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 Cookie, Inc. t/a Barracuda Transfer Application of a Retailer's License Class "CR" - to premises 2473 18th Street, N.W. Washington, D.C. Applicant	Case No: 50210-03/019P Order No: 2003-70

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

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

Simon Osnos, on behalf of the Applicant

Denis James, on behalf of the Protestant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The application, filed by Cookie, Inc., t/a Barracuda ("Applicant"), to transfer a Retailer's License Class "CR" from the first floor to the second floor of premises located at 2473 18th Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on February 19, 2003. It was determined that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2001), by Advisory Neighborhood Commission ("ANC") 1C and the Kalorama Citizens Association ("KCA").

[1] The Board voted 5-0 on June 4, 2003 to dismiss the protest of the Kalorama Citizens Association for the reasons set forth in this written Order, which is required to be issued pursuant to D.C. Official Code § 25-433(c). However, Ms. Ellen Opper-weiner who voted on this matter on June 4, 2003 is no longer a member of the Board. As a result, this Order is signed by the remaining four (4) Board members who voted on June 4, 2003.

The protest issues are whether the granting of the Applicant's request to transfer its Class "CR" Retailer's License from the first to the second floor of 2473 18th Street, N.W., will have an adverse effect on: (1) the peace, order, and quiet of the neighborhood and (2) residential parking needs and vehicular and pedestrian safety.

This case came before the Board for a public protest hearing on June 4, 2003. In addition to the February 19, 2003 roll call hearing, this case was also before the Board for status hearings on March 19, 2003 and April 23, 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. Alireza Hajaligholi is the President of Cookie, Incorporated, which filed this application to transfer an existing Class "CR" Retailer's License from the first floor to a larger space on the second floor of 2473 18th Street, N.W., pursuant to 23 DCMR § 405.1, which allows an Applicant to file an ABC license application prior to obtaining a certificate of occupancy for the building in which the proposed licensed premises would be located. (Tr. 4/23/03 at 6-8, 21; Tr. 6/4/03 at 3; Alcoholic Beverage Regulation Administration ("ABRA") Application File No. 50210.) The establishment has also applied to operate and sell alcoholic beverages between the hours of 11 a.m. to 2 a.m. on Sunday through Thursday, and from 11:00 a.m. to 3 a.m. on Friday and Saturday. (ABRA Protest File No. 50210-03/019P.) The establishment's transfer application is also seeking various forms of entertainment including live music that consists of a three-piece band playing soft rock and R&B, and recorded music. (Tr. 4/23/03 at 23; See Question 16 of ABRA Application File No. 50210; ABRA Protest File No. 50210-03/019P.) The Applicant has not requested permission to have dancing. (See Question 16 of ABRA Application File No. 50210.) The Applicant initially applied under the trade name of Secret; however, this trade name was withdrawn and the Applicant's proposed trade name has been changed to Barracuda. (ABRA Application File No. 50210.) The Applicant has also applied for a summer garden although it license application was erroneously marked sidewalk café. (Tr. 4/22/03 at 21; ABRA Application File No. 50210.)

2. The Applicant's transfer to a new location license application was initially protested by ANC 1C by letter dated January 12, 2003 that was signed by ANC 1C Chairperson Alan Roth. (ABRA Protest File No. 50210-03/019P.) A copy of the ANC 1C resolution protesting the license application with a quorum present by a vote of 7-0 was also attached. (ABRA Protest File No. 50210-03/019P.) ANC 1C protested the transfer application based upon the establishment's adverse effect on peace, order, and quiet in the neighborhood until such time as the parties reached a voluntary/cooperative agreement. (See ABRA Protest File No. 50210-03/019P.) Pursuant to D.C. Official Code § 25-446, ANC 1C reached a written voluntary/cooperative agreement with the Applicant dated March 24, 2003 that was received by ABRA on April 23, 2003. (See ABRA Protest File

No. 50210-03/019P.) A cover letter from ANC 1C Public Safety Committee Chair Bryan Weaver, who had been authorized by the ANC 1C January 12, 2003 protest letter to act on its behalf, was included with the voluntary/cooperative agreement that withdrew the protest of ANC 1C to the Applicant's license application. (See ABRA Protest File No. 50210-03/019P.) The agreement was signed by Alireza Hajaligholi, on behalf of the Applicant, and by ANC 1C Chairperson Alan J. Roth, on behalf of ANC 1C. (See March 24, 2003 voluntary/cooperative agreement.)

3. The Applicant's transfer to a new location license application was also protested timely by the KCA, by letter dated December 19, 2002, which was signed by Michael Gould who was then President of the KCA. (ABRA Protest File No. 50210-03/019P.) The KCA objected to the transfer to a new location license application based upon the establishment's adverse effect on (1) peace, order, and quiet in the neighborhood and (2) vehicular and pedestrian safety. (ABRA Protest File No. 50210-03/019P.)

4. The Applicant and the KCA -- through its designated representative, Denis James -- had one settlement conference[2] with the Board's Mediation Specialist, La Verne Fletcher, on Tuesday, April 22, 2003. (Tr. 4/23/03 at 4; See ABRA Protest File No. 50210-03/019P.) The parties were not able to reach a voluntary/cooperative agreement on the protest issues at the Tuesday, April 22, 2003 settlement conference. (Tr. 4/23/03 at 4.) A day later, at the Wednesday, April 23, 2003 status hearing, the Applicant was still not clear as to the specific issues of concern to the KCA with regard to the KCA's filed protest issues. (Tr. 4/23/03 at 20-21.) The Board set a protest hearing for June 4, 2003 at the April 22, 2003 status hearing; however, the Board required that a second mediation occur to address the parties' issues of concern prior to the June 4, 2003 protest hearing. (Tr. 4/23/03 at 24-25.) Neither party objected at the April 23, 2003 status hearing to the scheduling of a second settlement conference. (Tr. 4/23/03 at 1-29.)

5. At the beginning of the June 4, 2003 protest hearing, the Applicant argued that the KCA's protest should be dismissed under D.C. Official Code § 25-445(e) based upon the KCA's unreasonable refusal to attend a second settlement conference. (Tr. 6/4/03 at 5-7.) The Board called Mediation Specialist, La Verne Fletcher, as a witness for the sole purpose of determining whether KCA attended a second Board ordered settlement conference and if not, the reason(s) for KCA not attending. (Tr. 6/4/03 at 9, 12, 24-25.) The Board did not permit Ms. Fletcher to testify with regard to discussions on specific settlement issues. (Tr. 6/4/03 at 12, 21, 24-25.)

6. La Verne Fletcher is the mediator for the Board and also serves in the position of Mediation Specialist with the Alcoholic Beverage Regulation Administration. (Tr. 6/4/03 at 13.) Ms. Fletcher stated that the first mediation in this matter was conducted on April 22, 2003, at 2 p.m., and was attended by Mr. Alireza Hajaligholi and Mr. Simon Osnos, on behalf of the Applicant, and by Mr. Denis James, on behalf of the KCA. (Tr. 6/4/03 at 14, 18.) Ms. Fletcher also noted that a second mediation was scheduled with the parties for a

[2] The terms "settlement conference" and "mediation" used in this Order have the same meaning.

specific date, which was several weeks after the first April 22, 2003 mediation. (Tr. 6/4/03 at 14-15.) Ms. Fletcher later received a call from Mr. Denis James who informed her that he was not going to be attending the second mediation that had been scheduled. (Tr. 6/4/03 at 15, 19.) Mr. James did not provide Ms. Fletcher with a reason he would not be attending. (Tr. 6/4/03 at 15.) Ms. Fletcher did not make any efforts to reschedule the settlement conference as the result of Mr. James stating that he would not participate in a second mediation. (Tr. 6/4/03 at 16-17.) Ms. Fletcher noted that Mr. Simon Osnos and the Applicant had agreed to attend the second scheduled settlement conference. (Tr. 6/4/03 at 16.)

7. Mr. James represented that he refused to attend or participate in a second mediation because he believed that based upon the lack of any fruitful progress in the first mediation it would be a waste of the Applicant's and Ms. Fletcher's time as he was sure that the KCA would not budge off of its position. (Tr. 6/4/03 at 27-28.) Rather, Mr. James stated that he was looking instead toward the protest hearing that had already been set. (Tr. 6/4/03 at 27-28.) Mr. James believed his attendance at the first settlement conference to be sufficient to meet the requirements of D.C. Official Code § 25-445.

8. The Board accepts the Applicant's representation that the second mediation was scheduled for May 13, 2003 at 11 a.m. (Tr. 6/4/03 at 28.) The Applicant stated that it did not attend the second mediation as a call was received from Ms. Fletcher prior to the scheduled mediation indicating that Mr. James would not be attending the second mediation. (Tr. 6/4/03 at 28.)

CONCLUSIONS OF LAW

9. 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 to transfer its existing Class "CR" license from the first floor to the second floor of 2473 18th Street, N.W. -- subject to the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which it is located.

10. 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. In this case, pursuant to D.C. Official Code § 25-446, ANC 1C reached a written voluntary/cooperative agreement with the Applicant dated March 24, 2003 that was received by ABRA on April 23, 2003. A cover letter from ANC 1C Public Safety Committee Chair Bryan Weaver, who had been authorized by the ANC 1C January 12, 2003 protest letter to act on its behalf, was included with the voluntary/cooperative agreement that withdrew the protest of ANC 1C to the Applicant's license application subject to the approval by the Board of the signed agreement. The

Board gives great weight to the recommendations of ANC 1C and approves the March 24, 2003 voluntary/cooperative agreement and incorporates in this Order the conditions that will be placed on the Applicant's license pursuant to D.C. Official Code § 25-446 as set forth below.

11. D.C. Official Code § 25-445 sets forth the requirements for attending a settlement conference. These requirements were established by D.C. Law 13-298, the Title 25, D.C. Code Enactment and Related Amendments Act of 2001 ("D.C. Law 13-298"), effective May 3, 2001 (D.C. Official Code § 25-101 et seq.), which also codified Title 25 of the D.C. Official Code. The previous ABC governing statute, the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934, 48 Stat. 319, contained no reference to settlement conferences with the Board's rules on settlement conferences found solely in § 1512 of Title 23 of the District of Columbia Municipal Regulations ("DCMR") (1997). However, D.C. Law 13-298, which created D.C. Official Code § 25-445, modified the settlement conference provisions found in 23 DCMR § 1512, including providing the Board with the authority to consider withdrawn the protest of a Protestant who unreasonably refuses to make himself or herself available to attend a settlement conference as set forth in D.C. Official Code § 25-445(e). The Board is now faced for the first time to interpret the meaning of D.C. Official Code § 25-445(e) as it relates to the facts of this particular case.

12. D.C. Official Code § 25-445(d) prohibits a Protestant from unreasonably refusing to make himself or herself available to attend a settlement conference. In the event that a protestant unreasonably refuses to make himself or herself available for a settlement conference, D.C. Official Code § 25-445(e) requires the Board to consider the protest withdrawn unless, in the judgment of the Board, the Protestant shows good cause for refusing to be available. In this case, the KCA did attend a settlement conference on April 22, 2003. However, the KCA refused to attend a second mediation that had been ordered by the Board on April 23, 2003, which was scheduled by the parties and the Board's Mediation Specialist for May 11, 2003 at 11:00 a.m. As a result, the Applicant argues that the protest of the KCA must be considered withdrawn by the Board under D.C. Official Code § 25-445(e). In examining D.C. Official Code § 25-445(e), the Board must consider whether the Protestant's decision not to attend the second settlement conference was (1) unreasonable and (2) whether good cause exists as to why the Protestant refused to be available.

13. In this case, the testimony of Mr. James revealed that the reason for the KCA's non-attendance at the May 11, 2003 settlement conference was that the KCA believed that based upon the lack of any fruitful progress in the first mediation it would be a waste of the Applicant's and Ms. Fletcher's time to attend as KCA was sure that KCA would not budge off of its position. Instead, KCA had decided to look ahead to the scheduled June 4, 2003 protest hearing rather than attending the second settlement conference. The Board finds the rationale of the KCA for not attending the May 11, 2003 settlement conference to (1) be unreasonable, and (2) to not constitute good cause for refusing to be available.

Specifically, at the April 23, 2003 status hearing, the Board made it clear that its willingness to set a protest hearing on June 4, 2003 was predicated upon the attendance of the parties, including the KCA, to attend another settlement conference. The Board had decided to set another settlement conference, as described in D.C. Official Code § 25-445(a), as the April 23, 2003 status hearing revealed to the Board that the Applicant was still not clear as to the specific objections or concerns of the Protestant and that another settlement conference between the parties to discuss the Protestant's objections or concerns could possibly resolve the KCA's objections. It is worth noting that no objection was made by either party to the scheduling of the second settlement conference.

14. Additionally, the Board notes that it cannot, in the judgment of the Board, pursuant to D.C. Official Code § 25-445(e) accept one parties' belief that a settlement conference will not be successful as good cause for refusing to be available. The Board observes that it has frequently had cases before it that have settled and resulted in voluntary/cooperative agreements as the result of settlement conferences where at least one of the parties initially stated to the Board its preference to go directly to a protest proceeding as it did not believe that a settlement conference would be helpful. The Board notes that the fact that parties are unable to resolve their differences on their own is the reason that mediations are held with ABRA's Mediation Specialist. The success that the Board has had with settlement conferences over the last several years relies on the cooperation and willingness of both parties to participate in this process. In this case, the Applicant was willing to attend the second settlement conference; however KCA was not. While there is no requirement that the parties must resolve the Protestant's objections at the settlement conference, the resolution of a Protestant's objections cannot occur if either the Applicant or Protestant refuses to attend. The Board finds that D.C. Official Code § 25-445(e) seeks to require party attendance at a settlement conference for just this very reason. Otherwise, allowing a party to determine on its own whether or not attending a settlement conference would result in fruitful progress would undermine the usefulness of the settlement conference process and would also result in the Board hearing and deciding additional protests that could have been resolved through the settlement conference process.

15. The Board finds good cause pursuant to D.C. Official Code § 25-445(e) for a Protestant to not be available for a settlement conference to include such reasons as illness or other health related emergencies and unavoidable scheduling conflicts. The Board does not, however, consider a Protestant's belief that attending a settlement conference will not result in fruitful progress and would be a waste of time as either reasonable or good cause under D.C. Official Code § 25-445(e).

16. As a result, the Board finds that good cause as required under D.C. Official Code § 25-445(e) does not exist in this circumstance to justify the KCA's refusal to attend or participate in the second May 11, 2003 settlement conference. As such, pursuant to D.C. Official Code § 25-445(e), the Board considers the protest of the KCA to be withdrawn.

THEREFORE, it is hereby ORDERED on this 13th day of August 2003, that the transfer to a new location application for a Class "CR" Retailer's License filed by Cookies, Inc., t/a Barracuda, 2473 18th Street, N.W., Washington, D.C., be and the same is hereby, GRANTED. The Applicant shall obtain a certificate of occupancy for the new location as well as all other documents required by 23 DCMR § 405.3 prior to the issuance of the Class "CR" Retailer's License for this location.

It is FURTHER ORDERED that the following conditions agreed to by the Applicant and ANC 1C are approved by the Board and shall become a part of the Applicant's license:

1. The establishment's approved interior hours of operation shall be Sunday through Thursday from 11:00 a.m. to 2 a.m., and Friday and Saturday from 11:00 a.m. to 3 a.m. The establishment's approved outdoor hours for its summer garden shall be Sunday through Thursday from 11 a.m. to 11 p.m., and Friday and Saturday from 11 a.m. to 1 a.m.;

2. The establishment shall announce last call thirty (30) minutes prior to closing on each night of operation;

3. The establishment's interior seating capacity on the second floor shall not exceed one-hundred and seventy (170) patrons (Interior tables: 150 Interior Bar: 20). The establishment's outdoor seating capacity on its summer garden shall not exceed twenty five (25) patrons;

4. The Applicant agrees to comply with all District of Columbia noise-control laws and regulations which shall include preventing emissions of sound, capable of being heard outside of the premises, by any musical instrument or amplification device or other device of source or sound or noise, in accordance with the D.C. Noise Control Act of 1977 (Public Law 2-53), as amended;

5. The applicant shall comply with Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations;

6. The establishment's doors and windows are to be kept closed at all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises;

7. The establishment shall not be permitted to play music on the roof or the summer garden;

8. The establishment shall not permit music being played inside the establishment to be audible at surrounding residential housing areas;

9. Any live music performances at the establishment shall be for the benefit and enjoyment of the establishment's dining and bar patrons;

10. The establishment shall not play live music after 12:00 midnight;

11. The Applicant shall make every reasonable effort to preserve the tranquility of the neighborhood, and as such ask musical performers to do the same;

12. The establishment shall not be permitted to have a disc jockey or dancing;

13. The Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. The Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. The Applicant will make every reasonable effort to eliminate food sources for rodents;

14. The Applicant agrees to segregate and recycle bottles and glass refuse apart from trash and agrees not to dispose of bottles and glass refuse in the outside trash dumpsters during the hours of 11:00 p.m. and 8:00 a.m.;

15. The Applicant shall assist in the maintenance of the alleyway behind and the space in front of the establishment to at least eighteen (18) inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. The Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to cause patrons to leave those areas quietly at closing;

16. The Applicant shall provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the trash dumpsters. The Applicant shall provide ANC 1C with a copy of the contract to remove grease and fatty oils from the establishment;

17. The Applicant shall not place outside in the public space or summer garden any loudspeaker, tape player, CD player or other similar device, or place any inside speaker in such a way that it projects loud sound into the public space or summer garden;

18. The Applicant shall operate the establishment under the terms of its license and shall not rent out the establishment to third parties for events where the owner/manager is not present and managing the business;

19. The Applicant shall not place or cause to be placed any fliers, handbills, or other similar advertisement in the public space, specifically on lampposts, street signs, or any vehicle parked in the public space;

20. The Applicant shall conduct identification document checks inside the premises to avoid an outside line on the street;

21. The Applicant agrees not to promote or participate in bar or pub "crawls", "tours", or similar events;

22. The Applicant shall encourage employees and patrons to be considerate of neighboring residents at all times. The Applicant shall encourage employees and patrons leaving the establishment to keep conversations and noise down from 11:00 p.m. to 7:00 a.m.;

23. The Applicant shall operate in compliance with all applicable District of Columbia and Federal laws and regulations;

24. Nothing in this Board order shall preclude ANC 1C, the KCA, or any other individual from filing an objection to any request made by the Applicant to the Board of Zoning Adjustment.

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Interim Chairperson

Vera M. Abbott, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Not Voting
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).

BOARD FOR
THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest			
1205 Clifton Street, NW	40	2865	1
1405R Crittenden Street-Rear	823	2706	4
1407 Delafield Place	21	2709	4
617 Farragut Street	106	3212	4
1304 Farragut Street	41	2807	4
519 Florida Avenue	35	3093	1
521 Florida Avenue	26	3093	1
3200 Georgia Avenue	909	2892	1
3203 Georgia Avenue	809	3042	1
4419 Georgia Avenue	815	3020	4
5627-5631 Georgia Avenue	039	2991	4
4820 Iowa Avenue	30	2709	4
425 Irving Street-Rear	64	3049	4
535 Irving Street	31	3048	1
535 Irving Street-Rear	31	3048	1
315 K Street	804	526	2
470 K Street	44	516	2
440 Kenyon Street-Rear	43	3049	1
636 Kenyon Street	145	3047	1
636 Kenyon Street-Rear	145	3047	1
1217 Kenyon Street	117	2844	1
1331 Kenyon Street	47	2843	1
830 Lamont Street	97	2892	1
718 Marietta Place	43	3155	4
4001 Marlboro Place	48	3313	4
1350 Meridian Place	107	2836	1
1021 Monroe Street	74	2832	1
1824 Monroe Street	813	2614	1
1342 Montague Street	46	2796	4
1342 Montague Street-Rear	46	2796	4
234 N Street	127	555	5
408 N Street	863	513	2
3500 Nebraska Avenue	24	1599	3
3526 New Hampshire Ave	91	2614	1

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest (cont'd)			
1424 North Capitol Street	10	616	5
1424 North Capitol Street-Rear	10	616	5
4922 North Capitol Street	67	3401	4
405 O Street	802	511	2
505 O Street	36	479	5
507 O Street	37	479	5
509 O Street	2001/2002	479	5
820 Otis Place	119	2895	1
88-88 1/2 P Street	825	616	2
219 P Street	833	475	5
3245 Patterson Street-Rear	25	2021	4
1000 Park Road	39	2841	1
1424 Parkwood Place	46	2688	1
753 Quebec Place-Rear	170	3031	1
734 Quincy Street	57	3130	1
936 Quincy Street	92	2901	4
50 R Street-Rear	31	3101	5
403 R Street	801	0507	5
533 Randolph Street	105	3232	4
411 Randolph Street	82	3237	1
501 Rhode Island Avenue	33	475S	2
1000 Rhode Island Avenue	19	337	2
1427 Rhode Island Avenue	27	210	2
1429 Rhode Island Avenue	28	210	2
735 Rock Creek Church Road-NW	58	3130	4
1421 T Street-Rear	845	205	1
531 U Street	37	3079	2
533 U Street	38	3079	2
131 Varnum Street	803	3321	4
146 W Street	823	3120	5
911 W Street	067	0357	1
1305 Wallach Place	169	237	1
3116 Warder Street	38	3048	1
3224 Warder Street-Rear	13	3046	1
1227 1st Street	9	618	5
1202 3rd Street	837	523	2
1419 3rd Street	60	553	2
5311 3rd Street-Rear	6	3328	4
1716 4th Street	803	507	5
1809 4th Street	17	3095	1

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northwest (cont'd)			
1416 5th Street	26	479	2
1603 5th Street	111	509	2
3927 5th Street	78	3237	4
4109 5th Street	47	3241	4
4403 5th Street	12	3247	4
4409 5th Street	15	3247	4
1104 6th Street	859	449	2
1134 6th Street	30	449	2
1407 6th Street	30	479	2
1539 7th Street	179	445	2
1503 9th Street	29	397	2
4428 9th Street-Rear (Addition)	34	3020	4
3219 11th Street	26	2845	1
3221 11th Street	27	2845	1
2200 12th Street-Rear	62	271	1
2246 12th Street	212	271	1
2219 13th Street	86	271	1
3637 13th Street-Rear	145	2829	1
5008 13th Street	53	2806	4
5008 13th Street-Rear	53	2806	4
3564 14th Street	24	2688	1
4024 14th Street	53	2694	4
5310 14th Street	13	2716	4
3222 19th Street	817	2604	1
1617 21st Street	136	93	2

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast			
2301 Bladensburg Road	41	4359	5
2836 Brentwood Road	001	4316	5
207 C Street-Rear	847	757	6
1848 Central Place	39	4047	5
1820 Corcoran Street	18	4049	5
600 Division Avenue	13	5196	7
1717 E Street	143	4546	6
1721 E Street	144	4546	6

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast (cont'd)			
635 Emerson Street	8	3788	4
5900 Foote Street,	805	5256	7
1229 Franklin Street	20	336	5
1653 Gales Street	182	4540	6
1655 Gales Street	183	4540	6
914 H Street	63	933	6
303 K Street	804	775	6
1656 Kramer Street	207	4540	6
25 Michigan Avenue	48	3500	5
1118 Montello Avenue	71	4070	5
1125 Morse Street	140	4070	5
1136 Morse Street	055	4065	5
2422 Otis Street-Rear	48	4298	1
52 Q Street	105	3520	5
58 Q Street	102	3250	5
50 RI Avenue-Rear	3	3508	5
1515 Rhode Island Avenue	43	4131	5
1515 Rhode Island Avenue-Rear	43	4131	5
4310 Sheriff Road	819	5097	7
4326 Sheriff Road	831	5097	7
1741 Trinidad Avenue	26	4082	5
142 Webster Street	42	3668	4
1221 Wylie Street	169	1003	6
1020 3rd Street	34	749	6
1022 3rd Street	33	749	6
2407 3rd Street	28	3555	5
621 4th Street	93	810	6
2508 4th Street	51	3554	5
2819 5th Street-Rear	45	3640	5
1009 7th Street-Rear	84	887	6
608 8th Street	45	891	6
914 9th Street	45	910	6
4100 13th Street	24	Par 146	5
243 14th Place	78	1055	6
3122 16th Street	39	4014	5
2617 17th Street	806	4126	5
1234 18th Place	811	4445	5
1236 18th Place	811	4445	5
2718 26th Street	34	4265	5
913 43rd Place	47	5096	7
1044 44th Street	70	5125	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Northeast (cont'd)			
1117 48th Place	84	5158	7
945 52nd Street	803	5199	7
234 56th Street	144	5250	7
306 57th Place	84	5247	7
310 57th Place	84	5247	7
314 57th Place	87	5247	7

BUILDINGS CONDEMNED	LOT	SQUARE	WD
Southeast			
4427 A Street	107	5350	7
27 Atlantic Street	54	6170	8
5050 B Street	28	5326	7
5034 Bass Place	25	5325	7
4926 Call Place	33	5336	7
4030 Call Place	32	5336	7
5000 Call Place	35	5323	7
420 Chesapeake Street-Rear	808	6165	8
422 Chesapeake Street-Rear	809	6165	8
1720 D Street	87	1100	6
3206 D Street	802& 806	5430	7
1229 E Street	816	1019	6
3326 Ely Place	807	5444	6
1811 Erie Street	44	5801	8
1254 Half Street	99	0701	6
1260 Half Street	144	0701	6
1415 Morris Road	50	5809	6
2329 Q Street	56	5587	6
1219 Sumner Road	979	5865	8
1242 W Street	99	5782	8
4001 4th Street	39	6167	8
4005 4th Street	40	6167	8
2105 13th Street	681	5782	6
3403 15th Street	28	5917	8
1602 17th Street	801	0155	6
1427 22nd Street	48	5564	6
20 53rd Place	884	5284	7
71 Forrester Street	67	6240	8
73 Forrester Street	68	6240	8

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979-, **"The Historic Landmark and District Protection Act of 1978"** hereby gives notice that the addresses listed below, as requested permission to demolish, altar, sub-divide or erect new structures at the following location(s):

Application Date	Address	Lot	Square	Use
8/8/03	1830 11th Street, NW	805	306	Concept
	1306 34th Street, NW	831	1228	Roof Scaffold/SFD
	3311 Ross Place, NW	35	2085	Enclosed porch dormer/SFD
8/11/03	1229 30th Street, NW	10	1211	Window fence/SFD
8/12/03	3012 Dumbarton Street, NW	3	1233	Stoop/SFD
	1680 31st Street, NW	31	1281	Add/SFD
	3222 M Street, NW	868	1200	Concept
	2720 O Street, NW	813	1269	Concept
8/14/03	3255 M Street, NW	893	1207	Façade retail
	1687 32nd Street, NW	11	1281	Revision SFD
	1703 32nd Street, NW	812	2155	Concept
	3224 N Street, NW	833	1218	Concept
	1525 32nd Street, NW	73	1270	New SFD

8/14/03	2609 O Street, NW	855	1262	Add/SFD
	1055 Thomas Jefferson Street, NW	73	1190	Sign/ Office
	1310 29th Street, NW	815	1234	New door/SFD
	1647 Wisconsin Avenue, NW	46	1280	Concept
	3124 Q Street, NW	76	1270	Driveway SFD
	3249 N Street, NW	833	1231	Pergola wall/SFD
	2505 P Street, NW	815	1264E	Concept
8/15/03	3400 O Street, NW	840	1220	Window SFD
	3337 P Street, NW	222	1254	Concept
	1411 & 1413 27th Street, NW	842 & 843	1262	Concept
	1413 33rd Street, NW	850	1244	Windows SFD
	2737 O Street, NW	830	1260	Fence/Gate SFD
	3018 O Street, NW	124	1242	Windows SFD
	3014 N Street, NW	29	1209	Add/SFD
	1238 Wisconsin Avenue, NW	102 & 800	1218	Sign/ Retail
	1513 30th Street, NW	1	1268	Add/SFD
	3323 Reservoir Road, NW	245	1295	Window SFD
8/18/03	3413 Ordway Street, NW	49	2065	Concept

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

Forwarded for your information is a weekly listing of **raze permit application** filed with the Permit Service Center of the Building and Land Regulation Administration, requesting a permit to raze listed structures with the District of Columbia.

Application Date	Address	Lot	Square	Use
8/7/03	3000 University Terrace, NW	903	1426	2-story SFD w/Bsmt.
	2131 & 2133 10th Street, NW	58/59	358	1-story Building
	1815 Pennsylvania Avenue, NW	59	105	13-story office building
	1819 Pennsylvania Avenue, NW	59	105	12-story office building

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in ten (10) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code §1-309.06(d)(2);2001 Ed.

VACANT: **3E05**

Petition Circulation Period: **Monday, August 18, 2003 thru Monday, September 8, 2003**
Petition Challenge Period: **Thursday, September 11, 2003 thru Wednesday, September 17, 2003**

VACANT: **3D07, 3D08**
5C10, 5C11
6B11
8B03, 8C05, 8C06

Petition Circulation Period: **Wednesday, August 20, 2003 thru Tuesday, September 9, 2003**
Petition Challenge Period: **Friday, September 12, 2003 thru Thursday, September 18, 2003**

VACANT: **2B06**

Petition Circulation Period: **Tuesday, September 2, 2003 thru Monday, September 22, 2003**
Petition Challenge Period: **Thursday, September 25, 2003 thru Wednesday, October 1, 2003**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N

For more information, the public may call 727-2525.

Paul Junior High Public Charter School
5800 Eighth Street, NW
Washington, DC 20011

Request for Proposal

Paul Jr High Public Charter School is seeking proposals from qualified special education related service providers. Services to be provided include psychology and speech and language therapy. Specifications can be faxed upon request. Bids will be accepted between 09/05/2003 and 09/19/2003.

OFFICE OF RISK MANAGEMENT

Reorganization Plan No. 1 of 2003 (Sec. B)

CORRECTED NOTICE

Section B of the Reorganization Plan No. 1 of 2003 for the Office of Risk Management is being republished to correct errors to the previous notice published in the August 8, 2003 edition of the D.C. Register (50 DCR 6505). If necessary, other portions of the Reorganization Plan will be republished to corrected errors at a later date. The corrected Section B to the Reorganization Plan No. 1 of 2003 is attached.