THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of The Hair Club, Inc. t/a Nate's Comfort Zone Renewal Application for a Retailer's License Class "CT" - at premises 3301 12th Street, N.E. Washington, DC Applicant	Case No: 10420-01/015P Order No: 2003-55

BEFORE: Charles A. Burger, Interim Chairperson [1]
Vera M. Abbott, Member
Ellen Opper-Weiner, Esquire, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Laurie Collins, Member

ALSO PRESENT: Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

Edward Gilbride, on behalf of the Protestants

Michael S. Levy, Esquire, on behalf of the Applicant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The application, filed by The Hair Club, Inc., t/a Nate's Comfort Zone ("Applicant"), for the renewal of a Retailer's License Class "CT" at premises 3301 12th Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on March 7, 2001. It was determined that a timely protest was filed pursuant to Section 14(b) of the District of Columbia Alcoholic Beverage Control Act (the "1934 Act"), approved January 24, 1934, 48 Stat. 327, D.C. Code § 25-115(b) (1981 Ed.) by Patrick Hart, Christine Matthews, Ann Gilbride, Lynne Galbreath, Edward F.X. Gilbride, Sarah Woodhead, Rex

[1] Chairperson Roderic L. Woodson who was the Chairperson for these proceedings is no longer a member of the ABC Board and did not participate or vote on this matter. Interim Chairperson Charles A. Burger was a member of the Board during these proceedings.

Nutting, Harry L. Creighton, Terry Moore, Lucille V. Gaither, and Reverend William E. Calbert ("Protestants").

The protest issues are whether the establishment adversely affects: 1) the peace, order, quiet of the neighborhood, 2) residential parking needs and vehicular and pedestrian safety, and 3) real property values in the neighborhood.

This case came before the Board for public protest hearings on August 1, 2001, October 17, 2001, October 24, 2001, and February 27, 2002. The Board also held a Motions Hearing on July 31, 2002 in response to the Protestants' Motion to reopen the record. The Board having considered the evidence, the testimony of the witnesses, and documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located on the Northeast corner of 12th Street, N.E., with the main entrance facing Kearney Street, N.E., and 12th Street, N.E., on a commercial strip, zoned C-2-A. (Tr. 2/27/02 at 18; Board's Exhibit No. 1.) The Applicant's address is 3301 12th Street, N.E. (Tr. 8/1/01 at 40; Alcoholic Beverage Regulation Administration ("ABRA") Application File No. 10420.) The zone C-2-A district is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core. (Board's Exhibit No. 1.) The zone C-2-A district is also located in low and medium density residential areas with access to main highways or rapid transit and includes office and employment centers, shopping centers, and medium proportions, and accommodates a major portion of existing commercial strip developments. (Board's Exhibit No. 1.) With regard to geographic boundaries, the establishment's 600 foot locality includes North 12th Street, South 13th Street, East Lawrence and West Kearney. (Tr. 8/1/01 at 124; See ABRA Application File No. 10420.)

2. The establishment is located in a small building and contains a bar, a dance area, a small disc jockey booth, and a full kitchen where items on the menu are prepared. (Board's Exhibit No. 1.) The Applicant's Certificate of Occupancy, #B173073, dated October 17, 1995, reflects that the Applicant's establishment is permitted to have 40 seats. (ABRA Application File No. 10420.) The Applicant's original application file permits the establishment to have dancing and recorded music. (ABRA Application File No. 10420.)

3. ABRA Investigator Clifton S. Chambers, testified that during an extensive investigation of the establishment, he determined that it was in compliance with its current ABC application, other required licenses, District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") regulations, and the District of Columbia Department of Health regulations, with the exception of not having a public hall license. (Tr. 2/27/02 at 4-7, 17.) Specifically, Investigator Chambers observed that the Applicant charges a cover charge, but does not have a public hall license from DCRA. (Tr. 2/27/02 at 29.) Otherwise, Investigator Chambers testified that from the time of the protest, at least one of ABRA's Investigators was at the establishment almost every weekend, and that the Investigators found no other violations and were unable to substantiate the Protestants' complaint. (Tr. 2/27/02 at 7-8.) Investigator Chambers stated that

he visited the establishment at least thirty-five (35) times, including Friday and Saturday nights in 2000 and 2001, because of complaints made to the Interim ABRA Director and the ABRA Chief Investigator. (Tr. 2/27/02 at 16, 25; Board's Exhibit No. 1.)

4. With respect to noise, Investigator Chambers found at the beginning of his investigation that there was a problem with the level of music emanating from the establishment, but that Mr. Murray, the owner of the establishment, corrected the problem by turning the speakers inward to control the sound heard outside of the establishment. (Tr. 2/27/02 at 10; Board's Exhibit No. 1.)

5. With respect to rowdiness, Investigator Chambers did not observe any rowdiness by patrons. (Tr. 2/27/01 at 10; Board's Exhibit No. 1.) He stated that 12th Street, N.E., is a commercial strip and that the Protestants' houses border on the block that is along the commercial strip. (Tr. 2/27/01 at 10.) Investigator Chambers found there to be a lot of foot traffic and vehicle traffic on 12th Street, N.E., all throughout the night and on the weekends. (Tr. 2/27/02 at 10.)

6. With respect to loitering, Investigator Chambers did observe patrons and other individuals standing around the Applicant's establishment prior to entering or exiting the establishment. (Tr. 2/27/02 at 10.) Investigator Chambers observed people in this area standing around on the street corners. (Tr. 2/27/02 at 10-11; Board's Exhibit No. 1.) However, Investigator Chambers observed that most of the loitering in the area is further down the street including around Hamlin Street, N.E. (Tr. 2/27/02 at 11.) Investigator Chambers testified that approximately eighty percent (80%) of his visits to the Applicant's establishment were conducted inside of the establishment and that he never observed more than forty (40) patrons inside of the establishment during his visits. (Tr. 2/27/02 at 40-42.) Investigator Chambers stated that in some instances, he sat outside of the establishment to observe "what was going on." (Tr. 2/27/02 at 40.)

7. With respect to litter, Investigator Chambers observed that littering does occur in the area, but that Mr. Murray cleans up the street after the establishment closes. (Tr. 2/27/02 at 11; Board's Exhibit No. 1.) Investigator Chambers noted that one weekend, he observed litter inside of the doorway of the establishment that consisted of products that the Applicant does not sell or carry, such as fast-food bags. (Tr. 2/27/02 at 11; Board's Exhibit No. 1.) With respect to criminal activity, Investigator Chambers did not observe any criminal activity during his visits. (Tr. 2/27/02 at 11; Board's Exhibit No. 1.)

8. With respect to parking, Investigator Chambers found there to be ample parking on 12th Street N.E., and Kearney Street N.E., and noted that most of the other businesses in the neighborhood are closed in the evenings. (Tr. 2/27/02 at 12; Board's Exhibit No. 1.) Investigator Chambers also observed patrons using the "Bell Atlantic" parking lot located across 12th Street, N.E. (Tr. 2/27/02 at 12; Board's Exhibit No. 1.) Investigator Chambers noted that most houses in that block have off-street parking on both sides of the street. (Tr. 2/27/02 at 12.) Investigator Chambers stated that the Applicant does not provide private parking for its patrons. (Tr. 2/27/02 at 35.)

9. Nathan E. Murray, the Applicant and owner of the establishment, testified that he purchased the establishment around August 1995 or September 1995 because it was a thriving business and a well-known place in the District of Columbia. (Tr. 8/1/01 at 41.) He stated that there are three

sections to the building in which the establishment is located, and that the first two sections are the club, and the third section is next door, and that each section is approximately thirty-five (35) feet by fifty (50) feet. (Tr. 8/1/01 at 41-42.) Mr. Murray stated that a tavern has been at this location for forty-five (45) years. (Tr. 8/1/01 at 48.) He noted that within a couple of blocks of the establishment there are three or four other restaurants or taverns. (Tr. 8/1/01 at 42.) "Johnny K's", located at 3514 12th Street, N.E., Retailer's License Class CT, is the closest club and is about two blocks away from his establishment. (Tr. 8/1/01 at 43.) Additionally, there is a telephone company and a telephone company parking lot located across the street from his establishment. (Tr. 8/1/01 at 178.) The establishment is open until 3 a.m. on Friday and Saturday nights and until 1. a.m. during the week. (Tr. 8/1/01 at 55, 127.)

10. Mr. Murray testified that there are ten (10) barstools at the bar and seventy-five (75) seats inside of his establishment. (Tr. 8/1/01 at 42.) He stated that the establishment is a tavern catered toward older adults and that ninety-eight percent (98%) of the time; his patrons are between forty and fifty years of age, or above. (Tr. 8/1/01 at 43, 128.) Mr. Murray acknowledged that there has been a change in the patronage of the establishment that he attributes to older patrons moving to Maryland and that some of the patrons have died. (Tr. 8/1/01 at 166-167.) Mr. Murray stated that the establishment sells twelve (12) ounce bottles of alcoholic beverages, but that someone is stationed at the door, and there is an outside guard to make sure that no one leaves the establishment with a bottle or a glass container. (Tr. 8/1/01 at 171.) The establishment also has a buffet that includes steak, fish, meat loaf, pork chops, macaroni and cheese, and green beans. (Tr. 8/1/01 at 48.)

11. Mr. Murray acknowledged that he does not have a public hall license, but that he charges a five dollar ($5.00) cover charge on Friday nights to pay for the disc jockey and the security guard, and that the "VIP" patrons get their money back in drinks. (Tr. 8/1/01 at 115-117.) He testified that the type of music played at his establishment is jazz, oldies, and "current hits," and that there is dancing that is primarily "hand dancing" and "line dancing." (Tr. 8/1/01 at 43-44, 106-108, 129.) Mr. Murray has had dancing and a disc jockey at the establishment since he opened five years ago. (Tr. 8/1/01 at 130.) He stated that the disc jockey was provided when he purchased the establishment and that the former owner of the establishment also provided dancing, a disc jockey, and a doorman. (Tr. 8/1/01 at 130-131.) With regard to music, Mr. Murray noted that when he first applied for the ABC license, the only question he was asked to fill out was whether or not he would have a live band and he indicated on the ABC license application that he would not have a live band. (Tr. 8/1/01 at 141; ABRA's Application File No. 10420.) He stated that the previous owner charged patrons four dollars ($4.00) or five dollars ($5.00) for tickets to enter the establishment that were used to purchase food or drinks. (Tr. 8/1/01 at 131.) Mr. Murray stated that he has never hired promoters. (Tr. 8/1/01 at 131.) He stated that the doorman is responsible on Friday nights for counting how many patrons enter the establishment. (Tr. 8/1/01 at 133.)

12. With respect to noise, Mr. Murray testified that he first became aware that noise at his establishment was a problem when he attended a meeting held on "Brookland Day," in the Fall of 2000, at which time a neighborhood resident informed him that people were concerned about the amount of noise coming from the establishment. (Tr. 8/1/01 at 153-154.) Mr. Murray testified that the only time that music can be heard from inside of the establishment is when

patrons enter or exit the establishment. (Tr. 8/1/01 at 102.) He stated that in an effort to reduce the amount of noise emanating from inside of the establishment, he redirected one of the speakers away from the door to reduce the amount of noise when the door is opened. (Tr. 8/1/01 at 47, 53, 103.) Mr. Murray testified that the doorman also makes sure that patrons entering the establishment do not hold the door open for other patrons who are entering. (Tr. 8/1/01 at 53-54.) He testified that the disc jockey was also asked to tune down the sound level of the music. (Tr. 8/1/01 at 53, 62.) Mr. Murray testified that from the time he purchased the establishment until the Fall of 2000, he was not approached regarding any community concerns. (Tr. 8/1/01 at 154-155.) He testified that the main thrust of the problem is individuals who are not patrons of the establishment who park outside, drink alcoholic beverages, and play loud music. (Tr. 8/1/01 at 54, 100, 167.) Mr. Murray testified that he has also observed individuals, who are not patrons of the establishment, park across the street and play loud music in the telephone company parking lot; and, that on occasion he has asked them to shut down their music. (Tr. 8/1/01 at 100, 170.) He stated that the majority of the time they oblige and turn down the music. (Tr. 8/1/01 at 173.) Mr. Murray noted that individuals have been parking on the telephone company parking lot since last summer. (Tr. 8/1/01 at 172.) He discussed this matter with the Metropolitan Police Department ("MPD") in March 2001, and on one occasion MPD came out and ticketed one of the drivers parked on the lot. (Tr. 8/1/01 at 179-180.) Mr. Murray asserted that on the occasions when there has been MPD visibility, these individuals have left the area. (Tr. 8/1/01 at 170.)

13. With respect to loitering, Mr. Murray noted that loitering problems began last summer, and his understanding is that the majority of these loiterers start out at "Johnny K's" early on Friday nights and then come to his establishment around 1 a.m., where a few of them come inside, but that the majority of them remain outside of the premises. (Tr. 8/1/01 at 167-168.) Mr. Murray believes that the patronage at "Johnny K's" is mostly younger college students and that he has a problem with those patrons on Friday nights, but on Saturday nights they do not come to his establishment. (Tr. 8/1/01 at 162, 168.) He noted that about half of the younger crowd does not enter the premises, but stands outside. (Tr. 8/1/01 at 106.) He testified that the younger crowd that hangs around outside of the premises is age twenty-five and above. (Tr. 8/1/01 at 106.) Mr. Murray acknowledged that he considers this change in patronage to be a problem. (Tr. 8/1/01 at 169.) He stated that periodically he goes outside of the premises to make sure that everything is alright. (Tr. 8/1/01 at 64.) Mr. Murray met with Lieutenant Baxter of the MPD, District 5A, on or about February 21, 2001, regarding complaints from the neighbors. (Tr. 8/1/01 at 66.) He stated that at Lieutenant Baxter's recommendation, he passed out fliers the following week to all of his patrons informing them that hanging around out in front of the premises and making loud noise would not be allowed, and that the fliers resulted in a drastic reduction in the number of his patrons. (Tr. 8/1/01 at 67.)

14. With respect to measures taken by the Applicant to remedy problems, Mr. Murray testified that he produced a flier to post on the front door of the premises when the establishment is too full -- which he believed to be when approximately seventy-five (75) patrons are inside -- to ask persons attempting to enter his establishment to return on another night. (Tr. 8/1/01 at 68-69, 97; Applicant's Exhibit No. 4.) He stated that the "Club is Full" poster is also intended for use if the dance floor becomes full, but he has not had to use the sign since the number of patrons decreased. (Tr. 8/1/01 at 98; Applicant Exhibit No. 4.) Mr. Murray also prepared a flier

informing patrons that due to a recent increase in complaints regarding noise and general disturbance in the area, his establishment would be instituting a policy of no tennis shoes, no tank tops, no sweat gear, and no loitering near the club. (Tr. 8/1/01 at 69; Applicant's Exhibit No. 5.) He stated that the flier also informed patrons that "the neighbors deserve respect, peace, and cleanliness of their property from our patrons." (Tr. 8/1/01 at 69; Applicant's Exhibit No. 5.) Mr. Murray testified that use of the flier in March 2001 resulted in a reduction in the number of his patrons from seventy-three (73) during the first Friday in March to fifty-one (51) during the second Friday in March. (Tr. 8/1/01 at 70-71.) He noted that the dress code policy, aimed at the younger crowd, also decreased the number of patrons at his establishment. (Tr. 8/1/01 at 71.) Mr. Murray stated that the doorman counts the number of patrons who enter the premises. (Tr. 8/1/01 at 133.) He maintained documentation as to the number of patrons who visited his establishment on Friday nights in 2001. (Tr. 8/1/01 at 44; Applicant's Exhibit No. 1.) Mr. Murray stated that on Fridays in the month of July 2001, twenty (20) patrons visited the first week; twenty-six (26) patrons visited the second week; twenty-four (24) patrons visited the third week; and forty (40) patrons visited the fourth week. (Tr. 8/1/01 at 45.) He noted that was a decrease in the number of patrons from January 2001 when he had 74, 90, 68, and 80 patrons respectively on Fridays. (Tr. 8/01 at 45.)

15. With respect to litter, Mr. Murray stated that the area around his establishment is checked for litter after closing at around 3:30 a.m., at which time litter is picked-up from outside near the establishment and placed in trash bags. (Tr. 8/1/01 at 55.) He stated that most of the litter picked up is fast-food wrappers, buckets, cans, and bottles of beer from other establishments, which are items that cannot be purchased at his establishment. (Tr. 8/1/01 at 55.) Mr. Murray testified that a "Starbucks" coffee cup bag has also been picked up in front of the premises, noting that he does not sell "Starbucks" coffee. (Tr. 8/1/01 at 56; Applicant's Exhibit No. 3.) He testified that since patrons have been told not to park on Kearney Street N.E., there has been less litter and as a result, he has not filled up even one trash can with litter in the last five months. (Tr. 8/1/02 at 101.) Mr. Murray stated that a trash receptacle, provided by the District of Columbia, is located in front of the premises, and that his own trash receptacles are located on the side of the building, in the back of his establishment. (Tr. 8/1/01 at 159-160.) He stated that the trash receptacle located in front of the premises is used, but that he has never observed it overflowing. (Tr. 8/1/01 at 160.) Mr. Murray stated that on one occasion, someone from the telephone company located across the street from the premises spoke with him about litter, such as beer cans, being disposed of in the telephone company trash dumpster, and the telephone company subsequently removed the dumpster from the parking lot. (Tr. 8/1/01 at 173-175.) With regard to parking, Mr. Murray noted that he does not provide parking for his patrons, noting that the Applicant's patrons park on the public streets. (Tr. 8/1/01 at 97.)

16. With respect to criminal activity, Mr. Murray testified that he has never allowed illegal drugs to be sold at the establishment and was not aware of illegal drugs being sold inside of the establishment. (Tr. 8/1/01 at 76-77.) He stated that his corporate policy is that no drugs are allowed at the establishment. (Tr. 8/1/01 at 78.) Mr. Murray also testified that he has never had to request any MPD assistance due to any problems at the establishment. (Tr. 8/1/01 at 159.)

17. With respect to security, Mr. Murray noted that "BRSS" is the name of the private security company that he hired and that he has a written security plan from BRSS. (Tr. 8/1/01 at 135.)

He stated that in October 2000 he hired one security guard for each Friday night until closing. (Tr. 8/1/01 at 135, 177.) Mr. Murray hired an outside guard in an effort to prevent people from loitering, playing loud music in their cars, and drinking in front of the building. (Tr. 8/1/01 at 47-48, 54, 62, 135.)

18. With regard to the age of the Applicant's patrons, Mr. Murray testified that the person on the front door is responsible for verifying the identification cards of everyone that enters the premises. (Tr. 8/1/01 at 73.) He stated that there is a sign posted at the front door of the premises stating that patrons must be twenty-one (21) years of age to enter the premises and must provide proper identification. (Tr. 8/1/01 at 163.) Mr. Murray testified that another poster that states, "If the disturbances continue, the music format will change to oldies," was aimed at the younger crowd to discourage them from loitering and making excessive noise. (Tr. 8/1/01 at 105-106, 162.) He stated that there is not a crowd at his establishment on Friday nights until after 1:00 a.m., and that the establishment closes between 2:30 a.m. and 2:45 a.m. (Tr. 8/1/01 at 102.) Mr. Murray noted that there has never been a problem with the younger people who come inside of his establishment. (Tr. 8/1/01 at 169.) He estimates the younger crowd to be twenty-five (25) years of age and above. (Tr. 8/1/01 at 106.) Mr. Murray noted that in year 2000, he received a letter from Wilbur Gary (Bill) Nelson, Deputy Director, DCRA, congratulating him that during a joint undercover operation conducted by ABC and the MPD, he turned away underaged persons who attempted to purchase alcoholic beverages. (Tr. 8/1/01 at 74-75; Applicant's Exhibit No. 6.)

19. Albert Ceccone is a Real Estate Broker, who resides at 4505 Harrison Street, N.W., Washington, D.C. (Tr. 8/1/01 at 192-193.) Mr. Ceccone has been a broker in Washington, D.C. since 1976 and is a member of the Greater Capitol Area Association of Realtors, and a graduate of the Realtor Institute. (Tr. 8/1/01 at 193-194, 213.) He operates as a real estate broker in the District of Columbia and Maryland. (Tr. 8/1/01 at 194.) Mr. Ceccone has been involved with the sale of houses all over the city and is familiar with the property values at 12th Street, N.E., and Kearney Street, N.E. (Tr. 8/1/01 at 196.) He noted that within the past twelve (12) months he has been involved in five (5) transactions within a quarter mile of 12th Street, N.E., and Kearney Street, N.E. (Tr. 8/1/01 at 194-195, 214.) With respect to real property values, Mr. Ceccone stated that since January 2001, he has checked the sales of homes in the "Brookland" area in which the establishment is located and found that a house located at 1214 Kearney Street, N.E., sold in eight days for one hundred eighty-five thousand dollars ($185,000), with multiple contracts on the property, and noted that the property was still under contract. (Tr. 8/1/01 at 196-197.) Mr. Ceccone testified that the property at 1214 Kearney Street, N.E., was assessed at one hundred ten thousand dollars ($110,000) in the public record. (Tr. 8/1/01 at 198; Applicant's Exhibit No. 12.) He testified that a property at 1231 Kearney Street, N.E., that was purchased last year for $53,000 was on the market for one hundred thousand dollars ($100,000), but did not sell. (Tr. 8/1/01 at 197.) He stated that the property was subsequently taken off the market, improvements were made, put back on the market for two hundred fifty-nine thousand dollars ($259,000), sold in seventy-five (75) days, and is waiting to go to settlement. (Tr. 8/1/01 at 197-198; Applicant's Exhibit No. 12.) He testified that according to the public record, the assessed value of 1231 Kearney Street, N.E. was one hundred twenty thousand dollars ($120,000). (Tr. 8/1/01 at 199; Applicant's Exhibit No. 12.)

20. Mr. Ceccone testified that the Applicant's establishment has no negative effect on the real estate values in "Brookland," and that property values in the "Brookland" area are increasing. (Tr. 8/1/01 at 199-200, 205.) He testified that in the past year there has been a sixteen percent (16%) increase in the value of property in zip code 20017, which includes the area that the establishment is located. (Tr. 8/1/01 at 218.) Mr. Ceccone noted that the "comparable sale analysis," dated July 25, 2001, reveals a tremendous increase between the assessed value and the market value of property in the Brookland area. (Tr. 8/1/01 at 204, 232-237.) He stated that he obtained the "comparable sale analysis" from the Metropolitan Regional Information Systems, CMAC Summary Report, which is prepared by Metropolitan Regional Information Systems, Inc., and is available to all realtors in the Greater Capitol area. (Tr. 8/1/01 at 226; Applicant's Exhibit No. 12.) Mr. Ceccone pointed out that the first grouping on the summary report indicates the listings of homes for sale that are still active or under contract; the second grouping indicates homes that have actually sold, but have not settled; the third group reflects the comparable sales analysis and indicates properties that have been sold, settled, and lists the selling price; and the fourth group indicates houses that have been pulled off of the market. (Tr. 8/1/01 at 226-227; Applicant's Exhibit No. 12.) He noted that the comparable sale analysis shows all properties that have sold in Brookland since January 2001 and that they have been substantial in nature. (Tr. 8/1/01 at 202.) Mr. Ceccone stated that the four houses listed on the summary report which sold that are in close proximity to the establishment are located at 2917 12th Street, N.E.; 1303 Hamlin Street, N.E.; 1326 Hamlin Street, N.E.; and 1263 Monroe Street, N.E. (Tr. 9/1/01 at 228-230; Applicant's Exhibit No. 12.) He testified that he is a customer of the Applicant's establishment and that the average age of its customers is forty (40) years of age and older. (Tr. 8/1/01 at 199.) Mr. Ceccone considers the establishment to be an asset to the Brookland community. (Tr. 8/1/01 at 207.)

21. Kenneth Furr is a Police Officer with MPD, Fifth District. (Tr. 10/17/01 at 16.) Officer Furr has been employed with MPD for eleven (11) years, and with the Fifth District for three (3) years. (Tr. 10/17/01 at 19.) Officer Furr's tour of duty is generally from 11:00 p.m. to 7:00 a.m., during which time he is responsible for patrolling the area and answering calls for service. (Tr. 10/17/01 at 20, 33-34.) Officer Furr is familiar with the Applicant's establishment and the area around 12th Street, N.E., and Kearney Street, N.E., which is located in the Fifth District. (Tr. 10/17/01 at 19, 23.) Officer Furr's Patrol Service Area ("PSA") is PSA 506, which covers from the 1800 block of Rhode Island Avenue, N.E., to Eastern Avenue, N.E., to New York Avenue, N.E. (Tr. 10/17/01 at 35.) Officer Furr patrols the immediate area of the establishment almost every night that the establishment is open. (Tr. 10/17/01 at 24.) Officer Furr received two calls to the Applicant's establishment during the early part of his tour at the Fifth District for disorderly conduct, but he has not received any calls involving the establishment in the past year. (Tr. 10/17/01 at 21-22, 37.) Officer Furr noted that the establishment asked for special attention in the area from MPD Officers in response to complaints the establishment received from the neighborhood regarding disorderly persons. (Tr. 10/17/01 at 22-23, 48.) Officer Furr stated that he has never responded to a complaint directly from a citizen or an immediate neighbor of the Applicant. (Tr. 10/17/01 at 38.) Officer Furr noted that earlier during his tour of duty at the Fifth District, people would at times hang out in front of the premises, but that the owner "stepped up" security by posting a security guard outside of the premises. (Tr. 10/17/01 at 27.)

22. With respect to peace, order, and quiet, Officer Furr found that loitering is not generally a problem in the area where the Applicant's establishment is located, including 12th Street, N.E. (Tr. 10/17/01 at 29.) Officer Furr has had dialogue with the Applicant regarding his request to the 5th District that MPD monitor the area on specific days that problems have occurred. (Tr. 10/17/01 at 30, 35.) Officer Furr stated that monitoring the area involves the presence of MPD scout cars in the area to ensure that there is no loitering, disorderly conduct, or urinating in public. (Tr. 10/17/01 at 30.) Officer Furr testified that on the occasions that he has given special attention to the Applicant's establishment, many of the patrons were cooperative. (Tr. 10/17/01 at 48.) Officer Furr stated that when one or two scout cars sit outside the premises, patrons go directly to their cars and that disorderliness, loud noise, and urinating in public does not occur. (Tr. 10/17/01 at 49.) Officer Furr has not observed any signs or reports of drug dealing or underage drinking at the establishment. (Tr. 10/17/01 at 24.)

23. With respect to litter, Officer Furr has observed litter outside of the Applicant's establishment on some occasions, but he has also observed the owner and a couple of other people clean up around the premises after closing. (Tr. 10/17/01 at 25.) Officer Furr was unaware as to whether the litter was from patrons of the establishment. (Tr. 10/17/01 at 25.) Officer Furr noted that in the beginning, there was a big crowd at the Applicant's establishment on Fridays and Saturdays, but that after the Applicant met with Fifth District officials last year regarding the fire code regulations and overcrowding, there was a decrease in the crowd at the Applicant's establishment. (Tr. 10/17/01 at 40-43.) Officer Furr stated that there was also a change in the Applicant's dress code policy from baggy jeans to dressier attire. (Tr. 10/17/01 at 41.) Officer Furr found the age group of the establishment's patrons to be in their twenties (20's) and older. (Tr. 10/17/01 at 41.) Officer Furr never observed individuals urinating outside of the premises. (10/17/01 at 26.) With regard to parking, Officer Furr had not received any calls or issued any tickets for illegal parking. (Tr. 10/17/01 at 24-25.)

24. Captain James Crane, MPD, Fifth District, has been employed with MPD since 1988. (Tr. 10/17/01 at 50-51.) Captain Crane has been a captain at the Fifth District for one year and resides in the area. (Tr. 10/17/01 at 50-51.) Captain Crane visited the Applicant's establishment earlier this year in response to a call that he received from the Applicant that the community was opposed to the renewal of the Applicant's ABC license and that the Applicant wanted to discuss security issues. (Tr. 10/17/01 at 61.) Captain Crane noted that MPD has no official position on the renewal of the Applicant's license. (Tr. 10/17/01 at 62.)

25. With respect to criminal activity, Captain Crane noted that 12th Street, N.E., and Kearney Street, N.E., are located in PSA 503, which has the second highest crime rate of thirteen patrol service areas in the Fifth District. (Tr. 10/17/01 at 59.) He stated that this "reporting area" had one hundred eighteen (118) crimes so far this year, but that he has not seen any direct correlation between crime in the area and the Applicant's establishment. (Tr. 10/17/01 at 59-60.) Captain Crane testified that MPD pays attention to three bars in the 12th Street, N.E., corridor: the Applicant's establishment, "Johnny K's," and "Delta Elite". (Tr. 10/17/01 at 63.) Captain Crane also noted that on Fridays, Saturdays, and sometimes on Sundays, MPD will go back and forth between the three establishments. (Tr. 10/17/01 at 63.) Captain Crane testified that more arrests have been made at Johnny K's and Delta Elite than at the Applicant's establishment. (Tr. 10/17/01 at 63.) Captain Crane stated that last year he arrested approximately six (6) Catholic

University students in front of "Johnny K's." (Tr. 10/17/01 at 63.) Captain Crane stated that each establishment has a different clientele. (Tr. 10/17/01 at 64.)

26. Captain Crane testified that for calendar year 2001, there were twenty-nine (29) radio runs in the 1200 block of Kearney Street, N.E., and that seven reports were taken. (Tr. 10/17/01 at 57-59, 66; Applicant's Exhibit No. 13.) Specifically, Captain Crane stated that "radio runs" to the 1200 block of Kearney Street, N.E., occurred twice on February 10, 2001, one for disorderly conduct at 2:50 a.m. and another for the sound of gunshots at 2:10 a.m., with no police reports taken of either incident; on June 9, 2001 for an assault at 3:21 a.m., with no police report taken; on July 28, 2001 for disorderly conduct at 3:54 a.m., with no police report taken; on August 2, 2001 at 6:30 p.m., which was classified as investigate the trouble; on September 8, 2001, for damage to property, with a police report taken; and in March 2001 at 8:55 a.m. and August 17, 2001 at 10:00 p.m. for disorderly complaints at 1210 Kearney Street, N.E. (Tr. 10/17/01 at 56-57.) Captain Crane testified that "no police report taken" means that the incident was not documented in a written official police report. (Tr. 10/17/01 at 58.) Captain Crane stated that police reports are not taken for various reasons, such as when there is no element of a crime found, or when nothing is happening when the MPD arrives. (Tr. 10/17/01 at 58.)

27. Captain Crane testified that radio dispatch records show that one "radio run" was made for calendar year 2001 to 3301 12th Street, N.E., the Applicant's premises, involving an assault that occurred on May 5, 2001 at 1:58 a.m. (Tr. 10/17/01 at 56, 59-60.) Captain Crane stated that no police report was taken of the May 5, 2001 incident at the Applicant's premises. (Tr. 10/17/01 at 60.) Captain Crane stated that other "radio runs" to the 3300 block of 12th Street, N.E., were on September 24, 2001, for aggressive driving and on October 5, 2001, for a juvenile complaint. (Tr. 10/17/01 at 56.) Captain Crane testified that there were "radio runs" for 3309 12th Street, N.E.; 3311 12th Street, N.E.; 3315 12th Street, N.E.; and 3331 12th Street, N.E. (Tr. 10/17/01 at 59.) Captain Crane stated that four reports were taken for the 3300 block of 12th Street, N.E., this year. (Tr. 10/17/01 at 59.) Captain Crane also noted that based upon his review of the "radio runs," there has been a decrease in the number of recent calls compared to earlier in the year. (Tr. 10/17/01 at 65.)

28. With respect to noise, Captain Crane received "radio runs" in reference to disorderly complaints when the Applicant's establishment was closing, and he also received calls from citizens who said that they were unhappy about the presence of the Applicant's establishment. (Tr. 10/17/01 at 62-63.) Captain Crane stated that he also received complaints this spring that citizens believed that the Applicant's patrons were smoking marijuana as they left the premises but that he did not have any direct evidence that this was occurring. (Tr. 10/17/01 at 64.) Captain Crane was not aware of any reports related to underage drinking or drug dealing on the premises. (Tr. 10/17/01 at 64.) Captain Crane did not hear loud music at the Applicant's establishment during his approximately 2-3 visits to the establishment in 2001. (Tr. 10/17/01 at 76-78, 85.) Captain Crane also did not observe a crowd inside of the Applicant's establishment or many people leaving the Applicant's establishment during a Saturday night visit earlier in the year. (Tr. 10/17/01 at 79, 84-85.) Captain Crane stated that the Applicant contacted MPD to discuss security and the Applicant's concern about patrons lingering too long and being loud and waking up the neighbors and asked if MPD could dispatch uniformed officers to come by and have a presence so that there would not be any problems at the establishment. (Tr. 10/17/01 at

79.) Captain Crane also stated that MPD police cars are parked on the weekends for twenty to thirty minutes near the Applicant's establishment and all nightclubs in the Ward. (Tr. 10/17/01 at 83-84.)

29. With respect to vehicular parking, Captain Crane testified that citizens had not complained about double parking, but they did complain about people parking too close to the intersection or crosswalk around the Applicant's establishment. (Tr. 10/17/01 at 73-74.) Captain Crane did not observe these parking violations when he was at the Applicant's establishment last spring around 1:00 a.m. or 2:00 a.m. (Tr. 10/17/01 at 74.)

30. Cynthia Alston resides at 1014 Kearney Street, N.E., which is located approximately three-quarters of a city block from the Applicant's establishment. (Tr. 10/17/01 at 86-87.) She has resided there since approximately 1950. (Tr. 10/17/01 at 87.) Ms. Alston was initially opposed to the renewal of the Applicant's ABC license because of the noise made by patrons leaving the Applicant's establishment at closing primarily on Friday nights. (Tr. 10/17/01 at 88.) She wrote a letter opposing the Applicant's license renewal in February 2001 complaining about loud noise, voices, profanity, and trash in the streets, urinating, and people sometimes having sex and leaving condoms in people's yards. (Tr. 10/17/01 at 89-90; Applicant's Exhibit No. 14.) Ms. Alston did not observe whether the individuals engaged in these activities were the Applicant's patrons, but she assumed that some of the individuals were the Applicant's patrons. (Tr. 10/17/01 at 91.) She is no longer opposed to the renewal of the Applicant's ABC license because over the past few months, the problems have ceased and it has been very quiet on Friday nights. (Tr. 10/17/01 at 89-91, 108.) Ms. Alston noted one recent incident of noise at closing, but stated that the Applicant resolved the problem immediately by asking the individuals making the noise to be quiet and that the noise ceased immediately. (Tr. 10/17/01 at 91-92.) She stated that the Applicant is not presently negatively impacting upon peace and order in the neighborhood and that noise has not been a problem over the last few months. (Tr. 10/17/01 at 92-93.) Ms. Alston stated that she has not had any recent problems with trash and believed that the establishment had been responsive to neighborhood complaints. (Tr. 10/17/01 at 92, 94, 106-107.)

31. With respect to parking, Ms. Alston was not aware of any parking problems. (Tr. 10/17/01 at 95.) She has observed the Applicant's patrons park on "Verizon's" parking lot, but she did not observe them drinking or urinating in the parking lot. (Tr. 10/17/01 at 98.) Ms. Alston stated that the problems she had with patrons yelling, standing in the street and using profanity would start at 1:45 a.m. and last until about 3 a.m. or 4 a.m. (Tr. 10/17/01 at 98.) She stated that the loud noise from patrons would wake her up. (Tr. 10/17/01 at 99-100.)

32. Lavina Jernagin resides at 1021 Kearney Street, N.E., about half a block from the Applicant's establishment. (Tr. 10/17/01 at 109.) She has resided there since 1956. (Tr. 10/17/01 at 110.) Ms. Jernagin patronizes the Applicant's establishment at least twice a week. (Tr. 10/17/01 at 111.) She testified that the Applicant's establishment is a place to relax, meet people, socialize, eat nice food, listen to great music, and play cards. (Tr. 10/17/01 at 111, 116.) Ms. Jernagin testified that the average age of the Applicant's patrons is thirty-five (35) years and up. (Tr. 10/17/01 at 111.) She has observed some dancing at the establishment. (Tr. 10/17/01 at 111.) Ms. Jernagin testified that neighbors complained about things happening at the

Applicant's establishment on Friday nights when there was a younger crowd at the beginning of the year. (Tr. 10/17/01 at 111-112.) She testified that with the younger crowd came quite a bit of rowdiness, but that the rowdiness ceased around July 2001. (Tr. 10/17/01 at 113.) Ms. Jernagin testified that there is no longer a younger crowd at the Applicant's establishment. (Tr. 10/17/01 at 112.) She noted that patrons of Johnny K's were also coming to the corner of Nate's Comfort Zone to hang out after Johnny K's closes and that some of these individuals do not enter Nate's Comfort Zone. (Tr. 10/17/01 at 114, 120.)

33. Ms. Jernagin is not aware of any parking problems and has three cars at her house. (Tr. 10/17/01 at 112.) She also has not observed any loitering problems. (Tr. 10/17/01 at 112.) She testified that she has observed security at the Applicant's establishment on Fridays and that she has not observed any crimes being committed since August 5, 2001. (Tr. 10/17/01 at 113.) Ms. Jernagin stated that in the past she has on some occasions heard music coming from the establishment. (Tr. 10/17/01 at 116.) She no longer hears music coming from the Applicant's establishment. (Tr. 10/17/01 at 120.) Ms. Jernagin stated that on Friday the establishment is open until 2:30 a.m. or 2:45 a.m.; and Saturday nights he closes by 11 p.m. (Tr. 10/17/01 at 120.)

34. Paul Artiste, a retired D.C. public school principal, has patronized the Applicant's establishment over a thirty-year period during which the premises has had a variety of names, including "The Comfort Side," "The Junction," "Beverly's," "Lefty's," and now, "Nate's Comfort Zone." (Tr. 10/17/01 at 126-127.) Mr. Artiste lives at 15th Street, N.E., and Otis Street, N.E., which is within walking distance to the establishment. (Tr. 10/17/01 at 140-141.) Mr. Artiste patronizes the Applicant's establishment about once or twice a week as a recreational outlet because there are people there his age and he has a good time. (Tr. 10/17/01 at 128, 141, 144.) Mr. Artiste described the Applicant's establishment as a neighborhood establishment where people in the community may come to have a drink and stated that around eighty percent of patrons know one another. (Tr. 10/17/01 at 139.)

35. With respect to peace, order, and quiet, Mr. Artiste has not observed any disorderly conduct at the establishment. (Tr. 10/17/01 at 128.) He testified that the Applicant plays a variety of music on Friday nights, but that he has not observed live entertainment in a number of years. (Tr. 10/17/01 at 138.) Mr. Artiste stated that he does not hear music outside of the premises. (Tr. 10/17/01 at 130.) He believed that the Applicant has been responsive to comments and criticism from people in the neighborhood. (Tr. 10/17/01 at 134.)

36. With regard to improvements, Mr. Artiste stated that the Applicant has a security guard on Friday nights who will ask patrons to come inside if they stop for too long outside of the premises. (Tr. 10/17/01 at 133, 137.) He noted that the security guard will ask patrons to leave the area if they are not coming inside of the Applicant's establishment. (Tr. 10/17/01 at 137.) Additionally, Mr. Artiste observed that the speakers inside of the Applicant's establishment have been turned around to prevent noise from emanating outside of the establishment. (Tr. 10/17/01 at 133-134.) Finally, he noted that the Applicant has been in contact with MPD. (Tr. 10/17/01 at 134.) With respect to residential parking needs, Mr. Artiste has been able to find a parking space within one block of the establishment. (Tr. 10/17/01 at 128-129, 141.) He has not personally observed cars blocking driveways. (Tr. 10/17/01 at 135.)

37. Lucille Gaither resides at 3305 Kent Street, N.E., which is located three hundred (300) to four hundred (400) feet from the Applicant's establishment. (Tr. 10/17/01 at 155-156; Protestants' Exhibit No. 3a; Protestants' Exhibit No. 3c.) She has lived at this location for five (5) years. (Tr. 10/17/01 at 155.) Ms. Gaither can see the front door of the premises from where she lives. (Tr. 10/17/01 at 157.) She testified that beginning in November 1996, when she moved into her home, she heard loud "rock" music at the Applicant's establishment in her home that would wake her up and observed arguing and fighting by the Applicant's patrons, particularly at closing between 2:30 a.m. and 3:00 a.m. (Tr. 10/17/01 at 156-157, 164, 170.) Ms. Gaither testified that she hears music from the Applicant's establishment on Friday nights from approximately 1:00 a.m. until closing time. (Tr. 10/17/01 at 181.) She stated that there were a lot of patrons on Friday nights. (Tr. 10/17/01 at 163, 177.) Ms. Gaither testified that in 1997, she observed fighting between patrons leaving the premises at least once a month. (Tr. 10/17/01 at 161-162.) She observed that patrons sometimes appear to be intoxicated and has observed patrons staggering and cursing. (Tr. 10/17/01 at 163, 169, 172.) Ms. Gaither stated that in the last month and one half the Applicant's establishment has become quieter. (Tr. 10/17/01 at 160-161.)

38. Ms. Gaither noted that on July 28, 2001 she observed a woman standing on the street hollering and screaming until she left with three men who exited the establishment. (Tr. 10/17/01 at 171.) She stated that between February 2001 and May 2001 she also observed patrons of the establishment shouting and fighting outside on the sidewalk in front of the establishment. (Tr. 10/17/01 at 178-180.)

39. Andrew Galbreath resides at 1238 Trinity Street, N.E., where he has resided for approximately two (2) years. (Tr. 10/17/01 at 193-194, 211.) He stated that there are six (6) houses between his house and the Applicant's establishment. (Tr. 10/17/01 at 212.) With respect to peace, order, and quiet, Mr. Galbreath testified that from the fall of 1999 to the present, he has been typically disturbed by loud discussions between patrons exiting the establishment and music emanating from inside of the Applicant's establishment. (Tr. 10/17/01 at 194.) He stated that earlier in the year he had problems with loud music and noise from patrons approximately three Fridays a month. (Tr. 10/17/01 at 213.) Mr. Galbreath stated that in November 2000, he was awakened on a Friday night by music from the Applicant's establishment and loud voices of patrons exiting the premises around closing time, from approximately 2:30 a.m. to 3:00 a.m., and called MPD. (Tr. 10/17/01 at 194-195.) He noted that in February 2001, between 2:30 a.m. and 3:00 a.m., he also called MPD when he was awakened by boisterous patrons leaving the Applicant's establishment. (Tr. 10/17/01 at 196.) Mr. Galbreath testified that on or about July 28, 2001, at approximately 3:00 a.m., he observed in front of his driveway two cars surrounded by six (6) or eight (8) people; three (3) people sitting on the steps of his house drinking Corona beer; a man urinating in a neighbor's bushes; and a man passed out on the seat of a vehicle parked in front of his garage who he was told was a patron of the establishment. (Tr. 10/17/01 at 197-200, 202, 205.) He stated that these individuals had informed him that they had visited the establishment and that the establishment sold cheap beer. (Tr. 10/17/01 at 198, 205.) Mr. Galbreath further testified that the individuals drinking beer on the steps of his house appeared to be in their late teens to early twenties. (Tr. 10/17/01 at 215-216.) He stated that the individuals told him that they had left the establishment with the Corona beers that they were drinking. (Tr. 10/17/01 at 199.) Mr. Galbreath testified that

the individuals were still loitering outside in front of his home at about 3:30 a.m., and that he called MPD. (Tr. 10/17/01 at 200.) He noted that an MPD cruiser arrived around 4:00 a.m. and shuttled the people away. (Tr. 10/17/01 at 200.) Mr. Galbreath testified that on a Friday in the Spring of 2001, he observed the Applicant's patrons playing loud music from their cars and dancing and singing in the street, and he noted that the patrons appeared to be in their mid to late twenties. (Tr. 10/17/01 at 216, 220.)

40. Mr. Galbreath found the conditions at the establishment to have gotten better. (Tr. 10/17/01 at 214.) Specifically, he noted that there used to be a noise problem but that he has not been awakened by noise emanating from the premises on Friday nights within the last couple of months. (Tr. 10/17/01 at 208-209.) He noted that there used to be a loitering problem but that he no longer observes individuals standing around outside of the Applicant's establishment, and he is not aware of whether or not individuals standing outside of the premises were the Applicant's patrons. (Tr. 10/17/01 at 209-210.) Mr. Galbreath has not observed any public urination. (Tr. 10/17/01 at 218-219.)

41. With respect to parking, Mr. Galbreath testified that the Applicant's patrons typically park up and down the street on which he resides, and on 12th Street, N.E., on Friday nights, but that he is not aware of a parking problem in the area. (Tr. 10/17/01 at 207-208.) Mr. Galbreath typically parks his car in front of his house. (Tr. 10/17/01 at 207.)

42. Sarah Woodhead resides at 1201 Kearney Street, N.E., which is located directly across the street from the Applicant's establishment at the corner of 12th Street, N.E., and Kearney Street, N.E. (Tr. 10/24/01 at 6.) She has resided at this location for ten (10) years. (Tr. 10/24/01 at 6.) Ms. Woodhead has a bus stop located next to her house with the Metro located two blocks over and two blocks up. (Tr. 10/24/01 at 64-65.) She noted that there is not another ABC establishment located within two blocks of Nate's Comfort Zone. (Tr. 10/24/01 at 63.) Ms. Woodhead stated that the ABC establishment "Johnny K's" is located approximately two and one-half blocks north of the Applicant's establishment, and that there are several non-ABC licensed establishments, including a "Subway," a pizza place, and a hot wings type restaurant, located in close proximity to "Johnny K's." (Tr. 10/24/01 at 62-64.)

43. With respect to litter, Ms. Woodhead testified that after the Applicant took over the establishment approximately five years ago, she gradually observed lots of bottles outside. (Tr. 10/24/01 at 13.) She noted that for the past three years, in the mornings, especially Saturday mornings, she has often picked-up beer bottles, whiskey bottles, and plastic drinking glasses. (Tr. 10/24/01 at 24-25, 66.) Ms. Woodhead testified that when she informed the Applicant about the bottles outside of his establishment, the Applicant's response was that he is only responsible for what goes on in his bar or what he sells in his bar, and that unless she could prove that the bottles came from the Applicant's establishment, he is not responsible for what people drop. (Tr. 10/24/01 at 14, 25.) She stated that the Applicant did inform her that the establishment does use plastic drinking cups. (Tr. 10/24/01 at 25, 71.) Ms. Woodhead testified that on another occasion, when she stood outside of the Applicant's establishment with the Applicant to convince him to pick up the trash found after his establishment closes on Friday nights, he responded that the bottles, particularly the hard liquor bottles, could not have come from his establishment because he does not sell liquor that way. (Tr. 10/24/01 at 71.) She

acknowledged that in response to community concerns about litter, the Applicant now sweeps up and down the street. (Tr. 10/24/01 at 72.) Ms. Woodhead also noted that she finds trash unrelated to the Applicant's establishment, such as fast food trash. (Tr. 10/24/01 at 66.)

44. With respect to noise, Ms. Woodhead stated that the Applicant's establishment had become a little quieter this summer, and that although she is still awakened on Friday nights, it might be just at closing, and just for a little while. (Tr. 10/24/01 at 84.) She stated that over the last couple of months, she has not seen the "wild, young crowd" and that the security guard now moves people along. (Tr. 10/24/01 at 36.) Ms. Woodhead testified that she still wakes up on Friday nights, but it is not the result of prolonged "knock down, drag out" activity going on outside. (Tr. 10/24/01 at 36.) She testified that she experienced problems related to the Applicant's establishment every Friday night during the period of 1999 through 2001. (Tr. 10/24/01 at 19.) Ms. Woodhead testified that this was due to a younger crowd that patronized the Applicant's establishment during this period on Friday nights and sometimes on Saturday nights. (Tr. 10/24/01 at 19.) She also testified that when she would call the Applicant about the loud music being played at the establishment on Friday nights, the music was not turned down. (Tr. 10/24/01 at 14.) Ms. Woodhead testified that the noise coming from the Applicant's establishment was especially bad when the door to the Applicant's establishment was open, but that she could hear music inside her home even when the establishment's door was closed. (Tr. 10/24/01 at 18.) She further testified that in addition to noise emanating from inside of the Applicant's establishment, she also observed the Applicant's patrons making noise outside of the establishment. (Tr. 10/24/01 at 15-16, 18.) Ms. Woodhead stated that the Applicant would not come out to resolve issues occurring outside of the Applicant's establishment. (Tr. 10/24/01 at 14.) She testified that in her estimation, she called the Applicant's establishment just about every Friday night and most Saturdays last summer regarding issues related to the Applicant's establishment. (Tr. 10/24/01 at 15.) Ms. Woodhead testified that she received very little response and at times someone would hang-up the telephone on her when she called the Applicant. (Tr. 10/24/01 at 15.) She further stated that even after she filed a protest against the renewal of the license, she did not observe any changes at the Applicant's establishment and that, if anything, the situation got worse. (Tr. 10/24/01 at 33-34.) Ms. Woodhead testified that she attended a meeting at St. Anthony's Church in either February 2001 or March 2001, where Mr. Murray was present, but that she did not observe any changes in the operation of the Applicant's establishment after that meeting. (Tr. 10/24/01 at 34-35.) She noted that in the last couple of months things had gotten better because of the protest and the Board's involvement. (Tr. 10/24/01 at 35-36.) Ms. Woodhead testified that last night, which was a Tuesday, she could hear music from inside of her house emanating from inside of the Applicant's establishment at approximately 10:00 p.m., but that this is not typical for Tuesdays. (Tr. 10/24/01 at 73-74.)

45. With respect to criminal activity, Ms. Woodhead stated that for as long as she has lived in the neighborhood, there has been a drug problem at 10th Street, N.E., and Hamlin Street, N.E., although she does not observe it now as much as she used to. (Tr. 10/24/01 at 67.) She testified that she observed people handing things in and out of double parked cars in exchange for money and that she picks up drug bags, especially on Saturday mornings. (Tr. 10/24/01 at 29-30, 66-67.) Ms. Woodhead further testified that sometimes she observed individuals urinating and what appeared to be drug dealing outside of the Applicant's establishment. (Tr. 10/24/01 at 17.) She was unaware of any evidence connecting Mr. Murray to the drug activity and noted that the drug

problem in the area has improved. (Tr. 10/24/01 at 67-69.) She also testified that on one occasion, she observed an individual urinating in her backyard, and that she had also observed the Applicant's patrons drinking alcoholic beverages outside of the premises. (Tr. 10/24/01 at 23-24.) With respect to underage drinking, Ms. Woodhead stated that she has no evidence that the Applicant's establishment sells alcohol to minors. (Tr. 10/24/01 at 86-87.)

46. With respect to loitering, Ms. Woodhead testified that during the period from 1999 through 2001, she observed people hanging around outside of the Applicant's establishment, as well as hanging out in their cars. (Tr. 10/24/01 at 20.) She noted that she observed people drinking alcoholic beverages and partying before entering the Applicant's establishment, after leaving the Applicant's establishment, and when going in and out of the Applicant's establishment. (Tr. 10/24/01 at 20.) Ms. Woodhead testified that she also observed people, including patrons of the establishment, congregating on the chain link fence around the establishment and the "Verizon" parking lot where there would be loud talking, yelling, and occasionally fights. (Tr. 10/24/01 at 20.) She testified that there was a lot of obscene language, especially on Friday nights. (Tr. 10/24/01 at 20.) Ms. Woodhead testified that she had observed people in front of her house drinking and partying out of the trunk of their cars. (Tr. 10/24/01 at 24.) She further testified that at the end of summer, the security guard began to disperse people, but that before, he just stood around and watched things happen. (Tr. 10/24/01 at 73.) She stated that she has complained to MPD in the last year about activities at the Applicant's establishment, but that she does not recall the dates. (Tr. 10/24/01 at 76-77.) Ms. Woodhead stated that the situation improved over the summer months, but there were still some fights and intermittent noise. (Tr. 10/24/01 at 73.) Ms. Woodhead stated that the situation around the Applicant's establishment had improved over the last couple of months. (Tr. 10/24/01 at 70.)

47. With respect to parking, Ms. Woodhead stated that on Friday nights, cars lined Kearney Street, N.E., and the 3300 block of 12th Street, N.E., bumper to bumper on both sides of the street, and that cars also blocked the crosswalk. (Tr. 10/24/01 at 22-23, 26.) She testified that Applicant's patrons would park close enough to her driveway that it would be almost impossible to pull in or out of the driveway. (Tr. 10/24/01 at 26.) Ms. Woodhead further testified that over a three-year period, she has observed cars block her driveway as well as other driveways on 12th Street, N.E. (Tr. 10/24/01 at 27.) She testified that the Applicant's patrons block the intersection when they park their cars on the corner, making it difficult to look both ways up and down 12th Street, N.E., when pulling out. (Tr. 10/24/01 at 26-27.) Ms. Woodhead noted that the establishment does not have an attached parking lot. (Tr. 10/24/01 at 38.) She also testified that she observed in 2001 an enormous air handling unit in the yard south of the Applicant's establishment, which she described as an unsightly piece of equipment that is meant to be on a roof or behind a screen. (Tr. 10/24/01 at 37.) Ms. Woodhead stated that Mr. Murray said that he would remove the air handling equipment, but he has not removed it. (Tr. 10/24/01 at 38.)

48. Ms. Woodhead noted that the south side of the 1200 block of Kearney Street, N.E., is all single family residential and that the North side of the 1200 block of Kearney Street, N.E., contains single family residential, the establishment, and other commercial establishments. (Tr. 10/24/01 at 7, 61.) The Board viewed a videotape from the evening of Friday, February 16, 2001 into the morning of February 17, 2001 that was taken by Ms. Woodhead. (Tr. 10/24/01 at 41-44, Protestants' Exhibit No. 8.) This videotape showed cars blocking the crosswalk, loud music

coming from the establishment, individuals standing in front of the establishment, individuals talking and yelling, individuals urinating, and individuals throwing bottles onto the ground. (Tr. 10/24/01 at 48-53; Protestants' Exhibit No. 8.) Additionally, the Board viewed a videotape from June 9, 2001 taken by Ms. Woodhead. (Tr. 10/24/01 at 54-57; Protestants' Exhibit No. 9.) This videotape showed individuals fighting and cursing. (Tr. 10/24/01 at 57; Protestants' Exhibit No. 9.)

49. Howard Carter resides at 1208 Kearney Street, N.E., which is located three (3) doors away from the Applicant's establishment. (Tr. 10/24/01 at 91.) He had resided there since July 1, 1968, or about thirty-three (33) years. (Tr. 10/24/01 at 93, 105.) With respect to peace, order, and quiet, Mr. Carter noted that in the last two months, the music at the Applicant's establishment has gotten quieter and that he no longer wakes up between 12:00 a.m. and 3:00 a.m. in the morning to the music blasting, unable to sleep. (Tr. 10/24/01 at 92, 95.) Mr. Carter also observed in the past couple of months that the Applicant's clientele has changed. (Tr. 10/24/01 at 95.) He no longer sees "the youngsters" standing outside of the Applicant's establishment and going back and forth, and noted that "the youngsters" have ceased patronizing the Applicant's establishment. (Tr. 10/24/01 at 96.) Mr. Carter stated that on Labor Day weekend, as he walked down 12th Street, N.E., he observed "a youngster" urinating by a tree, and then entering the Applicant's establishment. (Tr. 10/24/01 at 97-98.) Mr. Carter has never observed underage drinking at the Applicant's establishment, as he does not patronize the Applicant's establishment. (Tr. 10/24/01 at 104.)

50. Mr. Carter has observed loitering in front of the Applicant's establishment, but not over the past two months. (Tr. 10/24/01 at 103-104.) He noted that in the last two months, he has not observed anybody sitting on his steps drinking after the Applicant's establishment has closed. (Tr. 10/24/01 at 94.) Previously, individuals were loitering on his steps. (Tr. 10/24/01 at 94.) Specifically, Mr. Carter had observed people sit out in front of his house and drink in cars, and then when they were finished, go to the Applicant's establishment, discarding whatever they were drinking on his sidewalk and his grass. (Tr. 10/24/01 at 96-97.) He stated that these same problems existed when the establishment was known as "Leftys" and operated by a different owner. (Tr. 10/24/01 at 94-95.) With regard to litter, he has picked up beer, wine, and liquor bottles out in front of his house. (Tr. 10/24/01 at 94.) Mr. Carter has never seen anyone purchase bottles of liquor or beer at the Applicant's establishment, as he does not go down there. (Tr. 10/24/01 at 101-102.)

51. With respect to noise, Mr. Carter testified that on Friday nights, he can hear music from the Applicant's establishment inside of his home, although the music is not "blasting" the way it was in the past. (Tr. 10/24/01 at 99.) He testified that at one point, the establishment had a disc jockey that was "awful" and who would "bring the house down" to the point that his house would be almost vibrating. (Tr. 10/24/01 at 99.) Mr. Carter believed that having the establishment close at Midnight on Fridays and Saturdays would probably go a long ways to improving things. (Tr. 10/24/01 at 107-108.) He noted that the late hours are what bring individuals who cause problems to the community. (Tr. 10/24/01 at 107.)

52. With respect to residential parking, Mr. Carter testified that people park on the street in front of his house and block his driveway. (Tr. 10/24/01 at 100, 102.) He stated that this problem has

not been that bad in the last couple of weeks. (Tr. 10/24/01 at 100.) He also testified that three weeks ago, he observed two ladies in a car with Maryland tags who had been patrons of the establishment pull their car into his next door neighbor's driveway, back into a car on the other side of the street, and drive away. (Tr. 10/24/01 at 98-99.) Over the past two years, Mr. Carter testified that he has directly observed people park in front of his driveway and then go into the Applicant's establishment, but he has not observed this in the last two months. (Tr. 10/24/01 at 103.)

53. Rex Nutting resides at 1201 Kearney Street, N.E., which is located across the street from the Applicant's establishment with his wife Sarah Woodhead and his family. (Tr. 10/24/01 at 109-110, 116.) Mr. Nutting stated that he resides across the street from a multi-unit apartment building with approximately twenty (20) units and noted that parking is not provided for the tenants of the building. (Tr. 10/24/01 at 125.)

54. With respect to noise and criminal activity, Mr. Nutting testified that on May 5, 2001 at approximately 1:00 a.m. he was awakened by a woman outside screaming profanities for ten (10) to fifteen (15) minutes and walking up and down the street appearing to be very agitated, with a few friends trying to calm her down. (Tr. 10/21/01 at 110, 118.) He stated that after a while the woman and her friends left temporarily heading east up Kearney Street, N.E., and the argument stopped. (Tr. 10/21/01 at 111.) Subsequently, Mr. Nutting also observed six (6) or seven (7) people talking at the corner where the Applicant's establishment is located, but noted that they were not talking particularly loud. (Tr. 10/24/01 at 111-112.) He testified that he also observed the Applicant's security guard engaged in the conversation with the six (6) or seven (7) people. (Tr. 10/24/01 at 112.) Mr. Nutting testified that he observed a patron exit the Applicant's establishment, when a man suddenly ran from across the street, pushed the patron and started to grapple and argue with him. (Tr. 10/24/01 at 112.) He testified that the man grabbed the patron and ran him into a security gate, resulting in the patron being knocked out and falling to the ground. (Tr. 10/24/01 at 112-113.) Mr. Nutting testified that the security guard did not bend down to see what happened to the patron. (Tr. 10/24/01 at 113.) He testified that the patron recovered after about one minute, staggered to his feet, was helped up by a couple of people, and walked up 12th Street, N.E. (Tr. 10/24/01 at 113.) Mr. Nutting observed that the man responsible for attacking the patron continued to stand in front of the Applicant's establishment talking with some people as if nothing had happened, and then walked up the street east on Kearney Street, N.E., where he met up with the women who had been previously arguing. (Tr. 10/24/01 at 113.)

55. Mr. Nutting testified that problems at the Applicant's establishment have been marginally better, noting that he has not seen as many problems as before; does not get awakened as often; does not see as many fights; does not see as much traffic; and his driveway is not blocked as much. (Tr. 10/24/01 at 115-116, 118-119.) With respect to litter, Mr. Nutting stated that he still sees some garbage but that the Applicant has made an effort to clean up and has done a fairly good job, at least right in front of his establishment and a couple doors up. (Tr. 10/24/03 at 123-124.) Mr. Nutting stated that the main problem with the establishment is the weekend hours. (Tr. 10/24/03 at 120-121.) Specifically, he mentioned the noise on late Friday nights and the crowd it attracts with regard to individuals who show up at the establishment at midnight or 1 a.m. (Tr. 10/24/03 at 121.)

56. Darcy Evans Flynn resides at 1206 Newton Street, N.E., and is the elected Advisory Neighborhood Commissioner for Advisory Neighborhood Commission ("ANC") 5A-08, which includes the area where the Applicant's establishment is located. (Tr. 10/24/01 at 130.) The Board did not give the testimony of Mr. Flynn on behalf of ANC 5A great weight and his testimony as to the position of ANC 5A was not considered by the Board in making its decision. (Tr. 10/24/01 at 156.) The Protestants called Mr. Flynn as a witness pursuant to D.C. Official Code § 1.309.10(d)(4) to discuss a letter dated March 5, 2001 from ANC 5A to the Board regarding the Applicant's license renewal application that had not been received by the Board in a timely manner. (Tr. 10/24/01 at 144, 146; See Protest File No. 10420-01/015P.) Specifically, the letter was received by ABRA on March 12, 2001; however the establishment's petition deadline was February 20, 2001 and the establishment's roll call hearing date was March 7, 2001. (See Protest File No. 10420-01/015P.) Oral testimony from an ANC Commissioner pursuant to this statutory provision has been accepted and given great weight by the Board in other protest cases. However, in this case the Board determined that the position of ANC 5A as: (1) stated in the March 5, 2001 letter and (2) articulated by Mr. Flynn was not entitled to great weight as it did not articulate either in writing or orally the basis for ANC 5A's decision nor did it raise any issues or concerns as required by D.C. Official Code § 1-309.10(d). (Tr. 10/24/01 at 147, 149.) Rather, both the March 5, 2001 letter and the testimony of Mr. Flynn indicated only that ANC 5A voted on February 28, 2001 to oppose the Applicant's liquor license application "[i]n support of the community" and its opposition to the Applicant's liquor license application, which the Board found: (1) to not satisfy the requirements of D.C. Official Code § 1-309.10(d) and (2) to not provide the Applicant with an opportunity to cross examine the witness as to the basis for the ANC's position or respond to the ANC's reasons for concern. (Tr. 10/24/01 at 144-146; See Protest File No 10420-01/015P.)

57. The Board held a hearing on July 31, 2002 on the Protestants' Motion to reopen the record which was denied. (Tr. 7/31/02 at 39.)

CONCLUSIONS OF LAW

58. Pursuant to D.C. Official Code § 25-313(a)(2001), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the protest hearings, the Board concludes that the Applicant has demonstrated that the renewal of its Retailer's License, Class "CT"-- with the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which the establishment is located.

59. The Board recognizes that pursuant to D.C. Official Code § 1-309.10 (2001) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd, 445 A.2d 643, 646 (D.C. 1982). However, in this instance, pursuant to D.C. Official Code §§ 25-609 and 1-309.10(d), the Board did not give either the March 5, 2001 letter or the testimony of Mr. Flynn on behalf of ANC 5A great weight. With regard to March 5, 2001 letter from ANC 5A, the letter was received by the Board on March 12, 2001. This was not only after the February 20, 2001 deadline for ANC 5A to have standing under D.C. Official Code § 25-601 as a

protestant in the case; the letter was also not filed less than seven (7) calendar days prior to the March 7, 2001 roll call date as required for an ANC's written recommendations to be entitled to great weight pursuant to D.C. Official Code § 25-609. However, D.C. Official Code § 1-309.10(d)(4), also requires the oral testimony of an ANC Commissioner to be given great weight as if provided in advance in writing as required by D.C. Official Code § 1-309.10(d)(1) when the oral testimony is accompanied within seven (7) days by written documentation from that ANC which supports the testimony. In this particular case, the Protestants called Mr. Flynn as a witness to discuss the March 5, 2001 letter from ANC 5A regarding the Applicant's license renewal application. Oral testimony from an ANC Commissioner pursuant to this statutory provision has been accepted and given great weight by the Board in other protest cases. However, in this case the Board determined that the position of ANC 5A as: (1) stated in the March 5, 2001 letter and (2) articulated by Mr. Flynn was not entitled to great weight as it did not articulate either in writing or orally the basis for ANC 5A's decision nor did it raise any issues or concerns as required by D.C. Official Code § 1-309.10(d). Rather, both the March 5, 2001 letter and the oral testimony of Mr. Flynn indicated only that ANC 5A voted on February 28, 2001 to oppose the Applicant's liquor license application "[i]n support of the community" and its opposition to the Applicant's liquor license application, which the Board found: (1) to not satisfy the requirements of D.C. Official Code § 1-309.10(d) and (2) to not provide the Applicant with an opportunity to cross examine the witness as to the basis for the ANC's position or to the reasons for its concern. Additionally, the Board notes that while D.C. Official Code § 1-309.10(d) does allow the oral testimony of an ANC commissioner to later be approved in writing by an ANC within seven (7) days, it does not obviate the requirement of an ANC Commissioner to initially state orally the basis for the ANC decision or concerns as required by D.C. Official Code § 1-309.10(d).

60. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 400.3(b) (1997), the Board must determine whether renewing the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood. With respect to noise and rowdy behavior, the testimony of Ms. Alston, Ms. Jernagin, Ms. Gaither, Mr. Galbreath, Ms. Woodhead, Mr. Carter, Mr. Nutting, and Investigator Chambers revealed that there had been a problem with music emanating from inside of the Applicant's establishment. Additionally, the testimony of Ms. Woodhead, Mr. Murray, and Mr. Nutting revealed that there had been instances of noise and rowdy behavior by both patrons and other individuals outside of the immediate area of the establishment. However, the testimony of Ms. Jernagin, Ms. Gaither, Mr. Galbreath, Ms. Woodhead, Mr. Carter, and Investigator Chambers also demonstrated that within the past few months, music emanating from inside of the Applicant's establishment had either ceased or been significantly reduced. The testimony of Investigator Chambers, Mr. Murray, Ms. Alston, Ms. Jernagin, and Ms. Woodhead also revealed that the amount of noise and rowdy behavior occurring outside of the immediate area of the establishment had also been significantly reduced.

61. Additionally, the testimony of Mr. Murray, Investigator Chambers, Mr. Artiste, and Officer Furr established that the Applicant has implemented numerous measures in an effort to reduce noise and rowdy behavior including: 1) redirecting the establishment's speakers away from the door; 2) having a doorman present to ensure that patrons do not hold open the door to the premises; 3) instructing the disc jockey to turn down the level of music; 4) meeting with

Lieutenant Baxter, MPD, 5A, regarding complaints from neighbors and implementing recommendations made by Lieutenant Baxter; 5) instituting a dress code policy aimed at discouraging the patronage of the younger crowd; 6) producing a poster aimed at discouraging loitering and excessive noise made by some of the younger crowd; and 7) hiring a security guard for each Friday night until closing to prevent people from turning up their car music and loitering in front of the establishment.

62. The Board also finds that the amount of noise and rowdy behavior adversely affecting residents in the area can be reduced by requiring the Applicant to continue to close by 1 a.m. on weekdays and by closing at 2 a.m., an hour earlier on Saturday and Sunday mornings. Specifically, the testimony of neighboring residents, including Mr. Carter and Mr. Nutting, complained about the establishment's late hours and being awakened late at night, especially on Friday nights. Additionally, the testimony of Mr. Murray and Ms. Jernigan revealed that non-patrons were also causing disturbances in the immediate area of the establishment on Friday nights as these individuals were attracted to the area as a result of the establishment's late hours. The Board believes that reducing the establishment's permitted closing time by one hour will reduce the amount of late night disturbances caused by both patrons and non-patrons of the establishment. Furthermore, requiring the Applicant to stop alcoholic beverage service at 12:30 a.m. during the week and by 1:30 a.m. on weekends will also help to reduce the amount of late night disturbances and to ensure that the establishment closes promptly at 1 a.m. on weekdays and 2 a.m. on weekends. The Board also notes that requiring the Applicant to not exceed its Board approved occupancy of forty (40) persons will also reduce incidents of noise and rowdy behavior in the immediate area of the establishment. The Board notes that it has authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e)(2001).

63. With regard to loitering, the Board finds based upon the testimony of Mr. Murray, Ms. Woodhead, Mr. Carter, and Investigator Chambers that some loitering activity has occurred around the Applicant's establishment. Specifically, the testimony of Investigator Chambers, Ms. Woodhead, Mr. Carter, and Mr. Murray revealed that some patrons of the establishment were standing around outside of the Applicant's establishment prior to entering or exiting the establishment. Additionally, the testimony of Mr. Murray and Ms. Jernagin established that on Friday nights a young crowd, including patrons of "Johnny K's", which did not patronize the Applicant's establishment would loiter in front of or in the area of the Applicant's establishment. However, the testimony also revealed that the Applicant has taken proactive steps to prevent or cure loitering problems in front of or in the area of the Applicant's establishment. Specifically, the testimony of Mr. Murray and Officer Furr revealed that in response to community complaints regarding loitering, the Applicant hired a security guard and produced informational flyers for his patrons to reduce the amount of loitering occurring in front of the Applicant's establishment. The testimony of Officer Furr and Captain Crane also established that the Applicant had requested that MPD monitor the area to reduce loitering in the area and that MPD's monitoring has been effective. The testimony of Ms. Woodhead and Mr. Carter also revealed that the incidences of loitering in front of the Applicant's establishment over the last couple of months has decreased. The Board finds that requiring the Applicant to post a "No Loitering" sign, in addition to the conditions listed above, will also help to eliminate loitering in front of and around

the Applicant's establishment. The Board notes that it has the authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

64. With respect to litter, the Board finds, based upon the testimony of Investigator Chambers, Mr. Murray, Officer Furr, Ms. Woodhead, and Mr. Carter that some litter, including fast food items, liquor bottles, beer bottles, and plastic glasses does exist in the area of the establishment. However, the testimony of Investigator Chambers, Officer Furr, Ms. Woodhead, and Mr. Nutting also revealed that the Applicant has cleaned up trash in and around the Applicant's establishment after the establishment closes. Additionally, the testimony of Investigator Chambers, Mr. Murray, and Ms. Woodhead also revealed that some of the litter found in the area of the establishment, including fast-food bags, Starbucks coffee cup bags, and buckets are products that the establishment does not sell or carry. The testimony of Mr. Murray also revealed that the Applicant maintains trash receptacles in front of and beside the Applicant's establishment. The Board finds that requiring the establishment at closing to pick-up trash in the immediate environs of the establishment pursuant to D.C. Official Code § 25-726 will also help to reduce litter around the Applicant's establishment. The Board notes that it has the authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

65. With respect to criminal activity, the testimony of Ms. Woodhead, Officer Furr, and Captain Crane revealed that some criminal activity exists in the area of the establishment. However, the Board finds, based upon the testimony of Captain Crane, Investigator Chambers, Officer Furr, and Mr. Murray that the operation of the Applicant's establishment does not significantly contribute to criminal activity in the area. The testimony of Captain Crane revealed that although the establishment is located in PSA 503, which has the second highest crime rate in the MPD Fifth District, he found no correlation between the amount of crime in the area and the Applicant's establishment. Specifically, Captain Crane noted that the other two ABC establishments in the 12th Street, N.E., corridor had more arrests than the Applicant's establishment. Additionally, the testimony of Officer Furr revealed that although he had received two calls to the Applicant's establishment for disorderly conduct, he had not received any calls involving the establishment in the past year. Additionally, Investigator Chambers did not observe any criminal activity at the Applicant's establishment during his thirty-five (35) visits. Finally, the testimony of Mr. Murray established that the Applicant has a policy that no drugs are permitted on the premises of the Applicant's establishment.

66. Based upon the above factors, and the conditions imposed by the Board above, the Board finds that granting the Applicant's Class "CT" license renewal application will not adversely affect the peace, order, and quiet of the neighborhood.

67. Pursuant to D.C. Official Code § 25-313(b)(3)(2001), the Board finds based upon the testimony of Investigator Chambers, Officer Furr, Captain Crane, Ms. Alston, Ms. Jernagin, Mr. Artiste, and Mr. Galbreath that the Applicant's establishment does not adversely affect the residential parking needs of the community. Specifically, the testimony of Investigator Chambers revealed that ample street parking is available for the Applicant's patrons and that most houses in the Applicant's block have off-street parking on both sides of the street. Additionally, the testimony of Mr. Artiste and Mr. Galbreath revealed that Mr. Artiste is able to find a parking space within one block of the establishment and that Mr. Galbreath typically parks

his car in front of his house. Finally, the testimony of Ms. Jernagin --who has three cars -- and Ms. Jernagin revealed that they were not aware of any parking problems in the area. With regard to vehicular and pedestrian safety, the testimony of Ms. Woodhead and Mr. Carter revealed that there have been instances where cars belonging to patrons of the establishment have blocked driveways of residents as well as crosswalks or parked too close to an intersection. The Board did not find this to be a frequent problem in light of the testimony of Officer Furr and Captain Crane. Specifically, the testimony of Officer Furr, who had patrolled the area of the establishment, indicated that he had not issued any tickets for illegal parking. Additionally, the testimony of Captain Crane indicated that he did not observe any parking violations when he visited the establishment last spring. Furthermore, the Board believes that limiting the capacity of the establishment to forty (40) patrons and reducing the establishment's closing time by one hour, as discussed above, will significantly reduce these occurrences.

68. Pursuant to D.C. Official Code § 25-313(b)(1)(2001), the Board finds based upon the testimony of Mr. Ceccone that the Applicant's establishment does not have an adverse affect on real property values. Specifically, the testimony of Mr. Ceccone revealed that real property values in the area of the establishment have been increasing.

69. With regard to the Applicant's compliance with the ABC laws and regulations, pursuant to D.C. Official Code § 25-315(b)(1), the testimony of Investigator Chambers revealed that the establishment is currently in compliance with existing ABC laws and regulations. The Board notes, however, that prior to the Applicant coming into compliance, the testimony of Ms. Woodhead and other witnesses revealed that on at least several occasions music could be heard emanating from the premises in violation of D.C. Official Code § 25-725. Additionally, the testimony of Mr. Murray did reveal that the establishment had previously exceeded on at least several occasions its Board approved certificate of occupancy of forty (40) patrons without filing a substantial change application pursuant to D.C. Official Code § 25-762. This was a factor considered by the Board in making its decision. The Board notes that it expects the Applicant to continue its compliance with these two provisions and is placing these conditions on the Applicant's license.

70. Compliance with other District of Columbia laws and regulations is not a factor considered by the Board on an ABC license renewal application. However, D.C. Official Code § 25-823(1) does provide the Board with the authority to suspend or revoke the license of a licensee who is in violation of any laws of the District. The Board notes that the testimony of Mr. Murray and Investigator Chambers revealed that the Applicant was charging admission without obtaining a public hall license from DCRA. As such, the Board notes that an ABC licensee must ensure compliance, when applicable, with the licensing requirement found in D.C. Official Code § 47-2820 prior to charging a cover. As such, the Board is requiring that the Applicant submit a copy of such license obtained by DCRA pursuant to D.C. Official Code § 47-2820 prior to the charging of a cover.

Therefore, it is hereby ORDERED on this 6th day of August 2003, that the renewal application for a Retailer's Class "CT" license filed by The Hair Club, Inc., t/a Nate's Comfort Zone, 3301 12th Street, N.E., be and the same is hereby, GRANTED.

It is FURTHER ORDERED that the following conditions are hereby imposed on the Applicant and shall become a term of the license:

1. The Applicant's approved occupancy is for forty (40) seats;

2. The Applicant shall post and maintain a "No Loitering" sign that prohibits all individuals from congregating in front of and around the establishment;

3. At closing, the Applicant shall pick-up trash in the immediate environs of the establishment pursuant to D.C. Official Code § 25-726;

4. The Applicant shall not produce any sound, noise, or music that may be heard in any premises other than the licensed premises pursuant to D.C. Official Code § 25-725;

5. The Applicant shall close the establishment as follows: Monday through Friday, the establishment shall close by 1:00 a.m., and Saturday and Sunday, the establishment shall close by 2:00 a.m.;

6. The Applicant shall stop selling or serving alcoholic beverages by 12:30 a.m. Monday through Friday, and by 1:30 a.m. on Saturday and Sunday;

7. The Applicant shall not charge a cover charge without: (1) obtaining a public hall or equivalent license from DCRA and (2) submitting a copy of such license to the Board.

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Interim Chairperson

Vera M. Abbott, Member

Ellen Opper-Weiner, Esquire, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Control Board, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedures Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. (See D.C. App, Rule 15(b)).

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of: Samuel I. Mills t/a Sam's Newsstand Holder of a Retailer's License Class "B" at premises 6200 Georgia Avenue, N.W. Washington, D.C. Respondent	Case No. 10354-03/011C Order No. 2003-71

BEFORE: Charles A. Burger, Interim Chairperson
Vera Abbott, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Laurie Collins, Member

ALSO PRESENT: Elmer Douglass Ellis, Esquire, on behalf of the Respondent

Pamela L. Smith, Assistant Corporation Counsel, D.C., on behalf of the District of Columbia

Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On December 13, 2002, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code § 25-826(a) 2001, ordered the suspension of the Retailer's License Class "B" held by Samuel I. Mills, t/a Sam's Newstand ("Respondent"), based upon an investigation conducted by Alcoholic Beverage Regulation Administration ("ABRA") Investigator Juliana N. Tengen as the result of a PD-251 incident report received from the Fourth District of the Metropolitan Police Department ("MPD") pursuant to D.C. Official Code § 25-804(b). The grounds for the suspension were set forth in the Notice of Summary Suspension, dated December 13, 2002, which was served on the Respondent.

On Monday, December 16, 2002, the Respondent requested a summary suspension hearing pursuant to D.C. Official Code § 25-826(c). The Board held the summary suspension hearing on

Tuesday, December 17, 2002 after denying the Respondent's request for a continuance for the reasons set forth below and subsequently issued from the bench, on the record and through a formal articulation of the decision and vote, its 5-0 decision to schedule a show cause hearing on January 29, 2003, pursuant to 23 DCMR § 1502, to revoke the Respondent's license based upon the evidence presented at the summary suspension hearing. The Board, based upon a request by the Respondent, that was not opposed by the Office of the Corporation Counsel, continued the show cause hearing until February 19, 2003. The Respondent also requested and received a continuance of the February 19, 2003 show cause hearing, that was not opposed by the Office of the Corporation Counsel, and after several other continuances the show cause hearing occurred on May 21, 2003. The Board held the show cause hearing to revoke the Respondent's license based upon the two charges set forth in the December 27, 2002 Notice to Show Cause, as described below. At the conclusion of the May 21, 2003 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered in making its decision the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, exhibits admitted in the hearings, and the documents comprising the Board's official file in making the following:

FINDINGS OF FACT

1. The establishment and the building where the establishment is located is owned by Samuel I. Mills. (Tr. 12/17/02 at 4-5, 154.) The establishment holds a Class "B" liquor license, which permits it to sell beer and wine and is located at 6200 Georgia Avenue, N.W. (ABRA Application File No. 10354.) The establishment also sells other items including newspapers, sodas, and potato chips. (Tr. 12/17/02 at 8-9, 139.) There is a bus stop located on the side of the establishment. (Tr. 12/17/02 at 116.)

2. The Respondent orally requested a continuance at the December 17, 2002 summary suspension hearing. (Tr. 12/17/02 at 6-9.) However, the Board denied the Respondent's request for a continuance because: (1) the summary suspension hearing had been requested in writing by the Respondent by letter dated December 16, 2003; (2) the Respondent's request for a continuance was not made until the December 17, 2002 hearing; and (3) the Respondent's request for a continuance was not supported by the Office of the Corporation Counsel. (Tr. 12/17/02 at 11-12.) The Board subsequently held the summary suspension hearing on Tuesday, December 17, 2002 and issued from the bench, on the record and through a formal articulation of the decision and vote, its 5-0 decision to schedule a show cause hearing pursuant to 23 DCMR § 1502, to revoke the Respondent's license based upon the evidence presented at the summary suspension hearing. (Tr. 12/17/02 at 180-184.) The show cause hearing occurred on May 21, 2002 and the Board took its decision under advisement. (Tr. 5/21/03 at 82.)

3. The Notice to Show Cause dated December 27, 2002 charges the Respondent with: (1) failing to superintend the licensed premises either in person or through a manager approved by the Board in violation of D.C. Official Code § 25-701 (2001), which the Board may take action pursuant to D.C. Official Code § 25-823 (2001) and (2) having knowingly permitted, in the licensed establishment (A) the illegal sale, or negotiation for sale, or the use of a controlled

substance, or (B) the possession or sale or negotiation for sale, of drug paraphernalia in violation of D.C. Official Code § 25-822 (2001). (See Show Cause Case File No. 10354-03/011C.)

4. The Respondent's license has been suspended since December 13, 2002, when the Board, pursuant to D.C. Official Code § 25-826(a) 2001, issued the Notice of Summary Suspension to the Respondent, based upon an investigation conducted by ABRA Investigator Juliana N. Tengen as the result of a PD-251 incident report received from the Fourth District of MPD pursuant to D.C. Official Code § 25-804(b). (See Show Cause Case File No. 10354-03/011C.)

5. Reginald Powell is a Sergeant with MPD and is assigned as a Sergeant Supervisor for the 4th District Focus Mission team. (Tr. 12/17/02 at 14.) Sergeant Powell explained that the Focus Mission Team is a vice-squad responsible for handling narcotics complaints. (Tr. 12/17/02 at 14-15.) Sergeant Powell has been with MPD for approximately ten (10) years, with the vice squad for about five (5) years, and with the Fourth District of MPD for approximately three (3) years. (Tr. 12/17/02 at 26-27.) Sergeant Powell is familiar with the establishment through numerous complaints involving drug trafficking and narcotics sales. (Tr. 12/17/02 at 15, 29.) Sergeant Powell noted that these complaints were from residents in the area as well as other sources. (Tr. 12/17/02 at 29-30.) With regard to the events leading to the November 21, 2002 controlled buy at the establishment, Sergeant Powell stated that he and another investigator had been briefed by a special employee and that Sergeant Powell was informed by the special employee that crack cocaine was being sold out of the Respondent's establishment. (Tr. 12/17/02 at 15.) As a result of receiving this information, Sergeant Powell noted that MPD set up what is known as a controlled buy or controlled purchase. (Tr. 12/17/02 at 15-16.) Sergeant Powell explained that a controlled buy or controlled purchase is when MPD provides a source or special employee ("special employee") with prerecorded funds from MPD to purchase narcotics. (Tr. 12/17/02 at 16, 22.) Sergeant Powell noted that once the special employee is provided with prerecorded funds, MPD drops the special employee off at the location; observes the special employee enter and leave the location and report back to the pre-designated area. (Tr. 12/17/02 at 16, 22.) Sergeant Powell noted that a full search and pat down of the special employee's clothing and garments occurs prior to the special employee entering the establishment to ensure that the special employee does not have any narcotics or drug contraband on them. (Tr. 12/17/02 at 16-17, 20.) Sergeant Powell noted that special employees while not full time employees of the government are compensated for their work. (Tr. 12/17/02 at 22.)

6. Sergeant Powell stated that on November 21, 2002, MPD patted down the special employee prior to entering the Respondent's establishment and that the special employee did not have narcotics prior to entering the establishment; observed the special employee enter the establishment; observed the special employee on his way in and out of the establishment; and observed and met the special employee at the prearranged location. (Tr. 12/17/02 at 17, 23-24.) Sergeant Powell noted that once inside the prearranged location, MPD recovered from the special employee a white rock substance that was field tested, which tested positive for cocaine. (Tr. 12/17/02 at 17, 23.) Sergeant Powell noted that the special employee did not go to another location during the course of the November 21, 2002 operation. (Tr. 12/17/02 at 23.) Sergeant Powell noted that the special employee in this case was considered reliable by MPD and had contributed to over twenty-five (25) arrests, including narcotic arrests and purchases, through a confidential informant system. (Tr. 12/17/02 at 19, 23.)

7. Sergeant Powell indicated that prior to the execution of the search warrant on November 29, 2002, the last time he was inside of the establishment was approximately two (2) years ago and that at that time the establishment's shelves were stocked. (Tr. 12/17/02 at 27-28, 32-33.) Sergeant Powell did not enter the store on November 21, 2002 but was at an observation post outside of the establishment. (Tr. 12/17/02 at 35-36.)

8. Sergeant Powell was present when Mr. Matthew Mills was arrested inside of the establishment on November 29, 2002. (Tr. 12/17/02 at 35, 38.) Sergeant Powell personally observed the items on the Search Warrant Seizure list that were seized from the establishment on November 29, 2002. (Tr. 12/17/02 at 36-37.) This included Sergeant Powell personally observing a blue Ziploc bag containing approximately three grams of a white rock substance that tested positive for cocaine. (Tr. 12/17/02 at 37; Government's Exhibit No. 3.) Additionally, Sergeant Powell observed the blue Ziploc bag containing approximately one gram of a white rock substance; two Ziploc bags containing a green weed substance; $100 assorted currency; razor blades with residue; two bags tested positive for narcotics and one was inconclusive. (Tr. 12/17/02 at 37.) Sergeant Powell noted that the green weed tested positive for THC. (Tr. 12/17/02 at 37.) Sergeant Powell noted that $160 was also obtained from Mr. Mills front pocket. (Tr. 12/17/02 at 37-38.) Sergeant Powell indicated that Investigator Singletary was the seizing officer. (Tr. 12/17/02 at 38.) Sergeant Powell acknowledged that the search warrant request also contained information from the special employee with regard to others selling crack cocaine inside of the establishment. (Tr. 12/17/02 at 39-40.)

9. With regard to loitering, Sergeant Powell noted that he has observed constant loitering outside of the establishment, including individuals hanging out on the sidewalks, sitting around, and engaged in conversation. (Tr. 12/17/02 at 30-31, 34, 125.) Sergeant Powell noted that some of the individuals he has observed loitering are patrons of the establishment. (Tr. 12/17/02 at 31.) Sergeant Powell noted that loitering is pretty common for the 6200 block of Georgia Avenue, N.W. (Tr. 12/17/02 at 126.) Sergeant Powell observed patrons inside of the establishment on November 29, 2002. (Tr. 12/17/02 at 31.)

10. MPD Investigator George Singletary is a vice investigator with the MPD 4th District Focus Mission Team. (Tr. 12/17/02 at 42, 75; Tr. 5/21/02 at 22, 43.) Investigator Singletary handles drug complaints and also works in Patrol Service Area ("PSA") 401 and PSA 402. (Tr. 12/17/02 at 42; Tr. 5/21/03 at 43.) The establishment is located in PSA 402 where Investigator Singletary has worked for two years. (Tr. 12/17/02 at 72; Tr. 5/21/02 at 50.) Investigator Singletary has also worked on narcotics cases for a little over two years and has been an MPD Officer for about four (4) years. (Tr. 5/21/03 at 31, 39.) Investigator Singletary has had training in identifying paraphernalia associated with the use and production of drugs although he is not a narcotics expert. (Tr. 5/21/03 at 31-32, 39.) Investigator Singletary stated that MPD executed a narcotics search warrant issued by D.C. Superior Court at the establishment on November 29, 2002. (Tr. 12/17/02 at 42; Tr. 12/17/02 at 23.) Investigator Singletary noted that prior to November 29, 2002, the establishment had been brought to his attention through numerous complaints regarding individuals conducting illegal activities at the establishment, in the back alley, and out on the street at the intersection of Georgia Avenue, N.W., and Rittenhouse Street, N.W., which are the cross streets where the establishment is located. (Tr. 12/17/02 at 43; Tr. 5/21/02 at 51.)

Investigator Singletary noted that the complaints were consistent with the evidence he found with the arrest of Mr. Matthew Mills on November 29, 2002. (Tr. 12/17/02 at 64.) Investigator Singletary noted that some of the complaints he received were from individuals at PSA 401 and PSA 402 meetings. (Tr. 12/17/02 at 64.)

11. Investigator Singletary noted that after execution of the search warrant MPD prepared a seizure list, a DEA 7 -- the narcotics form submitted to DEA lab for official testing other than MPD field tests --, the heat seal for the narcotics, and the property bag for any other property seized out of the location. (Tr. 12/17/02 at 44; Tr. 5/21/03 at 24.) Investigator Singletary explained that the seizure list is a form used by MPD as a matter of policy to detail items taken from the premises. (Tr. 12/17/02 at 44-45; Tr. 5/21/03 at 24, 43.) Investigator Singletary identified the seizure list from November 29, 2002 of items taken from the establishment. (Tr. 12/17/02 at 44-46; Government's Exhibit No. 1.) Investigator Singletary noted that he was the preparing investigator and also the seizing officer for the search warrant. (Tr. 12/17/02 at 45.) Investigator Singletary noted that the seizure record was kept in the course of a regulatory conducted business activity. (Tr. 12/17/02 at 45.)

12. With regard to specific items found inside of the establishment, Investigator Singletary noted that three (3) razor blades, item Nos. 3, 4, and 6 on the seizure list were found behind the counter inside of the establishment. (Tr. 12/17/02 at 47, 78; Tr. 5/21/03 at 25, 29.) Specifically, Investigator Singletary explained that the razor blades were placed in strategic locations not accessible to the public with two razor blades located right around the counter under the countertop below the cash register and the third razor blade located directly above the cash register. (Tr. 12/17/02 at 47, 49, 133-136; Tr. 5/21/03 at 38, 41, 55.) Investigator Singletary noted that the razor blades would be in view to an employee working at the establishment. (Tr. 12/17/02 at 68, 135-136.) Investigator Singletary observed that all three razor blades had residue and some signs of oxidation on them as though the residue had been there for some amount of time. (Tr. 12/17/02 at 78.) Investigator Singletary noted that the razor blades marked as item Nos. 3 and 4, tested positive for cocaine as the result of a field test he conducted. (Tr. 12/17/02 at 47-49, 78-79; Tr. 5/21/03 at 28-29, 33.) Specifically, Investigator Singletary stated that the presence of cocaine on two of the razor blades was visible and strong enough to get a positive field reaction for cocaine, which he noted was not the norm as usually the residue on razor blades is not strong enough to get a field reaction for cocaine. (Tr. 12/17/02 at 48, 78-79; Tr. 5/21/03 at 29-30, 35-36.) Investigator Singletary noted that the positive reaction on the razor blades indicates that the razor blades had either been used recently or had been subjected to large quantities of narcotics. (Tr. 12/17/02 at 49.) Investigator Singletary also noted that the condition of the razor blades indicated that there was more than one use. (Tr. 12/17/02 at 37.)

13. Investigator Singletary explained that item No. 1 was a ziploc bag containing three grams of a white rock substance with packaging -- which tested positive for cocaine -- that was found in the outer top pocket of a blue coat in the front of the store that was owned by Matthew Mills. (Tr. 12/17/02 at 49-50, 61; Tr. 5/21/03 at 47; Government's Exhibit No. 3.) Item No. 2 was one gram of marijuana with packaging. (Tr. 12/17/02 at 47-48.) Investigator Singletary noted that he had received confidential information from confidential informants the day before and the day of the narcotics search warrant, as well as on one prior occasion, that Mr. Mills was wearing the exact same blue coat. (Tr. 12/17/02 at 61.) Investigator Matthew Singletary also noted that the

coat was located on a rack located less than two feet from Mr. Matthew Mills. (Tr. 12/17/02 at 61-62.)

14. Investigator Singletary noted that on November 29, 2002 both he and Sergeant Powell were the first two MPD officers to enter the establishment. (Tr. 12/17/02 at 50.) Upon entering the establishment, Investigator Singletary observed Matthew Mills behind the counter area, and noted that Matthew Mills ducked behind the counter and raised his hands. (Tr. 12/17/02 at 51, 56-58; Tr. 5/21/03 at 37.) Investigator Singletary stated that there were approximately two or three other customers inside of the establishment but that Matthew Mills was the only employee inside of the establishment at the time he entered. (Tr. 12/02 at 51, 56-60.) Investigator Singletary noted that Matthew Mills was arrested as a result of their search. (Tr. 12/17/02 at 51; Tr. 5/21/03 at 37.)

15. Investigator Singletary noted that Matthew Mills was charged with Possession with Intent to Distribute ("PWID") Cocaine, UCSA, possession of marijuana, and PDP. (Tr. 12/17/02 at 52.) Investigator Singletary pointed out that possession is charged for having narcotics for your personal use, a smaller amount as opposed to PWID, which denotes having a larger amount with the intent to make a profit or some type of monetary gain. (Tr. 12/17/02 at 53.) Investigator Singletary noted that money was found in two areas, on the person of Matthew Mills and in his blue coat. (Tr. 12/17/02 at 63.)

16. Investigator Singletary noted that after Matthew Mills was arrested he was transported to the MPD 4th District for processing and that the establishment was secured as MPD found no other individual who claimed they either: (1) had ownership in the establishment or (2) previously or currently worked at the establishment. (Tr. 12/17/02 at 54.) Investigator Singletary noted that MPD was at the establishment for approximately one hour and five minutes, from approximately 10:30 a.m. to 11:35 a.m. (Tr. 12/17/02 at 55.)

17. Investigator Singletary noted that during his November 29, 2002 visit, the establishment's shelves and refrigerated sections were scarcely stocked, almost as though the establishment was going out of business. (Tr. 12/17/02 at 64-65.) Investigator Singletary noted that he had previously entered the establishment a year prior and that the shelves did not look the same way. (Tr. 12/17/02 at 65.)

18. Investigator Singletary was not sure how long Matthew Mills worked at the establishment but did note that Matthew Mills was at the establishment during the entire time that MPD was investigating the establishment. (Tr. 12/17/02 at 66.) Investigator Singletary stated that in addition to calls he has received about the establishment, he has also received calls complaining about Matthew Mills in the neighborhood and in PSA 401, which borders Montgomery County, Maryland. (Tr. 12/17/02 at 67, 75.) Investigator Singletary stated that he also received calls from individuals informing him that Matthew Mills was engaging in narcotics related activities in PSA 402 not only down at the establishment but around their homes. (Tr. 12/17/02 at 67, 72, 75.)

19. Investigator Singletary has observed Samuel Mills working at the establishment over the last two years. (Tr. 12/17/02 at 67-68, 72.) Investigator Singletary noted that narcotics investigators

and informants informed him that Mr. Matthew Mills had for a time worked at the establishment and had been engaged in drug-related activities inside of the establishment. (Tr. 12/17/02 at 74.) Investigator Singletary stated that he first heard allegations from citizens in both PSA 401 and PSA 402 that Mr. Mills was selling drugs out of the establishment between September 2001 and December 2001. (Tr. 12/17/02 at 74.)

20. Investigator Singletary believed that the drugs found inside of the establishment were for distribution rather than for personal use and noted that three grams is considered a substantial amount. (Tr. 12/17/02 at 77-78.) With regard to loitering, Investigator Singletary has observed a lot of loitering in front of the establishment. (Tr. 12/17/02 at 83.) Additionally, Investigator Singletary noted that he has personally observed narcotics being sold right in front of the establishment. (Tr. 12/17/03 at 83.) Specifically, Investigator Singletary observed individuals with large quantities of money with quantities of narcotics outside of the establishment. (Tr. 12/17/02 at 83-84.)

21. Investigator Singletary noted that in addition to the November 21, 2002 controlled buy there had been other controlled buys made at the establishment. (Tr. 5/21/03 at 40, 49, 51-52.) Specifically, Investigator Singletary noted that on a previous occasion there was a controlled buy conducted inside of the establishment two to three weeks prior to the controlled buy on November 21, 2002, which led to the narcotics search warrant. (Tr. 12/17/02 at 85.) Specifically, Investigator Singletary noted that an MPD special employee purchased cocaine inside of the establishment from Mr. Matthew Mills who was located behind the counter during the sale. (Tr. 12/17/02 at 86.) Investigator Singletary stated that MPD's investigation revealed that narcotics have been sold from the establishment to individuals patronizing the establishment. (Tr. 12/17/02 at 88.) Investigator Singletary noted that PWID Cocaine was a felony charge, possession of marijuana was a misdemeanor, and possession of drug paraphernalia was a misdemeanor. (Tr. 12/17/02 at 92.)

22. Vincent E. Norris is a resident of the District of Columbia. (Tr. 12/17/02 at 94.) On the morning of November 29, 2002, Mr. Norris went into the establishment to purchase a soda, sunflower seeds, and some gum. (Tr. 12/17/02 at 95, 105.) Mr. Norris was waited on by the young man -- Matthew Mills -- behind the counter who was the only employee he saw inside of the establishment. (Tr. 12/17/02 at 95.) He stated that while he was on the counter being waited on, MPD came into the establishment; placed him on the ground; searched and interviewed him; and confirmed that he was a patron of the establishment. (Tr. 12/17/02 at 95-96.) Mr. Norris noted that when he left Matthew Mills was still at the establishment with MPD. (Tr. 12/17/02 at 96.) He noted that there were no other patrons at the establishment during the time MPD entered. (Tr. 12/17/02 at 97, 101.) He noted that several other individuals and Mr. Matthew Mills were standing in the doorway when he initially entered the establishment. (Tr. 12/17/02 at 101.) He stated that Mr. Matthew Mills then followed him into the establishment and went behind the counter. (Tr. 12/17/02 at 101, 104.)

23. Mr. Norris is a regular patron of the establishment. (Tr. 12/17/02 at 97.) He observed that earlier in the year the store was busy but that lately it has been kind of light inside the establishment. (Tr. 12/17/02 at 97-98.) Specifically, Mr. Norris noted that the shelves inside of the establishment are lightly stocked. (Tr. 12/17/02 at 105-106.)

24. Mr. Norris has observed loitering occur outside of the establishment late in the evenings. (Tr. 12/17/02 at 98, 105-106.) He has also observed Samuel Mills inside of the establishment and working the counter but has never seen Ms. Williams inside of the establishment. (Tr. 12/17/02 at 100.) Mr. Norris always saw Matthew Mills inside of the establishment during his visits. (Tr. 12/17/02 at 101-102.) He noted that Matthew Mills only waited on him on one prior occasion earlier in the year. (Tr. 12/17/02 at 102.)

25. ABRA Investigator Juliana Tengen was assigned to investigate a PD 251 MPD report alleging that Matthew Mills was arrested at the establishment for possession of cocaine and marijuana. (Tr. 12/17/02 at 107-108.) ABRA Investigator Tengen found that Mr. Samuel Mills had a valid ABC license although he had failed to pay the second year payment that was due on December 2, 2002. (Tr. 12/17/02 at 108-109.) ABRA Investigator Tengen also checked the official records of the establishment that indicated that Mr. Matthew Mills does not have an ABC Manager's license. (Tr. 12/17/02 at 109-111; Government's Exhibit No. 2.) ABRA Investigator Tengen stated that Mr. Samuel Mills told her that Mr. Matthew Mills was not an employee and that Mr. Matthew Mills went to the establishment to open the door because the ABC manager was running late. (Tr. 12/17/02 at 117.)

26. ABRA Investigator Tengen stated that when she visited the establishment on Tuesday, December 3, 2003, at 11:15 a.m., to conduct a regulatory inspection, she observed that sixty (60%) of the establishment was empty. (Tr. 12/17/02 at 113-115, 120.) Specifically, Investigator Tengen stated that there were a few food products and some newspapers in the establishment but that most of the shelves were really empty and the refrigerators were empty or half-empty. (Tr. 12/17/02 at 113-115, 120.) ABRA Investigator Tengen noted that the establishment had its purchase invoices but did not appear to have purchased any alcohol for about two or three months. (Tr. 12/17/02 at 119-120.)

27. Samuel Mills is the owner of the establishment, which had been operating at this location for approximately thirty-two (32) years. (Tr. 12/17/02 at 58.) Samuel Mills testified that Ms. Felicia Williams has served as an employee with the establishment on and off for the last couple of years and that she received an ABC Manager license to serve as a night-shift manager for the establishment in the summer of 2002. (Tr. 12/17/02 at 137-138.) Mr. Mills stated that aside from serving as night shift manager, Ms. Williams orders merchandise and serves as a cashier. (Tr. 12/17/02 at 138.) Mr. Mills stated that Ms. Williams work hours over the last year have typically been from 4:00 p.m. to 10:00 p.m. (Tr. 12/17/02 at 138.)

28. Mr. Samuel Mills indicated that he employed Matthew Mills in the earlier part of 2002 as primarily a stock clerk, but not as a cashier. (Tr. 12/17/02 at 138-139, 146.) However, he noted that Matthew Mills does fill-in work from time to time in other positions, including serving as a cashier. (Tr. 12/17/02 at 139, 141.) Samuel Mills stated that the times when Matthew Mills worked the cash register were when the establishment was selling potato chips, sodas, and newspapers, etc., but not alcohol. (Tr. 12/17/02 at 141-143.) Samuel Mills stated that Matthew Mills was technically not an employee but was present at the establishment in November 2002. (Tr. 5/21/03 at 66.) Samuel Mills testified that 99 percent of the time Matthew Mills would be supervised by either himself or the shift manager. (Tr. 12/17/02 at 139.) Samuel Mills indicated

that he hires other part-time help from the neighborhood on a casual labor basis. (Tr. 12/17/02 at 139.)

29. Samuel Mills confirmed that Matthew Mills, who lives approximately six (6) blocks away, and his other son had keys to the front door of the establishment. (Tr. 12/17/02 at 141, 155; Tr. 5/21/03 at 62-69.) Ms. Felicia Williams, the ABC Manager, did not. (Tr. 5/21/03 at 68.) Samuel Mills stated that on November 29, 2002, Matthew Mills was supposed to wait for Ms. Williams; that Ms. Williams called Matthew Mills as she was running late; and "the rest just happened." (Tr. 12/17/02 at 141; Tr. 5/21/03 at 62, 69.) Samuel Mills stated of that inside the establishment when the search warrant was issued were his son, Matthew Mills, Mr. Norris, and another customer. (Tr. 5/21/03 at 61.) He noted that the establishment only sold alcohol when it had money to buy it and that he did not have many alcohol sales in November 2002 with his last alcohol sales in December 2002. (Tr. 12/17/02 at 143, 152-153.)

30. Samuel Mills indicated that he was not aware of his son's activities or any other illegal activity occurring at the establishment prior to November 29, 2002. (Tr. 12/17/02 at 140, 150; Tr. 5/21/03 at 59-60.) He confirmed that Matthew Mills does not have an ABC Manager's license. (Tr. 12/17/02 at 146.) With regard to the razor blades, Mr. Mills noted that the establishment has a couple boxes of razor blades to cut open newspapers that you might find anywhere in the establishment, including the counter or the top of the refrigerator right next to the paper rack. (Tr. 12/17/02 at 143-144.)

31. Samuel Mills stated that the establishment tries to operate between 9:00 a.m. and 10:00 p.m. but that sometimes it operates from 10:00 a.m. to about 8 p.m. or 9 p.m. depending on the flow of traffic. (Tr. 12/17/02 at 147.) He noted that in November 2002 the establishment was open from 8 a.m. to 10 p.m. (Tr. 5/21/03 at 64-65.) Mr. Mills indicated that he is present at the establishment during the morning and afternoon on a daily basis. (Tr. 12/17/02 at 147-148, 155.) He stated that Matthew Mills had not been opening the store for three weeks in a row. (Tr. 12/17/02 at 148.) He was not aware of complaints made to MPD about the establishment and believed MPD was outside the area of the establishment as it is a high crime area. (Tr. 12/17/02 at 148-149.)

32. Mr. Sam Mills stated that he was present and opened the establishment at 9:10 a.m. on November 21, 2002. (Tr. 12/17/02 at 156.) Mr. Mills stated that he eventually went into the back to take a nap and left the establishment at about 4:30 p.m. (Tr. 12/17/02 at 157.) Mr. Sam Mills acknowledged that he was not at the establishment on November 29, 2002 at 10:30 a.m. and that Ms. Williams was supposed to be the ABC manager on duty but was not present leaving no ABC manager on duty at this time. (Tr. 12/17/02 at 157-158.) Mr. Mills indicated that he might be guilty of not having an ABC manager on duty on a couple of occasions. (Tr. 12/17/02 at 174.) With regard to loitering, Mr. Mills believed the presence that of MPD outside the area of the establishment cut down on the amount of loitering. (Tr. 12/17/02 at 172-173.)

33. The Board voted 5-0 on December 17, 2002 to move to a revocation proceeding. (Tr. 12/17/02 at 181.) The Board took judicial notice of the record of the December 17, 2002 hearing at the May 21, 2003 show cause hearing. (Tr. 5/21/03 at 19.) An offer was made by the

Respondent at the May 21, 2003 hearing that the Board has chosen not to accept. (Tr. 5/21/03 at 9-19.)

CONCLUSIONS OF LAW

34. The Board has the authority to revoke the license of a licensee who violates D.C. Official Code § 25-822. Additionally, the Board has the authority to suspend or revoke the license of a licensee who violates D.C. Official Code § 25-823. In this instance, the Board finds that the Respondent's violations of both D.C. Official Code § 25-822(2) and D.C. Official Code § 25-823(3) warrant the revocation of the Respondent's license.

35. With regard to Charge 1, the Board must determine whether the Respondent failed to superintend the establishment either in person or through a manager approved by the Board as required by D.C. Official Code §§ 25-701 and 25-823(3). In this case, the testimony of Investigator Singletary, Investigator Tengen, Mr. Mills and Mr. Vargas revealed that neither Mr. Samuel Mills, the licensee, or a person holding an ABC Manager's license was present at the establishment on Friday, November 29, 2003, at 10:30 a.m. The testimony of Investigator Singletary, Investigator Tengen, and Mr. Vargas also revealed that Mr. Matthew Mills was the only individual acting as an employee at the establishment on November 29, 2003, at 10:30 a.m. Despite the fact that Samuel Mills claimed that his son Matthew Mills was not an employee of the establishment, Matthew Mills, who had keys to the establishment, was left to run the establishment on his own for several hours. Specifically, Matthew Mills opened the establishment on November 28, 2002 between 8 a.m. and 9 a.m. and Ms. Williams was still not present at the establishment when MPD arrived on November 29, 2002 at 10:30 a.m., and left around 11:35 a.m. Mr. Samuel Mills also noted that this may not have been the only time that neither he nor an ABC licensed manager was present at the establishment while it was open. The Board notes that this neglect of not having either Mr. Samuel Mills or Ms. Felicia Williams, the ABC Manager, on the licensed premises contributed to Mr. Matthew Mills ability to engage in drug activity on the licensed premises as discussed below. The Board notes that this was one factor the Board considered in deciding to revoke the Respondent's license and notes that a violation of this charge may constitute grounds for revocation pursuant to D.C. Official Code § 25-823.

36. With regard to Charge II, the Board must determine whether as set forth in D.C. Official Code § 25-822, the Respondent has knowingly permitted in the licensed establishment (A) the illegal sale, or negotiation for sale, or the use of a controlled substance or (B) the possession or sale, or negotiation for sale, of drug paraphernalia. D.C. Official Code § 25(822)(3) provides that successive sales or negotiations for sale over a continuous period of time shall be deemed evidence of knowing permission. In this case, the testimony of Investigator Singletary and Sergeant Powell established that successive sales over a continuous period did occur at the licensed establishment to warrant revocation as required by D.C. Official Code § 25-822. Specifically, the testimony of Sergeant Powell revealed that cocaine was sold to a special employee inside of the establishment on Thursday, November 21, 2002. The testimony of Investigator Singletary also revealed that other controlled buys have occurred at the establishment, including on one occasion where illegal drugs were purchased inside of the establishment from Matthew Mills several weeks prior to the November 21, 2002 controlled buy.

Additionally, although not a drug expert, Investigator Singletary did establish that he had sufficient training for the Board to find reliable his testimony that the conditions of the razor blades, specifically the heavy residue of narcotics on two of the three razor blades, indicated that the razor blades had been used on more than one occasion. The Board also notes that the testimony revealed that the razor blades were located behind the counter in the reach of an employee working behind the counter with no visible access to the public.

37. The Board notes that it did not accept the offer made by the Respondent at the May 21, 2003 show cause hearing. The Board notes that it did not consider the Respondent's willingness to make an offer in reaching this decision.

38. The Board finds pursuant to D.C. Official Code §§ 25-822 and 25-823(3) that the above-mentioned violations warrant the revocation of the Respondent's license.

ORDER

THEREFORE, it is hereby **ORDERED** on this 3rd day of September 2003, that the Retailer's License Class "B," issued to Samuel I. Mills, t/a Sam's Newsstand, be and is hereby **REVOKED**;

Samuel I. Mills
t/a Sam's Newsstand
September 3, 2003

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger
Charles A. Burger, Interim Chairperson

Not Voting
Vera M. Abbott, Member

Not Voting
Audrey E. Thompson, Member

Judy A. Moy
Judy A. Moy, Member

Laurie Collins
Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 (June 1997) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of Twins Lounge, Inc., t/a Twins Lounge Application for a new Retailer's License Class "CR" – at premises 5516 Colorado Avenue, N.W., Washington, D.C. Applicant	Case No. 10525-03/001P Order No. 2003-73

BEFORE: Charles A. Burger, Interim Chairperson
Vera M. Abbott, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Laurie Collins, Member

ALSO PRESENT: Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

Larry C. Williams, Esquire, on behalf of the Applicant

Gregory Shepard, on behalf of Protestant, ANC 4A

John J. Chagnon, Ana R. Escobar, and Julian DeLaine, on behalf of a group of five individual Protestants

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The application, filed by Twins Lounge, Inc., t/a Twins Lounge ("the Applicant"), for a new Retailer's License Class "CR" at premises 5516 Colorado Avenue, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on November 13, 2002. The Board determined at the roll call hearing that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2001), by Advisory Neighborhood Commission ("ANC") 4A. A group of five individuals, which included Ana R. Escobar, John Chagnon, Julien DeLaine, A. James Paige, and Carlos Bright Rosales, were initially dismissed as Protestants at the November 13, 2002 roll call hearing but were later reinstated as Protestants and recognized as such at the January 8, 2003 status hearing.

The protest issues are whether the establishment will adversely affect: (1) the peace, order, and quiet of the neighborhood; (2) residential parking needs and vehicular and pedestrian safety; and (3) real property values in the neighborhood.

This case came before the Board for public protest hearings on May 21, 2003 and June 18, 2003. The Board having considered the evidence, the testimony of the witnesses, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant has applied for a new Class "CR" Alcoholic Beverage Control ("ABC") Retailer's License for its establishment located at 5516 Colorado Avenue, N.W., Washington, D.C. (Alcoholic Beverage Regulation Administration ["ABRA"] Application File No. 10525.) The establishment and its front entrance are located in the Northwest area of Washington, D.C. at the corner of Colorado Avenue, N.W., and Longfellow Street, N.W. (Tr. 5/21/03 at 96; Tr. 6/18/03 at 44; Board's Exhibit No. 1.) The establishment is located in a zone C-2-A district, which is designed to provide facilities for shopping and business needs, housing and mixed uses for large segments of the city outside of the central core. (Tr. 5/21/03 at 20; Board's Exhibit No. 1.) The officers of Twins Lounge, Inc., include Kelemework and Mazagumet Tesfaye. (Tr. 5/21/03 at 4; Tr. 6/18/03 at 7; Board's Exhibit No. 1.) The Applicant is seeking to have recorded music and live music, which would include a modern jazz combo consisting of three (3) to five (5) pieces. (Tr. 5/21/03 at 17; Board's Exhibit No. 1.)

2. The ANC 4A protest letter, dated October 28, 2002, from ANC 4A Chairperson James H. Jones protests the issuance of a new Class "CR" Retailer's License to the Applicant based upon its adverse impact on: (1) peace, order, and quiet in the neighborhood; (2) real property values; and (3) residential parking and vehicular and pedestrian safety. (ABRA Protest File No. 10525-03/001P.) Specifically, ANC 4A's October 28, 2002 letter states that it has concerns regarding: (1) the establishment's proposed closing hours of 2:00 a.m. on weekdays and 3:00 a.m. on weekends; (2) the attraction of drug activity to the area by granting the Applicant a Class "CR" license; (3) disruption to the peace, order, and quiet of the neighborhood, including: (a) responses by the police to complaints for disturbing the peace, loud music, operating after hours, operating without a license, and other calls related to disruptive and criminal behavior; (b) patrons exiting the premises and disturbing residential properties late in the evening and early in the morning by: (1) being intoxicated, (2) engaging in loud boisterous conversations, and (3) arming and disarming automobiles; (4) the establishment operating as a nightclub disguised as a restaurant; (5) concerns that live entertainment and poetry will bring noise and crowds to the neighborhood; (6) concerns that patrons and public drinkers will hang outside of the establishment and in the immediate vicinity of the establishment; (7) public urination and defecation in the alleys and on private property; and (8) the establishment's impact upon residential parking. (ABRA Protest File No. 10525-03/001P.)

3. Willie Blount is employed as an Investigator for ABRA and has been an investigator for eighteen years. (Tr. 5/21/03 at 13-14.) Investigator Blount visited the establishment on four (4) occasions. (Tr. 5/21/03 at 14.) Specifically, Investigator Blount visited the establishment on

Friday, April 18, 2003 from 5:00 p.m. to 6:30 p.m.; Saturday, April 19, 2003 from 8:00 p.m. to 9:00 p.m.; Friday, April 23, 2003 from 9:00 p.m. to 10:00 p.m.; and Saturday, May 3, 2003 from 11:00 p.m. to 12:00 a.m. (Board's Exhibit No. 1; Tr. 5/21/03 at 15, 25.) Investigator Blount stated that the establishment is presently closed and has been closed for approximately thirteen months. (Tr. 5/21/03 at 14-15, 19.) Investigator Blount noted that the establishment's proposed hours of operation are Sunday through Thursday from 11:00 a.m. to 2:00 a.m. and Fridays and Saturdays from 11:00 a.m. to 3:00 a.m. (Tr. 5/21/03 at 15.) The Applicant has a certificate of occupancy dated June 24, 2002 permitting the use of the first floor with a maximum capacity of seventy persons inside of the establishment. (Tr. 5/21/03 at 16; Board's Exhibit No. 1.)

4. Investigator Blount observed that the Applicant's proposed establishment is located in a two-story brick building. (Tr. 5/21/03 at 17.) Investigator Blount stated that the Applicant has applied to operate on the first floor of the premises and that there is an apartment building located on the second floor above the premises. (Tr. 5/21/03 at 17.) Investigator Blount noted that a large apartment building is also located across the street from the establishment, which measures about seven or eight stories tall. (5/21/03 at 18, 21.) Investigator Blount also observed that the establishment is approximately twenty five feet from residential homes. (Tr. 5/21/03 at 26, 29-31.) Investigator Blount observed that several other businesses are located in the immediate vicinity of the establishment, including a laundromat, beauty parlor, and real estate office. (Tr. 5/21/03 at 18.) With regard to other ABC establishments in the area, Investigator Blount noted that "Colorado Liquors", which holds a Retailer's License Class A "liquor store" is located on the same side of the street about twenty five feet away from the establishment at 5512 Colorado Avenue, N.W., and that "Gold Corner Market", which holds a Retailer's License Class "B" is located across the street from the establishment on the corner of Kennedy Street and Colorado Avenue at 5503 Colorado Avenue, N.W. (Tr. 5/21/03 at 19; Board's Exhibit No. 1.) Investigator Blount also stated that the nearest on-premises Retailer's license Class "CR" (restaurant) establishment is located approximately four blocks away from the establishment. (Tr. 5/21/03 at 27.) A non-ABC licensed restaurant, Colorado Restaurant, is also located across the street from the establishment. (Tr. 5/21/03 at 20.) Investigator Blount stated that the location where the Applicant seeks to operate formerly had an ABC license. (Tr. 5/21/03 at 22.) Investigator Blount also noted that the Applicant owns another ABC establishment in the District of Columbia at a different location. (Tr. 5/21/03 at 22-23.)

5. With respect to peace, order, and quiet in the neighborhood, Investigator Blount did not observe any activity -- such as thugs, speeding cars, and fighting -- that negatively impacted upon the peace, order, and quiet of the neighborhood during his visits. (Tr. 5/21/03 at 16.) Investigator Blount also testified that he did not observe loitering or noise around the vicinity of the establishment. (Tr. 5/21/03 at 19; Board's Exhibit No. 1.) Investigator Blount further testified that he interviewed a resident of one of the apartment buildings in the vicinity of the establishment. (Tr. 5/21/03 at 22.) Investigator Blount questioned the resident about whether there were problems with public urination or parking stemming from the Applicant's operation of a previous ABC licensed establishment at the same location and the resident responded that there were not problems. (Tr. 5/21/03 at 22.) Investigator Blount also testified that he interviewed several other persons in the area and that these persons also stated that there were not problems with the establishment when it was open in the past. (Tr. 5/21/03 at 22.) Investigator Blount also stated that the neighborhood in the area of the establishment is quiet at

night. (Tr. 5/21/03 at 33.) Investigator Blount further testified that based upon his professional experience, whether the operation of an establishment that stays open until 2:00 a.m. or 3:00 a.m. disturbs the peace, order, and quiet of a neighborhood depends upon how the owner operates the establishment. (Tr. 5/21/03 at 34.) Investigator Blount further stated that in his professional opinion the offering of live entertainment with restaurant services does not cause problems if the establishment is operated properly. (Tr. 5/21/03 at 34.)

6. With respect to parking, Investigator Blount observed that parking was "easy" every time he visited the establishment and that spaces were available to park vehicles during all of his visits. (Tr. 5/21/03 at 16, 18, 25.) Investigator Blount also noted that in his opinion, the presence of thirty-five additional cars belonging to the Applicant's patrons could present a problem to the availability of neighborhood parking. (Tr. 5/21/03 at 35.) Investigator Blount based his opinion on the premise that the establishment has a certificate of occupancy for seventy patrons and that an average of two persons per vehicle could add up to about thirty-five vehicles to the area. (Tr. 5/21/03 at 35.) With respect to vehicular and pedestrian safety, Investigator Blount did not observe any activity that could be considered to affect pedestrian or vehicular safety during his visits. (Board's Exhibit No. 1.)

7. Mazaguenet Tesfaye is the Vice-President of Twins Lounge, Inc. (Tr. 5/21/03 at 46.) Ms. Tesfaye will generally manage the establishment on Fridays and Saturdays, but she also works at a hospital, so she will only come into the establishment in the evening during the week. (Tr. 5/21/03 at 59-60.)

8. With respect to the proposed operations of the establishment, Ms. Tesfaye stated that the establishment will not open on Monday and that she proposes to close on Sunday and Tuesday through Thursday at 1:00 a.m. and that she will close at 3:00 a.m. on Friday and Saturday. (Tr. 5/21/03 at 47-48, 75-76, 82.) Ms. Tesfaye also noted that she will have live entertainment at her restaurant and that the music played will be jazz. (Tr. 5/21/03 at 50, 79, 90.) She stated that 70% of the time the musical performers will only use a piano, drum, and bass and that the performers will perform in groups of three. (Tr. 5/21/03 at 50, 79, 90.) Ms. Tesfaye stated that the musical performers who play at the establishment come from all over the United States, including New York and Chicago, and that local talent performs there as well. (Tr. 5/21/03 at 50.) She stated that the music will always begin around 8:00 p.m. or 9:00 p.m., but she plans to open at 6:00 p.m. (Tr. 5/21/03 at 48, 81-82.) Ms. Tesfaye stated that the live music would stop at around 12:00 a.m. during the week and at 1:00 a.m. on weekends. (Tr. 5/21/03 at 48, 75-76, 82.) She intends to use promoters and charge a minimum charge where her patrons will receive one bill at the end of the evening that includes a charge for the music and food. (Tr. 5/21/03 at 84-87.) Ms. Tesfaye testified that she will serve Ethiopian, American, and Caribbean food; however, she stated that patrons do not enter her establishment to eat food unless there is music being offered. (Tr. 5/21/03 at 51.) She also testified that the dining room of her establishment will close when the music ends. (Tr. 5/21/03 at 51.) Ms. Tesfaye also stated that she intends to play recorded jazz music once the live music ends. (Tr. 5/21/03 at 92-93.) Ms. Tesfaye indicated that she has fifty seats inside of her establishment including the bar seats and that she has four seats at the bar and generally forty to forty-six dining seats. (Tr. 5/21/03 at 52.) She noted that the average number of patrons on a weekday night generally does not exceed twenty to twenty-five patrons and that on weekends she has up to forty-six patrons on some occasions.

(Tr. 5/21/03 at 52.) Ms. Tesfaye also stated that her certificate of occupancy is for seventy persons, but she installed a stage which limited the number of seats that she could provide. (Tr. 5/21/03 at 94-95.) She testified that the age group of her clientele is generally thirty-five years of age and older. (Tr. 5/21/03 at 79.) Ms. Tesfaye does not have security because she has an older audience and it is not needed, but she is willing to have security, if necessary. (Tr. 5/21/03 at 87.) She also testified that she has an outdoor patio, but she does not intend to use it. (Tr. 5/21/03 at 99, 104.)

9. With respect to peace, order and quiet, Ms. Tesfaye testified that as part of her operational plan, to ensure that her patrons do not disturb the neighbors in the area she plans to put a sign inside of the establishment on the front door directing her patrons to be quiet as they exit the premises and enter the neighborhood. (Tr. 5/21/03 at 48, 84.) She noted that after the establishment stops playing music patrons are told to be quiet and to go to their car. (Tr. 5/21/03 at 48.) Ms. Tesfaye also testified that she has two sets of exterior doors located at the front of the establishment and that these doors will be closed during operations, other than by persons entering and exiting the premises. (Tr. 5/21/03 at 49, 71, 99.) She also stated that there were no fights or disturbances in her establishment when she operated previously and that she has been operating an ABC establishment at this location -- with some stoppage in operation -- for approximately fourteen years. (Tr. 5/21/03 at 53, 64-66.) Ms. Tesfaye also testified that she never had to call the Metropolitan Police Department ("MPD") for an incident report regarding disorderly conduct by one of her patrons. (Tr. 5/21/03 at 53.) She testified that she has called MPD when people loiter in front of her establishment and she tells her customers that she is keeping a "lookout" to ensure that no one breaks into their cars while they are in her establishment. (Tr. 5/21/03 at 53-54.) Ms. Tesfaye further stated that "beggars" do come into her establishment and ask her for food and that these persons are "section 8" residents of the building located across the street from her establishment. (Tr. 5/21/03 at 54.) She noted that when these persons ask for food that she gives it to them. (Tr. 5/21/03 at 55.) Ms. Tesfaye stated that she does not know of any drug activity in the area of her establishment. (Tr. 5/21/03 at 80.)

10. With respect to noise, Ms. Tesfaye testified that her patrons are "old people" so they do not make noise or act in a rowdy manner when leaving her establishment. (Tr. 5/21/03 at 83.) She stated that there is a club on Kennedy Street, N.W., near her establishment, that caters to young people and that those persons might make noise. (Tr. 5/21/03 at 83.) Ms. Tesfaye also stated that her establishment has its own sound equipment and that the equipment has a "sound regulator" to control the sound volume. (Tr. 5/21/03 at 91.) She also indicated that musicians use microphones that are amplified. (Tr. 5/21/03 at 103.) Ms. Tesfaye noted that her door has an automatic close mechanism, which causes her to keep the door closed so that sound does not emanate outside of her establishment. (Tr. 5/21/03 at 72, 99-100.)

11. With respect to residential parking, Ms. Tesfaye stated that parking is not a problem because most of the other businesses in the area close at 10:00 p.m. and she opens at 6:00 p.m., but does not get customers until about 9:00 p.m. or 10:00 p.m., so most of the persons who would occupy vacant spaces "are gone." (Tr. 5/21/03 at 55-56, 88.) She stated that parking is always available for her patrons and that of the fifty persons who come to her establishment, patrons travel in groups of up to four or five persons in one car. (Tr. 5/21/03 at 56.) In addition to Colorado

Avenue, N.W., Ms. Tesfaye also testified that her customers park on 14th Street, N.W., 15th Street, N.W., and 16th Street, N.W. (Tr. 5/21/03 at 56, 73.) She testified that MPD embarked on a program to eliminate parking on the lot next to the liquor store, which diminished some available parking. (Tr. 5/21/03 at 56-57.) Ms. Tesfaye testified that persons received one-hundred dollar tickets from MPD for parking there and that now there is also "one hour" parking across the street from her establishment. (Tr. 5/21/03 at 56.) She further explained that this situation caused a parking problem for her business because the patrons who used to park in the lot right next to her establishment would not patronize her if they could not find a parking space. (Tr. 5/21/03 at 56-57.) Ms. Tesfaye also testified that she does not agree that there is a parking problem in the community because parking is "there all of the time" and that she has never heard complaints from patrons about parking. (Tr. 5/21/03 at 61, 75.)

12. With respect to her prior business operations, Ms. Tesfaye testified that she moved and opened a "Twins" at U Street, N.W., in January 2001, and subleased the establishment at 5516 Colorado Avenue, N.W., to Donald Johnson also known as "Ski-J". (Tr. 5/21/03 at 66-67.) She stated that Mr. Johnson was not the owner of "Twins." (Tr. 5/21/03 at 67.) Rather, he had a manager's license to run the establishment as a manager. (Tr. 5/21/03 at 67.) Ms. Tesfaye acknowledged that initially when Ski-J's opened they were unaware that the liquor license renewal application for Twins had been dismissed. (Tr. 5/21/03 at 68.) Subsequently, she testified that when Mr. Johnson ran Twins as the manager he operated with a "one-day or two-day liquor license" when he had alcoholic beverage sales. (Tr. 5/21/03 at 67, 69.) Ms. Tesfaye also testified that in the past she had a security person who would stay in the establishment until closing. (Tr. 5/21/03 at 94.)

13. Ms. Tesfaye stated that Colorado Kitchen opened in 2001 after her establishment closed. (Tr. 5/21/03 at 74-75.) She noted that her establishment is located on a commercial strip of three or four establishments, including a laundromat and a liquor store. (Tr. 5/21/03 at 77.) Ms. Tesfaye noted that these establishments all close by 10 p.m., except for Colorado Kitchen, which she believed to open at around 5:00 p.m. or 6:00 p.m. and close at around 11:00 p.m. (Tr. 5/21/03 at 77-78, 88.)

14. Wendy Whittington, Laverne King, and Sallie Johnson identified an original petition with signatures collected by the three of them in support of the Applicant. (Tr. 5/21/03 at 112-114; Applicant's Exhibit No. 1.) Specifically, Wendy Whittington testified that she personally collected part of the one hundred and forty signatures on a petition in support of the Applicant's license application over a week and a half time period and that she personally witnessed each signature that she collected. (Tr. 5/21/03 at 114, 116, 119; Applicant's Exhibit No. 1.) Ms. Laverne King also stated that she personally witnessed each signature that she collected. (Tr. 5/21/03 at 119.)

15. Sallie Johnson lives on 4923 14th Street, N.W., and she stated that her residence is within the civic association boundaries of the Applicant's establishment. (Tr. 5/21/03 at 119.) She testified that she personally collected part of the one hundred and forty signatures on a petition in support of the Applicant's license application, that she personally witnessed every signature that she collected, that people were eager to sign the petition, and that each signature was accompanied by a corresponding date. (Tr. 5/21/03 at 114–118; Applicant's Exhibit No. 1.)

16. Raymond Workeman is a taxicab driver who resides at 1353 Longfellow Street, N.W. (Tr. 5/21/03 at 123, 132.) He lives across the street approximately thirty feet from "Twins" and has resided in the same residence for about forty years, which is a multi-family dwelling where he also "rents out" four rooms. (Tr. 5/21/03 at 123, 125-128, 134-135.) With respect to noise, Mr. Workeman testified that there are problems with noise and that he can hear music throughout his house when the Applicant does not close the doors to the establishment. (Tr. 5/21/03 at 123-124.) He also testified that the Applicant was noisy when they first opened and that they disturbed him personally due to the noise coming through his house. (Tr. 5/21/03 at 126.) Mr. Workeman testified that he never went to the Applicant and personally asked them to reduce the volume or close the door and he has never spoken to then personally, he just calls MPD. (Tr. 5/21/03 at 127, 129.) He stated that when he calls MPD they respond within the hour and that MPD responds most of the time, but that by the time MPD arrives the music may no longer be playing because the sessions or songs may be only fifteen to twenty minutes long. (Tr. 5/21/03 at 130.) Mr. Workeman does not frequent "Twins" and he has never been inside of the establishment since it became "Twins." (Tr. 5/21/03 at 137.) He visited the ABC establishment at this location prior to "Twins" and believed that it stayed open until around 2:00 a.m. on weekends. (Tr. 5/21/03 at 137.)

17. Mr. Workeman also stated that the tenants in his apartment do not hear the noise and that they do not complain about noise emanating from the Applicant's establishment. (Tr. 5/21/03 at 129.) He stated that the noise he hears from the establishment is the music and that the music is very loud. (Tr. 5/21/03 at 129-130.) Mr. Workeman testified that the Applicant does not open the windows of the establishment, but leaves open the front door. (Tr. 5/21/03 at 127.) He testified that the Applicant reached an agreement and promised to keep their doors closed, but did not. (Tr. 5/21/03 at 124.) Mr. Workeman also stated that he does not hear music emanating from the establishment when the doors are closed. (Tr. 5/21/03 at 128.)

18. With respect to peace, order, and quiet, Mr. Workeman testified that sometimes the Applicant's patrons would urinate in the alley behind his house. (Tr. 5/21/03 at 128.) Mr. Workeman further testified that the patrons he has seen in the Applicant's establishment are college students and up to fifty years of age, but he mostly sees college students. (Tr. 5/21/03 at 128-129.) He testified that when the establishment was previously open, the Applicant's patrons would "come out of the place and hang out" and that on Friday and Saturday nights "people come out of the club and mingle" and hold loud conversations. (Tr. 5/21/03 at 124, 136, 144.) Mr. Workeman also testified that the establishment's busiest night when previously operating was probably Saturday. (Tr. 5/21/03 at 129.) He stated he would not have that much of a problem with the establishment if: (1) he could not hear the music and (2) patrons were not exiting the establishment at 3:00 a.m. or 4:00 a.m. and mingling and holding conversations. (Tr. 5/21/02 at 136.)

19. With respect to residential parking, Mr. Workeman testified that once the establishment opens the Applicant's patrons "take up all of the parking spaces." (Tr. 5/23/03 at 124, 133.) He stated that he paved his back yard so he parks behind his residence. (Tr. 5/21/03 at 133-134.) Mr. Workeman also testified that parking is currently fine in the area as there is generally always

a parking spot available in front of his house and that the Colorado Restaurant does not impact the availability of parking in the area. (Tr. 5/21/03 at 133-134.) He also testified that his tenants do not have cars. (Tr. 5/21/03 at 135.)

20. Mr. Workeman also testified that an establishment called "Emerald Isles" was located in the neighborhood at one time and was frequented by MPD, but that this establishment did not impact parking in the neighborhood because MPD would sometimes park their patrol cars "illegally" and not take up available parking spaces. (Tr. 5/21/03 at 138-139.) He further testified that there are not parking permits or parking restrictions in his neighborhood. (Tr. 5/21/03 at 140.)

21. With respect to real property values, Mr. Workeman testified that the value of his property has increased. (Tr. 5/21/03 at 141-142.)

22. Brenda K. Hattery resides at 5630 16th Street, N.W., where has lived since 1993. (Tr. 5/21/03 at 146, 160.) She is within walking distance of the establishment. (Tr. 5/21/02 at 152.) With respect to the peace, order, and quiet in the neighborhood, Ms. Hattery does not object to a restaurant at this location but has reservations about the Applicant's hours of operation as she believed that the late night clientele is different than the clientele the neighbors would like to see in the neighborhood, including people hanging out around the perimeter of the establishment's property. (Tr. 5/21/03 at 146-148.) Ms. Hattery stated she observed individuals hanging out on the perimeter of the establishment's property when it was both Twins and Ski-Js. (Tr. 5/21/03 at 148.) She stated that the corner of Longfellow Street, N.W., and Colorado Avenue, N.W., in front of "Twins" has always been an uncomfortable corner to walk by and that there is a group of people that hang out there that have nothing to do with "Twins" and that it "is not a great area." (Tr. 5/21/03 at 156-157, 161.) Ms. Hattery did note that recently she has not observed any loiterers or panhandlers in the area of the establishment. (Tr. 5/21/03 at 156.) She also stated that "Twins is a very nice club," that "inside they are great," and that she believes they are "good owners, good managers." (Tr. 5/21/03 at 158.) Ms. Hattery also testified that there was a loitering problem and that loiterers are not there much now, but she does not believe loitering was caused by the establishment. (Tr. 5/21/03 at 149, 160-162.)

23. With respect to noise, Ms. Hattery testified that she lives far enough away from the establishment that the music does not bother her and that as she walks through the neighborhood she and her husband "can actually enjoy hearing the music come from the door of the establishment when it is open." (Tr. 5/21/03 at 147-148.) She also testified that since "Twins" and "Ski-Js" have been closed the corner of Longfellow Street, N.W., and Colorado Avenue, N.W., is "notably silent and empty" at night and that she does not observe individuals loitering. (Tr. 5/21/03 at 149.) Ms. Hattery noted that this corner is currently quiet and pleasant at night. (Tr. 5/21/03 at 149.) She also testified that it goes unsaid that establishments generally operating as lounges are loud. (Tr. 5/21/03 at 158.)

24. With respect to parking, Ms. Hattery testified that there is a lot of parking in the neighborhood currently, but parking was not always so plentiful. (Tr. 5/21/03 at 158-159.) She stated that when the establishment was previously operating at this location the parking spaces filled up. (Tr. 5/21/03 at 158.) Ms. Hattery noted that the impact of the establishment on parking would be noticeable, but that "we are not like some neighborhoods, which it is very hard

to park." (Tr. 5/21/03 at 158-159.) She also indicated that she has parking for six cars "off-street", so parking is not a concern for her personally. (Tr. 5/21/03 at 163.) Ms. Hattery observed that Colorado Kitchen, which she patronizes at least once a week, sometimes causes a parking problem, including during Saturday and Sunday brunch, but that it is not a huge problem. (Tr. 5/21/03 at 154, 156.)

25. With respect to real property values, Ms. Hattery noted that housing values are increasing and more people are moving into her neighborhood. (Tr. 5/21/03 at 158.) She stated that she did not believe the operation of the establishment either added to or detracted from property values in the area. (Tr. 5/21/03 at 160.)

26. Ms. Hattery stated that she would like to see restrictions on the establishment's operating hours and that she would prefer to see the establishment close around 11:00 a.m. or 12:00 a.m. on weekdays and around 1:00 a.m. on weekends. (Tr. 5/21/03 at 150, 153.) She did not believe that it was appropriate to permit the establishment to stay open until 3:00 a.m. in this residential neighborhood and believed that it would lead to problems with noise. (Tr. 5/21/03 at 150-151.)

27. Julian DeLaine resides at 5604 14th Street, N.W., has resided in the neighborhood for about thirty-six years, and his residence is approximately one-half of a block away from "Twins." (Tr. 6/18/03 at 10-11, 20.) With respect to peace, order, and quiet in the neighborhood, Mr. DeLaine testified that since the Applicant's former establishment has been closed, there has been a noticeable decline in people in the area, especially during the evening hours, and that the neighborhood is now quiet at night. (Tr. 6/18/03 at 11-13, 18.) He also stated that the amount of loitering in or hanging out in front of the establishment has decreased since the establishment closed. (Tr. 6/18/03 at 12-13.) Mr. DeLaine testified that most businesses in the area close by approximately 10:00 p.m. (Tr. 6/18/03 at 15.) He observed that people would "hang out in the corner" of Longfellow Street, N.W., and Colorado Avenue, N.W., when the restaurant was open and that since the Applicant's prior establishment has been closed less people are hanging out on the corner. (Tr. 6/18/03 at 16-17.) Mr. DeLaine testified that individuals would now be more apt to take a walk through the area because of the reduction of the loitering problem at this corner. (Tr. 6/18/03 at 17.) He also testified that as people left the Applicant's establishment when it was operating their "conversations could be heard" as they walked to their cars and that people are in groups of three and four. (Tr. 6/18/03 at 17-19, 28-29.) Mr. DeLaine also stated that when the weather is warm, the Applicant's patrons take longer to go to their cars and also noted that "you can hear people unlocking their cars with alarms" through the late hours of the night. (Tr. 6/18/03 at 18, 24.) He also testified that the owners of an establishment cannot control the behavior of the patrons when they leave the establishment, which can become a problem late at night. (Tr. 6/18/03 at 23.) Mr. DeLaine stated that the establishment's patrons were primarily age twenty-five and older. (Tr. 6/18/03 at 27.) He further testified that he can see the patrons coming into and leaving the establishment from his residence and that the establishment's patrons are not rowdy. (Tr. 6/18/03 at 28.) The largest number of patrons Mr. DeLaine has observed at the Applicant's former establishment is somewhere around thirty. (Tr. 6/18/03 at 29.)

28. With respect to residential parking, Mr. DeLaine testified that parking is "pretty stringent" even with "Twins Lounge being closed." (Tr. 6/18/03 at 15.) He testified that there are more

residents in the area and that many of them own multiple cars, so parking is sometimes difficult in the evening. (Tr. 6/18/03 at 15-16.)

29. With respect to noise, Mr. DeLaine testified that in the past the Applicant would keep the doors to the establishment open and music was heard outside of the establishment as a result. (Tr. 6/18/03 at 17, 19.) He has never gone to the establishment and asked them to keep quiet or close their doors. (Tr. 6/18/03 at 21.)

30. Mr. Delaine stated that he is in favor of the establishment operating at this location but is opposed to the proposed late night hours of operation, specifically until 2:00 a.m. or 3:00 a.m., and their impact on the neighborhood. (Tr. 6/18/03 at 18-19, 21.) He would like to see the establishment close by 12:00 a.m. at the latest during any day of the week. (Tr. 6/18/03 at 25, 31.) Mr. Delaine acknowledged that no other restaurants with an ABC license are located on the block. (Tr. 6/18/03 at 22.)

31. Ana Escobar resides at 5603 14th Street, N.W., where she has lived for fifteen years. (Tr. 6/18/03 at 34.) As to the character of the area in which Applicant's establishment will be located, Ms. Escobar testified that the following businesses are in the vicinity of the Applicant's establishment: a Laundromat, a dry cleaners, ABC establishments trading as "Gold Corner Market" and "Colorado Liquors", a beauty salon, a barber shop, a sporting goods store, and a balloon and flower shop. (Tr. 6/18/03 at 42-46.) She also testified that an apartment building, church, residences, a halfway house, "Colorado Kitchen," and "Delicia's Market" are also in the vicinity of the Applicant's establishment. (Tr. 6/18/03 at 42-45.) Ms. Escobar stated that most of the businesses, including the two other ABC establishments, close by 10:00 p.m. (Tr. 6/18/03 at 46-47.)

32. With respect to neighborhood peace, order, and quiet, Ms. Escobar testified that when the establishment previously operated there was a problem with people that have addictions who "hang out on the corner" after the Applicant closes its establishment -- that they are not patrons of the establishment -- and people do not feel safe walking by the corner because of these persons. (Tr. 6/18/03 at 47-48.) She stated that patrons of the establishment would also hang outside of the establishment and talk. (Tr. 6/18/03 at 68.) Ms. Escobar also testified that there was a problem with the Applicant's patrons making noise in the neighborhood once they left the Applicant's former establishment. (Tr. 6/18/03 at 48.) She stated that currently she feels much safer in the area of the establishment at night. (Tr. 6/18/03 at 48-50.)

33. With respect to noise emanating from the licensed premises, Ms. Escobar testified that she spoke to the owners and informed them that the music was too loud. (Tr. 6/18/03 at 48-49.) She also testified that people would call her husband late at night to complain about loud music coming from the Applicant's establishment. (Tr. 6/18/03 at 50-52, 62.) Ms. Escobar noted that the noise problem was worse when the Applicant left the door of its establishment opened and less if the door was closed. (Tr. 6/18/03 at 53-54.) She also stated that she called MPD regarding the noise, but they did not always respond. (Tr. 6/18/03 at 55, 57.) Ms. Escobar stated that her concerns regarding the proposed establishment are with noise and the proposed late night hours of operation until 2:00 a.m. or 3:00 a.m. (Tr. 6/18/03 at 58-60.) She would like to see the

establishment close at 11:00 p.m. on weeknights and 12 a.m. on weekends. (Tr. 6/18/03 at 64-65.)

34. With respect to residential parking, Ms. Escobar testified that the parking issues have been abated since the establishment has closed. (Tr. 6/18/03 at 50.) She also testified that parking is "tight," but there is a small parking lot on the corner of Kennedy Street, N.W., and 14th Street, N.W. (Tr. 6/18/03 at 69-70.) Ms. Escobar stated that previously patrons would drive to the establishment individually or in groups of two to four persons. (Tr. 6/18/03 at 57.)

35. John Chagnon has resided at 5603 14th Street, N.W., for fifteen years and is an accountant who served as an Advisory Neighborhood Commissioner for six and a half years until January 2003. (Tr. 6/16/03 at 73, 75.) He is the spouse of Ana Escobar. (Tr. 6/18/03 at 78.)

36. With respect to noise, Mr. Chagnon stated that with regard to the previous establishment, he has met with the Applicant about noise emanating from the establishment and asked them to keep the noise down and keep the doors closed. (Tr. 6/18/03 at 75-76, 86.) He testified that there is a vast difference in the neighborhood since the Applicant's former establishment closed and that it is now quiet at night. (Tr. 6/18/03 at 77, 79-80.) Mr. Chagnon also testified that when the door to the establishment is propped open, noise can be heard from outside of the premises. (Tr. 6/18/03 at 83-84.)

37. Mr. Chagnon acknowledged that the establishment is located on a commercial street but did not believe that the operation of a restaurant until 2:00 a.m. or 3:00 a.m. is appropriate given the surrounding residential area. (Tr. 6/18/03 at 79.) He believed that the individuals leaving the establishment late at night are college students and not an older crowd. (Tr. 6/18/03 at 81.) Mr. Chagnon stated that he would have no problem with the establishment closing at 11:00 p.m. on weekdays and midnight on weekends. (Tr. 6/18/03 at 82.) He also noted that other restaurants post notices that ask patrons exiting the premises to "please be courteous to the area residents." (Tr. 6/18/03 at 87-88.)

CONCLUSIONS OF LAW

38. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that its liquor license application for which approval is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the hearings, the Board concludes that the Applicant has demonstrated that granting the Applicant's request for a new Retailer's License Class CR -- subject to the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which the establishment is located.

39. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) and D.C. Official Code § 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643, 646 (D.C. 1982). In this instance, James H. Jones, in his capacity as Chairperson of ANC 4A, properly submitted its recommendations to the Board in writing pursuant to D.C. Official Code § 25-609. Specifically, ANC 4A's October 28, 2002 letter opposes the granting of

a new Retailer's License Class "CR" to the establishment due to its adverse impact on: (1) the peace, order, and quiet of the neighborhood; (2) real property values; and (3) residential parking and vehicular and pedestrian safety. The October 28, 2002 ANC 4A letter also states ANC 4A's specific issues and concerns, which are noted in the Findings of Fact, and discussed below. This recommendation from ANC 4A is entitled to great weight under D.C. Official Code §§ 25-609 and 1-309.10.

40. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 District of Columbia Municipal Regulations ("DCMR") § 400.3(b)(1997), the Board must determine whether granting the Applicant's request for a new license will have an adverse affect on the peace, order, and quiet of the neighborhood. With regard to rowdy behavior, the testimony of Ms. Tesfaye and Mr. DeLaine revealed that patrons of the establishment do not act in a rowdy manner. With regard to litter, the Board finds based upon the testimony of Investigator Blount and from the record as a whole that there are no significant litter problems either at or caused by the establishment.

41. With regard to criminal activity, the testimony of Ms. Tesfaye revealed that the establishment does not significantly contribute to criminal activity in the area. Specifically, the testimony of Ms. Tesfaye revealed that there were not any fights or disturbances in the establishment when it was previously operating. Additionally, Ms. Tesfaye calls MPD to report individuals who loiter in front of her establishment. Ms. Tesfaye also indicated that she was not aware of any drug activity in the area of the establishment.

42. With respect to noise, the testimony of Mr. Workeman, Ms. Escobar, Mr. DeLaine, and Mr. Chagnon revealed that the Applicant previously played music at this location at a sound level that was audible outside of the licensed premises as the result of the Applicant permitting the entrance doors of the licensed premises to remain open during business hours and when live music was being played. The testimony of Mr. Chagnon, Mr. Escobar, and Mr. Workeman also revealed that live music being played at the establishment with the doors open had an adverse affect on some residents living in the area of the establishment. The Board finds requiring the Applicant to keep the entrance doors of its premises closed at all times during those hours when the establishment is in operation -- other than individuals entering and exiting the premises -- will help to reduce the level of noise in the neighborhood. Specifically, the testimony Mr. Workeman, Mr. DeLaine, and Mr. Chagnon revealed that live music played at the establishment could not be heard on the outside of the licensed premises when the establishment's doors were closed. Additionally, the Board finds that prohibiting the Applicant from playing live music after 12:00 a.m. on business days that begin on Sunday, Monday, Tuesday, Wednesday and Thursday and after 1:00 a.m. on business days that begin on Friday and Saturday will also help to ensure that residents are not disturbed late at night by live music. Furthermore, the Board notes that D.C. Official Code § 25-725 prohibits the Applicant from producing any sound, noise, or music that may be heard in any premises other than the licensed premises, and notes that the Applicant possesses a sound regulator to control the sound volume of music played at the establishment. The Board notes that it has the authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

43. With regard to noise, the testimony of Mr. DeLaine, Mr. Workeman, and Ms. Escobar, who

live in the area of the establishment, revealed that some residents are disturbed late at night by patrons exiting the Applicant's establishment. Specifically, the testimony of Mr. DeLaine and Mr. Workeman revealed that they can hear the conversations of groups of patrons exiting the establishment and that Mr. DeLaine can hear patrons unlocking their cars with alarms late at night. With regard to loitering, the testimony of Ms. Tesfaye, Mr. Chagnon, Mr. DeLaine, Ms. Hattery, and Ms. Escobar also revealed that some loitering by both patrons and non-patrons occurred in front of and in the area of the establishment. Specifically, the testimony of Ms. Hattery, Mr. DeLaine, and Ms. Escobar revealed a problem with loitering at the corner of Colorado Avenue, N.W., and Longfellow Street, N.W., with non-patrons drawn to the corner due to the late night operations of the establishment causing the biggest concern.

44. The Board finds that the amount of late night noise and loitering adversely affecting residents that occurred when the establishment previously operated at this location can be reduced by requiring the Applicant to close by 12:30 a.m. on business days that begin on Sunday, Monday, Tuesday, Wednesday, and Thursday and by 1:30 a.m. on the business days that begin on Friday and Saturday. The Board believes that reducing the establishment's permitted closing time will reduce: (1) the amount of noise and (2) the amount of loitering by non-patrons who were previously attracted to this corner as a result of the establishment's late hours. Furthermore, the Board finds that requiring the Applicant to stop alcoholic beverage service at 12:00 a.m. during the week and by 1:00 a.m. on weekends will also help to reduce noise and loitering in the area and ensure that the establishment closes promptly at 12:30 a.m. on weekdays and 1:30 a.m. on weekends. Finally, the Board finds that the amount of noise created by patrons exiting the establishment can also be reduced by requiring the Applicant to post and maintain a sign in good repair and visible upon exiting the establishment which states, "Please be courteous to the area residents and keep your volume down upon exiting the establishment." The Board notes that it possesses the authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104.

45. Based upon the above factors, and the conditions imposed by the Board above, the Board finds that granting the Applicant's request for a new Class "CR" Retailer's License, will not adversely impact upon the peace, order, and quiet in the neighborhood.

46. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds based upon the testimony of Investigator Blount, Ms. Tesfaye, Mr. Workeman and Ms. Hattery that the operation of the Applicant's establishment will not have an adverse affect upon the residential parking needs of the community. Specifically, the testimony of Investigator Blount revealed that parking spaces were easy to find during all of his visits to the establishment. Additionally, the testimony of Ms. Hattery revealed that there is a lot of parking in the neighborhood and that the area is not like some neighborhoods where it is hard to park. The testimony of Ms. Hattery and Mr. Workeman also established that although the volume of vehicles in the area increases when the establishment is open, parking is available. The testimony of Ms. Tesfaye further indicated that the other retail establishments in the area close at or before 10:00 p.m., thus lessening the number of persons in the vicinity attempting the find available parking. The testimony of Ms. Tesfaye also revealed that patrons of the establishment will find parking on 14th Street, N.W., 15th Street, N.W., and 16th Street, N.W., as well as Colorado Avenue, which are all in close proximity to the establishment. The testimony of Mr. Workeman and Ms. Hattery also

established that some residents in the community have "off-street" parking behind their residences, or as Mr. Workeman indicated, are simply residents that do not drive. The testimony of Investigator Blount did reveal, however, that allowing the establishment to have seventy (70) patrons at the establishment as permitted by its June 24, 2002 certificate of occupancy, could start to negatively affect parking in the area -- depending on how many patrons of the establishment were in each vehicle -- despite the current availability of parking in the area. As a result, the Board finds that not permitting the establishment to exceed fifty (50) patrons inside of the establishment at one time is necessary to ensure that the establishment does not adversely affect parking in the area. The Board notes that it has the authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

47. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds based upon the testimony of Investigator Blount and from the record as a whole that the establishment will not have an adverse affect on vehicular or pedestrian safety.

48. Pursuant to D.C. Official Code § 25-313(b)(1) (2001), the Board finds based upon the testimony of Mr. Workeman and Ms. Hattery that the establishment will not have an adverse affect on real property values. Specifically, the testimony of Mr. Workeman and Ms. Hattery revealed that property values in the area of the establishment have increased. Additionally, the testimony of Ms. Hattery indicated that she did not believe that the establishment detracted from property values in the area.

49. Pursuant to D.C. Official Code § 25-314(a)(1) through (2) (2001), the Board finds no evidence based upon the record as a whole that the Applicant's establishment is situated in proximity to schools, recreation centers, day care centers, public libraries, or other similar facilities so as to negatively affect the operation or clientele of those establishments. Furthermore, pursuant to D.C. Official Code § 25-314(a)(3) (2001), the Board finds no evidence based upon the record as a whole that school age children when using such facilities will be unduly attracted to the Applicant's establishment. The Board also notes that the testimony of Ms. Tesfaye indicated that the establishment would not open until 6:00 p.m. Additionally, pursuant to D.C. Official Code § 25-314(a)(4), the Board finds based upon the testimony of Investigator Blount, Ms. Escobar, and Mr. DeLaine that the issuance of a license would not create or contribute to an overconcentration of licensed establishments. Specifically, the testimony of Investigator Blount, Mr. DeLaine, and Ms. Escobar revealed that there are no other Class "CR" ABC establishments on the establishment's block. Additionally, the testimony of Investigator Blount revealed that the next nearest Class "CR" ABC establishment is approximately four (4) blocks away from this establishment. The Board notes that the Protestant did not raise any of the provisions of D.C. Official Code § 25-314 as a protest issue.

50. Based upon the above factors, and the record as a whole, the Board finds ANC 4A's written recommendation opposing the Applicant's request for a new Retailer's License Class "CR" based upon its adverse impact on: (1) peace, order, and quiet in the neighborhood; (2) parking and vehicular and pedestrian safety and (3) real property values does not warrant the complete denial of the Applicant's request for a new Class CR Retailer's license, and believes that this Order addresses the issues and concerns of ANC 4A. Specifically, with regard to peace, order, and quiet, the Board agrees with ANC 4A that the closing hours of 2:00 a.m. on weekdays and

3:00 a.m. on weekends are not appropriate for this neighborhood and, as stated above, is requiring the establishment to close by 12:30 a.m. on weekdays and 1:30 a.m. on weekends. These hour restrictions imposed by the Board, as well as prohibiting the establishment from having live music or selling or serving alcoholic beverages after 12:00 a.m. on weekdays and 1:00 a.m. on weekends also addresses ANC 4A's concerns regarding patrons disturbing residential properties late in the evening and early in the morning by: (1) being intoxicated; (2) engaging in loud boisterous conversations; (3) arming and disarming automobiles; and (4) urinating and defecating in alleys and on private property. These restrictions will also address ANC 4A's concerns regarding late night loitering by both patrons and non-patrons, the establishment operating as a nightclub disguised as a restaurant, and the need for MPD to be called late at night due to live music or disturbances caused by patrons, as well as other criminal activity. The Board notes based upon the testimony that it did not find the establishment to attract drug activity to the area. With regard to ANC 4A's concern regarding residential parking and vehicular and pedestrian safety, the testimony, as set forth above, revealed that sufficient parking exists in the area of the establishment and that no significant problems regarding vehicular and pedestrian safety exist. The Board also notes that it decided to limit the establishment to fifty patrons to address this concern. The Board notes that limiting the establishment to fifty patrons, in addition to the other restrictions, will also address the ANC's concern that the establishment will bring crowds and noise to the area. With regard to ANC 4A's concern regarding real property values, the testimony revealed that property values in the area have increased and that the establishment does not have a negative impact upon property values.

Therefore, it is hereby **ORDERED** on this 3rd day of September 2003, that the application for a new Retailer's License Class "CR" filed by Twins Lounge, Inc., t/a Twins Lounge, 5516 Colorado Ave., N.W., Washington, D.C., be and the same is hereby, **GRANTED**.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become the terms of the license:

1. The Applicant's approved occupancy shall be for fifty (50) patrons;

2. The Applicant shall stop selling or serving alcoholic beverages by 12:00 a.m. on business days that begin on Sunday, Monday, Tuesday, Wednesday, and Thursday and the Applicant shall stop selling or serving alcoholic beverages by 1:00 a.m. on business days that begin on Friday and Saturday;

3. The Applicant shall not be permitted to play live music after 12:00 a.m. on business days that begin on Sunday, Monday, Tuesday, Wednesday, and Thursday and the Applicant shall not be permitted to play live music after 1:00 a.m. on business days that begin on Friday and Saturday;

4. The Applicant shall close its establishment by 12:30 a.m. on business days that begin on Sunday, Monday, Tuesday, Wednesday, and Thursday and the Applicant shall close its establishment by 1:30 a.m. on business days that begin on Friday and Saturday;

5. The Applicant shall post and maintain a sign kept in good repair and visible upon exiting the establishment that states "Please be courteous to area residents and keep your volume down upon exiting the establishment." This sign shall be posted within thirty (30) days of receiving this Order;

6. The Applicant shall keep the entrance doors of the establishment closed at all times during business hours, except to provide for the ingress and egress of patrons of the establishment; and

7. The Applicant shall not produce any sound, noise, or music that may be heard in any premises other than the licensed premises pursuant to D.C. Official Code § 25-725.

Twins Lounge, Inc.,
t/a Twins Lounge
September 3, 2003

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger

Charles A. Burger, Interim Chairperson

Not Voting

Vera M. Abbott, Member

Not Voting

Audrey E. Thompson, Member

Judy A. Moy

Judy A. Moy, Member

Laurie Collins

Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Control Board, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. (See D.C. App. Rule 15(b)).