDERSON: -- of the witness.

7 MR. MURPHY: His opinion that it may  
8 have been a factor --

9 CHAIR ANDERSON: Sir, sir --

10 MR. MURPHY: Okay.

11 CHAIR ANDERSON: -- you're the lawyer  
12 asking the witness questions. Please ask the  
13 questions, sir.

14 MR. MURPHY: Changing subjects to the  
15 new owner of 4 R Street, Mr. Mutneja, have you  
16 observed any of the construction process that has  
17 occurred at 4 R Street since Mr. Mutneja bought  
18 the house that belonged to Ms. Multree?

19 MR. BERNEL: Yes, on a daily basis  
20 almost.

21 MR. MURPHY: What have you observed?

22 MR. BERNEL: I observed a empty  
23 building for several years with several stops  
24 orders. I also observed a Porta Potty on the  
25 front that abuts our property and makes our patio

1 smell like urine.

2 Just as I was leaving the pub today,  
3 it smelled like gasoline on the inside because  
4 they were running their generators on the inside  
5 of the building.

6 They built two stories on top of an  
7 existing lovely rowhouse turning it into a really  
8 big eyesore. Our building is only one story  
9 tall. And so there's a four-story building  
10 abutting us. And then next to him there's a  
11 three-story building. So it looks kind of like a  
12 big middle finger to the owner.

13 MR. MURPHY: Did you observe, have you  
14 observed the installation of anything in the home  
15 that may improve sound attenuation?

16 MR. BERNEL: Yes, I noticed that they  
17 had a spray insulation company come in and spray  
18 the abutting wall between us. I also noticed  
19 that the way that they did their structure was  
20 not tying into that shared party wall, the brick  
21 wall. So, likely, sound won't transfer from that  
22 wall to their floors or from their floors to that  
23 wall, which will help as well with sound.

24 MR. MURPHY: So, in your opinion, is  
25 it possible that the changes that have been made

1 already at 4 R Street may have changed the  
2 ability for sound to pass through the party wall?

3 MR. BERNEL: It's possible. We were  
4 trying to meet with him to put this into  
5 practice. But he routinely did not give us a  
6 time to meet or, hence our emails, or put us in  
7 contact with a sound person.

8 We were trying to avoid this because  
9 we're trying to open this place. But they keep  
10 dragging their heels. And now it's been almost a  
11 year of us trying to open a restaurant.

12 MR. MURPHY: Thank you, Nick. So, at  
13 this time, I would like to move to have Exhibits  
14 1 through 9 entered into evidence.

15 MS. LEWIS: We object.

16 CHAIR ANDERSON: What do you object  
17 to?

18 MS. LEWIS: We object to the fact that  
19 we do not see any type of bill of sale here. So  
20 we do know whether or not all of these  
21 construction materials were used.

22 On Exhibit No. 7, it's just a diagram  
23 stating what their plans were. But there's no,  
24 nothing, you know, that actually proves that it  
25 was executed.

1 MR. POWELL: Specifically, Exhibit 7,  
2 that that was the one given to DCRA for approval.  
3 So we don't know that that is actually what  
4 happened. That's a picture. But we don't -- I  
5 can draw that picture.

6 So we -- if this exhibit is to give  
7 evidence that this was done, we don't know that.  
8 There's no stamp. There's no approval. There's  
9 nothing on the architectural diagram.

10 MR. MUTNEJA: I have a few more  
11 questions on the objection.

12 (Simultaneous speaking.)

13 MR. MUTNEJA: I want to know if he's  
14 a licensed architect with --

15 CHAIR ANDERSON: Sir, hold on, hold  
16 on. All right --

17 MR. MUTNEJA: No, because the reason  
18 I'm asking is --

19 CHAIR ANDERSON: No, no. It's his  
20 witness. You have an opportunity to cross  
21 examine him. Whatever problem that you have with  
22 his qualifications, whatever problem that you  
23 have with his testimony, you have an opportunity  
24 to ask him about that. So you can ask him when  
25 it's your turn to cross examine him.

1                   So the witness has -- they have  
2 presented documents to me. I can't say whether  
3 or not it was done or not. But I don't have -- I  
4 mean, I, we have a witness testified to what the  
5 documents are. He identified the documents. And  
6 I don't see a reason why I'm not going to allow  
7 this to move into evidence --

8                   MS. LEWIS: He has a financial  
9 interest. He's the partner and owner of this  
10 establishment.

11                  CHAIR ANDERSON: Okay. And so what?  
12 I mean, they --

13                  MS. LEWIS: Conflict of interest.

14                  CHAIR ANDERSON: You can cross examine  
15 the, you can cross examine him over the  
16 documents. But the documents state what they  
17 are.

18                  I don't know whether or not they're in  
19 the building or not. I mean, there are a couple  
20 of them that they're showing that I assume it's  
21 the building. You can cross examine him about  
22 some of the pictures there to say whether or not  
23 this is -- I don't know if this is actually, like  
24 looking at Exhibit 8. I don't know if this is  
25 actually the inside of the building.



1                   You can ask him if that's, how do we  
2 know this is the inside of the building. You can  
3 look at Exhibit 9, and you can also ask him what  
4 they are.

5                   (Off mic comments.)

6                   CHAIR ANDERSON: So, I'm just, I'm  
7 saying at this juncture I'm going to admit  
8 Exhibits 1 through 9.

9                   (Whereupon, the above-referred to  
10 document were received into evidence  
11 as Protestant Exhibits 1 through 9.)

12                  CHAIR ANDERSON: Once, what you can  
13 do, however, in cross examine of the witness, you  
14 can go through the documents and you can cross  
15 examine him about his representation of what the  
16 documents stand for. Okay.?

17                  MS. LEWIS: Okay.

18                  CHAIR ANDERSON: All right. Do you  
19 have any other questions, Mr. Powell? Do you  
20 have any other questions for this witness?

21                  MS. CROCKETT: Mr. Murphy.

22                  CHAIR ANDERSON: I'm sorry. Mr. --  
23 I'm sorry. Mr. Murphy, do you have any other  
24 questions for this witness?

25                  MR. MURPHY: I have no further

1 questions for this witness.

2 CHAIR ANDERSON: All right. All  
3 right. I need to make sure that, because there's  
4 three protestants, you have an opportunity to ask  
5 questions. However, I don't need each of you to  
6 ask the witness the same questions. Okay. So  
7 listen to each other's questions and ask  
8 questions. So who wants to go first? Mr.  
9 Mutneja?

10 MR. MUTNEJA: Sure.

11 CHAIR ANDERSON: Yes, sir. Go ahead  
12 and ask questions of the witness. This is your  
13 chance to ask him about his testimony.

14 MR. MUTNEJA: Sure. First question,  
15 are you a licensed D.C. architect?

16 MR. BERNEL: No.

17 MR. MUTNEJA: And you designed the  
18 building?

19 MR. BERNEL: I did with the help of an  
20 architect at DBMC Architects.

21 MR. MUTNEJA: So did they stamp the  
22 drawings?

23 MR. BERNEL: Yes.

24 MR. MUTNEJA: And you were the  
25 drafter?

1 MR. BERNEL: Partly. I drafted most  
2 of it. And --

3 MR. MUTNEJA: Or did they do the work?

4 MR. BERNEL: They did some of the work  
5 --

6 MR. MUTNEJA: Do you have a contract  
7 showing that they did the work?

8 MR. BERNEL: Yeah.

9 MR. MUTNEJA: And how much did you pay  
10 them?

11 MR. BERNEL: I don't see how that's  
12 relevant.

13 (Simultaneous speaking.)

14 CHAIR ANDERSON: Hold on, sir. Hold  
15 on, hold on. It's the other side's job to ask,  
16 unless there is an objection, if he asks you a  
17 question, you need to answer.

18 MR. MURPHY: You can answer.

19 CHAIR ANDERSON: All right.

20 MR. BERNEL: Around \$7,000.

21 MR. MUTNEJA: To do all this, all  
22 architecting of the basement, sound insulation --

23 MR. BERNEL: Uh-huh.

24 MR. MUTNEJA: -- for doing all the  
25 drawings, \$7,000?

1 MR. BERNEL: Uh-huh.

2 MR. MUTNEJA: And you have the proof  
3 to show that.

4 MR. BERNEL: Yeah.

5 MR. MUTNEJA: Okay. Can you provide  
6 the proof after this --

7 MR. BERNEL: Sure.

8 MR. MUTNEJA: -- you know? Okay. So  
9 are you a licensed sound engineer?

10 MR. BERNEL: No.

11 MR. MUTNEJA: Okay. And you are  
12 designing all the sound thing also?

13 MR. BERNEL: No, two sound engineers  
14 that I worked with are, though.

15 MR. MUTNEJA: Did they -- you have an  
16 agreement with them I assume.

17 MR. BERNEL: A verbal agreement.

18 MR. MUTNEJA: Okay. Did you have  
19 anything in written form what they paid for this  
20 job?

21 MR. BERNEL: Maybe some emails.

22 MR. MUTNEJA: Were they paid money?

23 MR. BERNEL: No, materials.

24 MR. MUTNEJA: So you bought material  
25 or they designed this for you.

1           MR. BERNEL: We have extra materials  
2 after the job was finished that we gave to one of  
3 them as payment.

4           MR. MUTNEJA: So you paid them with  
5 material?

6           MR. BERNEL: With the sound  
7 attenuation materials. For the guy who owns a  
8 recording studio, he needed some, so I provided  
9 that to him for payment.

10          MR. MUTNEJA: So it doesn't add up.  
11 Neither you are a licensed architect, neither  
12 you're a sound engineer. You're designing  
13 everything. You are not even paying people for  
14 that. So that means I don't think, so they gave  
15 you very good information about the design. So I  
16 am assuming here that you did everything on your  
17 own and not them did it.

18          MR. BERNEL: That doesn't make sense.  
19 I just told you all the people I work with.

20          MR. MUTNEJA: Yeah, but without pay,  
21 nobody does the work for you.

22          CHAIR ANDERSON: Sir, you're not, you  
23 asked the question. I'm -- yeah, you're not  
24 testifying. You asked the question. He gave you  
25 an answer. I mean, this is -- I don't, I think

1 it's irrelevant how is it that he paid for it or  
2 what type of understanding that they have.  
3 That's not relevant.

4 MR. MUTNEJA: What I'm trying to  
5 establish is a non-licensed person did the work.

6 CHAIR ANDERSON: And then you ask him  
7 a question. You have asked him a question. And  
8 he said that he's not licensed. He said --

9 MR. MUTNEJA: Okay.

10 CHAIR ANDERSON: You've gotten your  
11 point.

12 MR. MUTNEJA: Okay.

13 CHAIR ANDERSON: If you have any other  
14 questions you want to ask him --

15 MR. MUTNEJA: Okay.

16 CHAIR ANDERSON: In closing, when, at  
17 the end of the case, if you want to make that as  
18 a part of your argument, yes. But you have asked  
19 him the question. He said he's not licensed.

20 You've made good points in asking  
21 questions. That's what you do. You ask  
22 questions. You don't argue with him. And you  
23 don't ask him whether or not it doesn't make  
24 sense that there was no payment. Different  
25 people have different arrangements how they pay

1 for work to occur.

2 MR. MUTNEJA: Okay.

3 CHAIR ANDERSON: It doesn't have to be  
4 cash --

5 MR. MUTNEJA: Got it. So, when you  
6 were designing the place, you knew that there is  
7 going to be a live entertainment band into the  
8 basement.

9 MR. BERNEL: Correct.

10 MR. MUTNEJA: What kind of capacity  
11 planning did you do? How much sound it will  
12 block? Can you give me the technical number for  
13 it?

14 MR. BERNEL: What's the technical  
15 number?

16 MR. MUTNEJA: Like how much decibels,  
17 if this is the sound, it will block to this  
18 level, and it will not block if the things go off  
19 of this level.

20 MR. BERNEL: What term would you like  
21 me to use, like an R-value or --

22 MR. MUTNEJA: R-value, what are the  
23 numbers?

24 MR. BERNEL: It's right on the  
25 spreadsheets that we provided.

1 MR. MUTNEJA: No, that's the material.

2 MR. BERNEL: Yeah --

3 MR. MUTNEJA: But I'm asking the  
4 capacity. So probably the way I'm asking is, so  
5 if one band is playing, there are three people  
6 playing, there are five people talking, you would  
7 approximately that this is the capacity of the  
8 sound which can come out of this basement. And I  
9 need to do the sound insulation based on this  
10 capacity.

11 So you were applying for some capacity  
12 that, oh, you cannot stop everything, correct? I  
13 mean, if there is a bomb there or something  
14 there, correct, you cannot stop the sound to go  
15 out, correct? I'm just saying a weird example  
16 here.

17 But I am saying whenever a sound  
18 engineer works, he's thinking this is the  
19 capacity of the sound which should go out which  
20 can come out of this place. And I will put the  
21 insulation according to this capacity.

22 MR. BERNEL: Okay. We had no  
23 obligation to do any of this. But we did it on  
24 purpose for your neighbors.

25 MR. MUTNEJA: Thank you, thank you.



1 MR. BERNEL: For you.

2 MR. MUTNEJA: I just want to know  
3 there was no capacity planning done.

4 MR. BERNEL: Just let's get that out  
5 of the way. We didn't have to do any of this.

6 MR. MUTNEJA: Thank you.

7 MR. BERNEL: We did it because we are  
8 concerned --

9 MR. MUTNEJA: I know, I know. You are  
10 good neighbors. Thank you.

11 CHAIR ANDERSON: Listen, sir, listen.  
12 You asked a question. Let him answer a question.  
13 And then you move on.

14 MR. MUTNEJA: So --

15 MR. BERNEL: All those spec sheets  
16 that I provided show you how many R-value for  
17 each --

18 MR. MUTNEJA: Those are for the  
19 material. I am saying how much anticipated sound  
20 you are trying to get out of that. How much are  
21 you planning for?

22 MR. BERNEL: I don't know what to tell  
23 you.

24 MR. MUTNEJA: Okay.

25 MR. BERNEL: Do you want to hear like

1 how many decibels --

2 MR. MUTNEJA: Okay. Forget about it.

3 So whether --

4 CHAIR ANDERSON: Listen, listen.

5 Well, go ahead.

6 MR. MUTNEJA: Together -- so I  
7 understand no capacity planning was done. So  
8 together with all the insulation material which  
9 you have put in, how much sound it can block --

10 MR. BERNEL: In decibels?

11 MR. MUTNEJA: -- R-value? Yeah, in  
12 decibels.

13 MR. BERNEL: I don't know.

14 MR. MUTNEJA: So, but you used all the  
15 material for, which are the values, correct?

16 MR. BERNEL: Pardon?

17 MR. MUTNEJA: You used all the  
18 material which had the R-values, where it says it  
19 can block this much kind of sound.

20 MR. BERNEL: Correct.

21 MR. MUTNEJA: So you don't know how  
22 much total it can block?

23 MR. BERNEL: Well, I haven't done a  
24 calculation.

25 MR. MUTNEJA: You are not doing the

1 calculation. Okay.

2 MR. BERNEL: We were trying to meet  
3 with you so that we could do that and see if you  
4 --

5 MR. MUTNEJA: No, this, you are saying  
6 you did it like one year back.

7 MR. BERNEL: Right --

8 MR. MUTNEJA: Did you try to contact  
9 me one year back?

10 MR. BERNEL: Yeah, we actually met  
11 with some representative of yours at the pub when  
12 you guys were just starting to build --

13 MR. MUTNEJA: Okay.

14 MR. BERNEL: -- and recommended to you  
15 all that since it's a shared wall --

16 MR. MUTNEJA: Only meeting I know  
17 whatever has happened is, which is about buying  
18 the pub place so that I can build there, but  
19 nothing to do with sound.

20 MR. BERNEL: Yeah, we talked about it  
21 with the guy. It wasn't you that showed up --

22 MR. MUTNEJA: Yeah, it was not --  
23 yeah.

24 MR. BERNEL: So it was some sort of  
25 representative of yours.

1 MS. CROCKETT: Hi, I'm the Board. And  
2 you all are having a conversation amongst  
3 yourselves.

4 MR. MUTNEJA: Okay. Got it. Okay.  
5 So I don't think, so I was attempted to contact  
6 ever or at least one year back.

7 MR. BERNEL: I know we contacted you  
8 about sound.

9 MR. MUTNEJA: Regarding sound?

10 MR. BERNEL: Um-hmm.

11 MR. MUTNEJA: Okay. Please provide  
12 proof if you can.

13 So, now talking about the sound, you  
14 are saying the party wall, which is, may bring to  
15 my property, the common wall, there was no  
16 insulation done on it just to create more vacuum  
17 there. Is that right --

18 MR. BERNEL: I --

19 MR. MUTNEJA: -- so that it will not  
20 send the sound on the other side?

21 MR. BERNEL: Correct. In order to  
22 isolate two spaces, what you need is density and  
23 space.

24 MR. MUTNEJA: Okay. So, within that  
25 density, you don't put any kind of insulation?

1 MR. BERNEL: Well, the brick wall  
2 provides some density. However, we used spray  
3 insulation because brick walls are old and they  
4 have cracks and stuff in them. And the spray  
5 insulation --

6 MR. MUTNEJA: Yes, spray is needed by  
7 --

8 (Simultaneous speaking.)

9 MR. MUTNEJA: But was there any sound  
10 insulation done?

11 CHAIR ANDERSON: -- let him finish  
12 before you start. You asked him a question.  
13 When he's done, then you can move on.

14 MR. MUTNEJA: Okay.

15 MR. BERNEL: Right. So we did use the  
16 brick wall as some of the density. Then we used  
17 spray insulation to fill in the gaps plus. And  
18 then there's air space. And then there is two  
19 layers of plywood for added density.

20 MR. MUTNEJA: Okay. But was there any  
21 R kind of material, the sound insulation material  
22 used between those, instead of one drywall, one  
23 plywood, one of the R material walls or whatever  
24 the material you have provided?

25 MR. BERNEL: Oh, yeah, the six inches

1 of the spray insulation will do both sound  
2 insulation and sound absorption.

3 MR. MUTNEJA: So what I'm trying to  
4 get to is you used those material on the other  
5 three walls.

6 MR. BERNEL: Um-hmm.

7 MR. MUTNEJA: And why was it not used  
8 on this wall --

9 MR. BERNEL: Because --

10 MR. MUTNEJA: -- which was especially  
11 a party wall? I know you understand trying to  
12 make a big gap between the two. But why not to  
13 insulate it as well?

14 MR. BERNEL: Because there's enough  
15 surface area on the other three walls to absorb  
16 the sound necessary. And the space between me  
17 and you, I wanted to block the sound not absorb  
18 it.

19 MR. MUTNEJA: Okay. So the sound  
20 material generally blocks it or absorbs it?

21 MR. BERNEL: The density, like I just  
22 described, the density air space and insulation  
23 that we installed and the brick wall work in a  
24 system so that sound is separated from our space  
25 and yours.

1 MR. MUTNEJA: Okay.

2 MR. BERNEL: And then you have some  
3 spray insulation on your side as well --

4 MR. MUTNEJA: Of course. That, we  
5 have to do it, yeah.

6 MR. BERNEL: Right.

7 MR. MUTNEJA: Okay. So was there any  
8 kind of break into the slab done so that the  
9 vibration does not travel through the slab on the  
10 other side of the building?

11 MR. BERNEL: No, the slab goes into a  
12 footing that is in soil. And your basement  
13 starts five feet above that.

14 MR. MUTNEJA: Okay.

15 MR. BERNEL: This is your basement  
16 floor. This is our floor.

17 MR. MUTNEJA: Okay.

18 MR. BERNEL: This is all dirt. So  
19 this --

20 MR. MUTNEJA: Okay.

21 MR. BERNEL: -- will absorb your --

22 MR. MUTNEJA: So you're saying that  
23 both the slabs are not going to connect at all?

24 MR. BERNEL: Correct.

25 MR. MUTNEJA: Okay. So, after all the

1 sound work was done and the insulation was done,  
2 was there any sound test performed?

3 MR. BERNEL: No, we've been trying to,  
4 though, with you.

5 MR. MUTNEJA: Okay. Was there any  
6 sound company contacted to do the sound test,  
7 independent sound company to do the sound test?

8 MR. BERNEL: No.

9 MR. MUTNEJA: Okay.

10 MR. BERNEL: But didn't you contact  
11 somebody? You contacted somebody.

12 MR. MUTNEJA: I did provide that sound  
13 company that you can use this sound company --

14 MR. BERNEL: Right. So yes --

15 MR. MUTNEJA: -- where you can ask  
16 them to do some test from my neighboring property  
17 and figure out how much is the material being  
18 used, what sound material was used, what kind of  
19 capacity planning was done, and how much it is  
20 blocking the sound, basically the test.

21 MR. BERNEL: Right. So I guess the  
22 answer is yes. You contacted them --

23 MR. MUTNEJA: But no test was  
24 performed and nothing was, it did not work out,  
25 correct?



1 MR. BERNEL: Right. We were supposed  
2 to do that with you before 11:00 a.m. --

3 MR. MUTNEJA: You need to do it with  
4 the sound company not with me. I am not a  
5 licensed person to deal with sound.

6 MR. BERNEL: It was your guy, though.

7 MR. MUTNEJA: Yeah, I gave the sound  
8 company contact information.

9 MR. BERNEL: Right.

10 MR. MUTNEJA: Okay. So, when you were  
11 designing this place, did you consider anything  
12 about the smell also?

13 MR. BERNEL: No, because we were  
14 adding a basement. That's the whole point of  
15 this --

16 MR. MUTNEJA: No, the kitchen -- so  
17 you were only worried about the basement. At  
18 that point also your level is at one level. And  
19 current building was also three level.

20 MR. BERNEL: What's that?

21 MR. MUTNEJA: Current building, my  
22 building is three level, and your building is one  
23 level. So the chimney is only limited to one  
24 level, correct?

25 MR. BERNEL: It actually goes out the

1 back. So now our chimney is next to a building  
2 that you made. Before there was no building back  
3 there.

4 MR. MUTNEJA: No, no, but it's three,  
5 it was a three-story house before also.

6 MR. BERNEL: Right, but we had  
7 clearance, the necessary clearance for our  
8 chimney --

9 MR. MUTNEJA: Clearance is there, but  
10 --

11 CHAIR ANDERSON: All right. I'm going  
12 to object to -- all right. The purpose of this  
13 hearing is that they're asking us for a  
14 substantial change. And the substantial change  
15 is not the kitchen. The substantial change is  
16 the occupancy. They want to --

17 MR. MUTNEJA: Okay.

18 CHAIR ANDERSON: They want to utilize  
19 a new space in the basement for entertainment,  
20 and they want to increase the occupancy upstairs.

21 There is no relevancy between, unless  
22 you're going to cook in a kitchen in the  
23 basement. Is cooking going to be in the  
24 basement?

25 MR. BERNEL: No.

1 CHAIR ANDERSON: If there's no cooking  
2 in the basement, then this is not relevant for  
3 this hearing because this is, the purpose of this  
4 hearing is substantial change to change the  
5 occupancy.

6 If we were talking about them being  
7 able to make changes to the kitchen, maybe we can  
8 have some other, we can have testimony about the  
9 smell.

10 But, for this hearing, that's not a  
11 relevant area of inquiry. So I'm not going to  
12 allow questions about a scent because it's not  
13 relevant to the purpose that we're here today.

14 MR. MUTNEJA: Got it. I have one  
15 question just to say how it is at 11 --

16 CHAIR ANDERSON: You tell me why --

17 MR. MUTNEJA: Okay. I tell you that  
18 11 --

19 CHAIR ANDERSON: -- tell me why it's  
20 relevant so I can --

21 MR. MUTNEJA: Sure.

22 CHAIR ANDERSON: Yes, sir.

23 MR. MUTNEJA: So there is only one  
24 kitchen into the restaurant. If you are  
25 increasing the occupancy from 80 to 168, I am

1 assuming all the people would be using the same  
2 kitchen, and the kitchen would be producing more  
3 food now, which will increase the smell to double  
4 I would assume if there are 180, you know, 160  
5 people coming in there instead of coming, 80  
6 people coming in there.

7 CHAIR ANDERSON: But, again, but I  
8 don't understand why that -- I can't order him.  
9 I don't believe that the ABC Board -- ABC Board  
10 doesn't have any expertise in chimneys. All  
11 right.

12 So I don't see how I could issue an  
13 order telling him that he needs to build a  
14 chimney from his kitchen above your building.  
15 That's not part of the expertise here.

16 And from what I'm hearing, sir, if I'm  
17 incorrect, please tell me so, from what I'm  
18 hearing that you are expanding, you're  
19 heightening your building.

20 So, if you're heightening your, you're  
21 undergoing construction and if you have  
22 heightened your building, I don't see how is it  
23 that I should, even if I had the authority to, I  
24 don't see how I would order someone to lessen his  
25 chimney if you're the one who's making your

1 building higher.

2 So, because you're making your  
3 building higher, you're asking him to, you're  
4 asking your neighbor to make changes to this  
5 chimney because you have changed your building.

6 MR. MUTNEJA: Okay. So --

7 CHAIR ANDERSON: But I'm just saying  
8 that's not, but I'm saying the, that's not  
9 something -- the Board doesn't have the expertise  
10 to say whether or not that's even appropriate.  
11 That's not something that I can order.

12 MR. MUTNEJA: So one of the things  
13 which I think I learned about our part was  
14 affecting the property value. And this is how I  
15 am tying it up, that this is affecting -- the two  
16 things which affect my property value is, one, is  
17 the live entertainment and I'm sharing a wall  
18 with that.

19 CHAIR ANDERSON: Okay. So ask about  
20 live entertainment --

21 MR. MUTNEJA: And second thing is if  
22 you have smell coming out of it, it will affect  
23 my property value.

24 CHAIR ANDERSON: But, sir, and, sir,  
25 this is what I just heard. Okay. This is what I

1 just heard. And I'm not sure if this is -- and  
2 this is unsubstantiated.

3 From what I was told, the previous --  
4 and I don't know where this information came  
5 from. But at least it's in the evidence I heard  
6 so far. The previous owner bought the property  
7 for 125 and sold it for \$600,000. I don't, and I  
8 don't know whether or not that's true or not.  
9 But that's the testimony that I've heard.

10 So, if I've heard the property value  
11 increased between the last person and you, the  
12 last person who bought the property, their  
13 property value went up \$500,000 for whatever  
14 reason.

15 So I'm not quite sure now how we can,  
16 you can argue that your property value is going  
17 to be diminished based on at least what was just  
18 placed. And you're saying your property value is  
19 going to be diminished because of the smell at  
20 the restaurant.

21 The restaurant, I assume the  
22 restaurant was there before you bought the  
23 property. I assume the property was there and  
24 whatever smell was there, and the price of the,  
25 the price went up \$500,000.

1           So I think maybe if you want to talk  
2 about, I think it's a better argument to talk  
3 about having more capacity. But I don't think  
4 the smell test is going to work for me, sir. So  
5 let's move on from the smell test on the chimney.

6           MR. POWELL: Just to be clear, is  
7 there no other testimony about the smell, because  
8 there -- are you --

9           CHAIR ANDERSON: We can talk, well --

10          MR. POWELL: -- prohibiting that,  
11 because that is relevant to future discussions?

12          CHAIR ANDERSON: Well, I heard about  
13 the chimney. That's what we were talking about.

14          MR. POWELL: Yes.

15          CHAIR ANDERSON: I mean, I think one  
16 of the things that we have to realize, if you  
17 live next to a restaurant, there is going to be a  
18 smell. I mean, maybe there are things that one  
19 can do to mitigate the smell.

20                 And I don't know how you can. I don't  
21 know that. I'll tell you, I live in a bedroom  
22 community. And I truthfully live in a bedroom  
23 community for specific reasons because that's my  
24 choice.

25                 But, so I'm not quite sure what

1 mitigation one can use for smell. Okay. I don't  
2 know. Yes, sir.

3 MR. MUTNEJA: So what we can mitigated  
4 and this is what we have been asking, to extend a  
5 chimney, like a flute kind of thing on top so  
6 that it goes up from at least two, three level up  
7 so that it can put that, you know, the smell into  
8 the air up rather than at the building level.

9 CHAIR ANDERSON: But let me ask you a  
10 question, sir --

11 MR. MUTNEJA: You know, at this moment  
12 --

13 CHAIR ANDERSON: -- prior to the,  
14 prior to you adding two stories to your building,  
15 was the chimney above or below the other  
16 property?

17 MR. MUTNEJA: Below.

18 MR. POWELL: Below.

19 MR. BERNEL: That's not true.

20 MR. POWELL: Yes, it is.

21 MR. MUTNEJA: Yeah, my building was  
22 three level building. And your building is one  
23 level building. So it has to be below.

24 MR. BERNEL: Your, the end, the back  
25 of your building ended before our chimney starts.



1 MR. MUTNEJA: It's not about end.

2 MR. BERNEL: So --

3 MR. MUTNEJA: The building --

4 CHAIR ANDERSON: All right. So, all  
5 right. There is some dispute there.

6 I mean, I'm not, I can't entertain it.  
7 I can't entertain. If you want to talk about  
8 general, I mean, there is going to be smell with  
9 living next to a restaurant. But I can't  
10 entertain that we need to tell him to order, to  
11 build a chimney.

12 I don't know whether or not that will  
13 even work. And I don't think the ABC Board has  
14 jurisdiction to do that.

15 And as I've said before, that is  
16 something that you guys could have negotiated.  
17 And if you agree to do that, you put it in a  
18 settlement agreement to say this is what you're  
19 going to do.

20 But that's not something that this  
21 Board will be able to -- the Board can order  
22 sound mitigation. But I'm not quite sure if the  
23 Board can order smell mitigation.

24 That's not something -- I know that  
25 the Board has ordered, if there's sound, we can

1 order sound mitigation. And we can order the  
2 other party to do certain things to make sure  
3 that as, you know, the law is that no sound  
4 mitigates from inside the property into another  
5 person's home.

6 You always have that option where if  
7 a tenant is living next door or someone living  
8 next door, if you're hearing sound, that's a  
9 violation always because you can't. So you do  
10 have -- and we can order sound mitigation.

11 It appears that they have done some  
12 sound mitigation. I don't know whether or not  
13 that's effective or not. I don't know.

14 But from what I'm hearing, and I don't  
15 understand why this was not done, because if we  
16 have two buildings, two people are constructing a  
17 building from -- two people are constructing a  
18 building. They're next door to each other.

19 I don't understand why they can't,  
20 they individually, since you're constructing a  
21 building, that both people install sound  
22 mitigation in their buildings because it's new  
23 construction.

24 This is not -- it doesn't appear to me  
25 that this is, one, you have an existing building,

1 and a new person is building something new. Both  
2 parties appear, it appears both parties are  
3 building at the same time. So both parties I  
4 would assume can install sound mitigation inside  
5 their buildings because they're both, these are  
6 both new construction.

7 So you can ask questions about it.  
8 But I'm not quite sure how far we can go about  
9 mitigating the scent, sir. I'm not sure what --

10 MR. SHORT: I've got some information  
11 that you need to have.

12 CHAIR ANDERSON: I think --

13 MR. SHORT: Please, Mr. Chair.

14 CHAIR ANDERSON: All right. Let me  
15 take, let's take a ten-minute break. Okay.  
16 We'll -- well, no, I can't. He's testifying. I  
17 need to finish. He has to -- I have to -- he has  
18 to finish, Mr. -- all right. All right.

19 MR. MUTNEJA: So were you able to talk  
20 to Ms. Debbie about the financial stress she is  
21 going through?

22 MR. BERNEL: No.

23 MR. MUTNEJA: Okay. When did you last  
24 talk to Ms. Debbie?

25 MR. BERNEL: I don't know.

1 MR. MUTNEJA: Okay. So how long did  
2 it take for the value to go up from 120,000 to  
3 650,000?

4 MR. BERNEL: I don't know.

5 MR. MUTNEJA: Okay. Can you confirm  
6 that there will be no live entertainment since  
7 you are saying the basement will be the only one  
8 which is sound insulated? Is your upper level  
9 sound insulated as well?

10 MR. BERNEL: Yes, there's sound  
11 insulation on the ceiling that absorbs music and  
12 sound.

13 MR. MUTNEJA: That's in the basement  
14 ceiling. But anything on the --

15 MR. BERNEL: Yeah.

16 MR. MUTNEJA: -- upper level also?

17 MR. BERNEL: Upper level ceiling, too.

18 MR. MUTNEJA: Upper level ceiling.

19 But anything around the walls?

20 MR. BERNEL: No, it's brick walls.

21 MR. MUTNEJA: Brick wall. So no -- is  
22 the main level soundproofed?

23 MR. BERNEL: Yes.

24 MR. MUTNEJA: Do you have any  
25 specification what material was used to do the

1 soundproofing?

2 MR. BERNEL: It's the same spray  
3 insulation soundproofing that I provided in the  
4 spec.

5 MR. MUTNEJA: It's spray insulation,  
6 all the, all Exhibit 1. Spray insulation is just  
7 one exhibit. Did you use all the 1 through 8  
8 exhibit on the first level also?

9 MR. BERNEL: No.

10 MR. MUTNEJA: Okay. So it's just the  
11 spray insulation on the first level. But none of  
12 the Exhibit 1 through 8 was used on the first  
13 level.

14 MR. BERNEL: Well, yeah, some of 1  
15 through 8 has been used on the first level.

16 MR. MUTNEJA: Which?

17 MR. BERNEL: On the ceiling of the  
18 main level, there is spray insulation.

19 MR. MUTNEJA: Other than spray  
20 insulation, was anything else used?

21 MR. BERNEL: No.

22 MR. MUTNEJA: Okay. Do you plan to  
23 have live entertainment at the first level also?

24 MR. BERNEL: We plan on putting the  
25 live entertainment in the basement. That's the

1 point of the basement.

2 MR. MUTNEJA: Will there be any on the  
3 main level also?

4 MR. BERNEL: We were willing to  
5 concede to that. But since we are here, no,  
6 there might be, yeah, if we want.

7 MR. MUTNEJA: Okay. So we are here,  
8 we are saying that you'll have live entertainment  
9 at main level also, and the only sound insulation  
10 which you have there is the spray insulation.

11 MR. BERNEL: Our plan is to put the  
12 live entertainment in the basement.

13 MR. MUTNEJA: Can you write to that,  
14 that it will not be used, live entertainment will  
15 not be done on the first level?

16 MR. BERNEL: We're not giving up the  
17 opportunity to be able to do live music upstairs.  
18 We already tried that, and you guys didn't agree  
19 to it.

20 MR. MUTNEJA: Okay. That's it.

21 MS. LEWIS: Are you finished? Okay.  
22 Did you speak to Ms. Multree and ask her why she  
23 moved?

24 CHAIR ANDERSON: Objection. We've  
25 been to that -- he said that, he said he didn't.

1 So remember what I said to you.

2 MS. LEWIS: Okay.

3 CHAIR ANDERSON: I don't -- I'm not  
4 asking -- don't ask the same questions. He  
5 already asked --

6 MS. LEWIS: Okay.

7 CHAIR ANDERSON: -- her about if she  
8 had conversations with her about her financial  
9 stress. So let's move on from there. Ask  
10 different questions, not just saying why did the  
11 lady move. And I don't think it's relevant at  
12 this juncture because we already had testimony.  
13 One of the reasons --

14 MS. LEWIS: While --

15 CHAIR ANDERSON: -- I can't have three  
16 people ask the same, because this is somewhat  
17 unusual. We have three protestants. And I can't  
18 have the three protestants ask the same  
19 questions. And I said that at the beginning.  
20 Okay.

21 MR. POWELL: Can we address the same  
22 topic but different questions?

23 CHAIR ANDERSON: Not why she moved.

24 MR. POWELL: Okay.

25 MS. LEWIS: Okay. Has Ms. Multree

1 contacted you via text about any concerns for the  
2 pub, like noise issues?

3 MR. BERNEL: When? Ever?

4 MS. LEWIS: When she living there.

5 MR. BERNEL: Yes.

6 MS. LEWIS: About how many times were  
7 you contacted by Ms. Multree?

8 MR. BERNEL: I don't know.

9 MS. LEWIS: Can you give an  
10 approximate number of times?

11 MR. BERNEL: A handful, a dozen. I  
12 don't know.

13 MS. LEWIS: So maybe a dozen, maybe 12  
14 times.

15 MR. BERNEL: I said I didn't know.  
16 That was a guess.

17 MS. LEWIS: So did she complain to you  
18 about noise coming from the establishment?

19 MR. BERNEL: Sometimes.

20 MS. LEWIS: Did she complain to you  
21 about smells coming from the establishment?

22 MR. BERNEL: Maybe, possibly. I don't  
23 remember.

24 MS. LEWIS: Did she complain to you  
25 about sounds coming from mechanical devices from



1 operating within the pub?

2 MR. BERNEL: What are mechanical  
3 devices?

4 MS. LEWIS: Like engine sounds or  
5 something of the sort.

6 MR. BERNEL: No.

7 MS. LEWIS: No? Yeah, motorcycles.

8 MR. BERNEL: Motorcycles? Yeah, she  
9 did. And then, so we didn't do that anymore,  
10 years ago.

11 MS. LEWIS: Chairs and tables dragging  
12 across the floor of the pub.

13 MR. BERNEL: She did at the beginning,  
14 yes. And then we stopped doing that.

15 MS. LEWIS: Okay. Can you give me  
16 more information about this concept of the room  
17 within a room for the subterranean space?

18 So the soundproofing that you did on  
19 the wall with all of the insulation materials  
20 that you've used here, is that space in itself  
21 the room within a room? Or is there going to be  
22 another room that's built where the live band  
23 will be playing?

24 MR. BERNEL: You've been to the  
25 finished space.

1 MS. LEWIS: I've been there. I'm  
2 asking you a question.

3 MR. BERNEL: I don't -- what was the  
4 question? Is that the finished product? Yes.

5 MS. LEWIS: Can you please give me  
6 more information about this room within a room  
7 concept? Are the building materials that you've  
8 used here, the foam, the insulation, the green  
9 thing, against the wall from which the abutting  
10 property owner is --

11 MR. BERNEL: Correct.

12 MS. LEWIS: -- what I'm asking is --  
13 and now when I went there, I just saw shelves  
14 that looks like a bar going across the wall. I  
15 could not see what was behind the wall.

16 MR. BERNEL: Right.

17 MS. LEWIS: I do not know whether or  
18 not the entire wall was covered. Is the entire,  
19 was the entire wall covered?

20 MR. BERNEL: With what?

21 MS. LEWIS: With the insulation  
22 materials --

23 MR. BERNEL: Yeah, it's in the photo.

24 MS. LEWIS: -- the soundproofing  
25 materials.

1 MR. BERNEL: It's in the photo in the  
2 exhibits.

3 MS. LEWIS: Well, we only saw a  
4 portion being implemented but not the entire  
5 wall. So --

6 MR. BERNEL: Well, there's an entire  
7 long photo, Exhibit 8B, that shows the entire  
8 space. And the space that's covered up is shown  
9 by Exhibit 8A.

10 MS. LEWIS: Okay. I can't really tell  
11 from this picture.

12 So how does this room within a room  
13 work? I mean, you have those insulation  
14 materials there. But is the live band just going  
15 to be on the inside space, because when I came  
16 there there's a bar there? So I can't, I have no  
17 concept of how this whole operation is going to  
18 work. Where will the live band play?

19 MR. BERNEL: I don't know yet.  
20 Probably in the northeast, northwest corner or  
21 maybe the northeast corner. We haven't been able  
22 to use it yet. So I'm not sure.

23 MS. LEWIS: So there's not going to be  
24 another room, just the insulation against the  
25 walls that you explained?

1 MR. BERNEL: I don't know why putting  
2 a live band in another room would help anyway.  
3 No one would hear it.

4 MS. LEWIS: Because you said a room  
5 within a room.

6 MR. BERNEL: Right.

7 MS. LEWIS: So it confuses me about  
8 this, having this room within a room.

9 MR. BERNEL: Okay. So the floor when  
10 the basement, we didn't develop the basement. It  
11 was just brick and concrete walls and ceiling  
12 joists, floor joists, and then more brick walls  
13 around. That was it. So that's the first room.

14 And what we built was another room  
15 smaller than that inside of that space that  
16 doesn't touch the outer room as much as possible  
17 so that the sound is isolated within that smaller  
18 space.

19 MS. LEWIS: Okay. I have no further  
20 questions.

21 CHAIR ANDERSON: Do you have any  
22 questions, Mr. Powell?

23 MR. POWELL: I do. Thank you. I have  
24 a couple questions. I'll start with some basics.

25 Your previous neighbor, Debbie, how

1 old is she?

2 MR. BERNEL: I don't know.

3 MR. POWELL: When is her birthday?

4 MR. BERNEL: I don't know.

5 MR. POWELL: Where is she from?

6 MR. BERNEL: I don't know.

7 MR. POWELL: So you don't know the  
8 basics about her. But do you know why she would  
9 reveal to you that she was having financial  
10 problems?

11 MR. BERNEL: Is that a question? I  
12 don't know.

13 MR. POWELL: Yeah. Did she, in fact,  
14 reveal to you that she had financial problems?

15 MR. BERNEL: No.

16 MR. POWELL: Okay. So was your  
17 statement based on fact or speculation?

18 MR. BERNEL: Speculation.

19 MR. POWELL: Okay. So you're  
20 speculating that she moved because of financial  
21 problems not because of noise issues and the  
22 things that we've described. Is that your  
23 testimony?

24 MR. BERNEL: Correct.

25 MR. MURPHY: Objection. That's

1 actually not what he said. He said it may have  
2 been a factor, not because.

3 CHAIR ANDERSON: All right. All  
4 right. I'll overrule an objection. Let's move  
5 on.

6 MR. POWELL: Okay. That's what I  
7 wanted to know. A couple things, is there going  
8 to be a bathroom downstairs?

9 CHAIR ANDERSON: A what?

10 MR. POWELL: A bathroom.

11 MR. BERNEL: There are two bathrooms.

12 MR. POWELL: Is there going to be a  
13 bathroom downstairs?

14 MR. BERNEL: There are two bathrooms  
15 downstairs.

16 MR. POWELL: Two bathrooms in the  
17 downstairs?

18 MR. BERNEL: Yes.

19 MR. POWELL: Okay. And the only way  
20 in and out is from that stairwell?

21 MR. BERNEL: There is one way --

22 MR. POWELL: For patrons.

23 MR. BERNEL: Correct, yes, through the  
24 stairwell.

25 MR. POWELL: Okay. How many bathrooms

1 are upstairs?

2 MR. BERNEL: Two bathrooms upstairs.

3 MR. POWELL: Is that one male, one  
4 female?

5 MR. BERNEL: No, they're single sex,  
6 whatever.

7 MR. POWELL: Is it, for all the  
8 bathrooms, is it for one person only, or is there  
9 like two urinals or two stalls, or what's the --

10 MR. BERNEL: One bathroom, one toilet  
11 per bathroom.

12 MR. POWELL: So, from the four  
13 bathrooms, that would hold four people.

14 MR. BERNEL: Correct.

15 MR. POWELL: Okay. If one person  
16 went, which we told. Okay. You mentioned that  
17 there was an abutting wall next to, with 4 R  
18 Street, N.W. Is that correct?

19 MR. BERNEL: Correct.

20 MR. POWELL: Is there an abutting wall  
21 in the rear of the property? Do you abut the  
22 building in the rear?

23 MR. BERNEL: No.

24 MR. POWELL: Okay. So, if someone  
25 wrote a letter saying that they were an abutting

1 property to the rear of the pub but never heard  
2 any noise, that would not be accurate.

3 MR. BERNEL: Correct. We don't abut  
4 anything to the rear.

5 MR. POWELL: Okay. So, if someone  
6 wrote a letter saying I lived here for seven  
7 years, we abutted the rear of the property, and I  
8 never heard any noise, that wouldn't be accurate  
9 because they don't actually abut.

10 CHAIR ANDERSON: All right. Let --

11 MR. BERNEL: Yes.

12 CHAIR ANDERSON: Hold on. I'm going  
13 to object to that question. There's only one  
14 abutting property owner here. And so let's not  
15 speculate about someone. So I'm not sure how  
16 many --

17 MR. POWELL: There is a letter that  
18 says that.

19 CHAIR ANDERSON: But it's not into  
20 evidence. So all we have, we have one protestant  
21 who is protesting this property as the abutting  
22 property owner.

23 MR. POWELL: Okay.

24 CHAIR ANDERSON: And so, and I have  
25 not heard that. So, therefore, we can't



1 speculate. So we're speculating.

2 MR. POWELL: Okay.

3 CHAIR ANDERSON: And I'm not going to  
4 deal and speculate about some alleged letter  
5 that's not in evidence --

6 MR. POWELL: Okay.

7 CHAIR ANDERSON: -- and that I've had  
8 no testimony on.

9 MR. POWELL: Noted. You stated that  
10 the chairs and the tables have rubber bottoms.  
11 Is that downstairs or upstairs?

12 CHAIR ANDERSON: Downstairs.

13 MR. POWELL: What about the ones  
14 upstairs?

15 CHAIR ANDERSON: We're not applying  
16 for anything upstairs.

17 MR. POWELL: Just do the chairs  
18 upstairs have, and tables have rubber bottoms?

19 MR. BERNEL: The tables do, the tables  
20 do and the chairs don't.

21 MR. POWELL: Okay. Have you  
22 historically had any complaints on the upstairs  
23 about the movement of furniture?

24 MR. BERNEL: Yes.

25 MR. POWELL: Okay. I just want to

1 confirm, on the adjoining wall upstairs, is that  
2 an exposed brick wall?

3 MR. BERNEL: Yes.

4 MR. POWELL: Is there any insulation  
5 on that exposed brick wall?

6 MR. BERNEL: No.

7 MR. POWELL: So, if I'm, if one is on  
8 the other side of that wall, they could probably  
9 hear sounds within the next property.

10 MR. BERNEL: I don't know.

11 MR. POWELL: Okay. But the insulation  
12 that's done downstairs was not done upstairs.

13 MR. BERNEL: Actually, I do know. I  
14 went to Debbie's house when there was sound, and  
15 I didn't hear anything.

16 MR. POWELL: Okay.

17 MR. BERNEL: So, no, you can't hear  
18 sound.

19 MR. POWELL: Okay. The insulation  
20 that was downstairs, the full insulation on all  
21 the walls was not done upstairs.

22 MR. BERNEL: Correct.

23 MR. POWELL: Okay. And you, is it  
24 your testimony that the pub still wants to have  
25 live music upstairs?

1                   MR. BERNEL: We want the ability to,  
2 but we do not want to.

3                   MR. POWELL: Explain --

4                   MR. BERNEL: We were going to have all  
5 the live music in the basement. We were going to  
6 come to an agreement with you all about having  
7 live music only in the basement. But it didn't  
8 work. So now we're not going to concede that.

9                   MR. POWELL: So is that a punitive  
10 measure?

11                   MR. BERNEL: I don't know.

12                   CHAIR ANDERSON: I'm going to object  
13 to that. And I'm objecting to that because I  
14 don't care what happens in the settlement. We  
15 are at a hearing. And so we're at a hearing.  
16 So, if this is something that you're asking for,  
17 you can ask for that.

18                   MR. POWELL: Okay.

19                   CHAIR ANDERSON: You can ask for that  
20 as one of the relief. However, you can't ask him  
21 if it was punitive because he doesn't want to  
22 concede that today.

23                   MR. POWELL: Okay. You mentioned that  
24 you had an architect and paid some \$7,000. Who  
25 was the architect?

1 MR. BERNEL: DBMC Architects.

2 MR. POWELL: And who owns DBMC  
3 Architects?

4 MR. BERNEL: David Baker.

5 MR. POWELL: Okay. And are you  
6 confident that if you live next door to 4 R  
7 Street, N.W. in the basement unit and there was a  
8 live band, are you confident that they would hear  
9 no sound?

10 MR. BERNEL: Yes.

11 MR. POWELL: Okay. Those are all my  
12 questions.

13 CHAIR ANDERSON: Okay. Any questions  
14 by any Board members? Go ahead, Mr. Short.

15 MR. SHORT: Remind me of your name  
16 again, for the record.

17 MR. BERNEL: Nick Bernel, spelled --

18 MR. SHORT: Do you mind if I call you  
19 Nick?

20 MR. BERNEL: Sure.

21 MR. SHORT: Okay. Nick, during all  
22 this building when everything was done, are there  
23 any city, fire department, DCRA, or any permits?  
24 Did you have anything stamped or sealed by the  
25 city?

1 MR. BERNEL: Yes, everything.

2 MR. SHORT: Can you provide that for  
3 this --

4 MR. BERNEL: Yes.

5 MR. SHORT: -- for this Board?

6 MR. BERNEL: Um-hmm.

7 MR. SHORT: That's all I have, Chair.  
8 When can you provide those?

9 MR. BERNEL: As soon as I get to a  
10 computer.

11 MR. SHORT: I'm talking about -- not  
12 something on the computer.

13 MR. BERNEL: Oh, as soon as I go back  
14 to the restaurant. We have the copies there.

15 MR. SHORT: DCRA approved everything  
16 in the basement and fireproofed everything in the  
17 basement, all the construction.

18 MR. BERNEL: Correct.

19 MR. SHORT: They've approved it all.

20 MR. BERNEL: Yes.

21 MR. SHORT: And who pulled those  
22 permits?

23 MR. BERNEL: David Baker was the  
24 architect and, for DBMC Design, DBMC Design,  
25 Architect, sorry. And the permit expediter was a

1       guy that we use, Dwayne his name is.

2               MR. SHORT:  If he's going to provide  
3       those from sheer (phonetic), I'd like for us to  
4       see those as soon as possible.  That's all I  
5       have.  Thank you.

6               CHAIR ANDERSON:  Yeah, the only  
7       problem is that normally when these hearings, the  
8       record is closed when the hearing is closed.  So  
9       it's, I'm not quite sure how I can deal with  
10      having records come in, because normally the  
11      hearing is closed when, at the end of the day.

12              MR. SHORT:  Can I please make one more  
13      statement, Mr. Chair, for the record?

14              CHAIR ANDERSON:  Yes, Mr. Short.

15              MR. SHORT:  Just recently, and it was  
16      this year, on Kennedy Street, N.W., there was a  
17      business owner who did a lot of construction  
18      work.  Two people died.

19              I'm in public safety most of my life.  
20      Thirty-three years I deal with the D.C. Fire  
21      Department.  And I'm not pleased with the city  
22      turning its head, just not addressing it.

23              And if it's on the up and up, then I  
24      think we should be able to see the -- you're the  
25      attorney.  We should be able to see the work

1 permits and what was allowed to be done and any  
2 construction that was done.

3 In one picture I see here down in the  
4 basement there is an electrical service at the  
5 bottom of the steps, correct?

6 MR. BERNEL: Yes.

7 MR. SHORT: Is that to the code?

8 MR. BERNEL: Yes.

9 MR. SHORT: Is that the building code?  
10 You can have electricals at the door of a  
11 basement with only one way in and one way out,  
12 the electrical service?

13 MR. BERNEL: Yes, it's locked.

14 MR. SHORT: Okay. I was in the fire  
15 marshal's office for 33 years, sir. That wasn't  
16 allowed when I was there. So they changed the  
17 code I guess.

18 MR. BERNEL: I don't know.

19 MR. SHORT: You can't do that. You  
20 got to move that electric service. You can't  
21 have it at the bottom of those steps. You can't  
22 have it there.

23 People need to come out of that place  
24 and they'll be -- if they're coming with smoke  
25 behind them, they will be blind. They need to

1 have a clear path out to the street. That's the  
2 law. That's the code for egress. Am I correct  
3 or wrong?

4 MR. BERNEL: The clear path, yes. But  
5 that equipment is up at about eight feet off the  
6 ground, seven feet.

7 MR. SHORT: Sir, you have an  
8 electrical service there. If it's raining,  
9 whether you have a hood or a cover, whatever you  
10 have, that's exposed to the elements. And that's  
11 in an exit egress.

12 And again, for the record, and I want  
13 everybody to hear this now. Just as a public  
14 safety person, two people died in this city for  
15 people doing construction that was not up to code  
16 or up to code at all. And somebody allowed them  
17 to do that.

18 And I want to be on the record. If  
19 anything ever happens to this place, I as a Board  
20 member have a problem unless I see those permits.

21 CHAIR ANDERSON: Well, I'll say, I  
22 don't -- I mean, there's no allegation in this  
23 case that there was any illegal construction. So  
24 we have -- I mean, there's no allegation in this  
25 case that there is an illegal construction.



1           And this is an establishment that the  
2 license, that the applicant -- I just want the  
3 record to reflect that the applicant has provided  
4 the Board with the certificate of occupancy for  
5 the basement.

6           And so the only thing that the ABC  
7 Board can do is to -- and now the agency has  
8 informed DCRA that this is an appropriate  
9 establishment to do what it wants to do. And the  
10 only thing that the ABC Board can go with is to  
11 rely on the information as provided to us by  
12 DCRA.

13           So, since DCRA has given us a  
14 certificate of occupancy to say that this  
15 business can occupy the basement of this  
16 building, then the ABC Board has to go with what  
17 was given to us by DCRA. And that's all we can  
18 do.

19           All right. Any other questions by any  
20 of the Board members? Mr. -- well, because this  
21 is Mr. -- so I'll go with -- all right.

22           Based on the questions that were asked  
23 by Mr. Short, does any of you have any questions  
24 to ask the witness based on the specific question  
25 that was asked by Mr. Short? Yes, Mr. Mutneja.

1 MR. MUTNEJA: Only thing what I have  
2 is --

3 CHAIR ANDERSON: You're asking him a  
4 question, not making a statement. Do you have a  
5 question for him based on the question that was  
6 asked by Mr. Short?

7 MR. MUTNEJA: Does D.C. code, has any  
8 code on the sound? I know they have the code on  
9 the insulation. But do they have --

10 CHAIR ANDERSON: No, sir. You can't  
11 ask that question. Mr. Short didn't ask about  
12 the sound. I said you have had questions before.  
13 I said at this juncture --

14 MR. MUTNEJA: Okay.

15 CHAIR ANDERSON: -- you can only ask  
16 questions that was asked by the Board. Do you  
17 have a question to ask him based on questions  
18 that Mr. Short had asked him?

19 MR. POWELL: I do.

20 CHAIR ANDERSON: No?

21 MR. POWELL: I do.

22 CHAIR ANDERSON: What's your question,  
23 what is your question, Mr. Powell?

24 MR. POWELL: Because he asked about  
25 the documents to DCRA.

1 CHAIR ANDERSON: About the what?

2 MR. POWELL: The documents to DCRA and

3 --

4 CHAIR ANDERSON: Okay. So what --

5 yeah.

6 MR. POWELL: Exhibit 7, which is the

7 architectural diagram of the basement, was that

8 submitted to get the approval documents that Mr.

9 Short asked you about?

10 MR. BERNEL: No, this is for this

11 meeting --

12 MR. POWELL: So that was not --

13 MR. BERNEL: -- to explain --

14 MR. POWELL: -- architectural

15 documents submitted to DCRA.

16 MR. BERNEL: Correct.

17 MR. POWELL: Okay.

18 CHAIR ANDERSON: Any other questions?

19 MR. POWELL: No.

20 CHAIR ANDERSON: Mr. Murphy, any

21 questions of the witness based on the specific

22 question that was asked by Mr. Short?

23 MR. MURPHY: No.

24 CHAIR ANDERSON: Thank you. Mr.

25 Bernel, thank you for your testimony. You can

1 step down.

2 MR. BERNEL: Thank you.

3 CHAIR ANDERSON: All right. We're  
4 going to take a break shortly. How many more  
5 witnesses do you have, Mr. --

6 MR. MURPHY: No more witnesses, three  
7 exhibits, four exhibits.

8 CHAIR ANDERSON: Did you figure out --  
9 I'm sorry, what?

10 MR. MURPHY: That is no more witnesses  
11 and four more exhibits.

12 CHAIR ANDERSON: Well, in order to  
13 have exhibits, you have to have a witness to  
14 identify the exhibits.

15 MR. MURPHY: Oh, well, then can I keep  
16 him on the stand?

17 CHAIR ANDERSON: No.

18 MR. MURPHY: Well, all right.

19 CHAIR ANDERSON: He's been dismissed.  
20 No, I'm not -- yeah.

21 MR. MURPHY: I'm sorry. Can I read  
22 them in myself?

23 CHAIR ANDERSON: Well --

24 MR. MURPHY: My plan was to read them  
25 to you.

1 CHAIR ANDERSON: Well, do you want to  
2 testify?

3 MR. MURPHY: Sure.

4 CHAIR ANDERSON: And knowing that,  
5 you're going to be subject to cross examination  
6 by them.

7 MR. MURPHY: That's fine.

8 CHAIR ANDERSON: So fine. Then I'll  
9 swear you in. And you can testify. And you can  
10 talk about the documents.

11 We're going to take a ten-minute  
12 break. We have another hearing at 4:30. But I  
13 guess that's not going to start at 4:30. But  
14 you'll still have your chance to give your, to  
15 testify.

16 We're going to take a ten-minute  
17 break. So it's 4:07. You know what? 4:15 we'll  
18 come back. All right. We're off the record.

19 (Whereupon, the above-entitled matter  
20 went off the record at 4:05 p.m. and resumed at  
21 4:15 p.m.)

22 CHAIR ANDERSON: All right. We're  
23 back on the record. I need to bring some order  
24 to this case.

25 And one of the an error that I made

1 at the beginning because we do have three  
2 protestants -- so, we do have a provision and  
3 law, Section 1612.8 that states: In any case  
4 where there is more than one protestant, the  
5 Board, in its discretion, may request that the  
6 protestants designate one person to conduct the  
7 protestant's case, to give the opening and  
8 closing statements, and to cross examine the  
9 applicant's witnesses. Okay.

10 Time I need to conserve time. What  
11 I need the protestant to do, is that one person  
12 needs to well, I guess, in this particular  
13 case, we only have one more witness, which is the  
14 owner, and I think that that should be limited.

15 I'm going to have just have one  
16 person to ask the questions. You can decide  
17 who's going to ask the questions, but you can  
18 provide write the questions down and give to  
19 the person because having going through three  
20 people, then that's not so, just you can  
21 write the questions and give it to one to the  
22 person.

23 I will have and I'll give you an  
24 opportunity to take some time to try to  
25 consolidate what your closing statement is.

1                   From what I've heard so far, it  
2 appears that the interests are basically the  
3 same.

4                   I mean, I'm not hearing    I'm not  
5 they're not diverging. So, it shouldn't be that  
6 difficult that one person can speak for everyone  
7 because, from the testimony I've heard so far,  
8 the interests are the same.

9                   I'm not hearing different    you might  
10 hear a little    the perspective might be a little  
11 bit different, but it's the same testimony that  
12 I'm getting from each other. So, that's what I'm  
13 going to ask folks to do just so that we can  
14 conserve some time.

15                   All right. So, Mr. Murphy, do you  
16 have another witness?

17                   MR. MURPHY: Myself.

18                   CHAIR ANDERSON: All right.

19                   MS. LEWIS: We object.

20                   CHAIR ANDERSON: How are you going to  
21 object to him testifying?

22                   MS. LEWIS: It wasn't on the

23                   CHAIR ANDERSON: It doesn't matter,  
24 ma'am.

25                   MS. LEWIS: -- protest information

1 form.

2 CHAIR ANDERSON: It doesn't matter.  
3 He is he's the licensee. He doesn't have to  
4 I mean

5 MS. LEWIS: He doesn't have to be his  
6 own witness.

7 CHAIR ANDERSON: Are you going to tell  
8 but

9 MS. LEWIS: I'm just asking.

10 CHAIR ANDERSON: Now, let me ask you  
11 a question --

12 MS. LEWIS: Before, we missed our  
13 opportunity. We wanted to make sure this time we  
14 did not miss an opportunity.

15 CHAIR ANDERSON: You're not missing an  
16 opportunity because

17 MS. LEWIS: He's not listed as one of  
18 the witnesses.

19 CHAIR ANDERSON: He doesn't have to be  
20 listed as a witness. He's the licensee.

21 MS. LEWIS: Okay.

22 CHAIR ANDERSON: So, you should have  
23 anticipated that the licensee probably would want  
24 to testify.

25 MS. LEWIS: Uh-huh.



1 CHAIR ANDERSON: So, you can ask him  
2 questions.

3 MS. LEWIS: Okay.

4 CHAIR ANDERSON: You don't have to  
5 list your name -- you don't have to list yourself  
6 as a protestant, you don't have to list  
7 yourself as the witness.

8 MS. LEWIS: Okay.

9 CHAIR ANDERSON: It's expected and  
10 anticipated that you're going to testify. When  
11 you go to -- when you do a case in court, you  
12 don't have you as the defendant or the plaintiff.

13 You don't have to list yourself as a  
14 witness because you're there. You can elect not  
15 to testify, but you're there. You can always  
16 testify.

17 Okay. And one of the things that he's  
18 doing, he's putting himself on -- in evidence --  
19 on the witness stand.

20 So, therefore, you're going to get  
21 your opportunity to cross examine him.

22 MS. LEWIS: Uh-huh.

23 CHAIR ANDERSON: Mr. Murphy, you need  
24 to go on the stand so you said you have some  
25 documents and you can bring them and we'll try to

1 move them into evidence or, you know what, you  
2 can sit there because you can sit there.

3 And when the you can sit there to do  
4 but for cross examination you can go over  
5 there. It will be easier that way.

6 So, can you raise your right hand,  
7 please. Do you swear or affirm to tell the truth  
8 and nothing but the truth?

9 MR. MURPHY: I do.

10 CHAIR ANDERSON: Go ahead, sir.

11 MR. MURPHY: So, I have some email  
12 letters here. I'd like to introduce Exhibits 10  
13 and 11 first.

14 CHAIR ANDERSON: What's 10 and 11?

15 MR. MURPHY: Exhibit No. 10 is an  
16 email from a former next-door neighbor to the Pub  
17 and the People, Nick Sementelli (phonetic).

18 CHAIR ANDERSON: I'm sorry, it's an  
19 email from who?

20 MR. MURPHY: His name is Nick  
21 Sementelli. Different Nick.

22 CHAIR ANDERSON: Who is this person?

23 MR. MURPHY: He used to be the he  
24 was the former neighbor of The Pub and the People  
25 on the other side.

1 CHAIR ANDERSON: Why is that relevant?

2 MR. MURPHY: Well, I'm going to  
3 present

4 CHAIR ANDERSON: It's a former  
5 neighbor on another side?

6 MR. MURPHY: He was going to give his  
7 experience with The Pub with regard to  
8 peace/quiet.

9 CHAIR ANDERSON: No.

10 MR. MURPHY: Okay.

11 CHAIR ANDERSON: No.

12 MR. MURPHY: Same thing with another  
13 woman down the street that had different  
14 experiences.

15 And then the third is an email from a  
16 realtor talking about real estate.

17 CHAIR ANDERSON: Okay. That's not  
18 relevant.

19 MR. MURPHY: Okay. That's all I have.

20 CHAIR ANDERSON: All right.

21 Do you rest well, there's nothing  
22 he didn't testify. There's no cross examination.  
23 So, do you have any other witnesses that you're  
24 going to present?

25 MR. MURPHY: No other evidence.

1 CHAIR ANDERSON: Do you rest?

2 MR. MURPHY: I rest.

3 CHAIR ANDERSON: Thank you. All  
4 right. That was easy.

5 All right. So, who is the first  
6 witness that we're going to call?

7 MR. POWELL: I'm going to start with  
8 my first

9 CHAIR ANDERSON: All right. Hold on.  
10 Okay. We're going to have one designated  
11 representative. Okay.

12 (Discussion off the record.)

13 CHAIR ANDERSON: You can give him your  
14 questions. You can draft the questions, give him  
15 your questions.

16 MR. POWELL: Okay. That's fine.

17 CHAIR ANDERSON: So, who's the first  
18 witness?

19 MR. POWELL: Felicia Lynch.

20 CHAIR ANDERSON: I'm sorry, who?

21 MR. POWELL: Felicia Lynch.

22 CHAIR ANDERSON: Ms. Lynch.

23 (Pause.)

24 CHAIR ANDERSON: Ms. Lynch, can you  
25 raise your right hand, please. Do you swear or

1 affirm to tell the truth and nothing but the  
2 truth?

3 MS. LYNCH: I do.

4 CHAIR ANDERSON: Thank you. Your  
5 witness.

6 MR. POWELL: I have a question first.

7 My exhibits are on the screen. So,  
8 when it's time for that, do I tell you first or  
9 am I free to just do it when I want to?

10 CHAIR ANDERSON: I guess do it you  
11 need to tell me what it is. I don't know what  
12 they are, so you need to tell me that.

13 MR. POWELL: Okay. So, I have an  
14 exhibit form. So, I'm going to ask some basic  
15 questions of Ms. Lynch, and then I'm going to go  
16 to my exhibits and ask her some questions about  
17 the exhibits.

18 CHAIR ANDERSON: As long as you  
19 identify what they are, okay, go ahead.

20 MR. POWELL: Thank you.

21 CHAIR ANDERSON: Hold on. Let me find  
22 your exhibit -- okay. Go ahead, sir.

23 MR. POWELL: Thank you.

24 DIRECT EXAMINATION

25 MR. POWELL: Good afternoon, Ms.

1 Lynch.

2 Can you state your name and spell it  
3 for the record, please.

4 MS. LYNCH: Felicia, F-E-L-I-C-I-A

5 CHAIR ANDERSON: Since you're standing  
6 up, you need to --

7 MS. LYNCH: Project.

8 CHAIR ANDERSON: -- just project your  
9 voice a little bit more so.

10 MS. LYNCH: Lynch, L-Y-N-C-H.

11 MR. POWELL: Okay. And what is your  
12 address?

13 MS. LYNCH: 13 Quincy Place, N.W.

14 MR. POWELL: And where is your house  
15 in relation to the alley?

16 MS. LYNCH: On the

17 MR. POWELL: In relation to the  
18 applicant.

19 MS. LYNCH: I am directly on the  
20 alley.

21 MR. POWELL: Okay. I'm going to bring  
22 up Exhibit 4 and

23 (Discussion off the record.)

24 CHAIR ANDERSON: What exhibit is this?

25 MS. LYNCH: This is the back of the

1 building.

2 CHAIR ANDERSON: Not you, ma'am.

3 MR. POWELL: It's Exhibit No. 4, which  
4 is labeled as "Pic No. 1."

5 CHAIR ANDERSON: All right. So, let  
6 me see oh, Exhibit No. -- all right. Okay. Go  
7 ahead.

8 MR. POWELL: Okay. And, Ms. Lynch,  
9 what do you see in this exhibit?

10 MS. LYNCH: I see the back of the  
11 building. I see a big, gaping hole and I see  
12 this is directly across the literally across  
13 the alley from me.

14 MR. POWELL: And behind that gate is  
15 what?

16 MS. LYNCH: There are dumpsters.

17 MR. POWELL: Thank you. Okay.

18 I'm going to go to Exhibit 5 and can  
19 you describe what you see in Exhibit 5, going  
20 from left to right? So, starting on the left

21 MS. LYNCH: That's my house.

22 MR. POWELL: And the address clearly  
23 shows

24 MS. LYNCH: 13.

25 MR. POWELL: Okay. And on the right,

1 what do you see?

2 MS. LYNCH: I see the alley.

3 MR. POWELL: And

4 MS. LYNCH: The back of I see the  
5 dumpsters.

6 MR. POWELL: Yep. Behind the gate?

7 MS. LYNCH: Behind the gate.

8 MR. POWELL: And this picture of the  
9 dumpster behind the gate

10 MS. LYNCH: Uh-huh.

11 MR. POWELL: -- was that similar to  
12 the one in the investigator's report?

13 MS. LYNCH: I didn't see his report,  
14 but, yeah

15 MR. POWELL: Okay.

16 MS. LYNCH: -- it is, probably.

17 MR. POWELL: Thank you. And this  
18 dumpster is literally across the alley from you,  
19 right?

20 MS. LYNCH: Oh, yeah. Right at my  
21 door my window, uh-huh.

22 MR. POWELL: About how many feet;  
23 would you say?

24 MS. LYNCH: I don't know the width of  
25 the alley. 10 feet.



1 MR. POWELL: 10 feet or so. Okay.

2 Great.

3 MS. LYNCH: It's a little bit more,  
4 probably. About 10 to 12 feet.

5 MR. POWELL: Okay. I want to put 4  
6 and 5 into evidence.

7 CHAIR ANDERSON: Do you have any  
8 objection?

9 MR. MURPHY: No.

10 MR. POWELL: Okay.

11 CHAIR ANDERSON: All right. So moved.

12 (Whereupon, the above-referred to  
13 documents were marked for  
14 identification and received into  
15 evidence as Protestant Exhibit 4 and  
16 Exhibit 5.)

17 MR. POWELL: So, I'll move on to  
18 Exhibit 6.

19 Can you all see Exhibit 6?

20 (Discussion off the record.)

21 MR. POWELL: So, you see Exhibit 6?

22 MS. LYNCH: Uh-huh.

23 MR. POWELL: That is

24 MS. LYNCH: The wall.

25 MR. POWELL: And that's the side wall

1 of your house, correct?

2 MS. LYNCH: Of my house, right.

3 MR. POWELL: Okay. And so, all the  
4 large windows along your side of the house are  
5 where in relation to the dumpster?

6 MS. LYNCH: Right across from the  
7 dumpster.

8 MR. POWELL: Okay. And because your  
9 windows are across the alley from that dumpster,  
10 what's the experience like when the Pub empties  
11 the trash?

12 MS. LYNCH: Oh, my God. Well, it  
13 could be Armageddon. I mean, it's noise.

14 And I want to also say that since I  
15 heard you bring up Tenleytown

16 CHAIR ANDERSON: I'm sorry, what are  
17 you talking about?

18 MS. LYNCH: I heard you bring up the  
19 use of Tenley Trash to pick up

20 CHAIR ANDERSON: That's not a question  
21 that was asked, ma'am. I mean, please respond to  
22 questions that are asked of you.

23 MS. LYNCH: Okay.

24 MR. POWELL: So, we'll go back.

25 MS. LYNCH: We'll go back.

1 MR. POWELL: So, because of the  
2 windows to your home -- several windows to your  
3 home are right directly across

4 MS. LYNCH: Right.

5 MR. POWELL: -- from the dumpster,  
6 when the Pub empties their trash, what does that  
7 what's that experience like for you?

8 MS. LYNCH: Disruptive.

9 MR. POWELL: Okay. And usually around  
10 what time does that happen?

11 MS. LYNCH: It could range any time  
12 between 12:00 and 3:00.

13 MR. POWELL: Is that a.m. or p.m.?

14 MS. LYNCH: A.M.

15 MR. POWELL: A.M. So, between  
16 midnight and 3:00 a.m.

17 MS. LYNCH: Right. It's more often  
18 around one o'clock, two o'clock. Sometimes on  
19 the weekend it will hit 3:00.

20 MR. POWELL: Okay. Okay. And when  
21 the trash is being

22 MS. LYNCH: And sometimes there are  
23 two.

24 MR. POWELL: Okay. When the trash is  
25 being thrown in the dumpster, what sounds do you

1 hear?

2 MS. LYNCH: Bottles and trash and  
3 bottles and trash

4 MR. POWELL: Okay.

5 MS. LYNCH: -- as if thrown from a  
6 high height.

7 MR. POWELL: Okay. Are you aware that  
8 there's a settlement agreement dated June 25th,  
9 2014, that states that no glass bottles are to be  
10 deposited by the staff into the dumpster between  
11 the hours of 10:00 p.m. and 8:00 a.m.?

12 MS. LYNCH: Yes.

13 MR. POWELL: But, in fact, around  
14 12:00, 1:00 and 2:00 you hear glass bottles being  
15 thrown in the dumpster?

16 MS. LYNCH: Yes.

17 MR. POWELL: Okay. So, in your  
18 interpretation, if a settlement agreement stated  
19 one thing and you heard something different  
20 happening, wouldn't that constitute as a  
21 violation?

22 MS. LYNCH: Yes.

23 MR. POWELL: Okay. So, in fact, you  
24 have experience, based upon your proximity

25 MS. LYNCH: Uh-huh.

1 MR. POWELL: -- to the dumpster, the  
2 windows in your house, between the hours of  
3 midnight and 3:00 a.m., you've, in fact,  
4 experienced violations based on what is in the  
5 settlement agreement.

6 MS. LYNCH: Yes.

7 MR. POWELL: Okay. Thank you.

8 I want to move Exhibit 6 into  
9 evidence.

10 CHAIR ANDERSON: Any objection, Mr.  
11 Murphy?

12 MR. MURPHY: 6 is what we're looking  
13 at right now?

14 CHAIR ANDERSON: Yes.

15 MR. MURPHY: No objection.

16 CHAIR ANDERSON: Okay. So moved.

17 (Whereupon, the above-referred to  
18 document was marked for identification  
19 and received into evidence as  
20 Protestant Exhibit No. 6.)

21 MR. POWELL: And when is the last time  
22 you heard this activity happen?

23 MS. LYNCH: 3:00 a.m. on Monday.

24 MR. POWELL: Monday. This past  
25 Monday?

1 MS. LYNCH: This past Monday.

2 MR. POWELL: Okay. Okay. Were you  
3 when you heard the testimony of the investigator.

4 Were you surprised to hear that he had  
5 no testimony around trash disposal?

6 MS. LYNCH: I was amazed. And,  
7 actually, surprised because my experience with  
8 ABRA has been, is they have come if you have a  
9 complaint, they will come at a time they can  
10 actually observe the complaint

11 MR. POWELL: Okay.

12 MS. LYNCH: -- and they didn't. I've  
13 never seen an ABRA person come around the trash.

14 MR. POWELL: Okay. I notice that  
15 you're using

16 MS. LYNCH: Yes.

17 MR. POWELL: -- a walker today; is  
18 that correct?

19 MS. LYNCH: Yes.

20 MR. POWELL: Why are you using a  
21 walker?

22 MS. LYNCH: Because on the 28th of  
23 November, last year, I had both of my knees  
24 replaced at the same time.

25 MR. POWELL: Okay. And so, because

1 you are using a walker and because you had both  
2 your knees replaced

3 MS. LYNCH: I'm living on the first  
4 on the second first floor.

5 MR. POWELL: So, how has that  
6 restricted you as living in your home?

7 MS. LYNCH: I live on the first level.

8 MR. POWELL: Okay. So, then, on the  
9 first level you're even

10 MS. LYNCH: Closer.

11 MR. POWELL: -- lower down

12 MS. LYNCH: I'm closer.

13 MR. POWELL: -- to the windows and  
14 closer to the noise.

15 MS. LYNCH: Right.

16 MR. POWELL: So, you

17 MS. LYNCH: And the windows are even  
18 bigger.

19 MR. POWELL: Okay. So, you are, in  
20 fact, within a clear earshot

21 MS. LYNCH: Right.

22 MR. POWELL: -- and eyeshot --

23 MS. LYNCH: Uh-huh.

24 MR. POWELL: -- of the dumpster that's  
25 emptied?

1 MS. LYNCH: Oh, yes.

2 MR. POWELL: Okay. Are you aware that  
3 so, you are able to actually look out and see  
4 people depositing trash?

5 MS. LYNCH: Oh, yeah.

6 MR. POWELL: Okay.

7 MS. LYNCH: And hear all of their  
8 discussions.

9 MR. POWELL: Okay. Are you aware that  
10 during mediation, that The Pub said

11 CHAIR ANDERSON: Objection. You can't  
12 ask any question about what was discussed in  
13 mediation.

14 MR. POWELL: Okay. I won't.

15 Are you aware, in general, that people  
16 from The Pub have said that the owners here are  
17 the ones, in fact, who oftentimes deposit trash  
18 in the dumpster?

19 Are you aware of that?

20 MS. LYNCH: I've heard that, but  
21 that's not so.

22 MR. POWELL: So, are you aware of  
23 that?

24 MS. LYNCH: I am aware of it.

25 MR. POWELL: Okay. So, because of



1 where you are in your house, your windows and  
2 what you see, have you noticed

3 MS. LYNCH: No.

4 MR. POWELL: -- any one of these four  
5 people

6 MS. LYNCH: No.

7 MR. POWELL: -- depositing trash in the  
8 dumpster?

9 MS. LYNCH: Never.

10 MR. POWELL: Okay. Thank you. So, we  
11 have added Exhibit 6. So, let me go on to the  
12 next exhibit, Exhibit 7.

13 So, Exhibit 7, can you describe what  
14 you see in this exhibit?

15 MS. LYNCH: Yeah. I got awakened  
16 early in the morning and the trash is being  
17 dumped.

18 And I asked Sheryl, you know, my  
19 housemate, to come down and take a picture. I  
20 mean, it was so awful. So, she came down and  
21 took a picture.

22 It's grainy like that because we did  
23 it through the screen.

24 MR. POWELL: Through the screen?

25 MS. LYNCH: Yeah. It was probably

1 about 2:15 and it was over the top.

2 MR. POWELL: So, in fact, your  
3 experience with dumping the trash has been so  
4 harrowing that it prompted you all to go to the  
5 window and take pictures?

6 MS. LYNCH: Start taking pictures,  
7 yes.

8 MR. POWELL: Have you ever vocalized  
9 to the people dumping the trash?

10 MS. LYNCH: Frequently.

11 MR. POWELL: And what do you say when  
12 they're dumping the trash outside your window  
13 with bottles at 1:00, 2:00 or 3:00 in the  
14 morning?

15 MS. LYNCH: When I'm feeling polite,  
16 I say, stop it, cut it out. If I'm not feeling  
17 polite, I ask, what is your problem? What the  
18 hell is wrong with you?

19 And then I just ignore it. I just  
20 lose it and I ignore it.

21 MR. POWELL: Okay.

22 MS. LYNCH: No one has ever responded,  
23 obviously.

24 MR. POWELL: Okay. I'd like to move  
25 to have Exhibit 7 into evidence.

1 CHAIR ANDERSON: Mr. Murphy?

2 MR. MURPHY: That's fine.

3 CHAIR ANDERSON: So moved.

4 (Whereupon, the above-referred to  
5 document was marked for identification  
6 and received into evidence as  
7 Protestant Exhibit No. 7.)

8 MR. POWELL: Next we have Exhibit 8.  
9 What do you see in Exhibit 8?

10 MS. LYNCH: People dumping trash.

11 MR. POWELL: Are they in the process  
12 of dumping trash or have completed the process of  
13 dumping the trash?

14 MS. LYNCH: I can't tell, but I think  
15 they're dumping.

16 MR. POWELL: Right. So, did you take  
17 this picture?

18 MS. LYNCH: No, Sheryl did.

19 MR. POWELL: Okay. All right. Are  
20 you aware that when I spoke to Sheryl, she told  
21 me this is a picture of someone having completed  
22 dumping the trash and walking toward R Street?

23 MS. LYNCH: Oh, right. That's the one  
24 where at some point they made a switch on how  
25 they arrive to dump the trash.

1 MR. POWELL: Right.

2 MS. LYNCH: At one point they were  
3 coming from R Street -

4 MR. POWELL: Okay.

5 MS. LYNCH: -- and it was very, very  
6 noisy. So, what they did, is they started coming  
7 in from Quincy Place, which is even noisier.

8 MR. POWELL: Okay.

9 MS. LYNCH: But because, for whatever  
10 reason, they would go out the R Street way.

11 MR. POWELL: Okay. So, they come  
12 around one way with all the bags and bottles at  
13 1:00, 2:00 or 3:00 in the morning and then walk  
14 this way?

15 MS. LYNCH: Right.

16 MR. POWELL: Okay. And you're again  
17 able to see and someone

18 MS. LYNCH: Right.

19 MR. POWELL: -- took a picture?

20 MS. LYNCH: Uh-huh.

21 MR. POWELL: Okay. I would like to  
22 enter Exhibit 8.

23 CHAIR ANDERSON: Mr. Murphy, any  
24 objection to Exhibit 8?

25 MR. MURPHY: No objection.

1 CHAIR ANDERSON: No objection.  
2 (Whereupon, the above-referred to  
3 document was marked for identification  
4 and received into evidence as  
5 Protestant Exhibit No. 8.)

6 MR. POWELL: Okay. I went through  
7 Exhibit 8, so I think that is all of is there  
8 anything else you'd like to talk to us about this  
9 trash experience?

10 MS. LYNCH: Yes. You told me that we  
11 were going to talk about, and we had no control  
12 over or they supposedly had no control over  
13 Tenley, but trash pickup, but, in fact, Tenley  
14 is they employ Tenley.

15 MR. POWELL: Uh-huh.

16 MS. LYNCH: My experience has been  
17 when you employ someone, you have some control of  
18 what they do.

19 MR. POWELL: Are you referencing when  
20 they actually come and pick up the trash?

21 MS. LYNCH: Yeah. Tenley comes to  
22 pick up the trash.

23 So, not only do I have that thing  
24 happening in the middle of the night

25 MR. POWELL: Uh-huh.

1 MS. LYNCH: -- at anywhere between  
2 quarter of 7:00 a.m. now, you realize I've been  
3 up since

4 MR. POWELL: The dumping?

5 MS. LYNCH: Yeah, the first dumping.  
6 At about quarter of 7:00 they will Tenley will  
7 arrive with their professional trash dumpers and  
8 that's a whole other scene.

9 That is too early. And I know that  
10 all the trash pickup things that we, as  
11 tenants, have requested or owners, are supposed  
12 to start after 7:00 and it's a nightmare.

13 And the language is something I would  
14 not expose anybody to.

15 MR. POWELL: Okay. Are you  
16 disappointed to know that there's been language  
17 in the settlement agreement from 2014 about trash  
18 and bottles that has been violated, but there's  
19 been no consequence as a result of that?

20 MS. LYNCH: Yeah no, I didn't know  
21 it was in there, but I also know that there's no  
22 consequences because they wouldn't be dumping it,  
23 right?

24 MR. POWELL: And as a result of that  
25 how long have you lived on Quincy, please.

1 MS. LYNCH: Since 2002.

2 MR. POWELL: And so, as a 17-year  
3 resident as a result of you feeling that there is  
4 no way to remedy this situation, how does that  
5 make you feel?

6 MS. LYNCH: Well, it makes me question  
7 the validity of DCRA or ABRA, whatever, and be  
8 able to control what happens.

9 Because if you do what they tell you  
10 to do when you read all the stuff, nothing  
11 happens.

12 MR. POWELL: Right.

13 MS. LYNCH: You call and they go,  
14 okay, I'll take care of it.

15 MR. POWELL: And how has this affected  
16 the noise, the peace and the quiet and the  
17 quality of life of you and your housemate?

18 MS. LYNCH: Well, I you know, I have  
19 to be try to be objective and I don't take in  
20 consideration my surgery, having been laid up a  
21 year, it has made it very unpleasant.

22 MR. POWELL: But even with your  
23 surgery aside

24 MS. LYNCH: Oh, it's always been  
25 unpleasant.

1 MR. POWELL: Okay. Thank you, ma'am.  
2 Is there anything else you wanted to  
3 add?

4 MS. LYNCH: Yes. I wanted to add is  
5 that the owners are very disrespectful. I don't  
6 know about you the way I was raised, is that if  
7 someone if you're going to be a good citizen, a  
8 good community citizen, is that you really try to  
9 do what your neighbors want.

10 MR. POWELL: Right. I'm going to show  
11 you this and then we'll come back to this  
12 exhibit.

13 (Discussion off the record.)

14 CHAIR ANDERSON: You just did Exhibit  
15 8. So, what's the next exhibit?

16 MR. POWELL: Exhibit 10, pic 7.

17 CHAIR ANDERSON: Is there a No. 9?

18 MR. POWELL: There is a 9, but I don't  
19 want to discuss that yet. I want to go to 10.

20 CHAIR ANDERSON: What's exhibit 10?

21 MR. POWELL: Okay. So, this one is  
22 Exhibit 10. I'll put it up on the screen.

23 CHAIR ANDERSON: All right.

24 MR. POWELL: So, are you aware this  
25 is Exhibit 10 that there is an easement or a



1 pathway behind The Pub that

2 MS. LYNCH: Yes.

3 MR. POWELL: Okay. And what would be  
4 your opinion if at some point we were to ask ABRA  
5 to stop the deposit of trash at a specific hour,  
6 say 11:00 a.m. or midnight, like to the  
7 agreement.

8 This would show you that there's  
9 possibly another storage option for the trash?

10 MS. LYNCH: Right. There is another  
11 storage option.

12 MR. POWELL: And at what point it  
13 could be done in the morning or a different time.

14 MS. LYNCH: Uh-huh.

15 MR. POWELL: And that would allow you  
16 to that would affect your quality of life,  
17 peace and quiet.

18 MS. LYNCH: Right.

19 MR. POWELL: Okay. That's all for me  
20 oh, can I put that exhibit in? Exhibit 10. I  
21 want to submit Exhibit 10.

22 CHAIR ANDERSON: Mr. Murphy, any  
23 objection?

24 MR. MURPHY: No, sir.

25 CHAIR ANDERSON: So moved.

1 (Whereupon, the above-referred to  
2 document was marked for identification  
3 and received into evidence as  
4 Protestant Exhibit No. 10.)

5 CHAIR ANDERSON: Do you have any other  
6 questions for Ms. Lynch?

7 MR. POWELL: No.

8 CHAIR ANDERSON: Okay. So, those are  
9 all the questions that you guys have for Ms.  
10 Lynch; is that correct?

11 MR. POWELL: Yes.

12 CHAIR ANDERSON: Okay. Mr. Murphy, do  
13 you have any questions for Ms. Lynch?

14 MR. MURPHY: Yes, sir.

15 CHAIR ANDERSON: Please ask.

16 CROSS EXAMINATION

17 MR. MURPHY: The Pub is currently  
18 licensed to have 192 seats.

19 Do you think the addition of 28 more  
20 seats will significantly change the degree of the  
21 disturbance?

22 MS. LYNCH: Probably. More trash,  
23 more bottles.

24 MR. MURPHY: How do you know the  
25 sounds you hear are glass bottles?

1 MS. LYNCH: I know what a glass bottle  
2 sounds like versus a glass, versus a plastic  
3 bottle, versus cardboard.

4 MR. MURPHY: So, you think you can  
5 hear the difference between a glass bottle and a  
6 broken pint glass or a broken plate?

7 MS. LYNCH: Yes.

8 MR. MURPHY: We do share that dumpster  
9 with Spark and Old Engine 12.

10 Do you think you can hear the  
11 difference between a Pub employee depositing  
12 trash and the Spark or an Old Engine employee  
13 depositing trash?

14 MS. LYNCH: Can I hear the difference  
15 between who's doing it?

16 MR. MURPHY: Yes.

17 MS. LYNCH: To avoid any possibilities  
18 of racial profiling, I'll say no; but I do know

19 MR. MURPHY: I'm saying if you can  
20 hear --

21 MS. LYNCH: That would be racial  
22 profiling if I said everybody who came was  
23 whatever. I won't say that.

24 I will say, however, that when Spark  
25 was there and when Engine No. 12 was there, once

1 you made a complaint, they backed off. They  
2 quieted down.

3 Once I talked to people from The Pub,  
4 there was a kind of assumption that I was making  
5 an unnecessary demand.

6 MR. MURPHY: Do you think that all of  
7 our employees are of the same race?

8 MS. LYNCH: No.

9 MR. MURPHY: I'd like to draw your  
10 attention to Exhibit 7, please.

11 CHAIR ANDERSON: Can someone show her  
12 Exhibit 7?

13 MR. MURPHY: Yes, I can.

14 MS. LYNCH: Yes.

15 MR. MURPHY: Are you aware that that  
16 person in that picture is me?

17 MS. LYNCH: Excuse me?

18 MR. MURPHY: That person in that  
19 picture is me.

20 MS. LYNCH: That's you?

21 MR. MURPHY: Yes.

22 MS. LYNCH: Okay. So.

23 MR. MURPHY: So, have you ever spoken  
24 with me while I took out the trash?

25 MS. LYNCH: No, I haven't wait a

1 minute. I may have yelled down. I didn't know  
2 that was you I was yelling at or Sheryl was  
3 yelling at.

4 (Laughter.)

5 MR. MURPHY: I can tell you I've  
6 certainly never heard anything or talked to

7 MS. LYNCH: Okay.

8 MR. MURPHY: Do you think that I want  
9 to wake you up in the middle of the night?

10 MS. LYNCH: No, I don't think you're  
11 being malicious. I think you're being  
12 inconsiderate. Okay.

13 MR. MURPHY: Yeah. Do you think that  
14 we want to be a bother to our neighbors?

15 MS. LYNCH: No, I don't think you want  
16 to be a bother. I think there's an assumption  
17 that what your neighbors are concerned about and  
18 what's important to you is different, and you  
19 have a greater value and greater significance  
20 about what you're doing.

21 And I might just say that if it was  
22 3:00 in the morning and I was putting out trash,  
23 I might not care what was going on; but the  
24 reality is you have people living next-door to  
25 you. They're your neighbors.

1 MR. MURPHY: I understand.

2 How many you said you hear  
3 communication.

4 MS. LYNCH: Yes.

5 MR. MURPHY: Voices, plural, right?

6 MS. LYNCH: Voices.

7 MR. MURPHY: How many people do you  
8 see in Exhibits 7 and 8?

9 MS. LYNCH: Actually, I only see one  
10 and I think one. This is it's too much of a  
11 blur for me to say for sure.

12 MR. MURPHY: Yeah. Would it come as  
13 a surprise to you to learn that, as a policy, one  
14 person takes out the trash while the other person  
15 is assigned different duties during closing?

16 MS. LYNCH: Of course. How else are  
17 you going to run an organization?

18 MR. MURPHY: So, I'm having difficulty  
19 understanding how you swear hearing multiple  
20 voices when only one person takes out the trash.

21 MS. LYNCH: I was comparing the  
22 multiple voices when I talked about Tenley.  
23 You're using Tenley.

24 MR. MURPHY: I understand.

25 MS. LYNCH: And Tenley people have

1 really trashy mouths. Okay.

2 MR. MURPHY: Sorry, we trust me when  
3 I tell you we have communicated with them and  
4 have problems all around.

5 Okay. Do you know when the  
6 construction began for the big dig that's  
7 happening in the middle of the block?

8 MS. LYNCH: The

9 MR. MURPHY: The hole in the ground.  
10 The big hole.

11 MS. LYNCH: Oh, right. I was out of  
12 town when they started. Probably about three  
13 months ago.

14 MR. MURPHY: So, are you aware that  
15 prior to the beginning of the construction there

16

17 MS. LYNCH: There was a

18 MR. MURPHY: -- that was where we kept  
19 our trash?

20 MS. LYNCH: Sometimes.

21 MR. MURPHY: Well, that's not the  
22 case. That's where we kept our trash prior to  
23 the beginning of the construction.

24 So, my concern is that you may be, at  
25 least, sometimes confusing us with the other

1 businesses operating.

2 MS. LYNCH: You mean the one that was  
3 closed?

4 MR. MURPHY: It's not closed. They're  
5 open, but they're an event space. They are

6 MS. LYNCH: Oh, you mean when --  
7 Spark.

8 MR. MURPHY: Yes.

9 MS. LYNCH: All right. Possibly.  
10 They don't do much.

11 MR. MURPHY: That's good enough.  
12 That's all I have. Thank you.

13 MS. LYNCH: Okay.

14 MR. POWELL: Can I redirect?

15 CHAIR ANDERSON: Enough. No, sir.  
16 Any questions by any board members?  
17 I'm hearing none.

18 No, you can't. So, thank you -- you  
19 can only ask questions if you only get one bite  
20 of the apple, sir. I'm serious. I'm not being  
21 mean.

22 (Discussion off the record.)

23 CHAIR ANDERSON: I mean, are you  
24 asking a direct are you asking a question about  
25 a question that he asked?



1 MR. POWELL: Yes.

2 CHAIR ANDERSON: Go ahead. You can  
3 ask the question, then, based on questions that  
4 were asked.

5 MR. POWELL: Yes.

6 REDIRECT EXAMINATION

7 MR. POWELL: So, we come back to  
8 Exhibit 8, right? That's Exhibit 8.

9 Which street is this person walking  
10 toward?

11 MS. LYNCH: The person is walking  
12 toward R Street.

13 MR. POWELL: So, if someone had

14 MS. CROCKETT: I'm sorry, I didn't  
15 hear you.

16 MS. LYNCH: I'm sorry. Toward R  
17 Street.

18 MR. POWELL: So, if someone from Spark  
19 or the firehouse was depositing trash, they  
20 wouldn't be walking toward R Street.

21 They'd be going right there because  
22 the building is right there, correct?

23 CHAIR ANDERSON: That's speculation.

24 MS. LYNCH: Yes.

25 CHAIR ANDERSON: She doesn't know who

1 was I don't want us to do speculation. I  
2 believe that the testimony is she took a picture  
3 of someone doing the trash, but she's speculating  
4 -- it wasn't that it's done by Spark or wasn't it  
5 done by The Pub and the People. I'm not quite  
6 sure if that's really helpful to us.

7 MR. POWELL: Because of the proximity  
8 of the buildings if it was Spark, they would go  
9 right in the building.

10 This person is going down the alley to  
11 R Street to go back to The Pub. That's what I'm  
12 saying.

13 CHAIR ANDERSON: But she doesn't know  
14 that.

15 MS. LYNCH: Yes, I do.

16 CHAIR ANDERSON: I'm sorry?

17 How can you know that, ma'am?

18 MS. LYNCH: Because I live there. I  
19 have lived there long enough.

20 CHAIR ANDERSON: Who's the person  
21 who's dumping the trash?

22 MS. LYNCH: I don't know.

23 CHAIR ANDERSON: I mean, you just  
24 testified that -- the owner said it was him and  
25 you said you didn't even know it was him.

1 MS. LYNCH: I'm saying to you that if  
2 you're going toward R Street

3 CHAIR ANDERSON: Okay.

4 MS. LYNCH: -- and you you would be  
5 coming from north of that dumping place.

6 CHAIR ANDERSON: Okay.

7 MS. LYNCH: If you are coming from  
8 Spark or the Engine 12

9 CHAIR ANDERSON: Okay.

10 MS. LYNCH: -- you would be going  
11 north

12 CHAIR ANDERSON: Okay.

13 MS. LYNCH: -- or stay in that same  
14 spot.

15 CHAIR ANDERSON: Okay.

16 MS. LYNCH: The dumpsters that they  
17 used were Spark's dumpsters and you just said  
18 it.

19 CHAIR ANDERSON: Okay. All right.  
20 Any other questions you want to ask?

21 MR. POWELL: Yes.

22 The Spark business well, the hole in  
23 the ground where the building is being torn down  
24 that you referenced and he referenced that they  
25 might have dumped their trash there at some

1 point, how much further away is that from your  
2 window?

3 MS. LYNCH: That's right across, also.

4 CHAIR ANDERSON: I didn't hear you.

5 MS. LYNCH: that's right across, also.

6 CHAIR ANDERSON: Okay.

7 MR. POWELL: So, is that three blocks  
8 away or

9 MS. LYNCH: No.

10 MR. POWELL: -- a mile away?

11 MS. LYNCH: No.

12 MR. POWELL: Is it it's additional  
13 feet away?

14 MS. LYNCH: Right. What's interesting  
15 is I have not observed anyone dumping trash in  
16 that big hole.

17 (Discussion off the record.)

18 MR. POWELL: The point is before that  
19 building was torn down

20 MS. LYNCH: Right.

21 MR. POWELL: -- and there was a  
22 dumpster there being deposited, that wasn't  
23 materially far from

24 MS. LYNCH: No.

25 MR. POWELL: Okay. So, you, in fact,

1 could have heard the same sound that you heard in  
2 the dumpster in the spot they referenced earlier?

3 MS. LYNCH: Right.

4 MR. POWELL: Okay. That's all I have.

5 CHAIR ANDERSON: Do you have any other  
6 questions?

7 MR. MURPHY: I don't.

8 CHAIR ANDERSON: All right. Thank  
9 you, Ms. Lynch, for your testimony. You can step  
10 down.

11 (Witness excused.)

12 CHAIR ANDERSON: I just want to get  
13 some preliminaries.

14 How many more witnesses do you guys  
15 have?

16 MR. POWELL: One, and then each of us  
17 are witnesses oh, two.

18 CHAIR ANDERSON: So, how many more  
19 total witnesses do you have?

20 MR. POWELL: Five no, four no,  
21 one, two, three, four, five.

22 SPEAKER: You know, it's not important  
23 that I testify because I'm hearing I would  
24 repeat what the neighbors have told you.

25 MR. POWELL: Okay. Probably four.

1 CHAIR ANDERSON: Four more witnesses.

2 MR. POWELL: Yes.

3 CHAIR ANDERSON: And how long do you  
4 think each person will testify for?

5 MR. POWELL: I'm thinking my next  
6 witness may be three minutes.

7 CHAIR ANDERSON: It's five o'clock.  
8 There is do you think that you need another  
9 hour?

10 Do you think all four witnesses could  
11 be wrapped up in an hour?

12 MR. POWELL: I would speculate and  
13 say, yes, I think so.

14 CHAIR ANDERSON: So, it's five o'clock  
15 yes, sir.

16 MR. MURPHY: We have people who are  
17 they allowed to leave, is the question. Are some  
18 of them allowed to leave or do they need to stay?

19 CHAIR ANDERSON: They are your people.  
20 You decide what you want to do. Your case you  
21 have rested your case, so you decide what you  
22 want to do with your people, sir. That's your  
23 call.

24 MR. MURPHY: Thank you.

25 CHAIR ANDERSON: You're welcome.

1                   So, we're saying that you have maybe  
2 another hour to testify. So, just we're off  
3 the record for The Pub and the People.

4                   (Whereupon, the above-entitled matter  
5 went off the record at 4:58 p.m. and resumed at  
6 5:00 p.m.)

7                   CHAIR ANDERSON: All right. Okay.  
8 We're back on the record for The Pub and the  
9 People.

10                  All right. Do you have another  
11 witness?

12                  MR. POWELL: I do.

13                  CHAIR ANDERSON: Who is that?

14                  MR. POWELL: Jean Watkins.

15                  CHAIR ANDERSON: I'm sorry, who?

16                  MR. POWELL: Jean Watkins.

17                  CHAIR ANDERSON: Ms. Watkins.

18                  (Pause.)

19                  CHAIR ANDERSON: Okay. Raise your  
20 right hand, please. Do you swear or affirm to  
21 tell the truth and nothing but the truth?

22                  MS. WATKINS: I do.

23                  CHAIR ANDERSON: All right. Fine.

24                  All right. I'm not telling anyone how  
25 to present their case, but I just want to let you

1 know that the purpose of this hearing we're  
2 having a protest hearing on a substantial change.

3 They're requesting a substantial  
4 change to expand into the basement, okay, and  
5 expand their occupancy. This is the purpose of  
6 that hearing.

7 So, whatever it is that you're the  
8 testimony of that would be helpful for the board  
9 is how -- is whether or not the board granting  
10 this change, how is this change going to impact  
11 on peace, order and quiet. Okay. I just want to  
12 let you know.

13 Go ahead, sir.

14 DIRECT EXAMINATION

15 MR. POWELL: Good it's still  
16 afternoon.

17 (Laughter.)

18 MR. POWELL: Ms. Watkins, can you  
19 state your name and spell it?

20 MS. WATKINS: Surely. Jean Watkins,  
21 J-E-A-N

22 CHAIR ANDERSON: Speak up.

23 MS. WATKINS: I'm sorry.

24 (Discussion off the record.)

25 CHAIR ANDERSON: So, speak into the



1 microphone, please.

2 MS. WATKINS: I thought I was. Hello.  
3 Yes?

4 CHAIR ANDERSON: Yeah.

5 MS. WATKINS: Okay. Jean, J-E-A-N.  
6 Watkins, W-A-T-K-I-N-S.

7 MR. POWELL: And, Ms. Watkins, what is  
8 your address?

9 MS. WATKINS: 19 R Street, N.W.

10 MR. POWELL: Okay.

11 SPEAKER: What's the address again?

12 CHAIR ANDERSON: 19 R Street.

13 MR. POWELL: And approximately how far  
14 are you away from The Pub and the People?

15 MS. WATKINS: I'm not good a mileage,  
16 but I would say I'm about seven homes away from  
17 the corner, not including the alley.

18 MR. POWELL: Okay. So, you're down  
19 seven homes and then there's an alley space?

20 MS. WATKINS: Correct. Yes.

21 MR. POWELL: Okay. And I want to  
22 present my Exhibit 1, which is a video.

23 CHAIR ANDERSON: Did you share the  
24 video with the other side?

25 MR. POWELL: We have emails from Imani

1 (phonetic) saying everybody got everything.

2 CHAIR ANDERSON: No, aside from Imani.  
3 This is I'm sorry, Mr. Murphy, do you have a  
4 copy of that video?

5 MR. MURPHY: I haven't seen this I  
6 think I do. I think we were sent a link.

7 CHAIR ANDERSON: That's fine. Go  
8 ahead.

9 (Playing video clip.)

10 MR. POWELL: Okay. Ms. Watkins, first  
11 of all, do you remember that incident?

12 MS. WATKINS: Yes. That particular  
13 day, yes.

14 MR. POWELL: And can you describe what  
15 you just saw in that video?

16 MS. WATKINS: It's the route that I  
17 often walk the dog or I take a stroll in the  
18 afternoon.

19 MR. POWELL: Okay.

20 MS. WATKINS: And it's a usual  
21 occurrence of music. The door was open so it  
22 could be heard.

23 CHAIR ANDERSON: Can you hold on one  
24 minute, please.

25 MS. WATKINS: Sorry.

1 (Discussion off the record.)

2 CHAIR ANDERSON: All right. You guys  
3 have as much time as you have. There's no time  
4 constraints. Our other case just went away.

5 (Laughter.)

6 CHAIR ANDERSON: All right. Go ahead.  
7 I'm sorry.

8 MS. WATKINS: Sorry about that.

9 CHAIR ANDERSON: No, I'm -- part of it  
10 part of the issue is that we schedule protest  
11 hearings at 1:30 and 4:30 or sometimes 3:00 or  
12 4:30, but a lot the agency has been doing it  
13 for a lot of years. A lot of these kind get  
14 settled and just fall off. So, it's not your  
15 fault.

16 Okay. So, go ahead. All right.

17 MR. POWELL: So, describing what you  
18 saw in the video, you heard

19 MS. WATKINS: I could hear the music.  
20 Some of the conversations, but not in detail.

21 MR. POWELL: And was that live music?

22 MS. WATKINS: It appeared to me to be  
23 live music.

24 MR. POWELL: Okay.

25 MS. WATKINS: Uh-huh.

1 MR. POWELL: And was the door open?

2 MS. WATKINS: It was.

3 MR. POWELL: Okay. Are you aware that  
4 in the settlement agreement there's supposed to  
5 be in the current settlement agreement there's  
6 supposed to be no live music playing that can be  
7 projected or heard outside?

8 Are you aware of that?

9 MS. WATKINS: I was aware of that,  
10 yes.

11 MR. POWELL: In the settlement  
12 agreement from June 25th, 2014.

13 MS. WATKINS: The date, I think, is  
14 correct, but I'm not sure.

15 CHAIR ANDERSON: No. No. Were you  
16 objecting to something?

17 MR. MURPHY: Well, it's inaccurate,  
18 but I can

19 CHAIR ANDERSON: It's not -- you're  
20 going to cross examine her. So, if it

21 MR. MURPHY: He's leading her into an  
22 inaccurate statement.

23 CHAIR ANDERSON: I'm sorry, it's what?

24 MR. MURPHY: He's leading her into an  
25 inaccurate statement.

1 CHAIR ANDERSON: So, you're objecting  
2 to what? You're objecting to the phraseology of  
3 his question?

4 MR. MURPHY: Well, legalese aside,  
5 it's what he just said is not in the settlement  
6 agreement.

7 CHAIR ANDERSON: Well, I don't know  
8 what's in the settlement agreement, so so,  
9 you're objecting to say that's not in the  
10 settlement agreement; is that so, the nature of  
11 your objection is that you're objecting to I  
12 don't have a settlement agreement here, so I  
13 don't know.

14 MR. MURPHY: Withdrawn.

15 CHAIR ANDERSON: All right. Go ahead.

16 MR. POWELL: Are you aware that there  
17 is a line that says: Applicant shall not  
18 transmit music or other sound generated by live  
19 entertainment to the outdoor premises?

20 MS. WATKINS: Yes.

21 MR. POWELL: Okay. So, in your  
22 opinion, would that do you consider that a  
23 violation of the current settlement agreement?

24 MS. WATKINS: Most surely, yes.

25 MR. POWELL: So, were you surprised to

1 hear that there had been no violations?

2 MS. WATKINS: When I heard yes.

3 MR. POWELL: Okay.

4 MS. WATKINS: Sorry.

5 MR. POWELL: So, when we think about  
6 this in the context applying for a substantial  
7 change, right, and wanting to do some additional  
8 things, increasing the occupancy, having live  
9 music, having more people, based on what you've  
10 experienced and that's been shown in the video,  
11 how do you think that would impact the peace and  
12 quiet and order of the neighborhood?

13 MS. WATKINS: It would only increase  
14 the disturbance and the ability to enjoy your  
15 residence.

16 MR. POWELL: Okay. Because on video  
17 the door is open

18 CHAIR ANDERSON: Sir, ask her a  
19 question. You can't ask her a question starting  
20 with "because."

21 MR. POWELL: Okay.

22 CHAIR ANDERSON: So, that tells me  
23 that's not a question.

24 MR. POWELL: Okay. Noted.

25 CHAIR ANDERSON: And I know you saw

1 this one on TV.

2 (Laughter.)

3 MR. POWELL: Maybe I did.

4 CHAIR ANDERSON: All right. You have  
5 to ask a question and we don't start a question  
6 with "because."

7 MR. POWELL: So, based upon what was  
8 in the video where there was live music playing,  
9 the door was open and it's being projected  
10 outside, that is the foundation of your concerns  
11 about the license for substantial change.

12 MS. WATKINS: Yes.

13 CHAIR ANDERSON: Also, one of the  
14 things that I'll also question you to, is that  
15 you can't one would say if there was an  
16 attorney who was here, that was a leading  
17 question because it already puts the answer in  
18 the question you're asking her.

19 MR. POWELL: Okay.

20 CHAIR ANDERSON: So, you can't load  
21 the question with the answer. So, you have to  
22 ask her a question for her to formulate her own  
23 you ask the question in a way that the answer  
24 will come up, but you can't give her the answer  
25 that you need her to form.

1 MR. POWELL: I think I know what  
2 you're saying.

3 CHAIR ANDERSON: All right.

4 MR. POWELL: So, your concerns about  
5 the peace and quiet that will be changed because  
6 of the substantial change is based upon what?

7 MS. WATKINS: My firsthand  
8 observation.

9 MR. POWELL: And that observation, was  
10 that shown in the video?

11 MS. WATKINS: It was.

12 MR. POWELL: Thank you so much. Okay.  
13 So, do you oftentimes hear noise  
14 coming from The Pub?

15 MS. WATKINS: Yes.

16 MR. POWELL: Okay. And you're able to  
17 hear that because of

18 MS. WATKINS: I enjoy sitting outside,  
19 I enjoy the elements, and I can hear the noise.

20 MR. POWELL: Okay. I don't know if I  
21 said this, but I want to submit this video into  
22 evidence.

23 CHAIR ANDERSON: Any objection, Mr.  
24 Murphy?

25 MR. MURPHY: No.



1 CHAIR ANDERSON: All right. So moved.  
2 (Whereupon, the above-referred to  
3 video was marked for identification  
4 and received into evidence as  
5 Protestant Exhibit No. 11.)

6 MR. POWELL: I'm going to move on to  
7 Exhibit 2, which is Video 2.

8 CHAIR ANDERSON: So, that's not  
9 Exhibit 2. So, that's we've done so, that's  
10 the video is Exhibit

11 MR. POWELL: 2.

12 CHAIR ANDERSON: -- 11.

13 MS. WATKINS: It's Video 2.

14 CHAIR ANDERSON: No. No. No. No.  
15 All right. So far we have moved you have  
16 offered Exhibit 1, 2, 3, 4, 5, 6, 7, 8 and 10.

17 MR. POWELL: I have not.

18 CHAIR ANDERSON: You have not what?

19 MR. POWELL: I have not offered those  
20 into evidence yet. If you look at the

21 CHAIR ANDERSON: Hold on. Hold on.  
22 Hold on, sir. Yes, you have. You have asked me  
23 you said to me that you want to move I marked  
24 everything and the last conversation that we had  
25 you said, No. 10, and I said, no, No. 9. You

1 said, oh, I'm going to get back to No. 9.

2 And then you and then I asked Mr.  
3 Murphy if he has an objection. And he said, no,  
4 he doesn't have an objection. So, all the so,  
5 I've moved Exhibit 1, 2, 3, 4, 5, 6, 7 and 10  
6 into evidence.

7 You have now in order for someone to  
8 follow what's going on, you had a video. So, the  
9 video has to be Exhibit 11.

10 MR. POWELL: Respectfully, may I say  
11 something?

12 CHAIR ANDERSON: No, sir. It's not  
13 may you say something. This is my courtroom and  
14 I'm telling the way this is I'm being  
15 serious.

16 The reason why I'm going through this,  
17 at the end of the day if someone else picks up  
18 this file, if they read the transcript, they need  
19 to know what the exhibits are.

20 So, that's one of the reasons why I am  
21 you identified them. We go through the  
22 numbers, you tell me what it is, you want to move  
23 in evidence and then I ask him if he objects. He  
24 said, no, and then I said, so moved.

25 So, I moved all of those, 1 through 8

1           No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7  
2           there was no 9    No. 10.

3                    You now want to move a video.  The  
4           video has to be Exhibit 11 because they have to  
5           be in order.

6                    You can't    that's all.  It has to be  
7           in order so if someone picks it up, they'll know  
8           that the video is Exhibit No. 11.

9                    MR. POWELL:  I understand.  I just  
10          want to make a statement.

11                   CHAIR ANDERSON:  Yeah.  Go ahead, sir.

12                   MR. POWELL:  So, I was going off the  
13          exhibit list.

14                   CHAIR ANDERSON:  Fine.

15                   MR. POWELL:  I'm saying the confusion  
16          is when I'm referencing exhibits, it's from the  
17          list.  So, that has changed.  I understand that  
18          now.

19                   CHAIR ANDERSON:  It's on the list,  
20          but, you know, people    you'll give me 20  
21          exhibits on your list.  However, if you don't  
22          introduce them into evidence, then they're not  
23          moved into evidence.

24                    If you don't make a motion to say, I  
25          want to move this into evidence, then I ask the

1 other side, then it's on the list.

2 MR. POWELL: I understand that.

3 CHAIR ANDERSON: So, it's on the list,  
4 so you're telling me, but what I'm now doing, I'm  
5 now renumbering them from the list.

6 And so, that's so, that's why I'm  
7 now telling you you're moving into evidence so,  
8 I'm saying because it's now moved into evidence,  
9 that the first one is now Exhibit the picture  
10 is now Exhibit 11 and you want to do another  
11 exhibit another picture and then it will be No.  
12 12.

13 Because what's in the record is what  
14 I say what the record is

15 MR. POWELL: I understand.

16 CHAIR ANDERSON: -- it's not what's on  
17 the paper.

18 MR. POWELL: I understand.

19 CHAIR ANDERSON: Okay.

20 MR. POWELL: Which is why I was  
21 confused, but now whatever number you say it is

22 (Laughter.)

23 CHAIR ANDERSON: And I'm not giving  
24 you a hard time. I want you to know that I'm not  
25 trying to give you a hard time.

1 I just because he's over there and  
2 he's taking he's typing everything that we do  
3 here

4 MR. POWELL: Yes.

5 CHAIR ANDERSON: -- so you can get the  
6 transcript and read it and know exactly what's in  
7 the transcript. So, that's why I'm going through  
8 doing this.

9 MR. POWELL: I understand.

10 CHAIR ANDERSON: Okay.

11 MR. POWELL: This is for my reference.  
12 We'll follow you. I'm going to the next video.

13 CHAIR ANDERSON: So, the next video  
14 now is going to be although it's identified in  
15 your exhibits as Video 2, it is now Exhibit 12.

16 MR. POWELL: Great.

17 CHAIR ANDERSON: Okay.

18 (Playing video clip.)

19 MR. POWELL: Okay. So, in that video  
20 are you able to tell, from the video, about where  
21 that was actually filmed?

22 MS. WATKINS: Yes.

23 MR. POWELL: Where is that?

24 MS. WATKINS: It's actually filmed on  
25 my side of the street near the alley.

1 MR. POWELL: Was it near your house?

2 MS. WATKINS: Yes.

3 MR. POWELL: Okay. And from that  
4 nighttime video seven houses plus the alley down

5

6 CHAIR ANDERSON: Can you do me a  
7 favor? What's this video? Can you have her  
8 tell us what's this video?

9 MR. POWELL: Oh, okay.

10 CHAIR ANDERSON: What is the video  
11 that we just saw?

12 MS. CROCKETT: Also, who took it?  
13 What date was it taken?

14 CHAIR ANDERSON: Yeah.

15 MS. CROCKETT: What time was it taken?  
16 We need some facts.

17 CHAIR ANDERSON: Yeah. Ask her  
18 questions like that. She needs to identify not  
19 that -- she needs to identify what the video is.  
20 I don't know what I saw the video, but I don't  
21 know what it is.

22 MR. POWELL: Okay. Thank you.

23 CHAIR ANDERSON: Okay.

24 MR. POWELL: What did you see in the  
25 video?

1 MS. WATKINS: In the video I saw  
2 persons standing at the corner having  
3 conversation. I saw music being played.  
4 Loudness. I don't know.

5 MR. POWELL: They were at the corner  
6 at what establishment?

7 MS. WATKINS: They were at the corner  
8 of Pub and People.

9 MR. POWELL: Right. Was that video  
10 shot in the day or in the night?

11 MS. WATKINS: It was shot at night.

12 MR. POWELL: Okay. So, did you take  
13 the video?

14 MS. WATKINS: No, I did not take that  
15 video.

16 MR. POWELL: And do you know the date  
17 that it was taken?

18 MS. WATKINS: I'm sorry, no.

19 MR. POWELL: Okay.

20 MS. WATKINS: I couldn't tell you what  
21 yesterday was.

22 MR. POWELL: Okay.

23 (Laughter.)

24 MR. POWELL: But the noise and  
25 conversation from the patio at night in the

1 video, is that something that you commonly  
2 experience

3 MS. WATKINS: Yes.

4 MR. POWELL: -- from your point of  
5 view?

6 Okay. So, when we think about the  
7 application for substantial change and going from  
8 84 people to 44 people additional people with  
9 the draw of live music and additional space and  
10 food and beer, how do you think that would impact  
11 the peace and quiet from your experience in that?

12 MS. WATKINS: I think it will increase  
13 the the volume would increase. I think it  
14 would impact me greatly because, as an old  
15 person, you go to bed at a certain hour and I  
16 think I have the right to do so.

17 MR. POWELL: And do you think if this  
18 application with the current occupancy for  
19 substantial change was granted and we went from  
20 84 to 144, do you think there would be more  
21 instances like what we saw in the

22 MS. WATKINS: Surely. Surely.

23 MR. POWELL: And that would absolutely  
24 adversely impact you and everybody between you  
25 and the corner?



1 MS. WATKINS: I do agree, yes.

2 MR. POWELL: Okay. Thank you. I  
3 would like to submit whatever

4 CHAIR ANDERSON: No. 12.

5 MR. POWELL: 12.

6 CHAIR ANDERSON: Mr. Murphy?

7 MR. MURPHY: No objection.

8 CHAIR ANDERSON: All right. So, the  
9 video is Exhibit 12.

10 (Whereupon, the above-referred to  
11 video was marked for identification  
12 and received into evidence as  
13 Protestant Exhibit No. 12.)

14 MR. POWELL: Okay. I am going to go  
15 to the next video, which will be Exhibit 13.

16 CHAIR ANDERSON: Yes.

17 (Playing video clip.)

18 MR. POWELL: Okay. Can you describe  
19 to me what you just saw in that video?

20 MS. WATKINS: I saw two persons I'll  
21 just say "young people" -- one person I saw  
22 urinating on the wall.

23 MR. POWELL: Okay.

24 MS. WATKINS: That's not an uncommon  
25 occurrence. We've actually given the wall a

1 name.

2 MR. POWELL: What name have we given  
3 that?

4 MS. WATKINS: The pee wall.

5 MR. POWELL: Okay. And those persons,  
6 after urinating on the wall, they were headed  
7 where were they headed after they were done?

8 MS. WATKINS: They went back to the  
9 corner the establishment on the corner.

10 MR. POWELL: Which is?

11 MS. WATKINS: I'm sorry, Pub and the  
12 People. I saw them go to the patio. I couldn't  
13 see them go in.

14 CHAIR ANDERSON: Well, let me ask a  
15 question.

16 MS. CROCKETT: Is that on the video?

17 CHAIR ANDERSON: I saw all right.  
18 I saw two people up here. One person peeing on  
19 the wall.

20 They were walking from what I saw,  
21 they were walking there were houses. So, it  
22 looked like they were walking on residential  
23 houses and it did not appear to me that they were  
24 walking down North Capitol.

25 MR. POWELL: I didn't say North

1 Capitol.

2 CHAIR ANDERSON: But The Pub and the  
3 People is at the corner. If they were not  
4 walking towards North Capitol, how could they be  
5 walking towards the Pub?

6 MR. POWELL: They were walking toward  
7 North Capitol. We have another picture that  
8 we'll present as an exhibit that will show that.

9 CHAIR ANDERSON: Yeah, but we can only  
10 I'm talking about what we just saw. And what I  
11 saw, I saw a bunch of residential a bunch of  
12 row houses.

13 They were walking towards a bunch of  
14 row houses and didn't sound familiar with the  
15 corner of where I'm now familiar where this  
16 establishment is located.

17 I don't know where these people were  
18 walking to. They were not walking the video  
19 this video didn't depict that they were walking  
20 you could say that they were coming from the  
21 establishment and they went there and peed, but  
22 they were walking they didn't pee on the wall  
23 and walk into the establishment, from this video.

24 MR. POWELL: Sir, respectfully, the  
25 video shows them walking toward the direction of

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MS. CROCKETT: Sir, I don't

MR. POWELL: Go ahead, Ms. Crockett.

MS. CROCKETT: These videos you've entered, who is filming these videos?

MR. POWELL: Me.

MS. CROCKETT: Okay. Thank you.

Because I you know, she's testifying to them, but I ask, you know, is she the did she take the video? She had not. What time was it taken? She did not know.

Now, I know you are the actual person taking the videos.

MR. POWELL: Yes.

MS. CROCKETT: Thank you.

CHAIR ANDERSON: Go ahead. Why don't you let's show the video again.

MR. POWELL: Again.

(Playing video clip.)

MR. POWELL: And I will show a subsequent exhibit that will show that entire segment so you can actually see from the pee wall to The Pub.

MS. CROCKETT: Did you continue this video to follow where they went?

1 MR. POWELL: My battery went out.

2 But when I testify, my testimony will  
3 be that I saw the

4 CHAIR ANDERSON: Well, that's your  
5 testimony, sir. She can't you can testify  
6 since you can testify later on, but based on  
7 that video I don't see how she can testify since  
8 she is not the one who took the video and she  
9 wasn't there.

10 MR. POWELL: Well, I

11 CHAIR ANDERSON: You can testify

12 MR. POWELL: All right.

13 CHAIR ANDERSON: -- while you're under  
14 oath. You can testify about the video.

15 MR. POWELL: I understand.

16 CHAIR ANDERSON: And I believe but  
17 I think a better witness this is what I would  
18 suggest to you.

19 If you took the video, you put  
20 yourself under oath and you explain to us,  
21 through the video, what it is that we're seeing.

22 Because since she wasn't there she  
23 didn't take the video, she wasn't there; isn't  
24 that correct?

25 Isn't that correct?

1 MR. POWELL: She didn't take the  
2 video.

3 CHAIR ANDERSON: And she was not  
4 there; is that correct?

5 MR. POWELL: I don't know. There's a  
6 reason why I showed her. I don't know that she  
7 was there.

8 CHAIR ANDERSON: But what I'm saying,  
9 though, sir, you are a better witness.

10 MR. POWELL: Okay.

11 CHAIR ANDERSON: You took the video.  
12 You can show us the video and you can explain to  
13 us what is it that we're seeing because you're  
14 going to testify.

15 MR. POWELL: Will I have a chance to  
16 ask her a question to explain why I had her speak  
17 to this video?

18 CHAIR ANDERSON: You can go ahead, but  
19 I'm not sure if she's I'm not sure and if Mr.  
20 Murphy was an attorney, he would not have allowed  
21 you to show this witness this video because this  
22 witness did not take the video, this witness was  
23 not there, and she doesn't even know when the  
24 video was taken.

25 So, an attorney would basically object

1 to say this person has no firsthand knowledge and  
2 she's supposing what's in it.

3 But I'm saying since you're going to  
4 testify and you're the one who took the video,  
5 you are a better witness to talk to to show us  
6 the video and explain to us what it is that we're  
7 seeing.

8 Because the questions that both myself  
9 and Ms. Crockett have first of all, Ms.  
10 Crockett was asking, who took the video? When  
11 was the video taken?

12 And your witness can't answer those  
13 questions.

14 MR. POWELL: Okay.

15 CHAIR ANDERSON: But you can go ahead,  
16 sir.

17 MR. POWELL: Okay. So, you did not  
18 take the video, correct?

19 MS. WATKINS: That is correct.

20 MR. POWELL: Okay.

21 MS. WATKINS: That is correct.

22 MR. POWELL: The actions that were in  
23 the video, is that a new experience to you?

24 MS. WATKINS: No.

25 MR. POWELL: Have you seen that on

1 more than one occasion?

2 MS. WATKINS: Yes.

3 MR. POWELL: And what you saw, was it  
4 similar to what you saw in the video?

5 MS. WATKINS: Correct.

6 MR. POWELL: So, is it your testimony  
7 that you have seen people urinate on the pee wall  
8 and return to The Pub?

9 MS. WATKINS: That is correct.

10 MR. POWELL: Thank you.

11 Do you know how many bathrooms are in  
12 The Pub?

13 MS. WATKINS: No, I do not. I've  
14 frequented The Pub maybe twice since it's been  
15 there. I don't know.

16 MR. POWELL: Okay. You did hear the  
17 testimony earlier today that there would be four  
18 individual bathrooms in The Pub?

19 MS. WATKINS: I did hear that, yes.

20 MR. POWELL: Okay. This license for  
21 substantial change going from 84 to 144 with more  
22 people and four bathrooms, what type of concern  
23 does that give you in the context of this video?

24 MS. WATKINS: That there will probably  
25 more likely be an increasing use of the pee wall.



1 MR. POWELL: Thank you. Okay.

2 Have you ever called ABRA about  
3 incidents that happen at The Pub?

4 MS. WATKINS: I have.

5 MR. POWELL: Okay. And how did you  
6 know to call ABRA?

7 MS. WATKINS: Well, I asked you for  
8 the number as opposed to my calling 9-1-1. So,  
9 that's how I got it.

10 MR. POWELL: And so, previously when  
11 there were incidents at The Pub like people  
12 urinating and music, you didn't take any action  
13 because you thought 9-1-1 was overkill?

14 MS. WATKINS: I didn't think anyone  
15 would pay attention to me --

16 MR. POWELL: Okay.

17 MS. WATKINS: -- in use of their  
18 services for that.

19 MR. POWELL: And when you learned that  
20 there was an ABRA number to call, what did you  
21 do?

22 MS. WATKINS: I called.

23 MR. POWELL: Okay. So, when you hear  
24 the -- Investigator Zolokofer repeatedly say  
25 there are no violations, there are no violations,

1 he came by there five times, he did this and  
2 that, there have been calls, but there are no  
3 violations, how do you feel about that?

4 MS. WATKINS: Confused because I felt  
5 that I placed the call, I gave my information, I  
6 thought I should have gotten some feedback about  
7 it, and I saw no change in what I had called  
8 about.

9 MR. POWELL: So, is it your preference  
10 that the occupancy, based upon your experience  
11 with public urination coming from a bar and pub,  
12 that it would go up or go down?

13 MS. WATKINS: I'm sorry?

14 MR. POWELL: Is it your preference  
15 that the occupancy go up, go down or stay the  
16 same based upon your experience?

17 MS. WATKINS: Well, based on my  
18 experience, I would say it's fine as it is, but,  
19 not to down the establishment, if they could do  
20 something about it, you know.

21 I don't want to keep someone from  
22 doing their livelihood, but with some concern for  
23 us, that's my main thing.

24 But I do think saying the same, if I  
25 had a choice, would be that, but

1 MR. POWELL: What is your opinion of  
2 having four single bathrooms for 144 people?

3 MS. WATKINS: I don't see how that  
4 would work, but port-a-potty is not the answer.  
5 So, I don't know.

6 MR. POWELL: Okay. So, I would like  
7 to enter this one into evidence.

8 CHAIR ANDERSON: Which one is this  
9 one?

10 MS. WATKINS: 13.

11 CHAIR ANDERSON: Is that No. 12 or is  
12 that

13 MS. WATKINS: 13.

14 CHAIR ANDERSON: Okay. All right.  
15 So, Mr. Murphy?

16 MR. MURPHY: No objection.

17 CHAIR ANDERSON: Okay. So, the third  
18 video will be Exhibit 13 and is moved into  
19 evidence.

20 (Whereupon, the above-mentioned video  
21 was marked for identification and  
22 received into evidence as Protestant  
23 Exhibit No. 13.)

24 MR. POWELL: Okay. I think let's  
25 see. I think that is all my initial questions

1 for Ms. Watkins.

2 CHAIR ANDERSON: All right. Mr.  
3 Murphy, do you have any questions? If you need  
4 the videos to be replayed, then we will replay  
5 them.

6 MR. MURPHY: Okay.

7 CHAIR ANDERSON: So, your witness.

8 CROSS EXAMINATION

9 MR. MURPHY: With respect to Exhibits  
10 11 and 12, which were the they were not the  
11 urination videos, but

12 CHAIR ANDERSON: Sorry. Go ahead, Mr.  
13 Murphy.

14 MR. MURPHY: Were those videos taken  
15 from inside someone's home?

16 CHAIR ANDERSON: You're asking her a

17  
18 MS. WATKINS: Are you speaking to me?

19 CHAIR ANDERSON: You're asking her a  
20 question.

21 MS. WATKINS: Are you speaking to me?

22 MR. MURPHY: As far as you can tell,  
23 were those videos taken from inside someone's  
24 home?

25 MS. WATKINS: As far as I can tell,

1 no. They were taken outside.

2 MR. MURPHY: For Exhibit 11, the one  
3 with the drums, are you aware the ABRA did come  
4 to have us close the doors and the windows and  
5 then confirmed that the sound level was  
6 acceptable?

7 MS. WATKINS: They didn't speak to me.  
8 I don't know what happened.

9 MR. MURPHY: Are you aware that even  
10 though they said that it was acceptable, that was  
11 the last time we ever allowed drums?

12 MS. WATKINS: Am I aware? How would  
13 I be aware?

14 MR. MURPHY: Well, I spoke

15 MS. WATKINS: No, I'm not aware.

16 MR. MURPHY: Have you been bothered by  
17 drums again since?

18 MS. WATKINS: That's not what I said.  
19 You asked me was I aware. I said no.

20 MR. MURPHY: Okay. Are you aware that  
21 we voluntarily stopped all live music on  
22 September 30th?

23 MS. WATKINS: No, I'm not aware. How  
24 would I be?

25 MR. MURPHY: Are you aware it is our

1 intent to move live music into

2 MS. WATKINS: I can't read your mind,  
3 no.

4 MR. MURPHY: Are you aware that were  
5 it not for this protest that live music would  
6 have been in the basement?

7 MS. WATKINS: Sir

8 CHAIR ANDERSON: Ma'am, if you can't  
9 answer the question

10 MS. WATKINS: I'm not aware, sir.

11 CHAIR ANDERSON: Thank you, ma'am.

12 Go ahead. Next question.

13 MR. MURPHY: You said you live at 19  
14 R Street; is that correct?

15 MS. WATKINS: That's what I yes.

16 MR. MURPHY: Does someone live in your  
17 home named Caroline Freeman (phonetic)?

18 MS. WATKINS: Yes.

19 MR. MURPHY: Are you aware that on  
20 August 9th she wrote a letter to ABRA and cc'd  
21 us, completely unsolicited by us, stating her,  
22 quote, emphatic support this was one of the  
23 letters that I was going to submit.

24 MS. WATKINS: I'm fully aware.

25 CHAIR ANDERSON: You're asking her a

1 question. I'm not

2 MR. MURPHY: Are you aware that she  
3 wrote a letter giving her emphatic support to The  
4 Pub's expansion into the basement?

5 MS. WATKINS: I'm fully aware of the  
6 letter, yes.

7 MR. MURPHY: Why do you think her  
8 experience is

9 MS. WATKINS: I can't read her mind.  
10 I have no idea.

11 MR. MURPHY: All right. With regard  
12 to Exhibit 13, the dubbed "pee wall video," do  
13 you think that we condone that behavior?

14 MS. WATKINS: Pardon me?

15 MR. MURPHY: Do you think that we, the  
16 business the business owners, as individuals,  
17 do you think that we condone or do you think  
18 that we want that behavior?

19 Do you think we want people to urinate  
20 in public and

21 MS. WATKINS: I have no idea what you  
22 want. I would assume that the average person  
23 would not.

24 MR. MURPHY: Absolutely not.

25 MS. WATKINS: But what you want, I

1 have no idea.

2 MR. MURPHY: Are you aware that there  
3 are that when the basement opens if and when  
4 the basement opens, the number of bathrooms in  
5 The Pub and the People will double, but they're  
6 only adding 28 seats to 192 and it's only a 50  
7 percent increase?

8 So, it's 100 percent increase in  
9 bathrooms, 50 percent increase in possible human  
10 bodies legally allowed in the building.

11 Do you think that that will make  
12 access to bathrooms

13 MS. WATKINS: I'm sorry, you're asking  
14 me two questions.

15 Are you saying am I aware that it will  
16 double? No, I'm not aware of that.

17 MR. MURPHY: Okay. It will double.  
18 I'll start with that sentence. It will double.

19 Given that, given that there's only a  
20 50 percent increase in people legally allowed,  
21 only a 15 percent increase in seats, but a 100  
22 percent increase in bathrooms, do you think that  
23 the bathroom situation would be better or worse?

24 MS. WATKINS: I have no idea.

25 MR. MURPHY: That's all.



1 CHAIR ANDERSON: Any questions

2 MR. POWELL: Redirect?

3 CHAIR ANDERSON: No. No. No. No.

4 It's our time to ask questions.

5 MR. POWELL: Oh, I'm sorry.

6 CHAIR ANDERSON: Any questions by the  
7 board members?

8 You're trying I am paying attention  
9 to what's going on here. You're trying to slip a  
10 fast one on me.

11 MR. POWELL: No, I'm not.

12 CHAIR ANDERSON: I am playing with  
13 you.

14 (Laughter.)

15 CHAIR ANDERSON: It is 5:36 in the  
16 afternoon and we've been here since nine o'clock  
17 this morning. So, to give me go ahead, Mr.  
18 Short.

19 MR. SHORT: Your name again, please,  
20 ma'am.

21 MS. WATKINS: Jean Watkins.

22 MR. SHORT: Ms. Watkins. And, Ms.  
23 Watkins, how long have you lived in the  
24 neighborhood?

25 MS. WATKINS: I originally moved in

1 the neighborhood I had two spans. I was there  
2 ten years, moved away for three, and then back  
3 for seven.

4 MR. SHORT: So, has this establishment  
5 always been there since the ten years?

6 MS. WATKINS: No. No. Sorry, no.

7 MR. SHORT: Okay. I guess and thank  
8 you for your testimony. It's been quite  
9 compelling.

10 What do you you say you don't have  
11 a problem with the business being there?

12 MS. WATKINS: No.

13 MR. SHORT: And you do have a  
14 settlement agreement, correct?

15 MS. WATKINS: Yes.

16 MR. SHORT: And to your knowledge, how  
17 well are they following the settlement agreement?

18 MS. WATKINS: If you're asking  
19 percentages, I'll mess up, but I don't think  
20 they're following it fully.

21 MR. SHORT: So, are the doors and  
22 windows supposed to be closed when they're  
23 playing music? Is that a part of the settlement  
24

25 MS. WATKINS: It is.

1 MR. SHORT: -- agreement?

2 MS. WATKINS: Yes.

3 MR. SHORT: And what we saw in the  
4 video a minute ago, were the doors open?

5 MS. WATKINS: The door was open in  
6 that video, yes.

7 MR. MURPHY: It is not part of the  
8 settlement agreement.

9 MS. WATKINS: It is my understanding  
10 that it was.

11 CHAIR ANDERSON: There's no pending  
12 question, Mr. Murphy. And I don't know if the  
13 settlement agreement is a part of if the it's  
14 a part of our record.

15 So, I mean, we can review the  
16 settlement agreement to see if that provision is  
17 in the settlement agreement.

18 MS. WATKINS: I thought it was.

19 CHAIR ANDERSON: So, that's part of  
20 our own records although it's not disclosed. I'm  
21 not sure if it's disclosed by either side.

22 Is it disclosed by either side, the  
23 settlement agreement?

24 MR. MURPHY: It wasn't an exhibit.

25 MR. POWELL: We didn't make it an

1 exhibit, but it's your document.

2 CHAIR ANDERSON: Well, all right, but  
3 it's a part of our documents. Okay. All right.  
4 So, we can check on that.

5 MR. SHORT: Okay. Ms. Watkins

6 MS. WATKINS: Yes, sir.

7 MR. SHORT: -- if this business were  
8 to live up to their settlement agreement, do you  
9 think you would be a lot more comfortable as a  
10 neighbor?

11 MS. WATKINS: Yes.

12 MR. SHORT: That's all. Thank you  
13 very much. You've been

14 CHAIR ANDERSON: Any other questions  
15 by any board members?

16 The question I want to ask, the video  
17 I see the first video was do you know what  
18 time of day was that video taken well, I mean,  
19 it appeared that it was bright.

20 So, do you know if

21 MS. WATKINS: Bright, no.

22 CHAIR ANDERSON: The first video.

23 MS. WATKINS: Okay.

24 CHAIR ANDERSON: The first video where  
25 there was, I guess, the drumming

1 MS. WATKINS: Oh, I apologize. Sorry.

2 CHAIR ANDERSON: -- do you know was  
3 that video do you know was that in the early  
4 afternoon, the evening or the night?

5 Do you have any idea when this video

6

7 MS. WATKINS: I'm not certain. I  
8 would be guessing if I --

9 CHAIR ANDERSON: Okay. That's fine.

10 MS. WATKINS: -- gave an answer and I  
11 don't want to do that.

12 CHAIR ANDERSON: Then that's fine.

13 MS. WATKINS: Okay.

14 CHAIR ANDERSON: All right. Any other  
15 questions by any of the board members?

16 Mr. Murphy, do you have any questions  
17 you want to ask based on the questions that I  
18 asked and Mr. Short asked?

19 MR. MURPHY: No, sir.

20 CHAIR ANDERSON: Mr. Powell, this is  
21 your opportunity to ask questions, but it's only  
22 based on questions that I asked or questions  
23 excuse me that Mr. Short has asked.

24 MR. POWELL: Or Mr. Murphy, right?

25 CHAIR ANDERSON: I'm sorry?

1 MR. POWELL: His questions, too,  
2 right?

3 CHAIR ANDERSON: He didn't have any  
4 questions, so no.

5 MR. POWELL: But his first round of  
6 questions.

7 CHAIR ANDERSON: No, just you can  
8 ask I'll give you some leeway, but not to  
9 revisit the entire case.

10 MR. POWELL: Okay.

11 CHAIR ANDERSON: Okay. So, you can  
12 ask a couple of questions, sir.

13 REDIRECT EXAMINATION

14 MR. POWELL: You testified that you  
15 had two stints living there, I think, for ten  
16 years and seven years, correct?

17 MS. WATKINS: Yes. Yes.

18 MR. POWELL: The person Caroline who  
19 rents the place upstairs from you, how long has  
20 she lived there?

21 MS. WATKINS: Going into two years  
22 now.

23 MR. POWELL: Is it more than two years  
24 or less than two years?

25 MS. WATKINS: Less than.

1 MR. POWELL: Okay. Less than two  
2 years.

3 And your experiences with these things  
4 at The Pub have gone beyond the two years that  
5 she's been there?

6 MS. WATKINS: Surely.

7 MR. POWELL: Yes or no?

8 MS. WATKINS: Yes.

9 MR. POWELL: All right.

10 CHAIR ANDERSON: Ms. Watkins, thank  
11 you very much for your testimony.

12 MS. WATKINS: Thank you.

13 CHAIR ANDERSON: You can step down.  
14 All right.

15 (Witness excused.)

16 CHAIR ANDERSON: Do we have another  
17 witness?

18 MR. POWELL: So, this is we prepared  
19 for each of us to kind of go individually. But  
20 now that I'm kind of delegated

21 CHAIR ANDERSON: What do you mean "go  
22 individually"?

23 MR. POWELL: As a witness.

24 CHAIR ANDERSON: All right. Okay.

25 So, each of you want to testify; is

1 that correct?

2 MR. POWELL: Yes.

3 CHAIR ANDERSON: Okay.

4 MR. POWELL: We each had she had  
5 questions for me and I don't know what hers are  
6 yet, so we've got to regroup because we kind of  
7 switched it.

8 CHAIR ANDERSON: But if she has  
9 questions for you, you can raise your right hand  
10 and you can testify.

11 MR. POWELL: And she'll get to ask me  
12 those questions?

13 CHAIR ANDERSON: She don't need to ask  
14 you any questions. You can she doesn't need to  
15 ask any questions. You know what it is that you  
16 want to testify.

17 So, raise your right hand. You can  
18 testify.

19 MR. POWELL: Okay.

20 CHAIR ANDERSON: He raises his right  
21 hand, he testifies.

22 MR. POWELL: It's been a long day.

23 CHAIR ANDERSON: She raises her right  
24 hand, she testifies and then he'll cross examine  
25 each of you when it's time, but I don't she



1 doesn't I'm not -- because you're a protestant,  
2 we don't need to she doesn't need to ask you  
3 questions.

4 Raise your right hand. You know what  
5 you want to state. Then he'll cross examine you,  
6 and we will, and then each person will testify  
7 and we'll move on.

8 MR. POWELL: I apologize. I feel like  
9 I'm always doing something wrong. So, just stop  
10 me.

11 CHAIR ANDERSON: No, you're fine.

12 Mr. Powell, do you swear or affirm to  
13 tell the truth and nothing but the truth?

14 MR. POWELL: Absolutely, I do.

15 CHAIR ANDERSON: All right. So, you  
16 can either sit there or sit at the table, but  
17 make sure that we hear whatever you want to put  
18 on the record.

19 MR. POWELL: I'm going to sit, but I  
20 may have to come back to

21 CHAIR ANDERSON: Whatever works for  
22 you.

23 MR. POWELL: So, I'm just going to  
24 testify and talk about what I want to talk about.

25 CHAIR ANDERSON: Yes, sir.

1 MR. POWELL: Okay. So, my name is  
2 Rodney Powell, R-O-D-N-E-Y, P-O-W-E-L-L. I live  
3 at 17 R Street, N.W.

4 I am about six or seven houses down  
5 from the corner of North Capitol and Pub and  
6 People and I've lived there about 17 years.

7 So, in reference to some of the  
8 exhibits, I can talk about them in detail. So,  
9 actually, I took the video.

10 Okay. So, the first video so, there  
11 has been I don't know where I begin. Okay.  
12 So, originally I welcomed The Pub as a business,  
13 right. It's not that I don't want them there.

14 When they initially had the opening,  
15 I went to the opening and it was kind of a  
16 community event.

17 And of course I was, you know,  
18 excited. It was a new business, a place to go  
19 down the street, you know. I have options.

20 I don't mind driving or Ubering or  
21 going somewhere else, but it's good to have  
22 something in your neighborhood. So, I was kind  
23 of awed in that regard.

24 Over time, my experience is that The  
25 Pub has not always been the best citizen. And,

1 in my opinion, based upon some things that I've  
2 seen and heard when there's been communication  
3 with the owners, it's kind of been a smug  
4 response.

5 And I'm a little bit surprised to hear  
6 this theme of, like, kumbaya, we always want to  
7 work and help and just resolve.

8 And that hasn't always been the case,  
9 and that's what I was getting to with that line  
10 of questioning.

11 Previously, when he said, well, since  
12 we didn't reach an agreement, then now we want to  
13 keep the music on the upper level almost like it  
14 was a punitive thing, which that reality has  
15 really been more of my experience, what I've seen  
16 and heard with The Pub and the People.

17 When I took the video, I felt  
18 compelled to take a video because my experience  
19 with ABRA and calling the investigators has  
20 really been nothing you're not ABRA, are you?

21 (Laughter.)

22 MR. SHORT: ABC Board.

23 MR. POWELL: Okay. So -- and I'm not  
24 here to down anybody, but ABRA is the first  
25 organization I've dealt with where they lead with

1 what they can't do.

2 First you call and, well, I'm the only  
3 one out tonight and I can't get there for three  
4 hours.

5 And I'm like, well, it's 11:30, so  
6 then it will be 2:30. There was like there's  
7 always a number of, like, qualifications. I  
8 can't do this, I can't do that and I'll get there  
9 and observe and I'll let you know, and you never  
10 hear back.

11 An issue we were dealing with, Earl  
12 some Earl Jones a guy named Earl and then  
13 there was an investigator. There was a Mr.  
14 Florentine and then there was a Kevin something,  
15 a Kevin Fuente (phonetic).

16 There's been several people that we've  
17 dealt with, but every time you call there's a  
18 qualification.

19 And even the last time when it was  
20 about the actual door being open so the music was  
21 projecting outside, well, you know, I can't make  
22 them stop. All I can do is I mean, I can go by  
23 and we can, you know, talk and we can strategize  
24 and come up with a way to ameliorate the  
25 situation.

1           It's it made me question, well,  
2 what's the point of the settlement agreement when  
3 you call and the neighbors express things that  
4 have happened and I continually get all these  
5 qualifications.

6           Mr. Investigator Zolokofer is not  
7 here. He did call me and I was traveling on a  
8 business trip, not vacation.

9           But when he called me, I was reluctant  
10 and suspicious because I don't I don't have any  
11 much faith in ABRA and what they do.

12           And whenever you call, there always  
13 seems to be, we're going to go and somebody  
14 called, so you better do this and do that and  
15 just, you know, clam everything down, not that  
16 there's a violation and we're going to take an  
17 action.

18           So, I wasn't compelled, really, to  
19 call him back and just lay everything out, man,  
20 it's this, it's this, it's this, because I didn't  
21 trust not so much him personally, but the entire  
22 process, which has been very, very, very, very  
23 frustrating.

24           Which leads to the reason why I'm  
25 taking video. If you think about it from my

1       standpoint, I'm reduced to taking a video of  
2       people urinating on a wall because I feel that if  
3       I don't have video or something concrete, that  
4       nothing will be done.

5                   And at the point much like Ms. Lynch,  
6       it's like we got to get pictures, we got to get  
7       something because nobody is hearing us.

8                   Nobody is hearing us, nobody is  
9       believing us, and now we're coming to a point  
10      where we want to go    we want to get 60 more  
11      people. Really?

12                   And, you know, we want to have live  
13      music and, well, you know, we soundproofed it,  
14      you know. Just trust us on that one.

15                   That has not been    that causes great  
16      concern to the peace, the quiet and everything  
17      within the neighborhood.

18                   So, what substantiates my feelings and  
19      testimony is that we're out taking videos,  
20      running around taking videos, somebody urinating,  
21      we got people loud on the corner because it's  
22      like without that we have nothing.

23                   Because when we call, you know, I'm  
24      the only one, I can't get there for three hours.  
25      The investigator himself said, oh, I went around,

1 I didn't see nothing.

2 And so, I feel like if you only had  
3 his report and I didn't have my videos, my  
4 things, her picture, her testimony, that you'd be  
5 like, oh, well, you know, we don't see much.

6 So, I'm compelled to be so repetitious  
7 and go around and do things to kind of build a  
8 case and say, hey, we got to put the brakes on  
9 this because while we don't have anything against  
10 them personally, this ain't what they saying it  
11 is. This is not that way.

12 So, now they want more people, you  
13 know, live music, you know. We may or may not  
14 have soundproofing. We don't want to put limits  
15 on when we take out the trash because of course  
16 there's going to be more trash. That's the whole  
17 trash context.

18 With more people, you're going to go  
19 out there more frequently. That causes us great  
20 concern.

21 I can testify to before I do that,  
22 can I enter my own exhibit?

23 CHAIR ANDERSON: Yeah.

24 MR. POWELL: Okay. So, this is  
25 well, it's this picture.

1 CHAIR ANDERSON: So we're at Number  
2 14. Let me see.

3 MR. POWELL: 14, Yes.

4 CHAIR ANDERSON: Hold on. Let me find  
5 it. What's this? What is it?

6 MR. POWELL: It's on mine, on this one  
7 --

8 CHAIR ANDERSON: What's given to me,  
9 it's not marked. Okay? So, all right.

10 MEMBER CATO: You said pee wall?

11 MR. POWELL: This is the --

12 CHAIR ANDERSON: Which one is this?  
13 Oh, sorry. It's after --

14 MR. POWELL: So I jokingly --

15 CHAIR ANDERSON: Hold on. Hold on,  
16 please. Hold on. Okay. So this is Number 14.  
17 Okay. So what's this?

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

21 MR. POWELL: So our joke was in China  
22 you have the Great Wall. In Israel, they got the  
23 wailing wall. On our street, we have the pee  
24 wall.

25 And what this picture shows is from



1 the video when they left this wall, they made a  
2 right turn and they were going toward the corner,  
3 which is actually in the direction of where the  
4 pub is. I took this. This is a clear shot.  
5 This is substantially the rest of the footage  
6 from the video.

7 I actually took the video. I actually  
8 saw it. My battery was low, which is why I  
9 couldn't -- you know, when your signal gets below  
10 10 percent certain functions you can't do. Video  
11 is one of them, right? Because video takes a lot  
12 of power. So to back that up, I came when it was  
13 still mostly daylight to take this picture to  
14 show the rest of what happened and the view and  
15 what I saw.

16 So I'd like to enter this into  
17 evidence.

18 CHAIR ANDERSON: Mr. Murphy?

19 MR. MURPHY: That's fine.

20 CHAIR ANDERSON: Okay. So moved,  
21 Exhibit 14.

22 (Whereupon, the above-referred to  
23 document marked for identification as  
24 Protestant Exhibit No. 14 was entered  
25 into evidence.)

1 MR. POWELL: I can testify to the  
2 first video, which is we were -- that happened at  
3 the beginning of this summer. I don't have an  
4 exact date. I think it was on the weekend and it  
5 was during the day, like, in the afternoon. It  
6 wasn't, like, 7 or 8 o'clock, but I don't think  
7 it was like, 1:00 or 2:00 either. It was  
8 sometime in the afternoon and you could clearly  
9 hear the drums.

10 And Ms. Jeanne said the same thing.  
11 Do you hear that? Where is that? And it was  
12 actually from the pub. And I know it was before  
13 the summer because I thought to myself, we are  
14 not going to go through this in the summer.  
15 We're not going to start this now and go through  
16 the summer.

17 And so because of the past experience  
18 with ABRA, I went and got my, I think it was my  
19 phone and iPad and walked to the corner and tried  
20 to capture everything. The motorcycle, which is  
21 now irrelevant, the people sitting there playing  
22 the instruments, the door being opened, which  
23 allowed the sound to project outside.

24 In the video you actually see a woman,  
25 the music is so loud she had to walk away to take

1 her phone call. She came out of the  
2 establishment to walk away to complete her call  
3 because it was so loud. And, in fact, we could  
4 hear it down the street. So we had completed the  
5 video. I think I called myself, and Ms. Jeanne  
6 called, but I never knew what happened. And this  
7 was what -- it might have been Florentine. I  
8 don't know who it was.

9 But the first thing he said was, oh,  
10 man, I got five other calls so I know the pub  
11 real well, which made me raise an eyebrow. He  
12 said, yes, I know the pub. Everybody knows the  
13 pub but there's no violations, right? I know the  
14 pub, and, I mean, I don't know when I can get  
15 there. But, you know, we'll see. We have a lot  
16 going on tonight.

17 So even the initial interaction was  
18 not very reassuring. And I said to myself, well,  
19 at least I have a video. And lo and behold, we  
20 get this application for substantial change and  
21 everything. And I thought, you know, I got to  
22 pull my videos together because we have a story  
23 to tell and this is our story.

24 And this what we've been dealing with  
25 and this whole narrative that is personal. It's

1 not. It does affect the peace and the quiet and  
2 the quality of living. And I'm watching people,  
3 you know, urinate and all types of things.

4 Now I have been in the abutting  
5 property when the other owner lived there. I  
6 have been there on multiple occasions. One time  
7 I walked in and I said, why is your TV so loud?  
8 She had the TV on, like, 70, 75. She said  
9 because I can hear the people next door.

10 And then another time, I said what are  
11 you cooking? She said I'm not cooking anything.  
12 That's from next door. The bar is behind that  
13 abutting wall. I could hear the blender. You  
14 can hear them mixing drinks on the other side of  
15 the wall. I've actually been at their house.  
16 And she just looked at me. And the funny thing  
17 is when they finally moved, I sort of found out,  
18 she's, like, I sold. I can't take this.

19 And a couple times we had a  
20 disagreement, I said you need to call ABRA. You  
21 need to do this. Well, we had a different ANC  
22 then, Teri Janine. You need to call Teri. You  
23 need to do this. And it's not working.

24 I text the owners. I text them. I  
25 hear them dragging stuff across the floor at

1 night. She told me one time she went over in her  
2 nightgown. She had her nightgown. She had her  
3 hair wrapped up and said, really, on more than  
4 one occasion.

5 So I can testify to what I was told  
6 but also to what I heard and what I smelled and  
7 what I saw because this was a Sunday, I think,  
8 during football. And they had the TV way up.  
9 And when they turned it down I could clearly hear  
10 the noise coming from next door.

11 So that's why the soundproofing is  
12 such a big deal. And that's why it's so  
13 disconcerting to hear them say, well, we might  
14 keep music upstairs. We might not.

15 Since you didn't do it, then we might  
16 want to have the option to keep it upstairs which  
17 to me doesn't necessarily sound like something  
18 very neighborly or to hear, I guess I can talk  
19 about this because I know, we can't put any  
20 limits on when we take the trash out. We can't  
21 stop taking trash out at midnight because we're  
22 open until 2:00. And, you know, we'll make an  
23 effort to try to walk and be quiet and train the  
24 staff to lift it up gently and do all this type  
25 of stuff. Nothing, nothing, ever seems to be

1 resolved.

2 So, yes, we tried to get a settlement  
3 agreement but too many sticking points. Things  
4 that we know directly affect the quality of life.  
5 And now we're sitting here thinking, okay, now  
6 we're going to have 144 people on this corner.

7 And this whole notion that just  
8 because it's North Capitol, oh, it's a busy  
9 street. Don't worry it. It does make a  
10 difference if 140 some people are on the corner  
11 of a busy street because on a Sunday night at 8  
12 o'clock it's not like rush hour traffic. That  
13 street is noisiest during rush hour in the  
14 morning and rush hour in the evening. Not at 9,  
15 10, 12 o'clock at night.

16 And that's what's going to happen.  
17 Now we can go until 3 o'clock with a band in the  
18 basement and people might stand outside. And I  
19 can tell you for sure that if it's four bathrooms  
20 and 144 people, somebody is going to pee outside.

21 Now they may not endorse that, but  
22 that's the reality of increased occupancy in a  
23 place that serves beer, wine, liquor, water,  
24 food. That's just how it is. That's a reality.  
25 And we're saying that shouldn't be our reality.

1                   We've got to put something around that  
2 because then it seems that the thrust is that  
3 this is all about the business and not the  
4 residents. Well, since we're on a mixed corridor  
5 and since, you know, we've got a light. No,  
6 that's not acceptable to me.

7                   So I'm testifying to the three videos.  
8 So the two people who urinated on the wall, I  
9 actually saw them. I saw them come from the pub,  
10 which made me go get my phone. I knew what was  
11 going to happen. I went and got the phone,  
12 looked. Opened it up, focused, focused in on  
13 people urinating, right? And then saw them walk  
14 away and then the battery died. I really wanted  
15 to follow them the entire way.

16                   The previous video is how much noise  
17 we heard from where we are. As you noticed, I  
18 zoomed in and zoomed out. It was audible.  
19 People on the patios, ha, ha, ha, ha, ha. So  
20 it's me seven or eight houses down, imagine what  
21 the abutting guy is going to get. There's no way  
22 around it. That's why our request about  
23 occupancy, you know, I'd like to do hours, but I  
24 don't know if that's up for debate, you know,  
25 trash times because it does absolutely impact the

1 person who lived there.

2           Honestly, there was more peace and  
3 quiet when the building was empty. Now I'm not  
4 going to advocate having empty buildings, but we  
5 didn't have these issues.

6           CHAIR ANDERSON: That's it?

7           M. POWELL: That's all for me.

8           CHAIR ANDERSON: Mr. Murphy, you can  
9 cross-examine him.

10           MR. MURPHY: We'll start with a couple  
11 simple ones. You did say you heard the blender  
12 through the wall. Is that correct?

13           MR. POWELL: I did.

14           MR. MURPHY: So it's weird because  
15 there's no blender in the building.

16           MR. POWELL: I heard a blending sound.

17           MR. MURPHY: Yes. There's not one.  
18 Regarding the Exhibit 11, the one with the band.  
19 Did you stay and watch while ABRA came?

20           MR. POWELL: Well, when I called ABRA,  
21 he told me I don't know when I'll get there. So  
22 it was an undetermined amount of time. He said,  
23 man, I'm the only guy. I don't know. I may get  
24 there in an hour or two.

25           MR. MURPHY: Mm-hmm.



1           MR. POWELL: So I chose not to stand  
2 on the corner and wait forever.

3           MR. MURPHY: I don't blame you. But  
4 you've said a lot about how unresponsive they  
5 are. But they did come, quickly enough to cause  
6 a change -- to bring it to our knowledge that it  
7 was loud. And we closed the doors, closed the  
8 windows and then ABRA signed off on it.

9           MR. POWELL: He told me he would call  
10 me back, and he didn't.

11          MR. MURPHY: Well, I'm sorry for that.  
12 A lot of this is an information issue. Let me  
13 ask you, since we opened and prior to filing this  
14 protest, have you ever come to us or sent us an  
15 email voicing your concerns?

16          MR. POWELL: No. Because I don't know  
17 you like that. The mechanism for that was ABRA.

18          MR. MURPHY: No one in this room has  
19 ever done that. The only person we ever heard  
20 from was Debbie.

21          MR. POWELL: Well, you saw how that  
22 turned out. She moved.

23          CHAIR ANDERSON: This is cross-  
24 examining, Mr. -- all right.

25          MR. MURPHY: But it's difficult for us

1 to make adjustments if we haven't had any  
2 communication. Lastly, this supposed pee wall,  
3 do you know who that house belongs to?

4 MR. POWELL: I believe Pat and Bruce  
5 Mitchell live there.

6 MR. MURPHY: Do you know what their  
7 relationship is to the business?

8 MR. POWELL: I've heard rumors that  
9 they own the business.

10 MR. MURPHY: They own the building.  
11 They're a landlord. And they've never reached  
12 out to us about this. And they usually are not  
13 shy about reaching out when there's a problem.

14 CHAIR ANDERSON: Ma'am -- thank you.

15 MR. MURPHY: Why do you think that is?

16 MR. POWELL: You would be asking me to  
17 speculate. I don't know why.

18 MR. MURPHY: I have no further  
19 questions.

20 CHAIR ANDERSON: Any questions by any  
21 Board members? Go ahead, Mr. Short.

22 MEMBER SHORT: Yes, Mr. Powell, are  
23 you the ANC person?

24 MR. POWELL: I am not.

25 MS. LEWIS: I am.

1                   MEMBER SHORT: Okay. Well, I'm going  
2 to just make a statement and then I'm going to  
3 ask a question if it's okay with the Chair.

4                   Georgetown, how long have you been in  
5 Washington, D.C.?

6                   MR. POWELL: In the actual city?

7                   MEMBER SHORT: Mm-hmm.

8                   MR. POWELL: In 2000 --

9                   MEMBER SHORT: Well, the better  
10 question. Have you ever visited Georgetown when  
11 the night club used to be up there? You know  
12 they don't have any night clubs anymore in  
13 Georgetown.

14                   (Simultaneous speaking.)

15                   MR. POWELL: No. I did, like, public  
16 gardens.

17                   MEMBER SHORT: Okay. Forget it. I'll  
18 just say this to you. During my tenure with the  
19 firm, I once ran what they called a Mayor's  
20 Nuisance Abatement Task Force. And there was  
21 several clubs that closed on M Street until  
22 finally the neighbors had enough between the ANC  
23 and the councilmember -- you might want to take  
24 some notes.

25                   They had meetings with the fire chief,

1 the police chief and with DCRA. And they  
2 activated the Nuisance Task Force. And guess  
3 what happened? Clubs, people didn't make calls.  
4 They called me or called my task force. We had  
5 no more trouble out of them because they got  
6 tickets.

7 And if they came into compliance they  
8 didn't see us anymore. But hard head folks --  
9 but, again, I would suggest you give it to ANC.  
10 All of you who are really concerned in the  
11 neighborhood, write letters, put your names to  
12 the letters, ask for a meeting with the Mayor's  
13 office and have the blessing of your  
14 councilmember.

15 And I would be willing to bet you  
16 things would change not only at this club but all  
17 the way down North Capitol Street. So the power  
18 is in your hands if you use it. And you won't  
19 get any calls after that.

20 Public urination, I do know that Chief  
21 Newsham is hard on that. That compelling video  
22 that you showed, if Chief Newsham were to see  
23 that, whoever that in the 5th District I think is  
24 you --

25 MR. POWELL: I think it's third now.

1 It switched to third.

2 MEMBER SHORT: Oh, yes, they changed  
3 it again. They changed it down. I'll just say  
4 this. I would get the chief involved. I would  
5 get all of the department heads, including the  
6 Mayor. And they will work with the club because  
7 everybody wants to see business in this town.  
8 Everybody wants to see business.

9 And if you have your settlement  
10 agreement, when you call or when an ABRA person  
11 comes out you need to have that in hand and say,  
12 here's what our settlement agreement is saying.  
13 Do you see the same thing I see?

14 Have your settlement agreement --  
15 there's plenty of copies of the settlement  
16 agreement right there in the club. That's part  
17 of the requirements of a settlement agreement.

18 So the bottom line is we want to see  
19 businesses. We want to make sure the businesses  
20 and the community work together because they can  
21 function. A moratorium in Georgetown shut down  
22 all the night clubs.

23 Georgetown just got to the point where  
24 they asked this Board to take off the moratorium.  
25 But no new night clubs, only restaurants and

1        taverns. So, again, because the people there  
2        banded together and wrote those letters. Got a  
3        meeting with the Mayor. And we have a night life  
4        czar. And I would suggest you talk to him first.  
5        But you need to have those letters and  
6        signatures.

7                        Now my question to you is this,  
8        knowing this business isn't going to be shut down  
9        and they're probably going to get everything  
10       renewed, you have a settlement agreement. You  
11       need to work harder about getting the settlement  
12       agreement actually done. You know, your videos  
13       were quite compelling. I heard the noise. I saw  
14       the pee wall.

15                      And, again, if more people in town saw  
16       that, they would have a talk with the owner. And  
17       guess what? He would be glad to keep his  
18       business, keep the noise down. We had a couple  
19       of businesses on 7th Street that used to have a  
20       lot of mess, beer gardens. You don't hear about  
21       them anymore, do you? Because the neighborhood  
22       banned together and they worked it out.

23                      Now my question to you is after all my  
24       -- what are you going to do about it and what is  
25       your community going to do about it to help

1 yourselves?

2 MR. POWELL: So it's my impression  
3 that ABRA was the mechanism for that.

4 MEMBER SHORT: What's that?

5 MR. POWELL: That ABRA and the ABC  
6 Board was the place to resolve these things. I  
7 have called McDuffie's office. He has, like, a  
8 community type liaison thing. You know, they  
9 weren't -- I don't want to trash the councilman,  
10 but you said everybody wants business in the  
11 District, and you can just stop there because  
12 that's what I believe. And I think that is the  
13 thrust of this.

14 MEMBER SHORT: Let me ask you another  
15 question, why do some neighborhoods get response  
16 from the government and yours isn't?

17 MR. POWELL: If you're asking my  
18 opinion, I would glad to give you my opinion.  
19 Because there's this push and blessing to do this  
20 in Ward 5. We want to support business.

21 MEMBER SHORT: Nothing can happen  
22 without the people in Ward 5 raising up to the  
23 point where they get the attention of the Mayor's  
24 office period.

25 MR. POWELL: Am I hearing that ABRA is

1 not --

2 MEMBER SHORT: I've been cut off. The  
3 Chairman just told me that's enough.

4 MR. POWELL: Okay.

5 MEMBER SHORT: But I simply say if  
6 that was happening in my neighborhood, I would do  
7 what the people in Georgetown do.

8 CHAIR ANDERSON: Mr. Powell, the  
9 licensee has informed you that they have  
10 soundproofed this basement, is that correct?  
11 Have they informed you they have soundproofed the  
12 new space?

13 MR. POWELL: They said that they've --  
14 yes, soundproofed.

15 CHAIR ANDERSON: Have you been --  
16 well, I guess you're not the --

17 MR. POWELL: Are you getting to our  
18 request?

19 CHAIR ANDERSON: No, no. No, I'll  
20 withdraw the question. That's a better question  
21 for -- all right. I don't have any questions for  
22 you. Does anyone else have any other questions  
23 for Mr. Powell? All right. Thank you, Mr.  
24 Powell, for your testimony. All right.

25 MR. POWELL: Yes.



1 CHAIR ANDERSON: Do we have -- who is  
2 next? Mr. Mutneja. No, they're -- I was told  
3 there were only three more witnesses and the  
4 three of you are the three witnesses. That's  
5 what I was told.

6 MR. POWELL: You said four.

7 CHAIR ANDERSON: Who were they?

8 MR. POWELL: It was one, two, three.

9 CHAIR ANDERSON: I thought that --

10 MR. POWELL: Three, but it wasn't her.  
11 It was her.

12 CHAIR ANDERSON: So who are the  
13 witnesses who need to testify?

14 MR. POWELL: Two left.

15 CHAIR ANDERSON: So we only have two  
16 more witnesses?

17 MR. POWELL: Yes.

18 CHAIR ANDERSON: All right. So you're  
19 going to ask her questions because she's not a  
20 protestor. So therefore she's not going to --  
21 she needs to be asked questions. Because you are  
22 protesting, I've given you the opportunity to  
23 speak.

24 MR. POWELL: Okay.

25 CHAIR ANDERSON: But if the other

1 person is a witness, then someone needs to call  
2 her and ask questions of her.

3 MR. POWELL: She was originally going  
4 to question her, but now I'm going to take over.  
5 Okay.

6 CHAIR ANDERSON: Who is the next  
7 witness then?

8 MR. POWELL: Kathie, did you want to  
9 --

10 CHAIR ANDERSON: I didn't realize  
11 there was another witness because I would have  
12 had her testify before you. I thought the last  
13 three witnesses were the three protesters.

14 MS. LEWIS: Can I say something?

15 CHAIR ANDERSON: Yes, ma'am.

16 MS. LEWIS: Okay. I declined --

17 CHAIR ANDERSON: Right.

18 MS. LEWIS: -- to be a witness because  
19 I'm here because of the input that had been given  
20 to me by the community.

21 CHAIR ANDERSON: Okay.

22 MS. LEWIS: So anything that I would  
23 say would be a repetition of what I've heard.

24 CHAIR ANDERSON: And that's fine.

25 MS. LEWIS: I thought it was more

1 important for them to testify rather than me to  
2 regurgitate information that they (simultaneous  
3 speaking).

4 CHAIR ANDERSON: No, I'm fine. I  
5 don't have a problem with that. I'm fine. I was  
6 just --

7 MS. LEWIS: (Simultaneous speaking)  
8 let them go.

9 CHAIR ANDERSON: And that's fine. I  
10 was just -- just for clarity so I'm fine. So I  
11 just want to make sure -- so who is this person?

12 MS. LEWIS: So who is this person?

13 MS. SHAHAN: A resident.

14 CHAIR ANDERSON: I'm sorry. No, not  
15 you. Mr. Powell, who is the person you're  
16 calling?

17 MR. POWELL: So this was originally  
18 Karla's witness. This is Kathie. She is --

19 CHAIR ANDERSON: Hold on a minute.  
20 Hold on a minute. Ms. Lewis, do you want to call  
21 her as a witness? You call her as a witness.  
22 You call her as a witness. Okay. So Ms. Lewis,  
23 who is the next witness?

24 MS. LEWIS: The next witness is Kathie  
25 Shahan.

1 CHAIR ANDERSON: Ms. Shahan, can you  
2 raise your right hand, please? Do you swear or  
3 affirm to tell the truth and nothing but the  
4 truth?

5 MS. SHAHAN: I do.

6 CHAIR ANDERSON: Have a seat, ma'am.  
7 Please speak up. Please ask a question.

8 MS. LEWIS: Okay. Ms. Shahan, can you  
9 please state your name and date of birth.

10 CHAIR ANDERSON: First and foremost  
11 have her state --

12 MS. LEWIS: Please state your name --

13 CHAIR ANDERSON: -- her name and where  
14 she lives.

15 MS. LEWIS: -- and spell your name,  
16 please.

17 MS. SHAHAN: My name is Kathie Shahan,  
18 K-A-T-H-I-E S-H-A-H-A-N. I live at 60 R Street  
19 Northwest. And I've been there since 1980.

20 MS. LEWIS: Can you please -- I would  
21 like to introduce Exhibit Number 1.

22 CHAIR ANDERSON: All right. This is  
23 going to be Exhibit 14. This will be Exhibit 14,  
24 which is in your package as Exhibit Number 1 so -  
25 -

1 MS. LEWIS: Yes.

2 CHAIR ANDERSON: All right. So hold  
3 on. Let me see what the exhibit is. So is that  
4 the person in the white shirt?

5 MS. LEWIS: Yes.

6 CHAIR ANDERSON: Okay.

7 MS. LEWIS: Like the baseball shirt.

8 CHAIR ANDERSON: So this is Exhibit  
9 Number 14.

10 MS. LEWIS: Should I give you a copy  
11 so you can see? Can you please speak to that  
12 particular exhibit?

13 MS. SHAHAN: Yes, I took this exhibit  
14 --

15 CHAIR ANDERSON: No, I'm sorry. It's  
16 15.

17 MS. LEWIS: Fifteen, okay.

18 CHAIR ANDERSON: It's Exhibit Number  
19 15. Okay. Go ahead.

20 (Whereupon, the above-referred to  
21 document was re-marked as Protestant  
22 Exhibit No. 15 for identification.)

23 MS. SHAHAN: I took this exhibit  
24 approximately two or three weeks ago in the  
25 evening before daylight savings time was over.

1 It was probably sometime between 5 and 6 o'clock.  
2 That's when I usually walk my dog at night.

3 And this is just -- this is the R  
4 Street side of the Pub and the People right next  
5 to the house that's next door. And it just shows  
6 a gentleman out there talking on the phone over  
7 in the area that they told us that's supposed to  
8 be the quiet area where they don't put tables or  
9 anything.

10 Subsequently, I've previously seen  
11 four people out there, three people talking very  
12 loud and one person talking on the phone and all  
13 of them were smoking. And this guy is smoking  
14 also.

15 MS. LEWIS: I would like to move  
16 Exhibit 15.

17 CHAIRPERSON POWELL: Mr. Murphy? We  
18 have no objection?

19 MR. MURPHY: I have no objection.

20 CHAIRPERSON POWELL: So moved.

21 (Whereupon, the above-referred to  
22 document marked for identification as  
23 Protestant Exhibit No. 15 was entered  
24 into evidence.)

25 MS. LEWIS: Okay. And I would like to

1 go to my Exhibit 2, which will be Exhibit Number  
2 16. Can you please --

3 (Whereupon, the above-referred to  
4 document was marked as Protestant  
5 Exhibit No. 16 for identification.)

6 CHAIR ANDERSON: Let me see it. Okay.

7 MS. LEWIS: Can you please tell us  
8 about what it is we're looking at here?

9 MS. SHAHAN: Well, Exhibit 2, if you  
10 start with Exhibit 3 -- this is Exhibit 2.

11 CHAIR ANDERSON: No, ma'am. No,  
12 ma'am. We're --

13 MS. SHAHAN: Okay. We'll start.

14 CHAIR ANDERSON: All right.

15 MS. SHAHAN: They're out of order.

16 MS. LEWIS: Can we look at 2 and 3  
17 together?

18 (Simultaneous speaking.)

19 MS. SHAHAN: Anyway, Exhibit 2 shows  
20 --

21 CHAIR ANDERSON: All right. And this  
22 is Exhibit 16. So what's the next exhibit?  
23 What's the next exhibit? What's the next  
24 exhibit? So this is Exhibit 17. Okay. Go  
25 ahead.

1 (Whereupon, the above-referred to  
2 document was marked as Protestant  
3 Exhibit No. 17 for identification.)

4 MS. SHAHAN: Okay. On this exhibit,  
5 you can see what appears to be -- it's a very --

6 CHAIR ANDERSON: What exhibit are you  
7 now talking about?

8 MS. LEWIS: Seventeen, I believe.

9 MS. SHAHAN: The one with the dog.

10 CHAIR ANDERSON: All right.

11 MS. SHAHAN: Okay. I took this  
12 picture because there's a trail that's coming out  
13 of the Pub and the People. I could see it coming  
14 from the back door, and it came down the  
15 sidewalk.

16 And then you go over to the other  
17 exhibit, it went all the way down the sidewalk  
18 and into the alley. And it was a very greasy  
19 stain coming out of there. It concerned me as  
20 just a matter of something that would attract  
21 rats or roaches or whatever. And it stayed there  
22 for several weeks until we had a really good rain  
23 that apparently washed it away. It wasn't there  
24 today.

25 MS. LEWIS: Yes. I would like to move



1 to introduce as evidence 16 and 17.

2 CHAIR ANDERSON: Mr. Murphy?

3 MR. MURPHY: That's okay. I can  
4 actually shed some light on this.

5 CHAIR ANDERSON: All right. Go ahead.  
6 (Whereupon, the above-referred to  
7 documents marked for identification as  
8 Protestant Exhibit Nos. 16 and 17 were  
9 entered into evidence.)

10 MS. LEWIS: And last but not least,  
11 Exhibit 4, which would be 18.

12 (Whereupon, the above-referred to  
13 document was marked as Protestant  
14 Exhibit No. 18 for identification.)

15 CHAIR ANDERSON: Which one is that?

16 MS. LEWIS: It's the picture of the  
17 bench.

18 CHAIR ANDERSON: Okay.

19 MS. LEWIS: There's an ash tray.

20 CHAIR ANDERSON: Ash tray, right here.  
21 Go ahead.

22 MS. LEWIS: And can you talk about  
23 what it is that we're looking at here?

24 MS. SHAHAN: Yes. This is a picture  
25 that I also took within the last few weeks. And

1 it's showing the R Street side of the pub right  
2 next to the house that's next door to it with a  
3 bench on it. And that tall cylinder is where you  
4 deposit cigarettes. And this, again, is just  
5 where I've seen people standing around and  
6 smoking cigarettes.

7 MS. LEWIS: Can you please tell me  
8 what your concerns are about this?

9 MS. SHAHAN: Well, this is actually  
10 taken because I was concerned that some of the  
11 people close there had been complaining about the  
12 smoke that had been coming into the house. And I  
13 just took this in support of the arguments that  
14 they were making.

15 MS. LEWIS: Have you noticed any  
16 other type of activity coming from the pub? Now  
17 when you say crowds --

18 MS. SHAHAN: I've seen loud music when  
19 I walked by in front of the pub. But I live far  
20 enough away that the music from the pub would not  
21 bother me the way it would some of the other  
22 neighbors.

23 Mostly what I've been concerned with  
24 is if you increase the size, we already have a  
25 parking problem. We already have a problem with

1 a lot of people on the street.

2 When you start having music late at  
3 night, you have a lot of drinking. People walk  
4 up and down the street. They make a lot of  
5 noise. They're having a good time. They're  
6 having fun. But at 2 o'clock in the morning, it  
7 wakes me up.

8 And I can't say it all comes from the  
9 Pub and the People. But any of the restaurants  
10 around there, it gets very loud. And the more  
11 people there are, the more noise they're going to  
12 make and the more music and whatever you have  
13 later into the hour I would expect there would be  
14 a lot more drinking and therefore a lot more  
15 noise.

16 MS. LEWIS: I have no further  
17 questions.

18 CHAIR ANDERSON: Wait.

19 MS. SHAHAN: I'm sorry. You're right.

20 CHAIR ANDERSON: Mr. Murphy.

21 MR. MURPHY: Thank you. So with  
22 respect to 16 and 17 --

23 MS. SHAHAN: Mm-hmm.

24 MR. MURPHY: I'll get to a question.  
25 But first I'll provide a little background if

1 that's all right.

2 CHAIR ANDERSON: No. No, you have to  
3 ask her a question.

4 MR. MURPHY: Would it make you feel  
5 better to -- well, first, did you know this  
6 happened actually during our mediation?

7 MS. SHAHAN: I don't care when it  
8 happened, it was there.

9 MR. MURPHY: I guess the question is,  
10 would it make you feel better to know that I got  
11 a phone call from our landlord moments after this  
12 happened, and we dealt with it immediately. And  
13 within an hour, someone was out there with soap  
14 and water.

15 MS. SHAHAN: No, it was there for days  
16 afterwards.

17 MR. MURPHY: I know it was. And his  
18 explanation was that it's untreated brick and so  
19 it soaks in. But we did make every effort to  
20 immediately rectify it. And it was done by  
21 someone who has never done this before who has  
22 trouble walking and made a mistake and didn't  
23 seal the cap. And you may all know, Ted McGinn.  
24 And he doesn't --

25 CHAIR ANDERSON: You have to ask a

1 question.

2 MS. SHAHAN: So the second one that I  
3 saw like that was because --

4 MR. MURPHY: The second one?

5 MS. SHAHAN: No, no. This is not the  
6 same day. But, I mean, I saw another trail a  
7 different day.

8 CHAIR ANDERSON: Mr. Murphy, ask her  
9 a question.

10 MR. MURPHY: That's all I have her.  
11 That's all I have for that. So then for Exhibit  
12 18 --

13 MS. SHAHAN: Which one was that.

14 MR. MURPHY: The cigarettes.

15 MS. SHAHAN: Yes, mm-hmm.

16 MR. MURPHY: Would you still object to  
17 this being there if removing it increased the  
18 amount of litter and cigarette butts that were  
19 present?

20 MS. SHAHAN: You just move it  
21 somewhere else.

22 MR. MURPHY: Where would you suggest  
23 we move it?

24 MS. SHAHAN: Someplace that doesn't  
25 bother the neighbors.

1 MR. MURPHY: Can you give us any  
2 better place than this?

3 MS. SHAHAN: I'd have to go take a  
4 look. Maybe I could, I don't know. But right  
5 now, no.

6 MR. MURPHY: Okay.

7 MS. SHAHAN: I can't tell you one way  
8 or the other.

9 MR. MURPHY: All right. You did  
10 mention parking. Do you have any concern that  
11 the conversion of the single member homes for our  
12 street into multifamily apartment buildings is  
13 going to adversely impact parking?

14 MS. SHAHAN: Absolutely.

15 MR. MURPHY: We agree. Okay. Thank  
16 you. That's all.

17 CHAIR ANDERSON: Any questions? No,  
18 Ms. -- no, no, no.

19 MS. SHAHAN: Your turn. I'm sorry.

20 CHAIR ANDERSON: You folks don't leave  
21 until I say you're free to go. You're arrested.  
22 You're under arrest until I say you're free to  
23 go.

24 MS. SHAHAN: And we haven't been here  
25 as long as you have.

1 CHAIR ANDERSON: Any questions by the  
2 Board members?

3 MEMBER SHORT: I have one.

4 CHAIR ANDERSON: Yes, Mr. Short.

5 MEMBER SHORT: Okay. Dealing with  
6 smoking in places of public assembly, do you know  
7 the Department of Health issues permits for that?  
8 Does this establishment have a permit for  
9 smoking?

10 MS. SHAHAN: I have not --

11 MEMBER SHORT: Have you ever asked?  
12 Does this establishment have a permit from the DC  
13 Department of Health for smoking on their patio?

14 MS. SHAHAN: I didn't know there was  
15 such a thing to ask about.

16 MEMBER SHORT: Yes. The Department of  
17 Health.

18 MS. SHAHAN: Okay.

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

21 CHAIR ANDERSON: All right. Ms.  
22 Shahan, thank you very much for your testimony.

23 MS. SHAHAN: I can go now.

24 CHAIR ANDERSON: You can step down  
25 now. Thank you. Do you have any other witnesses

1 who wish to testify? Mr. Mutneja?

2 MR. MUTNEJA: Yes.

3 CHAIR ANDERSON: Can you raise your  
4 right hand, sir? Do you swear or affirm to tell  
5 the truth and nothing but the truth?

6 MR. MUTNEJA: Yes, I do.

7 CHAIR ANDERSON: All right. Go ahead,  
8 sir.

9 MR. MUTNEJA: Sukhmohinder Mutneja.

10 MEMBER CATO: Spell your last name,  
11 please.

12 MR. MUTNEJA: M as in Mary, U, T as in  
13 Thomas, N as in Nancy, E as in Edward, J as in  
14 Jack, A as in alpha.

15 MEMBER CATO: Thank you.

16 MR. MUTNEJA: So I want to start --  
17 again, the same thing, we don't have any problem  
18 with the establishment itself. It's all about  
19 the way they are operating. All we need are some  
20 changes in the way they are operating so that it  
21 can reduce the concerns of the neighbors.

22 I, particularly being the abutting  
23 neighbor, have a lot of concerns. My concerns  
24 are mostly around parking issues, sound. Because  
25 I am the one who would be hearing the live music



1 every day.

2 I have problems with the smell  
3 although you're saying it's -- because if you  
4 increase the establishment from 80 members, 84 to  
5 -- you're adding 60 more members of occupancy.  
6 If there are 60 more people coming into the pub,  
7 they will be cooking more. More smell will be  
8 coming.

9 So that's how I'm kind of thinking,  
10 you know, when I say the smell is connected to  
11 all of this stuff, it's the occupancy.

12 I would like to read the letter which  
13 previous owner gave it to me saying the problem  
14 with the --

15 CHAIR ANDERSON: No. That's hearsay.  
16 This is you testifying. So I can't have you read  
17 a letter from a previous owner. We have had  
18 testimony. Our people have testified about the  
19 previous owner why they moved or why they didn't  
20 move. But I can't have you read a letter. No  
21 one has an opportunity to cross-examine the  
22 letter. So I'm not going to -- you can't --

23 MR. MUTNEJA: At least to the extent  
24 of what they are saying and the behavior. There  
25 is explicit dialogue between the previous owner

1 and the pub owner.

2 CHAIR ANDERSON: What pub owner?

3 MR. MUTNEJA: I can read the --

4 CHAIR ANDERSON: Just what owner?

5 What owner? This owner?

6 MR. MUTNEJA: Yes. I will give you  
7 the name exactly.

8 MR. MURPHY: It's hearsay. And when  
9 I referenced one of your statements earlier --

10 CHAIR ANDERSON: I can't have you read  
11 a statement from an owner. Sir, this is your  
12 opportunity for you to testify as the abutting  
13 property owner.

14 Why is it that you disagree with this  
15 request from the applicant for a substantial  
16 change? Okay? You are the abutting property  
17 owner. So from your experience, you need to  
18 testify why is it that the Board should grant  
19 this?

20 The previous owner, there was -- when  
21 the previous owner was there, there was no issue  
22 with the basement because the basement was used  
23 as a storage area. This is a new area now. So  
24 this is not -- we can't litigate what else is  
25 going on.

1           If you want to talk about what impact  
2 you believe us increasing the occupancy will  
3 have, but some of the issues that you have here,  
4 you could have protested the renewal of the  
5 license.

6           So when you renew the license, you can  
7 protest the renewal of the license to say, I have  
8 all these issues. This hearing is very limited  
9 to them asking us for the substantial change for  
10 the basement and to increase their occupancy for  
11 the building.

12           That's what the testimony should be  
13 and needs to be on. Because the previous  
14 occupant, since the space was never utilized,  
15 whatever the previous occupancy had to say  
16 because the previous occupant, since the space  
17 was never utilized -- whatever the previous  
18 occupant had to say about the basement, that's  
19 irrelevant because it was a storage area.

20           MR. MUTNEJA: So mostly it's all about  
21 the sound and the cooking smell. Those are two  
22 objections which have been talked about so I  
23 don't want to repeat the problems with that.

24           What I'm looking for is maybe an  
25 independent sound company come in and certify

1 that everything with the soundproofing was done,  
2 was done properly and do test out of it saying it  
3 can handle this kind of sound and it is not  
4 sufficient if the sound goes beyond this level.

5 And the way it is connected is because  
6 they were talking about live entertainment on  
7 both the levels -- only one level before. Now  
8 they are talking about live entertainment at both  
9 levels, which is connected with the occupancy as  
10 well since they are increasing the occupancy. So  
11 they want to get more business, and they want to  
12 add more live entertainment in the basement as  
13 well. So that's how it is connected to the sound  
14 stuff.

15 Other than that, I have two exhibits  
16 here which I would like to talk about. This is  
17 an exhibit of a motorcycle. And I know we have  
18 talked about it a lot, but I'm giving you just a  
19 different view about it. Maybe I think it's  
20 number 18.

21 CHAIR ANDERSON: All right, sir. This  
22 is about --

23 MR. MUTNEJA: Sound. It's connected  
24 by the sound.

25 CHAIR ANDERSON: No, sir. I don't

1 want to hear any testimony about a motorcycle. A  
2 motorcycle has nothing to do with this Board  
3 agreeing or disagreeing to give them a  
4 substantial change.

5 From what I'm told this is someone's  
6 motorcycle, and they might be parking it some  
7 other place that might be legal or illegal. But  
8 that has nothing -- ABRA doesn't have any  
9 jurisdiction over this motorcycle, sir, unless  
10 you're telling me that the motorcycle is  
11 permanently affixed to this restaurant.

12 MR. MUTNEJA: Yes. So motorcycle is  
13 owned by one of the owners.

14 CHAIR ANDERSON: But I can't --

15 MR. MUTNEJA: They park it there and  
16 by 4:00 p.m. they will start it.

17 CHAIR ANDERSON: But I have nothing to  
18 do with -- that has nothing to do with this  
19 hearing. That's another -- so no testimony of  
20 that, sir. No testimony on that, sir. That, as  
21 a neighbor, that is something that you two need  
22 to work out. ABRA can't do anything about that.

23 MR. MUTNEJA: Okay.

24 CHAIR ANDERSON: ABRA can't do  
25 anything about someone revving their motorcycle

1 at 8 o'clock in the morning or 2:00 a.m. in the  
2 morning. That's not something that we can do.  
3 So let's move on from there.

4 MR. MUTNEJA: There is another  
5 exhibit, this one, where they have speaker on the  
6 adjoining wall with my property.

7 CHAIR ANDERSON: We can go ahead and  
8 testify. So this is going to be number --

9 MR. MUTNEJA: Eighteen, I guess.

10 CHAIR ANDERSON: This will be Number  
11 18. Let me find it first. Okay. Go ahead.

12 MR. MUTNEJA: To this is a speaker  
13 which is on the shared wall with my property.

14 CHAIR ANDERSON: Where is -- oh, okay.  
15 Okay.

16 MR. MUTNEJA: And, of course, whenever  
17 there is anything going on in the pub, the  
18 speaker is on high volume. And it's right on --  
19 there's no insulation here. Nothing that will --  
20 the sound directly travels to the neighbor -- my  
21 property.

22 CHAIR ANDERSON: I'm sorry. This is  
23 Number 19. It's not 18.

24 MR. MUTNEJA: Nineteen.

25 (Whereupon, the above-referred to

1 document was marked as Protestant  
2 Exhibit No. 19 for identification.)

3 CHAIR ANDERSON: Okay. So you're  
4 saying -- so you have issues with the speaker  
5 attached to this wall.

6 MR. MUTNEJA: Correct. And I would  
7 like to add that as evidence.

8 CHAIR ANDERSON: Mr. Murphy, do you  
9 have any issues with me moving this into  
10 evidence?

11 MR. MURPHY: No.

12 (Whereupon, the above-referred to  
13 document marked for identification as  
14 Protestant Exhibit No. 19 was entered  
15 into evidence.)

16 CHAIR ANDERSON: All right. What else  
17 do you need to say, sir?

18 MR. MUTNEJA: So what we are  
19 requesting is for this to be moved somewhere away  
20 from the wall, at least not to the neighbor wall,  
21 you know, maybe someplace else where it is on the  
22 Capitol, you know, on the street side rather than  
23 on our side.

24 CHAIR ANDERSON: Okay.

25 MR. MUTNEJA: That's what we are

1 requesting, yes. And that goes for all the  
2 speakers, I mean, not just this speaker. If they  
3 have any other speakers which are on the wall,  
4 the shared wall, probably they should be moved  
5 towards the other side so the less sound will  
6 travel to the other side of the property.

7 CHAIR ANDERSON: Okay.

8 MR. MUTNEJA: Other than that, I have  
9 concern about the real estate values. I'm a  
10 builder. I build properties. If I have tenant  
11 coming in and they have -- a tenant or even buy  
12 us, whatever, if they come in and they tell me  
13 they have issues with the sound, I will not be  
14 able to even sell the property or even rent the  
15 property, which is the biggest concern for me  
16 because I need to make sure things are good based  
17 on the sound, the smell and, you know, the  
18 parking situation and the peace in the  
19 neighborhood.

20 Because if these -- I mean, think of  
21 a new tenant coming in with this situation  
22 knowing all these problems, they would not just  
23 even come and buy the property, forget about the  
24 value of the property. They would just not even  
25 buy or they would not even rent the property.



1                   So it's not even about value. It's  
2 about I cannot sell it maybe, you know, that may  
3 be the case. And that is the big concern I have  
4 from them. That's it for my side, I guess.

5                   CHAIR ANDERSON: Mr. Murphy, do you  
6 have any questions you want to ask?

7                   MR. MURPHY: Yes. What makes you  
8 think that that's on the wall?

9                   MR. MUTNEJA: It's on the wall.

10                  MR. MURPHY: Can you see -- I'm sorry.  
11 The exhibit with the speaker. Can you see that  
12 the speaker is actually attached via rubber wires  
13 to the ceiling and not the wall?

14                  MR. MUTNEJA: Okay. You can be  
15 technically different. But it's maybe -- maybe  
16 it's this close to the wall. Okay. I understand  
17 it's not exactly touching the wall. But it's by  
18 the wall. If that makes you happy.

19                  The problem is not the speaker. The  
20 problem is the sound coming out of the speaker,  
21 which is traveling into the neighbor property.  
22 The problem is not the speaker.

23                  If you move this away from the wall to  
24 the other side where it is not next to my  
25 property, it will help to bring the sound down.

1 There is no insulation. Just a concrete wall.

2 And, yes, I agree, maybe there is a  
3 one inch layer gap between the speaker and the  
4 wall. And if that you are saying will help you  
5 with the -- that sound will not travel because  
6 there is a one inch space between the wall and  
7 the -- I don't know if that makes an argument.

8 MR. MURPHY: I understand what you are  
9 saying but are you a sound expert?

10 MR. MUTNEJA: No, I am common sense  
11 expert. I can tell you it will make sound and  
12 sound goes in there and we hear it. That's  
13 common sense. I'm not a sound expert. I'm not  
14 calculating how much sound will travel if it's  
15 one inch away or if it's exactly not one inch  
16 away from the wall.

17 MR. MURPHY: So you're not aware of  
18 how sound, the physics of sound works?

19 MR. MUTNEJA: I have common sense. I  
20 can tell you it's all about speaker. Speaker  
21 makes sound. If you keep it away from some  
22 place, it will make less sound.

23 MR. MURPHY: Would you be --

24 MR. MUTNEJA: If you keep it -- if I'm  
25 speaking in your ear, it will make more sound.

1 If I'm speaking from farther, it will make less  
2 sound. That's what I'm trying to come to  
3 rational -- it's common sense.

4 MR. MURPHY: Would you believe that  
5 sound works the same in an unobstructed space as  
6 it does through walls?

7 MR. MUTNEJA: Okay. Okay. Let's  
8 forget about common sense also. What I'm saying  
9 is have a sound expert come in, and he does the  
10 recommendations saying this is what should  
11 happen, which will reduce the sound on the  
12 neighboring property.

13 And that's what I'm saying. We need  
14 to do the test. We need a sound engineer to come  
15 in there. They know the best way. They can  
16 figure out even if it's one inch away, it's okay.  
17 Then they can tell. But I'm not a sound expert.  
18 I agree.

19 MR. MURPHY: What would you say if I  
20 told you that five years ago we did have a sound  
21 engineer come in and that it his advice was that  
22 in order to create the least transfer of sound  
23 through the wall that the best way is to mount  
24 the speakers not on the wall, but to the ceiling  
25 because sound through the walls transfers -- it

1 vibrates through the walls.

2           It doesn't pass through the wall  
3 because it's close. It vibrates. And so he says  
4 -- what would you say if I told you that his  
5 recommendation was to do exactly this. Mount it  
6 on the rubber wires and mount it to the ceiling.

7           MR. MUTNEJA: If you ask between the  
8 two options whether it should be on the wall or  
9 it should be hung from the ceiling, probably you  
10 are right. But if you, as a sound engineer, that  
11 it should be 15 feet away from the wall, then you  
12 should have asked him the recommendation.

13           If you give him two choices, should I  
14 put it on the roof or should I stick it on the  
15 wall, it makes sense to put it on the roof. But  
16 if you ask him should I put this -- my neighbor  
17 has a concern saying the sound travels and should  
18 I put it, like, 20 feet away from the wall or  
19 should I keep it one inch away from the wall?  
20 Probably a sound engineer will say keep it 20  
21 feet away from the wall.

22           MR. MURPHY: Did you --

23           MR. MUTNEJA: I'm not a sound engineer  
24 again, but that's my guess on the sound as far as  
25 I understand sound.

1                   MR. MURPHY: How many sound engineers  
2 do you think we should have provide their  
3 opinions?

4                   MR. MUTNEJA: I don't know. I mean,  
5 I just need to one to come in and do the test. I  
6 don't need 10. I just need one certified company  
7 come and do the test and give you the  
8 recommendation how can you reduce the sound for  
9 the neighbor?

10                  And they can do a test saying this is  
11 the current level. It should be an independent.  
12 It's not even my sound engineer. It can be any  
13 sound engineering company, but they just need to  
14 give me a document certifying this is what it is.  
15 This how it is working. And it could allow you,  
16 like, you put this much sound above this level  
17 and you will not hear any sound. All I need is  
18 thing.

19                  We can talk on and on about the  
20 location of the speakers. We can talk about  
21 soundproofing. But until I get to hear, you  
22 know, from a sound company saying this is the  
23 best way to avoid it, it doesn't make sense to  
24 me.

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

1 CHAIR ANDERSON: Okay. Mr. Mutneja,  
2 you don't currently live in the building, is that  
3 correct?

4 MR. MUTNEJA: Say that again?

5 CHAIR ANDERSON: The building next --  
6 you own the building but that's correct that you  
7 don't live in the building?

8 MR. MUTNEJA: I don't live there.  
9 It's under construction, sir.

10 CHAIR ANDERSON: And you're converting  
11 a single family home into what?

12 MR. MUTNEJA: There will be five  
13 units.

14 CHAIR ANDERSON: Five units. So how  
15 many tenants are you adding to the property?

16 MR. MUTNEJA: Five tenants.

17 CHAIR ANDERSON: You're adding five  
18 tenants so therefore you're adding more folks to  
19 the neighborhood. Is that correct?

20 MR. MUTNEJA: Correct.

21 CHAIR ANDERSON: And it's also correct  
22 that you're doing major construction on the  
23 property. Isn't that correct?

24 MR. MUTNEJA: That's correct.

25 CHAIR ANDERSON: So if you're doing

1 major construction on this property and you're  
2 concerned about your tenants, what kind of sound  
3 mitigation are you doing in your apartment  
4 building, sir? What are you doing?

5 MR. MUTNEJA: We have been doing this  
6 from the design perspective itself. And I think  
7 we already speak to it saying we already  
8 implemented the design where we are trying to  
9 keep the -- instead of doing, like, the other  
10 thing of a wall, we make that as a passage so at  
11 least the unit starts -- there is a gap between  
12 the two.

13 So that's the first thing we did from  
14 a design perspective. Again, we also had the  
15 same foam insulation what they did. We did the  
16 same foam insulation. We are doing the double  
17 plywood walls, which we are doing it from our  
18 side. We used the best windows, which can take  
19 most of the sound, which are, you know, certified  
20 and those.

21 So whatever needs to be done on my  
22 side, I have to do it because if I have an owner,  
23 you know, a buyer or a renter coming into it and  
24 say I'm hearing sound, I cannot sell. I will  
25 lose money.

1                   So I am doing more than what is  
2 needed. Not just from the insulation level, not  
3 just from the sound insulation level, but I had  
4 this thing from the design consideration itself I  
5 am trying to do as much as I can.

6                   CHAIR ANDERSON: You're also stating  
7 that you're also doing sound mitigation in your  
8 property. Is that correct?

9                   MR. MUTNEJA: Yes, yes.

10                  CHAIR ANDERSON: Now, I heard before  
11 there were allegations that the two sides were  
12 supposed to get together and check the sound.  
13 Tell me, what was that all about?

14                  MR. MUTNEJA: So basically what we  
15 have been requesting is I have not seen their  
16 changes, correct? So I did my changes. What I  
17 have been asking is let a sound engineer, a sound  
18 company come in and certify that things have been  
19 done right. They have been installed properly.  
20 Whatever is installed is done right. And then  
21 they do a test of the sound from my building and  
22 with some live entertainment going on into their  
23 building in the night hours or in the day hours.

24                  At least we have something on paper  
25 saying, yes, it is working. Just showing me a



1 picture, I don't know how I can tell you it may  
2 work or it may not work. I am not saying, you  
3 know, they did not do it. I'm just saying we  
4 need to test it out.

5 CHAIR ANDERSON: So how long has this  
6 been going on? How long has this conversation  
7 been going on between the two sides?

8 MR. MUTNEJA: Probably 15 days or  
9 more.

10 CHAIR ANDERSON: Fifteen days or more.  
11 So you've never had an opportunity for both of  
12 you -- because I'm hearing it because there's not  
13 much that we can do. We can order sound  
14 mitigation, but I guess what I'm saying is that I  
15 don't understand how the parties have not been  
16 able to -- at least from the builder's  
17 perspective that I've heard that someone had said  
18 we were supposed to come over and check the sound  
19 or you were supposed to do it vice versa, but it  
20 didn't happen. So what was that?

21 MR. MUTNEJA: I think on sound we gave  
22 them a sound engineer company, the name of the  
23 guy. They talked to him. But no test was  
24 performed. All they said was I spoke to their  
25 guy, the sound engineer guy which you gave me.

1 And he said everything you are doing is right. I  
2 mean, that doesn't help me, you know.

3 CHAIR ANDERSON: But if you said you  
4 gave him --

5 MR. MUTNEJA: Something to document  
6 and do the test and come up with a conclusion  
7 saying this is sufficient what they did.

8 CHAIR ANDERSON: All right. Go ahead,  
9 Mr. Cato.

10 MEMBER CATO: So quick question. So  
11 the understanding is that you want them to cover  
12 the cost of the sound mitigation?

13 MR. MUTNEJA: Of course.

14 MEMBER CATO: Okay. All right.

15 CHAIR ANDERSON: Yes, yes, yes, Ms.  
16 Crockett.

17 MEMBER CROCKETT: There's a lot of  
18 talk about sound engineers. I guess my question  
19 is you own the property next door. How difficult  
20 is it for you to go in your property, allow them  
21 to crank up the music, the television, have some  
22 drummers come, whatever needs to be done and you  
23 can stand on your property and determine whether  
24 you can hear the noise or not. I guess I'm not  
25 quite understanding the --

1                   MR. MURPHY: Would it be inappropriate  
2 to hug you right now?

3                   (Simultaneous speaking.)

4                   MEMBER CROCKETT: What's the value in  
5 having somebody come and give numbers and so they  
6 say, yes, it looks like everything they've done  
7 is correct. But two months from now you hear  
8 their noise.

9                   So how is a report on paper from a  
10 sound engineer actually of any use? What sounds  
11 like what's most useful is let's just play some  
12 loud music and loud TVs and bang some drums and  
13 see if you can hear it in 4 R Street Northwest.

14                  MR. MUTNEJA: That may be one way of  
15 doing it. I agree. But when they are saying  
16 that a sound company has already soundproofed it,  
17 why can't they certify? If they have a sound  
18 company already did that -- I have something --  
19 you know tomorrow if the sound is coming, all I  
20 have to say is you gave me a certificate and this  
21 is not working.

22                  (Simultaneous speaking.)

23                  MEMBER CROCKETT: And that's exactly  
24 my point.

25                  (Simultaneous speaking.)

1                   MEMBER CROCKETT:  Sir, if they give  
2 you a certificate and two months from now you  
3 realize it's not working, so what was the value  
4 of that certification?  None if you can still  
5 hear noise.

6                   MR. MUTNEJA:  When I complain somebody  
7 will come and say I heard.  I look at this, no  
8 sound.  They are doing some changes.  I don't  
9 know what they did, but the sound is coming.  At  
10 least I can I say something.

11                   At that point, they will say, oh, this  
12 is existing sound coming.  Maybe, I don't know.  
13 I want to put something into settlement saying  
14 this is a sound engineer, and they did the thing.  
15 And I lost little bit of trust with them.  I tell  
16 you one instance, but it's not related to this  
17 thing.  Again, it's about the trust part.  I  
18 needed some help on doing --

19                   MEMBER CATO:  Sir, we're asking the  
20 questions now.  You had your opportunity to  
21 testify.

22                   MR. MUTNEJA:  Probably I don't trust  
23 them.

24                   CHAIR ANDERSON:  This is one of the  
25 reasons why the Board always says that I prefer

1 if it was coming in just to add it. Because part  
2 of the problem even if the Board was to say,  
3 okay, order a sound engineer. We order a sound  
4 engineer. Someone goes and the servicing is  
5 fine.

6 Your tenant moves in. They crank  
7 their music. And the tenant can hear the noise,  
8 and they will say, oh, we went to a sound  
9 engineer and the sound engineer said that it was  
10 perfectly fine so I really don't know what your  
11 tenant is talking about because our sound  
12 engineer told us that you can't hear any noise  
13 in theory. And that's a problem. I don't --

14 MEMBER CROCKETT: It's all  
15 theoretical.

16 CHAIR ANDERSON: Right. And so since  
17 this has been going on, I mean, I'm hearing one  
18 person said we've been trying to do this for a  
19 year. We have two properties that are going  
20 under construction. So this is not -- this house  
21 is there.

22 When the previous owner was there,  
23 that's a different story because I would not ask  
24 a previous owner to install sound mitigation  
25 noise in her house because she lives there.

1 They're making changes. Yes, they need to  
2 soundproof their place. But both of you, I  
3 understand, the pub is doing construction.

4 MR. MURPHY: We're not doing  
5 construction. I know that's not my place.

6 CHAIR ANDERSON: It's not your place.  
7 But when I said construction, it's in the sense  
8 that he's doing construction. This place has  
9 done some construction by -- well, the exhibits  
10 I've seen, that's construction because I've seen  
11 people put foam in the wall and stuff, that's  
12 construction.

13 So the Pub and the People did  
14 construction. I heard all this testimony to say  
15 these are all the sound mitigation. We have done  
16 this to the walls. So I have heard they have  
17 sound mediation.

18 And I questioned, part of what I'm  
19 also hearing is that yes, you might have done it,  
20 but I need an independent person to come in and  
21 say that what you've done is okay. Although, no,  
22 this person said that your sound person spoke to  
23 the owner, and they said, oh, yes, everything  
24 they're doing is right. But you still don't know  
25 whether or not there's actual sound.

1           And so the question is that just turn  
2 the music on. Let someone stand there and crank  
3 the music and then we'll hear. So you don't need  
4 someone to say it's at this decibel or that  
5 decibel. Just turn the music on because if  
6 someone is there next door, they can tell you if  
7 they hear the sound.

8           Because even if the Board was to say,  
9 okay, we're going to order for them to have an  
10 independent person, it's done. And when the  
11 tenant moves in, the tenant can always call  
12 outraged to complain because they're hearing the  
13 music from next door. And it's, like, and so  
14 because our regulations said the sound cannot  
15 emanate from the property outside into another  
16 property. And they're going to say, no, ABRA  
17 told us -- we had the sound engineer who came in  
18 and he told us that this is what it is. Here's  
19 our certificate to say that this place is  
20 properly soundproofed.

21           MR. MUTNEJA: What you are saying is  
22 to test it out? We already showed you videos  
23 saying the sound is coming out. So it's not that  
24 you --

25                           (Simultaneous speaking.)

1 CHAIR ANDERSON: Not the new --  
2 because they're not -- the place hasn't been  
3 approved so they're not using it.

4 MR. MUTNEJA: No, no, no. But they're  
5 using both levels, correct?

6 CHAIR ANDERSON: But that is not in  
7 this hearing. I don't care about what's going  
8 on upstairs. All I care about is we're talking  
9 about sound mitigation. And sound mitigation in  
10 the basement because they're asking for a change.  
11 So that's one of the things I keep on saying to  
12 you.

13 One is that this hearing is about is  
14 a substantial change in the basement and the  
15 substantial change to add more people upstairs.  
16 you're talking about negotiation about whether  
17 they are going to play live music upstairs,  
18 downstairs, wherever, that's not part of this  
19 hearing. It's not part of this hearing.

20 That is something that is independent  
21 and that is something that could be done for a  
22 settlement agreement where you guys can do  
23 agreements. Strictly what we are asked to do is  
24 whether or not we should approve a substantial  
25 change to allow them to utilize the basement.



1                   And also, secondly, whether or not  
2 we're going to allow them to increase the  
3 occupancy upstairs. I know they said they want  
4 to add 28 -- I think the downstairs I think is  
5 28. But because of some other previous, now  
6 they're told the upstairs can accommodate more  
7 people.

8                   So therefore they now have a new  
9 certificate of occupancy saying that they can  
10 more people upstairs than currently. So the  
11 decision is we have to make is whether or not,  
12 although they might have a certificate of  
13 occupancy to say that they can have 100 people  
14 upstairs. We can say, no, you can only have 80.  
15 So that's part of our decision.

16                   So we're going to make a decision  
17 whether or not we're going to allow them upstairs  
18 to increase their occupancy upstairs and whether  
19 or not we're going -- because whether or not  
20 there is sound from speakers coming from  
21 upstairs, that's not relevant to the hearing  
22 because that's not the issue here because it's  
23 the basement.

24                   So, yes, you're correct when we talk  
25 about sound mitigation coming from the basement.

1 And the testimony that I've heard is that I  
2 believe that at least one of the exhibits that  
3 they showed, I think it's a very small portion of  
4 your building is attached to -- I'm sorry, like,  
5 the basement, like a very small portion of the  
6 basement is attached to your building because  
7 they're not necessarily on the same level.

8 MR. MUTNEJA: They're on a different  
9 level.

10 CHAIR ANDERSON: Right.

11 MR. MUTNEJA: It's like 3 or 4 feet,  
12 but it's along the whole wall. I mean, it's not  
13 just a small portion.

14 CHAIR ANDERSON: Right. But that's  
15 just the basement.

16 MR. MUTNEJA: (Simultaneous speaking)  
17 in there.

18 CHAIR ANDERSON: Right. That's just  
19 in the basement. And that's what we're talking  
20 about.

21 MEMBER CROCKETT: I have another  
22 question for him.

23 CHAIR ANDERSON: Go ahead, Ms.  
24 Crockett.

25 MEMBER CROCKETT: Mr. Mutneja, you

1 also testified regarding your property values.

2 You purchased this property when?

3 MR. MUTNEJA: A couple of years back.

4 MEMBER CROCKETT: Two years, three  
5 years? Was the Pub and the People present when  
6 you purchased this property?

7 MR. MUTNEJA: I think I purchased in  
8 July of 2017.

9 MEMBER CROCKETT: Was the Pub and the  
10 People open at that time?

11 MR. MUTNEJA: Yes.

12 MEMBER CROCKETT: Did it deter you  
13 from purchasing that property?

14 MR. MUTNEJA: I was told that this is  
15 a problem. You need to take care of sound  
16 insulation a lot and these two are the couple  
17 issues.

18 MEMBER CROCKETT: My question was did  
19 it deter you from purchasing that building?

20 MR. MUTNEJA: Yes, it deterred me.

21 MEMBER CROCKETT: How? Do you know  
22 what the meaning of deter is?

23 MR. MUTNEJA: It was told me that if  
24 you can fix the problem --

25 MEMBER CROCKETT: Do you know the

1 meaning of deter, sir?

2 MR. MUTNEJA: Yes.

3 MEMBER CROCKETT: So how are you  
4 saying that you were deterred from purchasing the  
5 building when you clearly purchased the building?

6 MR. MUTNEJA: Okay. All I'm trying to  
7 tell you is I was known about this problem. It  
8 was a big decision for me to accept those  
9 problems and buy the building and whatnot. And I  
10 took the yes on it and said, okay, I'll buy it.  
11 Because what I'm thinking is in my mind, and  
12 thinking as a builder, I'm adding a lot of value  
13 to it probably I can make money out of it maybe.

14 MEMBER CROCKETT: Okay.

15 MR. MUTNEJA: But if this becomes a  
16 significant problem, I'm not worried about a  
17 decrease in profit margin. Now I'm more worried  
18 about whether I'll be able to sell it or not.  
19 Because I came to know about the extent of the  
20 problem after I purchased the property.

21 MEMBER CROCKETT: Mm-hmm. So --

22 MR. MUTNEJA: I did know there is a  
23 problem, but I did not know the extent of it.

24 MEMBER CROCKETT: Okay. Sir, my point  
25 is you were not deterred by these problems which

1 you have just stated you knew about prior to  
2 purchasing the building. And therefore your  
3 argument that you are concerned about your  
4 ability to sell or rent by your own admission you  
5 bought this building knowing the problems that  
6 were there.

7 MR. MUTNEJA: I did not know the full  
8 extent, yes.

9 MEMBER CROCKETT: Okay.

10 MR. MUTNEJA: But I knew the problems  
11 were there.

12 CHAIR ANDERSON: All right. Any other  
13 questions for Board members? All right. Any  
14 final comments you want to make, sir, based on  
15 you need to clarify we asked questions. It  
16 appears that we are asking questions. You know,  
17 we've been here. I'm trying to understand and so  
18 I'm not trying to --

19 MR. MUTNEJA: All I need is just help  
20 me out to figure this out, you know, and get it  
21 done the right way.

22 CHAIR ANDERSON: All right. That's  
23 fine.

24 MR. MUTNEJA: And that's not just for  
25 me, for the neighborhood also.

1                   CHAIR ANDERSON: All right. All  
2 right. Thank you very much. We have no more  
3 witnesses, is that correct? All right. So it's  
4 time -- does either side want to call a rebuttal  
5 witness? No? No? All right. So are you ready  
6 for closing? I mean, is that?

7                   All right. What we're going to do is  
8 that I'll give you a couple minutes first to put  
9 your thoughts together. Let me ask the question  
10 because do you -- when I read the statement I  
11 said only one person can close.

12                   Because I think I'll relent because  
13 since I don't necessarily have another hearing  
14 and because I started this one way in the sense  
15 that we were going three parts. So I'm going to  
16 allow the three of you to make a closing if you  
17 want to do it.

18                   But I would hope that you don't repeat  
19 what each person is saying, and you don't go on  
20 for 20 minutes. Okay? So just wrap up in your  
21 case in the sense of -- the closing is to tell me  
22 what it is that you believe that you have proven  
23 and what it is that you want us to do at the end  
24 of the day. So that's for both sides.

25                   It's 6:54. I'll give you six minutes

1 to get yourself together and at 7 o'clock I'll  
2 get your closing. And you will have no more than  
3 5 minutes to close, each person, 5 minutes, that  
4 should be sufficient time for you to tell me what  
5 it is that you want the Board to do. So 7  
6 o'clock. Okay. Thank you.

7 (Whereupon, the above-entitled matter  
8 went off the record at 6:54 p.m. and resumed at  
9 7:02 p.m.)

10 CHAIR ANDERSON: Basically what's  
11 going to happen we'll have the Applicant make its  
12 closing statement. Then the Protestants will  
13 make its closing statement. Therefore, your  
14 closing statement is what the evidence shows and  
15 this is what you're asking the Board to do.

16 We'll start with the Applicant. Go  
17 ahead.

18 MR. MURPHY: We are not applying for  
19 a license to have live music. We're only asking  
20 for a license to use a 28-seat space and a  
21 soundproof basement. We believe this will have  
22 no significant effect on peace, order, quiet,  
23 safety, or parking.

24 We are a nightclub. There's no dance  
25 floor. It's families and friends speaking

1 conversationally. I encourage you all to come in  
2 and see for yourself. In the basement great  
3 effort has been taken to soundproof this new  
4 space.

5 We do plan to move all music to the  
6 basement in part to reduce noise. If it's too  
7 noisy and it breaks the law, then we'll stop the  
8 live music. It's not part of our business plan  
9 and it's not the primary purpose for the  
10 basement.

11 What we haven't heard here today are  
12 the mountains of praise that we are usually used  
13 to hearing. Most of the neighborhood tells us  
14 that. Best neighborhood bar last three years in  
15 a row. People who live in the same dwelling as  
16 the Protestants love and support us.

17 We've never heard most of these  
18 complaints before this protest and we scarcely  
19 had a chance to brainstorm about how to mitigate  
20 these concerns, let alone try to solve the tricky  
21 one.

22 As I said in the opening statement, we  
23 remain committed to being the best neighbors we  
24 can and both (a) obey the law, and (b) be  
25 responsible to the community. We cannot be



1 responsive if the neighborhood isn't  
2 communicating with us.

3 We have the best of intentions and we  
4 truly want to be the best neighborhood bar in DC.  
5 We are confident that we can both increase the  
6 occupancy and expand into the basement without  
7 adverse impact to the neighborhood. We encourage  
8 ABRA to support this application for a  
9 substantial change. Thank you.

10 CHAIR ANDERSON: Who's going to go  
11 first?

12 MS. LEWIS: I will.

13 CHAIR ANDERSON: All right, Ms. Lewis.

14 MS. LEWIS: As the commissioner for  
15 the single member district and representative for  
16 ANC-5E, and also a 33-year resident in the  
17 community, I am not against the business. We  
18 want the businesses to thrive in the community.

19 I want the Pub to understand that I am  
20 here to represent the concerns of the residents.  
21 They brought a concern to me. That's what I'm  
22 supposed to do. That's my job as a commissioner.

23 I would like the Pub to adhere to  
24 stipulations in the current settlement agreement.  
25 It sounds as though today from everything that

1 we've heard if you would only abide by the  
2 current agreement that we have, we wouldn't be  
3 here today.

4 I would like the Pub to honor what  
5 they've been telling the community which is all  
6 live music goes downstairs. When we try to come  
7 to an amended settlement agreement, your partners  
8 disagreed with the fact that all live music would  
9 go downstairs and stated that they wanted to keep  
10 the option open, and we heard testimony today,  
11 too, to have live music upstairs as well.

12 The Board has heard him say that all  
13 live music would go downstairs. We would like  
14 that to be written into the order that all live  
15 music will be downstairs. We would also like to  
16 have in the order that no projection of live  
17 music will be outside.

18 We would like the Board to address the issue of  
19 noise that has been emanating from the trash by  
20 restricting the hours of the trash disposal,  
21 perhaps not past 11:00 p.m.

22 We would like the Board to also  
23 address the fact that they keep the doors and  
24 windows open with the live music and  
25 entertainment so for them to have the windows and

1 doors closed. We know that this is something  
2 that is not unusual in board orders. I have seen  
3 it before but they refuse to have that in the  
4 amended settlement agreement.

5 I would like the Board to keep the  
6 occupancy load the same on the first floor. They  
7 themselves stated that the only reason why they  
8 were increasing it was because some calculation  
9 from DCRA, or whomever had done it, so they  
10 decided to go with it. They said to us when we  
11 were trying to come to some agreement that they  
12 would keep it the same. We would like the  
13 occupancy load on the first floor to be kept the  
14 same.

15 We would also like the Board to  
16 consider lowering the number of occupants on the  
17 lower level just to give the residents an  
18 opportunity to adjust to the new change. We are  
19 opening up a new space. There are going to be  
20 more people there. The crowds, smoking, the  
21 noise.

22 Perhaps if we can do it in increments,  
23 it would help the neighbors to adjust in terms of  
24 increased number of people that are going to be  
25 there. We have heard them say that they are only

1 increasing by 15 percent, but according to my  
2 numbers, it's 58 percent in terms of the  
3 occupancy load. I feel as though that is a huge  
4 number for the community to absorb in terms of  
5 this change.

6 Last but not least, although we  
7 haven't been able to come to any agreement with  
8 regards to how to mitigate this issue, but if  
9 anything can be done as far as the smell to the  
10 abutting property, we would like the Board to  
11 make some recommendations in terms of what can be  
12 done to address that issue.

13 CHAIR ANDERSON: Thank you.

14 MR. POWELL: Good evening. It's been  
15 a long day. Thank you for your time. What we  
16 want is quite clearly spelled out on my PIF form.

17 CHAIR ANDERSON: That's not in the  
18 record. You need to tell me what it is. I'm not  
19 being fictitious. Nothing is in the record so  
20 you need to -- nothing is in the record until  
21 it's moved in the record so, therefore, you need  
22 to tell me what it is that you want.

23 MR. POWELL: We submitted those.

24 CHAIR ANDERSON: It's in the record.

25 MR. POWELL: The PIF is in the record?

1 CHAIR ANDERSON: Yes.

2 MR. POWELL: Okay. What we want, each  
3 of us, and specifically me representing the group  
4 of 11, is quite clearly spelled out on my PIF  
5 form. I'm a little bit dismayed but, in my  
6 opinion, it is all connected to the request.

7 You keep talking about the basement,  
8 that there is a substantial change related to the  
9 basement and the occupancy, the existence of the  
10 basement, the occupancy of the basement, and the  
11 occupancy of the upper level. That is all part  
12 of substantial change. The things that I walked  
13 through the protestants are saying are directly  
14 tied to occupancy.

15 The things we went through and talked  
16 about, the history of the property is not to  
17 malign the Pub, but to make the ABC Board aware  
18 that there is a history of issues with sound from  
19 live music, sound from patrons, urination, trash.

20 All of that is there and valid and  
21 will only be exacerbated by more people in this  
22 establishment, particularly with the increase in  
23 number of people and the bathrooms and the entire  
24 thing. We are quite clearly asking that all live  
25 music be on the subterranean level.

1                   That proper soundproofing be  
2                   verified/certified by an independent person  
3                   beyond just saying, "Oh, can I hear it? Oh, can  
4                   you hear it." The reason that's not acceptable  
5                   is because there is history of some discrepancy  
6                   where the gentleman said he sat next door and  
7                   didn't hear it.

8                   I was there and I heard it. We don't  
9                   want to talk about the previous tenant but she  
10                  was there and she lived through it. She wasn't  
11                  sick. She moved because of it. That's what I'm  
12                  saying. That's my testimony. That's in my  
13                  summary.

14                  It's not as simplistic as saying you  
15                  stand over here and I'll sit over here. I get  
16                  it. That would seem like it would make sense.  
17                  We are asking for a sound engineer to address the  
18                  capacity constraints. He said, yes, if a person  
19                  moved in, they might say now I hear it because  
20                  maybe something has changed on that side.

21                  If they say, "Hey, we have  
22                  soundproofed and we agreed to a certain capacity  
23                  for noise and that is mitigated and you cannot  
24                  hear it next door," if suddenly we can hear it,  
25                  perhaps the capacity has changed or been violated

1 or gone beyond. That's why we're asking for the  
2 engineering certification.

3 I think they're nice people but he's  
4 not an architect. He said, "Oh, I did this for  
5 soundproofing." Okay, maybe. From the video you  
6 saw sound problems. You saw people standing on  
7 the corner. You heard it. You saw a band there.  
8 The door was open. It came outside.

9 He himself said, "You know what? Yep,  
10 that was us. We did it. ABRA came and we turned  
11 it down." But then we're back in the cycle of it  
12 happened, you called, it happened, you called.  
13 We are asking these things which are stipulations  
14 meaning, okay, if we go forward and grant all of  
15 these things, these things have to happen.

16 We want the occupancy to be this  
17 instead of this. We want the soundproofing to  
18 happen and be verified. We want the trash to  
19 stop at a certain time. As you consider whether  
20 or not we go forward, these are our stipulations  
21 as to whether or not they can go forward and it's  
22 very clear.

23 The reason we feel that it is running  
24 into this because all these things that we've  
25 shown, the evidence that we've displayed is

1 directly connected to their operation and the  
2 number of people and the fact that there will be  
3 loud music. They can have music. There's not an  
4 application for music, okay. We're saying put  
5 that only downstairs.

6           You got that. Just put it downstairs.  
7 Give some type of confirmation or some  
8 independent verification and agree on a capacity  
9 and then we can stand there and hear it. Right?  
10 Stop the trash at a certain time. Don't have the  
11 windows and doors open and sound from the inside  
12 projecting outside.

13           The upstairs level is valid. Even  
14 though they are changing downstairs, they want to  
15 change the occupancy upstairs which is why we  
16 brought up the fact there's no soundproofing up  
17 there now. They said it's a brick wall. Now if  
18 we increase the occupancy on the upstairs on a  
19 level where we said there is already no proofing,  
20 there's a brick wall which we saw in the photo,  
21 that's why the upstairs piece is valid.

22           I think what I want you to also think  
23 about is how we've been splitting hairs. Well,  
24 is the speaker on the wall or is it hanging from  
25 the thing. Is it this, is it that. The good



1 citizen would say you know what? This speaker is  
2 too close to my neighbor's brick wall where we  
3 can hear sound.

4 I have a rubber thing hanging a inch  
5 out. Just move it. This is why -- and we're  
6 coming to the Board to say we have to have things  
7 verifiable. None of this off language about try  
8 and ameliorate. The rest of this was, and it was  
9 our ignorance, I thank Mr. Short for sharing  
10 this, we thought ABRA was the venue, in fact, to  
11 do this. I didn't know there was a ZAR and  
12 somebody else.

13 We called McDuffy's office. Since  
14 we're here and since there's a substantial  
15 change, before that change is happening we're  
16 saying, look, these are the issues we have. We  
17 want you to consider this, the occupancy, and as  
18 a stipulation of whether or not you go forward.  
19 That is very, very clear.

20 We only brought up the previous owner  
21 to talk about the history of the property. I  
22 can't tell you how many times in the news I've  
23 heard people say there's been a lot of history at  
24 this establishment and the police chief will shut  
25 them down.

1                   In history what has happened  
2 previously is important and that's what all these  
3 people are thinking about, all them who live  
4 right there. I believe that -- I don't think it  
5 was in evidence but they had a petition with a  
6 lot of people that  
7 signed --

8                   CHAIR ANDERSON: Mr. Powell, you were  
9 doing great until you started bringing outside  
10 stuff in. This is what you proved, this is what  
11 you want us to do, so let's wrap it up.

12                  MR. POWELL: Anyway, so in conclusion  
13 that's what I want. In our PIF it says what we  
14 want and there are stipulations to the material.

15                  CHAIR ANDERSON: You have the last  
16 word, sir. Do you wish to make any closing?

17                  MR. SUKHMINDER: All I -- they  
18 covered it good. All I want to add to it is a  
19 simple thing. Their lease is up for renewal at  
20 the end of the year, I think. It's in December.  
21 I don't want to go through this. This is my  
22 first time I'm coming to this. Do whatever you  
23 need to do, do it now. Don't make me come again.

24                  (Laughter.)

25                  MR. SUKHMINDER: I don't want to

1       come again. Nothing against anybody here but I  
2       cannot handle these things, you know. I'm  
3       fighting for tenants. I'm not even fighting for  
4       myself much here. I'm thinking about the  
5       neighborhood. I don't have that kind of time  
6       also to do all this stuff. I just want it to be  
7       done right so we don't show up again. That's all  
8       I want to say.

9                   CHAIR ANDERSON: All right.

10                  Thank you very much for the  
11                  presentation today. I want to thank both parties  
12                  for their presentations today. We've been here  
13                  since 9:00 this morning. We're here to listen  
14                  and we're going to make a decision tonight. You  
15                  won't know what the decision is but we're going  
16                  to try to make a decision tonight.

17                  I just want to let you know that we're  
18                  all citizens as you are. We're all DC residents  
19                  and we appreciate the fact that you're here. I  
20                  appreciate what you just said about you don't  
21                  want to see us again because I always tell folks  
22                  --

23                               (Laughter.)

24                  CHAIR ANDERSON: No, I'm serious. I  
25                  always tell folks settle this. I won't take it

1 personally if you don't come back. If I don't  
2 see you again, I never take it personal. What  
3 that says to me is that you have worked it out  
4 and you don't need my help. If I need to make a  
5 decision, I will.

6 I always tell folks when they come  
7 here to see the Board, it's never pleasurable.  
8 People never come to say, "Hi, how are you doing?  
9 I want to say hello." It's always something.

10 All right. Being more serious, do the  
11 parties wish to propose findings of fact and  
12 conclusions of law? Do you want to wait to get  
13 the transcript or read the transcript to say his  
14 is what was proven and bringing in new evidence,  
15 or you just want to waive your right to do that  
16 and we'll make a decision on the presentation  
17 today? I have to ask.

18 MR. POWELL: We want to waive it.

19 CHAIR ANDERSON: Waive it. No, I'm  
20 serious. Waive it at a protest hearing because  
21 that's asking you to be -- that's asking you to  
22 be an attorney meaning that you're going to  
23 listen to the transcript and then you're going to  
24 write a legal brief to tell us what it just said.  
25 We heard it today so everyone wants to waive it.

1 Okay.

2 Let me do my final closing and then  
3 I'll dismiss you. As Chairperson of the  
4 Alcoholic Beverage Control Board for the District  
5 of Columbia in accordance with DC Official Code  
6 Section 2574(b) of the Open Meetings Act I move  
7 that the ABC Board hold a closed meeting for the  
8 purpose of seeking legal advice from our counsel  
9 on Case No. 19-PRO-00095, The Pub and the People,  
10 pursuant to DC Official Code Section 2574(b)(4)  
11 of the Open Meetings Act and deliberate upon Case  
12 No. 19-PRO-00095, The Pub and the People for the  
13 reasons cited in DC Official Code Section  
14 2574(b)(13) of the Open Meetings Act. Is there a  
15 second?

16 MEMBER SHORT: Second.

17 CHAIR ANDERSON: Mr. Short has  
18 seconded the motion. I will now take a roll call  
19 vote on the motion before us now that has been  
20 seconded.

21 MEMBER CROCKETT: Agree.

22 CHAIR ANDERSON: Mr. Cato.

23 MEMBER CATO: Agree.

24 CHAIR ANDERSON: Mr. Short.

25 MEMBER SHORT: I agree.

1                   CHAIR ANDERSON: Mr. Anderson. I  
2 agree. As it appears that the motion has passed,  
3 I hereby give notice that the ABC Board will  
4 recess these proceedings to hold a closed meeting  
5 in the ABC Board conference room pursuant to  
6 Section 2574(b) of the Open Meetings Act. Thank  
7 you.

8                   Hold on one more minute, please. I  
9 need to do one more thing and then you guys can  
10 go.

11                   As Chairperson of the Alcoholic  
12 Beverage Control Board for the District of  
13 Columbia in accordance with DC Official Code  
14 Section 2574(b) of the Open Meetings Act, I move  
15 that the ABC Board hold a closed meeting on  
16 November 20, 2019 for the purpose of seeking  
17 legal advice from our counsel on the matters  
18 identified on the Board's legal license and  
19 investigative agenda for November 20, 2019 as  
20 published in the DC Register on November 8, 2019.  
21 Is there a second?

22                   MEMBER CROCKETT: Second.

23                   CHAIR ANDERSON: Ms. Crockett has  
24 seconded the motion. I will now take a roll call  
25 vote on the motion before us now that has been

1 seconded.

2 Ms. Crockett.

3 MEMBER CROCKETT: I agree.

4 CHAIR ANDERSON: Mr. Cato.

5 MEMBER CATO: I agree.

6 CHAIR ANDERSON: Mr. Short.

7 MEMBER SHORT: I agree.

8 CHAIR ANDERSON: Mr. Anderson. I

9 agree. As it appears that a motion has passed, I  
10 hereby give notice that the ABC Board will hold a  
11 closed meeting pursuant to the Open Meetings Act.  
12 Notice will also be posted on the ABC Board  
13 hearing room bulletin board, placed on the  
14 electronic calendar on ABRA's website, and  
15 published in the DC Register in as practical --

16 I'm sorry. Before I close the record  
17 officially, we did have -- we had a 4:30 protest  
18 hearing and that case -- I'm sorry. The protest  
19 hearing that was on our calendar, Case No. 19-  
20 PRO-00050, Betty's GoJo, License No. 102500, was  
21 scheduled actually for 4:30 protest hearing today  
22 but because of our earlier protest, the Board  
23 continued this matter to a date to be determined.  
24 That case is now scheduled for December 5 at  
25 10:00 a.m.

1                   With that said, we are adjourned. It  
2 is 7:24 p.m. and we're adjourned for the day.  
3 Thank you very much.

4                   (Whereupon, the above-entitled matter  
5 went off the record at 7:24 p.m.)  
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: ABRA Hearing

Before: Alcoholic Beverage Control Board

Date: 11-06-19

Place: Washington, D.C.

was duly recorded and accurately transcribed under  
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Court Reporter

**NEAL R. GROSS**

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