

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

-----: :
IN THE MATTER OF: :
: :
Office of Planning - Text : Case No.
Amendment to ' 721.3 : 11-16
: :
-----: :

Monday,
October 3, 2011

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
11-16 by the District of Columbia Zoning
Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., 20001,
Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
GREG M. SELFRIDGE, Commissioner
MICHAEL G. TURNBULL, FAIA,
Commissioner (OAC)
PETER MAY, Commissioner (NPS)

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON

The transcript constitutes the
minutes from the Public Hearing held on
October 3, 2011.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

TABLE OF CONTENTS

	<u>Page No.</u>
Presentation by Office of Planning	7
Testimony of Phil Mendelson, Honorable Council Member at Large	7
Report of Other Government Agencies	
Report of ANCs	
Organizations or Persons in Support	
Organizations or Persons in Opposition	

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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

6:32 p.m.

CHAIRMAN HOOD: Good evening,
ladies and gentlemen.

This is a public hearing of the
Zoning Commission for the District of Columbia
for Monday, October 3, 2011.

My name is Anthony Hood. Joining
me this evening are Commissioners May,
Selfridge and Turnbull.

We are also joined by the Office
of Zoning Staff, Ms. Sharon Schellin, Office
of Planning Staff, Ms. Steingasser and Mr.
Lawson.

This proceeding is being recorded
by a court reporter. It's also webcast live.
Accordingly, we must ask you to refrain from
any disruptive noises or actions in the
hearing room.

The subject of this evening's
hearing is Zoning Commission Case No. 11-16.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 This is a request by the Office of Planning
2 for a text amendment to 721.3K of the Zoning
3 Regulations, to exempt firearms retail sales.
4 for establishments located in District Law
5 Enforcement or Licensing Agencies from
6 complying with the radius limitations of that
7 provision.

8 Notice of today's hearing was
9 published in the D.C. Register on July 22,
10 2011, and copies of that announcement are
11 available to my left on the wall near the
12 door.

13 The hearing will be conducted in
14 accordance with provisions of 11 DCMR 3021 as
15 follows: preliminary matters, presentations
16 by the Office of Planning, report of other
17 government agencies, report of the ANC, in
18 this case all of them, organizations and
19 persons in support, organizations and persons
20 in opposition.

21 The following time constraints

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be maintained in this hearing:
2 organizations, five minutes, individuals,
3 three minutes.

4 All persons appearing before the
5 Commission are to fill out two witness cards.

6 When presenting information to the
7 Commission, please turn on and speak into the
8 microphone.

9 Please turn off all beepers and
10 cell phones at this time, so not to disrupt
11 these proceedings.

12 At this time, the Commission will
13 consider any preliminary matters. Does the
14 staff have any preliminary matters.

15 MS. SCHELLIN: No, sir.

16 CHAIRMAN HOOD: Okay. We've been
17 joined by the Honorable Council Member at
18 Large, Phil Mendelson. I'm going to ask if he
19 can come to the table, but I will ask if you
20 would indulge us for one moment so we can go
21 the Office of Planning. I don't think that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to take long, and then we will hear your
2 comments.

3 Okay. Ms. Steingasser.

4 MS. STEINGASSER: Mr. Chairman and
5 Commissioners, the Office of Planning
6 recommended in July emergency adoption of a
7 text amendment to Section 21(3)(k). We are
8 recommending final adoption of that same text
9 amendment with the modification that it be
10 limited now in final form to only the
11 Metropolitan Police Department Headquarters,
12 that the phrase located in the law, "...
13 enforcement office or licensing agency ...,"
14 shall be deleted from the final text.

15 That amendment is being proposed
16 after consultation with the Deputy Mayor for
17 Public Safety and Justice, as well as the
18 Council for the Metropolitan Police
19 Department.

20 CHAIRMAN HOOD: Okay.
21 Commissioners, let's go straight to Council

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Member Mendelson.

2 MR. MENDELSON: Thank you,
3 Chairman Hood and Members of the Commission.

4 I've handed up copies of my
5 testimony.

6 I'm Phil Mendelson, At Large
7 Member of the Council of the District of
8 Columbia, and Chairman of the Committee on
9 Judiciary of the Council of the District of
10 Columbia.

11 As the Chair of the Judiciary
12 Committee, I'm responsible for legislation
13 relating to gun control in the District, and
14 ensuring that our gun laws are consistent with
15 constitutional law.

16 I'm here today for two reasons.
17 First, the proposed text case provides much
18 needed relief for the location of Federal
19 firearms dealers. Second, the case before you
20 provides an important opportunity to reexamine
21 the zoning restrictions, to reexamine the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 zoning restrictions on firearms retail
2 establishments.

3 Regarding the first point, as you
4 may know there's only one licensed firearms
5 dealer in the District. His name is CS
6 Exchange Limited, and it's operated by Mr.
7 Charles Sykes.

8 Under Federal law, no dealer may
9 sell a hand gun to a resident of another
10 state. Thus, when a person acquires a hand
11 gun, such as by purchase or as a gift, in a
12 state other than the place of his or her
13 residence he or she must transfer the hand gun
14 via a federally-registered dealer in his or
15 her own state.

16 Since there are no gun stores in
17 the District of Columbia, every District
18 resident must go through CS Exchange if he or
19 she seeks to acquire a hand gun.

20 CS Exchange is not really a retail
21 gun dealer. Rather, it acts like a transfer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 agent. However, if CS Exchange were to go out
2 of existence no citizen of the District could
3 lawfully acquire a hand gun.

4 As much as it has been our
5 tradition since Home Rule to discourage gun
6 ownership, the Supreme Court made clear in its
7 2008 decision, Heller v District of Columbia,
8 that District residents have a right to
9 possess a hand gun for self defense in their
10 home. Thus, it is essential that there be at
11 least one licensed firearms dealer in the
12 District.

13 It is not likely, though, that in
14 the foreseeable future there will be more than
15 one licensed firearms dealer in the District.

16 Mr. Sykes told me in July that he
17 averages six to ten hand gun transactions per
18 month. That's a maximum of 120 hand gun sales
19 per year, a very small market.

20 I believe he charges \$125 per
21 transaction. That amount is, actually, high

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 compared to transfer dealers, what transfer
2 dealers in other states charge. But, this
3 means that Mr. Sykes' grosses about \$1,250 a
4 month. That's not very much income.

5 Mr. Sykes was notified in April
6 that his one room, second-story office, would
7 have to relocate because the building was
8 slated for redevelopment. He stopped taking
9 customers and began to look for a new
10 location.

11 Current zoning, as you know,
12 restricted him to C2 and higher, and the
13 market that is his income made his ability to
14 relocate even more difficult.

15 After two and a half unsuccessful
16 months, the District government stepped in and
17 offered temporary space at police
18 headquarters. In the meantime, the District
19 had been sued in Federal Court because
20 citizens were unable to acquire hand guns, in
21 spite of the Heller decision.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The District government's action
2 is the genesis of the case before you. Police
3 headquarters is a perfectly fine location for
4 Mr. Sykes' type of business. For years, every
5 gun owner has had to take their hand gun from
6 Mr. Sykes' former location to police
7 headquarters, because all firearms must be
8 registered, and the registration is handled at
9 police headquarters.

10 Now, instead of traveling from,
11 say, Anacostia, which was where Mr. Sykes was
12 formerly located, instead of having to travel
13 from Anacostia to downtown, citizens will have
14 to travel only from one room to another within
15 the same building.

16 There are other advantages as well
17 to using police headquarters, such as reduced
18 risk of robbery to registrants, and reduced
19 risk of burglary at the dealer's office.

20 However, it is my understanding
21 that Mr. Sykes will be permitted to locate at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 police headquarters for only one year. Thus,
2 the current solution is temporary, which means
3 that the benefit of the text amendment is
4 temporary. This gives rise to the second
5 purpose of my testimony.

6 The case before you provides an
7 important opportunity to reexamine the zoning
8 restrictions on firearms retail
9 establishments. Until 2008, a firearms retail
10 sales establishment was not a separately-
11 defined use under the zoning regulations, and,
12 therefore, it appears that gun dealers were
13 permitted, as a matter of right, in any
14 commercial district.

15 This treatment is similar to other
16 large cities, Chicago, New York, Portland, San
17 Francisco, and Seattle. Other cities limit
18 gun dealers to moderate density in less
19 restrictive commercial districts, but without
20 any distance requirement, Baltimore, Denver,
21 Detroit, Los Angeles, Minneapolis and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Pittsburgh.

2 But, in the District, with a
3 market so small that it can barely sustain one
4 transfer agent, a dealer may not locate in a
5 C1 district within 300 feet of a residence,
6 within 300 feet of a special purpose district,
7 within 300 feet of a church or other place of
8 worship, within 300 feet of a public or
9 private school, within 300 feet of a public
10 library, or within 300 feet of a playground.

11 Even though Metropolitan Police
12 Headquarters is one full block and two cross
13 streets away from the Lutheran Church located
14 at 4th and E Streets, it is too close for the
15 location of a transfer dealer. Thus, the
16 zoning care before you.

17 In 2008, right after the Heller
18 decision, all of us moved with uncertainty as
19 we relaxed our laws prohibiting the possession
20 of hand guns. In that context, it made sense
21 to be cautious and place distance restrictions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on gun dealers. But, the fears have not borne
2 out.

3 With three years experience, and
4 with revisions to our gun laws, that is, over
5 the last several years that Council has made
6 revisions, I believe that the only distance
7 restriction necessary, if any, is that a
8 firearms retail sales establishment should not
9 be located next door to the uses I just
10 enumerated, that is, a residence, church,
11 school, playground, and so forth.

12 There is a fear that a gun shop
13 will become a gathering place for
14 troublemakers, attract violence, and in these
15 ways be a nuisance. Yet, there is no evidence
16 of this happening in other cities.

17 Moreover, our local laws reduce
18 the risk, no licensed dealer shall display any
19 firearm or ammunition in windows visible from
20 a street or sidewalk. All firearms,
21 destructive devices, and ammunition, shall be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 kept at all times in a securely locked place
2 affixed to the premises, except when being
3 shown to a customer.

4 It is unlawful to transport a
5 firearm unless it is unloaded, inside a locked
6 container, and separate from any ammunition.

7 The waiting time for the purchase
8 of a firearm is ten days. So, nobody can walk
9 into a gun store and expect to walk out
10 minutes later with a gun. Gun dealers shall
11 adhere to strict inventory reporting
12 requirements to eliminate the risk of loss and
13 to enable the police to track a theft. And,
14 gun dealers are prohibited from selling a
15 firearm to a person under 21 years of age.

16 The numerous restrictions on gun
17 dealers render unnecessary a 300 foot distance
18 requirement, and the recent experience of Mr.
19 Sykes highlights the difficulty created by
20 this buffer.

21 Until the market changes, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presently unforeseen, it is unlikely that
2 there will ever be more than one or two gun
3 dealers in the District, and it is more likely
4 that they will be transfer agents rather than
5 retail gun stores. And, if a retail gun store
6 were to come, it is probably going to be a
7 national chain store, for which gun sales are
8 a fraction of the business.

9 The proposed revision to the
10 zoning regulations would permit Mr. Sykes to
11 continue operation, which is necessary if
12 individuals are to be able to acquire hand
13 guns under Federal and constitutional law.
14 However, this solution may be temporary.

15 The Commission should go further
16 than the proposed text and eliminate the 300-
17 foot buffer requirement. At most, firearms
18 retail sales establishments should be
19 prohibited from locating next door or adjacent
20 to a residence, church, school, et cetera.

21 The fact that the proposed text in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this case is broad enough to permit location
2 at any law enforcement facility, or licensing
3 agency, is not objectionable since in my view
4 it is my view that the text should be even
5 broader.

6 Thank you.

7 CHAIRMAN HOOD: Thank you very
8 much, Councilman Mendelson. We appreciate
9 your comments, and know you have been working
10 hard on this issue for a while, and we really
11 appreciate it.

12 Let's have a few questions from my
13 colleagues.

14 If I understand correctly, what
15 you are asking the Commission to do is go --
16 you are asking us to go a step further. The
17 proposal now has, as you stated in your
18 testimony, 300 feet from playgrounds,
19 churches, special purpose districts, you are
20 asking us to just look at and condense that
21 and basically say, do away with the 300-foot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 rule, and say that it should not be next door
2 or maybe on the same street.

3 You are asking us to go that next
4 step.

5 MR. MENDELSON: Correct.

6 CHAIRMAN HOOD: Have we -- you are
7 asking us to go that next step now as opposed
8 to maybe later, as we get closer to this
9 temporary solution becoming outdated, or
10 becoming exempt, or becoming final.

11 I mean, as the final date of this,
12 what we are proposing tonight, is temporary,
13 because at some point in time we are going to
14 have to revisit this, you are asking us to do
15 it now as opposed to later.

16 MR. MENDELSON: Correct.

17 CHAIRMAN HOOD: Have we had those
18 discussions with the Office of Planning?

19 MR. MENDELSON: I don't think so.
20 I've not had those discussions, and I think
21 the last time the buffer was discussed was in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 2008 when the regulations that we now have
2 were before the Commission.

3 CHAIRMAN HOOD: And, I'm just
4 curious of what the input or how much input
5 the public has, as far as relaxing that, what
6 you have requested. Have we had any threats,
7 or has anybody been talking about it? And, I
8 know we have a mandate, I know we have to come
9 into compliance, but I'm just wondering, has
10 it been out there in the community?

11 MS. SCHELLIN: The relaxation of
12 the 300 foot?

13 CHAIRMAN HOOD: Right.

14 MS. SCHELLIN: It has not, and if
15 the Commission chose to go down that I think
16 we would have to re-advertise that for an
17 additional public hearing.

18 MR. MENDELSON: If I may, that's
19 kind of what happened in 2008. The proposal
20 initially, I think there were a number of
21 alternatives that were put forth, and they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 largely restricted -- proposed to restrict the
2 location of a firearms retail establishing to
3 C4, C5, I don't think it was even permitted --
4 proposed to be permitted in C3.

5 And, as a result of testimony and
6 further thought, it was decided to re-
7 advertise that hearing, and the current
8 regulations were adopted, which permit in C2
9 and above with the 300-foot buffer.

10 CHAIRMAN HOOD: Okay. Let me open
11 it up to my colleagues. I have some thoughts,
12 but let me open it up and hear from others.

13 Commissioner May?

14 COMMISSIONER MAY: Yes. I'm
15 curious, and I'll ask this of anyone who would
16 know, but is there any talk of any kind of gun
17 shops being located in the City, either
18 separately or within larger stores or
19 whatever?

20 MS. STEINGASSER: I have not heard
21 of any.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MENDELSON: What I know is
2 this. When Mr. Sykes was told he would have
3 to relocate, there was some media attention
4 around that, and there were a couple people
5 who contacted me, and I directed them to the
6 Deputy Mayor for Public Safety, who wanted to
7 be just what we call an FFL, which is a
8 transfer agent.

9 As far as I know, none of that has
10 gone any farther, because the market is so
11 small.

12 Also, in the last few months,
13 there was a news report about Walmart, which
14 is interested in locating stores in the
15 District. Whether that would be a place for
16 selling firearms, and I believe Walmart said
17 that they weren't going to do that.

18 Walmart, I believe, is the
19 Nation's largest firearms dealer, and I think
20 they took that off the table.

21 COMMISSIONER MAY: And, it wasn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clear from the various bits of information
2 that I have on the case file on this, but has
3 Mr. Sykes been continually in business?

4 MR. MENDELSON: I'm not quite sure
5 what you mean.

6 COMMISSIONER MAY: Well, I mean --

7 MR. MENDELSON: He stopped taking
8 new customers in April, and I believe he has
9 now resumed taking new customers, since he has
10 relocated at police headquarters.

11 COMMISSIONER MAY: Okay. So, he
12 has been relocated there. Okay.

13 I'm curious, just in hearing the
14 Office of Planning's thought of reaction to
15 relaxing the 300-foot buffer, you know,
16 regardless of what procedure we go through to
17 do that, whether you have a reaction to that.

18 MS. STEINGASSER: We don't have a
19 reaction at this time. We would probably have
20 to map it out and coordinate efforts with the
21 Deputy Mayor for Public Safety, as well as the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Office of Attorney General, both.

2 COMMISSIONER MAY: From your
3 perspective, would it make more sense to,
4 essentially, continue this case and re-
5 advertise, or would it make more sense to
6 include this so that Mr. Sykes can stay in
7 business?

8 MS. STEINGASSER: Well, I think we
9 would -- that would be our recommendation,
10 that if the Commission would like the Office
11 of Planning to look further at the issue, we'd
12 be happy to do so as a separate case, so that
13 Mr. -- we could conclude this case to get the
14 permanent zoning in place, and Mr. Sykes can
15 continue to operate without the emergency
16 elapsing.

17 CHAIRMAN HOOD: Any other
18 questions?

19 Commissioner Turnbull?

20 COMMISSIONER TURNBULL: Yes, I
21 think -- thank you, Mr. Chair. We've only got

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 three ANCs which are chiming in on this, but
2 they've all, basically, understood that that's
3 300 feet. So, I think we would need to re-
4 advertise to make that change.

5 I guess my only one concern is,
6 the thing that I like, and I'm not necessarily
7 opposed to changing it, to going to a
8 different whatever -- I guess the only thing
9 is the word "next door," or the words, "next
10 door." Does that exclude across the street?

11 I guess what nice about a
12 definitive length, 300 feet, 200 feet, 100
13 feet, is that there is no wiggle room. I
14 guess I'm just concerned about what next door
15 really means. It would have to be defined in
16 whatever we did, as to the adjacencies of
17 where this place would be.

18 I think people, I think the ANCs,
19 are going to be looking for some comfort level
20 as to that. I think next door, just saying
21 the word next door might raise a little angst

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with some of them. But again, I think that
2 can be dealt with.

3 Yes, that's it.

4 CHAIRMAN HOOD: Do you want to
5 respond?

6 MR. MENDELSON: Well, you know, I
7 do think it would raise angst with some of the
8 ANCs, but in reflecting on this, if you look
9 at the market, we are talking about one or two
10 of these licensees in the City. We are not
11 talking about a large number.

12 Second, under the current
13 regulations, I mean, think of this building,
14 because you've got a church at one end of the
15 building, 4th and E, and you have police
16 headquarters at the other end of the building,
17 Indiana and 4th, and that's too close under
18 the regulations.

19 This summer, I traveled across
20 country, drove across country. I saw a lot of
21 gun stores. They are in strip commercial.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 There was one across from a grocery store.
2 And so, it's not uncommon, and in the District
3 it wasn't uncommon, until we prohibited owning
4 hand guns, to have these gun stores, I
5 believe, in any District. That's not clear.

6 I don't know whether 18th and
7 Adams Mill Road was C1 or C2 back in the
8 1970s.

9 And then, we have so many
10 restrictions on the gun stores at this point,
11 that they are really pretty safe places,
12 because you can't display the firearms. The
13 employees all have to be fingerprinted. I
14 didn't mention that in my testimony. There
15 are just a lot of restrictions on these
16 dealers.

17 So that, they are not going to be
18 the kind of attractive nuisance that is what I
19 think the ANCs are thinking of at first blush.

20 COMMISSIONER TURNBULL: And, I'm
21 not opposed to changing. I just think we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 probably going to need a hearing to --

2 MR. MENDELSON: I understand.

3 COMMISSIONER TURNBULL: -- flesh
4 that all out.

5 And, I'm not sure, to keep Mr.
6 Sykes in business, if it makes sense to pass
7 what we have, and then have OP either come
8 back with some more either working with your
9 recommendation and making some changes on the
10 proposed revision to what we have here.

11 CHAIRMAN HOOD: Any other
12 comments?

13 COMMISSIONER MAY: I had just one
14 other question. You said in your testimony
15 that Mr. Sykes will only be permanent for one
16 year?

17 MR. MENDELSON: That's my
18 understanding.

19 COMMISSIONER MAY: And, why is
20 that?

21 MR. MENDELSON: I think the -- I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 couldn't tell you all the reason why. I was
2 involved in quite a number of conversations in
3 July, late June and July, because there was,
4 at one point, legislation I was proposing.
5 The District Government would be the Federal
6 firearms licensee if Mr. Sykes couldn't be
7 relocated. And, I was told that his use, I
8 think it's an agreement for use at the MPD
9 headquarters is one year.

10 COMMISSIONER MAY: Ms.
11 Steingasser, do you have incite into why it's
12 limited to one year?

13 MS. STEINGASSER: I believe the
14 hope is that he would find a more permanent
15 location outside of the MPD headquarters, but
16 the term in the lease is a one year, I believe
17 it's renewable.

18 COMMISSIONER MAY: So, in theory,
19 if it's only a year -- I mean, I guess, you
20 know, if the ultimate objective is for him to
21 be located in a more viable commercial space,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and we want to facilitate that, it may be that
2 in order to facilitate that we need to lift
3 the 300-foot buffer. And, so long as he could
4 continue to operate, you know, maybe it's one
5 year, but maybe it's one year with renewals,
6 that might be workable.

7 If it was going to be one year and
8 he's out, then I would be more inclined to
9 continue this case and try to bring this to
10 resolution under this case, than pass this
11 now.

12 CHAIRMAN HOOD: Mr. Selfridge.

13 COMMISSIONER SELFRIDGE: I would
14 simply say that it seems to me that to move
15 forward with this case tonight would make
16 sense, and then to revisit the issue as the
17 Office of Planning has indicated they would
18 do. It makes a lot of sense, and people are
19 going to want to comment on it.

20 So, I think we would regret not
21 allowing those people to comment, is my sense.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: What would
2 be the timing on that? I guess I'm looking at
3 OP as to --

4 MS. STEINGASSER: To be very
5 candid, I mean, this is a highly political
6 issue.

7 COMMISSIONER TURNBULL: Right.

8 MS. STEINGASSER: We would have to
9 coordinate with the Executive as well as the
10 Deputy Mayor for Justice -- Public Safety and
11 Justice, and with the Office of Attorney
12 General.

13 We did coordinate with the Office
14 of Attorney General on this text amendment,
15 both the 2008 and the one this evening, and
16 they were comfortable with it as a final.

17 I don't know what the timing would
18 be. We'd have to coordinate and get that
19 reorganized.

20 CHAIRMAN HOOD: I guess,
21 Commissioners, the way I see it, we have, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think, two options. We can take the
2 recommendation of Council Member Mendelson and
3 continue it, to try to maybe go out and vet
4 this 300-foot rule, or we can go ahead tonight
5 and deal with the case specific, and maybe try
6 to give the Office -- or, try to ask the
7 Office of Planning and all the other parties
8 that are decision-making parties, the
9 Executive Branch, to maybe come back in seven
10 months.

11 I'd like to see us work something
12 out, and take this 300-foot rule under
13 advisement, and deal with it before the year
14 of this temporary, which possibly may be
15 renewed.

16 So, we have two different options
17 the way I see it. I'd just like to see --
18 let's open it up for discussion and see how
19 you all would like to go.

20 COMMISSIONER TURNBULL: Does he,
21 if we continue it, does he still continue to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be able to operate?

2 CHAIRMAN HOOD: If we continue
3 this case?

4 COMMISSIONER TURNBULL: If we
5 continue it.

6 MS. STEINGASSER: He would. He
7 has -- he has a legitimate license and a
8 legitimate lease. He would be non-conforming,
9 because he went in under the emergency rule,
10 which will expire. So, he would be a non-
11 conforming use, but it would be a legal use.

12 COMMISSIONER TURNBULL: But, he
13 could continue to operate?

14 MS. STEINGASSER: He could
15 continue. I don't know the conditions of the
16 Certificate of Occupancy, whether it's --

17 COMMISSIONER TURNBULL: Well, does
18 that put D.C. in jeopardy of Federal law? I
19 mean, is there anything that complicates the
20 issue for him operating that here?

21 MS. STEINGASSER: I don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: I don't
2 want to get him in a bind.

3 MR. MENDELSON: I don't believe
4 there's an issue, in regard to the Federal
5 Government.

6 COMMISSIONER TURNBULL: Right.

7 MR. MENDELSON: The ATF licenses
8 him, and they've seen the premises. And, I
9 don't -- I'm not aware of anything that --

10 COMMISSIONER TURNBULL: Okay.

11 MR. MENDELSON: -- that would
12 jeopardize that, him operating there.

13 CHAIRMAN HOOD: You were speaking
14 of --

15 COMMISSIONER TURNBULL: I was just
16 concerned that it was going to come back on
17 D.C.

18 CHAIRMAN HOOD: -- I mean, you
19 were thinking as far as holding off this case
20 and putting it back out there, re-advertising
21 it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Right.

2 CHAIRMAN HOOD: And, doing away
3 with the 300-foot rule, as opposed --

4 COMMISSIONER TURNBULL: Well, yes,
5 trying to just continue it. I mean, that was
6 one of your options, I think.

7 CHAIRMAN HOOD: That was one of
8 them.

9 COMMISSIONER TURNBULL: Was to
10 continue it.

11 I'm ready to go whichever way is
12 going to make the most sense, and the most
13 practical way to deal with this.

14 CHAIRMAN HOOD: Commissioner
15 Selfridge?

16 COMMISSIONER SELFRIDGE: As part
17 of the testimony, Council Member Mendelson,
18 does that sound like an agreeable way to move
19 forward, to bring this to conclusion and then
20 work with OP and all the stakeholders to try
21 to get some permanent solution?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MENDELSON: Well, there were a
2 couple of thoughts went through my mind. You
3 know your procedures better than I do, but I
4 think sometimes you issue orders and then keep
5 the case open for further processing. That's
6 one thought that goes through my mind.

7 Another is, I don't know if you
8 were planning on proceeding with a decision
9 tonight, because another possibility is that I
10 can talk with Ms. Steingasser and the Office
11 of Planning, and with the Deputy Mayor, and
12 let's say within the week either I submit
13 something additional or Office of Planning
14 submits something additional, or both.

15 COMMISSIONER MAY: Ms.
16 Steingasser, can I ask a quick questions?

17 When does the -- if we don't act
18 on this, when would the emergency expire?

19 MS. STEINGASSER: Ms. Schellin, do
20 you know when the emergency would expire

21 MS. SCHELLIN: It expires -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 guys took action, it's 120 days from when you
2 took action, which I think was -- it was in
3 July.

4 MS. STEINGASSER: July 14th, so --

5 MS. SCHELLIN: Right.

6 MS. STEINGASSER: -- it would be
7 the middle of November.

8 CHAIRMAN HOOD: You know what I
9 really think, I think that we need to go ahead
10 and close this case out. This is my
11 recommendation. And also, work with the
12 Office of Planning again, Public Safety and
13 everyone else, and try to not wait that whole
14 year. We need to probably start vetting and
15 having conversations in the six months and
16 come back with some text to do away with the
17 requirement of the -- I've lost my train of
18 thought -- the 300-foot buffer, 300-foot
19 requirement.

20 I think that that, within itself,
21 will give -- that way we can do a vetting. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 need to start that before the year is out. I
2 know we have a lot on the plate, but I see
3 that as being a full hearing, at least in
4 front of us, and we need to start that, if
5 that's the way we choose to go, because I
6 think that the Council Member is exactly
7 right. I remember growing up with Irving's, I
8 think we had Irving's in D.C., I think.

9 COMMISSIONER MAY: Irving's
10 Department Store.

11 CHAIRMAN HOOD: Yes, and I think
12 they sold -- I think they sold firearms, if
13 I'm not mistaken. And, I remember one, I
14 think, being on Bladensburg Road, and we
15 talked about this previously, but that was a
16 different time. That was in the '70s, but
17 still, I think that this is worth vetting. I
18 think this is something we need to put out.

19 We do have three responses from
20 three different ANCs in the City, but I think
21 if we relax the 300-foot rule we may have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 number of responses.

2 And then, we also need to do, as
3 Commissioner Turnbull has mentioned, we need
4 to figure out what does next door mean. Is it
5 the same street? I think some of those things
6 we need to work out.

7 And then, that doesn't put us in
8 the emergency situation in November, to have
9 to deal with it. But, I would like, if my
10 colleagues agree, that the Office of Planning,
11 we get on top of this in the next six months
12 or so to start the ball moving, if not sooner,
13 so we can have our hearings and our
14 discussions to relax the 300-foot buffer.

15 Anyone have a problem with that
16 procedure or have something else they want to
17 recommend?

18 COMMISSIONER MAY: Mr. Chairman, I
19 want to make an observation on that.

20 You know, I think that one of the
21 things that we have going for us at the moment

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is that we, actually, have some reason to
2 resolve this. I mean, the matter really is
3 before us right now, and if we take action to
4 approve what's before us right now, it kind of
5 -- it takes the heat off, and we could
6 conceivably lose some momentum toward getting
7 the right solution.

8 But, at the very least, I wouldn't
9 want to be taking action on this until Council
10 Member Mendelson and the Office of Planning
11 have a chance to discuss it a little bit
12 further, to try to strategize a little bit, or
13 discuss, you know, what the realm of
14 possibility is for relaxing the buffer.

15 So, in other words, I wouldn't
16 want to take action on anything tonight. At
17 least I'd want to put it off until a future
18 meeting.

19 And, I would, frankly, be open to
20 the idea of -- and I assume we can do this, we
21 can extend an emergency, can we not?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. SCHELLIN: Yes, you can.

2 COMMISSIONER MAY: So, you know, I
3 would be open to the thought of, you know, if
4 there's sufficient common ground, and a sense
5 that the Office of Planning can work things
6 out with the rest of the administration to try
7 to advance this more immediately, then I would
8 be inclined to let it ride until we need to
9 extend the emergency, and then just extend the
10 emergency and hope that we can get it all
11 resolve once and for all within another 120
12 days, rather than taking another six months
13 just to get a newly-cooked version of it.

14 CHAIRMAN HOOD: I would agree with
15 that. My only issue is that, this is going to
16 have to be vetted, and I can assure you that
17 once we do away with the 300 -- if we don't do
18 it right or it's not crafted correctly, once
19 we do away with the 300-foot rule we are going
20 to have a number -- we are going to have a
21 number of hearings.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I don't have a problem with doing
2 away with it, but I think we are going to hear
3 from a number of community groups, a number of
4 concerns. We are going to hear a lot of that,
5 and that's why I want to make sure that the
6 craft and the folks that we are going to be
7 doing this with have a chance to be vetted.

8 I could go either way, and I agree
9 that this is in the realm in front of us now,
10 but also, I wanted to make sure because I was
11 trying not to do the emergency. I thought
12 that it was an issue with us doing another
13 emergency.

14 MS. SCHELLIN: When I spoke with
15 OAG today, I was advised that the Commission
16 did not need to take -- extend the emergency
17 action, because this -- there would be a final
18 rulemaking published, even if the emergency
19 expired we would only be a day or two, is what
20 he said.

21 So, there was no need to do the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 emergency. However, if you are not going to
2 take action, it doesn't, necessarily, need to
3 be done tonight, but, obviously, with what
4 Council Member Mendelson has proposed, as Ms.
5 Steingasser said, it would definitely require
6 another hearing. So, it would be another
7 case. Or, somehow this case would have to be
8 re-set down to include that language.

9 CHAIRMAN HOOD: Okay.

10 MS. SCHELLIN: Before we could
11 continue it and have it part of this case.

12 CHAIRMAN HOOD: Let me ask this.
13 If we do do what Commissioner May mentioned,
14 all we would have to do is, we have to re-
15 advertise, right? We have to re-advertise.
16 And, I guess have one or two hearings.

17 What would the time frame -- what
18 would the time frame be? I'm looking to
19 staff, what kind of time frame are we looking
20 at?

21 MS. SCHELLIN: Are you setting it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 down tonight, because you have to set it down.

2 It hasn't been set down. It's not a case.

3 It's not before you. This new language has to

4 be set down.

5 CHAIRMAN HOOD: But, we need to

6 craft language first.

7 MS. SCHELLIN: It has to be

8 started from beginning, because it's not been

9 set down.

10 CHAIRMAN HOOD: It's a little

11 more, I think, the way I see it, it's a little

12 more than just the 300-foot buffer. We need

13 to make sure we define next door, same street.

14 There's a lot more that needs to be worked.

15 And, I guess what I'm trying to do

16 is not prevent us, and I agree, we need to

17 deal with the issue, but I was trying to have

18 our cake and eat it too, that way, go ahead

19 and have the -- go ahead and set -- deal with

20 this one, put a time frame on the second one.

21 That's kind -- that gives everybody a little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 more time, as opposed -- because it looks like
2 it's going to have to be a lot of thought
3 behind what does next door mean. I think
4 Commissioner Turnbull brings up a good point,
5 what does next door mean.

6 MS. SCHELLIN: Chairman Hood, if I
7 may, and Ms. Steingasser can correct me, at a
8 future meeting, but prior to the expiration of
9 the emergency, if new language was brought
10 before you, you could set that down and take
11 emergency action on the new language, if that
12 was what you wanted to do. Or, you could just
13 take emergency action on -- extend what's here
14 now and still set down the new language.

15 But, I'm not sure OP can come back
16 that quickly.

17 MS. STEINGASSER: We'd be extremely
18 rushed. You've only got one meeting in
19 October, and then you have two in November.
20 Yes.

21 MS. SCHELLIN: I think the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 emergency would expire before the November --
2 we would need to advertise it. Well,
3 actually, they just need to take action.

4 CHAIRMAN HOOD: What if we approve
5 it, if we do another emergency?

6 MS. SCHELLIN: I don't think you
7 need to do it now, and that would allow the
8 opportunity to also have OAG weigh in.

9 We could do the emergency, if I'm
10 not mistaken, at our October 17th meeting, you
11 could re-extend it then, and/or take proposed
12 action on this case at that time.

13 CHAIRMAN HOOD: So, that way we'll
14 get more counsel on it.

15 MS. SCHELLIN: Right, you could
16 have some counsel from OAG, if OP agrees.

17 COMMISSIONER MAY: Yes, at the
18 very least I'd want to put it off until the
19 October 17th meeting before we take action. I
20 think that makes sense.

21 You know, I just -- I believe that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if we were to take action on this tonight and
2 defer consideration of the 300-foot buffer
3 question, I think it just -- it gives us -- it
4 does give us some breathing room to be able to
5 get things worked out. And, I do trust that
6 the Office of Planning is going to take it on
7 expeditiously, and, you know, with the same
8 professionalism as they always do, but we are
9 talking about getting to some agreement with
10 numerous parties within the government. There
11 may not be, necessarily, any great pressure to
12 do so, particularly, if, you know, we've got
13 the one dealer, and the one dealer has got his
14 one-year deal, but, you know, that could be
15 extended.

16 And so, the whole thing could wind
17 up taking a lot longer, even if we try and
18 push hard to get the resolution as quickly as
19 possible. Our urging the Office of Planning
20 or the administration to move forward doesn't
21 necessarily have much oomph, if it winds up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 just taking time to get agreement.

2 So, I think continuing this case,
3 and trying to get full agreement on it, under
4 the current emergency, or whether under an
5 extended emergency, I think is the right way
6 to keep the pressure on.

7 But, regardless, either way, I
8 mean, we don't do anything until October 17th.

9 CHAIRMAN HOOD: And, I think --
10 any other comments, COMmissioners -- I think --
11 I would concur with that. I just felt like
12 when I read Council Member Mendelson's
13 testimony, is that this is a temporary for a
14 year, so I felt the bite was still on, even if
15 we dealt with this tonight.

16 But, I think we've come up to a
17 resolve I think all of us do agree.

18 All right. So, what we'll do is,
19 there's a possibility that we are going to
20 have to deal with this as an emergency at the
21 October meeting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. SCHELLIN: And/or proposed
2 action also, if you decide to go that way.
3 Correct.

4 CHAIRMAN HOOD: So, those two
5 options are still out there.

6 MS. SCHELLIN: Correct.

7 CHAIRMAN HOOD: Okay. Okay.

8 Council Member, do you have
9 anything else you would like to add?

10 MR. MENDELSON: If I want to
11 submit anything additional, I'm not saying I
12 will, but if I do reflecting on this
13 conversation, the record is still open for --

14 CHAIRMAN HOOD: Let's leave the
15 record open on this conversation, and can we
16 just confine it to the Council Member, since
17 he was the only witness?

18 MS. SCHELLIN: Yes, we can keep
19 the record open only for Council Member
20 Mendelson, if he chooses.

21 CHAIRMAN HOOD: And the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Planning. Okay. All right.

2 Anything else?

3 MS. SCHELLIN: No, sir.

4 CHAIRMAN HOOD: Okay. Well,
5 Council Member, we definitely appreciate you
6 coming down as always. Good see to see our
7 Council Members when they come, we know how
8 busy your schedules are, and we appreciate all
9 the work you've done on this.

10 MR. MENDELSON: Thank you.

11 CHAIRMAN HOOD: Let me call and
12 see, I don't see anyone, but I need to call,
13 is there anyone else who would like to testify
14 on this case, 11-16.

15 Not seeing anyone, with that, I
16 want to thank everyone for their
17 participation.

18 Ms. Schellin, are we finished?

19 MS. SCHELLIN: We are finished.

20 CHAIRMAN HOOD: Okay. With that,
21 this hearing is adjourned.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1

(Whereupon, the above-entitled

2

matter was concluded at 7:10 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com