

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
:
1001 H Street, LLC t/a Ben's :
Chili Bowl/Ben's Upstairs : Protest
1001 H Street, NE : Hearing
Retailer CR - ANC-6A :
License No. 93103 :
Case #13-PRO-00133 :
:
(New Application) :
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January 8, 2014

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 Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member

ALSO PRESENT:

ILEANA CORRALES, ABRA Investigator

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

(1:37 p.m.)

CHAIRPERSON MILLER: The case that I believe everybody is here for today is a Protest Hearing. It's Case No. 13-PRO-00133, Ben's Upstairs located at 1001 H Street, N.E., License No. 93103. And that's a new application.

I think before we even get into introductions, the Board has a preliminary matter and I'm going to turn to Mr. Alberti on that.

MEMBER ALBERTI: Yes. Thank you, Ms. Miller. I find that I must recuse myself from this case, if out of an abundance of caution, to avoid any potential appearance of a conflict of interest. So I will be stepping off the dias. Thank you very much.

CHAIRPERSON MILLER: Okay. Thank you, Mr. Alberti.

All right. Now, let's start with introductions by the parties.

1 MR. KLINE: Yes, good afternoon.
2 Andrew Kline. I'm here on behalf of the
3 applicant.

4 MR. KAMAL ALI: Kamal Ben Ali,
5 applicant, Ben's Upstairs.

6 MR. NIZAM ALI: Nizam Ben Ali,
7 applicant, Ben's Upstairs.

8 MR. WILLIAMS: Good afternoon, Jay
9 Williams on behalf of ANC-6A.

10 MR. HOLMES: David Holmes on
11 behalf of ANC-6A.

12 CHAIRPERSON MILLER: Okay. Now,
13 we have a motion filed in this case, so the
14 Board is going to deal with that motion. We
15 do not need to hear any argument on the case.
16 The Board is well-aware of the issues. Oh,
17 that is a Motion to Strike the part of the
18 protestant's PIF that addresses settlement
19 discussions.

20 I want to say -- first of all, I
21 want to move to deny the motion because there
22 is no reason to deny information that is

1 provided us in a PIF. The PIF is very
2 valuable because it gives us and the other
3 parties the information we all need to know
4 what to expect at the hearing.

5 And that actually gave the
6 applicant the information that the protestants
7 intended to bring up settlement discussions.
8 So I wouldn't grant that, but at the same
9 time, and then we will vote on this, I will
10 say that settlement discussions are not
11 admissible in our hearings. And they are not
12 relevant and the Board is not going to allow
13 time to be taken up with something that the
14 Board is not even going to consider.

15 What the Board is interested in at
16 these hearings and in accordance with the
17 statute is impacts, you know, on peace, order,
18 quiet and that is the subject of the hearing.
19 If you want to put forth for the Board's
20 consideration something you put forth in
21 settlement, you know, that's fine, but we want
22 to deal with the merits.

1 We do not and will not take any
2 time to deal with settlement discussions. And
3 in part that's so that you have that
4 protection when you are undergoing settlement
5 negotiations.

6 All right. So therefore, I move
7 to deny the Motion to Strike the part of the
8 PIF that was filed by the applicant. Do I
9 have a second?

10 MEMBER SILVERSTEIN: I second.
11 Madam Chair?

12 CHAIRPERSON MILLER: Any further
13 discussion on that?

14 MEMBER SILVERSTEIN: Very briefly.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Silverstein?

17 MEMBER SILVERSTEIN: I view the
18 PIF as simply you are telling us what you want
19 to tell us. I don't view it as evidence. As
20 such, we don't want to spend a lot of time
21 arguing about whether or not what you say you
22 are going to tell us should be admitted or

1 not. We don't want to waste people's time for
2 that.

3 We are not going to hear that,
4 because we never do hear what people negotiate
5 in good faith negotiations, that is beyond our
6 purview. That is what my understanding of
7 this is, we can dispatch this rather quickly
8 and move on. Thank you, Madam Chair.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Anything else? Okay.

11 MR. KLINE: Madam Chair, just very
12 briefly. I think a brief update might be
13 appropriate in terms of what is in the PIF,
14 because our concern is not that the Board view
15 it as evidence, but in terms of what the
16 parties have done. And I just want the Board
17 to know that we had a very productive
18 mediation on Monday, things have changed from
19 what was stated in the PIF.

20 We didn't settle the case. We are
21 here today. But I just thought in terms of
22 what was exchanged in the motion and in the

1 opposition to the motion, those facts have now
2 changed and I just thought it might be helpful
3 for the Board to know that. Thank you.

4 CHAIRPERSON MILLER: Okay. I
5 mean, just for my part and then I'm dealing
6 with it procedurally that I don't think a
7 motion to strike a PIF is in order, that
8 people should be allowed to tell us what they
9 want to do at the hearing and that saves time
10 at the hearing.

11 And we are not paying attention to
12 settlement negotiations. Okay. All right.
13 There is a Motion to Deny applicant's Motion
14 to Strike the Protest Information Form and
15 there was a second.

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? Okay. All those abstaining? Then
20 the applicant's motion is denied and we can
21 now move into the hearing.

22 Just before we start just to get

1 an idea of witnesses again, I know you
2 generally identify in your PIF witnesses, but
3 it's good to get it, for us to get an idea
4 before we start, how many witnesses we are
5 going to hear.

6 And I would also say this seems
7 like a very narrow issue, so we don't want
8 redundancy or one person to say I testify to
9 the same thing, you know. So we don't need to
10 hear 10 people testify to the same thing. We
11 want to focus on the issue.

12 All right. Mr. Kline, can you
13 just give us a general idea?

14 MR. KLINE: At most, six, but we
15 certainly mindful of not being repetitive.
16 And we won't call anyone if we don't believe
17 that they are necessary.

18 CHAIRPERSON MILLER: Okay. And I
19 think, yeah, that the PIF does serve the
20 purpose of narrowing in where the issue is and
21 I hope that the hearing follows that way.

22 Okay. And the ANC?

1 MR. WILLIAMS: We are expecting,
2 pardon me, at most I would estimate eight
3 witnesses. And I do want to note that there
4 are some witnesses we would like to present
5 who are not disclosed on the PIF, because we
6 just, you know, worked out that they were
7 available today and just wanted to put that
8 forward now if maybe we need to deal with
9 that.

10 CHAIRPERSON MILLER: Okay.

11 MR. WILLIAMS: And also, we are
12 mindful of the -- your request to not have
13 duplicative testimony. It is entirely
14 possible that we will be able to consolidate
15 that as we go along.

16 CHAIRPERSON MILLER: Okay. So I
17 think unless the parties have an objection, we
18 could wait until we get to that point to see
19 if they really need to testify. Okay.

20 And our general rule is each side
21 has an hour and a half, excluding opening and
22 closing, and including when you are doing your

1 cross-exam. And Mr. Jones is keeping track
2 and hopefully you won't even come anywhere
3 near that point. It's rare that it happens.
4 Okay. But in this kind of a narrow issue, I
5 hope not.

6 Okay. So there we are. Any
7 questions before we go to opening statements?
8 Okay. All right. Applicant's opening
9 statement?

10 MR. KLINE: Yes. Thank you, Madam
11 Chair and Members of the Board. I'm very
12 excited to be here this afternoon as we are
13 before you on an application for Ben's Chili
14 Bowl and Ben's Upstairs.

15 Ben's Chili Bowl, of course, is
16 the nationally known restaurant that operates
17 just a few blocks from here and has operated
18 at that location for 55 years and has a
19 business next door known as Ben's Next Door
20 that has been licensed for five years and
21 exercise their rights and privileges under
22 that license responsibly.

1 This will be the second permanent
2 location of Ben's Chili Bowl and the second
3 permanent location of what is being called, at
4 this location, Ben's Upstairs. The current
5 location is called Ben's Next Door. There
6 are, of course, locations at the National's
7 Ball Park.

8 And it is exciting that this is
9 happening in the District of Columbia. There
10 are lots of opportunities for this brand.
11 This has become even more well-known over the
12 last 10 years, so to look at many different
13 locations in the Metropolitan area and
14 elsewhere and we are very excited that they
15 have chosen H Street and that we're before you
16 today on the application for this new location
17 on H Street in the District of Columbia.

18 The issue, as we understand it in
19 hearing from the protestants, seems to be
20 focused primarily on the outside seating, both
21 the outside cafe and the roof deck patio
22 seating/summer garden seating. The evidence

1 that we will produce to you today will show
2 that there is thought that has been given as
3 to how this building will be constructed. It
4 is not currently in existence. The building
5 is being rebuilt.

6 And you will see from the plans
7 that are tendered by our witnesses that there
8 has been thought given in terms of noise
9 traveling back into the neighborhood. You
10 will hear testimony concerning the nature of
11 this corridor, which is also an exciting
12 corridor and the fact that it will be home to
13 the District's new trolley that will run up
14 and down H Street in front of the
15 establishment.

16 And at the conclusion of the
17 hearing, we will request that you grant the
18 application and grant the license with the
19 privileges that have been sought, with one
20 exception, and that is in the original
21 application, we had filed for a 4:00 a.m.
22 closing time. We are orally amending that, at

1 this point, such that it is a 3:00 a.m.
2 closing time, consistent with the legal hours
3 of service of 3:00 a.m.

4 And then the rooftop hours that
5 are sought are 2:00 a.m. and 3:00 a.m. 2:00
6 a.m. Sunday through Thursday and 3:00 a.m.
7 Friday and Saturday and the same with the
8 sidewalk cafe.

9 So at the conclusion of the
10 hearing, we hope that you will see that these
11 gentlemen who have already been entrusted with
12 one license should be entrusted with this
13 license with the privileges that have been
14 sought under it. Thank you.

15 CHAIRPERSON MILLER: Thank you.
16 ANC?

17 MR. WILLIAMS: Good afternoon,
18 Madam Chair and Members of the Board. Thank
19 you very much for your time.

20 To take care of something
21 initially, ANC-6A welcomes Ben's Chili Bowl to
22 the neighborhood. I can't think of a single

1 resident who I have talked to who is not in
2 favor and excited about an establishment as
3 iconic as Ben's coming into our neighborhood.

4 This is -- we think that the
5 presence of Ben's Chili Bowl and Ben's
6 Upstairs will actually be a positive for our
7 neighborhood. We don't dispute that. We are
8 not here to challenge their entire license,
9 obviously.

10 We want to help to make sure that
11 Ben's has a successful relationship with the
12 surrounding neighborhood, a goal which I'm
13 sure that they share. We are here because of
14 neighborhood concerns surrounding the noise
15 that a reasonable person would expect to
16 emanate from the outdoor spaces at Ben's, both
17 the sidewalk cafe and the rooftop deck.

18 As you know and as you have just
19 heard, they have requested to keep their
20 outdoor spaces open until 3:00 a.m. on
21 weekends and 2:00 a.m. on weekdays. Not only
22 is this completely out of line with the rest

1 of H Street, but it's unreasonable for an
2 establishment that is located adjacent to a
3 densely-populated residential block.

4 As you will hear when we present
5 our evidence, there is overwhelming opposition
6 from neighbors to the hours that are requested
7 by Ben's. Not to the existence of Ben's Chili
8 Bowl, because, as I said, virtually everyone
9 welcomes them to the neighborhood, but just to
10 these late night hours.

11 Not only do the immediate
12 neighbors who are -- who would be the most
13 affected by this establishment oppose these
14 hours, but based on a recent community meeting
15 that the ANC hosted to discuss its policy
16 regarding sidewalk cafe and rooftop deck
17 hours, there was overwhelming support
18 throughout ANC-6A in support of the ANC's
19 current stance regarding the closure of these
20 outdoor spaces at 11:00 p.m. on weekdays and
21 midnight on weekends.

22 We greatly appreciate the sound

1 mitigation efforts that Ben's has proposed and
2 I'm sure they will present when they give
3 their evidence and our hope is that these
4 efforts will reduce the amount of noise coming
5 from the outdoor areas.

6 However, it is important to
7 remember that sound mitigation is not sound
8 elimination. The only way Ben's could
9 eliminate sound is to enclose the area
10 completely, which you can't do with outdoor
11 spaces, particularly the sidewalk cafe, when
12 DDOT has particular regulations and laws that
13 say these spaces can't be enclosed.

14 So to be sure, even with sound
15 mitigation efforts, it's highly unlikely --
16 it's highly likely that noise will emanate
17 from these outdoor spaces into homes just feet
18 from the sidewalk cafe or coming down from the
19 rooftop deck that is three stories about the
20 neighborhood and facing many residences.

21 And just to be clear, residents
22 are largely willing to deal with this issue of

1 sound during reasonable hours, which is why we
2 are asking not for a complete ban on these
3 outdoor spaces, but for reasonable closing
4 times of 11:00 p.m. and midnight.

5 These times are even later than
6 when some residents are trying to go to sleep
7 or trying to put their young ones to bed. But
8 the ANC feels that it is the right compromise
9 to give a little bit to the establishment as
10 well, but still represent the interests of the
11 community.

12 As I noted, there is no sound
13 mitigation on the rooftop deck and on the
14 direction of 10th Street that we are aware of
15 and we may find out differently during the
16 evidence.

17 But along 10th Street there are
18 current residences and then there is also a
19 new development that is coming in on 10th
20 Street on the west side, just across the
21 street from the proposed space with Ben's.

22 So in conclusion, the ANC is here

1 to ask that the Board impose a closing time of
2 11:00 p.m. on weeknights and 12:00 a.m. on
3 weeknight -- on weekends for the rooftop deck
4 and sidewalk cafe, which is in line with every
5 other sidewalk cafe in the surrounding area
6 and with nearly every rooftop deck in the
7 surrounding area.

8 And request for -- in addition, we
9 are also requesting the Board order that Ben's
10 not have live or pre-recorded music on either
11 outdoor space. This has been a problematic
12 issue for the ANC in the neighborhood in the
13 past and it's not something we would like to--
14 we wish to deal with with another
15 establishment.

16 There are other requests that we
17 believe are important for the neighborhood and
18 that we have discussed in the past with Ben's,
19 but the ANC is focusing on just these issues
20 because the noise is the biggest concern of
21 the community and it's the one that we think
22 is a critical issue to bring before the Board.

1 So once again, we welcome Ben's
2 Chili Bowl to the neighborhood. We hope and
3 expect that they will be good neighbors, but
4 the request to have late night outdoor space
5 hours that are completely out of line with the
6 neighborhood and that are opposed by the vast
7 majority of the neighbors who would be
8 affected is unacceptable to the ANC and we are
9 confident that after hearing the evidence, the
10 Board will agree with us. Thank you.

11 CHAIRPERSON MILLER: Thank you.
12 Okay. Will our Investigator come up, please?
13 Whereupon,

14 INVESTIGATOR ILEANA CORRALES
15 was called as a witness by the ABRA Board, and
16 having been first duly sworn, assumed the
17 witness stand and was examined and testified
18 as follows:

19 CHAIRPERSON MILLER: Okay. Thank
20 you. So whenever you are ready.

21 INVESTIGATOR CORRALES: Sure.

22 DIRECT EXAMINATION

1 INVESTIGATOR CORRALES: Good
2 afternoon, Madam Chair and Members of the
3 Board. My name is Ileana Corrales and I
4 conduct inspections and investigations in
5 licensed ABC establishments throughout the
6 District of Columbia.

7 I have been an Investigator with
8 the Alcoholic Beverage Regulation
9 Administration since February 4, 2008.

10 I was assigned to Investigate the
11 protest against Ben's Chili Bowl/Ben's
12 Upstairs, who has applied for a new ABC
13 License Restaurant Class with a sidewalk cafe
14 and summer garden endorsement.

15 Regarding the specific protest
16 issues in this case, I was able to speak to a
17 representative -- to the representative of
18 ANC-6A, Commissioner Jay Williams.
19 Commissioner Williams stated to me that ANC-6A
20 is concerned with the noise that could disrupt
21 the quality of life of the residents nearby,
22 specifically coming from the sidewalk cafe and

1 summer garden.

2 Commissioner Williams also stated
3 that they would prefer if the proposed
4 establishment would close its outside areas at
5 11:00 p.m. on weekdays, Sunday through
6 Thursday, and 12:00 a.m. on weekends, Fridays
7 and Saturdays.

8 I will now present a brief summary
9 of my findings resulting from my investigation
10 beginning December 19, 2013 and concluding
11 December 30, 2013.

12 Ben's Chili Bowl/Ben's Upstairs
13 will be located at 1001 H Street, N.E., on the
14 revitalized busy commercial H Street Corridor
15 of Washington, D.C. The surrounding area of
16 the prospective establishment is a mix -- is
17 mixed -- a mix of commercial, residential,
18 food and retail establishments.

19 Currently, the building that is
20 going to house this establishment has not been
21 constructed. The building will be a corner
22 lot row-style building located on the corner

1 of H Street, N.E., and 10th Street, N.E. You
2 can refer to Exhibits 9, 10 and 11 for
3 photographs of that.

4 The concept of the proposed
5 establishment comes from the original Ben's
6 Chili Bowl and Next Door. Ben's Chili Bowl is
7 a landmark restaurant in Washington, D.C.
8 located at 1213 U Street, N.W., in the Shaw
9 neighborhood of D.C. It is known locally for
10 its chili dogs, half smokes and milkshakes.

11 The original Ben's Chili Bowl
12 shares a common wall with next door, which
13 opened in 2009. Next Door has a Class Tavern
14 License which offers everything on the Ben's
15 Chili full menu in addition to its own lunch,
16 dinner and late night menu.

17 I met with Kamal Ali, owner of
18 Ben's Chili Bowl and Frank White, the
19 company's business development and real estate
20 officer. Mr. Ali and Mr. White stated the
21 following about the layout of the proposed
22 establishment.

1 The establishment will be locate--
2 will be housed within a three level building.
3 When the project gets finished, this will be
4 the second stand-alone Ben's Chili Bowl. And
5 it will take up the first level. And Ben's
6 Upstairs will occupy the second and third
7 level of the building.

8 The third level of the building
9 will be a rooftop summer garden with a seating
10 capacity of, approximately, 44 seats with one
11 bar that will serve alcoholic beverages.

12 The bar area will be enclosed by a
13 canopy that will allow the business to get
14 year around use of the space. That will give
15 the business year around use of the space.

16 The second level of the building
17 will have a bar in the middle of the floor,
18 which will be surrounded by barstools, tables
19 and chairs. Access to Ben's Upstairs will be
20 through a separate entrance that faces H
21 Street, N.E.

22 The first floor will house Ben's

1 Chili Bowl. Ben's Chili Bowl will not have a
2 bar, but will have counter, booth and stool
3 seating like the original Ben's Chili Bowl on
4 U Street. There is currently no alcoholic
5 service planned for Ben's Chili Bowl.

6 There is a proposed sidewalk cafe
7 that will occupy space on the 10th Street side
8 of the establishment with a total capacity to
9 seat 38 patrons. The total estimated
10 occupancy for the establishment is 266, 191
11 being seats.

12 Mr. White addressed the issue of
13 possible noise being heard from the rooftop of
14 the establishment. He stated there would be
15 a wall erected on the back end of the area
16 that will help to mitigate sound, noise and
17 aesthetics. This will range between 8 to 11
18 feet tall in height.

19 Ben's Chili Bowl and Ben's
20 Upstairs will not offer entertainment and has
21 not applied for an entertainment endorsement
22 along with this license application.

1 I was also informed that the
2 company has purchased a house located at 729
3 10th Street, N.E., the house directly behind
4 the coming establishment to serve as a buffer
5 for neighbors during construction and to help
6 shield noise once the restaurant opens.

7 1001 H Street, N.E., is surrounded
8 mostly by street parking, which includes pay-
9 to-park, two hour and four hour parking
10 restrictions as well as residential parking
11 zones.

12 According to the District of
13 Columbia GIS system, there are, approximately,
14 13 licensed ABC establishments operating
15 within 1,200 feet of 1001 H Street, N.E. Five
16 of these either have a summer garden or a
17 sidewalk cafe.

18 ABRA personnel monitored 1001 H
19 Street, N.E., a total of seven times from
20 December 19, 2013 through December 30, 2013 to
21 determine if there are any existing issues
22 regarding parking, peace, order and quiet in

1 the surrounding area where the establishment
2 will be located.

3 During the monitoring period, ABRA
4 Investigators noted the following:

5 Construction site of proposed
6 establishment, limited parking available
7 during night -- during the nights that it was
8 monitored, more parking available in the early
9 mornings than during the day. Heavy
10 pedestrian foot traffic on H Street, N.E. The
11 Investigators also noted that a lot of patrons
12 were -- a lot of patrons in the surrounding
13 areas that patronize the surrounding
14 establishments rely on cabs for means of
15 transportation.

16 Lastly, ABRA Investigators were
17 unable to determine how the proposed
18 establishment would have an effect and whether
19 it would be positive or negative on
20 residential parking needs, vehicular and
21 pedestrian safety because the establishment is
22 currently not in operation.

1 This concludes my testimony for
2 this case.

3 CHAIRPERSON MILLER: Thank you.
4 Are there Board questions? I have a couple
5 quick ones. I'm probably missing something
6 here, so when you say there is currently no
7 alcohol service planned for Ben's Chili Bowl--

8 INVESTIGATOR CORRALES: Correct.

9 CHAIRPERSON MILLER: -- why are we
10 here? I mean, why are they here?

11 INVESTIGATOR CORRALES: Oh.

12 CHAIRPERSON MILLER: Oh.

13 INVESTIGATOR CORRALES: Ben's --
14 well, Ben's Chili Bowl is downstairs and --

15 CHAIRPERSON MILLER: Oh.

16 INVESTIGATOR CORRALES: -- Ben's
17 Upstairs are the two --

18 CHAIRPERSON MILLER: Oh, okay.

19 INVESTIGATOR CORRALES: -- at the
20 top.

21 CHAIRPERSON MILLER: Thank you.

22 That's where I was confused. All right. And

1 do you have an opinion whether there is
2 something different about the outdoor seating
3 in this case that would, I don't know if
4 justify is the right word, but would lead the
5 Board to treat outdoor seating in this case
6 differently from the other establishments in
7 the area? From what I heard Mr. Williams say,
8 the others are subject to earlier hours than
9 are being requested in this case.

10 INVESTIGATOR CORRALES: It's hard
11 to determine that, because the establishment
12 is not in operation, so what effect they would
13 have on the neighborhood is hard to predict.

14 CHAIRPERSON MILLER: Okay. I
15 wanted to see if you had an opinion on that.
16 And do you know when that new residential
17 development will be completed?

18 INVESTIGATOR CORRALES: I was not
19 informed of the new residential development
20 when I conducted my interviews actually.

21 CHAIRPERSON MILLER: Okay. Okay.
22 That's all I have. Mr. Silverstein?

1 MEMBER SILVERSTEIN: Thank you for
2 your report, Ms. Corrales.

3 INVESTIGATOR CORRALES: Thank you.

4 MEMBER SILVERSTEIN: What is the
5 distance between the applicants and the
6 nearest existing residence? And what would
7 the sound situation be there?

8 INVESTIGATOR CORRALES: The
9 nearest residential located house is the house
10 that they purchased. Ben's Chili Bowl has
11 purchased which is directly behind the
12 proposed establishment.

13 MEMBER SILVERSTEIN: But
14 understanding that they have purchased that
15 and will be using that as a sound buffer and
16 storage area, what then is the nearest
17 residential?

18 INVESTIGATOR CORRALES: The one
19 next door to that because it's a duplex.

20 MEMBER SILVERSTEIN: So it's one
21 door down?

22 INVESTIGATOR CORRALES: Um-hum,

1 one door down. That's correct.

2 MEMBER SILVERSTEIN: And is there
3 a series of homes there?

4 INVESTIGATOR CORRALES: Duplexes,
5 townhouses, condominiums. There appears to be
6 condominiums across the street from it. So
7 homes on --

8 MEMBER SILVERSTEIN: So --

9 INVESTIGATOR CORRALES: -- correct
10 that side.

11 MEMBER SILVERSTEIN: -- this is
12 clearly a mixed-use area where there is a
13 commercial strip and there is housing directly
14 on the --

15 INVESTIGATOR CORRALES: In the
16 back.

17 MEMBER SILVERSTEIN: -- side
18 street? So that is the issue that --

19 INVESTIGATOR CORRALES: Right,
20 behind it. Behind the proposed establishment.

21 MEMBER SILVERSTEIN: Thank you.

22 No further questions.

1 INVESTIGATOR CORRALES: Okay.

2 CHAIRPERSON MILLER: Okay. Other
3 Board questions? All right. Does the
4 applicant have questions?

5 MR. KLINE: Yes. Thank you.

6 CHAIRPERSON MILLER: Okay.

7 CROSS-EXAMINATION

8 MR. KLINE: Good afternoon,
9 Investigator Corrales.

10 INVESTIGATOR CORRALES: Hello, Mr.
11 Kline.

12 MR. KLINE: There are no homes
13 immediately adjacent to the proposed
14 establishment, are there?

15 INVESTIGATOR CORRALES: No. It's
16 -- no.

17 MR. KLINE: Right. So this fronts
18 H Street and is on the corner of 10th and H
19 and directly across 10th is also commercial?

20 INVESTIGATOR CORRALES: Correct.

21 MR. KLINE: Correct. In fact, you
22 have to go somewhat down the block on 10th

1 Street before you reach the first residence
2 besides the house that is directly behind,
3 correct?

4 INVESTIGATOR CORRALES: Correct,
5 correct.

6 MR. KLINE: Okay. Now, you were
7 asked whether there was anything that was
8 different about this establishment that might
9 justify it being treated differently than
10 other establishments in the neighborhood. To
11 your knowledge, has the Board ever ruled on
12 any of these other establishments or were
13 those all done by settlement agreements, if
14 you know?

15 INVESTIGATOR CORRALES: Say your
16 question again?

17 MR. KLINE: In other words, do you
18 know has the Board restricted outside closing
19 hours for any of the adjacent businesses?

20 INVESTIGATOR CORRALES: I do not
21 know that.

22 MR. KLINE: You don't know?

1 INVESTIGATOR CORRALES: No.

2 MR. KLINE: It was discussed with
3 you that the ANC was really concerned that an
4 agreement be signed, correct?

5 INVESTIGATOR CORRALES: Correct.

6 MR. KLINE: And was there a
7 statement that everyone or almost everyone in
8 the neighborhood had signed an agreement?

9 INVESTIGATOR CORRALES: Correct.

10 MR. KLINE: Okay. But you don't
11 know whether that is why they are limited to
12 these earlier hours or not? You didn't look
13 at that --

14 INVESTIGATOR CORRALES: No.

15 MR. KLINE: -- as part of your
16 investigation? Okay. Now, in your
17 investigation you mentioned a number of
18 places. I think you have a list of places
19 that you looked at and their hours. And there
20 is at least one that has later hours than
21 this, correct? The Twelve Restaurant & Bar?

22 INVESTIGATOR CORRALES: Twelve,

1 twelve, yes.

2 MR. KLINE: Okay. So there was,
3 obviously, no Board restriction on that,
4 correct?

5 INVESTIGATOR CORRALES: No, they
6 are just bounded by a settlement agreement.

7 MR. KLINE: And then doesn't Smith
8 Commons have outside seating at their
9 location, which is listed on page 4 of your
10 report?

11 INVESTIGATOR CORRALES:
12 Unfortunately, I was not able to find their
13 exact hours in ABRA records and I did not
14 visit the establishment to confirm that.

15 MR. KLINE: Okay. All right. Do
16 you know whether they have outside seating?

17 INVESTIGATOR CORRALES: I have
18 heard that they have an off-deck type of
19 outside seating, but like I said, ABRA records
20 did not reflect their hours, so I did not put
21 it in the report.

22 MR. KLINE: And what about Cusbah

1 at 1128 H Street, N.E.?

2 INVESTIGATOR CORRALES: They
3 weren't reflected in ABRA records in our
4 system.

5 MR. KLINE: Okay. Did you do any
6 visual inspection of the neighborhood as to
7 who had outside seating?

8 INVESTIGATOR CORRALES: Most of
9 the times -- well, yeah. Sorry, yes. I am
10 aware that Twelve Restaurant has a rooftop and
11 outside seating. Khan's which is obvious, so
12 when I go around in the afternoon, I was able
13 to verify these. However, some of these
14 establishments don't open until later in the
15 afternoon, so --

16 MR. KLINE: Okay. But Khan's is
17 not on your list, are they?

18 INVESTIGATOR CORRALES: It is.

19 MR. KLINE: Oh, it is on your
20 list. Okay. And you say until 11:00 and
21 12:00 and that's based on what? I don't see
22 that.

1 INVESTIGATOR CORRALES: All these
2 hours are based on their settlement
3 agreements.

4 MR. KLINE: These are all based on
5 settlement agreements?

6 INVESTIGATOR CORRALES: Correct.
7 These hours are -- well, yes, these hours are
8 based on settlement agreements.

9 MR. KLINE: All right. So turning
10 to my earlier question, none of these hours
11 were set by the Board. They are all based on
12 settlement agreements?

13 INVESTIGATOR CORRALES: Correct.

14 MR. KLINE: Correct?

15 INVESTIGATOR CORRALES: Yes.

16 MR. KLINE: All right. So in
17 reality, if the Board were to grant different
18 hours for this establishment, this might be
19 the first time the Board has addressed this
20 issue, correct?

21 INVESTIGATOR CORRALES: Possibly.

22 MR. KLINE: Okay. Thank you.

1 That's all I have.

2 CHAIRPERSON MILLER: Okay. Does
3 the ANC have any questions? Okay.

4 MR. WILLIAMS: A couple real
5 quick. Hi, Ms. Corrales.

6 INVESTIGATOR CORRALES: Hi.

7 MR. WILLIAMS: So it's fair to say
8 that based on your investigation and the
9 investigation report you provided here that no
10 nearby establishments have a sidewalk cafe
11 open later than 11:00 p.m. on weeknights and
12 12:00 a.m. on weekends. Is that correct?

13 INVESTIGATOR CORRALES: With the
14 exception of Twelve.

15 MR. WILLIAMS: I'm specifically
16 talking about sidewalk cafes.

17 INVESTIGATOR CORRALES: Oh,
18 sidewalk. Correct. What I put down here is
19 what there -- what I researched through their
20 voluntary agreement.

21 MR. WILLIAMS: Sure. And so is it
22 fair to say that based on your investigation,

1 all nearby establishments that you
2 investigated, except for one, have summer
3 gardens that are open no later than 10:00 p.m.
4 on weeknights and midnight on weekends?

5 INVESTIGATOR CORRALES: Correct.

6 MR. WILLIAMS: And is it also fair
7 to say that the one quote outlier nearby
8 establishment, which is Twelve, closes its
9 summer garden earlier than what Ben's Chili
10 Bowl and Ben's Upstairs is now requesting
11 before the Board?

12 INVESTIGATOR CORRALES: Yes.

13 MR. WILLIAMS: And what time is
14 that?

15 INVESTIGATOR CORRALES: 2:00 a.m.
16 weekdays and weekends.

17 MR. WILLIAMS: And when you
18 explain that the -- when you answered Mr.
19 Kline's question about having to go somewhat
20 further down the block to get to the nearest
21 occupied residence, did you actually mean that
22 you only have to go one additional house down

1 to reach the first additional -- the first
2 occupied residence on that block beyond the
3 buffer house that they purchased?

4 INVESTIGATOR CORRALES: Ask me
5 that question again.

6 MR. WILLIAMS: Sure. So Mr. Kline
7 asked you if you have to go somewhat down the
8 block to get to the first occupied residence,
9 so to speak. Would you agree that what you
10 meant is that you just have to go to the next
11 house down from the one that they purchased?

12 INVESTIGATOR CORRALES: Well,
13 from --

14 MR. WILLIAMS: On that side of the
15 street.

16 INVESTIGATOR CORRALES: -- the
17 entrance of Ben's Chili Bowl, you have to walk
18 down a little ways down to get to the next
19 house.

20 MR. WILLIAMS: Okay.

21 INVESTIGATOR CORRALES: The house
22 that's connected to that buffer house.

1 MR. WILLIAMS: And what if you
2 were walking from the sidewalk cafe?

3 INVESTIGATOR CORRALES: The
4 beginning or the end of the sidewalk cafe?

5 MR. WILLIAMS: The end furthest up
6 10th Street.

7 INVESTIGATOR CORRALES: You said--
8 I don't know exactly the distance, but it's
9 not that further down. Not much further down.

10 MR. WILLIAMS: Would it be fair to
11 represent it as a narrow alley opening and
12 then one townhouse that they purchased and
13 then the next house is occupied?

14 INVESTIGATOR CORRALES: Yes.

15 MR. WILLIAMS: Okay. That's all
16 we have. Thank you.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Any other Board questions? Oh, Mr.
19 Jones, um-hum.

20 MEMBER JONES: Thank you, Madam
21 Chair. Investigator Corrales, do you have
22 your report in front of you?

1 INVESTIGATOR CORRALES: Yes.

2 MEMBER JONES: Do you have Exhibit
3 9 in front of you?

4 INVESTIGATOR CORRALES: Yes. Yes,
5 sir.

6 MEMBER JONES: Okay. I just want
7 to make sure I'm following. I think I get it,
8 but it's early in the year, so I may not be up
9 on my game. Ben's Chili Bowl, this looks like
10 a rendering, not an actual photograph.

11 INVESTIGATOR CORRALES: Correct.
12 It was provided by --

13 MEMBER JONES: Okay.

14 INVESTIGATOR CORRALES: -- the
15 applicant.

16 MEMBER JONES: If looking at this
17 rendering, if I'm looking at the left side of
18 that drawing, there is a red building. That
19 red building exists currently, correct?

20 INVESTIGATOR CORRALES: Yes, it
21 does.

22 MEMBER JONES: Okay. Is that the

1 10th Street side or is that the H Street side?

2 INVESTIGATOR CORRALES: Where the
3 red building is, that is the H Street side.

4 MEMBER JONES: That's H Street
5 side. Okay. So going down H Street, based on
6 what you observed, were there any residences
7 adjacent to that red building or anywhere else
8 along that block?

9 INVESTIGATOR CORRALES: No, sir.

10 MEMBER JONES: Okay.

11 INVESTIGATOR CORRALES:

12 Commercial.

13 MEMBER JONES: Now, going down the
14 10th Street side.

15 INVESTIGATOR CORRALES: Yes.

16 MEMBER JONES: There is two row
17 houses or two townhouses back here. One of
18 them I'm understanding, based on what I have
19 heard, that the first house that you get to
20 after leaving the Ben's Chili Bowl rendering
21 is a home that was purchased by the owners of
22 Ben's Chili Bowl, i.e., the licensees that are

1 here before us.

2 INVESTIGATOR CORRALES: Yes.

3 MEMBER JONES: Is that your
4 understanding as well?

5 INVESTIGATOR CORRALES: Yes.

6 MEMBER JONES: The house
7 immediately adjacent to that one, that is
8 literally connected to that one in accordance
9 with this rendering, is that a residence or is
10 that another nonresidential home?

11 INVESTIGATOR CORRALES: I believe
12 that is a residence.

13 MEMBER JONES: Do you happen to
14 know whether or not it is occupied?

15 INVESTIGATOR CORRALES: I do not
16 know if it's occupied.

17 MEMBER JONES: You don't know if
18 it's occupied. Okay. So, Investigator, if
19 you go to Exhibit 12, it's kind of a little
20 bit of a bird'seye.

21 INVESTIGATOR CORRALES: Yes.

22 MEMBER JONES: And just to make

1 sure we are clear up here on the Board, there
2 are a total of three independent structures
3 that are planned for the -- I lost track. Is
4 that the H Street side where the townhomes
5 are?

6 INVESTIGATOR CORRALES: That's the
7 10th Street side.

8 MEMBER JONES: 10th Street side. I
9 apologize. So the sidewalk cafe is on the
10 10th Street side, correct?

11 INVESTIGATOR CORRALES: Correct.

12 MEMBER JONES: Okay. So on
13 Exhibit 12 there appear to be three
14 independent structures that are represented
15 here on the 10th Street side. There is Ben's
16 Chili Bowl, which is the first structure as
17 you go from the corner of 10th and H.

18 INVESTIGATOR CORRALES: Um-hum.

19 MEMBER JONES: You walk back,
20 there is a one townhome that says "house owned
21 by licensee."

22 INVESTIGATOR CORRALES: Yes.

1 MEMBER JONES: And then there is a
2 third structure, right? Okay. And that third
3 structure, based on what you just said, I
4 believe, is that that third structure is one
5 that is a private residence.

6 INVESTIGATOR CORRALES: I believe
7 so, yes.

8 MEMBER JONES: You believe that.
9 Okay. Good.

10 CHAIRPERSON MILLER: That's it?

11 MEMBER JONES: All right. Thank
12 you very much, ma'am.

13 CHAIRPERSON MILLER: Okay. Thank
14 you, Mr. Jones. I just want to follow-up on
15 what Mr. Jones started, because I feel like we
16 have a good picture of what this is near.

17 Okay. So what is behind the
18 structure? Where it says rooftop summer
19 garden, okay, on one side and the sidewalk
20 cafe and then the sidewalk cafe is 10th
21 Street, right?

22 INVESTIGATOR CORRALES: Exhibit

1 No. 12?

2 CHAIRPERSON MILLER: Yes.

3 INVESTIGATOR CORRALES: Okay.

4 CHAIRPERSON MILLER: So what's on
5 the other side? What's parallel to that?

6 INVESTIGATOR CORRALES: Parallel
7 to?

8 CHAIRPERSON MILLER: Is it 9th
9 Street? What's parallel to the --

10 INVESTIGATOR CORRALES: Oh, it's
11 all commercial businesses.

12 CHAIRPERSON MILLER: Behind is all
13 commercial?

14 INVESTIGATOR CORRALES: Next to
15 the red building, the red structure or behind
16 the two townhomes? That's -- where the two
17 townhomes are, that's the 10th Street side.

18 CHAIRPERSON MILLER: Right.
19 That's what I mean.

20 INVESTIGATOR CORRALES: Okay.

21 CHAIRPERSON MILLER: So behind
22 there is a rooftop summer garden, it's a

1 rectangle and one side of the rectangle faces
2 10th Street and the other side faces, I don't
3 know what, is it 9th Street or I don't know.
4 What does that back up to?

5 INVESTIGATOR CORRALES: You're
6 talking about the townhomes that are on the
7 10th Street side, correct?

8 CHAIRPERSON MILLER: No. Okay.

9 INVESTIGATOR CORRALES: The ones
10 next to the red structure?

11 CHAIRPERSON MILLER: We don't
12 know. It's not showing. There is this dark
13 gray area behind the rooftop summer garden
14 where that reddish building is going.

15 INVESTIGATOR CORRALES: Oh, that
16 is all commercial. That is facing the H
17 Street side and it's all commercial.

18 CHAIRPERSON MILLER: That's H
19 Street?

20 INVESTIGATOR CORRALES: Correct.

21 CHAIRPERSON MILLER: Okay.

22 INVESTIGATOR CORRALES: That faces

1 H Street.

2 CHAIRPERSON MILLER: That's all
3 commercial?

4 INVESTIGATOR CORRALES: That's
5 commercial, a commercial block.

6 CHAIRPERSON MILLER: Okay. So I
7 just want to be clear where the residential
8 areas are. The one is we see these two
9 townhouses.

10 INVESTIGATOR CORRALES: So behind
11 -- next to those two townhouses all the way
12 down in that direction.

13 CHAIRPERSON MILLER: Right.

14 INVESTIGATOR CORRALES: That's
15 residential.

16 CHAIRPERSON MILLER: Is there any
17 other area that has residences like across the
18 street from the red building that we are
19 calling the red building?

20 INVESTIGATOR CORRALES: Across the
21 street from the red building, which is on the
22 H Street side is commercial.

1 CHAIRPERSON MILLER: That's
2 commercial?

3 INVESTIGATOR CORRALES: Correct.
4 It faces commercial establishments.

5 CHAIRPERSON MILLER: Okay. H is
6 commercial.

7 INVESTIGATOR CORRALES: H, H.

8 CHAIRPERSON MILLER: H is
9 commercial.

10 INVESTIGATOR CORRALES: H.

11 CHAIRPERSON MILLER: H, right.
12 And 10th is Commercial?

13 INVESTIGATOR CORRALES: 10 is --
14 well, behind Ben's Chili Bowl all those town--
15 it's residential on the 10th Street side.

16 CHAIRPERSON MILLER: On the 10th
17 Street side.

18 INVESTIGATOR CORRALES: Correct.

19 CHAIRPERSON MILLER: That's it.

20 INVESTIGATOR CORRALES: So if you
21 walk down from where the sidewalk cafe is at,
22 down towards the townhouses, you are going to

1 be in a Residential Zone.

2 CHAIRPERSON MILLER: Okay. So let
3 me just ask you then to be clear, see those
4 two little townhouses, they are pretty clear.

5 INVESTIGATOR CORRALES: Right.

6 CHAIRPERSON MILLER: What's
7 behind --

8 INVESTIGATOR CORRALES: That is
9 residential.

10 CHAIRPERSON MILLER: Behind them
11 is what?

12 INVESTIGATOR CORRALES:
13 Residential.

14 CHAIRPERSON MILLER: Residential
15 behind them?

16 INVESTIGATOR CORRALES: All the
17 way. No, wait. It's a pretty big block, so
18 behind that is all houses as well that face
19 the -- let me get a better map. A better map
20 would be -- okay. So if you look at Exhibit
21 15 --

22 CHAIRPERSON MILLER: Okay.

1 INVESTIGATOR CORRALES: -- you
2 will see the 10th Street, so anything -- so
3 where it points at eventually Ben's Upstairs
4 will be located at.

5 CHAIRPERSON MILLER: Okay.

6 INVESTIGATOR CORRALES: Anything
7 south of that is residential.

8 CHAIRPERSON MILLER: Okay. All
9 right. Thank you. Mr. Jones?

10 MEMBER JONES: Just a follow-up on
11 that. When you say anything to the south of
12 that, that includes -- excuse me.

13 Looking at Exhibit 15, when you
14 say anything to the south of the anticipated
15 location for Ben's Chili Bowl/Ben's Upstairs,
16 does that include both sides of 10th Street?

17 INVESTIGATOR CORRALES: Correct,
18 yes.

19 MEMBER JONES: Okay.

20 INVESTIGATOR CORRALES: Because to
21 the east side of it is -- appears to be
22 condominiums.

1 MEMBER JONES: A condominium
2 complex?

3 INVESTIGATOR CORRALES: Yep.

4 MEMBER JONES: Right, okay. So
5 essentially --

6 INVESTIGATOR CORRALES: Okay.

7 MEMBER JONES: -- everything to
8 the south of Ben's Chili Bowl area is, as you
9 witnessed and observed it and understand it to
10 be, residential?

11 INVESTIGATOR CORRALES: Correct.

12 MEMBER JONES: Thank you. Thank
13 you, Madam Chair.

14 CHAIRPERSON MILLER: Okay. Any
15 other Board questions? Any follow-up on Board
16 questions?

17 MR. KLINE: No.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much.

20 INVESTIGATOR CORRALES: Okay.

21 (Whereupon, witness was excused.)

22 CHAIRPERSON MILLER: All right.

1 Then we are ready for the applicant's case.

2 MR. KLINE: Yes. I'll call Sondra
3 Phillips-Gilbert to the stand, please.

4 CHAIRPERSON MILLER: Good
5 afternoon.

6 MS. PHILLIPS-GILBERT: Good
7 afternoon.

8 Whereupon,

9 SONDRA PHILLIPS-GILBERT
10 was called as a witness by Counsel for the
11 Applicant, and having been first duly sworn,
12 assumed the witness stand and was examined and
13 testified as follows:

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 DIRECT EXAMINATION

17 MR. KLINE: State your name for
18 the record, please.

19 MS. PHILLIPS-GILBERT: My name is
20 Sondra Phillips-Gilbert.

21 MR. KLINE: And, Ms. Phillips-
22 Gilbert, where do you reside?

1 MS. PHILLIPS-GILBERT: At 1744 E
2 Street, N.E.

3 MR. KLINE: And, approximately,
4 how far is that from the proposed Ben's Chili
5 Bowl/Ben's Upstairs location?

6 MS. PHILLIPS-GILBERT: About seven
7 blocks.

8 MR. KLINE: Okay. And how long
9 have you resided there?

10 MS. PHILLIPS-GILBERT: Since 1991.

11 MR. KLINE: So over 22 years?

12 MS. PHILLIPS-GILBERT: Yes.

13 MR. KLINE: And are you -- you are
14 currently an ANC Commissioner?

15 MS. PHILLIPS-GILBERT: Yes, I am.

16 MR. KLINE: And tell the Board
17 what Commission and what SMD.

18 MS. PHILLIPS-GILBERT: I am
19 Commissioner 6A07 and I am the Commissioner
20 for the Rosedale community.

21 MR. KLINE: All right. So you are
22 here in support of the application. Is that

1 correct?

2 MS. PHILLIPS-GILBERT: Yes, I am.

3 MR. WILLIAMS: Can I raise an
4 objection briefly? Just to -- I would ask for
5 clarification that she is not here speaking on
6 behalf of the ANC, because the ANC voted to
7 protest this license.

8 MR. HOLMES: Unanimously.

9 MR. KLINE: That's fine. I never
10 said she was and I don't think she referred to
11 it.

12 MR. WILLIAMS: I just wanted to
13 clarify because you introduced her as an ANC
14 Commissioner.

15 MEMBER SILVERSTEIN: You can do
16 that in your cross-examination.

17 CHAIRPERSON MILLER: I understand
18 that, but actually I would -- is she here on
19 behalf of her SMD or just herself?

20 MR. KLINE: Well, as I think the
21 Board knows, SMD Members have no authority
22 other than to vote in an entire ANC. So

1 respectfully, she has identified herself as a
2 Commissioner, but clearly only a Commission
3 with a quorum voting can act officially. So
4 that's the law. So I don't -- you know, she
5 can't speak as a -- I mean, she can speak, but
6 I mean, it doesn't mean anything as a
7 Commissioner.

8 CHAIRPERSON MILLER: Okay.

9 MR. KLINE: Because we're dealing
10 with the laws.

11 CHAIRPERSON MILLER: All right. I
12 guess we are clear then who she is
13 representing. Okay. For the record, okay.

14 MR. KLINE: Let me see. So you
15 are here testifying as -- for the application,
16 correct?

17 MS. PHILLIPS-GILBERT: Yes, I am.

18 MR. KLINE: And you support the
19 rooftop hours that have been sought by the
20 applicant?

21 MS. PHILLIPS-GILBERT: Yes.

22 MR. KLINE: And why do you support

1 the application and these hours?

2 MS. PHILLIPS-GILBERT: Well, as an
3 ANC, we are Advisory Neighborhood
4 Commissioners and from my -- as a new
5 Commissioner, I have observed how our
6 Commission has mistreated businesses that have
7 come before us. And most of the businesses
8 are afraid that if they don't sign the
9 agreement, that they will not receive their
10 license.

11 And so with the change on H
12 Street, the trolley coming in, the community,
13 I see that we can have this extended time.
14 And it's also the right of the applicant. He
15 or she, whoever applies for their license have
16 a right to apply. And I don't see how -- you
17 know, why we should oppose them from doing
18 that.

19 MR. KLINE: All right. Now, we
20 have heard opening statements and I suspect we
21 will hear testimony that there are people in
22 the neighborhood that are concerned about the

1 effects that these late hours might have on
2 them as residents of the neighborhood.

3 From your standpoint, why are you
4 comfortable that, if you are, those effects
5 will be adequately addressed by this
6 applicant?

7 MS. PHILLIPS-GILBERT: Well, like
8 I said, I have been in the community for many
9 years and I have seen the change in the
10 community. And with the trolley car and the
11 new businesses coming in, the community is
12 much more forgiving in allowing the extended
13 time.

14 You know, I have been to Ben's
15 Chili Bowl right up the street here and I have
16 seen community -- you know, the businesses in
17 the community around it, it didn't give the
18 appearance that Ben's was an establishment
19 that brought in traffic that was loud and
20 obnoxious. Their character is outstanding.
21 I mean, very professional.

22 And I support them because of my

1 experiences with them and also for my
 2 community. This is a source too of bringing
 3 in economic, you know, persons that can hire
 4 from our community, that can give to -- that
 5 can provide jobs and employment. Excuse me.
 6 Give jobs and employment to people in my
 7 community as well as Ward 6 and the city.

8 So I think that we have to start
 9 listening to what the businesses are saying,
 10 because they are being adversely impacted as
 11 well.

12 MR. KLINE: All right. Thank you.
 13 I don't have any further questions of the
 14 witness, at this time. Thank you.

15 CHAIRPERSON MILLER: Does the ANC
 16 have questions?

17 MR. WILLIAMS: Yes, ma'am.

18 CHAIRPERSON MILLER: Okay.

19 CROSS-EXAMINATION

20 MR. WILLIAMS: Ms. Phillips-
 21 Gilbert, you said that you live at 1744 E
 22 Street, N.E. Is that correct?

1 MS. PHILLIPS-GILBERT: Correct.

2 MR. WILLIAMS: And you represented
3 that as seven blocks from Ben's Chili Bowl?

4 MS. PHILLIPS-GILBERT: About
5 seven.

6 MR. WILLIAMS: About seven or
7 seven blocks?

8 MS. PHILLIPS-GILBERT: About seven
9 blocks.

10 MR. WILLIAMS: How many blocks is
11 E Street from H Street?

12 MS. PHILLIPS-GILBERT: E Street
13 from H Street?

14 MR. WILLIAMS: Yes, ma'am.

15 MS. PHILLIPS-GILBERT: I don't
16 know.

17 MR. WILLIAMS: Would you -- is it
18 fair to say it's three blocks away?

19 MS. PHILLIPS-GILBERT: No, I
20 wouldn't say three blocks.

21 MR. WILLIAMS: Okay. We will move
22 on. How many residents that live on the

1 blocks immediately surrounding Ben's Chili
2 Bowl have you spoken with?

3 MS. PHILLIPS-GILBERT: I haven't
4 spoken to any -- I haven't taken out the time
5 to walk the community, that I haven't done.

6 MR. WILLIAMS: Okay.

7 MS. PHILLIPS-GILBERT: So if I
8 spoke to someone that is in that community, I
9 wouldn't know.

10 MR. WILLIAMS: And, Ms. Phillips-
11 Gilbert, is it fair to say that when this
12 protest was up for a vote before the ANC that
13 you voted in favor of the protest?

14 MS. PHILLIPS-GILBERT: And I'm
15 glad you brought that up, because I do not
16 recall voting in favor of the protest. And it
17 has been a problem with this Commission
18 altering minutes and specifically as we speak,
19 I have -- we have exchanged emails this
20 morning in reference to testimony and
21 information that I wanted inserted in minutes
22 that has been blocked by my Commission.

1 CHAIRPERSON MILLER: Okay. We
2 don't need to go down the road into too much
3 detail, but I --

4 MS. PHILLIPS-GILBERT: Okay. I
5 just wanted to say that I don't recall voting
6 for that.

7 CHAIRPERSON MILLER: Okay.

8 MS. PHILLIPS-GILBERT: And so I'm
9 glad he brought that up.

10 CHAIRPERSON MILLER: Okay.

11 MR. WILLIAMS: I have an exhibit
12 which I'll represent the minutes from the --
13 that specific ANC Commission meeting where the
14 vote was taken -- had taken place that shows
15 you, Ms. Phillips-Gilbert as present and the
16 vote passing it on a 4-0 vote.

17 MR. KLINE: Objection. Is that a
18 question? Sounds like testimony to me.

19 MR. WILLIAMS: Is that -- well, do
20 you disagree with that -- with the contention
21 made in this exhibit?

22 MS. PHILLIPS-GILBERT: Yes, I do.

1 MR. WILLIAMS: Would you like to
2 look at it?

3 MS. PHILLIPS-GILBERT: Yes, I do.

4 MR. WILLIAMS: Would the Board
5 like a copy of it?

6 CHAIRPERSON MILLER: Not -- I
7 don't think so, at this time.

8 MS. PHILLIPS-GILBERT: I disagree
9 with that, sir.

10 CHAIRPERSON MILLER: I think when
11 it is your case, you can move something into
12 evidence, so --

13 MR. WILLIAMS: I was just assuming
14 it could be rebuttal evidence based on her
15 testimony, because this is coming from her
16 testimony on behalf of the applicant stating
17 that she did not, you know, vote in favor of
18 the --

19 CHAIRPERSON MILLER: I know. I
20 understand that she is denying that she voted
21 that way. And you have a document that shows
22 otherwise. Okay. I don't think it needs to

1 be --

2 MR. WILLIAMS: Okay. That's fine.

3 CHAIRPERSON MILLER: We don't need
4 to go any further, at this point. But if
5 later you decide you want to put it into
6 evidence, that will be your decision.

7 MR. WILLIAMS: Okay.

8 CHAIRPERSON MILLER: Okay. So
9 let's move on.

10 MR. WILLIAMS: Sure. Ms.
11 Phillips-Gilbert, were you aware of an ANC-6A
12 Alcoholic Beverage Licensing meeting on
13 December 17th to discuss rooftop deck and
14 sidewalk cafe hours?

15 MS. PHILLIPS-GILBERT: Yes, I was.

16 MR. WILLIAMS: Did you --

17 MS. PHILLIPS-GILBERT: But I was
18 unable to attend that. I had to be at my
19 son's school.

20 MR. WILLIAMS: So you are not
21 aware of what the general community feedback
22 was from people throughout ANC-6A? Is that --

1 MR. KLINE: Objection as to
2 relevance. Unless that meeting related to
3 this application, I don't see how it is
4 terribly relevant.

5 MR. WILLIAMS: We are -- in
6 addition to the immediately affected
7 neighbors, we are also representing that the
8 ANC has overwhelming support of its policy to
9 request what we are requesting here before the
10 Board. And we feel like it is relevant to
11 look not only to the immediate neighbors,
12 which of course we will present, but also to
13 the surrounding community who may not be
14 directly affected, but live in the area.

15 CHAIRPERSON MILLER: Okay. It was
16 related to rooftop hours in general?

17 MR. WILLIAMS: It was specifically
18 related --

19 CHAIRPERSON MILLER: Okay.

20 MR. WILLIAMS: -- to rooftop deck
21 hours and public space --

22 CHAIRPERSON MILLER: Okay.

1 MR. WILLIAMS: -- guides.

2 CHAIRPERSON MILLER: Okay.

3 MR. KLINE: With all due respect
4 to the Commissioner and with all due respect
5 to one Board Member who probably will disagree
6 with me, ANCs don't make policies. ANCs
7 advise on particular license applications.
8 They are not legislatures. They don't have
9 that authority.

10 So what they may or may not have
11 done or thought they did with respect to
12 policy, the fact of the matter is under the
13 law, they are advisory with respect to a
14 specific license application.

15 CHAIRPERSON MILLER: I don't think
16 that's at issue. And I just want to try to
17 cut to the chase here, because I think that I
18 understand that this witness is testifying on
19 her own. But because you said she can't speak
20 on behalf of her SMD --

21 MR. KLINE: Right.

22 CHAIRPERSON MILLER: -- because

1 they don't have that authority under the law.
2 On the other hand, when we have ANC
3 Commissioners come and testify before us, we
4 need to assess to what extent are they in
5 touch with their community or whatever and,
6 therefore, that's because of their title.

7 So I think that, therefore, the
8 questions are valid. So I'm going to overrule
9 the objection. So let's keep moving.

10 MR. WILLIAMS: So just to clarify,
11 you do not know the outcome or the general
12 consensus from the neighborhood from that
13 meeting. Is that correct?

14 MS. PHILLIPS-GILBERT: That is
15 correct. And also, I was looking for that in
16 the minutes, so that I can review what came
17 out of it, but I couldn't find it.

18 MR. WILLIAMS: Okay.

19 MS. PHILLIPS-GILBERT: I didn't
20 receive it from you nor did I see it sent to
21 any other Commissioner what were the findings
22 from that meeting. And I'm glad you brought

1 that up as well.

2 MR. WILLIAMS: I don't have any
3 more questions.

4 MS. PHILLIPS-GILBERT: I want a
5 copy of that.

6 CHAIRPERSON MILLER: Okay. Board
7 questions? I just want to ask you, do you
8 represent the Single Member District in which
9 this establishment is going to be located?

10 MS. PHILLIPS-GILBERT: No, I
11 don't.

12 CHAIRPERSON MILLER: You don't.

13 MS. PHILLIPS-GILBERT: No, I
14 don't.

15 CHAIRPERSON MILLER: Okay. You
16 are an adjacent Single Member District?

17 MS. PHILLIPS-GILBERT: No.

18 CHAIRPERSON MILLER: No?

19 MS. PHILLIPS-GILBERT: Let's see,
20 that's 6A06 and I'm 6 -- I think they are
21 6A03. But I'm not adjacent to --

22 CHAIRPERSON MILLER: Okay.

1 MS. PHILLIPS-GILBERT: -- within
2 the Commission.

3 CHAIRPERSON MILLER: Okay. And I
4 did hear that you were questioned that you
5 didn't go and talk to people in the immediate
6 community to the establishment. Did you talk
7 to people in your own SMD about this or is
8 this just your opinion?

9 MS. PHILLIPS-GILBERT: Well, I
10 have -- I did speak with an individual who did
11 attend the meeting and her comment was that
12 the businesses were very upset about being
13 restricted. And she spoke -- she stated that
14 she spoke -- she didn't speak, but that she
15 observed the conversation. I didn't get the
16 part about the community, their side.

17 CHAIRPERSON MILLER: Okay.

18 MS. PHILLIPS-GILBERT: But the
19 businesses were very upset.

20 CHAIRPERSON MILLER: Okay. And
21 one last question. The person you spoke with,
22 were they in your SMD or another SMD?

1 MS. PHILLIPS-GILBERT: They are in
2 another SMD. And I don't know -- they are not
3 in my community, but they are -- from what I
4 understand, I believe she is in 6A.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Jones?

7 MEMBER JONES: Just I think I'm
8 following, I just want to make sure I am.

9 With where you live and it is
10 relative to the anticipated location of the
11 licensee, would you hear noise emanating from
12 the rooftop cafe if it was operating at 3:00
13 a.m.?

14 MS. PHILLIPS-GILBERT: No.

15 MEMBER JONES: Would you hear
16 noise emanating from the sidewalk cafe if it
17 was operating at 3:00 a.m.?

18 MS. PHILLIPS-GILBERT: No.

19 MEMBER JONES: Okay. Thank you.
20 Thank you, Madam Chair.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Any questions on Board questions?

1 MR. KLINE: No, thank you.

2 MR. WILLIAMS: No questions.

3 CHAIRPERSON MILLER: Okay. Thank
4 you very much.

5 MS. PHILLIPS-GILBERT: Thank you.

6 (Whereupon, witness was excused.)

7 MR. KLINE: I call to the stand
8 Howard Gill.

9 CHAIRPERSON MILLER: Good
10 afternoon.
11 Whereupon,

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

17 CHAIRPERSON MILLER: Thank you.
18 Okay.

19 DIRECT EXAMINATION

20 MR. KLINE: Would you state your
21 name for the record, please, and where you
22 reside?

1 MR. GILL: My name is Howard Gill.
2 I reside at 2027 11th Street, N.W.

3 MR. KLINE: All right. Now, is
4 that in proximity to the currently existing
5 Ben's Chili Bowl and Ben's Next Door?

6 MR. GILL: Yes, it is,
7 approximately, two blocks from it.

8 MR. KLINE: Okay. Have you had
9 occasion to interact with the ownership of
10 Ben's Chili Bowl and Ben's Next Door?

11 MR. GILL: Yes. On multiple
12 occasions, as a resident for close to 18
13 years, I have met the owners, family members,
14 patrons, workers, business colleagues, some
15 other community neighbors from both the Chili
16 Bowl and also from the new establishment,
17 which is Ben's Next Door.

18 MR. KLINE: And you have been in
19 Ben's Next Door, obviously?

20 MR. GILL: Yes.

21 MR. KLINE: And you knew that to
22 be an ABC licensed establishment?

1 MR. GILL: Correct.

2 MR. KLINE: In your interactions
3 with ownership, have you formed an opinion as
4 to their method and manner of managing their
5 alcoholic beverage licensed establishment?

6 MR. GILL: In relationship to the
7 community and the neighborhood, other
8 establishments there, my relationship with
9 them and at least what I have observed, them
10 being fairly professional, above-board. Its
11 ownership or management in which you can
12 communicate with, share concerns if any arise,
13 even to the extent of ideas.

14 So highly amenable to both patrons
15 and neighbors.

16 MR. KLINE: Have they been
17 responsive with respect to any issues that may
18 have arisen in the community?

19 MR. GILL: Yes.

20 MR. KLINE: Now, there is no
21 outside seating at either of these businesses,
22 is there?

1 MR. GILL: That's correct. No,
2 for the Chili Bowl and also for Next Door,
3 there is no outside seating. There is outside
4 seating across the street at, I think the
5 establishment, Ulah, and further, two blocks,
6 down actually right next to where I reside
7 there is Sala on the corner and then there is
8 a brunch for, I believe, one other
9 establishment, another restaurant.

10 MR. KLINE: All right. So
11 although this establishment -- the
12 establishments that are run by the Alis don't
13 have outside seating, you have had experience
14 with other businesses in your community that
15 have outside seating?

16 MR. WILLIAMS: Objection. I don't
17 see how this is relevant to a new
18 establishment on H Street run by the Alis.

19 MR. KLINE: I'm getting there.

20 CHAIRPERSON MILLER: How is it
21 relevant? How is it relevant?

22 MR. KLINE: Is that a fair

1 question?

2 CHAIRPERSON MILLER: Mr. Kline,
3 what are -- how is it relevant? Were you
4 asking about his experience with other outdoor
5 eating establishments?

6 MR. KLINE: If you will let me get
7 to one more question, I'll tie it all
8 together.

9 CHAIRPERSON MILLER: Okay. Let's
10 see.

11 MR. WILLIAMS: I'm sorry, can
12 you --

13 MR. KLINE: So the question is
14 although the Alis do not have outside seating
15 at their establishment, you had experience
16 with other outside seating venues in proximity
17 of your residence, correct?

18 MR. GILL: Oh, yes.

19 MR. KLINE: All right. So you are
20 familiar with the problems that can arise with
21 respect to outside seating?

22 MR. GILL: Very much so.

1 MR. KLINE: Based on your
2 experience with the Alis and based on your
3 experience with them in other matters related
4 to the operations or business, how do you feel
5 they will react and deal with any issues that
6 might arise from outside seating proposed at
7 their new location?

8 MR. WILLIAMS: Objection. This is
9 still -- he still hasn't shown relevance to
10 this. The Alis do not have a business in his
11 neighborhood that has outdoor seating.

12 CHAIRPERSON MILLER: I'm sorry,
13 I'm going to overrule it. It doesn't really
14 necessarily even go to outdoor seating. It's
15 just how, based on his knowledge of them,
16 which he has established, does he think they
17 are going to react to any problems. Is that
18 it?

19 MR. KLINE: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. GILL: My experience with the
22 Alis for any issues pertaining to restaurant

1 or the management of their establishment has
 2 been very good, very responsive for any
 3 outside issues. There were issues that I was
 4 aware of with, for example, trash that were
 5 deposited, not by patrons, but just by
 6 passerbys. Highly responsive. A simple call,
 7 walked down the street, a conversation two
 8 minutes and it's always addressed.

9 My experience with the Alis, in a
 10 manner with them, I'm familiar with probably
 11 seven other businesses right next to mine not
 12 as amenable, but, you know, if you are asking
 13 comparison for management, I would have to say
 14 the Alis, at least my experience, have been
 15 very responsive and extremely responsive.

16 MR. KLINE: Great. Thank you.
 17 That's all I have, at this time.

18 CHAIRPERSON MILLER: Okay. Cross?

19 MR. WILLIAMS: I have no
 20 questions.

21 CHAIRPERSON MILLER: Board
 22 Members? Mr. Jones, go ahead.

1 MEMBER JONES: Thank you, Madam
2 Chair. Just to be clear, do you have both a
3 business and a residence near the current
4 Ben's Chili Bowl?

5 MR. GILL: I have a residence near
6 the current Ben's Chili Bowl.

7 MEMBER JONES: Okay. Just a
8 residence, not a business and a residence?

9 MR. GILL: No, just a residence.

10 MEMBER JONES: Okay.

11 CHAIRPERSON MILLER: Yes.

12 MEMBER JONES: And can you -- you
13 mentioned briefly one example of them being
14 responsive to a request that you had raised or
15 a concern that you had raised. Can you
16 clarify that request and what the exact
17 measures that were taken to address it?

18 MR. GILL: Just in the
19 neighborhood that you have a lot of after-hour
20 activities. Individuals come into the U
21 Street neighborhood, people tossing, you know,
22 cups, trash, what have you out there. So the

1 next morning, as a resident, you wake up and
 2 you see trash and stuff outside, you know, so
 3 you wonder where it comes from, how to
 4 organize with some of the businesses in the
 5 neighborhood to see if they are keeping an eye
 6 on that.

7 If someone would clean out their
 8 car, you know, in the back alley or something
 9 like that. So obviously, it didn't come from
 10 your business, but I have had experience to
 11 know that with the Alis they would immediately
 12 dispatch one of their workers to go and
 13 address it. It has never been an issue.

14 With some other business managers
 15 well-being, it would take them a time to
 16 recognize the concern of a neighbor, of a
 17 resident. I never had that with the Alis.

18 MEMBER JONES: Okay.

19 MR. GILL: Ever.

20 MEMBER JONES: So and I get that
 21 as a qualitative sense, but specifically
 22 related to the trash issue that you raised,

1 what measures -- so they were responsive.
2 They seemed to engage you, at a minimum, to
3 say we feel your pain, to paraphrase. But
4 what did they actionably do to address your
5 concern? You're saying they sent an employee
6 to your front yard to clean the trash out of
7 your front yard?

8 MR. GILL: Oh, well, my concern
9 was with the alley.

10 MEMBER JONES: Okay.

11 MR. GILL: So this is two alleys
12 over, but I see it in the back of my alley.

13 MEMBER JONES: Understood.

14 MR. GILL: So you see these
15 things. So sometimes it's just taking a step
16 to go to some of the owners and saying hey,
17 can you keep an eye on these types of things
18 that is happening in an alley? Your guys are
19 coming out maybe emptying trash, not to say
20 that the trash there was deposited by them,
21 but if they see it, can they take measures?

22 Some people will say that's not

1 our job, that's -- you know, wait until the
2 city comes by.

3 MEMBER JONES: Yes.

4 MR. GILL: I found with the Alis,
5 it's never been an issue.

6 MEMBER JONES: Okay.

7 MR. GILL: So I can go over and
8 ask the manager at -- next door any time hey,
9 I just passed through the alley on the way
10 home, there is some trash. No problem. If I
11 turn back around 15, 20 minutes, it's
12 addressed.

13 MEMBER JONES: I understand.

14 MR. GILL: And it has never been
15 an issue where the communication has been
16 challenged by any of the staff members.
17 There's no need for repeated calls and stuff
18 like that. It's just -- to me, it's just "a
19 good corporate citizen or neighbor."

20 MEMBER JONES: Got it.

21 MR. GILL: If you will.

22 MEMBER JONES: Thank you.

1 MR. GILL: So I found the Alis
2 being extremely responsive and understand the
3 nature of the business and the relationship to
4 the neighborhood, I would say far better than
5 a newer business. I guess with their 50 plus
6 years in the city, understanding that. So I
7 think it's okay, you know, in that regard.

8 MEMBER JONES: Okay. And just to
9 clarify, it isn't just a matter of you go to
10 a particular person that happens to be on duty
11 at that location. It's -- there seems to be--
12 from what I'm getting from you and correct me
13 if I'm wrong, you are indicating to me that
14 the culture of the employees, you are assuming
15 is being put down by ownership, to take that
16 or embrace the community as you felt embraced
17 by this licensed establishment or this
18 establishment, this commercial establishment
19 that is in your neighborhood. Is that a fair
20 characterization?

21 MR. GILL: Yes, that's correct.

22 MEMBER JONES: Okay.

1 MR. GILL: Top down.

2 MEMBER JONES: And you would feel
3 as though, obviously, since that's a culture
4 that has been pushed down from ownership
5 across the two commercial establishments that
6 are located on this -- in this general area,
7 that that's the same culture that will be
8 pushed down regardless of where this license--
9 this owner has an establishment? Is that a
10 fair characterization as well?

11 MR. GILL: Correct.

12 MEMBER JONES: Okay. Thank you.

13 MR. GILL: That is absolutely
14 correct.

15 MEMBER JONES: Thank you, Madam
16 Chair.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Any other Board questions? Any
19 questions based on Board questions?

20 MR. KLINE: No, thank you.

21 CHAIRPERSON MILLER: Okay. Thank
22 you very much, sir.

1 MR. GILL: Thank you.

2 MR. KLINE: Thank you.

3 COURT REPORTER: Sir, can you
4 spell your name on the record, please, before
5 you leave the witness box?

6 MR. GILL: Sure. The first name
7 is Howard, H-O-W-A-R-D, last name is Gill, G-
8 I-L-L.

9 COURT REPORTER: Thank you.

10 (Whereupon, witness was excused.)

11 MR. KLINE: I call to the stand
12 Frank White.

13 Whereupon,

14 FRANK WHITE

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

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Have a seat.

21 DIRECT EXAMINATION

22 MR. KLINE: State your name for

1 the record, please.

2 MR. WHITE: Frank White.

3 MR. KLINE: And what's your
4 connection with the applicant?

5 MR. WHITE: I'm involved with
6 business development and real estate
7 operations for Ben's Chili Bowl via Ben's Next
8 Door.

9 CHAIRPERSON MILLER: Can you speak
10 up, sir, a little bit?

11 MR. WHITE: I'm sorry. I'm
12 involved with business development and real
13 estate activities for Ben's Chili Bowl.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MR. KLINE: And how long have you
17 been involved in such a capacity?

18 MR. WHITE: For about three and a
19 half years.

20 MR. KLINE: And what's your
21 experience before that?

22 MR. WHITE: I have about 30 years

1 of commercial real estate experience working
2 for national chains. I have also been on the
3 development side of the business working for
4 shopping center development in that capacity
5 for a number of years, but about 30 years of
6 collective commercial real estate experience.

7 MR. KLINE: All right. Now, as
8 part of that, did that involve development of
9 restaurants?

10 MR. WHITE: That is correct.

11 MR. KLINE: And tell the Board
12 what that experience was.

13 MR. WHITE: It has been all over
14 the board. I have worked for chains, i.e., 7-
15 11 Food Stores, who commonly has issues with
16 hours, you know, because of the neighbors not
17 wanting that -- them to operate 24 hours. I
18 have had experience with other restaurant
19 chains, i.e., Cracker Barrel restaurants and
20 a number of small mom and pop restaurants
21 throughout the number of years of experience
22 that I have had.

1 MR. KLINE: And just so we are
2 clear, you sort of gave your title, but your
3 role with this organization is to do what
4 exactly?

5 MR. WHITE: Essentially, although
6 I'm doing business development activities,
7 it's also -- it's primarily responsible for
8 real estate expansion. So ultimately, once we
9 decide that we are going to pull the trigger
10 on the larger expansion process, I'll be
11 heavily involved with that part of it.

12 MR. KLINE: Now, does that also
13 involve the construction if there is
14 construction involved or remodeling of a
15 particular location?

16 MR. WHITE: That is correct. I'm
17 involved as an owner's representative on the
18 construction side of the business, so that I'm
19 interfacing with the GCs or contractors to
20 develop and open -- get the stores open.

21 MR. KLINE: Okay. You are not
22 involved in restaurant operations at all, are

1 you?

2 MR. WHITE: No, I am not.

3 MR. KLINE: Okay. So basically,
4 you build them, they run them?

5 MR. WHITE: That is correct.

6 MR. KLINE: Is that the way this
7 works?

8 MR. WHITE: That is correct.

9 MR. WILLIAMS: Objection. Based
10 on that, I don't see how this witness can be
11 relevant to the hearing today.

12 CHAIRPERSON MILLER: Well, let's
13 hear. Go ahead. Let's hear.

14 MR. KLINE: We are going to walk
15 through this building, what is located there.

16 MR. WILLIAMS: He --

17 CHAIRPERSON MILLER: Okay.

18 MR. KLINE: He is involved with
19 the company. I'm at a loss as to how they
20 even respond to --

21 CHAIRPERSON MILLER: Are you going
22 towards --

1 MR. KLINE: -- how he is --

2 CHAIRPERSON MILLER: -- the
3 construction with respect to peace, order,
4 quiet, sound?

5 MR. KLINE: We are going to go
6 through the plans, so the Board can see what
7 it is that we are talking about building
8 there, what the restaurant is going to be, how
9 it lays out, how the roof deck lays out. I
10 know the Board frequently on the front ends
11 wants to see what these things are going to
12 look like before we talk about how we are
13 going to run them.

14 So we thought it would be a good
15 idea to put Mr. White on first, so we could
16 get that out of the way and then we can talk
17 about operations.

18 MR. WILLIAMS: Okay. I mean, I
19 can suggest we speed this along and just talk
20 about the construction that would be related
21 to the outdoor spaces, because that's why we
22 are here. I -- we have no quarrel with their

1 internal plans, with their general
2 construction plans.

3 Our quarrel is with the noise that
4 would emanate from the rooftop and the
5 sidewalk cafe.

6 CHAIRPERSON MILLER: Right. I
7 mean, maybe you can speed this up, because if
8 there is no contest to basics, can you --

9 MR. KLINE: I believe I'm usually
10 efficient here.

11 CHAIRPERSON MILLER: Okay.

12 MR. KLINE: I certainly will try--

13 CHAIRPERSON MILLER: You just
14 established his credentials, correct?

15 MR. KLINE: I appreciate Mr.
16 Williams reminding me that I should talk about
17 what is relevant to the Board and I will do
18 that.

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: Thank you. If I may
21 approach the witness?

22 CHAIRPERSON MILLER: Yes, go

1 ahead.

2 MR. KLINE: I'm going to hand him
3 a package of exhibits that have been provided
4 to the Board.

5 Mr. White, I have handed you a
6 package of exhibits. Now, turning your
7 attention to Exhibit 1, could you tell the
8 Board what that is?

9 MR. WHITE: This is the actual
10 project location, restaurant location, the
11 corner of 10th and H. It's the southeast
12 corner of 10th and H. H Street being,
13 obviously, a heavy commercial corridor.

14 MR. KLINE: All right. Now, there
15 was a lot of discussion earlier when the
16 Investigator was on the stand as to locations
17 of various things. There is a dot on this
18 drawing that designates where the proposed
19 restaurant will be?

20 MR. WHITE: That is correct.

21 MR. KLINE: All right. Now,
22 immediately to the east of that, which would

1 be to the left of the dot --

2 MR. WHITE: That is correct.

3 MR. KLINE: -- am I recording it
4 correctly, is that right?

5 MR. WHITE: Yes.

6 MR. KLINE: All right. That's
7 across 10th Street, right?

8 MR. WHITE: Yes.

9 MR. KLINE: All right. And what
10 is -- is that residential or commercial that
11 is located there?

12 MR. WHITE: It's commercial.

13 MR. KLINE: Okay. And how far
14 down the block does the commercial extend if
15 you can identify it on Exhibit 1?

16 MR. WHITE: Extend down H Street?

17 MR. KLINE: Down 10th Street.

18 MR. WHITE: Down 10th Street, just
19 to the edge of what might be considered the
20 Bank of America property, which is a
21 commercial. It's a driveway access for the
22 shopping center as well as a driveway access

1 for a large residential apartment building.

2 MR. KLINE: All right. And is
3 that designated on this drawing?

4 MR. WHITE: Yes, it is.

5 MR. KLINE: And can you describe
6 for the Board, since we got our record here
7 and they have the drawing in front of them,
8 where that driveway is located?

9 MR. WHITE: It is, approximately,
10 I would say approximately -- well, the foot --
11 the street width of 10th Street is 80 feet, so
12 it has got to be close to 80 -- 100 feet from
13 our location.

14 MR. KLINE: No. Well, just
15 looking at the drawing and if you want to mark
16 on the drawing, so that everybody is clear and
17 then we will admit that, I'm just trying to
18 give the Board the -- from the drawing where
19 the residential begins on the east side of the
20 street.

21 MR. WHITE: On the east side of
22 the street, it's, approximately, 100 and

1 maybe --

2 MR. WILLIAMS: Do you mean the
3 left side?

4 MR. WHITE: Um-hum.

5 MR. WILLIAMS: Do you mean the
6 left side?

7 MR. WHITE: I'm looking at the --

8 CHAIRPERSON MILLER: Oh, wait.
9 I'm sorry.

10 MR. WHITE: I was referring to --

11 CHAIRPERSON MILLER: You can't ask
12 the witness --

13 MR. WHITE: -- the left side of
14 the street.

15 CHAIRPERSON MILLER: -- a
16 question.

17 MR. KLINE: All right. Okay.

18 MR. WHITE: I was referring to the
19 left side of the street --

20 MR. KLINE: Okay. So looking at
21 this drawing --

22 MR. WHITE: -- for the commercial

1 property.

2 MR. KLINE: -- what is north and
3 what is south?

4 CHAIRPERSON MILLER: Yes.

5 MR. KLINE: Let's get oriented
6 here.

7 MR. WHITE: The -- on the east
8 side, southeast corner is the project corner.

9 MR. KLINE: Okay.

10 MR. WHITE: On the southwest
11 corner is a commercial bank, existing
12 commercial bank, Bank of America.

13 MR. KLINE: Um-hum.

14 MR. WHITE: On the northeast
15 corner is a commercial corridor with a number
16 of small shop spaces. And on the northwest
17 corner is a number of commercial spaces as
18 well.

19 MR. KLINE: All right. So on the
20 four corners it is commercial?

21 MR. WHITE: That is correct.

22 MR. KLINE: All right. And then

1 immediately across 10th Street there is no
2 residential, correct?

3 MR. WHITE: Right, that is
4 correct.

5 MR. KLINE: And then there has
6 been some discussion from the Investigator,
7 there is a house immediately behind the
8 proposed establishment, correct?

9 MR. WHITE: That is correct.

10 MR. KLINE: And when you first
11 went into this venture, that was occupied,
12 correct?

13 MR. WHITE: It was occupied.

14 MR. KLINE: All right. And then
15 what happened after that?

16 MR. WHITE: Well, because of the
17 sensitivity that we have always had as
18 operators to consider, you know, this project,
19 you know, beyond the design methods that we
20 came up with to address the neighborhood's
21 concern with respect to buffers, the owners
22 ended up purchasing, as a result of that

1 sensitivity, the house to help be an
2 additional buffer to the operation.

3 MR. KLINE: Okay. All right.
4 Now, turning your attention to Exhibit 2.

5 MR. WHITE: Yes.

6 MR. KLINE: Which you should have
7 in front of you. Can you identify that
8 document?

9 MR. WHITE: That is the roof
10 terrace perspective. But this document
11 basically really describes the concept of what
12 we are building. Essentially, you have a
13 Ben's Chili Bowl on the first floor with an
14 outdoor cafe. The corner entrance is
15 absolutely directly on the corner of 10th and
16 H.

17 On the second floor is the
18 operation considered to be Ben's Upstairs.
19 And then on the third level would be the roof
20 terrace.

21 MR. KLINE: Okay.

22 MR. WHITE: And you can literally

1 see the buffer that was created as part of
2 that roof terrace.

3 MR. KLINE: All right. Now,
4 before we turn to that, just so we are clear,
5 there is passageway between the two concepts
6 within the building, correct?

7 MR. WHITE: Yes, there is.

8 MR. KLINE: All right.

9 MR. WHITE: There is the primary
10 entrance of Ben's Upstairs is to the left of
11 the primary entrance of Ben's Chili Bowl. But
12 there internally is another entrance coming
13 from Ben's Chili Bowl into the hallway
14 corridor that takes you up to Ben's Upstairs.

15 MR. KLINE: All right. But this
16 is being permitted as all one restaurant with
17 one Certificate of Occupancy and one business
18 license, correct?

19 MR. WHITE: That is correct.

20 MR. KLINE: Okay. All right.

21 Now, in looking at the rooftop, you indicated
22 that there were specific features that were

1 designed to mitigate potential noises. I'm
2 paraphrasing, but is that your testimony?

3 MR. WHITE: That is correct.

4 MR. KLINE: All right. Will you
5 tell the Board what those are?

6 MR. WHITE: Absolutely. Well,
7 what we have basically is a wood structure
8 along with stone that has created a buffer.
9 The buffer, basically, is about, on the south
10 wall, 9 feet, but it is, basically, 9 feet.
11 It's actually 15 feet. That 9 feet is 15 feet
12 off of the property line.

13 There is another lower roof which,
14 basically, there are air compressors, HVAC
15 compressors that are on that lower roof, which
16 are also shielded from the community.

17 The buffer -- basically, the upper
18 part of the parapet is about 10 feet off the
19 bottom floor of the roof terrace, which
20 basically means that this building is about 44
21 feet up in the air with respect to the rooftop
22 operation.

1 One of the things that -- when we
2 designed this building, we were looking at,
3 you know, what it would mean to be able to
4 design it in such a way that if we did have a
5 roof deck, that sound would be mitigated. And
6 we felt that by taking this building higher,
7 matching it up to the existing building to the
8 left, which is 1015 H Street, that we would
9 have a better chance of mitigating sound than
10 if it was lower, which the original height was
11 probably about 20 -- collectively, about 20 to
12 22 feet.

13 MR. KLINE: Okay. So to the rear
14 of the roof deck area, the rear meaning the
15 portion farthest from H Street, there is a
16 wall, correct?

17 MR. WHITE: That is correct.

18 MR. KLINE: And there is also
19 facilities that are located there of some
20 kind?

21 MR. WHITE: It's a 9 foot wall.
22 Basically, a 9 foot buffer, but within that

1 buffer there are restrooms that are included
2 in that.

3 MR. KLINE: Okay. All right. So
4 that acts as a buffer in terms of sound
5 traveling behind the building?

6 MR. WHITE: That is correct.

7 MR. KLINE: Okay.

8 MR. WHITE: In addition to that,
9 there is a rain screen which is before you
10 ever get another 4 feet out, which could also
11 be considered part of the buffer area as well.

12 CHAIRPERSON MILLER: I'm sorry,
13 could you repeat? There is a what?

14 MR. WHITE: There is a rain
15 screen.

16 CHAIRPERSON MILLER: A rain
17 screen?

18 MR. WHITE: A wood rain screen
19 which is in front of the restrooms, so that
20 wood rain screen, basically, is another 4 feet
21 out. So if you take that 4 feet plus the 9
22 feet, you are almost at 12 feet, 12 or 13 feet

1 of buffer area before you ever get to the back
2 of the building.

3 MR. KLINE: All right. Turn to
4 Exhibit 3. Does that depict what you just
5 described? You identified -- first, identify
6 what Exhibit 3 is.

7 MR. WHITE: That is correct.
8 That's a further enhancement of it. And
9 basically what you have is the brick wall and
10 parapet. So you basically have a 34.5 foot
11 height to the bottom of the roof deck and then
12 you have an additional 10.2 feet to the top o
13 the parapet wall, which basically gives you
14 the 44 feet, 44 plus feet.

15 MR. KLINE: All right. And
16 Exhibit 4, if you would identify what that
17 drawing is?

18 MR. WHITE: Exhibit 4 basically is
19 basically building section, so what we are
20 demonstrating here is that in the cellar --
21 there is a cellar which is basically the prep
22 kitchen. The first floor being Ben's Chili

1 Bowl. The second floor being, of course,
2 Ben's Upstairs. And then in addition to that
3 the roof terrace.

4 What we are indicating on this
5 plan is that:

6 (1) The height of the entire
7 structure up to the top parapet, which
8 includes the buffer, is 44.5 feet.

9 We are also indicating that there
10 is a -- on the back of the building there is
11 a 4 inch brick and 6 inch metal studs which
12 also is a part of that buffer.

13 And then on top of that, if you
14 look at the distance between where the actual
15 bar/lounge is starting and the rear property
16 line, you are looking at close to 32.5 feet.

17 MR. KLINE: All right.

18 MR. WHITE: The plan also shows a
19 proposed canopy which basically is the width
20 of about 25 feet which would be -- which would
21 cover the drinking lounge of the rooftop deck
22 bar.

1 MR. KLINE: You mean the dining
2 lounge?

3 MR. WHITE: It would be the
4 rooftop bar as well as the dining lounge.

5 MR. KLINE: Okay.

6 MR. WHITE: Part of the dining
7 lounge.

8 MR. KLINE: Okay. And what's the
9 purpose of, what did you call it, it's an
10 awning? Is that what you --

11 MR. WHITE: Canopy or awning.

12 MR. KLINE: Canopy.

13 MR. WHITE: That's correct.

14 MR. KLINE: And what's the purpose
15 of the canopy?

16 MR. WHITE: It would also be to
17 help mitigate sound.

18 MR. KLINE: Okay. All right.
19 Then Exhibit 5, if you could just identify it?
20 We're not going to spend any time on it. Just
21 so I --

22 MR. WHITE: Sure. Basically, you

1 are looking at the street width, you know,
2 showing -- reflecting the amount of width that
3 you have between the other side of the street,
4 which is 80 feet on 10th Street, 90 feet on H
5 Street. In addition to that, it also shows
6 the 15 foot buffer along with the 9 foot
7 buffer for the rear back wall. And then it
8 also reflects the proposed residence or the
9 residence that was purchased by the Ali boys
10 to also consider being a buffer to this
11 project or restaurant.

12 MR. KLINE: And is that what is
13 labeled as Lot 64, two story frame building?

14 MR. WHITE: That is correct.

15 MR. KLINE: That's the building
16 that you are talking about that was purchased?

17 MR. WHITE: That is correct.

18 MR. KLINE: Okay. And Exhibit 6,
19 if you could just identify what is depicted on
20 there?

21 MR. WHITE: Sure. We were
22 basically showing the distance of the buffer

1 including the 4 foot -- with the rain --

2 MR. KLINE: No. We are looking at
3 exhibit -- are you looking at Exhibit 6 now or
4 is that -- are those the plans for the cellar
5 on the first floor?

6 MR. WHITE: Gotcha. Exhibit 6
7 shows the cellar plan, which is basically
8 storage and prep. On the -- it also shows the
9 first floor plan for Ben's Chili Bowl,
10 including the outdoor cafe.

11 MR. KLINE: All right. And just
12 so we have a complete picture, Exhibit 7 is
13 the second floor plan and the roof terrace
14 plan?

15 MR. WHITE: That is correct.

16 MR. KLINE: All right. And then
17 let's move to Exhibit 8. Exhibit 8 is a
18 larger drawing of what is depicted on Exhibit
19 7, the roof terrace plan, correct?

20 MR. WHITE: That is correct.

21 MR. KLINE: All right. So if you
22 would, on Exhibit 7, you mentioned previously

1 that there is a buffer and restrooms. Would
2 you identify those on Exhibit 8, please?

3 MR. WHITE: Yes. So you have your
4 15 feet buffer, which is the far rear south
5 wall of the building, which is closest to the
6 property line, which is 15 feet. Then you
7 have close to 9 feet of buffer, which includes
8 the restrooms. Then you have the rain screen
9 wall, which is another almost 4 feet.

10 In addition to that, you have the
11 dining, the bar area along with the dining
12 area, which is basically being shown with a
13 proposed canopy covering the majority of that.

14 In addition to that, any of the
15 open dining lounge area that is not under the
16 canopy is closer to H Street.

17 MR. KLINE: All right. Now, just
18 so we are clear, because I don't think it's in
19 the record, at this point, this building
20 doesn't exist right now, correct?

21 MR. WHITE: That is correct.

22 MR. KLINE: All right. And what

1 is there now?

2 MR. WHITE: Dirt.

3 MR. KLINE: Okay. I don't think
4 we got that in the record, so I thought it was
5 important that we do that.

6 All right. Turning your attention
7 to Exhibit 9, can you identify that document,
8 please?

9 MR. WHITE: Exhibit 9, basically,
10 is the roof terrace/parapet wall. We were
11 trying to show the detail of the rain screen
12 on that back south wall along with the almost
13 10 foot buffer wall.

14 In addition to that, there is a
15 parapet wall, which is about 34 -- a little
16 over 34 inches. And then on top of the
17 parapet wall is a small steel guard rail for--
18 you know, basically to -- for protection.

19 MR. KLINE: All right. And --

20 MR. WHITE: And it can be used as
21 buffer.

22 MR. KLINE: Okay. And Exhibit 10,

1 would you identify that document?

2 MR. WHITE: Exhibit 10 is also the
3 rooftop terrace, which basically shows the
4 seating layout and how -- I'm sorry, I take
5 that back.

6 This is actually Ben's Chili Bowl,
7 which is basically showing -- on the first
8 floor, which is basically showing the outdoor
9 cafe seating as well.

10 MR. KLINE: All right. Now, the
11 outdoor cafe seating, let's talk about that
12 for a minute. Has any thought been given with
13 respect to the outdoor sidewalk cafe in terms
14 of mitigation of noise in the neighborhood?

15 MR. WHITE: Our intentions were to
16 put a buffer, as much as we could, with shrubs
17 that would buffer the back side of the outdoor
18 cafe to the residential.

19 MR. KLINE: Okay. And that is
20 depicted on the drawing in some way?

21 MR. WHITE: Yes, it is.

22 MR. KLINE: All right. And how is

1 that labeled on the drawing?

2 MR. WHITE: Moveable planters.

3 MR. KLINE: Okay.

4 MR. WHITE: With -- I'm sorry, go
5 ahead.

6 MR. KLINE: Go ahead.

7 MR. WHITE: By DDOT it has to be
8 moveable planters.

9 MR. KLINE: Right. Okay. I was
10 going to come to that. So, at this point, you
11 do not yet have approvals for a sidewalk cafe,
12 correct?

13 MR. WHITE: That is correct.

14 MR. KLINE: So as part of that
15 process, will you be making decisions as to
16 how to best buffer noise from the sidewalk
17 cafe?

18 MR. WHITE: Yes, we will.

19 MR. KLINE: And there is a process
20 that you will have to go through in terms of
21 getting that approved?

22 MR. WHITE: That is correct.

1 MR. KLINE: Okay. I would move
2 Applicant's Exhibit 1 through 10.

3 (Whereupon, the documents were
4 marked as Applicant Exhibit 1
5 through 10 for identification.)

6 CHAIRPERSON MILLER: Any
7 objections?

8 MR. WILLIAMS: No objection.

9 CHAIRPERSON MILLER: Okay.

10 MR. KLINE: Thank you.

11 CHAIRPERSON MILLER: They are
12 admitted.

13 (Whereupon, the documents marked
14 as Applicant Exhibit 1 through 10
15 were received in evidence.)

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: Thank you.

18 CHAIRPERSON MILLER: 1 through 10.

19 MR. KLINE: Mr. White, you spent
20 some time in the neighborhood looking at some
21 of the other establishments that have outside
22 seating?

1 MR. WHITE: I did.

2 MR. KLINE: And what did you
3 discover when you did that?

4 MR. WHITE: It was all over the
5 board in terms of what I was told or if you --
6 you know, in terms of hours. I mean, I have
7 talked to specific operators that some of
8 their hours were up to 2:00 a.m. on weekends
9 or past maybe 1:00 in the morning on weekdays.

10 There are one or more that had
11 signed voluntary agreements that basically did
12 not have restrictions on hours. So I
13 concluded that it was sort of all over the
14 board. It wasn't uniform that, you know, you
15 really had, you know, operators that were
16 restricted to uniform hours across the board.

17 MR. KLINE: All right. Now, you
18 were here when the Investigator testified?

19 MR. WHITE: Yes.

20 MR. KLINE: Did you find her
21 enumeration of the hours of particular
22 establishments incomplete in some way?

1 MR. WHITE: I did, based upon my
2 findings.

3 MR. KLINE: All right. So in what
4 ways, if you recall, were they incomplete?

5 MR. WHITE: Well, I just felt like
6 they were -- if you had gone another block,
7 there were several operators that their hours
8 appear to be closed at later hours.

9 MR. KLINE: Okay. Can you tell
10 the Board specifically what those
11 establishments might be?

12 MR. WHITE: Smith Commons, I
13 think, was one. The Vic, the Queen Vic was
14 another. I had conversations with the Sahara
15 Lounge, who also mentioned that they had later
16 operating hours. Cusbah, you know, I didn't
17 talk to anybody, but I could -- I noted the
18 hours on the window and I'm not sure if those
19 same hours are the same hours as the outdoor
20 cafe, but certainly those hours were -- said
21 they were open later.

22 MR. KLINE: That's all the

1 questions.

2 MR. WHITE: The only other thing I
3 wanted to mention is that as I also observed
4 some of the other rooftops, I don't -- none of
5 them went through the process and certainly
6 the design sensitivity that I think the Ali
7 brothers did with respect to the development
8 of this deal.

9 Most of the buffers that were
10 created were, basically, just a wooden plank
11 board and that would be the extent of the
12 buffer. Beyond that, we are providing a whole
13 lot more substantialness to what we are trying
14 to do to mitigate noise.

15 MR. KLINE: Just one more
16 question. With respect to the sidewalk cafe,
17 are you also contemplating a canopy there to
18 deal with potential noise effects?

19 MR. WHITE: We are considering
20 that as well.

21 MR. KLINE: Okay. And that will
22 have to go through the same design approval

1 that we talked about?

2 MR. WHITE: That is correct.

3 MR. KLINE: Okay. Thank you. No
4 further questions of this witness, at this
5 time.

6 CHAIRPERSON MILLER: Okay. Cross?

7 CROSS-EXAMINATION

8 MR. WILLIAMS: Mr. White, when you
9 did your investigation going another block up
10 H Street, did you actually pull the settlement
11 agreements or license information of these
12 establishments that you referred to?

13 MR. WHITE: I could not. The only
14 one that I did was the Queen Vic and noted
15 that there were no restrictions on their
16 hours, except for entertainment.

17 MR. WILLIAMS: And does Queen Vic
18 have a public space patio?

19 MR. WHITE: They do not, but they
20 do have a rooftop deck.

21 MR. WILLIAMS: And when you had
22 visited Sahara and spoke to the owners there,

1 did you observe a sidewalk cafe at Sahara?

2 MR. WHITE: It was not present at
3 the time when I talked to the owner. The
4 owner said that the intent was for it to go
5 back out in the summer, but it was not there.

6 MR. WILLIAMS: Did you review
7 Sahara's settlement agreement?

8 MR. WHITE: He did not have it
9 printed.

10 MR. WILLIAMS: But, Mr. White, are
11 you aware of a forthcoming residential
12 development on the west side of 10th Street
13 where the Bank of America, that you referred
14 to, currently is?

15 MR. WHITE: I am.

16 MR. WILLIAMS: What is your
17 understanding of what the development is going
18 to be?

19 MR. WHITE: It's going to be a
20 mixed-use project with commercial, retail
21 and/or restaurants on the first floor and then
22 beyond that, there will be residential units

1 that will be built.

2 MR. WILLIAMS: So looking at -- my
3 apologies. So looking at Exhibit 1 that you
4 just reviewed with Mr. Kline --

5 MR. WHITE: Yes.

6 MR. WILLIAMS: -- when you
7 specifically stated that there are no
8 residences on the west side of 10th Street
9 until you get further down across that
10 driveway/alleyway --

11 MR. WHITE: That driveway, right.

12 MR. WILLIAMS: -- that's true
13 currently, but the plan is for all of that
14 side of 10th Street to eventually have
15 residences. Is that correct?

16 MR. WHITE: Some portion of it, I
17 believe, correct.

18 MR. WILLIAMS: So the second floor
19 and up is your understanding?

20 MR. WHITE: It will be -- from my
21 understanding, it's going to be recessed.

22 MR. WILLIAMS: Um-hum.

1 MR. WHITE: And continue to be
2 recessed as they go up --

3 MR. WILLIAMS: Um-hum.

4 MR. WHITE: -- off of H Street.

5 MR. WILLIAMS: But those
6 residences will face directly across the
7 street from Ben's Chili Bowl and Ben's
8 Upstairs?

9 MR. WHITE: I don't know that to
10 be the case.

11 MR. WILLIAMS: Okay. But the
12 building itself will be located in the --
13 where Bank of America is on the other side?

14 MR. WHITE: That is correct.

15 MR. WILLIAMS: Turning your
16 attention to Exhibit 2, is it a fair
17 representation that the west side of the roof
18 deck that is on -- I'm sorry. Yes, the west
19 side of the roof deck facing 10th Street does
20 not have the same structures on it as the east
21 side and the south side of the roof deck?

22 MR. WHITE: They are not

1 equivalent structures.

2 MR. WILLIAMS: Okay.

3 MR. WHITE: That's correct.

4 CHAIRPERSON MILLER: I'm sorry.

5 Could you repeat the question and answer? I
6 couldn't hear anyone.

7 MR. WILLIAMS: Yes. That was a
8 terrible question. I apologize.

9 CHAIRPERSON MILLER: Oh.

10 MR. WILLIAMS: Is it fair to -- is
11 it a fair representation that the west side of
12 the rooftop deck does not have the same
13 structures placed on it that the south side
14 and the east side do?

15 MR. WHITE: It has a buffer, but
16 it is a different buffer.

17 MR. WILLIAMS: And the --

18 CHAIRPERSON MILLER: No. Can you
19 speak a little louder? When you face him, we
20 can't hear as well.

21 MR. WILLIAMS: Yes.

22 MR. WHITE: Sure. It is a buffer,

1 but it is a different buffer.

2 CHAIRPERSON MILLER: Okay.

3 MR. WILLIAMS: How high is that
4 buffer on the west side?

5 MR. WHITE: 34 inches, not
6 including the steel guard rail, which will be
7 another couple of inches.

8 MR. WILLIAMS: So if people are
9 standing or sitting along that west side wall,
10 as is shown in your plans, their faces or
11 their heads will be above the buffer that you
12 have erect -- that you propose to erect. Is
13 that correct?

14 MR. WHITE: If I'm not mistaken,
15 I'm not sure. I've got to recall the extent
16 of the canopy, but the canopy goes down to a
17 certain part that may even cover that up.

18 MR. WILLIAMS: Okay. But it's
19 fair to say that the west side is more open
20 than the south side or the east side? Is that
21 correct?

22 MR. WHITE: It's a fair

1 assumption.

2 MR. WILLIAMS: Thank you. You
3 said you purchased the house immediately south
4 of Ben's -- or when I say you, I mean, the --

5 MR. WHITE: Right.

6 MR. WILLIAMS: Purchased the house
7 immediately south of the establishment. Is
8 that correct?

9 MR. WHITE: That's correct.

10 MR. WILLIAMS: Did you -- are
11 there any plans to incorporate additional
12 sound buffers or any other measures in -- on
13 that house?

14 MR. WHITE: Not that -- not at
15 this moment, no.

16 MR. WILLIAMS: Okay. And turning
17 your attention to the sidewalk cafe, is it
18 fair to say that you are pretty limited by
19 DDOT rules and laws about what sound
20 mitigation efforts you can actually put in
21 place?

22 MR. WHITE: That's correct.

1 MR. WILLIAMS: That's all I have.

2 CHAIRPERSON MILLER: Was that
3 answer yes?

4 MR. WHITE: Yes.

5 MR. WILLIAMS: I'm sorry, the
6 answer was yes.

7 MR. WHITE: Yes.

8 CHAIRPERSON MILLER: Okay. Are
9 there Board questions? Mr. Jones?

10 MEMBER JONES: Thank you, Madam
11 Chair. So I appreciate that -- the account
12 that you gave us of the -- what thought
13 process went into this structure. I just want
14 to make sure I'm following it, so I'm going to
15 ask you some more clarifying questions.

16 So you are indicating that what --
17 the architectural layout of the rooftop, a
18 large portion of the rationale associated with
19 that was to take into consideration minimizing
20 the sound or mitigating, to use your word, the
21 sound emanating from that -- from your day-to-
22 day operations. Is that correct?

1 MR. WHITE: That is correct.

2 MEMBER JONES: Okay. What was the
3 rationale --

4 MR. WHITE: We don't know what the
5 sound is going to be like, but we up front
6 opted to consider making that part of our plan
7 as we, you know, put the plans together.

8 MEMBER JONES: Understood. So
9 given that, did -- was there any sound
10 analysis done whatsoever as part of this
11 process, given your statement that the intent
12 of this was to mitigate sound?

13 MR. WHITE: Not to date.

14 MEMBER JONES: Not to date. Is
15 there a plan to do that?

16 MR. WHITE: Possibly, but if
17 necessary, I'm sure they would consider it,
18 but that's not something that we contemplated
19 at the moment.

20 MEMBER JONES: That's not
21 something that is imminent at this point,
22 correct?

1 MR. WHITE: Well, the operation
2 would have to be open and we would sort of
3 have to see, you know, what the noise level
4 was going to be like before we decided to do
5 something like that.

6 MEMBER JONES: In order for you to
7 do a sound analysis, your position is that the
8 establishment has to be open before you can
9 conduct a sound analysis to understand what
10 the net effect of your barriers would be?

11 MR. WHITE: I'm not sure how you
12 draw that conclusion.

13 MEMBER JONES: What's the
14 conclusion that we are drawing?

15 MR. WHITE: The conclusion that
16 there is noise emanating on our rooftop. I
17 mean, that's your question, correct?

18 MEMBER JONES: I think you have
19 already drawn that conclusion by your
20 statement earlier that you put these barriers
21 in place for the purposes of mitigating sound
22 emanation. So I'm just using what you

1 presented as your rationale.

2 MR. WHITE: True.

3 MEMBER JONES: Am I mistaken in
4 what you stated was your rationale for putting
5 these structures in place?

6 MR. WHITE: No, sir.

7 MEMBER JONES: Okay. So the
8 conclusion is already there. Can we agree on
9 that?

10 MR. WHITE: Yes, sir.

11 MEMBER JONES: Okay. Given that
12 conclusion is in place, what study, what do
13 you know to be the net effect of these things
14 that you put in place on the objective or goal
15 of mitigating sound? Do you have any
16 qualitative assessment of what the end effect
17 of these structural changes are that you
18 implemented in your diagram and in your plan
19 up?

20 MR. WHITE: We do not.

21 MEMBER JONES: You do not. Is
22 there any intent to perform said analysis to

1 get quantitative assessment as opposed to a
2 qualitative feel?

3 MR. WHITE: I guess we can
4 consider doing something like that.

5 MEMBER JONES: Okay. Given that,
6 I also noticed that it seems as though, if I'm
7 understanding the layout of the neighborhood
8 correctly, in Exhibit 2 -- do you happen to
9 have Exhibit 2 in front of you?

10 MR. WHITE: Yes.

11 MEMBER JONES: Exhibit 2 shows
12 this red building that I have referred to
13 often. That red building seems to be on a
14 commercial side.

15 MR. WHITE: That is correct.

16 MEMBER JONES: So it seems like
17 you put up a sound barrier to protect the
18 commercial side of the neighborhood and didn't
19 put up a sound barrier to protect the -- what
20 is anticipated to be the residential side or
21 the other side of 10th Street. Is that -- am
22 I understanding this diagram correctly?

1 MR. WHITE: We put up the wall on
2 the west side to accommodate part of the
3 operation, which would include the bar. As
4 most rooftop decks, that I'm aware of, there
5 is some level of wanting to be able to look at
6 it from the perspective that I'm looking out
7 and over the building, so if we would have put
8 up a buffer on that side, we would have been
9 blocking the view for the patrons in the
10 future.

11 MEMBER JONES: Okay. So is it
12 fair to say that the primary intent of the
13 placement and the nature of the construction
14 isn't the mitigation of sound, it's related to
15 the business operations and the appeal, the
16 aesthetic appeal of the operation?

17 MR. WHITE: I would say that it's
18 both, but it would also include mitigation as
19 well.

20 MEMBER JONES: I understand it
21 includes mitigation by default. I'm trying to
22 understand if your primary goal in the design

1 of the structure was to protect and mitigate
2 sound emanating from your day-to-day
3 operations from the residential component of
4 the neighborhood, why would you put the wall
5 on the commercial side as opposed to the
6 residential side?

7 So you are referring to it as the
8 west side, I believe, is where the wall is.
9 Why wouldn't you put it on the east side?

10 MR. WHITE: I'm suggesting that it
11 was part of the design, but I think first and
12 foremost that mitigation was always part of
13 what we wanted to make sure that this
14 included.

15 MEMBER JONES: Understood. So if
16 that was, why wasn't it put on the east side?
17 I'm just trying to follow the rationale.

18 MR. WHITE: Again, if you put up a
19 buffer on that side of the wall, you are
20 blocking the view of any patrons that would be
21 on the rooftop.

22 MEMBER JONES: So it seems like

1 your primary focus wasn't the mitigation of
2 sound. It was to protect the view of your
3 potential patrons.

4 MR. WHITE: We wanted to consider
5 -- in design you consider not just, you know,
6 components of mitigation or sound mitigation,
7 but it's also to be able to make sure that you
8 have got an operation that is appealing to
9 people.

10 MEMBER JONES: Understood. So in
11 your design you go through a set of
12 requirements. And you prioritize your
13 requirements. And you address your needs to
14 meet those requirements and you try to
15 prioritize them to give you some mechanism by
16 which you are going to make your trades.

17 So you do trade studies. So when
18 you came up with this design, you traded the
19 ability of your patrons to look over into the
20 street against the ability to mitigate sound
21 going into the residential area. And you
22 chose to make your decision based on the

1 ability of your patrons to look over into the
2 street, to have a good view.

3 MR. WHITE: I would say that the
4 south wall was always essentially to be able
5 to mitigate sound. The west wall, I would say
6 is probably more of a design feature for being
7 able to accommodate the patrons.

8 MEMBER JONES: Okay. The sound
9 mitigation steps that you put into your design
10 to protect the residences on, I guess it's,
11 the east side or on the other side of 10th
12 Street where this potential condominium
13 building is going up, etcetera, you are saying
14 that that was like a 34 inch buffer or a 34
15 inch high wall?

16 MR. WHITE: Yes.

17 MEMBER JONES: Whatever the case
18 may be? Which is different than the nature of
19 the structure on the west side of the wall,
20 which is several feet high, correct?

21 MR. WHITE: That's correct.

22 MEMBER JONES: Okay. The

1 objective there, if I'm understanding you
2 correctly, you wanted to keep it at a certain
3 level so that your patrons could still
4 experience the nuances of being able to have
5 a rooftop experience, being able to look over
6 onto the street?

7 MR. WHITE: That is correct.

8 MEMBER JONES: And that was part
9 of the rationale why you didn't put a 9 foot
10 wall on that south side and you chose to put
11 it on the west side.

12 MR. WHITE: That's --

13 MEMBER JONES: Okay.

14 MR. WHITE: -- completely a
15 correct assumption.

16 MEMBER JONES: Okay. As far as
17 this -- the house that has been put up as --
18 was purchased for the purpose of establishing
19 a buffer, what exactly -- how does that fit
20 into the operations? Explain to me how it
21 buffers.

22 MR. WHITE: Well, basically, if

1 the townhome that was on the other side of
2 that was right next to us, right next to the
3 business operation, there would be some level
4 of noise that would probably be emitted a lot
5 more strongly.

6 But basically, by buff -- by
7 purchasing this house, you have some distance
8 between our operation and that house, which,
9 basically, acts as a buffer.

10 MEMBER JONES: So is it -- you are
11 saying that the distance -- so you have
12 created additional distance between the point
13 source of the noise and the nearest residence
14 that could be disturbed or disrupted by said
15 noise?

16 MR. WHITE: That's correct.

17 MEMBER JONES: And that distance
18 is the equivalent to the width and length of
19 or the area, if you will, of this additional
20 home that was purchased?

21 MR. WHITE: That's correct.

22 MEMBER JONES: And that's the only

1 plan that you have for utilizing that space
2 that you purchased a home to provide buffer.
3 You don't plan on doing anything from a sound
4 barrier standpoint? You don't plan on doing
5 anything except for leaving the home sit there
6 and go unused?

7 MR. WHITE: We -- basically, it is
8 rented to a nonprofit, but, you know, at some
9 point we may contemplate doing something like
10 that if we have issues in the future.

11 MEMBER JONES: Okay.

12 MR. WHITE: But that's not the
13 case now.

14 MEMBER JONES: So you didn't just
15 buy it for the purpose of it being a buffer.
16 You are actually using it as a revenue
17 generating activity as well?

18 MR. WHITE: Well, it was purchased
19 as a buffer.

20 MEMBER JONES: Is it generating
21 revenue?

22 MR. WHITE: Not initially as an

1 investment.

2 MEMBER JONES: Is it being used as
3 an investment now?

4 MR. WHITE: Yes.

5 MEMBER JONES: Is it being used as
6 an investment prior to even the structure
7 Ben's Chili Bowl and Ben's Upstairs even being
8 built?

9 MR. WHITE: Yes.

10 MEMBER JONES: Okay. So it is
11 being used for revenue generating activities?

12 MR. WHITE: Yes.

13 MEMBER JONES: Okay. Thank you.
14 Thank you, Madam Chair.

15 CHAIRPERSON MILLER: Okay.
16 Others? Okay. I just have a few. I have a
17 sound question. So you are not a sound
18 expert. Is that correct?

19 MR. WHITE: I am not.

20 CHAIRPERSON MILLER: Did you
21 consult a sound expert when you chose the type
22 of barrier or canopy that you are going to

1 use?

2 MR. WHITE: I can't speak for our
3 architects, but I don't know if that's the
4 case.

5 CHAIRPERSON MILLER: So you don't
6 know?

7 MR. WHITE: That's correct.

8 CHAIRPERSON MILLER: Okay. And so
9 the sound barrier that we are talking about
10 that is against one of the walls, we don't
11 really know or you don't know how it actually
12 operates, how the science works?

13 MR. WHITE: Not at this time.

14 CHAIRPERSON MILLER: Okay. If you
15 could look at Exhibit No. 1? I just want to
16 be clear I understand where residences are and
17 where commercial is. So if you look at it
18 where Exhibit 1 is in the right hand corner,
19 okay?

20 MR. WHITE: On the right hand
21 corner.

22 CHAIRPERSON MILLER: So I see a

1 dot, 1001 H Street, that's this establishment.

2 MR. WHITE: That is correct.

3 CHAIRPERSON MILLER: Okay. Now,
4 to the right of it, what is that on the other
5 side of the yellow line?

6 MR. WHITE: That is 1005 H Street,
7 which is basically being used as an office,
8 but --

9 CHAIRPERSON MILLER: That's the
10 townhouse that we were just talking about?

11 MR. WHITE: That's correct.

12 CHAIRPERSON MILLER: Okay. And
13 next to --

14 MR. WHITE: Oh, no, no, no. No.

15 CHAIRPERSON MILLER: No?

16 MR. WHITE: No, that is a
17 commercial building to the right of that.

18 CHAIRPERSON MILLER: Okay. That's
19 a commercial building. And next to that?

20 MR. WHITE: Another commercial
21 building.

22 CHAIRPERSON MILLER: Okay. Is it

1 -- and then next to that?

2 MR. WHITE: Another commercial
3 building.

4 CHAIRPERSON MILLER: Okay. So all
5 right. Now, let's go back to where the blue
6 dot is. Okay. And now down from that is
7 what, the townhouse?

8 MR. WHITE: To the south of that
9 is the house that was purchased by the Ali
10 brothers.

11 CHAIRPERSON MILLER: Right.

12 MR. WHITE: And then just to the
13 south of that, adjacent to it, is a townhome.

14 CHAIRPERSON MILLER: Okay. And
15 then south, those three lots, are they houses?

16 MR. WHITE: They are all
17 residential.

18 CHAIRPERSON MILLER: Okay. All
19 right. So then when we cross 10th Street,
20 directly across from the blue dot, basically,
21 is that a building that is now commercial that
22 is going to turn mixed-use at some future

1 time?

2 MR. WHITE: Across 10th Street on
3 the north side of H Street?

4 CHAIRPERSON MILLER: Across 10th
5 Street on the south side of H Street, yeah.

6 MR. WHITE: That's a commercial
7 building that is going to become a mixed-use
8 project.

9 CHAIRPERSON MILLER: Okay. And I
10 don't know if you have much personal knowledge
11 on that. I thought you said it may be
12 commercial on the bottom and the residential
13 recessed back?

14 MR. WHITE: Based upon my
15 experience --

16 CHAIRPERSON MILLER: Is that
17 correct?

18 MR. WHITE: -- that's likely what
19 will happen. It's sort of the trend of
20 development these days.

21 CHAIRPERSON MILLER: Okay. And do
22 you have any knowledge as to when that is

1 going to happen?

2 MR. WHITE: I don't know
3 specifically, but it's my understanding that
4 it would happen after the trolley was all
5 situated and the possibility of, you know,
6 this area sort of gelling a little bit more.

7 CHAIRPERSON MILLER: Okay. So as
8 of know, it's commercial and if we follow
9 going south, then we -- it looks like we come
10 to that driveway that you were talking about?

11 MR. WHITE: That's correct.

12 CHAIRPERSON MILLER: And so what's
13 on the other side of the driveway going south?

14 MR. WHITE: Some residential.
15 They look like condos.

16 CHAIRPERSON MILLER: So residences
17 start down there?

18 MR. WHITE: Right.

19 CHAIRPERSON MILLER: Okay. So if
20 we go north then from 1001 H Street directly
21 across from H Street --

22 MR. WHITE: Yes.

1 CHAIRPERSON MILLER: -- what are
2 those?

3 MR. WHITE: They are all
4 commercial structures.

5 CHAIRPERSON MILLER: They are
6 commercial?

7 MR. WHITE: Yes.

8 CHAIRPERSON MILLER: Okay. Going
9 to the east it's basically all commercial?

10 MR. WHITE: That is correct.

11 CHAIRPERSON MILLER: Okay. And
12 then finally the left hand corner, northwest
13 corner across from that commercial on H
14 Street?

15 MR. WHITE: All commercial
16 structures.

17 CHAIRPERSON MILLER: All
18 commercial? Okay. Thank you. Let me see if
19 there is anything else. No. I don't have
20 anything else. Any other Board questions?
21 Mr. Brooks?

22 MEMBER BROOKS: No.

1 CHAIRPERSON MILLER: No? Okay.

2 Questions on Board questions?

3 MR. KLINE: Yes.

4 CHAIRPERSON MILLER: Okay.

5 MR. KLINE: Thank you.

6 REDIRECT EXAMINATION

7 MR. KLINE: Mr. White, the -- to
8 the south of the premises where the townhouse
9 is, to your knowledge, that's all zoned
10 residential, correct?

11 MR. WHITE: To my knowledge, yes.

12 MR. KLINE: All right. So was the
13 intent to build this service structure, if you
14 will, where the restrooms are and everything,
15 why was it built there? I mean, you were
16 asked in terms of, you know, what you were
17 accommodating.

18 MR. WHITE: Basically, to be a
19 buffer.

20 MR. KLINE: To be a buffer?

21 MR. WHITE: That's correct.

22 MR. KLINE: And it was -- was it,

1 in designing the building, your understanding
2 that the bulk of the residential was behind
3 the establishment?

4 MR. WHITE: Yes.

5 MR. KLINE: Okay. So in terms of
6 constructing the buffer, that was of more
7 concern to you than a buffer on the west side
8 of the rooftop, correct?

9 MR. WHITE: That is correct.

10 MR. KLINE: All right. And in
11 terms of what is across 10th Street on the
12 west side, to your knowledge, that is zoned
13 commercial?

14 MR. WHITE: Yes, it is.

15 MR. KLINE: And there aren't
16 currently any residences there, correct?

17 MR. WHITE: There is not.

18 MR. KLINE: Did that affect your
19 thinking in terms of how you were designing
20 and where you were going to build structures
21 in terms of balancing noise mitigation against
22 aesthetics and the experience of overlooking

1 the rooftop to the street?

2 MR. WHITE: Not necessarily.

3 MR. KLINE: Not necessarily?

4 MR. WHITE: No.

5 MR. KLINE: Why not?

6 MR. WHITE: Well, I mean, you
7 know, there was some thought -- I should say
8 there was thought behind it, but it was not as
9 important as the existing residential, which
10 is on the south side.

11 MR. KLINE: Got it. Okay. So
12 your testimony is that's what you were
13 thinking about was the existing residential
14 that is in areas zoned residential.

15 MR. WHITE: That's correct.

16 MR. KLINE: As opposed to
17 potential future residences in areas zoned
18 commercial?

19 MR. WHITE: Yes.

20 MR. KLINE: Okay. Now,
21 immediately behind the building, we talked
22 about this townhouse that was purchased. It

1 doesn't abut the rear of the establishment,
2 does it?

3 MR. WHITE: No. There is an
4 alley, somewhat of a small easement that
5 separates, you know, the edge of our property
6 from the beginning of that property.

7 MR. KLINE: Okay. And the idea
8 was -- and there was someone living there when
9 you went into the project, correct?

10 MR. WHITE: Yes, there was.

11 MR. KLINE: All right. And when--
12 and that person decided to sell or move or
13 what happened?

14 MR. WHITE: They ended up getting
15 a promotion to go back to the northeast area
16 and that's what made them sell.

17 MR. KLINE: And did you say oh, my
18 God, what a tremendous opportunity, that's the
19 best?

20 MR. WHITE: We did.

21 MR. KLINE: Okay. But were
22 there --

1 MR. WHITE: I mean, when I said --
2 I mean, it was an opportunity, but it was one
3 of those opportunities that we said let's look
4 at it and maybe we could also use that as a
5 buffer.

6 MR. KLINE: Okay. Got it. All
7 right. Thank you. That's all I have.

8 MR. WILLIAMS: Just a couple of
9 quick clarifying questions, just to make sure
10 the record is clear, because I think there was
11 some confusion versus east and west.

12 RE CROSS-EXAMINATION

13 MR. WILLIAMS: The side of the
14 rooftop deck that does not have the 9 foot
15 wall barrier is on the west side and the north
16 side. Is that correct?

17 MR. WHITE: It's the west side and
18 the north side, yes.

19 MR. WILLIAMS: Okay. And just
20 while we are talking about where residences
21 are, north of 10th Street -- the north side of
22 10th Street along H, we all agree are

1 commercial buildings, correct?

2 MR. WHITE: Yes.

3 MR. WILLIAMS: But if you go
4 further up 10th Street on both the east and
5 west side, those are residential areas as
6 well. Is that correct?

7 MR. WHITE: That's correct.

8 MR. WILLIAMS: And the entire --
9 is it fair to say that the entire space south
10 of the establishment on the east side of 10th
11 Street is residential?

12 MR. WHITE: Yes.

13 MR. WILLIAMS: And also on the
14 west side of 10th Street, despite the fact
15 that at least the building -- the development
16 immediately across the street is zoned
17 commercial, south of that is all residential
18 as well. Is that correct?

19 MR. WHITE: On the other side of
20 the alley, that's correct.

21 MR. WILLIAMS: Yes. All right. I
22 don't have any other questions. Thank you.

1 CHAIRPERSON MILLER: I just would
2 appreciate if you could just clarify for me
3 one question and that is if we look at Exhibit
4 1 --

5 MR. WHITE: Um-hum.

6 CHAIRPERSON MILLER: -- all right,
7 could you tell me where the barrier is and
8 where the -- I thought I heard you say that
9 that barrier was intended to protect
10 residences.

11 MR. WHITE: On the south side of
12 the -- of that dot property line.

13 CHAIRPERSON MILLER: Okay. It's
14 on the south?

15 MR. WHITE: Yes.

16 CHAIRPERSON MILLER: Okay. So the
17 residences are those that -- the townhouse
18 that we talked about, the one they purchased?

19 MR. WHITE: That's correct.

20 CHAIRPERSON MILLER: Okay. Okay.
21 Thank you. All right. Any other questions?
22 All right. Thank you very much.

1 MR. KLINE: Thank you.

2 (Whereupon, witness was excused.)

3 MR. KLINE: I call to the stand

4 Kamal Ali.

5 Whereupon,

6 KAMAL BEN ALI

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

11 CHAIRPERSON MILLER: All right.

12 Thank you. Have a seat.

13 DIRECT EXAMINATION

14 MR. KLINE: State your name for
15 the record, please.

16 MR. KAMAL ALI: My name is Kamal
17 Ben Ali.

18 MR. KLINE: All right. Kamal Ben
19 Ali. So what is your relationship to the
20 famous Ben's Chili Bowl?

21 MR. KAMAL ALI: I am the second
22 middle son to Ben and Virginia Ali, the

1 founders of Ben's Chili Bowl.

2 MR. KLINE: Okay. And you have
3 worked in that business for quite a period of
4 time?

5 MR. KAMAL ALI: Yes, sir, for over
6 30 years.

7 MR. KLINE: All right. And what
8 has been your role in the business? Who runs
9 this business?

10 MR. KAMAL ALI: My role has been I
11 have been the primary operator of the business
12 for that period of time.

13 MR. KLINE: Okay. And when you
14 say that business, specifically what business?

15 MR. KAMAL ALI: Anything related
16 to Ben's Chili Bowl. Ben's Chili Bowl, Ben's
17 Next Door, Ben's at the Ball Park, expansions,
18 everything related to it. It's a family owned
19 and operated business. Mom, my brother,
20 Nizam, dad when he was living. We operate as
21 a family, but I have been the primary
22 operator.

1 MR. KLINE: All right. And are
2 you, now that you are expanding, frequently
3 still on the premises or not?

4 MR. KAMAL ALI: Yes, I'm there
5 every day. I'm there seven days a week. We
6 always try to have a family member present
7 most of the time.

8 MR. KLINE: And your intent is to
9 open this business on H Street in a style
10 similar to the existing businesses?

11 MR. KAMAL ALI: Yes, sir. We are
12 trying to open -- expand Ben's Chili Bowl on
13 H Street. We saw a lot of similarities
14 between the U Street Corridor and the H Street
15 Corridor historically and with the growth and
16 the opportunity there and we thought it would
17 be a great place to go and embrace that
18 community just as we have embraced the U
19 Street community.

20 MR. KLINE: Now, in terms of --
21 you basically have two concepts in the same
22 building, correct, that you are planning on H

1 Street?

2 MR. KAMAL ALI: Yes, and that came
3 to be we primarily wanted to expand the Ben's
4 Chili Bowl concept. We were told by the
5 neighborhood that we were not allowed to put
6 a fast food establishment on H Street as was
7 governed by the ANC or certain codes. I'm not
8 sure exactly what. And then we were asked by
9 the community to put a more full-service style
10 and we said well, we could do that if that's
11 what the community wants. And that's how we
12 came to spend a lot more money in trying to
13 open up Ben's Upstairs as well.

14 MR. KLINE: Okay. So it's all one
15 license. It's all one business housed within
16 this building, correct?

17 MR. KAMAL ALI: Yes, sir.

18 MR. KLINE: But you are going to
19 run two concepts, correct?

20 MR. KAMAL ALI: Yeah.

21 MR. KLINE: All right. Now, the
22 first floor and the sidewalk cafe will be the

1 Ben's Chili Bowl concept?

2 MR. KAMAL ALI: Yes, just like the
3 Ben's Chili Bowl on U Street, same menu, same
4 concept.

5 MR. KLINE: With respect to the
6 service of alcoholic beverages, do you intend
7 to serve alcohol in the interior of the first
8 floor?

9 MR. KAMAL ALI: We have always run
10 a family concept and mom and dad never wanted
11 to have alcohol as part of that concept, so we
12 have -- we do not have plans to serve alcohol
13 down there.

14 MR. KLINE: Okay. What about on
15 the sidewalk cafe portion that is adjacent to
16 the first floor of Ben's Chili Bowl?

17 MR. KAMAL ALI: Definitely not and
18 I think that separates us from every other
19 sidewalk cafe on the corridor that I believe
20 serves alcohol.

21 MR. KLINE: Okay. So even though
22 we have an alcohol license application before

1 the Board for the whole building, your plans
2 are not to serve alcohol on the sidewalk cafe.
3 Is that right?

4 MR. KAMAL ALI: By choice, yes,
5 sir.

6 MR. KLINE: All right. Now, but
7 you still desire later hours for the sidewalk
8 cafe, correct?

9 MR. KAMAL ALI: Yes, sir, for
10 extra seating, for enjoyment of the patrons,
11 yes, sir, um-hum.

12 MR. KLINE: All right. And if the
13 Board were to restrict your ability to serve
14 alcohol on the sidewalk cafe, that wouldn't be
15 of any concern to you. Is that correct?

16 MR. KAMAL ALI: That is correct.

17 MR. KLINE: All right. Now, let's
18 talk about the upstairs concept. Tell the
19 Board what that's all about and how it relates
20 to similar or different than what you do up
21 the street?

22 MR. KAMAL ALI: A full-service

1 restaurant and bar, serving a full menu, a
2 variety menu. We are looking at a seafood
3 menu for that place, just to do something a
4 little different than what's on the corridor
5 and then what we have at Ben's Next Door.

6 It will be similar to the extent
7 that we run a restaurant/bar. We have no
8 interest in running a nightclub. We have no
9 interest in having dancing. We have no
10 interest in having, you know, live
11 entertainment or anything that is -- we like
12 a very controlled environment where we are
13 serving primarily food with drinks.

14 MR. KLINE: And, in fact, you
15 haven't applied for an entertainment
16 endorsement in connection with this license,
17 have you?

18 MR. KAMAL ALI: No. No
19 entertainment, no dancing, nothing of that
20 nature.

21 MR. KLINE: All right. I want to
22 show you what has been marked as Applicant's

1 Exhibit 11 and ask you to identify that,
2 please.

3 MR. KAMAL ALI: Yes. This is the
4 primary menu of Ben's Chili Bowl, the lunch
5 and dinner menu.

6 MR. KLINE: All right. And then
7 turn the page and look at Exhibit 12 and
8 identify that, please.

9 MR. KAMAL ALI: Exhibit 12 is a
10 rendition of proposal of a menu for Ben's
11 Upstairs.

12 MR. KLINE: Okay. I would -- go
13 ahead.

14 MR. KAMAL ALI: We will have many
15 months to prepare.

16 MR. KLINE: Okay. I would move
17 Applicant's Exhibits 11 and 12.

18 (Whereupon, the documents were
19 marked as Applicant Exhibit 11 and
20 12 for identification.)

21 MR. WILLIAMS: The only objection
22 I would raise is I don't see the relevance of

1 either of these exhibits to the topic of the
2 hearing today.

3 CHAIRPERSON MILLER: Okay. Do you
4 want to answer that, Mr. Kline?

5 MR. KLINE: Sure. The witness has
6 testified -- we have applied for an ABC
7 License, it's for a CR License. There is no
8 entertainment endorsement. Less there be any
9 questions to what the activities will be on
10 the rooftop deck, we have given you the menu
11 to show you what it is that will be served.

12 CHAIRPERSON MILLER: Okay. Yeah,
13 overruled and I don't see any prejudice to the
14 other party by this menu coming in. Okay. So
15 Applicant's Exhibits 11 and 12 are admitted.

16 (Whereupon, the documents marked
17 as Applicant Exhibit 11 and 12
18 were received in evidence.)

19 MR. KLINE: Okay. First, let me
20 close the loop on that. Applicant's Exhibit
21 12 does that represent what you will be
22 serving, the fare that you will be serving on

1 the rooftop deck?

2 MR. KAMAL ALI: Yes, that's the
3 plan.

4 MR. KLINE: Okay. Now --

5 MR. KAMAL ALI: In addition to
6 some -- perhaps add a Saturday and Sunday
7 brunch menu perhaps, that type of, you know,
8 compliment.

9 MR. KLINE: Okay. All right. And
10 the idea is that this be primarily a
11 restaurant?

12 MR. KAMAL ALI: Yes.

13 MR. KLINE: As opposed to a bar or
14 nightclub or some other type of activity?

15 MR. KAMAL ALI: Yes, a restaurant/
16 bar. So, you know, a combination of those two
17 things. We understand that the community, the
18 young community, the people who frequent H
19 Street and frequent U Street, frequent 14th
20 Street are a drinking community and we like to
21 serve a lot of food. You know, we're
22 primarily a restaurant first and a bar second.

1 In our opinion we don't run just a bar.

2 A lot of people try to serve as
3 little food as possible and as much alcohol as
4 possible, that's not what we do. We are a
5 full-service restaurant/bar. We do serve food
6 up until, for instance at Ben's Next Door, an
7 hour before closing time, so that we can
8 continue to, you know, be what we are.

9 MR. KLINE: All right. Now, you
10 have been licensed up the street on U Street
11 at Ben's Next Door for how long?

12 MR. KAMAL ALI: For over five
13 years now.

14 MR. KLINE: And have you had any
15 particular problems at that establishment with
16 the operation of the establishment?

17 MR. KAMAL ALI: We have not. Have
18 do not -- again, as a restaurant/bar, we don't
19 turn up the music too loud. We don't keep the
20 lights too low. We provide an atmosphere that
21 is fun and friendly for dining out.

22 MR. KLINE: Have you ever had any

1 complaints concerning noise of any type?

2 MR. KAMAL ALI: We have never had
3 any operational complaint as far as noise.
4 Inside the place goes or anything like that,
5 the one problem we did have was in the very
6 beginning of the set up, that there were some
7 fans above the building that were creating a
8 problem for residents. We have always
9 operated as a -- with residents right around
10 us. This has always been a commercial/
11 residential neighborhood, so we had a building
12 on 2020 12th Street that has a lot of condos
13 and very -- directly next to Next Door.

14 A few residents came and said hey,
15 we are hearing something from our windows.
16 Sure, let's go, let me hear it myself. I'm
17 happy to come over there. I went over there
18 and visited with those residents heard the
19 noises ourself and we went about creating a
20 plan to change it and we built a wall to defer
21 that noise. And they were satisfied with it
22 and we were -- we did it quickly and

1 efficiently.

2 MR. KLINE: Now, you have heard
3 during the course of the last few months
4 concerns that have been raised about potential
5 noise from the rooftop deck and the sidewalk
6 cafe, correct?

7 MR. KAMAL ALI: Yes, I have.

8 MR. KLINE: And what would you say
9 to assuage those that have those concerns?
10 What would your response be?

11 MR. KAMAL ALI: Well, I think
12 their concerns are 100 percent justified and
13 we are -- we want the opportunity to see what
14 noise is created or not created. We just
15 don't want to assume that there is noise that
16 they can hear. We want to -- we have done
17 everything we can to mitigate it on the front
18 end. And then once we get the building up, we
19 will be able to see for ourselves and make the
20 proper determination to be sensitive to the
21 residents. We have no intention of being
22 disruptive to our community.

1 MR. KLINE: And you operate in a
2 community now, obviously, correct?

3 MR. KAMAL ALI: For over 55 years.
4 And myself over 30 years.

5 MR. KLINE: And how close are the
6 nearest residences to your existing operation?

7 MR. KAMAL ALI: On every side of
8 us they are a block away.

9 MR. KLINE: Okay.

10 MR. KAMAL ALI: Or closer. One is
11 an alleyway, which is the 2020 12th Street
12 building that I mentioned.

13 MR. KLINE: Now, if the Board were
14 to give you the hours that you have requested
15 for the rooftop and there are complaints and
16 problems with respect to noise, how will you
17 deal with those?

18 MR. KAMAL ALI: We will deal with
19 them immediately and we will deal with them
20 professionally. We will deal with them right
21 away. We -- you know, again, we are part of
22 this community. We just look for the

1 opportunity to be successful here to recoup
2 our investment and make money as we have done
3 here, but we are very sensitive to it.

4 As a matter of fact, you know, as
5 I have told the ANC, we visited with the ANCs
6 many, many times, we have talked to residents
7 in this neighborhood and we tried to assuage
8 them by telling them we are very responsive
9 people. We are very humane people. And we
10 are not going to disturb them, but give us the
11 opportunity, first, how can we preemptively
12 decide that there is going to be a certain
13 noise level that none of us know.

14 MR. KLINE: All right.

15 MR. KAMAL ALI: Let's get the
16 building up. Let's listen to it and we will
17 make the proper decision to close at the
18 appropriate hour. I'm not -- we're not asking
19 -- we are not saying we are going to stay open
20 until 3:00 in the morning or 2:00 in the
21 morning, necessarily. We are saying give us
22 the opportunity to see and react

1 appropriately.

2 MR. KLINE: Now, you have the
3 existing business on U Street, the two
4 businesses and you are going to continue to
5 operate those as well, correct?

6 MR. KAMAL ALI: Yes, sir.

7 MR. KLINE: Who will be at the new
8 business to make sure that what one Board
9 Member, I think, described as a culture of
10 your business, that that will be continued?
11 Who is going to be there to make sure that
12 that happens?

13 MR. KAMAL ALI: Myself, my wife,
14 my brother, Nizam, my cousin Rob, family
15 members will be there at least for the first,
16 you know, period of time to make sure that
17 there are no problems and to run those
18 businesses, just like we run the U Street
19 businesses.

20 MR. KLINE: So in terms of the
21 direct management of the U Street business,
22 who will that be?

1 MR. KAMAL ALI: We are hands-on
2 operators, but we have enough family members
3 to go around for now for these operations.
4 And we will always be, even if we had, you
5 know, more stores that we could handle, we
6 would be there ourselves to set the tone and
7 to train people and to make sure that those
8 things are implemented. We are not -- this
9 store is not in Chicago. It's right here in
10 our community. We will be there again daily.

11 MR. KLINE: Now, it seems that the
12 sole issue that we are down -- we are before
13 this Board on at this hearing has to do with
14 the hours of both the rooftop and the sidewalk
15 cafe. Can you tell the Board what impact it
16 might or will have on your business if your
17 hours are curtailed to 11:00 p.m. Sunday
18 through Thursday and midnight Friday and
19 Saturday?

20 MR. KAMAL ALI: Well, again, it's
21 our intention to operate this -- these spaces
22 responsibly and with a minimum noise level

1 that is not disruptive to the community. If,
2 indeed, we are able to do that, I think they
3 are two very separate areas and I think that,
4 you know, we have to assess each individually
5 because one is 90 feet in the sky and
6 projecting there with their south wall. The
7 other is closer to the ground.

8 So it will depend on those things
9 and when we find out how much noise those
10 things are making or what the patterns are for
11 them. But from a metric standpoint of
12 finances, the outdoor seating represents about
13 35 percent of our total seating.

14 Ben's Upstairs is a very small
15 restaurant. It's very hard to, you know,
16 recoup these monies that we have extended on
17 just the seating at Ben's Upstairs. So we
18 have added the rooftop deck as a way to
19 compensate for that.

20 So if 35 percent of the total
21 seating of the restaurant is outdoor seating
22 and we are restricted, approximately, 20

1 percent of the time on the hours, these are
2 based on calculations that I have done and
3 said if we close, you know, these an hour
4 earlier, etcetera, it would seem to me that I
5 came up with a number of about 7 to 10 percent
6 of our sales that could be affected.

7 MR. KLINE: And given the margins
8 in the restaurant industry, does that
9 represent potentially a significant portion of
10 your profits?

11 MR. KAMAL ALI: It certain does.
12 I mean, you know, you have prime hours. If
13 you think about a Friday or Saturday night
14 from, you know, midnight to 3:00 in the
15 morning, there are some -- there is a prime
16 hour there and you're giving patrons the --
17 patrons in the great weather, everybody wants
18 to be outside. Everybody wants to be on these
19 decks, you know. And they will choose -- they
20 make a choice not necessarily to go inside, if
21 you have room there, but they make the choice
22 to go to another establishment.

1 MR. KLINE: Okay.

2 MR. KAMAL ALI: I would like to
3 add that the property that we bought next
4 door, the house was not for an investment at
5 all. We -- I saw that property and I thought
6 this is going to be the most affected home
7 that we are talking about in this process.
8 This is the most affected.

9 If I were living in that house, I
10 would be mad. I said so the reason we
11 purchased that home was because I said -- the
12 neighbor had moved, I said I think we have to
13 buy it, because, you know, it would just seem
14 unfair to -- you know, for a neighbor to
15 necessarily have to endure, especially with
16 the construction part.

17 So we knew that for the
18 construction we would be, you know, affecting
19 them directly with, you know, the issues
20 revolving around construction. But so that's
21 why we purchased the building. It was not at
22 all for an investment. I just wanted to

1 clarify that.

2 MR. KLINE: Okay. And how did
3 that all come about, just so we are clear?

4 MR. KAMAL ALI: We met the
5 neighbor there. We talked to them and we said
6 -- and they just -- you know, they were very
7 lovely people. We were trying to work with
8 them to say hey, any problems that come up,
9 we're going to work with you.

10 We met with other people in that
11 block, but when they did move to go to New
12 York for an opportunity, we saw that the
13 building was for sale and we said I think we
14 have to buy that.

15 MR. KLINE: Okay. And in terms of
16 the wall that is being constructed or is
17 proposed on the east side of the rooftop,
18 there are some questions as to why did you
19 build a high wall there. Is there a
20 particular reason why that was done?

21 MR. KAMAL ALI: Sure.
22 Operationally, I mean, you know, when you are

1 working on a large project like this, the
2 architecture goes, you know, in a direction.
3 So you are trying to accomplish multiple
4 goals, downstairs, upstairs, rooftop,
5 everything and the architect said this --
6 where is the stairway? You have to get up to
7 the roof. Where is the stairway going to be?

8 So that whole stairwell that is on
9 that side is the main reason. It could not be
10 on the east side. You know, it just couldn't
11 be there. You would be blocking the entire
12 front of your store to create a stairwell.
13 So, you know, it just wouldn't make sense at
14 all. So it was not -- it was an operation
15 from many angles, you know, but the architects
16 -- it was the best the architects could do to
17 come up with for that. So the stairwell, the
18 bar, etcetera.

19 MR. KLINE: Now, we have already
20 established on the record that this building
21 is not built and right now it's a lot,
22 correct?

1 MR. KAMAL ALI: That's correct.

2 MR. KLINE: So if when you build
3 the building and you get open and there are --
4 if there are complaints about noise, will you
5 have opportunities to take additional
6 measures, at that point?

7 MR. KAMAL ALI: Of course. And
8 even before we get open, because we've got to
9 build the thing first before we can see what
10 kind of sounds could emanate, you know what I
11 mean? So once we build it, before we even get
12 open, we will -- we are happy to have the
13 sound engineers come up there. We are happy
14 to see what affect it has.

15 We are happy to talk to the
16 neighbors, turn the radio on or something or
17 have some people up there having a mock
18 conversation. We will invite the whole ANC to
19 go up there and have a conversation. I'll go
20 next door and see what kind of noise it makes,
21 so we can make a proper decision. How do we
22 make a decision ahead of time?

1 MR. KLINE: Right. That's all the
2 questions I have, at this time.

3 CHAIRPERSON MILLER: Okay. ANC?

4 CROSS-EXAMINATION

5 MR. WILLIAMS: Mr. Ali, just to
6 clarify, I think it's already on the record,
7 the current establishment, Ben's Chili Bowl
8 and Ben's Next Door, does not have any outdoor
9 space. Is that correct?

10 MR. KAMAL ALI: That's correct. I
11 have no experience running an outdoor sidewalk
12 cafe or a rooftop deck and I welcome the
13 opportunity to do it and do it in a
14 responsible way and to learn.

15 MR. WILLIAMS: Okay.

16 MR. KAMAL ALI: So I'm open to all
17 things. I just hope the ANC is open to all
18 things.

19 MR. WILLIAMS: I don't have any
20 other questions, other than thank you and your
21 family for bringing the establishment to H
22 Street. We are really excited for it.

1 CHAIRPERSON MILLER: Great. Okay.
2 Are there Board questions? All right. I have
3 at least one. So you said in your testimony
4 with respect to purchasing the townhouse that
5 you talked to everybody on the block?

6 MR. KAMAL ALI: I said I talked to
7 more than one people -- more than one person
8 on the block.

9 CHAIRPERSON MILLER: Oh.

10 MR. KAMAL ALI: We talked to those
11 direct neighbors, but we also talked to some
12 other neighbors in the block.

13 CHAIRPERSON MILLER: Okay. And
14 were they opposed to the rooftop cafe or the
15 sidewalk?

16 MR. KAMAL ALI: Well, I mean, you
17 know, I think at maybe one meeting we heard
18 some opposition to it. We didn't -- in the
19 general conversation, it didn't come up that
20 specific.

21 CHAIRPERSON MILLER: Okay. And so
22 were there any suggestions then that you

1 responded to in these plans or anything?

2 MR. KAMAL ALI: I don't think so.
3 Maybe we just -- and our way of dealing with
4 things is to keep an open dialogue to keep
5 good relations and to address things, you
6 know, as they arise or before they can arise,
7 if people can anticipate them, but that's what
8 we have done the best we can with the
9 architects, with the contractor. We have
10 always made it a point of emphasis to say that
11 we know that we have to deal with this. We
12 know we have residents close by. We have to
13 do everything we can to maximize our hours of
14 possibility.

15 CHAIRPERSON MILLER: Okay. And I
16 think you stated that you had knowledge that
17 the reason that that barrier wall is where it
18 is was driven by pretty much the staircase,
19 where the staircase was?

20 MR. KAMAL ALI: The east wall,
21 yes, ma'am. The south wall was always thought
22 of as the main sound barrier and that's why

1 that was put there specifically, because we --
2 again, we did think of all the residences as
3 being to the south on 10th Street, but the
4 east wall as opposed to putting that type of
5 structure on the west wall as opposed to the
6 east wall, that houses the entire staircase
7 structure.

8 CHAIRPERSON MILLER: Okay. And
9 did you talk to your architect about sound
10 mitigation?

11 MR. KAMAL ALI: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. KAMAL ALI: Every step of the
14 way.

15 CHAIRPERSON MILLER: Okay. So I
16 think there was a question whether there was
17 some sound analysis that was done. And so did
18 your architect build that in?

19 MR. KAMAL ALI: Well, I'm not a
20 builder or an architect, so I don't --

21 CHAIRPERSON MILLER: Yes.

22 MR. KAMAL ALI: -- know that you

1 do it ahead of time or you do it once it is
 2 built. You know, I don't know how the process
 3 works. We made it a point of emphasis every
 4 step of the way as our directive to the
 5 architect and to the contractors that we have
 6 to do everything we can to mitigate sound or
 7 disturbance, you know, construction laws,
 8 everything, because we are in a neighborhood.
 9 That's the best I can do with my layman --

10 CHAIRPERSON MILLER: Okay. So it
 11 sounds like you said that and the architect
 12 did this barrier.

13 MR. KAMAL ALI: They take it from
 14 there and do what they have done. I don't
 15 know who they consult with.

16 CHAIRPERSON MILLER: Okay.

17 MR. KAMAL ALI: But I would assume
 18 again that as we build a building, that that's
 19 when we go back from a practical -- I'm a very
 20 practical person. You build a building and
 21 then you go back and say okay, now, is there
 22 anything we can add, anything we can do, let's

1 hear it first, let's measure it first and
2 let's go about it the proper way to make those
3 decisions. It's not too late to, you know,
4 add things.

5 CHAIRPERSON MILLER: Okay. And my
6 last question, I think, is you have said that
7 your outdoor seating will be, approximately,
8 7 to 10 percent of your business. Is that
9 right?

10 MR. KAMAL ALI: That's a
11 guesstimate. I mean, based on the percentage
12 of seating to the indoor seating, so 35
13 percent of the seating and then based on the
14 reduction of the hours, that's the best I can
15 do in terms of calculating, I mean.

16 CHAIRPERSON MILLER: And it's a
17 guess somewhat, I gather?

18 MR. KAMAL ALI: Yes, ma'am, um-
19 hum.

20 CHAIRPERSON MILLER: So but how is
21 that reduced if we are talking about a few
22 hours? If we are talking about --

1 MR. KAMAL ALI: Well, that's what
2 I explained that the 35 percent of the seating
3 reduced approximately 20 percent of the hours.
4 But based on the proposed hours --

5 CHAIRPERSON MILLER: Oh, okay.

6 MR. KAMAL ALI: -- if we close
7 three hours early, three hours earlier than we
8 are proposing. If we close 11:00 to 2:00
9 during the week, five days a week, that's 15
10 hours. If we close 12:00 to 3:00 the other
11 two days a week, that's an additional six
12 hours, that's 21 hours.

13 I believe I calculated that we are
14 open approximately 107 hours during -- as a
15 total full scale, so that would represent
16 approximately 20 percent of the time that
17 those places would be closed.

18 CHAIRPERSON MILLER: Okay. So
19 that 7 and 10 percent actually does reflect
20 your best guess with --

21 MR. KAMAL ALI: Yes, ma'am.

22 CHAIRPERSON MILLER: -- respect to

1 the question of the hours for the outdoor
2 seating.

3 MR. KAMAL ALI: Yes, ma'am, um-
4 hum.

5 CHAIRPERSON MILLER: Okay. I
6 don't have any other questions. Mr. Jones?

7 MEMBER JONES: Thank you, Madam
8 Chair. If you didn't have that 7 to 10
9 percent, would you go out of business?

10 MR. KAMAL ALI: Would I go out of
11 business? I hope not, but it would reduce --
12 it would certainly reduce the profits.

13 MEMBER JONES: Understood. It
14 would reduce -- it would increase the amount
15 of time it took you to recoup your investment.
16 But does that mean you would not be able to
17 recoup your investment?

18 MR. KAMAL ALI: Not in -- you're
19 given X number more years, no.

20 MEMBER JONES: Okay. Would you
21 consider this to be a worthwhile investment if
22 you didn't have that 7 to 10 percent? Would

1 you consider this a worthwhile business
2 venture without the 7 to 10 percent?

3 MR. KAMAL ALI: Um-hum. Would I
4 consider it a worthwhile business venture if
5 I didn't have that 7 to 10 percent? It would
6 be a less attractive business venture.

7 Again --

8 MEMBER JONES: Understood.

9 MR. KAMAL ALI: -- it's the
10 process.

11 MEMBER JONES: A worthwhile
12 business venture if you didn't have that 7 to
13 10 percent. It's a yes or a no.

14 MR. KAMAL ALI: I might make
15 another choice.

16 MEMBER JONES: You may make
17 another choice, okay. But you don't know that
18 you have a definitive other choice to make
19 that is in play. Are you saying that you
20 would go with a different direction if you
21 weren't able to do that 7 to 10 percent?

22 MR. KAMAL ALI: I'm sorry. It had

1 -- had we known some of these things ahead of
2 time --

3 MEMBER JONES: Yes.

4 MR. KAMAL ALI: -- again, we were
5 -- again, I would never have built the Ben's
6 Upstairs period.

7 MEMBER JONES: Understood.

8 MR. KAMAL ALI: I would have built
9 Ben's Chili Bowl downstairs.

10 MEMBER JONES: So when you got to
11 that decision gate --

12 MR. KAMAL ALI: Um-hum.

13 MEMBER JONES: -- right, which you
14 are already past, is what I'm understanding
15 from you.

16 MR. KAMAL ALI: To account for the
17 additional seating and the additional revenue.
18 We are counting on that as part of our
19 business plan.

20 MEMBER JONES: Understood. And if
21 you don't get that, does that make this a
22 venture that is not worthwhile in going down

1 the path?

2 MR. KAMAL ALI: Yes.

3 MEMBER JONES: Okay. On the
4 diagram on Exhibit 7, there is a diagram that
5 shows the roof terrace plan as 44 seats.

6 MR. KAMAL ALI: Okay.

7 MEMBER JONES: Is it your
8 understanding that you will only have 44
9 people up there at any point in time?

10 MR. KAMAL ALI: Eating, yes.

11 MEMBER JONES: Is it your
12 understanding --

13 MR. KAMAL ALI: Not total people.
14 Not total people, but eating.

15 MEMBER JONES: Okay. What would
16 be the total number of people that you could
17 and would allow to be in that area upstairs?

18 MR. KAMAL ALI: I'm not sure what
19 the occupancy allows. It would be whatever
20 the occupancy allows.

21 MEMBER JONES: So you would be
22 willing to go to the maximum occupancy

1 standing and sitting? And there is no
2 indication of what that number is? Is that in
3 front of you?

4 MR. KAMAL ALI: We do that based
5 on the operation. So in other words, we don't
6 let it get out of control. So not necessarily
7 is the answer to your question. If it allowed
8 me to have 200 people in that outside deck,
9 would I allow it? No, not if it was on
10 unruly, not if it was too noisy.

11 MEMBER JONES: So but you don't
12 know -- you can't --

13 MR. KAMAL ALI: I get to control
14 that number by the amount of people I let up
15 there. So based on --

16 MEMBER JONES: Say that one more
17 time. Say that one more time.

18 MR. KAMAL ALI: I get to control
19 that number within the realm of the occupancy
20 based on the number of people we allow to go
21 up there. We don't have to allow it to be
22 maximally occupied because we are allowed to

1 do it. It's a judgment call just like it is
2 every day at the Chili Bowl or Ben's Next
3 Door. It's a judgment call.

4 MEMBER JONES: Just like the
5 hours.

6 MR. KAMAL ALI: Sorry?

7 MEMBER JONES: Just like the
8 hours. Right? You can control --

9 MR. KAMAL ALI: If I'm allowed the
10 flexibility.

11 MEMBER JONES: If you choose to
12 operate lower hours --

13 MR. KAMAL ALI: Yes. If I'm
14 allowed the flexibility, I believe I'm mature
15 enough and responsible enough. I think we
16 have shown that over 30 and 55 years to make
17 those decisions based on what is best for our
18 sales and the neighborhood combined, yes.

19 MEMBER JONES: I don't challenge
20 the veracity of what you have done. I get
21 that. I appreciate it. I'm just trying to
22 understand what your construct is for

1 operating the outdoor --

2 MR. KAMAL ALI: Um-hum.

3 MEMBER JONES: -- top level venue
4 based on the information that has been
5 presented.

6 MR. KAMAL ALI: Yep.

7 MEMBER JONES: And what you are
8 testifying to here today.

9 MR. KAMAL ALI: That's correct.

10 MEMBER JONES: Okay.

11 MR. KAMAL ALI: And as I said, I
12 have never run one before.

13 MEMBER JONES: Exactly.

14 MR. KAMAL ALI: It will be a work
15 in progress. And we will do everything we can
16 to make sure we run a responsible operation.

17 MEMBER JONES: So do you have any
18 idea, do you have any records that shows what
19 the maximum occupancy truly --

20 MR. KAMAL ALI: I'm not sure if
21 Frank knows. Frank, do you have any idea what
22 the occupancy is for Ben's Upstairs?

1 MR. WHITE: No.

2 MR. KAMAL ALI: The total
3 occupancy?

4 MEMBER JONES: I could -- this
5 is --

6 MR. WHITE: I don't know.

7 MR. KAMAL ALI: I don't know.

8 MEMBER JONES: You don't know.
9 Okay.

10 MR. KAMAL ALI: I don't know.

11 MEMBER JONES: Given that, what is
12 -- the back and forth, what is the process,
13 what's the iterative process that you plan to
14 use to implement in order to come to that nice
15 number that you mentioned that you are mature
16 enough. You are smart enough. You have been
17 in business long enough to know what you are
18 doing.

19 MR. KAMAL ALI: That's correct.

20 MEMBER JONES: What's the
21 iterative process that you would use to get to
22 that nice number of total number of people

1 that you have, that you could operate at and
2 not disturb the community? What's the process
3 by which -- explain that to me. How does that
4 work?

5 MR. KAMAL ALI: Um-hum. Well,
6 it's basically you are going to have to try it
7 out somewhat. You are going to have to do
8 some tests whether it's soft openings or
9 whether it's a grand opening and you are going
10 to have to get some people up on that roof and
11 you are going to have to, like I said, go next
12 door to the closest residence and be a partner
13 with your neighbors and listen.

14 And then you are going to make
15 certain determinations based on that. You are
16 going to maybe put the sound check people,
17 maybe, you know, some different ways to
18 determine that. I mean, it's not an exact
19 science, but it's very common sense.

20 You know, there is -- most things
21 holding me, like I said, I'm a pretty basic
22 guy, so I use the common sense approach to

1 figure it out.

2 MEMBER JONES: So that's what? So
3 let's walk through the example. You open up.
4 You have a soft opening. And you limit the
5 number of people upstairs or you just have a
6 soft opening and then you --

7 MR. KAMAL ALI: Well, you know --

8 MEMBER JONES: -- wait to hear
9 complaints?

10 MR. KAMAL ALI: -- you will get X
11 number or you will get whatever people you get
12 up there. So whether you get 50 up there to
13 start with and whether you say hey, you know
14 what, that sounds pretty good, let's put some
15 more people up there. Let's get 60, let's get
16 70. Let's get 80. Let's get some people up
17 there. Hey, guys, turn up the sound, turn up
18 a little music or talk a little bit. You
19 know, that's how you test it out.

20 MEMBER JONES: Okay. So you plan
21 on having music upstairs in the open area? I
22 didn't realize that.

1 MR. KAMAL ALI: Yes, we plan on
2 having some background music. Sure. I mean,
3 if we are having a Saturday or Sunday brunch,
4 you know, of course, we would have some
5 background music up there for the diners'
6 enjoyment.

7 MEMBER JONES: Okay. So --

8 MR. KAMAL ALI: Assuming it does
9 not bother the neighbors.

10 MEMBER JONES: -- your construct
11 is you would push -- you would put as much and
12 as loud until you got complaints and then you
13 would adjust based on the level and types of
14 complaints you receive? It sounds like that's
15 the iterative process that you are --

16 MR. KAMAL ALI: Well, when you say
17 complaints, I'm saying I'm proactive before we
18 get to the complaints.

19 MEMBER JONES: How are you being
20 proactive?

21 MR. KAMAL ALI: I'm going to do it
22 ahead of time.

1 MEMBER JONES: How?

2 MR. KAMAL ALI: We're going to do
3 it with the neighbors. I just told you how.
4 We are going to go -- we are going to do some
5 tests before we even get open to get over
6 there to find out.

7 MEMBER JONES: Okay. So --

8 MR. KAMAL ALI: We are going the
9 sound guy up there --

10 MEMBER JONES: -- well --

11 MR. KAMAL ALI: -- ahead of time
12 to find out.

13 MEMBER JONES: -- I'm not as smart
14 as you are, obviously. So I'm trying to
15 understand what is the process for performing
16 the test? So you are taking a proactive
17 approach. So you are saying you are not doing
18 any sound analysis ahead of time, correct?

19 MR. KAMAL ALI: Before the
20 building is built? No.

21 MEMBER JONES: Correct, right.
22 You are not doing any sound analysis based on

1 the architectural drawings or renderings?

2 You're not doing any --

3 MR. KAMAL ALI: I don't know how.

4 I would if I could. I don't know how.

5 MEMBER JONES: You are not hiring
6 anyone that does know how to do that?

7 MR. KAMAL ALI: I don't know that
8 that's even possible to do it before the
9 building is built. I don't know that it's
10 possible.

11 MEMBER JONES: So you're going to
12 build the building?

13 MR. KAMAL ALI: That's correct.

14 MEMBER JONES: Okay. And then you
15 are going to do what? You're going to have
16 people come up?

17 MR. KAMAL ALI: When the rooftop
18 is there --

19 MEMBER JONES: Right.

20 MR. KAMAL ALI: -- and it -- we
21 have a structure, we will go up and be doing
22 simple -- I'm happy to take the ANC people or

1 neighbors, whomever, and get some people up
2 there and see for ourselves how much sound we
3 can generate, emanate and how much is heard
4 from the neighbors.

5 MEMBER JONES: So you're going to
6 have the people that would be impacted by the
7 sound in the source area of the sound, so they
8 wouldn't be in a position to hear it at the
9 point where they would be disturbed? I know
10 I understand the process. I'm just -- and I
11 just want to understand what your process is
12 for taking this proactive approach to
13 identifying how to mitigate sound and the
14 impact to the community.

15 MR. KAMAL ALI: I don't know that
16 I can explain it any better. I'm going to get
17 some people on the roof.

18 MEMBER JONES: All right. That's
19 fine.

20 MR. KAMAL ALI: I'll have some
21 neighbors in their homes. Together we are
22 going to figure that out.

1 MEMBER JONES: Thank you. Thank
2 you, Madam Chair.

3 CHAIRPERSON MILLER: Okay. Other
4 questions? Mr. Silverstein has a question.
5 Go ahead.

6 MEMBER SILVERSTEIN: Mr. Ali, I
7 think we all understand well the role your
8 family and establishment have in the
9 neighborhood here. And my question is if you
10 were to get the hours that you asked for and
11 that would become the precedent for other
12 establishments in the H Street area, what
13 would that extension of hours for outdoor
14 things for other places that they can apply
15 for and this moving of what is somewhat of a
16 neighborhood standard, what would that have on
17 the quality of life there, do you think?

18 MR. KAMAL ALI: Well, I don't see
19 that it sets a precedent for -- I think each
20 individual is different just like we are all
21 different as people. I think that each
22 establishment is different, each operator is

1 different.

2 I know several bad operators, so I
3 wouldn't want to open up a place period and I
4 know other operators who can do anything they
5 want, as far as I'm concerned, because I know
6 they are going to handle it responsively.

7 So there is an opportunity for
8 this process, there is an opportunity for the
9 Board to hear, there is people's track
10 records, there is many ways to make a
11 determination upon how each one handles it.
12 So I don't see that because I'm granted the
13 ability to do that, that everyone else is
14 necessarily granted it. I think that's why we
15 have this process and we're lucky to have it.

16 MEMBER SILVERSTEIN: Thank you.

17 CHAIRPERSON MILLER: I have one
18 follow-up question, except I want to ask Mr.
19 Kline. You don't have the architect here, do
20 you?

21 MR. KLINE: No.

22 CHAIRPERSON MILLER: Okay. So Mr.

1 Ali, I just want to clarify that it's my
2 understanding that some thought went into
3 sound mitigation and that's why you have on
4 the architectural plans a barrier on two of
5 the walls and shrubs or whatever.

6 So it's not as if you are waiting
7 until the building is built to consider sound
8 mitigation. Am I correct?

9 MR. KAMAL ALI: That's correct.

10 CHAIRPERSON MILLER: Okay. So you
11 are just waiting to test out.

12 MR. KAMAL ALI: The next step,
13 take the next step.

14 CHAIRPERSON MILLER: The next step
15 is kind of --

16 MR. KAMAL ALI: There are several
17 steps involved in figuring this out and we are
18 just, you know, going along with the process.

19 CHAIRPERSON MILLER: Okay. And I
20 thought I heard you say that you told the
21 architect that sound mitigation was a concern.

22 MR. KAMAL ALI: Yes, from day one,

1 sure.

2 CHAIRPERSON MILLER: And that --
3 okay. So that was your architect's judgment.

4 MR. KAMAL ALI: It's a residential
5 neighborhood. Yeah, I mean, there is another
6 thing we didn't bring up today was behind
7 Ben's Chili Bowl is where our trash is. Okay?
8 So as with most restaurants or businesses, the
9 trash is usually in the back or, you know, to
10 the side, so we had an opportunity to say, you
11 know, how do we handle this trash issue. And
12 it was a big issue as well.

13 The same way we knew about the
14 noise issue, we knew about this trash issue.
15 And we said gosh, I wouldn't want to be living
16 right next door here and the guys are always
17 putting out the trash or the trash, you know,
18 thing is making noise or whatever. And so we
19 purposefully built a roll-down enclosed trash
20 thing, which is probably, you know, unheard of
21 in a restaurant these days and with a way to
22 get into it from the restaurant, so that we

1 don't have to disturb the neighbors with that.

2 It takes away seating from us. So
3 we do these things at -- again, here is the
4 give and take. We took away our own seating
5 that would be revenue generating to make
6 accommodation that we feel is in the best
7 interest of the community at-large.

8 CHAIRPERSON MILLER: Okay. And I
9 guess my other question is on the rooftop you
10 have a possible canopy. And I'm wondering did
11 you talk to your architect about a choice
12 between a canopy or what is sometimes done
13 with a glass bubble that kind of can open and
14 close?

15 MR. KAMAL ALI: We have put out
16 different possibilities. I mean, we are
17 governed in this particular building case, we
18 are governed by a lot of codes. So we are
19 governed by FAR. We could build a much more
20 soundproof barrier on that rooftop deck if we
21 were allowed to by FAR.

22 We could provide a much, you know,

1 more soundproof barrier on the sidewalk cafe
2 if DDOT were to allow it. We have to operate
3 within the guidelines and the codes of the
4 buildings. And so we are not allowed to build
5 a more enclosed -- we weren't allowed to build
6 a very enclosed area on that rooftop deck.
7 Not because we didn't want to, but because
8 that would go against or count against our
9 FAR, our floor area ratio --

10 CHAIRPERSON MILLER: Right.

11 MR. KAMAL ALI: -- of the building
12 in order to accomplish that.

13 CHAIRPERSON MILLER: Right. You
14 would have to get a variance.

15 MR. KAMAL ALI: Again, you know,
16 I'm not -- I just operate. I just sell hot
17 dogs. I don't --

18 CHAIRPERSON MILLER: Okay. All
19 right. Okay.

20 MR. KAMAL ALI: -- check the
21 contracts and say the sound techniques or
22 nothing else.

1 CHAIRPERSON MILLER: Right, right.
2 And you may not need that. I mean, I don't
3 know. I just wanted to know if that was
4 explored.

5 MR. KAMAL ALI: Well, I mean, we
6 are aware of it and, again, I see something
7 here. We see a lot of neighbors. We see a
8 lot of rooftop decks. So I see a neighbor
9 down on 9th and U, The Brixton or what's the--
10 one of those and they went from a more open
11 enclosure to a glass enclosure.

12 And I said gosh, is that -- can we
13 do that?

14 CHAIRPERSON MILLER: Right.

15 MR. KAMAL ALI: Does that count
16 against anything? You know, I'm not, again,
17 the best interpreter of the codes. I just go
18 to the professionals and say let's mitigate
19 the sound as much as we can.

20 CHAIRPERSON MILLER: Okay.
21 Anybody else? Okay. Any questions on Board
22 questions?

1 MR. KLINE: Yes, thank you.

2 CHAIRPERSON MILLER: Okay.

3 REDIRECT EXAMINATION

4 MR. KLINE: Mr. Ali, in terms of
5 your discussion about how many people on the
6 rooftop area, you have tables planned for up
7 there, correct?

8 MR. KAMAL ALI: Yes.

9 MR. KLINE: And that is
10 represented on Exhibit 8.

11 MR. KAMAL ALI: Okay.

12 MR. KLINE: Don't you have in
13 front of you?

14 MR. KAMAL ALI: Okay.

15 MR. KLINE: Is that correct?

16 MR. KAMAL ALI: Yes, sir.

17 MR. KLINE: All right. You don't
18 have any plans to move those tables to
19 accommodate more people, do you?

20 MR. KAMAL ALI: No.

21 MR. KLINE: In terms of the style
22 of your restaurant, the style of the

1 restaurant that you currently run, is it a
2 place where people are packed elbow-to-elbow
3 around the existing tables that are there?

4 MR. KAMAL ALI: No. We don't
5 generally operate that type of place. And,
6 you know, in our opinion it's not great for
7 business. It's not -- you know, we just don't
8 particularly like it. We just -- you know, we
9 don't want the -- you know, every 21 year-old
10 college crowd, you know, elbow-to-elbow, you
11 know, pissy drunk. That's not our crowd. We
12 have diners. We want people having, you know,
13 a cocktail with their meals and enjoying their
14 atmosphere.

15 MR. KLINE: So is the rooftop
16 primarily intended to accommodate dining?

17 MR. KAMAL ALI: Yes.

18 MR. KLINE: And is that an
19 experience that necessarily operationally and
20 practically limits how many people are going
21 to be up there?

22 MR. KAMAL ALI: Yes.

1 MR. KLINE: Okay. So I mean, in
2 terms of the number, it's not as if like some
3 of the -- not to disparage any place, but some
4 of the rooftops in town where it is a bar and
5 people are standing wall-to-wall, that's not
6 the concept is it?

7 MR. KAMAL ALI: That's correct,
8 that's not our concept, otherwise, we wouldn't
9 have any tables and chairs up there. It would
10 be a standing concept. That's not our
11 concept.

12 MR. KLINE: Okay. And it's not
13 your intention to move these tables and chairs
14 to accommodate?

15 MR. KAMAL ALI: It is not. And we
16 have a canopy that goes directly over them to
17 protect them during the weather as well. So,
18 you know, it's meant for them for year around
19 use. It's not meant as a -- it's meant for
20 dining for year around use.

21 MR. KLINE: And in terms of you
22 talked about you see this as an iterative

1 process in terms of determining how best to
2 deal with the sound and what the noise might
3 be when the building is built. Is it -- it's
4 your plan to be very practical and get a crowd
5 of people up there, whether they be neighbors
6 or other people, and work with the people in
7 the neighborhood and see what the noise levels
8 are before you get open?

9 MR. KAMAL ALI: Yes, sir.

10 MR. KLINE: All right.

11 MR. KAMAL ALI: That would be
12 right.

13 MR. KLINE: And you pledge to do
14 that?

15 MR. KAMAL ALI: Yes, sir. We will
16 get a sound person up there as well to help
17 with that.

18 MR. KLINE: Okay. Great. Thank
19 you. That's all I have.

20 MR. WILLIAMS: I have just a
21 couple of quick clarifying questions. Before,
22 just respectfully, can I get a time check for

1 where we stand? It's 4:00 and the ANC is
2 losing witnesses as we speak.

3 CHAIRPERSON MILLER: Oh, you are?
4 Okay. Mr. Jones?

5 MEMBER JONES: The licensee has 32
6 minutes. The protestants have 68 minutes.

7 MR. WILLIAMS: Okay.

8 MEMBER JONES: 37 and 68.

9 MR. WILLIAMS: Thank you.

10 CHAIRPERSON MILLER: But you can
11 bring to our attention if you are really going
12 to lose a witness and then Mr. Kline might be
13 agreeable to going out of order. If we are
14 still all right, it's better to go in order if
15 we are all right.

16 MR. WILLIAMS: We do have at least
17 one witness. I can -- it's actually two, but
18 I think I can have one testify that needs to
19 leave like immediately or as soon as humanly
20 possible. I can do my clarifying questions.
21 Do you have any more witnesses after this?

22 MR. KLINE: No, I think we are

1 good.

2 MR. WILLIAMS: Oh, this might work
3 out.

4 CHAIRPERSON MILLER: Oh, good. We
5 are finished with --

6 MR. WILLIAMS: Perfect, okay.

7 CHAIRPERSON MILLER: Okay.

8 RECROSS-EXAMINATION

9 MR. WILLIAMS: So real quick, Mr.
10 Ali --

11 CHAIRPERSON MILLER: Okay.

12 MR. WILLIAMS: -- so I can get to
13 my witnesses, when you talked to one or more
14 neighbors and they were generally in support
15 of the rooftop deck, did you tell them that --
16 the hours that you had proposed in your
17 application for a liquor license?

18 MR. KAMAL ALI: I don't think I
19 said that they were in favor of the rooftop
20 deck. I said that I talked to one or more
21 neighbors about our concept in general.

22 MR. WILLIAMS: Okay. And did you

1 tell them --

2 MR. KAMAL ALI: And they did not
3 support it.

4 MR. WILLIAMS: -- of your intent
5 to --

6 MR. KAMAL ALI: No. We didn't go
7 into a lot of specifics --

8 MR. WILLIAMS: Okay.

9 MR. KAMAL ALI: -- about the decks
10 or the patios or the hours or anything in
11 particular.

12 MR. WILLIAMS: All right. And
13 just real quickly, we talked about the layout
14 on Exhibit 8. There is a bar up on the --

15 MR. KAMAL ALI: Certainly.

16 MR. WILLIAMS: -- rooftop deck.

17 MR. KAMAL ALI: Yes, sir.

18 MR. WILLIAMS: And there is space
19 for people to -- who are not seated to be
20 standing. There is that space over to the
21 left, that open dining/lounge. Is that an
22 area where people could -- can be?

1 MR. KAMAL ALI: It is. That's an
2 open air area.

3 MR. WILLIAMS: That's an open air
4 area?

5 MR. KAMAL ALI: That's an open air
6 area. Again, our limits are sometimes based
7 on what we have to do, not what we want to do.

8 MR. WILLIAMS: Sure.

9 MR. KAMAL ALI: So if I could put
10 tables and chairs over there, I'm not sure off
11 the top of my head about our maximum seating.

12 MR. WILLIAMS: Okay.

13 MR. KAMAL ALI: But we certainly
14 are not against putting tables over there as
15 well. It's not created that way for any
16 particular reason.

17 MR. WILLIAMS: And in the --

18 MR. KAMAL ALI: That I know of.

19 MR. WILLIAMS: -- area immediately
20 down based on the orientation of this exhibit
21 from the bar is another area where people
22 could be standing and having drinks at the bar

1 and standing around there. Is that correct?

2 MR. KAMAL ALI: Where? We have a
3 table there?

4 MR. WILLIAMS: Yes.

5 MR. KAMAL ALI: Yes, a long table
6 or seated. I mean, I envision it to be stools
7 tucked under there if, again, we are allowed
8 to by our seating requirements.

9 MR. WILLIAMS: And you are
10 proposing 28 seats based on the count here on
11 this exhibit. Is that correct?

12 MR. HOLMES: Plus the bar.

13 MR. WILLIAMS: Plus the bar, of
14 course. This is seats for actually tables.

15 MR. KAMAL ALI: On Exhibit No. 8?

16 MR. WILLIAMS: Yes.

17 MR. KAMAL ALI: I don't count 28.
18 if you say so.

19 MR. WILLIAMS: Is that including
20 the bar? We're counting 28.

21 MR. KAMAL ALI: I see 22.

22 MR. WILLIAMS: Okay. Well --

1 MR. KAMAL ALI: Plus the bar is
2 what I see. If I'm counting right.

3 MR. WILLIAMS: All right. Well,
4 the exhibit -- we can let the exhibit speak
5 for itself. And just the last question.
6 Ben's Chili Bowl is a pretty popular
7 destination. Is it not?

8 MR. KAMAL ALI: It certainly is.

9 MR. WILLIAMS: Is it fair to say
10 that on a pretty regular basis you have tour
11 buses full of people pulling up to come to
12 your establishment?

13 MR. KAMAL ALI: Because we -- on a
14 fairly regular basis. Seasonally more so,
15 because we have the back room that can
16 accommodate them.

17 MR. WILLIAMS: Would you expect
18 tour buses to be pulling up to the H Street
19 location once it opens?

20 MR. KAMAL ALI: No, because we
21 don't have that -- we wouldn't book them,
22 because we don't have the space for them in

1 that area.

2 MR. WILLIAMS: So you only have
3 tour buses come to the current location when
4 they are booked ahead of time? You don't ever
5 have buses pull up at --

6 MR. KAMAL ALI: 95 percent would
7 be. I mean, if they pull up, I can't make
8 them not pull up. But that's not how it
9 normally happens. It happens because we have
10 booked tour buses, because we have a back room
11 that we built specifically to hold about 60
12 people.

13 MR. WILLIAMS: All right.

14 MR. KAMAL ALI: It's about the
15 size of a tour bus.

16 MR. WILLIAMS: And finally, Mr.
17 Ali, you said that, you know, moving forward
18 you would be flexible. And, you know, one of
19 the things you were considering is you would,
20 you know, if you needed to work it out with
21 the neighbors, restrict your hours.

22 MR. KAMAL ALI: Yes, sir.

1 MR. WILLIAMS: But you earlier
2 said that if your hours were restricted, it
3 wouldn't be worthwhile for this business. How
4 do you explain that?

5 MR. KAMAL ALI: Well, I explain it
6 by, you know, that's a tough question to say
7 is it worth it or is it not worth it. What
8 decision would you make. I mean, we are in it
9 now. We are going to do the best we can to
10 make it work, no matter what. So until I get
11 it in and find out all the metrics to it and
12 what the pattern is and do I get more sales
13 than I expect or less, you know, again, you
14 have to be fluid with the business and there
15 is no one answer to it. Unless you're making
16 the decision ahead of time --

17 MR. WILLIAMS: Right.

18 MR. KAMAL ALI: -- there is no one
19 answer.

20 MR. WILLIAMS: And do you expect
21 the sidewalk cafe to be fully operational and
22 full of patrons year round, including the

1 winter?

2 MR. KAMAL ALI: Again, I can't
3 speak to what the patrons will do. It depends
4 on, you know, whether -- it depends on how
5 comfortable they are. It depends on the
6 weather. It depends on, you know, some
7 various things. So it's very hard to
8 determine. Again, I have never run that
9 before, so I really don't -- I'm not -- I
10 don't know what I can say.

11 MR. WILLIAMS: Thank you.

12 MR. KAMAL ALI: Anything else?

13 CHAIRPERSON MILLER: I think
14 that's it. Thank you very much.

15 MR. KAMAL ALI: You're welcome.

16 CHAIRPERSON MILLER: So we are
17 ready for the ANC case when you are ready to
18 go.

19 MR. KLINE: I beg the Board's
20 indulgence.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: Yes, the applicant

1 does rest. Thank you.

2 CHAIRPERSON MILLER: Okay. Thank
3 you.

4 MR. WILLIAMS: The protestant
5 first would like to call Daniel Goldburt.

6 CHAIRPERSON MILLER: Okay. I'm
7 going to swear you in.

8 Whereupon,

9 DANIEL GOLDBURT
10 was called as a witness by Counsel for the
11 Protestant, and having been first duly sworn,
12 assumed the witness stand and was examined and
13 testified as follows:

14 CHAIRPERSON MILLER: All right.
15 Thank you.

16 DIRECT EXAMINATION

17 MR. WILLIAMS: Hi, Mr. Goldburt.
18 Can you state your name for the record,
19 please?

20 MR. GOLDBURT: Daniel Goldburt.

21 MR. WILLIAMS: Can you spell that
22 last name?

1 MR. GOLDBURT: G-O-L-D-B-U-R-T.

2 MR. WILLIAMS: And where do you
3 currently reside?

4 MR. GOLDBURT: 723 10th Street,
5 N.E.

6 MR. WILLIAMS: And is that on the
7 same block as the proposed Ben's Chili Bowl
8 and Ben's Upstairs?

9 MR. GOLDBURT: Yes.

10 MR. WILLIAMS: Okay. Are you
11 aware of the current plans for Ben's Chili
12 Bowl and Ben's Upstairs?

13 MR. GOLDBURT: Yes, absolutely.

14 MR. WILLIAMS: And are you aware
15 of their plans for outdoor space hours?

16 MR. GOLDBURT: Yes, I know they --
17 I heard 3:00 a.m. on the weekends and 2:00
18 a.m. during the weekdays.

19 MR. WILLIAMS: Do you have
20 concerns about the hours that Ben's Chili Bowl
21 is requesting?

22 MR. GOLDBURT: Yeah.

1 MR. WILLIAMS: Can you explain
2 what those are?

3 MR. GOLDBURT: Absolutely. Yeah,
4 my main concern is the noise. I live three
5 row houses away from Ben's Chili Bowl, that's
6 about 65 feet. There are three bay row
7 houses. I live 65 feet from the sidewalk
8 cafe. And I have separate noise concerns
9 about the sidewalk cafe and the rooftop bar.

10 The sidewalk cafe, my wife and I,
11 our bedroom is on -- is the -- right on the
12 street side of our row house. And today,
13 typically, there will be a spike in noise
14 around shortly after 11:00 and shortly after
15 midnight on the weekends. So being woken up
16 from the activity on H Street is a general
17 concern. But we knew that when we moved in.

18 My concern with Ben's Chili Bowl's
19 hours is that we will be woken up when we are
20 now after 11:00 and then again after 2:00 or
21 3:00. So we will be woken up twice.

22 And then with the rooftop hours,

1 we have a 6 month-old baby and his nursery is
2 in the back of the row house upstairs. So we
3 try to mitigate it, put him in the quietest
4 part of the building, but, of course, if there
5 is music up on the rooftop and if it's open
6 until 2:00 and 3:00 a.m., there is not a lot
7 we can do to keep him sleeping. Even today,
8 there is not a lot we can do to keep him
9 sleeping. Anyway, but it will be much harder
10 to live there with a child.

11 MR. WILLIAMS: Mr. Goldburt, did
12 you have the opportunity to discuss with your
13 neighbors on the block with respect to this
14 coming establishment?

15 MR. GOLDBURT: Absolutely, yeah.
16 I mean, we are close with our neighbors to the
17 north. We talked to Jameson and Taron, that's
18 the immediate row house to the north and then
19 Leslie on Kendrick Meek, one row house up.
20 And we talked extensively also with Mike and
21 Marie Knight before they moved. And I know
22 they had a lot of concerns.

1 It's true that they got a
2 promotion to -- in New York and they left, but
3 when we asked them would you consider renting
4 the place instead of selling it, they said it
5 would be hard to rent because of Ben's Chili
6 Bowl. So that's why they put it up on the
7 market.

8 MR. WILLIAMS: And the people you
9 are speaking about just then, those are the
10 people who owned the -- who previously owned
11 the row house immediately south of Ben's Chili
12 Bowl?

13 MR. GOLDBURT: Yes.

14 MR. WILLIAMS: Okay. All right.
15 Have you spoken to any neighbors on your block
16 who are in support of the request -- Ben's
17 request to have their outdoor spaces open
18 until 2:00 a.m. on weeknights and 3:00 a.m. on
19 weekends?

20 MR. GOLDBURT: I think everybody I
21 have spoke to is in support of Ben's Chili
22 Bowl, but not in support of those extended

1 hours outside. And we live in this
2 neighborhood. We understand that it's mixed-
3 use and we welcome the H Street, you know,
4 energy, but as long as that is contained
5 indoors and doesn't directly affect us, you
6 know, that's the expectation of the neighbors
7 that I have talked to.

8 And if I could close by saying,
9 you know, our concern. We have no reason to
10 doubt the veracity of the Ali brothers that
11 they want to be good neighbors, but why go
12 through this process of putting people on the
13 roof deck and listening to the noise? That
14 seems overly complicated when the neighborhood
15 has already decided as a policy that it is
16 11:00 and midnight.

17 You know, that's what the
18 neighbors want and that's what we tell the ANC
19 and that's what we expect in our neighborhood.
20 And I don't -- the concern is that the
21 neighborhood will lose control of that one
22 piece that we expect.

1 MR. WILLIAMS: Thank you, Mr.
2 Goldburt.

3 MR. GOLDBURT: Okay.

4 MR. WILLIAMS: I don't have any
5 more questions.

6 CHAIRPERSON MILLER: Cross?

7 CROSS-EXAMINATION

8 MR. KLINE: Mr. Goldburt, do you
9 enjoy going to outside eating and drinking
10 areas, rooftops or sidewalk cafes, as the case
11 may be?

12 MR. GOLDBURT: I did before we had
13 a son, yes.

14 MR. KLINE: Okay. Understood. So
15 you did before you had a son?

16 MR. GOLDBURT: I enjoy it. I
17 would enjoy it.

18 MR. KLINE: Okay.

19 MR. GOLDBURT: Yeah.

20 MR. KLINE: And before you had a
21 son and you did that, did you enjoy doing that
22 at later hours?

1 MR. GOLDBURT: What do you mean by
2 later? How late?

3 MR. KLINE: Oh, after midnight on
4 the weekends.

5 MR. GOLDBURT: I would say --

6 MR. WILLIAMS: I would object to
7 the relevance of this.

8 MR. KLINE: Well, I think it's
9 quite relevant.

10 MR. GOLDBURT: I have not been out
11 after midnight --

12 CHAIRPERSON MILLER: Overruled.

13 MR. GOLDBURT: -- since college.

14 MR. KLINE: Well --

15 MR. GOLDBURT: I mean, given --
16 there are exceptions, but I don't generally
17 stay out past 11:30.

18 MR. KLINE: Okay. But you have
19 friends that like to stay out past 11:30?

20 MR. GOLDBURT: I have a couple.

21 MR. WILLIAMS: I'm going to object
22 to this as well.

1 MR. GOLDBURT: Yes.

2 MR. WILLIAMS: I mean --

3 MR. GOLDBURT: Yes. I know

4 people --

5 MR. WILLIAMS: We can stipulate.

6 MR. GOLDBURT: -- that stay out at
7 11:00. Well, where is this going?

8 MR. KLINE: We have a whole lot of
9 testimony about what everybody wants in the
10 neighborhood and I'm trying to explore that
11 further.

12 CHAIRPERSON MILLER: Okay.

13 MR. KLINE: I mean, we have a
14 blanket well, this is what everybody wants.
15 But it seems to me that that door has been
16 opened and I don't know why I can't --

17 CHAIRPERSON MILLER: Okay. Go
18 ahead.

19 MR. KLINE: -- explore further.

20 CHAIRPERSON MILLER: Go ahead.

21 MR. KLINE: So where were we? So
22 your friends don't go out late? Is that what

1 I'm hearing?

2 MR. GOLDBURT: My friends in New
3 York that I know go out very late.

4 MR. KLINE: Okay. But not in the
5 District of Columbia?

6 MR. GOLDBURT: Not my neighbors,
7 no.

8 MR. KLINE: I'm not asking about
9 your neighbors. I'm asking about --

10 MR. GOLDBURT: Not --

11 MR. KLINE: -- your friends, which
12 may be only the same thing.

13 MR. GOLDBURT: I have friends in
14 the District of Columbia that go out late.

15 MR. KLINE: All right. And they
16 like to go out late to the outside seating
17 areas, whether they be rooftop or sidewalk
18 cafes?

19 MR. GOLDBURT: I can't speak to
20 their exact preferences.

21 MR. KLINE: Okay. Do you believe
22 that there should be opportunities for people

1 to be outside dining and drinking in outdoor
2 spaces?

3 MR. GOLDBURT: Yes.

4 MR. KLINE: Okay. And that there
5 are neighborhoods where that is appropriate,
6 correct?

7 MR. GOLDBURT: Yes.

8 MR. KLINE: Okay. And you live
9 right off of H Street, N.E., correct?

10 MR. GOLDBURT: Yes.

11 MR. KLINE: And it's a major
12 commercial thoroughfare, correct?

13 MR. GOLDBURT: Yes.

14 MR. KLINE: Where we are soon
15 going to have the first trolley being
16 reestablished in the District of Columbia.

17 MR. GOLDBURT: Yes.

18 MR. KLINE: So it would seem to be
19 a vibrant core where friends, like the ones
20 you have spoken of, might want to enjoy an
21 opportunity to be outside drinking and eating
22 after midnight, correct?

1 MR. GOLDBURT: I don't object to
2 them going out and enjoying their time in
3 outdoor spaces until 11:00 -- until a
4 reasonable hour. In other neighborhoods, if
5 they -- they can do that. In my neighborhood,
6 where I can control the things I can control,
7 I know I live on H Street. My baby goes to
8 sleep at 6:00 p.m.

9 I'm not saying that they should
10 shut down outdoor operations at 6:00 p.m. I'm
11 saying they should shut down operations when
12 everybody else in the -- when most other
13 establishments on H Street shut down
14 operations, because that's what the community
15 has asked for. That has been their policy and
16 that's the expectation before I moved in and
17 since I have moved in.

18 MR. KLINE: Is it your belief that
19 the neighborhood gets to decide what the
20 regulations are in your neighborhood for the
21 service of alcohol?

22 MR. GOLDBURT: I believe that we

1 have -- no, of course we don't have -- no.
2 No, I know we do not decide, but we have a
3 strong community who is represented by the ANC
4 that I have been active in and we have a
5 strong voice.

6 MR. KLINE: Okay.

7 MR. GOLDBURT: And if
8 establishments come to H Street and claim to
9 be friendly to the community, they listen to
10 that voice.

11 MR. KLINE: Oh, so is it your
12 contention that you have a separate set of
13 rules for people who want to operate in the H
14 Street Corridor?

15 MR. GOLDBURT: Me being myself
16 particularly?

17 MR. KLINE: Well, your viewpoint
18 in terms of businesses that come to H Street
19 have to do it our way or they shouldn't come
20 here. Is that what I'm hearing you testify?

21 MR. GOLDBURT: I'm saying
22 businesses who want to be good neighbors

1 should work with the ANC and, yeah, should
2 follow the guidelines that they have
3 established as policy for everyone.

4 MR. KLINE: Which in effect is a
5 separate set of rules layered upon the
6 Alcoholic Beverage Code and Regulations,
7 correct?

8 MR. GOLDBURT: I think I'm out of
9 my depth here.

10 MR. KLINE: Okay. I'll withdraw.
11 Thank you.

12 CHAIRPERSON MILLER: Okay.

13 MR. GOLDBURT: Okay.

14 CHAIRPERSON MILLER: Board
15 questions? Okay. Mr. Goldburt, I want to ask
16 you, are you concerned about the noise from
17 the different outdoor seating areas?

18 MR. GOLDBURT: Yes.

19 CHAIRPERSON MILLER: Specifically.
20 So like at 11:00 -- at 1:00 in the morning,
21 you are concerned that you will hear noise
22 from the outdoor cafe and the rooftop, right?

1 MR. GOLDBURT: Yes.

2 CHAIRPERSON MILLER: Okay. So and
3 as Mr. Ali said, we don't necessarily know how
4 much noise is going to be at each place, but
5 would you say that it's bound to be different,
6 because the rooftop is further away from you
7 than the cafe?

8 MR. GOLDBURT: Yes. But in
9 addition to the ongoing noise from operations,
10 the noise from -- the noise on the street
11 level at least that I'm concerned about is
12 when establishments close, then those patrons
13 leave and go get their cars and there is
14 usually a spike of people talking loudly --

15 CHAIRPERSON MILLER: Right.

16 MR. GOLDBURT: -- outside of our
17 window.

18 CHAIRPERSON MILLER: Right. That
19 was going to be my other question. So there
20 are two different concerns.

21 MR. GOLDBURT: Yes.

22 CHAIRPERSON MILLER: One is -- and

1 is it when people actually leave as opposed to
2 throughout those hours?

3 MR. GOLDBURT: That might -- I
4 think my primary concern is when they leave,
5 that spike directly outside of our windows.

6 CHAIRPERSON MILLER: Right. It's
7 the whole --

8 MR. GOLDBURT: For the sidewalk
9 cafe.

10 CHAIRPERSON MILLER: When the
11 business closes, they come out on the street.

12 MR. GOLDBURT: Yes.

13 CHAIRPERSON MILLER: Now, are
14 there other establishments in the area that
15 now have later operating hours, so those
16 patrons are coming out on the street later or
17 you don't hear them?

18 MR. GOLDBURT: There are.

19 CHAIRPERSON MILLER: Okay. There
20 are.

21 MR. GOLDBURT: There are other
22 establishments that have later operating hours

1 inside, yes.

2 CHAIRPERSON MILLER: Okay.

3 Inside. But it's the same concept, because
4 it's the closing and then they come out on the
5 street that makes the noise.

6 MR. GOLDBURT: Yes.

7 CHAIRPERSON MILLER: Right? That
8 type of noise. Okay. So do you know which
9 ones those are right now?

10 MR. GOLDBURT: Which ones which
11 are?

12 CHAIRPERSON MILLER: Which
13 establishments might have the late hours right
14 now? I mean, are they bothering you? Are
15 they --

16 MR. GOLDBURT: I can't identify
17 exactly which ones have late hours.

18 CHAIRPERSON MILLER: Okay.

19 MR. GOLDBURT: Actually, across on
20 H Street the bars that have late hours are the
21 Little Miss Whiskey's that I specifically
22 identify them because they -- there are a

1 large amount of patrons that come outside to
2 smoke. And so that will bother us.

3 CHAIRPERSON MILLER: So how far
4 away are they from you?

5 MR. GOLDBURT: They are one block
6 away on H Street.

7 CHAIRPERSON MILLER: Okay. So
8 when you testified you said you hear the spike
9 in noise like at 11:00 and 12:00, at the hours
10 that are -- sound like they are predominant in
11 your neighborhood for establishments that
12 serve alcohol, right?

13 MR. GOLDBURT: Yes.

14 CHAIRPERSON MILLER: Okay. Do you
15 hear the other establishments, the people
16 coming from the other establishments that are
17 the later hours?

18 MR. GOLDBURT: We will hear noise
19 throughout the night. So, yes, sometimes I
20 will hear those patrons --

21 CHAIRPERSON MILLER: Okay.

22 MR. GOLDBURT: -- when they leave.

1 CHAIRPERSON MILLER: And is it
2 that you hear the 11:00 and 12:00 more because
3 there are more coming out at that time?

4 MR. GOLDBURT: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MR. GOLDBURT: I would imagine. I
7 would surmise.

8 CHAIRPERSON MILLER: Okay. Okay.
9 This is my last question. Does it matter
10 whether those establishments be it 11:00 or
11 12:00 or 1:00 or whatever, are you along any--
12 some route that people would go by to get to
13 the Metro? No, they don't have Metro there.
14 I guess to get to -- I mean, are you along a
15 route?

16 MR. GOLDBURT: No.

17 CHAIRPERSON MILLER: No.

18 MR. GOLDBURT: Just parking.

19 CHAIRPERSON MILLER: Parking.
20 It's just like parking within the radius of
21 the establishment.

22 MR. GOLDBURT: Right, yeah.

1 CHAIRPERSON MILLER: Okay.

2 MR. GOLDBURT: I mean your
3 question, does it matter 11:00 or 12:00, I
4 just want consistency, so it's at least once
5 at night.

6 CHAIRPERSON MILLER: Um-hum, okay.
7 All right. Any other questions? Any follow-
8 up questions? All right. Thank you very
9 much.

10 MR. KLINE: I have.

11 CHAIRPERSON MILLER: Yes, okay.

12 RECROSS-EXAMINATION

13 MR. KLINE: So there are a number
14 of establishments in your neighborhood that
15 close at 2:00 and 3:00, correct?

16 MR. GOLDBURT: Yes.

17 MR. KLINE: Okay. And is it your
18 contention that some how people coming from a
19 roof deck or a sidewalk cafe are somehow
20 noisier than the people coming from the
21 interior of the establishment?

22 MR. GOLDBURT: My contention is

1 that I hear a spike shortly after 11:00 on
2 weekdays and shortly after 12:00 on weekends.

3 MR. KLINE: All right. So if this
4 establishment is required to close its rooftop
5 area and it's sidewalk cafe at 11:00 and
6 12:00, that's only going to exacerbate that
7 spike, correct?

8 MR. GOLDBURT: My concern is more
9 that there is one spike. I can live with
10 that. I expect that. I would rather the one
11 spike be worse than having two, three spikes
12 and be woken up multiple times.

13 MR. KLINE: Okay. You concede
14 that there are already people leaving at 2:00
15 and 3:00, correct?

16 MR. GOLDBURT: People leave, yes.
17 They leave at -- whenever they want to leave.

18 MR. KLINE: So you don't have any
19 way of knowing that having the additional
20 people represented by the sidewalk cafe and/or
21 the rooftop are going to create any different
22 problem at 2:00 and 3:00, do you?

1 MR. GOLDBURT: Can you repeat the
2 question?

3 MR. KLINE: You stated that right
4 now you hear people leave, presumably, the
5 outside seating areas at 11:00 and 12:00,
6 correct?

7 MR. GOLDBURT: Yes.

8 MR. KLINE: And that causes
9 disruption, disturbs you and your family?

10 MR. GOLDBURT: Yes.

11 MR. KLINE: Correct? But you also
12 concede that it's the people leaving. It's
13 not their presence on the sidewalk cafe or the
14 rooftop area, as the case may be. Is that
15 right?

16 MR. GOLDBURT: Yes.

17 MR. KLINE: But you also have
18 people that are leaving the interiors of these
19 establishments at 2:00 a.m. and 3:00 a.m.,
20 correct?

21 MR. GOLDBURT: Yes.

22 MR. KLINE: But those don't

1 disturb you?

2 MR. GOLDBURT: I don't notice as
3 big a spike from those people, no.

4 MR. KLINE: Okay. So perhaps you
5 are sleeping more soundly at 2:00 and at 3:00?

6 MR. GOLDBURT: I mean --

7 MR. KLINE: Than when the people
8 leave at 11:00 and 12:00?

9 MR. GOLDBURT: -- if I had --
10 yeah, if I had to guess, it could be that.
11 Maybe people leave at a trickle, so there is
12 less left that late. And there are more
13 people there at 11:00 and 12:00 in those
14 outdoor areas that people enjoy close, that's
15 what drives the mass exodus.

16 At 2:00 and 3:00, there is maybe a
17 few people left. If you ask me to surmise,
18 that would be why I don't have -- why I don't
19 hear such a spike at 2:00 or 3:00.

20 MR. KLINE: So it's reasonable to
21 assume that this -- if this establishment has
22 later hours for the cafe and for the rooftop

1 area, that they would trickle out just like
2 the people do from the interiors of the
3 current establishments, correct?

4 MR. GOLDBURT: Possibly.

5 MR. KLINE: Okay. Thank you. No
6 further questions.

7 REDIRECT EXAMINATION

8 MR. WILLIAMS: Mr. Goldburt, are
9 there currently any sidewalk cafes or rooftop
10 decks immediately adjacent to your lot?

11 MR. GOLDBURT: No.

12 MR. WILLIAMS: If Ben's Chili Bowl
13 and Ben's Upstairs were to have sidewalk cafe
14 and rooftop deck hours that extended to 2:00
15 a.m. and 3:00 a.m., would that mean that there
16 would be people on these outdoor spaces
17 directly adjacent to your block until 2:00
18 a.m. and 3:00 a.m.?

19 MR. GOLDBURT: Yes.

20 MR. WILLIAMS: Is that a concern
21 for you?

22 MR. GOLDBURT: Yes.

1 MR. WILLIAMS: Ignoring the fact
2 of when people leave the establishment or when
3 people will be going out onto the street, is
4 the fact of people being on these places up
5 until 2:00 a.m. and 3:00 a.m. a problem?

6 MR. GOLDBURT: Yes. As I said, I
7 have two separate concerns. The sidewalk
8 cafe, I know there is going to be noise, but
9 in fairness to everyone else, and every other
10 business, I'm -- my -- I'm not going to
11 contend with the hours up to 11:00 and up to
12 12:00.

13 I'm concerned with those hours,
14 but on the sidewalk cafe, my concern is when
15 people leave.

16 Now, on the rooftop 2:00 and 3:00,
17 as I said, that just constant noise,
18 especially if there is music, that's just
19 going to make it impossible for my baby to
20 sleep.

21 MR. WILLIAMS: So your concerns
22 with the rooftop are unrelated to when people

1 are leaving. Your concerns with the rooftop
2 are with the fact that there are people on
3 this outdoor space that directly project --
4 and the noise directly projects into your
5 child's bedroom?

6 MR. GOLDBURT: Yes.

7 MR. WILLIAMS: And that's -- and
8 you are concerned with the potential of that
9 happening all the way up until 2:00 a.m. on
10 weeknights and 3:00 a.m. on weekends?

11 MR. GOLDBURT: Yes. I would like
12 to limit that if possible.

13 MR. WILLIAMS: Thank you.

14 CHAIRPERSON MILLER: Okay. Thank
15 you very much.

16 MR. GOLDBURT: Okay. Thank you.

17 (Whereupon, witness was excused.)

18 MR. WILLIAMS: The next witness is
19 Leslie Meek.

20 CHAIRPERSON MILLER: Hi.

21 Whereupon,

22 LESLIE MEEK

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

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 DIRECT EXAMINATION

8 MR. WILLIAMS: Good afternoon, Ms.
9 Meek.

10 MS. MEEK: Good afternoon.

11 MR. WILLIAMS: Thank you for your
12 patience.

13 MS. MEEK: Sure.

14 MR. WILLIAMS: Can you state your
15 name and spell it and give your address for
16 the record, please?

17 MS. MEEK: My name is Leslie Meek.

18 MR. WILLIAMS: Can you talk
19 towards this, so we can hear you good?

20 MS. MEEK: L-E-S-L-I-E M-E-E-K.
21 My address is 727 10th Street, N.E., and I
22 have lived there for over 10 years.

1 MEMBER SILVERSTEIN: Can you speak
2 up and face us?

3 MS. MEEK: Oh, you can't hear me?
4 I can speak up, no problem.

5 CHAIRPERSON MILLER: Okay, great.

6 MEMBER SILVERSTEIN: Yes, we want
7 to hear you.

8 MR. WILLIAMS: And you said you
9 lived there for 10 years. Is that correct?

10 MS. MEEK: Yes.

11 MR. WILLIAMS: And what is your
12 proximity to the proposed location of Ben's
13 Chili Bowl and Ben's Upstairs?

14 MS. MEEK: Well, they bought the
15 house that is attached to my house. So I am
16 seven paces away from the proposed cafe, the
17 sidewalk cafe.

18 MR. WILLIAMS: So just --

19 CHAIRPERSON MILLER: Okay.

20 MR. WILLIAMS: -- for the -- for
21 everyone's reference, if we are looking at
22 Exhibit 2 --

1 MS. MEEK: Yeah.

2 MR. WILLIAMS: -- is your house
3 the furthest right house?

4 MS. MEEK: The gray shaded house.
5 The last little townhouse --

6 CHAIRPERSON MILLER: Right.

7 MS. MEEK: -- depicted on the
8 picture is my house.

9 CHAIRPERSON MILLER: Great. Okay.

10 MS. MEEK: Okay.

11 MR. WILLIAMS: Thank you. Are you
12 aware -- you have been sitting here all day.
13 Are you aware of what hours they are
14 requesting for their sidewalk cafe and rooftop
15 deck?

16 MS. MEEK: Now I'm aware.

17 MR. WILLIAMS: Okay. And when you
18 say now you are aware, you were not aware
19 previously?

20 MS. MEEK: I was not aware that it
21 was initially 4:00 a.m. and then today reduced
22 to 3:00 a.m. and 2:00 a.m. during the week.

1 And it frightened me when I heard it.

2 MR. WILLIAMS: And why did it
3 frighten you? What are your concerns with
4 those hours?

5 MS. MEEK: In my home, my -- the
6 master bedroom, my bedroom is on the front of
7 the house. And if a person is just walking by
8 having a normal conversation in normal tones,
9 I can hear every word of their conversation.
10 So the thought of a cafe, a sidewalk cafe
11 being there and a rooftop cafe up until such
12 late hours, causes me great concern because it
13 will keep me up in the morning.

14 This is my family home. I have
15 two children, a husband. My daughter has gone
16 off to college, but I'm still raising -- my
17 son is still living there and we need to go to
18 bed at night, get a good night's rest, so that
19 I can go to work, so that my husband can go to
20 work and my child can go to school.

21 There is often times that my son
22 comes out of his bedroom to look to see what

1 the commotion or what the noise or what an
2 argument may be because he hears it in his
3 room. So I understand. While I appreciate,
4 greatly appreciate the efforts that this
5 family has put into their considerations for
6 the noise, there is going to be noise that
7 they just cannot control.

8 There is going to be noise with
9 just the clanking of the plates, with just the
10 glasses, with just people, even if people are
11 on their best behavior, there is going to be
12 noise with the discussions that they may be
13 having. And the proximity of my home, which
14 is my home, and I will have to be subjected to
15 listening to this type of noise.

16 I have lived there for 10 years.
17 I'm well-aware that H Street is a commercial
18 area. It wasn't what it is now 10 years ago
19 when I moved there. And I appreciate the way
20 that it has grown.

21 However, this is my home. And I
22 have to protect my home, my family, my ability

1 to get up in the morning and go to work. And
2 I'm sure that you would not want Ben's Chili
3 Bowl or this type of establishment to be open
4 this late next door to your home.

5 I don't think anyone would want
6 that. So my concern is traffic. My concern
7 is the revelers that cannot be controlled.
8 But my concern is also the noise that will be
9 extended well into the night. It's not fair
10 to those people who have bought their homes
11 and are making a home for themselves and their
12 families.

13 And I don't believe that it is
14 fair to put profit above home. I appreciate
15 profit. I come from a family of business
16 people. We owned several restaurants. I'm
17 sorry. We had our own restaurant and now we
18 rent the property to another restaurant. We
19 have had several. We have several businesses
20 in Brooklyn, New York over 40 years, a bike
21 shop in Brooklyn, New York.

22 So I understand the need to

1 balance that desire to make money and grow
2 your business. But this cafe, the sidewalk
3 cafe wraps around the corner. It is about
4 seven paces from my bedroom window. And I do
5 not anticipate that the barriers that they are
6 talking about, the plants and this wall where
7 there is, you know, another wall that is --
8 that there is no wall, the side of the
9 building that there is no wall, those noises
10 come straight into my bedroom.

11 They go straight into my backyard.
12 When my neighbor, when one of my neighbors
13 opens their door to go, I can hear them if I'm
14 standing in my backyard. I'm -- there was a
15 church next door a doorway from where they are
16 going to build Ben's Chili Bowl. On Sundays,
17 if I'm in my backyard, if my window is open,
18 I can hear the church from my backyard.

19 I am definitely going to hear what
20 is going on in this establishment.

21 My other concern is that
22 especially with the extended hours, is the

1 fact that all of those bars on H Street will
2 be closing and those people who have been
3 drinking, may have been drinking, partying
4 will be looking for somewhere to eat and this
5 is going to be the perfect place for them.

6 That's great for business. It's
7 not great for someone who is trying to
8 establish their home and maintain their home
9 with their children in it.

10 MR. WILLIAMS: Ms. Meek, have you
11 spoken to other neighbors on your block
12 regarding this establishment?

13 MS. MEEK: Yes, I have.

14 MR. WILLIAMS: Do you have any
15 indication that there are any neighbors on
16 your block who are in support of their
17 requested hours for their outdoor spaces?

18 MS. MEEK: No.

19 MR. KLINE: Objection on the
20 grounds of relevance. I let it go to this
21 point, but --

22 CHAIRPERSON MILLER: Well, no.

1 MR. KLINE: -- what the neighbors
2 want or don't want, this hearing is about
3 whether the establishment will have an adverse
4 impact on peace, order and quiet, not a
5 popularity contest.

6 MR. WILLIAMS: And I feel like the
7 neighbors --

8 MR. KLINE: Excuse me.

9 CHAIRPERSON MILLER: Okay.

10 MR. KLINE: Not a popularity
11 contest, as the Board has said in their recent
12 order.

13 CHAIRPERSON MILLER: That's true.
14 I'm going to overrule -- I mean, just ask you
15 asked about friend's opinion, about the other
16 guy and I asked the ANC Commission if she
17 talked to other people. We will take it for--
18 we will give it the weight that it deserves.
19 It's not the witness themselves testifying.
20 But I think it's a fair question. Go ahead.

21 MR. WILLIAMS: So sorry, just to
22 clarify. You -- have you heard from any

1 neighbors on your block who are in support of
2 the hours for the outdoor spaces requested by
3 this establishment?

4 MS. MEEK: No.

5 MR. WILLIAMS: Thank you. I don't
6 have any other questions.

7 CHAIRPERSON MILLER: Board
8 questions? Ms. Meek, I'm very -- oh, Mr.
9 Jones, you have a question?

10 MEMBER JONES: Yes, but you can go
11 ahead.

12 CHAIRPERSON MILLER: Okay. All
13 right. I'm very happy you are here, because
14 when I was looking at the diagram, I was most
15 interested in hearing from you, because you
16 look like you are the most impacted.

17 MS. MEEK: Yes.

18 CHAIRPERSON MILLER: Since the
19 house between you and the new business won't
20 be inhabited by a resident. Okay. So I hear
21 your concerns between Ben's Chili Bowl and you
22 as another house, but that's not going to be

1 occupied by a resident. So you are the close
2 -- it looks like you are the closest resident.

3 MS. MEEK: Yes, I am.

4 CHAIRPERSON MILLER: And so I want
5 to ask you your experience right now where you
6 are living. You hear noise related to traffic
7 from the other bars?

8 MS. MEEK: Oh, definitely.

9 Because individuals will park, especially in
10 the summer months, on our street and when they
11 are coming back to get their cars, they are
12 pretty happy folks. And I use that loosely.
13 I use that term loosely.

14 They are very vocal. I have heard
15 arguments, lover quarrels. I have had
16 intoxicated people in front of my home.

17 CHAIRPERSON MILLER: Okay. Let me
18 ask you this.

19 MS. MEEK: Who doze off.

20 CHAIRPERSON MILLER: Did you -- do
21 you hear it -- we have heard in this hearing
22 that there are some establishments that are

1 open later than 12:00. Do you hear them as
2 well?

3 MS. MEEK: I don't know what
4 establishments I hear. I can tell you --

5 CHAIRPERSON MILLER: And what
6 hours do you hear noise?

7 MS. MEEK: I cannot tell you. I
8 do not -- I don't take note of the time. And
9 it happens so often that it doesn't serve a
10 purpose for me to sit here and say oh, it's
11 now 3:00. I don't know what times. It
12 happens late at night. I have been awakened
13 from my sleep by these noises.

14 CHAIRPERSON MILLER: Okay.
15 Because we often hear about noise from patrons
16 leaving the establishments late at night and
17 walking down the street and, you know, car
18 doors slamming, etcetera.

19 And you talked about, you know, in
20 front of your house with respect to the car
21 doors and stuff. I'm just curious if you ever
22 approached DDOT to change the parking, so that

1 it could just be residential?

2 MS. MEEK: No, I haven't. I have
3 not. I tolerate it. At this point, it is my
4 hope that it's something that remains to --
5 that it's something that can be tolerated in
6 the future, that's why I'm here today, because
7 I want to make sure that my voice is heard and
8 that we try every means to maintain the
9 decorum at least at the level that we have it
10 now.

11 It's not perfect, but you know we
12 have -- you have to have give and take. So I
13 have not, you know, talked to DDOT. I haven't
14 pursued those avenues. I have gone to various
15 local meetings to talk, to express my opinion
16 in the hopes that that works and that that's
17 enough.

18 CHAIRPERSON MILLER: Okay. So you
19 can hear the noise even when your windows are
20 closed?

21 MS. MEEK: Oh, yeah.

22 CHAIRPERSON MILLER: Okay.

1 MS. MEEK: I don't really open my
2 windows.

3 CHAIRPERSON MILLER: And do you
4 have a different degree of concern between the
5 sidewalk cafe and the rooftop terrace?

6 MS. MEEK: No, because for me and
7 the way that my home is positioned, I'm going
8 to get the noise from both of them no matter
9 what. It's -- from the sidewalk cafe, it's
10 going to come in to my bedroom. From the
11 rooftop, it's -- I'm going to get it no matter
12 what.

13 If I lived a couple of doors down,
14 I might not get the rooftop cafe, it might
15 just be the sidewalk cafe. But where I am and
16 the way that the homes are situated, I'm going
17 to get it all and especially since it is now
18 going to be on a third level, which is going
19 to be higher than my home, it is really just
20 going to come right into my home.

21 And the homes that -- the home
22 that was purchased is not -- it's great that

1 we are calling it a buffer home, but it's not,
2 in my estimation, going to be a buffer home.

3 CHAIRPERSON MILLER: Okay. Thank
4 you.

5 MS. MEEK: What I think -- I'm
6 sorry, if I may?

7 CHAIRPERSON MILLER: Oh, go ahead.
8 All right.

9 MS. MEEK: What I think it will be
10 a buffer for, which I think is very admirable
11 for the Alis, is that they didn't want someone
12 to move into that home and have to suffer the
13 noises of construction and so forth. But in
14 terms of it acting as a buffer for the noise
15 that the other homes will experience, I'm not
16 too sure that that's -- I don't believe that
17 that's -- that it will serve that purpose.

18 CHAIRPERSON MILLER: Okay. Mr.
19 Jones, did you have a question or do you have
20 a time limit?

21 MEMBER JONES: I did have a
22 question.

1 CHAIRPERSON MILLER: Okay. Go
2 ahead.

3 MEMBER JONES: Excuse me. Just to
4 be clear, so you are not opposed to this
5 establishment operating at all?

6 MS. MEEK: I can't be opposed to
7 them wanting to expand their business, because
8 of my background. If I lived in a perfect
9 world, then I would create a nice little
10 bubble where I wouldn't have to hear any of
11 the noises, but I'm willing to have a give and
12 take, but not until 3:00 in the morning not --
13 on weekends and not until 2:00 a.m. through
14 weeknights. I think that that's unreasonable.

15 MEMBER JONES: Understood. Are
16 you in agreement with the 11:00 and 12:00
17 construct that has been presented by --

18 MS. MEEK: I'm willing to work
19 with it.

20 MEMBER JONES: -- the protestant?

21 MS. MEEK: I'm willing to work
22 with that, yes.

1 MEMBER JONES: Okay. Ideally,
2 what would you want?

3 MS. MEEK: Ideally, I would not
4 want an outdoor cafe. I wouldn't want a
5 sidewalk cafe.

6 MEMBER JONES: Okay. So you --

7 MS. MEEK: Ideally.

8 MEMBER JONES: -- are the nearest
9 residence to the proposed operating
10 establishment.

11 MS. MEEK: Yes.

12 MEMBER JONES: And you are
13 indicating that from your standpoint, you are
14 concerned about the sidewalk cafe being
15 operated at all?

16 MS. MEEK: Yes. Ideally, ideally.
17 As someone who understands the nature of
18 business, as someone who does not want to
19 prevent another from pursuing their dreams and
20 their goals, I am willing to say, okay, you
21 know, sidewalk cafe. I'm willing to work with
22 this. I'm willing to even deal with whatever

1 comes along as long as it's within reason.

2 But if you ask me ideally, I would
3 prefer there for not to -- I would prefer that
4 there was not a sidewalk cafe.

5 MEMBER JONES: Do you have any
6 concerns regarding the rooftop in terms of
7 hours?

8 MS. MEEK: Yes, I do.

9 MEMBER JONES: Ideally, what would
10 you like to see?

11 MS. MEEK: Ideally, once again,
12 ideally, it would be great if there wasn't a
13 rooftop cafe. But we have to be fair to a
14 businessman, a business family with goals and
15 dreams. So I'm willing to work with -- work--
16 compromise. But not at 3:00 a.m. and 2:00
17 a.m.

18 MEMBER JONES: Understood. Prior
19 to the activities going on with the
20 construction of this proposed establishment,
21 you indicated that you knew what was there
22 before?

1 MS. MEEK: Yes.

2 MEMBER JONES: What was there
3 before?

4 MS. MEEK: A clothing store.

5 MEMBER JONES: A clothing store.
6 The nature of the operations of the clothing
7 store, did that -- in any way, shape or form,
8 was that something that you felt, witnessed,
9 were disturbed by in any way?

10 MS. MEEK: No.

11 MEMBER JONES: No. The difference
12 between that establishment and that business
13 and the nature of the type of business that is
14 being proposed is what, in your mind?

15 MS. MEEK: The difference?

16 MEMBER JONES: Yes.

17 MS. MEEK: Oh, it's a great
18 difference. There is going to be a much -- in
19 my estimation, there will be a much greater --
20 much more traffic, a different type of
21 cliental, a more vocal cliental, a cliental
22 who will likely be entering the premises

1 intoxicated, a cliental -- I know that the
2 Ben's establishment that will be on the second
3 and third floor, they will likely attract or
4 they are hoping to attract a different type of
5 cliental, a more sophisticated cliental.

6 But with that will come,
7 especially on the rooftop cafe, much more
8 noise, whether it be from glasses clinking or
9 plates rattling or people speaking.

10 MEMBER JONES: Okay.

11 MS. MEEK: So it's a very
12 different establishment.

13 MEMBER JONES: Different business
14 model.

15 MS. MEEK: Yes.

16 MEMBER JONES: And from that
17 standpoint you feel as though it will be more
18 disruptive to your day-to-day life?

19 MS. MEEK: Most definitely.

20 MEMBER JONES: Okay. The
21 individual that was your neighbor, did you
22 have any chance to speak with them or dialogue

1 with them about the possibility of this
 2 establishment coming to fruition? This
 3 establishment being Ben's Next Door -- I mean,
 4 Ben's Upstairs and the Ben's Chili Bowl.
 5 Sorry.

6 MS. MEEK: Yes.

7 MEMBER JONES: You did?

8 MS. MEEK: Yes.

9 MEMBER JONES: Can you briefly
 10 summarize or characterize what their
 11 perspective on the impact they were feeling
 12 was going to be to their lives from the
 13 operation of this business?

14 MS. MEEK: All right. Well, their
 15 windows -- on the front of their home, they
 16 have windows. On the side of their home they
 17 have windows that span the entire side of
 18 their home. The entrance to their home is on
 19 the side of their home which faces the back of
 20 Ben's Chili Bowl.

21 They were concerned with possible
 22 odors. They were concerned with -- definitely

1 with the noise. And they were concerned with
2 the garbage disposal and possible vermin.

3 MEMBER JONES: Did those concerns
4 contribute to them vacating the premises?

5 MS. MEEK: I don't know.

6 MEMBER JONES: You don't know.
7 Did -- were you ever approached by the
8 licensee or the owners of the perspective
9 business about -- were you ever approached in
10 any way, shape or form by the ownership?

11 MS. MEEK: I approached them. I
12 didn't approach the ownership. I approached
13 Mr. White. I saw him talking to my neighbors
14 before they moved and I pulled up in my car
15 and I asked him -- I introduced myself. And
16 I asked him for his card and I asked him for
17 the opportunity to talk with him and he gave
18 me that opportunity.

19 And I had the opportunity to sit
20 down with Mr. White and with Mr. Ali. Mr.
21 Ali's son and his wife at their restaurant
22 here on U Street and I expressed my concerns

1 to them then.

2 MEMBER JONES: Okay. And you had
3 the opportunity. They gave you a voice. Did
4 you feel as though they were embracing your
5 concerns?

6 MS. MEEK: I feel -- I won't say
7 embracing. I feel that they heard me. I feel
8 that they were receptive. But I will tell you
9 that as a business person, coming from a
10 business family, especially when you are
11 starting a brand new business, there are
12 things that you don't know are going to come
13 up.

14 I know that they cannot have a
15 full understanding of what it's like to sit in
16 my bedroom and hear the noise coming off of
17 the street, no matter how well-intended they
18 may be. And no matter how well-intended they
19 may be and how much effort they put into noise
20 control, it will -- it cannot stop the noise.

21 There are certain noises that
22 their business will emanate that they have no

1 control over. Were they responsive? Were
2 they -- did they listen? Yes, they did
3 listen. But what will the outcome be a year
4 from now when no one is listening, when there
5 is no more audience, when certain permits or
6 permissions are already given? I can't rely
7 on that.

8 MEMBER JONES: Understood. Did
9 they offer to buy your house?

10 MS. MEEK: No.

11 MEMBER JONES: No. Do you -- are
12 you aware of the fact that they offered to buy
13 your neighbors' house?

14 MS. MEEK: I was informed, after
15 that neighbor moved out, by another neighbor
16 that the Alis had purchased their home.

17 MEMBER JONES: Okay. And the last
18 question. Did they indicate to you in any
19 way, shape or form how they intended for --
20 intended the house that they bought to be a
21 buffer to you?

22 MS. MEEK: No.

1 MEMBER JONES: The most impacted
2 individual.

3 MS. MEEK: Not -- I'm sorry, let
4 me -- I didn't know that they had purchased
5 the home until my neighbor had told me. I had
6 the first opportunity to speak with Mr. Ali,
7 the son, today and he expressed to me that he
8 thought it would be a buffer today.

9 MEMBER JONES: Today?

10 MS. MEEK: Yeah.

11 MEMBER JONES: Okay. Thank you.
12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Silverstein?

15 MEMBER SILVERSTEIN: Thank you,
16 Ms. Meek. Help me out with this. Let's
17 assume, and this is to get your priorities,
18 that the licensee receives the license. What
19 do you have to have, assuming that they are
20 going to have a rooftop, in order to make your
21 life bearable, okay, tolerable, liveable?
22 Whatever term you want to use.

1 MS. MEEK: What do they have to
2 have?

3 MEMBER SILVERSTEIN: What do you
4 have to have? In terms of hours, conditions,
5 whatever on that rooftop. What's the minimum
6 you got to have?

7 MS. MEEK: Okay. In terms of
8 hours, they are currently -- I believe that
9 the city is currently asking that they close
10 at 11:00 on weeknights and 12:00 on weekends.
11 Do I have that right? Did I get that correct?

12 MR. WILLIAMS: I think it should
13 be --

14 MEMBER JONES: Based on what you
15 know.

16 MEMBER SILVERSTEIN: I'm asking
17 what you know.

18 MEMBER JONES: They can't answer
19 your questions, sorry.

20 MS. MEEK: Okay. You know, I
21 don't -- there are many unknowns here. I
22 don't know what type of -- what volume of

1 business they are going to have. I assume
2 that because it is Ben's Chili Bowl and
3 because even tourists come in to be at Ben's
4 Chili Bowl, that there will be good business
5 there.

6 How -- I don't know if I can
7 imagine how high a third floor will be for
8 Ben's Chili Bowl. Okay. Your question is
9 what do I need.

10 MEMBER SILVERSTEIN: Yes.

11 MS. MEEK: I am willing to work
12 with the 11:00 and 12:00 hours that are
13 proposed.

14 MEMBER SILVERSTEIN: Anything
15 else?

16 MS. MEEK: I would like to -- I
17 would like the attention of the city and I
18 would like there to be some follow-up later on
19 in terms of how it is working.

20 MEMBER SILVERSTEIN: Sound
21 attenuation?

22 MS. MEEK: I'm sorry? What did

1 you say?

2 MEMBER SILVERSTEIN: Any kind of
3 noise attenuation or --

4 MS. MEEK: Whatever resources
5 there are out there to monitor the noise and
6 to have an official means of working with this
7 establishment and with the owners. You know,
8 it is okay. TruOrleans is down the street.
9 They had massive problems. They spoke to the
10 owners several times.

11 Now, I will admit the owners of
12 TruOrleans, I presume -- I don't know who they
13 are in relation to who these owners are.
14 However, working with the city after certain
15 permissions were already granted, the
16 residents were miserable. They were miserable
17 because nothing could be done once the
18 permissions were already granted.

19 So right now, I'm asking for
20 restraint here now and then if necessary,
21 let's revisit it later on, you know, about,
22 okay, you know, this is working. This is

1 fine. We know that the type of cliental has
2 already been established and we know what to
3 expect, let's consider extending.

4 But not -- we don't extend now and
5 then try to pull the horse back into the barn.

6 MEMBER SILVERSTEIN: And what
7 about the sidewalk cafe?

8 MS. MEEK: What about it? What
9 are you asking me?

10 MEMBER SILVERSTEIN: What are your
11 -- what is the -- what do you need to make
12 that liveable? The same things?

13 MS. MEEK: I need to be able to
14 sleep at night. I need to --

15 MEMBER SILVERSTEIN: What are the
16 hours?

17 MS. MEEK: -- get to sleep. How
18 many hours do I sleep at night?

19 MEMBER SILVERSTEIN: No. What are
20 the hours you would need.

21 MS. MEEK: Oh. I am willing to
22 work with 11:00 weeknights and 12:00 weekends.

1 I'm willing to work with that. I think that
2 that's a reasonable time for the owners as
3 well as for me as a resident. I'm willing to
4 work with that, yes.

5 MEMBER SILVERSTEIN: The fact that
6 you are closer than anyone, it would seem like
7 if we make this okay for you, it would be okay
8 for most everybody.

9 MS. MEEK: Well, I hope so.

10 MEMBER SILVERSTEIN: Think that's
11 the case?

12 MS. MEEK: And I hope that it's
13 okay for me. I mean, 11:00 is still late.
14 That's still late. You know, 12:00 on
15 weekends is still late. What I think what my
16 consideration is is for the fact that this is
17 a family business and they are -- they just
18 have a desire to expand their business.

19 You know, what's -- if I were in
20 their shoes, how would I feel if someone just
21 indiscriminately, you know, did not try to
22 work with us? So that's what my consideration

1 is. And I'm hoping and I'm praying that it
2 will be okay.

3 MEMBER SILVERSTEIN: I thank you,
4 because we have to make these balances
5 ourselves and work these things out ourselves
6 and I thank you for the time you have taken
7 here.

8 MS. MEEK: And I thank you for
9 your consideration.

10 MEMBER SILVERSTEIN: Thank you.

11 CHAIRPERSON MILLER: Okay. Any
12 other Board questions? Any questions on Board
13 questions?

14 MR. KLINE: Yes, I never got to
15 cross. Do I get to --

16 CHAIRPERSON MILLER: You didn't?

17 MR. KLINE: -- do it now? No.

18 CHAIRPERSON MILLER: Oh, it's
19 getting late. I'm sorry. Go ahead.

20 CROSS-EXAMINATION

21 MR. KLINE: Ms. Meek, you
22 testified you have lived in your residence for

1 10 years. Is that correct?

2 MS. MEEK: Yes, I have testified
3 as to that.

4 MR. KLINE: There has been quite a
5 bit of change in that neighborhood over the
6 course of the last 10 years, correct?

7 MS. MEEK: Correct.

8 MR. KLINE: And some of it
9 positive, some of it perhaps negative,
10 correct?

11 MS. MEEK: It depends on what
12 context you are speaking. I don't know what
13 context you are speaking of.

14 MR. KLINE: Well, let's talk about
15 it for a minute.

16 MS. MEEK: Sure.

17 MR. KLINE: The neighborhood is
18 safer than it was 10 years ago, isn't it, for
19 the most part?

20 MS. MEEK: I guess you could say
21 that.

22 MR. KLINE: There is more activity

1 on the street, on H Street, which tends to
2 make it safer?

3 MS. MEEK: I'm not sure that I
4 would say that necessarily, but --

5 MR. KLINE: Okay.

6 MS. MEEK: -- there is more
7 activity on H Street.

8 MR. KLINE: All right. And would
9 you say the changes are for the positive in
10 the neighborhood over the last 10 years?

11 MS. MEEK: Well, some are and some
12 aren't.

13 MR. KLINE: Overall?

14 MS. MEEK: Overall, well, I'll say
15 some are and some aren't.

16 MR. KLINE: Okay. Real estate
17 values have risen in the neighborhood, haven't
18 they?

19 MS. MEEK: Yes.

20 MR. KLINE: And that would include
21 your personal residence, correct?

22 MS. MEEK: Yes, yes.

1 MR. KLINE: And that has coincided
2 with the expansion of hospitality
3 establishments in the neighborhood, hasn't it?

4 MS. MEEK: I don't know that.

5 MR. KLINE: You don't know?

6 MS. MEEK: No.

7 MR. KLINE: You haven't see a
8 number of hospitality establishments open in
9 your neighborhood over the course of the last
10 10 years?

11 MS. MEEK: Your question was did
12 the value of my home increase, was that
13 coincided with the establishment, the increase
14 of hospitality establishments on H Street. I
15 don't know that.

16 MR. KLINE: Well, I didn't ask you
17 cause and effect. I asked you if that also
18 happened during the course of that 10 year
19 period.

20 MS. MEEK: I don't know.

21 MR. KLINE: You don't know whether
22 there has been an expansion of hospitality

1 establishments?

2 MS. MEEK: That wasn't your
3 question.

4 MR. KLINE: Well, that's my
5 question now. Has there been an expansion of
6 hospitality establishments in your
7 neighborhood?

8 MS. MEEK: Yes, there has been.

9 MR. KLINE: Okay. And that has
10 been at a time that has seen a dramatic
11 increase in the value of real property in your
12 neighborhood as well, correct?

13 MS. MEEK: Yes.

14 MR. WILLIAMS: Objection. We have
15 already established that she doesn't want to
16 speculate as to the connection between the
17 two.

18 MR. KLINE: I'm not asking --

19 CHAIRPERSON MILLER: He didn't ask
20 for the connection this time. Okay.

21 MR. KLINE: All right. Now,
22 granted that we are not sound engineers, but

1 I posit this to you. Isn't it true that
2 distance dissipates noise?

3 MS. MEEK: I'm not a sound
4 engineer either and I would not offer any
5 supposition on that.

6 MR. KLINE: All right. Well, you
7 hear me fine where I'm sitting, correct?

8 MS. MEEK: Yes, I do.

9 MR. KLINE: If I have the same
10 voice level and I'm at the back of the room,
11 you're probably not going to hear me as well.
12 Is that --

13 MS. MEEK: I'm not going to
14 speculate as to that, sir.

15 MR. KLINE: You're not going to
16 speculate.

17 MS. MEEK: Sorry.

18 MR. KLINE: Okay. Is it also your
19 experience that physical barriers -- although
20 let me withdraw that and rephrase it.

21 Is it your experience that
22 physical barriers affect volumes of noise and

1 levels of noise?

2 MS. MEEK: Yes, I'm sure that it
3 does, but I'll offer you this.

4 MR. KLINE: That's -- you have
5 answered my question.

6 MS. MEEK: No. I would like to
7 offer --

8 MR. KLINE: Thank you.

9 MS. MEEK: -- you this.

10 MR. KLINE: There is no question.

11 MS. MEEK: I would like to offer
12 you this, if I may.

13 CHAIRPERSON MILLER: Well, no.
14 Are you going to explain the reason for your
15 answer?

16 MS. MEEK: Yes, I would like to.

17 CHAIRPERSON MILLER: Okay.
18 Briefly.

19 MS. MEEK: In the house that I
20 live in, it's a wood house and it's attached
21 to another wood house. It's one house that is
22 separated by a wall. When they close the door

1 to their house, I hear it in my bedroom. When
2 they walk up the stairs, I hear it in my
3 bedroom.

4 So what I wonder about at this
5 point in time is just a few feet away from
6 their front door when there is noises coming
7 from the patio, rooftop patio and the sidewalk
8 patio, will I be able to hear that also?

9 CHAIRPERSON MILLER: Okay.

10 MR. KLINE: I would move to strike
11 as being nonresponsive to the question.

12 CHAIRPERSON MILLER: All right.
13 Okay.

14 MR. KLINE: It's not warranted.

15 CHAIRPERSON MILLER: I don't think
16 we need to strike it, but go ahead. She said
17 that before.

18 MR. KLINE: The question is is it
19 your experience that physical barriers buffer
20 and mitigate noise?

21 MR. WILLIAMS: Objection. Asked
22 and answered.

1 MR. KLINE: It has not been
2 answered.

3 MR. WILLIAMS: She said yes and
4 then provided explanation. She did say yes.

5 CHAIRPERSON MILLER: Is yes the
6 answer?

7 MR. KLINE: Fine.

8 MS. MEEK: I did.

9 MR. KLINE: So you agree with --

10 MS. MEEK: I did answer it.

11 CHAIRPERSON MILLER: Okay. The
12 answer was yes.

13 MR. KLINE: All right. I
14 apologize. Withdraw it.

15 CHAIRPERSON MILLER: Okay.

16 MR. KLINE: So isn't it true that
17 the structure, the wall that is being built on
18 the south side of the rooftop, which includes
19 bathrooms and stairwell will mitigate the
20 noise heard from the rooftop in your
21 residence?

22 MS. MEEK: I don't know.

1 MR. KLINE: You don't know. Now,
2 do you go out to places in the District of
3 Columbia to dine and drink perhaps?

4 MS. MEEK: Yes, I do.

5 MR. KLINE: Do you enjoy dining
6 and drinking outside?

7 MS. MEEK: Sometimes. Sometimes I
8 do, sometimes I don't.

9 MR. KLINE: Okay. But on occasion
10 you do enjoy sidewalk cafe or a rooftop area,
11 correct?

12 MS. MEEK: Sure.

13 MR. KLINE: All right. So you
14 said ideally it would be great if there was no
15 rooftop.

16 MS. MEEK: Sure.

17 MR. KLINE: That was your
18 testimony, correct?

19 MS. MEEK: Yes, um-hum.

20 MR. KLINE: So if we took that
21 proposition from everyone that was concerned
22 about noise in their neighborhood, we wouldn't

1 have any rooftops, would we?

2 MS. MEEK: Well, I'm not concerned
3 about everyone. I'm not concerned about, you
4 know, the -- I cannot be concerned with every
5 living citizen in the District of Columbia.

6 MR. KLINE: Okay.

7 MS. MEEK: I am extremely
8 concerned about my ability to have quiet
9 enjoyment and a good quality of life for the
10 expensive home that I invested in and have
11 been living in for the past 10 years with my
12 husband and my children. That's my concern.
13 I'm not extremely happy about the fact that
14 there will be some noises created by a rooftop
15 cafe and a sidewalk cafe that I know that I
16 will be hearing in my home.

17 And I certainly don't want to hear
18 it at 3:00 in the morning or at 2:00 in the
19 morning, because I would like to be able to
20 sleep at night, have my children go to bed at
21 night, wake up refreshed, that's why we buy a
22 home. That's what quite enjoyment, quality of

1 life, those are the concerns that I have.

2 So I'm more concerned about me
3 than I am every citizen in the District of
4 Columbia.

5 MR. KLINE: All right.

6 (Whereupon, at 5:00 p.m. the
7 hearing continued into the evening session.)

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 MR. KLINE: So you recognize then
4 evaluating your testimony the Board has to
5 take other interests into account in terms of
6 accommodating residents of the District of
7 Columbia who might enjoy outside dining on a
8 rooftop or a sidewalk cafe?

9 MS. MEEK: Oh, I don't know that.

10 MR. KLINE: You don't know that?
11 Okay. You said that you were in Ben's Next
12 Door, I think, once?

13 MS. MEEK: Yes.

14 MR. KLINE: Is that the only time
15 that you were in there?

16 MS. MEEK: Yes.

17 MR. KLINE: What is your basis for
18 concluding that people will be entering this
19 establishment intoxicated?

20 MS. MEEK: Well, when I sat down
21 and I spoke with Mr. Ali and his wife and Mr.
22 White, Mr. Ali's wife said to me that you do

1 understand that the type of cliental that we
2 will be catering to are those leaving the bars
3 that tend to be intoxicated and want to find
4 something to eat. That was the first time
5 that it ever even occurred to me that --

6 MR. KLINE: Okay.

7 MS. MEEK: -- that was what was
8 going to happen.

9 MR. KLINE: And that would be for
10 the Chili Bowl operation on the first floor,
11 correct?

12 MS. MEEK: No, no, no. Well, I
13 don't know which one. She was talking about
14 the whole establishment when we were talking.

15 MR. KLINE: Okay. Fair enough.
16 Now, you mentioned TruOrleans and your
17 concerns about that establishment.

18 MS. MEEK: No, I didn't have
19 concerns with the establishment. I had
20 concerns for the neighbors that were
21 complaining about what was going on in the
22 establishment.

1 MR. KLINE: All right. But you
2 expressed concerns if they got licensed and
3 then there was nothing else that could be done
4 about it, correct?

5 MS. MEEK: No, that's not what I
6 said.

7 MR. KLINE: Well, that's what I
8 thought I heard you say. What did you say
9 then?

10 MS. MEEK: I think what I said was
11 that there was many, many issues that had --
12 noise issues that were going on with
13 TruOrleans and their neighbors and many
14 concerns that they had and it was very
15 difficult for those neighbors at that point to
16 deal with the noise issues and have the city
17 come in and effectuate a change.

18 MR. KLINE: And TruOrleans is now
19 closed, isn't it?

20 MS. MEEK: Yeah, they are closed
21 for tax issues.

22 MR. KLINE: Okay. But the fact of

1 the matter is taxes, paying your taxes is one
2 of the things that you have to do to be a
3 responsible business owner, isn't it?

4 MS. MEEK: Oh, I don't know that.

5 MR. KLINE: You don't know? You
6 indicated that --

7 CHAIRPERSON MILLER: Mr. --

8 MR. KLINE: -- your family has
9 property in Brooklyn --

10 CHAIRPERSON MILLER: -- Kline,
11 what's the point?

12 MR. KLINE: -- New York --

13 MR. WILLIAMS: Where are we going
14 with this?

15 CHAIRPERSON MILLER: Yeah.

16 MR. KLINE: You don't know whether
17 or not --

18 CHAIRPERSON MILLER: Wait, Mr.
19 Kline.

20 MEMBER SILVERSTEIN: Mr. Kline?

21 MEMBER JONES: Mr. Kline, the
22 Chair is getting your attention, please.

1 CHAIRPERSON MILLER: I think you
2 are badgering the witness now. Is this really
3 relevant to peace, order and quiet at this
4 establishment?

5 MR. KLINE: The witness testified
6 about her concerns that nothing could be done
7 and used an example -- as an example another
8 operator who is now closed. And when it was
9 suggested that they were closed, the witness
10 indicated well, they are closed because of tax
11 reasons, as if that is totally irrelevant as
12 to how they operate their business and their
13 responsibility as business operators.

14 MR. WILLIAMS: It is an
15 irrelevant --

16 CHAIRPERSON MILLER: Well, what is
17 the point?

18 MR. WILLIAMS: -- topic.

19 CHAIRPERSON MILLER: Where are you
20 going with this?

21 MR. KLINE: I'll withdraw.

22 CHAIRPERSON MILLER: Okay. Thank

1 you.

2 MR. KLINE: No further questions.

3 CHAIRPERSON MILLER: All right.

4 Is that it?

5 MR. KLINE: Just one more. You
6 indicated that you recognized that there are
7 certain noises from this business that will be
8 unavoidable and that you will hear in your
9 house, correct?

10 MS. MEEK: Yes.

11 MR. KLINE: All right. And that
12 is going to be true whether or not there is a
13 rooftop terrace seating area and a sidewalk
14 cafe, correct?

15 MS. MEEK: I disagree with that.

16 MR. KLINE: All right.

17 CHAIRPERSON MILLER: Oh.

18 MR. KLINE: No further questions.

19 CHAIRPERSON MILLER: Okay.

20 MR. WILLIAMS: We don't have any
21 further questions.

22 CHAIRPERSON MILLER: Okay. Thank

1 you very much.

2 MS. MEEK: Thank you all.

3 (Whereupon, witness was excused.)

4 CHAIRPERSON MILLER: Do you have
5 any other witnesses?

6 MR. KLINE: Can we take three
7 minutes for the restroom?

8 CHAIRPERSON MILLER: Yeah, but
9 let's see if he has any other witnesses.

10 MR. KLINE: Oh, if he does --

11 MR. WILLIAMS: We do. We
12 definitely have at least a couple more
13 witnesses.

14 CHAIRPERSON MILLER: Okay. Then
15 we can take a --

16 MR. WILLIAMS: Do you want a
17 break? We can take a restroom break.

18 CHAIRPERSON MILLER: -- 10
19 minutes, 5 minutes? Five minutes.

20 MR. WILLIAMS: Five minute break.

21 CHAIRPERSON MILLER: Okay.

22 MR. KLINE: I don't need more than

1 that.

2 CHAIRPERSON MILLER: All right.

3 (Whereupon, at 5:04 p.m. a recess
4 until 5:42 p.m.)

5 CHAIRPERSON MILLER: Thank you
6 all. We are back on the record. I believe
7 Mr. Jones will be joining us shortly. So why
8 don't we continue with the ANC's case.

9 MR. WILLIAMS: We will call David
10 Holmes. We will call him as our witness,
11 please.

12 CHAIRPERSON MILLER: Okay.
13 Whereupon,

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

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 DIRECT EXAMINATION

22 MR. WILLIAMS: Hi, Mr. Holmes.

1 Please state your name and address for the
2 record.

3 MR. HOLMES: David Holmes. I am
4 at 919 Massachusetts Avenue, N.E.

5 MR. WILLIAMS: And you have a role
6 with the Advisory Neighborhood Commission 6A.
7 Is that correct?

8 MR. HOLMES: Right. I am Chair of
9 the Commission.

10 MR. WILLIAMS: How long have you
11 been Chair of the ANC?

12 MR. HOLMES: I've been three years
13 as Chair.

14 MR. WILLIAMS: And have you been a
15 Commissioner prior to that?

16 MR. HOLMES: I have been
17 Commissioner since 2006.

18 MR. WILLIAMS: In your experience
19 with the ANC, have you come to get an
20 understanding of the nature of the
21 neighborhood surrounding H Street?

22 MR. HOLMES: Yes. It has been

1 kind of the focus of mine all along as we
2 began the repairs of H Street and trying to
3 get the trolley car on H Street. It is a
4 neighborhood. We have relatively wide
5 sidewalks on a number of streets north and
6 south of H Street. And the sidewalks on H
7 Street itself are very narrow, which is why
8 you don't see sidewalk cafes on H Street
9 itself. They have to be, if you are going to
10 have one, on the side street.

11 Unfortunately, that means that the
12 alleys there are almost always 10 feet wide.
13 So a sidewalk cafe is often within 10 feet
14 plus maybe 5, maybe nothing from the next door
15 neighbor's residential walls.

16 There is little mitigation that
17 can be effective. We have tried some. You
18 have seen some here before where we have moved
19 back the public space areas 10 feet from the
20 walls. We have asked for fences to be put in.
21 We have asked for tents to put in.

22 It's almost impossible sometimes

1 to mitigate, especially when you are that
2 close to a residential --

3 CHAIRPERSON MILLER: What did you
4 say after fences? You have asked for what to
5 be put in? You said fences haven't been
6 effective. And I missed something else.

7 MR. HOLMES: We have pushed people
8 back by fences closing off areas, so nobody
9 can get into them. We have tried sound
10 barrier fences on the street level, which have
11 not been effective. And are usually stopped
12 by Public Space as soon as they see them.

13 We have tried plantings, which
14 does work and Public Space doesn't mind those
15 as long as they are not permanent.

16 We got here with -- a number of
17 our rooftops, they are as close as 18 feet
18 from the bedrooms. That's not the case here.
19 But mitigating that is always a problem for
20 us, so we go to extensive efforts.

21 This has taken us years and it is
22 based on the experience that we have been

1 accumulating over the last 10 years as the
2 street has turned itself around.

3 We have found that the best
4 solution that the owners were able to accept
5 and the neighbors were able to accept is the
6 time limitation of 11:00 and midnight. Nobody
7 is happy about that. Neighbors always want it
8 to be 10:00. They want it to be 9:00.
9 Business owners always want it to be later
10 than that, as late as possible, because in the
11 case in a number of these places, they have
12 more seats on the sidewalk than they have
13 inside the restaurant.

14 But at least when you have a
15 limitation on hours, they will know their
16 trouble is coming to an end at 11:00 or it is
17 coming to an end at midnight. Most of the
18 residents along our corridor are long-term
19 residents. They have been there for a long
20 time, since before the riots, quite
21 frequently, when the street lost about one-
22 third of its structures.

1 Even when the Commercial District
2 was at its peak in the '40s and '50s, they
3 weren't troubled by extensive sound, because
4 there weren't the restaurants there. There
5 was never a sidewalk cafe. There were no
6 rooftops. So no one has ever had this
7 experience that we have suddenly gotten in the
8 last two or three years, the sidewalk cafes.

9 Even the newer residents couldn't
10 have anticipated the sudden placement of
11 sidewalk cafes. There weren't any until three
12 or four years ago. We had some rooftops
13 before that, but the sidewalk cafes are new.

14 Again, what we have been doing is
15 trying to reach a compromise and you will see
16 that in our settlement agreements with
17 everybody who -- almost everybody who has been
18 around since the last four or five years.

19 But what we are asking here is
20 that you protect the neighbors as well as the
21 business interest by staying with the
22 agreement that we have carefully worked out

1 with the current business owners. You have to
2 understand they are not all happy about that
3 and you will see some of them up before you as
4 they try to break those time barriers, but
5 that's the agreement that we have had up to
6 this time.

7 There is some discussion here
8 earlier about the other side of 10th Street,
9 the west side of 10th Street, that is the H
10 Street Connection. It's owned by the
11 Rappaport Companies. It has a massive PUD
12 which was just renewed. They intend to put
13 about a 95 foot building in there. It goes
14 from H Street continuously to 10th Street and
15 it backs up to the Capitol Towers. So the
16 height is in the center near the Capitol Hill
17 Towers.

18 The side that is closest to Ben's
19 Chili Bowl will be 40 feet high. It is three
20 residential floors and one normal retail floor
21 at the ground level. You can't see that now,
22 but it is coming. Rappaport, Gary Rappaport

1 says that as soon as the trolleys are going,
2 he will start construction. Trolleys are on
3 the street now. They are running. They are
4 not carrying passengers yet, but they are
5 going.

6 He anticipates construction will
7 begin before the end of the year. We don't
8 expect that these places will have actual
9 residents until 2016. It could be after that,
10 but they are coming and those are going to be
11 neighbors directly across the street from
12 where Ben's is putting in it's restaurant.
13 That's all I have to say.

14 I just thought you might
15 appreciate a little perspective on where we
16 are and how we got there.

17 MEMBER SILVERSTEIN: I'm sorry?

18 MR. HOLMES: I just thought you
19 might appreciate a little perspective on how
20 we got there and the current situation.

21 MR. WILLIAMS: Mr. Holmes, just
22 hopefully to short circuit maybe a cross-

1 examination question or two, you are aware
2 that the ANC is not responsible for setting
3 Board policy with respect to alcohol
4 regulation laws. Is that correct?

5 MR. HOLMES: I am.

6 MR. WILLIAMS: When you say it's
7 the ANC's stance, what do you mean by that?
8 When you say the ANC pushes for these
9 particular hours, what do you mean?

10 MR. HOLMES: We search for that
11 and encourage them to, in their settlement
12 agreements, agree to the submitted hours. We
13 have never had a refusal up to this point.

14 MR. WILLIAMS: I don't have any
15 other questions.

16 CHAIRPERSON MILLER: Mr. Kline?

17 MR. KLINE: Yes.

18 CROSS-EXAMINATION

19 MR. KLINE: Mr. Holmes, how long
20 have you lived in the neighborhood?

21 MR. HOLMES: Since 1997.

22 MR. KLINE: Okay. Isn't it true

1 that Mr. Englert was the pioneer of the new
2 establishments that came to H Street?

3 MR. HOLMES: I think you will find
4 some discussion about that, including one of
5 the people that was on your witness list. The
6 ANC, both 6C and 6A, fought hard to get the
7 street repaired and get the streetcar in. And
8 that --

9 MEMBER SILVERSTEIN: We need to
10 hear you.

11 CHAIRPERSON MILLER: Yes.

12 MR. HOLMES: Streetcars and the
13 repair of the street were the primary drivers
14 of the renovation of H Street. Mr. Englert
15 was a big help. He is not a primary
16 guideline.

17 MR. KLINE: Okay. So he was
18 involved there. He bought a number of
19 buildings.

20 MR. HOLMES: He did.

21 MR. KLINE: Renovated them for
22 restaurants, correct?

1 MR. HOLMES: Right.

2 MR. KLINE: And this notion of a
3 standard or a standard agreement, he was one
4 of the first with respect to that, wasn't he?

5 MR. HOLMES: That's true.

6 MR. KLINE: Okay. And now, having
7 been there a number of years, he is one of the
8 ones that seeks to see that standard go away,
9 isn't he?

10 MR. HOLMES: That's true.

11 MR. KLINE: Okay. So this happy-
12 medium that you are presenting to the Board
13 that has existed and continues to exist, it's
14 not really there any more, is it?

15 MR. WILLIAMS: Objection. He is
16 misrepresenting prior testimony.

17 CHAIRPERSON MILLER: Answer the
18 question. Overruled.

19 MR. HOLMES: I'm sorry?

20 CHAIRPERSON MILLER: Overruled.
21 You can answer the question, if you remember
22 it.

1 MR. HOLMES: Can you repeat your
2 question?

3 MR. KLINE: I think you testified
4 that everyone has gotten along and everyone
5 was on board, the business owners were all on
6 board with the standard agreement, correct?

7 MR. HOLMES: That's correct.

8 MR. KLINE: And one of those
9 business owners --

10 MR. HOLMES: Unhappy at times, but
11 on board.

12 MR. KLINE: Okay.

13 MR. HOLMES: They signed them,
14 yeah.

15 CHAIRPERSON MILLER: We can't hear
16 you now. Could you speak up?

17 MR. HOLMES: They were unhappy at
18 the limitation of hours, but they all signed
19 it.

20 MR. KLINE: Okay. But in recent
21 times, in fact in the past year or so, there
22 are a number of operators there, including Mr.

1 Englert, who have expressed grave concerns
2 about those agreements and about that
3 standard, haven't they?

4 MR. HOLMES: Yes.

5 MR. KLINE: Okay.

6 MR. HOLMES: They want the
7 extended hours.

8 MR. KLINE: Okay. So --

9 CHAIRPERSON MILLER: I'm sorry,
10 wait. We can't hear that. What?

11 MR. HOLMES: There are several,
12 including Mr. Englert, who want extended
13 hours.

14 CHAIRPERSON MILLER: Okay.

15 MR. KLINE: Okay.

16 MR. WILLIAMS: Mr. Holmes, direct
17 your answers to the Board. I think it would
18 be helpful. All right.

19 MR. KLINE: So in terms of
20 everyone getting along and everyone agreeing,
21 that may have been the case at one time, but
22 that's not really the case now, is it?

1 MR. HOLMES: Mr. Englert filed for
2 a chance to break his settlement agreement
3 recently in the last few months.

4 MR. KLINE: Okay. And that was
5 for a number of establishments, wasn't it?

6 MR. HOLMES: For four of his
7 establishments.

8 MR. KLINE: And there are others
9 that have filed as well, correct? If you
10 know.

11 MR. HOLMES: There was one who
12 filed, but then was dismissed because it was
13 too soon for them to have sought a
14 termination.

15 MR. KLINE: Okay. But that
16 operator is also not happy with the status quo
17 in terms of the blanket restrictions on
18 businesses in that bracket.

19 MR. HOLMES: Funny you should
20 mention that, yesterday we were here and we
21 reached an agreement with that establishment,
22 which is --

1 MR. WILLIAMS: Sorry, I just want
2 to step in. We are getting into the topic of
3 settlement negotiations.

4 CHAIRPERSON MILLER: Yes.

5 MR. WILLIAMS: -- that haven't
6 been finalized.

7 CHAIRPERSON MILLER: Right.
8 That's true. We don't need to go into that
9 detail.

10 MR. KLINE: All right. Now, you
11 have testified concerning the proposed project
12 across the street. I think you indicated the
13 Rappaport Properties is developing that --

14 MR. HOLMES: Yes.

15 MR. KLINE: -- property?

16 MR. HOLMES: Yes.

17 MR. KLINE: All right. And they
18 will be either marketing the residential units
19 as rentals or condos for sale, presumably,
20 correct?

21 MR. HOLMES: Yes, sir.

22 MR. KLINE: All right. And you

1 know that about this project, at this point,
2 correct?

3 MR. HOLMES: I do.

4 MR. KLINE: And so Mr. Rappaport
5 and his investors they would seem to have a
6 substantial stake in terms of what is going on
7 here today, wouldn't they?

8 MR. HOLMES: I do not know that
9 they know about this proceeding.

10 MR. KLINE: Okay. You are aware
11 that the placards went up on the outside of
12 the building, correct?

13 MR. HOLMES: Which building?

14 MR. KLINE: Ben's Chili Bowl,
15 Ben's Upstairs.

16 MR. HOLMES: On the fence, yes.

17 MR. KLINE: And you are --

18 MR. HOLMES: Yes.

19 MR. KLINE: -- aware that the
20 notice appeared in the DC Register, correct?

21 MR. HOLMES: Yes.

22 MR. KLINE: And you have had

1 meetings where the topic of this application
2 has been on your agenda, correct?

3 MR. HOLMES: Yes.

4 MR. KLINE: And Rappaport
5 Properties has a substantial stake in the
6 community as they own a piece of property and
7 intend to develop it, correct?

8 MR. HOLMES: Yes.

9 MR. KLINE: So one can presume
10 that they know or have reason to know as to
11 this proceeding?

12 MR. HOLMES: I think that's a
13 significant presumption.

14 MR. KLINE: All right.

15 CHAIRPERSON MILLER: I'm sorry,
16 what was the answer?

17 MR. HOLMES: I think that's an
18 excessive presumption.

19 CHAIRPERSON MILLER: Thank you.
20 Okay.

21 MR. KLINE: But you don't see
22 anyone here from their organization today

1 expressing concern about the marketability of
2 their units either as rentals or condos if the
3 roof deck is approved, sidewalk cafe is
4 approved with maximum hours?

5 MR. HOLMES: I assume that you are
6 making a suggestion that we should have made
7 that presentation to him and had him here?

8 MR. KLINE: No. I'm only asking
9 whether you see anyone here or you have seen
10 anyone here from Rappaport Properties
11 expressing a concern about this application
12 and the hours which have been applied for.
13 That's my question.

14 MR. HOLMES: No, sir.

15 MR. KLINE: Okay. That's all I
16 have. Thank you.

17 CHAIRPERSON MILLER: Board
18 questions?

19 MR. WILLIAMS: Oh, sorry.

20 CHAIRPERSON MILLER: Oh. I'll do
21 Board questions and then we will get to you.

22 MR. WILLIAMS: That's fine.

1 CHAIRPERSON MILLER: Okay. I just
2 want to ask you in all those years that you
3 have been working as an ANC Commissioner and
4 being concerned about sound, noise from
5 outdoor areas, have you -- I know you are not
6 a sound expert. Have you looked into issues
7 such as like how sound travels, like in this
8 case, for instance, where you may have a roof
9 deck that is above the houses?

10 I think people are more familiar
11 with sound from an outdoor cafe on the same
12 level, but I'm wondering if you have had some
13 issues with knowledge with respect to --

14 MR. HOLMES: Yes.

15 CHAIRPERSON MILLER: -- noise?
16 Okay. Can you --

17 MR. HOLMES: I think almost every
18 ANC Commissioner knows about churches and
19 sound, especially the historic churches. We
20 have a number of them that have no extra
21 glazing over the stained glass windows and
22 loud amplified music. And then when you get

1 into revivals or even the standard church
2 services and the noise levels can become
3 intolerable to the neighborhood. I have one
4 of those.

5 There is also one on 13th Street
6 that likes to record its services at 2:00 a.m.
7 when everybody is not working, so they get
8 together and then they have sound that pumps
9 in the sound of the audience. There's
10 actually no audience, but it is done at full
11 volume and it's for later recording. So, yes.

12 CHAIRPERSON MILLER: Have you had
13 experience with roof decks?

14 MR. HOLMES: Not roof decks, no.

15 CHAIRPERSON MILLER: Okay.

16 MR. HOLMES: I have no restaurants
17 in my District whatsoever.

18 CHAIRPERSON MILLER: Okay. Okay.
19 Okay. I don't have any other questions. Does
20 the ANC have questions?

21 MR. WILLIAMS: Yes, just a couple
22 of clarifying questions.

1 REDIRECT EXAMINATION

2 MR. WILLIAMS: Mr. Holmes, are you
3 aware of issues regarding sound from any bar/
4 restaurant rooftops in the ANC?

5 MR. HOLMES: Yes.

6 MR. WILLIAMS: And there is -- can
7 you briefly, without going into much detail,
8 describe these concerns?

9 MR. HOLMES: The --

10 MR. WILLIAMS: If you can.

11 MR. HOLMES: Yeah. We get
12 complaints and then we try to mediate them, so
13 that it isn't necessarily go to ABRA or to the
14 police or to DCRA. We all have casual sound
15 meters on our phones nowadays, so we can use
16 to record the sound. We have a number of
17 establishments that have seriously alienated
18 their neighbors with their sidewalk cafes.

19 Sometimes sidewalk cafes are just
20 plain -- were illegal. They weren't
21 permitted. But, yes, this is a common
22 problem.

1 MR. WILLIAMS: Mr. Holmes, we have
2 heard a lot about some push-back from other --
3 from business owners on H Street and the kind
4 of dynamic between neighbors and the owners.
5 In your opinion, who does the ANC represent?

6 MR. HOLMES: We represent a
7 combination. We are elected by our neighbors,
8 but the health of our neighborhood depends on
9 the businesses. So we try to represent both
10 communities. The ANC, I think, has to be
11 recorded as one of the principal drivers in
12 the restoration of H Street and the thriving
13 Business District.

14 MR. WILLIAMS: And just one last
15 question. Regarding the Rappaport
16 development, has anybody from Rappaport
17 expressed to you that they support Ben's Chili
18 Bowl proposal regarding outdoor space hours?

19 MR. HOLMES: No.

20 MR. WILLIAMS: Thank you.

21 MR. KLINE: I have questions in
22 light of the Board's questions, not in light

1 of the redirect.

2 CHAIRPERSON MILLER: Okay. Okay.

3 MR. KLINE: Just a couple.

4 RECROSS-EXAMINATION

5 MR. KLINE: You mentioned recorded
6 noise from churches.

7 MR. HOLMES: And live noise.

8 MR. KLINE: Okay. You are aware,
9 are you not, that the ABC Regulations prohibit
10 noise from recorded music or mechanical
11 instruments from being heard in any residence
12 and property that is zoned residential?

13 MR. HOLMES: I am.

14 MR. KLINE: Okay. And you are
15 aware that that's a violation?

16 MR. HOLMES: Yes.

17 MR. KLINE: All right. And you
18 also talked about that you had mediated some
19 of the issues between owners and residents
20 concerning sidewalk cafes? Is that correct?

21 MR. HOLMES: Yes.

22 MR. KLINE: And what has been the

1 success of that mediation?

2 MR. HOLMES: Sometimes it's
3 successful, often times it's the next step to
4 going to court.

5 MR. KLINE: And doesn't it almost
6 always depend upon the quality and the
7 responsibility of the operator?

8 MR. HOLMES: That's true.

9 MR. KLINE: And in this case, do
10 you have any reason in the world to believe
11 that the Ali family wouldn't deal in good
12 faith to address any issues that might be
13 raised by you or your Commission with respect
14 to noise in your community?

15 MR. HOLMES: I am eager to see
16 Ben's Chili Bowl open in our neighborhood. I
17 would be very appreciative if they would agree
18 to our hours of 11:00 and midnight and avoid
19 the problems you have been hearing about.

20 MR. KLINE: You definitely ducked
21 my question and I'll move to strike your
22 answer and I will ask it again.

1 MR. HOLMES: Yes, sir.

2 MR. KLINE: If I need to.

3 MR. HOLMES: Yes, go ahead.

4 MR. KLINE: Do you know the
5 question?

6 MR. HOLMES: Try it again.

7 MR. KLINE: The question is is
8 there anything that you know about the Alis
9 that leads you to believe that they will not
10 deal in good faith to address any noise issues
11 that you might bring to them as an ANC
12 Commissioner in terms of mediation or
13 otherwise?

14 MR. HOLMES: We have had extensive
15 negotiations with the Alis.

16 MR. KLINE: It's a yes or no
17 question, at this point.

18 MR. HOLMES: I can't answer it
19 that way. I have no question about the good
20 faith of the Alis.

21 MR. KLINE: Okay. So --

22 MR. HOLMES: Nonetheless, we have

1 no experience with their operation in our
2 neighborhood.

3 CHAIRPERSON MILLER: Okay.

4 MR. KLINE: So if I may restate
5 your answer, your answer is well, we don't
6 have any --

7 CHAIRPERSON MILLER: Yes.

8 MR. KLINE: -- reason to trust
9 them. We don't have any reason not to trust
10 them. Is that what you are saying?

11 MR. HOLMES: I stand by my
12 previous answer.

13 CHAIRPERSON MILLER: Okay. That's
14 fine.

15 MR. KLINE: No further questions.

16 CHAIRPERSON MILLER: That's fine.
17 Thank you. Okay.

18 MR. WILLIAMS: No further
19 questions.

20 CHAIRPERSON MILLER: Okay. Thank
21 you very much.

22 (Whereupon, witness was excused.)

1 MR. WILLIAMS: ANC will call Omar
2 Mahmud to the stand. If I butchered your last
3 name, I apologize.

4 Whereupon,

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

10 CHAIRPERSON MILLER: Thank you.
11 Good evening.

12 DIRECT EXAMINATION

13 MR. WILLIAMS: Mr. Mahmud, can you
14 state your name and address for the record,
15 please?

16 MR. MAHMUD: Sure.

17 MEMBER SILVERSTEIN: Time, please.

18 MR. WILLIAMS: Oh, I'm sorry.

19 MEMBER SILVERSTEIN: Mr. Jones,
20 how much time is left?

21 MEMBER JONES: Just a time check.

22 MR. WILLIAMS: Yes.

1 MEMBER JONES: We are at -- the
2 protestants have 40 minutes left.

3 MR. WILLIAMS: Okay.

4 MEMBER JONES: The licensee has 6
5 minutes left.

6 MR. KLINE: Wow, I thought it
7 would be close.

8 CHAIRPERSON MILLER: Okay. Is
9 this our last witness?

10 MR. WILLIAMS: One more. Both of
11 these will hopefully be brief and given that
12 he only has six minutes, I think we will be
13 brief.

14 CHAIRPERSON MILLER: Okay. Well,
15 just so he knows, you know, to plan his time
16 that there is going to be another witness.

17 MR. WILLIAMS: Yeah, yeah.

18 CHAIRPERSON MILLER: Okay.

19 MR. WILLIAMS: There will be a
20 short witness.

21 So can you say your name and
22 address for the record, please?

1 MR. MAHMUD: Sure. Omar Mahmud,
2 718 10th Street, N.E., which is, when you are
3 looking at that diagram, the first house
4 across the street on 10th Street that you come
5 to when you go down the block. And those are
6 all residential townhomes, by the way. I know
7 a lot of people were talking about them being
8 condos, but those are all townhomes. It's a
9 whole row of neighbors that all share an
10 alley.

11 MR. WILLIAMS: So if I can
12 approach real quick, just so we can --

13 CHAIRPERSON MILLER: Okay.

14 MR. WILLIAMS: -- be on the same
15 page. I'm showing you Exhibit 1, the
16 Applicant's Exhibit 1. Is your -- can you
17 describe where your home is located on this
18 exhibit?

19 MR. MAHMUD: Right. So if you are
20 looking at the blue dot directly across 10th
21 Street, if you go left, that first house you
22 come to in the residential area is my house.

1 MR. WILLIAMS: And I'll point
2 here. It's right here on Exhibit 1. So if
3 you are going south on 10th Street, it's the
4 first house you encounter on the other side of
5 10th.

6 MR. MAHMUD: And I would also
7 point --

8 CHAIRPERSON MILLER: Excuse me.
9 After that driveway and stuff?

10 MR. MAHMUD: Right.

11 CHAIRPERSON MILLER: We are going
12 south?

13 MR. MAHMUD: The first house after
14 the drive.

15 CHAIRPERSON MILLER: Okay.

16 MR. MAHMUD: And I would also
17 point out that I am the ANC-6A Commissioner
18 for that Single Member District.

19 MR. WILLIAMS: And, Mr. Mahmud, in
20 your role as the Single Member District
21 representative for that neighborhood, have you
22 had an opportunity to discuss the plans of

1 this establishment with your constituents?

2 MR. MAHMUD: I have.

3 MR. WILLIAMS: And what is the
4 general take from those conversations?

5 MR. MAHMUD: Just to sum it up, I
6 mean, I have not talked to one person who is
7 in support of these extended hours. I mean,
8 I think that's pretty telling via email, via--
9 we had a Transportation/Public Space Committee
10 meeting in November where Ben's came and
11 presented their application for the public
12 space sidewalk cafe.

13 Overwhelmingly, the residents were
14 against them having extended hours. Some
15 residents expressed other concerns, but when
16 it came to the hours of operation,
17 overwhelmingly the response was no, we don't
18 want them to extend those hours past the hours
19 that the ANC expects of other businesses.

20 I have also took it upon myself to
21 walk door-to-door in the 700 Block, which is
22 that 10th Street Block that is the block that

1 Ben's shares to every residence over the
2 course of two nights this week.

3 And then I also went to the 800
4 Block of 10th Street which is crossing H
5 street going forward, because I think they are
6 going to be impacted as well. If you look at
7 the plans, you've got the wall facing the
8 commercial establishment next door and you
9 have got the wall behind, which blocks the
10 sound from the property they bought, but then
11 everything out from there is unprotected.

12 So I was really concerned about
13 what the neighbors across the H Street would
14 think about these plans. And I, you know,
15 walked as far as I thought was earshot and
16 again didn't talk to one person that was in
17 support. Not everyone answered their doors.
18 It was pretty freezing cold outside, but I
19 talked to about 25 people in all over the
20 course of those two nights and not one person
21 was in support of them having late night hours
22 for the outdoor spaces.

1 People were in support of Ben's.
2 People love Ben's. They want Ben's. I told
3 the people I talked to they have a great
4 concept. They have a great plan they
5 presented to us. I'm excited personally about
6 having them come to the neighborhood. But
7 then they said look, you know, at a certain
8 point we have got to have peace and quiet.
9 And, you know, if they are going to have an
10 outdoor space, they have got to contain all
11 the noise from their operation indoors past a
12 certain hour.

13 MR. WILLIAMS: Mr. Mahmud, as a
14 resident who presumably will be directly
15 affected by this establishment, what is your
16 personal opinion regarding their request?

17 MR. MAHMUD: I just, you know,
18 think it's not reasonable. I mean, I don't
19 see how -- you know, given the people that
20 live around you, you are coming to a
21 neighborhood, those people have invested in
22 the neighborhood, too, and they have been

1 living there for several years. And they are
2 all telling you look, we don't want to hear
3 this noise. We don't want you to have this
4 outdoor space operating until 3:00 a.m.,
5 that's overwhelmingly.

6 I mean, you know, people left. We
7 had other neighbors that wanted to say the
8 same thing, but they had to leave. I had a
9 bunch of neighbors that said I have to work.
10 I can't come, but, please, you know, as my ANC
11 representative represent my voice and tell
12 these guys that we do not want this noise past
13 midnight on the weekends.

14 MR. WILLIAMS: I don't have any
15 further questions of this witness.

16 CHAIRPERSON MILLER: Okay. Cross?

17 MR. MAHMUD: Can I just --

18 CHAIRPERSON MILLER: Yes?

19 MR. MAHMUD: -- further clarify.

20 You know, the reason why people are so
21 concerned is because this is one of those
22 things that looks great on paper. You know,

1 they have given, you know, these plans and
2 they said look, we've got walls. But as has
3 been pointed out, there has been on real sound
4 analysis for that decisions they have made in
5 their planning, in the details.

6 This is all, you know, kind of
7 taken on faith that it's going to be okay and
8 people aren't willing to take things like that
9 on faith. When it comes to peace and quiet
10 and enjoying the quiet enjoyment of their
11 homes, they are not willing to do that. They
12 want to say look, we want an operation plan
13 that makes sense.

14 And we are letting these guys know
15 up front. We said look, adjust your
16 operations, assuming you are not going to have
17 people sitting on those outdoor spaces, up
18 front. You know, we don't want to pull the
19 rug out from under you after the fact if you,
20 you know, set your pricing and you've done all
21 those things, assuming that you are going to
22 have that revenue, and then later on pull it

1 out from under you.

2 We're saying, look, up front
3 adjust your plans accordingly, because that's
4 the reason -- expectation of the neighborhood.
5 And you know, we deal -- I hear as a
6 Commissioner that has a Single Member District
7 that's on H Street, I hear concerns about
8 noise all the time.

9 And all I can tell people is, you
10 know, look, you know, if it's late night, if
11 it's getting, you know, past midnight or
12 something, there is something we can do to
13 step in. They have, you know, voluntary
14 agreements. But if it's during the day, I
15 mean, we just kind of have to deal with that,
16 you know what I mean?

17 We live in D.C. We live in a
18 vibrant, you know, city and that's just
19 something we have to, you know, learn to live
20 with. But late at night, you know, absolutely
21 I'm with you. We've got to do something to
22 curb that.

1 CHAIRPERSON MILLER: Okay. Were
2 you finished?

3 MR. WILLIAMS: Yeah, I'm finished
4 with my direct.

5 CHAIRPERSON MILLER: Okay. Cross?

6 MR. KLINE: I have no questions.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Jones, I'll let you go first.

9 MEMBER JONES: Thank you, Madam
10 Chair.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER JONES: So thank you for
13 coming. Thank you for staying, appreciate it.
14 The big question I have for you is I
15 understand the concern that you're raising.
16 I understand that you have got the feedback
17 that you received.

18 I would like to ask a question
19 turning the other way. How would you feel
20 about Ben's and their ownership saying I don't
21 want to be in your neighborhood because of the
22 stipulations that you are asking to put on us?

1 Right? You are requiring us to operate 11:00
2 to 12:00, so because of that, I choose not to
3 be in your neighborhood. Would you -- do you
4 believe that, you personally, I know you can't
5 because you haven't asked that question of
6 your constituents, your people --

7 MR. MAHMUD: I would say I had
8 asked that.

9 MEMBER JONES: Okay. Well, help
10 me out. So I want to hear your personal
11 feedback on that as well as your constituents.
12 All right. What you think and what you
13 represent.

14 MR. MAHMUD: Sure. So, you know,
15 my personal feeling is you are coming to a
16 neighborhood, you know, operate your business
17 according to the norms of the neighborhood and
18 be reasonable. If Ben's decided -- and I
19 don't think they would make that decision, but
20 if they decided look, we're going -- we don't
21 want to, you know, hear those hours and we are
22 going to, you know, change it, the people that

1 have expressed the feelings or that to me and
2 myself have said I'm sorry, guess we are going
3 to have to miss out on Ben's.

4 I mean, if it means -- if the
5 tradeoff is, you know, I can't sleep past
6 midnight, you know, on the weekends, I'm going
7 to be awakened by noise at 11:00 during the
8 week, the tradeoff for that is, you know, I
9 get to have Ben's, I would rather not have
10 Ben's. That's my personal opinion.

11 MEMBER JONES: Okay.

12 MR. MAHMUD: But that's not to say
13 I don't want Ben's. I want Ben's. I just
14 don't want to have Ben's operating the way
15 that is going to run the quiet enjoyment of me
16 and my neighbors. So, you know, it's like
17 with any other business. If the business says
18 they are going to come and then they say oh,
19 you guys, you know, do things the way we want,
20 you know, things done, otherwise, we are not
21 going to open our business. How many people
22 are going to, you know, agree to that?

1 I mean, if you put a gun to their
2 head, they are probably going to say well, you
3 know, you're putting a gun to my head, I'm not
4 receptive to that. You know what I mean?

5 MEMBER JONES: Is that the
6 sentiment that you have or feel?

7 MR. MAHMUD: I wouldn't say -- I
8 haven't directly asked that question to all
9 the people, the 25 or so people I talked to
10 over the course of the two nights. But a
11 couple of people actually brought that point
12 up to me. They said look, you know, if they
13 are saying, you know, that -- if I have to say
14 that I'm going to agree to these late hours or
15 if they are not going to be here, then bye-bye
16 Ben's.

17 I mean, that was their -- you
18 know, I want to be a little bit more
19 diplomatic than that, but, you know, that's
20 basically what a couple of people told me
21 without even me asking that question.

22 MEMBER JONES: Understood. And

1 just to make sure I'm clear for others, so if
2 I'm paraphrasing what you said, if Ben's
3 doesn't want to play ball with the 11:00 and
4 12:00, that you don't want Ben's?

5 MR. MAHMUD: I'm not saying that.
6 I want Ben's. I'm just saying --

7 MEMBER JONES: Well, no. If they
8 don't play ball with the 11:00 and 12:00,
9 i.e., if they say --

10 MR. MAHMUD: I --

11 MEMBER JONES: -- either we get
12 our full hours as we are requesting them or we
13 do not want to be in your neighborhood, your
14 position on that is bye-bye Ben's?

15 MR. MAHMUD: I wouldn't say it
16 that way. I would say --

17 MEMBER JONES: I said I was
18 paraphrasing.

19 MR. MAHMUD: Right. So what I
20 would say is you know, can you work with us?
21 Let's try to find, you know, some way to deal
22 with your issue. I don't want to say bye-bye

1 Ben's, no.

2 MEMBER JONES: Okay. So I think
3 this kind of leads me to my point. It sounds
4 like it's not so black and white or Draconian
5 in the sense of I don't get that sense that --
6 I didn't get the sense, and I'm speaking
7 purely just from the hours that we have been
8 here today, that the ownership was putting a
9 gun to the community's head and saying --

10 MR. MAHMUD: No, no.

11 MEMBER JONES: -- we're not
12 willing to talk, negotiate, field this thing
13 out.

14 MR. MAHMUD: I'm not saying that
15 either.

16 MEMBER JONES: Right? And I know
17 you are not saying that. So it seems as if
18 there is an opportunity to get to some middle
19 ground, but I'm not really understanding where
20 that is from your standpoint, your
21 constituents standpoint without it being the
22 11:00 to 12:00.

1 MR. MAHMUD: Well --

2 MEMBER JONES: If it's not 11:00
3 and 12:00, then it's bye-bye Ben's.

4 MR. MAHMUD: -- that's the --

5 MEMBER JONES: Is kind of what I'm
6 getting from you.

7 MR. MAHMUD: Yes, and that's the
8 middle ground that we have struck.

9 MEMBER JONES: Okay.

10 MR. MAHMUD: So you --

11 MEMBER JONES: So --

12 MR. MAHMUD: -- have heard from
13 people that want it to close earlier. Right?
14 You heard from Ms. Meek. She would rather not
15 them have any, you know, late night hours.
16 But then she said, you know, if they are going
17 to have -- or she said that she would rather
18 them not have any outdoor space.

19 MEMBER JONES: Okay.

20 MR. MAHMUD: And she said, well,
21 you know, I would want it, you know, earlier
22 than that, because I want to, you know, sleep.

1 But I understand that we have to make
2 compromises. So I'm willing to live with
3 something that is a little later.

4 And I would say that, you know,
5 that's the compromise that has been struck
6 with other businesses and I think we are going
7 to try to -- we are trying to strike that same
8 compromise with Ben's. We're not -- and I'm
9 just saying that look, this is us expressing
10 our voice.

11 MEMBER JONES: Right.

12 MR. MAHMUD: You know, ultimately,
13 you know, it's in your power to decide, you
14 know, what happens. We are not, you know,
15 saying that, you know, we can tell Ben's to go
16 away or not. We are just expressing our
17 preference, our voice.

18 MEMBER JONES: Understood.

19 MR. MAHMUD: And I can't tell
20 Ben's to go away or anything like that.

21 MEMBER JONES: Understood.

22 MR. MAHMUD: I'm just saying that

1 this is our preference.

2 MEMBER JONES: Understood. So
3 just making sure, so the 11:00 to 12:00
4 represents the extent of where you think you
5 may even be comfortable as you individually,
6 as you representing your constituents?

7 MR. MAHMUD: Right.

8 MEMBER JONES: Right. So that's
9 where you felt you had gone far. Now, it's
10 not necessarily a middle ground, because
11 middle ground would need to be from both
12 parties agreeing that that's the middle
13 ground. But you are saying that's the extent
14 of where you are willing to go?

15 MR. MAHMUD: Well, I'm saying
16 that's the middle ground that has been struck
17 in the past in our past dealings with
18 businesses. Now, if you want to --

19 MEMBER JONES: Understood.

20 MR. MAHMUD: If we were starting
21 negotiations just with Ben's fresh --

22 MEMBER JONES: Right.

1 MR. MAHMUD: -- then sure, we
2 would start at 9:00. 8:00, 9:00. And then
3 they start at 3:00.

4 MEMBER JONES: No, understood.

5 MR. MAHMUD: And then we come to
6 the middle ground at midnight. You know what
7 I mean?

8 MEMBER JONES: Yes.

9 MR. MAHMUD: But that's -- but
10 what we are dealing with here is, you know,
11 sort of the norm that we have set in our
12 negotiations over the years that we think that
13 people can live with.

14 MEMBER JONES: Okay. Thank you.
15 Thank you, Madam Chair.

16 CHAIRPERSON MILLER: Others?
17 Okay. I want to confirm with you. Are you
18 okay with the proposed hours for the interior
19 of the establishment?

20 MR. MAHMUD: Absolutely. I have
21 no problem with the hours of operation in
22 general for Ben's. I want Ben's to succeed

1 and profit and, you know, we are going to have
2 to deal with the traffic issues. We are going
3 to have to deal with the late night people
4 going to their cars after going to Ben's.
5 That's fine. We are going to deal with that,
6 because that's just a part of what we have to
7 deal with inviting Ben's into the
8 neighborhood.

9 What I don't want to deal with is
10 the constant barrage of noise and sound that
11 is going to be coming from the sidewalk cafe
12 and the outdoor patio past a certain hour. We
13 are going to have to deal with it during the
14 early hours.

15 CHAIRPERSON MILLER: All right.
16 Let me ask you about that. I asked Mr. Holmes
17 about it, I think, too. I think that most of
18 us are pretty familiar with sidewalk cafes,
19 the noise that comes from them.

20 MR. MAHMUD: Right.

21 CHAIRPERSON MILLER: This rooftop
22 seems like more of an unknown. It's above the

1 residences and it supposedly has some barrier
2 in it.

3 MR. MAHMUD: Right. But if you
4 look at the barrier, it's at the back, so that
5 protects the property they bought from noise,
6 which is great. And it also has a wall that
7 is along side the commercial corridor part of
8 H Street. The part that will spill noise out
9 into the residential area, as you have heard
10 in testimony, is open.

11 And that is to the west and to the
12 north. So to the north you have residents
13 that live just beyond the commercial buildings
14 on H Street. That's not -- you know, I don't
15 know if that has been made clear, but, you
16 know, the 800 Block of 10th Street just north
17 of H Street, there are homes there as well,
18 just like there are homes in the 700 Block.

19 So that's all open.

20 CHAIRPERSON MILLER: I know. I
21 guess my question is, I mean this is an
22 unknown and I'm asking you if you have any

1 experience with noise from rooftops?

2 MR. MAHMUD: My general experience
3 has been people in the neighborhood
4 complaining about noise coming from other
5 businesses.

6 CHAIRPERSON MILLER: Right.

7 MR. MAHMUD: And that includes
8 businesses with rooftops and decks and
9 sidewalk cafes. Now, I don't know -- you
10 know, I haven't gone to each of those
11 businesses to look at the, you know,
12 configuration and all that stuff. But I'm
13 just telling you anecdotally, I hear
14 complaints about noise from residents here,
15 absolutely.

16 CHAIRPERSON MILLER: Okay. So
17 would it be accurate to say that the concern
18 about the roof deck stems from an assumption
19 that because it's open, for an unknown, that
20 this --

21 MR. MAHMUD: This is not there.
22 Absolutely. I mean, until it -- you know, we

1 can only go off of our common sense here,
2 right? And if we look at the plans and it has
3 an open area that goes into, you know, my
4 bedroom, I can only assume I'm going to hear
5 that.

6 CHAIRPERSON MILLER: Okay. And as
7 far as the whole common grounds question, I
8 guess, did you -- I understand this 11:00/
9 12:00 in most of the settlement agreements, I
10 guess. But there are also in the neighborhood
11 establishments that don't have settlement
12 agreements?

13 MR. MAHMUD: I'm not as familiar
14 with that issue. I know that Twelve, which is
15 this -- one of the bars/restaurants that is
16 outside of my Single Member District a little
17 further down H Street, for whatever reason
18 before I was on the ANC and I think before Jay
19 was Chair of the ABL, somehow their voluntary
20 agreement didn't include -- is that correct?
21 It didn't include the restriction.

22 And that's the only one I know of.

1 And we are fighting hard to get that in line,
2 because the neighbors that live near there are
3 absolutely having a nightmare of a time
4 dealing with that place.

5 CHAIRPERSON MILLER: Was there any
6 -- well, you know, I think Mr. Jones asked
7 you, you know, how do people feel like 11:00/
8 12:00 or 3:00/4:00. Like which, you know,
9 either/or. Did anybody ever say like well,
10 okay, if it's 1:00 on a Saturday night, I
11 could live with that?

12 MR. MAHMUD: Yeah, one person who
13 lives at the very end of my row of houses. So
14 we have a row of townhomes. And she is at the
15 very end, so she is furthest away from the
16 noise. And she said, you know, this is crazy.
17 4:00/3:00, anything, that's crazy. You know,
18 she said I could probably live with one hour.
19 But, you know, that's her speaking as one
20 person that lives at the very end. I could
21 tell you that that one person said that, yes.

22 CHAIRPERSON MILLER: Okay. All

1 right. Okay. Any questions? All right. Any
2 questions on Board questions?

3 MR. KLINE: Yes.

4 CHAIRPERSON MILLER: Okay.

5 CROSS-EXAMINATION

6 MR. KLINE: You testified that if
7 it was a question between having the hours and
8 no Ben's, the choice would seem to be no
9 Ben's, correct?

10 MR. MAHMUD: I'm saying that my
11 preference is for Ben's to operate with those
12 hours. If I had to -- if you are asking me,
13 Omar, would you, you know, want to be kept up
14 until 3:00 a.m. just so -- for the privilege
15 of having, you know, chili dogs across the
16 street? I would say, you know, let's talk to
17 Ben's about not having those hours.

18 MR. KLINE: Okay. So let's talk
19 about chili dogs across the street for just a
20 second. If the choice were between no alcohol
21 and a 24 hour operation and alcohol with
22 limited hours as has been applied for, what

1 would the choice be?

2 MR. MAHMUD: I haven't given -- I
3 haven't even thought about that yet.

4 MR. KLINE: Okay.

5 MR. MAHMUD: I didn't think about
6 it.

7 MR. KLINE: No further questions.

8 MR. WILLIAMS: Just one real
9 quick.

10 CHAIRPERSON MILLER: Redirect?
11 Okay.

12 REDIRECT EXAMINATION

13 MR. WILLIAMS: Mr. Mahmud, your
14 Single Member District covers part of H
15 Street. Is that correct?

16 MR. MAHMUD: That's right.

17 MR. WILLIAMS: Can you tell us
18 what blocks it covers?

19 MR. MAHMUD: Yes. From the 800
20 Block. So from 8th Street and H going down to
21 11th. There is some, you know, jagged, you
22 know, one side of the block is not mine, the

1 other side is. So when you go 11th Street,
2 the north side of H Street is in my SMD and it
3 stops at 12th.

4 So it kind of goes like this. But
5 roughly 12th, 11th, all the way down to 8th and
6 7th.

7 MR. WILLIAMS: Okay.

8 MR. MAHMUD: Because there is a
9 jagged at 7th, too.

10 MR. WILLIAMS: Both directions?

11 MR. MAHMUD: Yeah, I mean, we are
12 part of H Street, yeah.

13 MR. WILLIAMS: I don't -- we have
14 no more questions for Mr. Mahmud.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 (Whereupon, witness was excused.)

18 MR. WILLIAMS: So last and
19 probably least, the ANC calls Jay Williams,
20 myself. Mr. Holmes will be --

21 CHAIRPERSON MILLER: Okay.

22 MR. WILLIAMS: -- conducting the

1 questioning.

2 CHAIRPERSON MILLER: Okay.

3 Whereupon,

4 JAY WILLIAMS

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

9 CHAIRPERSON MILLER: Okay.

10 DIRECT EXAMINATION

11 MR. HOLMES: Mr. Williams, could
12 you state your name and address?

13 MR. WILLIAMS: My name is Jay
14 Williams. I reside at 315 12th Street, N.E.,
15 Unit #100.

16 MR. HOLMES: What's your role with
17 the ANC?

18 MR. WILLIAMS: I am a Commissioner
19 for Single Member District 6A05 and I'm also
20 the Chair of the Alcoholic Beverage Licensing
21 Committee.

22 MR. HOLMES: As -- have you had an

1 opportunity as Chair of the ABL Committee to
2 discuss the community's opinion on rooftop
3 decks and sidewalk cafe hours?

4 MR. WILLIAMS: Yes. On December
5 17th we held a community meeting. The ABL
6 Committee held a community meeting to discuss
7 specifically the issue of rooftop deck and
8 public space patio or sidewalk cafe hours in
9 the ANC-6A.

10 We put out notice of it at least a
11 month beforehand, tried to get word out as
12 much as possible. I'm aware that both
13 residents and businesses tried to drum up
14 support for people to come and show up for
15 this meeting.

16 It was very well-attended. I
17 would estimate probably between 60 and 70
18 individuals were there and we spent a good
19 hour and 45 minutes hearing testimony from the
20 neighborhood about this issue.

21 MR. HOLMES: Madam Chair, this is
22 Protestant Exhibit No. 1.

1 CHAIRPERSON MILLER: Do you have
2 it? Do you have their exhibit? Okay.

3 (Whereupon, the document was
4 marked as Protestant Exhibit 1 for
5 identification.)

6 MR. HOLMES: We submit the minutes
7 as our Exhibit No. 1.

8 MR. KLINE: Objection on the
9 grounds of relevance and prejudicial
10 settlement discussion information. It appears
11 to be minutes that pertain to many things, few
12 of which relate to this application and the
13 very little language that I see that relates
14 to this application goes precisely to
15 settlement discussions.

16 MR. WILLIAMS: Can I respond to
17 that? I know I'm a witness. I apologize.

18 CHAIRPERSON MILLER: All right.
19 Yes.

20 MR. WILLIAMS: We are more than
21 willing -- I -- the ANC is more than willing
22 to strike Sections, you know, 2 through 3,

1 which do not relate to this. We would present
2 that the section discussing public space
3 patio, rooftop deck hours is germane to this
4 conversation, because it represents the
5 opinion and feeling of the neighbors that we
6 represent, specifically regarding the issue
7 specifically at issue here.

8 MR. KLINE: Once again, the
9 opinion or feeling of the neighbors is not
10 what is relevant to this proceeding. What is
11 relevant is the appropriateness giving
12 concerns about peace, order and quiet and the
13 other rubric contained in the statute.

14 MR. WILLIAMS: I --

15 MR. KLINE: This isn't a
16 popularity contest in terms of what, you know,
17 neighbors think. We are hear -- you are
18 hearing the evidence. It's not relevant.

19 MR. WILLIAMS: Neighbors' opinions
20 are based on their feelings having to do with
21 peace, order and quiet in their neighborhood.
22 So I feel like it is exactly on point and

1 relevant to this discussion. And, of course,
2 the Board can give whatever weight they feel
3 to this evidence. But I do feel like there is
4 at least some relevance to be gained from this
5 evidence.

6 And I'm willing to describe the
7 meeting generally as well, obviously, and I
8 can --

9 CHAIRPERSON MILLER: That's okay.
10 Let me just make sure we are now talking about
11 a specific part of the minutes and we would be
12 striking the rest of the minutes that are not
13 relevant to the rooftop.

14 MR. WILLIAMS: Sure. Yeah, and I
15 -- we have no problem with striking --

16 CHAIRPERSON MILLER: So --

17 MR. WILLIAMS: -- anything that
18 doesn't relate to discussion of --

19 CHAIRPERSON MILLER: Okay.

20 MR. WILLIAMS: -- sidewalk cafe
21 and rooftop deck hours.

22 CHAIRPERSON MILLER: So I just

1 want -- before I get into it, so well, call to
2 order doesn't really matter, I'm sure.

3 Okay. So old business? No,
4 that's Ben's Chili Bowl is the old business.

5 MR. WILLIAMS: Yeah, we can strike
6 old business, because that's just having to do
7 with the update on the status of the hearings.

8 CHAIRPERSON MILLER: Okay.

9 MR. WILLIAMS: And there is, I
10 guess, some very general reference to
11 negotiations, which I'm fine with being
12 struck. I know that's not relevant here.

13 CHAIRPERSON MILLER: Okay. So
14 that would be struck. So you want in No. 4,
15 New Business, Community Discussion Regarding
16 Public Space Patio and Rooftop Deck Hours?

17 MR. WILLIAMS: Yes. So subsection
18 (a) and near the very end, I think it is, the
19 next to the last page, I also consent to
20 striking subsection (b) having to do with the
21 new license that was before the ABL, as well
22 as, of course, the last page where the

1 committee adjourned.

2 CHAIRPERSON MILLER: Okay. All
3 right. So (b) is stricken.

4 MR. WILLIAMS: Yes.

5 CHAIRPERSON MILLER: So everything
6 up to (b)?

7 MR. WILLIAMS: Yes. The rest of
8 that is a summary of the meeting and the input
9 that the residents in the neighborhood of ANC-
10 6A gave regarding sidewalk cafe and rooftop
11 deck hours.

12 CHAIRPERSON MILLER: Okay. And
13 this is for -- this is community discussion,
14 not just with respect to Ben's Chili Bowl, but
15 with respect to --

16 MR. WILLIAMS: The ANC's general
17 opinion of sidewalk cafe and rooftop deck
18 hours and how the ANC is going to address that
19 issue going forward.

20 CHAIRPERSON MILLER: Okay. And
21 this is a public document, is it not?

22 MR. WILLIAMS: Yes.

1 CHAIRPERSON MILLER: That gets
2 posted on the -- do you post it on the
3 Internet?

4 MR. WILLIAMS: Correct.

5 CHAIRPERSON MILLER: Okay. And
6 your objection is that --

7 MR. KLINE: My objection is there
8 are statements from many people who are not
9 identified. This is a discussion concerning
10 a policy that the ANC admittedly does not have
11 the authority to make. They don't make rules.
12 And, you know, I appreciate --

13 CHAIRPERSON MILLER: We know. We
14 know what the ANC can do.

15 MR. KLINE: I beg your pardon?

16 CHAIRPERSON MILLER: I said we
17 know what the ANC can do.

18 MR. KLINE: Then I --

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: -- have nothing
21 further.

22 CHAIRPERSON MILLER: All right.

1 So then I would say -- and I mean I guess it's
2 hearsay, because they are not here to be
3 cross-examined by opposing counsel.

4 MR. KLINE: Nor are they even
5 identified in --

6 CHAIRPERSON MILLER: Or
7 necessarily identified. However, I think it
8 is relevant to the issue of some perceptions
9 that may be out there by the community. And
10 I'm going to admit it and would say with the
11 caveat that, you know, we will give it the
12 weight that it deserves and that we may not
13 know who these people are or where they live
14 or anything like that, but we will admit it as
15 Protestant's Exhibit No. 1.

16 (Whereupon, the document marked as
17 Protestant Exhibit 1 was received
18 in evidence.)

19 MR. HOLMES: Thank you.

20 CHAIRPERSON MILLER: Okay.

21 MR. HOLMES: Most people are
22 identified.

1 CHAIRPERSON MILLER: Okay.

2 MR. HOLMES: Mr. Williams, what
3 was the outcome of this meeting?

4 MR. WILLIAMS: The general
5 consensus is that ABL Committee voted
6 unanimously with two abstentions that it was
7 the sense of the committee that the residents
8 were overwhelmingly in support of the ANC's
9 position that rooftop decks and sidewalk cafes
10 be closed at 11:00 p.m. on weeknights and
11 12:00 a.m. on weekends.

12 I can tell you that my -- by my
13 recollection of the meeting that I chaired, I
14 can recall two residents of ANC-6A who spoke
15 generally in favor of later hours and 20 or
16 more who spoke in opposition and in support of
17 the ANC's position.

18 It was particularly noted that
19 this was unique from other community meetings
20 regarding say CR vs. CT licenses or a couple
21 of other issues that come up before the ANC
22 where there is more of a split among the

1 community. This was very stark and the -- it
2 was very clear that the community members were
3 in favor of the ANC's position.

4 MR. HOLMES: That's it for us.

5 CHAIRPERSON MILLER: Okay. Cross?

6 CROSS-EXAMINATION

7 MR. KLINE: Mr. Williams, you are
8 familiar with the establishment known as
9 Biergarten Haus?

10 MR. WILLIAMS: I am.

11 MR. KLINE: That's at 1355 H
12 Street, N.E.?

13 MR. WILLIAMS: That sounds
14 correct, but I don't know the exact address.

15 MR. KLINE: Okay. But it's about
16 three or four blocks from this establishment?

17 MR. WILLIAMS: Yes.

18 MR. KLINE: And they have an
19 outside seating area and bar, correct?

20 MR. WILLIAMS: They do on private
21 space.

22 MR. KLINE: Okay. And but it's

1 outside, correct?

2 MR. WILLIAMS: Yes, and it's on
3 the ground floor.

4 MR. KLINE: Okay. And they have
5 hours until 2:00 a.m., don't they?

6 MR. WILLIAMS: I don't know for
7 sure actually.

8 MR. KLINE: You do know that their
9 hours are beyond your standard 11:00/12:00
10 though, don't you?

11 MR. WILLIAMS: Because -- well, if
12 they are, the reason is because it's --

13 MR. KLINE: I didn't ask the
14 reason. My question to you is are you aware
15 that their hours are beyond the standard 11:00
16 and 12:00?

17 MR. WILLIAMS: I'm not.

18 MR. KLINE: You're not aware?

19 MR. WILLIAMS: Well, when you say
20 -- when you say the standard 11:00 and 12:00,
21 you are referring to the standard that the ANC
22 has for rooftop decks and sidewalk cafes. So

1 I reject the premise of your question.

2 MR. KLINE: All right. Is a
3 rooftop deck a summer garden?

4 MR. WILLIAMS: Yes.

5 MR. KLINE: Is outside seating on
6 private property a summer garden?

7 MR. WILLIAMS: Yes.

8 MR. KLINE: So this is a summer
9 garden that has hours longer than the 11:00
10 and 12:00 that is your standard that you have
11 testified and your other witnesses have
12 testified repeatedly --

13 MR. WILLIAMS: Um-hum.

14 MR. KLINE: -- that this is the
15 standard in your neighborhood, correct?

16 MR. WILLIAMS: Again, I reject
17 your premise.

18 MR. KLINE: Just answer my
19 question.

20 MR. WILLIAMS: I don't know what
21 Biergarten Haus's hours are for their outdoor
22 space.

1 MR. KLINE: Okay. Do they have a
2 so-called settlement agreement which restricts
3 their summer garden hours to 11:00 p.m. and
4 12:00 p.m. or 12:00 midnight?

5 MR. WILLIAMS: I can't say for
6 sure, but I do not believe they do.

7 MR. KLINE: They do not? You
8 don't believe that they do?

9 MR. WILLIAMS: Correct.

10 MR. KLINE: There has been
11 substantial testimony that everyone in the
12 neighborhood with respect to my words "outside
13 space" --

14 MR. WILLIAMS: Um-hum.

15 MR. KLINE: -- agrees to the same
16 hours of 11:00 and 12:00. Isn't that the
17 testimony?

18 MR. WILLIAMS: No, that's not the
19 testimony.

20 MR. KLINE: Would you say?

21 MR. WILLIAMS: That's not the
22 testimony. The testimony has been that the

1 ANC -- and maybe this needs to be clarified,
2 the ANC makes a distinction between rooftop
3 decks and other summer gardens on private
4 space. And I understand that summer garden
5 applies to both of those spaces, but the ANC
6 feels that there is an important distinction
7 between the two types of space.

8 MR. KLINE: So help me out here.
9 A sidewalk cafe is at ground level, correct?

10 MR. WILLIAMS: On public space.

11 MR. KLINE: On public space. The
12 summer gardens which by implication your ANC
13 seems to favor are also on ground level,
14 correct?

15 MR. WILLIAMS: Yes, on private
16 space.

17 MR. KLINE: On private space.

18 MR. WILLIAMS: Um-hum.

19 MR. KLINE: But summer gardens on
20 rooftops are to be treated differently --

21 MR. WILLIAMS: Yep.

22 MR. KLINE: -- and public --

1 outside seating on public space at ground
2 level is to be treated differently. Is that
3 correct?

4 MR. WILLIAMS: That's correct,
5 because there are -- we -- the ANC strongly
6 believes that there are different levels of
7 sound mitigation possible for those three
8 different spaces and that there is less
9 possible sound mitigation for rooftop decks
10 and public space -- especially public space
11 patios, but also rooftop decks versus private
12 summer gardens, because private summer gardens
13 you can build a whole wall around all three
14 corners. There is a lot more -- you have a
15 lot more flexibility with what a business can
16 do because they own that land and they own
17 that space.

18 And then the reason the rooftop
19 deck is treated differently is because of the
20 nature of it being higher above all the
21 residences. The sound will inevitably spill
22 out. We have heard testimony that there are

1 a lot of design decisions that are made
2 specifically to not include noise mitigation,
3 so that people can enjoy the sight lines from
4 the rooftop.

5 So the ANC has made, over the
6 course of quite a few years, the decision that
7 rooftop decks should be treated differently
8 from other summer gardens. And I think we can
9 all agree that sidewalk cafes, by their
10 nature, DDOT isn't going to allow a lot of the
11 mitigation efforts that, you know, are
12 possible elsewhere.

13 MR. KLINE: All right. So it's
14 true that every situation is different,
15 correct?

16 MR. WILLIAMS: Yes.

17 MR. KLINE: Yes. So a blanket
18 rule doesn't really work very well, does it?

19 MR. WILLIAMS: Well, the -- a
20 blanket rule works for -- a rule that the ANC
21 -- a position for the ANC of something like
22 hours for 11:00 p.m. and midnight does work

1 across the board because of our experiences in
2 the past and because of what is important to
3 our neighbors.

4 We have had businesses talking out
5 of both ends of their mouths saying, oh, you
6 know, this blanket rule doesn't work. One
7 size fits all doesn't work. And then they
8 turn around and point down the hall and say
9 look at Biergarten Haus. They have later
10 hours, why shouldn't we? And the implication
11 is well, we should have those later hours.

12 Businesses are trying -- are
13 talking both ways on that. The ANC is trying
14 to be consistent. The ANC thinks that if it
15 is -- if it goes forward with its standard
16 policy and it pushes for, what we believe is,
17 a reasonable time for rooftop decks and
18 sidewalk cafe -- and public space sidewalk
19 cafe hours, that that is perfectly acceptable
20 and a great balance for the community and the
21 establishment.

22 MR. KLINE: So you are going to

1 attempt to reign in Biergarten so that they
2 close at 11:00 and 12:00 as well?

3 MR. WILLIAMS: Biergarten Haus
4 does not have a rooftop deck or a sidewalk
5 cafe.

6 MR. KLINE: But they have a summer
7 garden, correct?

8 MR. WILLIAMS: Yes. Biergarten
9 Haus has a summer garden.

10 MR. KLINE: And a rooftop is, by
11 legal definition, a summer garden, correct?

12 MR. WILLIAMS: And I have
13 explained already that the ANC has a
14 distinction between summer gardens that are
15 not on rooftops and rooftop decks.

16 MR. KLINE: So the ANC has
17 concluded that it is possible to mitigate
18 sound at ground level on private property, but
19 not at rooftop level on private property?

20 MR. WILLIAMS: That's not --
21 that's a complete misrepresentation of what I
22 said. It's -- we don't say that it's not

1 possible. We say that there are different --
2 that the nature of those spaces are different,
3 such that there is only so much sound
4 mitigation that can be done on those spaces.
5 And that's why we think that a straight
6 restriction for 11:00 p.m. and midnight is
7 reasonable.

8 MR. KLINE: Aren't we really
9 saying the same thing, that it really should
10 be on a case-by-case basis, because you are
11 able to do some things at some summer garden
12 locations that you may not be able to do at
13 other summer garden locations?

14 MR. WILLIAMS: The problem with
15 the case-by-case basis, especially in this
16 situation, is that there is no establishment
17 here. There is nothing built right now. We
18 have the words of what I will perfectly and
19 100 percent say sound like great businessmen
20 who have a great history in Washington, D.C.

21 However, we don't know -- we don't
22 have a building. We don't have activity.

1 This is the ANC's chance because after this
2 hearing, there is no -- the ANC has no say in
3 the actual hours of operation or any type of
4 operational restrictions for Ben's Chili Bowl
5 and Ben's Upstairs until the next renewal
6 period, which, as you know, is what, like four
7 or six years from now. You know better than
8 I do. I don't keep track of all of that.

9 This is the ANC's opportunity.
10 And the ANC knowing what it knows in the
11 neighborhood, knowing what it knows from the
12 neighbors and from what everyone has told us,
13 knowing our experiences with these types of
14 outdoor spaces elsewhere in our ANC has felt
15 that given what we know and given what we have
16 been told, this is our policy.

17 MR. KLINE: So --

18 MR. WILLIAMS: This is our --

19 MR. KLINE: -- just one final
20 question.

21 MR. WILLIAMS: Um-hum.

22 MR. KLINE: So the ANC is

1 perfectly comfortable with extending those
2 privileges to a summer garden that is on
3 private property on the first floor, but is
4 not comfortable extending those privileges to
5 these business people who have operated in the
6 District of Columbia for 55 years without
7 incident?

8 MR. WILLIAMS: Two responses to
9 that. First, they have operated in the
10 District of Columbia without any outdoor space
11 without incident.

12 Second is that we do actually work
13 with businesses who want to have their own
14 private space summer garden and we do ask for
15 them to have restrictions at 11:00 p.m. and
16 midnight. And there is a trial period for
17 that. And if they can show that they are able
18 to operate without the problems, then there is
19 different -- then they can be renegotiated.
20 There may be support for that.

21 However, we still believe that
22 those spaces are -- should be treated

1 differently from rooftop decks and sidewalk
2 cafes.

3 MR. KLINE: No further questions.

4 CHAIRPERSON MILLER: Okay. Board
5 questions? I have a few. Okay.

6 So as I asked your other ANC
7 Commissioners, do you have experience with
8 rooftop outdoor spaces?

9 MR. WILLIAMS: Not in my Single
10 Member District. My Single Member District is
11 almost 100 percent residential. But as Chair
12 of the ABL Committee, I do.

13 CHAIRPERSON MILLER: What is that?

14 MR. WILLIAMS: I -- there have
15 been significant concerns raised with at least
16 one rooftop deck that has been operating
17 beyond midnight due to what we have talked
18 about previously and that there have been
19 numerous, numerous noise complaints coming
20 from that rooftop deck.

21 CHAIRPERSON MILLER: Okay. And is
22 that rooftop deck, does it look similar to

1 this rooftop deck in any way? I know this
2 isn't built yet, you know.

3 MR. WILLIAMS: It has --

4 CHAIRPERSON MILLER: How --

5 MR. WILLIAMS: -- it does have a
6 raised fence around at least part of it. And
7 I -- there some sound mitigation measures in
8 place and they have agreed to, you know, no
9 speakers or prerecorded music, but they ignore
10 that restriction actually.

11 But I can't really describe it any
12 better. I haven't actually been up on that
13 rooftop.

14 CHAIRPERSON MILLER: Okay. What's
15 the name of that one?

16 MR. WILLIAMS: It's Twelve.

17 CHAIRPERSON MILLER: Twelve?

18 MR. WILLIAMS: Twelve Restaurant
19 and Lounge.

20 CHAIRPERSON MILLER: Okay.

21 MR. WILLIAMS: Yeah.

22 CHAIRPERSON MILLER: How many

1 residents came to your meeting on the
2 community discussion regarding public space
3 patio and rooftop deck hours?

4 MR. WILLIAMS: I would -- I can
5 only estimate, but I would say between 60 and
6 70 were present.

7 CHAIRPERSON MILLER: Okay. And
8 how many residents are in the ANC? 2,000?

9 MR. WILLIAMS: 2,000 is per Single
10 Member District, so about 16,000 total.

11 CHAIRPERSON MILLER: 16,000.

12 MR. WILLIAMS: Yes.

13 CHAIRPERSON MILLER: And when you
14 have a heavy turnout, what number is that?

15 MR. WILLIAMS: At ANC meetings?

16 CHAIRPERSON MILLER: Yes.

17 MR. WILLIAMS: Heavy turnout would
18 probably be about 40. No, not even 40. I
19 would say like 20 people.

20 CHAIRPERSON MILLER: So and you
21 had 60 at this one, so --

22 MR. WILLIAMS: We had 60 or 70.

1 So I would say -- I mean, it was by far the
2 largest ANC meeting I have ever attended.
3 Granted I have only been a Commissioner for
4 about a year.

5 CHAIRPERSON MILLER: About how
6 long?

7 MR. WILLIAMS: I have been a
8 Commissioner for a year.

9 CHAIRPERSON MILLER: Oh, okay.

10 MR. WILLIAMS: And ABL Chair. It
11 was by far the biggest ABL Committee meeting
12 as well.

13 CHAIRPERSON MILLER: One other
14 question. You made reference to agreements
15 for a trial period with respect to, what was
16 it called, private -- the public space is on
17 private property.

18 MR. WILLIAMS: The outdoor space.

19 CHAIRPERSON MILLER: Is that
20 something that you would consider with respect
21 to this application? When we are talking
22 about certain middle grounds, is that --

1 MR. WILLIAMS: Yeah. I mean, I
2 understand where we are coming from on that.
3 The problem is that I get the sense from the
4 community that this is a middle ground. That
5 11:00 and 12:00 is not ideal for the
6 neighborhood, but the neighborhood is willing
7 to -- and honestly, there are other issues
8 that are important to the ANC that haven't
9 even been presented here, because we want to
10 focus -- we have given up -- well, not given
11 up.

12 But, you know, we have kind of
13 conceded those issues, partly because of the
14 assurances we have received from them, but
15 partly because we want to focus on the one or
16 two critical issues that are here today, which
17 is the noise coming from these spaces.

18 CHAIRPERSON MILLER: Okay. That's
19 it for me. Anything else? Any questions on
20 Board questions? Okay. Thank you very much.

21 MR. WILLIAMS: Thank you.

22 (Whereupon, witness was excused.)

1 CHAIRPERSON MILLER: Does that
2 complete the ANC's case?

3 MR. WILLIAMS: Yeah, that
4 completes our -- oh, actually, I'm sorry. I
5 do and I think it has been pretty clear to the
6 Board that -- the neighborhood stance on this.
7 I do have three exhibits which are letters
8 submit -- which are letters that neighbors
9 asked me to submit on their behalf to the
10 Board. These are all neighbors who live
11 within a block of Ben's Chili Bowl.

12 I asked -- I mean, I don't have a
13 witness to move them in, because they are just
14 letters from these -- from neighbors.

15 CHAIRPERSON MILLER: Okay.

16 MR. WILLIAMS: But I --

17 CHAIRPERSON MILLER: Did you show
18 them to Mr. Kline?

19 MR. WILLIAMS: I can show them to
20 Mr. Kline right now. I apologize. Oh, sorry.

21 CHAIRPERSON MILLER: Do you have
22 an extra copy for the Board?

1 MR. WILLIAMS: Yep, I have copies
2 for the Board. I apologize. Let me get it
3 all together. So I have 2, 3 -- Exhibits 2,
4 3 and 4 for protestants.

5 (Whereupon, the documents were
6 marked as Protestant Exhibit 2, 3
7 and 4 for identification.)

8 MR. WILLIAMS: Do you have 2, 3
9 and 4?

10 MR. KLINE: I have 2. I have 3.
11 And I have 4.

12 MR. WILLIAMS: Great.

13 MR. KLINE: I have no objection to
14 2. I have an objection to 3, in that it
15 discusses settlement negotiations and
16 settlement with other establishments.

17 MR. WILLIAMS: Well, I mean, you
18 could give as much weight or as little weight
19 as you want to those discussions. If your --
20 if you don't want it, if you don't consider
21 settlement agreement discussions to the extent
22 that it discusses settlement agreement

1 discussions, I -- that's fine with striking
2 that part.

3 CHAIRPERSON MILLER: Okay. I
4 don't have it in front of me, so I am kind of
5 waiting until I look at them.

6 MR. WILLIAMS: Oh, I already --

7 MR. KLINE: I have no objection to
8 4.

9 MR. WILLIAMS: Ms. Jenkins has
10 one. I gave her --

11 MR. KLINE: So I have an objection
12 to 3, but not to 2 or 4.

13 CHAIRPERSON MILLER: Okay.

14 MR. WILLIAMS: Just to move this
15 along, I assume Mr. Kline's objection is to
16 the second paragraph of Exhibit 3.

17 MR. KLINE: It's really the whole
18 thing. I mean, it seems to be throughout the
19 letter.

20 MR. WILLIAMS: I disagree with
21 that representation and, you know, I'll leave
22 it to the Board to determine what is

1 considered discussion of settlement
2 negotiations and what is not.

3 CHAIRPERSON MILLER: All right.
4 I'm going to have to take a minute to read it.

5 MR. KLINE: Fine. Redact the
6 second paragraph and I'm fine with it.

7 MR. WILLIAMS: We have no
8 objection to that.

9 CHAIRPERSON MILLER: All right.
10 There being no objection to Exhibits 2, 3 and
11 4, except for the second paragraph of No. 3,
12 which will be stricken, those three exhibits
13 are admitted.

14 (Whereupon, the documents marked
15 as Protestant Exhibit 2, 3 and 4
16 were received in evidence.)

17 CHAIRPERSON MILLER: Okay. Is
18 that it? Does the ANC rest its case?

19 MR. WILLIAMS: The ANC rests its
20 evidence. Thank you.

21 CHAIRPERSON MILLER: Is there any
22 redirect or whatever?

1 MR. KLINE: We don't have any
2 rebuttal, no.

3 CHAIRPERSON MILLER: Rebuttal,
4 right.

5 MR. KLINE: Thank you.

6 CHAIRPERSON MILLER: Okay. Then
7 closing. Applicant?

8 MR. KLINE: Yes. Thank you, Madam
9 Chair, Members of the Board. The issues in
10 this case, I think we call concede, are pretty
11 narrow. And those concern the appropriate
12 hours of operation for a sidewalk cafe area
13 upon which the licensee agrees no alcohol will
14 be served. And the hours for a rooftop area
15 which the licensee desires to operate until
16 2:00 a.m./3:00 a.m. on Friday and Saturday.

17 The rooftop area as has been
18 testified to by Mr. Ali will be used primarily
19 for dining and, indeed, there is no
20 entertainment endorsement that has been
21 applied for and I think the Board is certainly
22 well-aware of the difference between a

1 restaurant with no entertainment endorsement
2 whatsoever and a different establishment.

3 And the atmosphere in such places
4 tend to be different. The issues with noise,
5 which seems to be the primary issue at this
6 hearing, seem to be less.

7 We heard a lot of testimony
8 concerning a neighborhood rule and everyone
9 plays by the same rules. But they do until
10 they don't. It is striking that we have an
11 establishment three or four blocks away that
12 has a summer garden that is entitled to be
13 open until 2:00 in the morning, which the ANC
14 arbitrarily seems to make the distinction
15 well, that's on the first floor. That's
16 different.

17 We don't know what the basis for
18 that distinction is, but the notion that there
19 is one rule that one size fits all is exactly
20 what we regaled against at the beginning of
21 this hearing and exactly why we are here at
22 this late hour talking about this case.

1 There is not a one size fits all.
2 And there is not a rule for every single
3 operator. Establishments differ in physical
4 characteristics. They differ in terms of the
5 quality of their ownership and operators. And
6 I'm proud to be here tonight at 6:45 next to
7 gentlemen whose family have operated in the
8 District of Columbia in this neighborhood that
9 we are in now for 55 years. And they have
10 been trusted with an alcohol license for five
11 years.

12 Now, Mr. Ali says well, I don't
13 exactly know in terms of what the issues are
14 going to be with noise, but he was very clear
15 on one point, whatever they are, he is going
16 to address them. The same way he and his
17 family have always addressed issues in the
18 businesses that they have run in this
19 neighborhood and they will in the new
20 neighborhood.

21 There was testimony from a number
22 of residents who said well, they are leaving

1 the rooftop completely unprotected. It's
2 completely open to the adjacent residences.
3 Well, I invite your attention to Exhibit 1.
4 Perhaps you can't see it, my little note from
5 where you sit, but if you look up the street,
6 Mr. Mahmud who is the closest unobstructed
7 residence, is quite a ways up the street.

8 There is testimony, there is an
9 exhibit that reflects that the street is 80
10 feet wide, so he is several hundred feet from
11 the establishment. He is not right there.
12 And there is a wall in terms of line of sight
13 that blocks the bulk of the rooftop from his
14 residence.

15 Now, as we know and as the Board
16 has had much experience with, so line of sight
17 goes, so goes noise. And the barrier at the
18 back of this building on the south side of the
19 rooftop will be an effective barrier to noise
20 heard in the residences to the south.

21 Ms. Meek, I believe, who also
22 testified, her residence is completely blocked

1 from the rooftop by the wall and the service
2 area that will be constructed at the back of
3 the rooftop where the restrooms will be and
4 where the stairwell is.

5 And in addition to that, even
6 though she wouldn't concede that noise
7 dissipates the further you go away, we all
8 know that to be true. There is another
9 residence that the Alis bought as a buffer to
10 further mitigate.

11 Now, we are not asking you to take
12 on faith that there may not be issues with
13 noise. We are not asking you to do that.
14 What we are asking you to do is look at the
15 quality of these operators and trust them to
16 deal with the issues in this business, whether
17 they be related to noise, whether they be
18 related to trash, whether they be related to
19 exiting patrons and entrust them to deal with
20 these issues as they have proven over the
21 course of many, many years that they are well-
22 prepared to deal with. Thank you.

1 CHAIRPERSON MILLER: Thank you.

2 Okay. Ready?

3 MR. WILLIAMS: Madam Chair and
4 Board, thank you very much for your time, for
5 these last five hours.

6 As you have heard today, there is
7 overwhelming neighborhood opposition to the
8 hours proposed by Ben's Chili Bowl for the
9 rooftop deck and sidewalk cafe. And I
10 apologize, I -- when I say Ben's Chili Bowl,
11 I mean, Ben's Chili Bowl and Ben's Upstairs.

12 This isn't an issue the ANC takes
13 lightly, which is why we are here today. We
14 believe that Ben's, in general, will be good
15 neighbors and we welcome their business to our
16 community. We think that they will be a great
17 fit and are the type of establishment people
18 think of when they think of positive
19 development in a neighborhood.

20 But the request for a rooftop deck
21 and sidewalk cafe to be open until 2:00 a.m.
22 on weeknights and 3:00 a.m. on weekends when

1 these spaces are located just feet from
2 residences is unreasonable both for the
3 neighbors directly affected and for the
4 surrounding neighborhood as a whole, where
5 these hours are completely out of the
6 ordinary.

7 Mr. Kline just testified or just
8 said in his closing statement that line of
9 sight equals line of noise. First off, we
10 heard no testimony about that today. And I
11 would ask the Board to give that the weight
12 that it deserves. I disagree with his
13 statement. We will just leave it at that.

14 The specific neighbors affected
15 have shown overwhelming support for the ANC's
16 position of requesting that the hours of these
17 outdoor spaces be closed at 11:00 p.m. and
18 midnight. And the ANC, after a community
19 meeting attended by 60 to 70 individuals, just
20 recently reaffirmed this policy having to do
21 with rooftop decks and sidewalk cafes.

22 It is particularly telling that

1 Ben's Chili Bowl was not able to present a
2 single resident affected by the establishment
3 to testify in favor of their hours. Whereas,
4 on the other hand, you have heard testimony
5 from Mr. Mahmud that he couldn't find a single
6 -- he also could not find a single resident in
7 favor of their hours and instead found over 20
8 residents who are opposed to these hours.

9 We want Ben's Chili Bowl and Ben's
10 Upstairs to succeed. This business is less
11 likely to be successful if their potential
12 best customers, the locals who live
13 immediately around their business, are hostile
14 because of noise from the restaurant and bar
15 is causing a lack of sleep.

16 This is the ANC's chance to be
17 heard. We can't wait and just go on their
18 promises and hope that everything is going to
19 be fine when this is built. This is the
20 chance and set up by the statute for the ANC
21 to show up and protest and express its
22 interest. That's why we are here and that's

1 why we are putting forth the proposal that we
2 have today.

3 I don't need to go into the rest
4 of the summary, the testimony, you have heard
5 all of the evidence that we have presented.

6 As such, we respectfully request
7 that the Board support the concerns of the
8 surrounding neighbors and ensure that Ben's is
9 in line with the vast majority of other
10 establishments along H Street by setting the
11 closing hours for the applicant's sidewalk
12 cafe and rooftop deck to 11:00 p.m. on
13 weeknights and 12:00 a.m. on weekends and
14 require that Ben's undertake reasonable sound
15 mitigation efforts, including having no live
16 or prerecorded music on their outdoor spaces.
17 Thank you very much.

18 CHAIRPERSON MILLER: Did you say
19 no loud?

20 MR. WILLIAMS: Live.

21 CHAIRPERSON MILLER: Oh, live.

22 MR. WILLIAMS: Or prerecorded.

1 CHAIRPERSON MILLER: Thank you.

2 MR. WILLIAMS: But we definitely
3 don't want loud as well.

4 MR. KLINE: Just for the record,
5 that's not an issue.

6 CHAIRPERSON MILLER: All right.
7 Wrapping it up. Okay. I'm going to close the
8 record now. Everybody has gotten in their
9 exhibits and the testimony.

10 And I'll ask the parties if they
11 wish to file proposed findings of fact and
12 conclusions of law or waive your right to do
13 so?

14 MR. WILLIAMS: The deadline for
15 that is 20 days after the transcript? Is that
16 correct?

17 CHAIRPERSON MILLER: I believe
18 that's what the regs say, but I think that we
19 have said 30 days from when you get your
20 transcript.

21 MR. WILLIAMS: 30 days from the
22 transcript?

1 CHAIRPERSON MILLER: Isn't that
2 what we said? I think that's what we said.

3 MR. WILLIAMS: Okay. I just
4 wanted to clarify.

5 CHAIRPERSON MILLER: Do you want
6 to do it?

7 MR. WILLIAMS: I don't know. I
8 mean, I'm new at this.

9 CHAIRPERSON MILLER: Oh.

10 MR. WILLIAMS: Is that typical?

11 CHAIRPERSON MILLER: It's not the
12 norm, no.

13 MR. WILLIAMS: Oh.

14 CHAIRPERSON MILLER: Especially on
15 the --

16 MR. KLINE: Normally to waive is
17 the --

18 CHAIRPERSON MILLER: Yes, okay.

19 MR. KLINE: We are going to be
20 waiving, if that provides any guidance.

21 MR. WILLIAMS: Okay. Then, yes, I
22 -- we will waive as well.

1 CHAIRPERSON MILLER: Okay.

2 MR. WILLIAMS: As long as I have
3 them on the record waiving, then I --

4 CHAIRPERSON MILLER: Right.

5 MR. WILLIAMS: -- we waive the
6 opportunity as well.

7 CHAIRPERSON MILLER: That is the
8 norm.

9 MR. WILLIAMS: Okay.

10 CHAIRPERSON MILLER: Especially
11 where the issue is pretty straightforward.

12 MR. WILLIAMS: Yes.

13 CHAIRPERSON MILLER: And we have
14 had five hours of this.

15 MR. WILLIAMS: Even if it's not
16 the norm, they are waiving it.

17 CHAIRPERSON MILLER: Okay.

18 MR. WILLIAMS: We are fine with
19 waiving.

20 CHAIRPERSON MILLER: All right.
21 Then the parties have waived that.

22 MR. WILLIAMS: Yes.

1 CHAIRPERSON MILLER: And okay, I'm
2 going to read the instructions and we are
3 going to take a vote, a public vote to
4 deliberate on this case in closed session.
5 Okay.

6 As Chairperson of the Alcoholic
7 Beverage Control Board for the District of
8 Columbia and in accordance with DC Official
9 Code Section 2-574(b) of the Open Meetings
10 Act, I move that the ABC Board hold a closed
11 meeting for the purpose of seeking legal
12 advice from our counsel on Case No. 13-PRO-
13 00133, Ben's Chili Bowl/Ben's Upstairs,
14 pursuant to Section 2-574(b)(4) of the Open
15 Meetings Act and deliberating upon this case
16 for the reasons cited in Section 2-574(b)(13)
17 of the Open Meetings Act.

18 Is there a second?

19 MEMBER BROOKS: Second.

20 CHAIRPERSON MILLER: Mr. Brooks
21 has seconded the motion. I'll now take a roll
22 call vote on the motion now that it has been

1 seconded.

2 Mr. Brooks?

3 MEMBER BROOKS: I agree.

4 CHAIRPERSON MILLER: I agree.

5 Mr. Jones?

6 MEMBER JONES: I agree.

7 CHAIRPERSON MILLER: Okay. It
8 appears the motion has passed by a vote of 3-
9 0-0. And I hereby give notice that the ABC
10 Board will deliberate this case in closed
11 session.

12 And, Mr. Kline, maybe you will
13 help me out on this. I think that we are to
14 issue a decision within 60 days, since it's a
15 new application?

16 MR. KLINE: For a new application,
17 yes.

18 CHAIRPERSON MILLER: Okay. Then
19 that's what we will do. We will issue a
20 decision within 60 days.

21 Okay. Thank you.

22 MR. KLINE: Thank you.

1 MR. WILLIAMS: Thank you for your
2 time.

3 CHAIRPERSON MILLER: Have a good
4 night.

5 MR. KLINE: Have a good evening.

6 CHAIRPERSON MILLER: All right.
7 The Board is now going to recess and reconvene
8 for the agenda in a little while. Okay.

9 (Whereupon, the Protest Hearing in
10 the above-entitled matter was concluded at
11 6:54 p.m.)

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