THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
Panutat, LLC t/a Sanctuary 21	License Number: Case Number: Order No.:	83267 10-PRO-00003 2010-418
Applicant for a Retailer's Class CN License		
at premises 2131 K Street, N.W. Washington, D.C. 20037		

BEFORE: Nick Alberti, Acting Chairperson
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Panutat, LLC, t/a Sanctuary 21, Applicant

Emanuel Mpras, Esq., on behalf of the Applicant

Richard Aguglia, Esq., on behalf of
Advisory Neighborhood Commission 2A

Chris Labas, on behalf of a Group of Five or More Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

Jonathan Berman, Assistant Attorney General
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Panutat, LLC, t/a Sanctuary 21 (Applicant) filed an Application for a Retailer's Class CN License for the basement of premises 2131 K Street, N.W. The Application initially came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on February 22, 2010.

Protests against the Application were timely filed by Advisory Neighborhood Commission (ANC) 2A by letter dated March 23, 2010, and the Group of Five or More Individuals by a petition filed with the Board on February 7, 2010.

No Voluntary Agreement was reached between the Applicant and the Protestants before the Protest Hearing. The Application was heard at a Protest Hearing on April 28, 2010.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the request for a new Retailer's Class CN License would adversely impact the peace, order, and quiet of the neighborhood; real property values; and residential parking and pedestrian safety.

Before the Protest Hearing, ANC 2A filed a Motion to Dismiss the Applicant's Application. Specifically, the Protestants argued that the space requested by the Applicant is already occupied by Shadow Room, License No. 075871. *ABRA Protest File 076250-09/075P, Protestant Motion to Dismiss Application, 1-2.* As a result, according to the Protestants, the Board should deny the Application because if approved, it would undermine the voluntary agreement signed between the Shadow Room and ANC 2A, which limits Shadow Room's occupancy. *ABRA Protest File 076250-09/075P, Protestant Motion to Dismiss Application, 1-2.* The Applicant subsequently filed a response to ANC 2A's arguments.

The Board acknowledges the Protestants' evidence presented in the Motion to Dismiss that Shadow Room's application, on the page titled Business Information, states "1st Floor & Basement" in response to the question "Floor(s) of licensed business." *ABRA Protest File 076250-09/075P.* The Board also acknowledges that Board Order No. 2007-072 states that "The Applicant has applied to operate two floors..." Board Order No. 2007-072, at 2. The Board also notes that Board Order No. 2008-300 states that Shadow Room operates two floors. Board Order No. 2008-300.

Nevertheless, the Protestants incorrectly assert that Shadow Room's license includes the basement of 2131 K Street, N.W., because Board Order No. 2007-072, Board Order 2008-300, and the Shadow Room's application state that the Shadow Room's license covers the basement. The document that determines the space an establishment may utilize to sell and serve alcohol is the ABC license itself, not an application for a liquor license. Here, ABRA's records reveal that the Shadow Room is licensed to serve and sell alcoholic beverages on the first floor of 2131 K Street, N.W. Therefore, because the Shadow Room's current license, License No. 075871, states that it only covers the first floor of 2131 K Street, N.W., the Board finds that the Shadow Room's ABC license only pertains to the first floor and not the basement sought by the Applicant. *ABRA Licensing File No. 075871.* Therefore, the Board denied the Protestants' Motion to Dismiss during the Protest Hearing. *Transcript April 28, 2010* (*hereinafter Tr.* 4/28/10) at 10.

ANC 2A also filed a Motion for Reconsideration of the Board's Oral Ruling Denying Protestants Motion to Dismiss, which was opposed by the Applicant in a reply brief. ANC 2A's Motion for Reconsideration was not filed in a timely manner under D.C. Code § 25-433 (2002) because the Motion for Reconsideration was received on July 16, 2010, more than 10 days after the ruling was made on April 28, 2010. Nevertheless, even if timely filed, the Board would still deny the Protestants' Motion for Reconsideration. Based on the Shadow Room's license, it is clear that Sanctuary 21 is not bound by the Shadow Room's Voluntary Agreement because the Shadow Room and Sanctuary 21 are separate entities. Furthermore, the Board is not persuaded by the Applicant's policy arguments, which would have the Board unlawfully apply Voluntary Agreements to ABC establishments that are not parties to those agreements. Therefore, the Board denies ANC 2A's Motion for Reconsideration.

ANC 2A also submitted Proposed Findings of Fact and Conclusions of Law that are part of the record.

At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant is requesting a Retailer's Class CN License. *ABRA Licensing File No. 083267*. The establishment is located in a C-3-C zone. *ABRA Exhibit No. 3*. The proposed location is 290 feet from the Bright Horizons Daycare Center. *ABRA Exhibit No. 6*. There are approximately 37 ABC-licensed establishments within 1200 feet of the Applicant's proposed location. *ABRA Exhibit No. 5*. There is a class R-5-E zone located on 22nd Street, N.W., located around the corner from the Applicant's proposed location. *ABRA Exhibit No. 19*.

2. The Applicant proposes to have its hours of operation run from 9:00 a.m. to 3:00 a.m., Sunday through Thursday, and 9:00 a.m. to 4:00 a.m., Friday and Saturday. *ABRA Protest File 076250-09/075P, Protest Report, 5*. The Applicant proposes to sell alcohol from 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *ABRA Protest File 076250-09/075P, Protest Report, 5*.

3. The Board called ABRA Investigator David Bailey to testify. *Tr.*, 5/12/10 at 44. Investigator Bailey stated that he monitored the establishment on 14 separate occasions between April 2, 2010, and April 18, 2010. *Tr.*, 5/12/10 at 49; *ABRA Protest File 076250-09/075P, Protest Report, 7-8*.

4. In regards to parking, Investigator Bailey testified that there are five meter spots on the same side as Sanctuary 21 and several more across the street from the establishment's proposed location. *Tr.*, 5/12/10 at 47. He stated that there are public parking spaces available after 6:30 p.m. on the 1000 block of both 21st Street, N.W., and 22nd Street,

N.W. *Tr.*, 5/12/10 at 47. Investigator Bailey noted that there are three parking garages that close at 7:00 p.m. during the week and are closed on Saturday and Sunday. *Tr.*, 5/12/10 at 47-48. Finally, Investigator Bailey testified that the Applicant stated that the business will hire a valet parking service with 75 parking spaces available. *Tr.*, 5/12/10 at 49. Investigator Bailey testified that there is ample parking within walking distance of Sanctuary 21's proposed location. *Tr.*, 5/12/10 at 63.

5. The Protestants called Sergeant Vernon Keith Grundger with the Metropolitan Police Department to testify. *Tr.*, 5/12/10 at 22. Sgt. Grundger testified that he has responded to incidents that have occurred at the Shadow Room. *Tr.*, 5/12/10 at 22. He stated that patrons and even a police officer have been the victims of assaults and stabbings both inside and outside the Shadow Room. *Tr.*, 5/12/10 at 23. Sgt. Grundger testified that he believes there were over 20 assaults and other incidents that occurred at the Shadow Room in the past 15 months. *Tr.*, 5/12/10 at 23. He testified that on one occasion a diplomat assaulted an officer responding to a fight between patrons and that the patrons later assaulted the officer as well. *Tr.*, 5/12/10 at 24. According to Sgt. Grundger and the Applicant, the Shadow Room employs two police officers as part of the MPD Reimbursable Detail on Thursdays through Saturday. *Tr.*, 5/12/10 at 37, 39, 41. He also testified that the MPD Reimbursable Detail stays until 11:30 p.m. or until all patrons have left the area. *Tr.*, 5/12/10 at 37, 39, 41.

6. The Applicant noted that there was a nine percent decrease in crime over the past year within 1000 feet of 2131 K Street, N.W. *ABRA Protest File 076250-09/075P, Licensee Exhibit No. 2; Tr.*, 5/12/10 at 30-32. According to Sgt. Grundger, MPD reported that there were 14 calls for service at 2131 K Street, N.W., that resulted in ABRA generating an investigative report. *ABRA Exhibit No. 37.* Sgt. Grundger noted that police officers do not always fill out the ABC incident report after an incident at an establishment, which explains why he said there were more calls than actually reported by MPD's statistics. *Tr.*, 5/12/10 at 34-35.

7. Sgt. Grundger also explained that the establishment's valet service interferes with MPD's operations. *Tr.*, 5/12/10 at 38. He accused the valet service of parking patrons' cars in a manner that blocks emergency vehicles. *Tr.*, 5/12/10 at 38. He also accused the valet service of parking cars in public spaces and in residential neighborhoods rather than taking the cars to a garage. *Tr.*, 5/12/10 at 38-39.

8. The Protestants also called MPD Sgt. Carlos Bundy to testify. *Tr.*, 5/12/10 at 64. Regarding parking, Sgt. Bundy testified that the Shadow Room is located on a one-way street that also serves as a hospital route. *Tr.*, 5/12/10 at 65. Sgt. Bundy testified that the Applicant's current valet service is double parking cars and parking cars in alleyways, which at times interferes with emergency vehicles and interferes with traffic headed to L Street, N.W. *Tr.*, 5/12/10 at 65-66. Sgt. Bundy admitted that the Shadow Room has the right to five parking spaces near the loading dock. *Tr.*, 5/12/10 at 76. Based on the location of the club, Sgt. Bundy believes that the owners of the Shadow Room are acting in good faith and doing the best they can do under the circumstances. *Tr.*, 5/12/10 at 69. He noted that the owners of Shadow Room asked MPD to ticket illegally parked cars and

moved their valet station down the street so they could park cars faster. *Tr.*, 5/12/10 at 76. He recommended that the Applicant hire more valets and utilize a parking garage. *Tr.*, 5/12/10 at 70.

9. The Applicant called Saptak Das to testify on behalf of the Applicant. *Tr.*, 5/12/10 at 77. Mr. Das stated that he is an owner of Sanctuary 21. *Tr.*, 5/12/10 at 78. He stated that Sanctuary 21 will be a high-end establishment. *Tr.*, 5/12/10 at 78. He noted that Sanctuary 21's primary entertainment will come from DJs. *Tr.*, 5/12/10 at 79.

10. Mr. Das stated that the Applicant is sensitive to the parking situation. *Tr.*, 5/12/10 at 79. Accordingly, Mr. Das stated that Shadow Room's door staff asks cars to move and the establishment regularly asks the MPD Reimbursable Detail to help keep cars moving. *Tr.*, 5/12/10 at 79. He also testified that he has complained about cars parking in the alley to the police but stated that the police refuse to ticket the cars. *Tr.*, 5/12/10 at 80. According to Mr. Das, the valet service normally parks about 20 cars per night. *Tr.*, 5/12/10 at 81. Mr. Das also mentioned that the Applicant can utilize the services of an additional garage if the demand for parking at Sanctuary 21 merits it. *Tr.*, 5/12/10 at 81. Mr. Das stated that during the Presidential Inauguration the valet service parked 40 cars. *Tr.*, 5/12/10 at 101-02. Finally, Mr. Das stated that the Shadow Room has moved its valet service down the street away from the premises in order to mitigate the effect of many patrons leaving at the same time when the establishment closes. *Tr.*, 5/12/10 at 82. Mr. Das testified that approximately 20 percent of the Shadow Room's patrons utilize the club's valet service. *Tr.*, 5/12/10 at 87.

11. Commenting further on the parking situation, Mr. Das testified that his establishment has access to 75 parking spots. *Tr.*, 5/12/10 at 81. Mr. Das's valet company has access to the parking garage located in his building. *Tr.*, 5/12/10 at 105. Mr. Das stated that he has spoken to his valet service and the company has made changes in response. *Tr.*, 5/12/10 at 118. For example, the valet service is keeping the service lane near the establishment clear and has moved the valet stand to avoid crowds near the venue's entrance. *Tr.*, 5/12/10 at 118-20. Furthermore, Mr. Das testified that he has the right to obtain further parking from his landlord if he so desires. *Tr.*, 5/12/10 at 106. However, Mr. Das admitted that he will share the 75 parking spaces with the Shadow Room. *Tr.*, 5/12/10 at 113.

12. Mr. Das stated that the establishment has taken efforts to mitigate potential public safety issues. *Tr.*, 5/12/10 at 82. He stated that the establishment will escort patrons to their vehicles if they request it and all of the employees will receive an escort to their vehicles at the end of the night. *Tr.*, 5/12/10 at 83. In addition, Mr. Das stated the establishment will utilize the services of the MPD Reimbursable Detail. *Tr.*, 5/12/10 at 83.

13. Mr. Das testified that Sanctuary 21 has not been built yet. *Tr.*, 5/12/10 at 110. According to Mr. Das, the establishment plans to build an establishment with a maximum occupancy of 250 people. *Tr.*, 5/12/10 at 112.

14. Mr. Das averred that the Shadow Room and Sanctuary 21 will operate as separate entities. *Tr.*, 5/12/10 at 114. Although the two establishments are located in the same building, Mr. Das stated that customers will not have access to both venues from within either establishment. *Tr.*, 5/12/10 at 114. He stated that the two establishments are connected by an elevator that requires a key to operate. *Tr.*, 5/12/10 at 113-14.

15. The Protestants called Joe Mehra, a traffic expert, to testify on behalf of the Protestants. *Tr.*, 5/12/10 at 121-22. Mr. Mehra testified that he reviewed the traffic conditions at 2131 K Street, N.W. *Tr.*, 5/12/10 at 126. He stated that he reviewed traffic conditions between the intersection of K Street, N.W., and 22nd Street, N.W. between 5:00 p.m. and 6:00 p.m. *Tr.*, 5/12/10 at 126-27. Based on his study, he determined that the area is experiencing an average delay of 55 seconds. *Tr.*, 5/12/10 at 127-28. Specifically, on N Street, N.W., in front of the Applicant's proposed location, two lanes are available from 7:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 6:30 p.m. during rush hour and only one lane is available during all other hours. *Tr.*, 5/12/10 at 128. Mr. Mehra further testified that the road is critical for emergency vehicles. *Tr.*, 5/12/10 at 129. Mr. Mehra speculated that if the Applicant is allowed to open it will increase the delay to 66 seconds, which he believes is an unacceptable delay. *Tr.*, 5/12/10 at 129.

16. Mr. Mehra stated that the garages in the area close at 7:00 p.m. *Tr.*, 5/12/10 at 130. He further testified that an attendant at Atlantic Parking told him that the garage only has 44 parking spots. *Tr.*, 5/12/10 at 44.

17. According to Mr. Mehra, peak traffic hours occur between 5:00 p.m. and 6:00 p.m. *Tr.*, 5/12/10 at 139. Mr. Mehra stated that he observed traffic in the area on four separate occasions but did not review conditions between 11:00 p.m. and 3:00 a.m. *Tr.*, 5/12/10 at 132. He stated that his conclusion about the levels of service in the area could change depending on the hour. *Tr.*, 5/12/10 at 139. Mr. Mehra admitted that he could not obtain data to perform an analysis of the traffic after 11:00 p.m. *Tr.*, 5/12/10 at 143. Mr. Mehra stated that there is a metro station located a few blocks from the club and there is a bus stop near Sanctuary 21's location. *Tr.*, 5/12/10 at 152-55.

18. The Protestants also called ANC Commissioner Florence Harmon to testify on behalf of the Protestants. *Tr.*, 5/12/10 at 158. Commissioner Harmon testified that the neighborhood surrounding the proposed location of Sanctuary 21 had a "residential character." *Tr.*, 5/12/10 at 159. After showing the Board a zoning map developed by the District of Columbia, she noted that there are condominiums, townhouses, and residences located around the establishment. *Tr.*, 5/12/10 at 161-62; *ABRA Protest File 076250-09/075P, Protestant Exhibit 5*. In addition, she testified that the block where Sanctuary 21 is located is a split zone, where one side is commercial and the other side is residential. *Tr.*, 5/12/10 at 163.

19. Commissioner Harmon also discussed MPD's crime statistics for the area surrounding Sanctuary 21's proposed location. *Tr.*, 5/12/10 at 179-81. Within 500 feet of the establishment, Commissioner Harmon reported that violent crimes increased 100 percent and assaults with dangerous weapons increased 300 percent. *Tr.*, 5/12/10 at 181-

82; *ABRA Protest File 076250-09/075P*, *Protestant Exhibit 6*. Furthermore, within 250 feet of the proposed location, violent crimes increased 500 percent and assaults with a deadly weapon increased 200 percent. *Tr.*, 5/12/10 at 182; *ABRA Protest File 076250-09/075P*, *Protestant Exhibit 7*.

20. Commissioner Harmon testified that, in her capacity as an ANC Commissioner, she has received noise complaints from the area where Sanctuary 21 proposes to be located. *Tr.*, 5/12/10 at 185. She further added that the noise from the area has disturbed her sleep and interfered with the quiet enjoyment of her property. *Tr.*, 5/12/10 at 185-86. Commissioner Harmon testified that residents use the alley near the establishment to enter the parking garage. *Tr.*, 5/12/10 at 186. She further testified that she has heard people who had frequented the Shadow Room yelling loudly over a personal dispute. *Tr.*, 5/12/10 at 187. Commissioner Harmon stated that she is awakened at least once per week because of noise outside of her residence. *Tr.*, 5/12/10 at 201. She also noted that as an ANC Commissioner, she received many complaints from her constituents regarding the noise made by the Shadow Room. *Tr.*, 5/12/10 at 203. Specifically, her constituents often complain about noise emanating from the Shadow Room's patrons on Thursday nights. *Tr.*, 5/12/10 at 203-04.

21. Commissioner Harmon testified that she believes that establishments could take steps to reduce noise. *Tr.*, 5/12/10 at 193. She stated that employees should be stationed near residential areas to discourage patrons from entering residential areas. *Tr.*, 5/12/10 at 193. She also suggested that establishments should discourage patrons from parking in front of residences. *Tr.*, 5/12/10 at 193.

22. Commissioner Harmon testified that she finds Mr. Das uncooperative. *Tr.*, 5/12/10 at 197. For example, she stated that Mr. Das refused to have his security staff disperse crowds behind his building. *Tr.*, 5/12/10 at 197.

23. Mr. Chris Labas testified on behalf of the Protestants. *Tr.*, 5/12/10 at 212. Mr. Labas serves as the property manager and lives at 1099 22nd Street, N.W. *Tr.*, 5/12/10 at 212. Mr. Labas stated that there has been an increase in the amount of defecation and litter in the alley behind his complex and on 22nd Street, N.W. *Tr.*, 5/12/10 at 216-17, 236. Mr. Labas testified that he has filed approximately 25 to 50 complaints regarding litter and defecation and on some occasions witnessed people engage in littering or defecation. *Tr.*, 5/12/10 at 227-28.

24. Mr. Labas believes that the Shadow Room is responsible for the increase in defecation and litter that his complex has experienced. *Tr.*, 5/12/10 at 217. Specifically, on one occasion, he witnessed a male urinate on a building that shares a driveway with his complex and then enter the line for the nightclub at 2131 K Street, N.W. *Tr.*, 5/12/10 at 229. Further, Mr. Labas presumed that many of the people he sees congregating near his complex come from 2131 K Street, N.W., because he can see people walking from 2131 K Street, N.W., from where he lives and the people he sees are dressed as if they are going to a nightclub. *Tr.*, 5/12/10 at 230. Finally, Mr. Labas noted that after the Shadow Room opened there was much more litter in the community. *Tr.*, 5/12/10 at 236.

25. Mr. Labas testified that he has witnessed Shadow Room's valet service park too many cars in the alley and impede traffic. *Tr.*, 5/12/10 at 219. For example, on one occasion, Mr. Labas was driving down the alley and had to wait 10 minutes for the valet service to move cars out of the way. *Tr.*, 5/12/10 at 219. He also stated that residents of his building regularly complain that the valet service is parking cars in his complex's trash area and loading dock. *Tr.*, 5/12/10 at 219-20, 223, 237; *ABRA Protest File 076250-09/075P, Protestant Exhibit 8.*

26. Mr. Labas testified that crowds of people engage in loud talking, playing music, and revving car engines around 11:30 p.m. and between 2:00 a.m. and 4:00 a.m. *Tr.*, 5/12/10 at 225. He stated that he has seen fights and heard people yelling across the street. *Tr.*, 5/12/10 at 240. Mr. Labas stated that the frequency of disturbing incidents has gotten worse. *Tr.*, 5/12/10 at 224. Mr. Labas stated that a year ago incidents occurred two to three times per month but, since January or February, they are occurring every Thursday night. *Tr.*, 5/12/10 at 224.

27. According to Mr. Labas, the neighborhood has seen some changes since 2006. *Tr.*, 5/12/10 at 232. Since 2006, a new condominium complex opened on 22nd Street, N.W., and New Hampshire Avenue, N.W. *Tr.*, 5/12/10 at 232. Furthermore, the Ritz-Carlton Hotel opened a restaurant on 23rd Street, N.W., and L Street, N.W. *Tr.*, 5/12/10 at 232. According to Mr. Labas, both properties are more than 500 feet away from 2131 K Street, N.W. *Tr.*, 5/12/10 at 232.

28. The Protestants called Mr. Trevor Neve to testify in opposition to the Application. *Tr.*, 5/12/10 at 242. Mr. Neve lives at 1099 22nd Street, N.W., and is the president of his condominium association. *Tr.*, 5/12/10 at 243.

29. Mr. Neve testified that the Office of Tax and Revenue determined that there was a 15 percent decline in the property values of all of the condominiums in Mr. Neve's complex, as compared to a 3.7 percent city-wide decline in condominium property values. *Tr.*, 5/12/10 at 247-48, 253, 255. As an example, Mr. Neve noted that Unit 102 was worth $553,510 in 2010 and Unit 102 was proposed to be worth $472,360 in 2011. *Tr.*, 5/12/10 at 247. Based on the development of retail establishments in the neighborhood, Mr. Neve concluded that the nightclub in the area was detracting from the area's property values. *Tr.*, 5/12/10 at 254.

30. Mr. Neve stated that he reached his conclusion by elimination. *Tr.*, 5/12/10 at 156. Nevertheless, he could not explain why the value of properties located near ABC establishments in other parts of the city increased even though they had a larger amount of ABC establishments in close proximity. *Tr.*, 5/12/10 at 268.

CONCLUSIONS OF LAW

31. Pursuant to D.C. Official Code § 25-313(a) (2009), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a license is requested is

appropriate for the neighborhood in which it is located. The Board concludes that the Applicant has demonstrated that the Application for a Retailer's Class CN License is appropriate for 2131 K Street, N.W., Washington, D.C.

32. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, ANC 2A alleged that if the Board approved the Applicant's Application this would adversely impact the peace, order, and quiet of the neighborhood. Specifically, during the Protestants' presentation to the Board, ANC 2A raised concerns that the Applicant's plans would lead to an increase in trash problems, crime, noise, reduce property values, and create parking issues.

33. The Board is not convinced that approving the Application will contribute to trash and litter problems in the community. The law states that the Board must determine whether an establishment is appropriate based on the "[t]he effect of the *establishment* on peace, order, and quiet, including the noise and litter provisions set forth in *§§ 25-725* and *25-726*." D.C. Code § 25-313(b)(2) (2004) (emphasis added). Based on the language in § 25-313, it is inappropriate for the Board to consider the contribution of patrons to litter and trash in the community when they lack a nexus to the establishment. As such, testimony that a separate establishment's patrons are littering, urinating, and defecating on properties near the establishment's proposed location is insufficient to deny the issuance of a liquor license to a new establishment that is not yet operating in the community.

34. The Board is not persuaded that approving the Application will contribute to crime in the area. The law states that the Board must determine whether an establishment is appropriate based on the "[t]he effect of the *establishment* on peace, order, and quiet, including the noise and litter provisions set forth in *§§ 25-725* and *25-726*." D.C. Code § 25-313(b)(2) (emphasis added). Based on the language in § 25-313, it is inappropriate for the Board to consider the contribution of patrons and other people to crime to the community when they lack a nexus to the Applicant's establishment. The Protestants presented evidence that criminal activity and violent incidents have occurred in their neighborhood. However, the Board notes that the establishment has not opened yet and none of the incidents are related to the Applicant. Therefore, the Protestants' arguments that approving the Application will increase crime in the neighborhood are merely speculative and are insufficient to deny the Application.

35. The Board is also not persuaded that approving the Application will contribute to an increase in disturbing noises experienced by the community. The law states that the Board must determine whether an establishment is appropriate based on the "[t]he effect of the *establishment* on peace, order, and quiet, including the noise and litter provisions set forth in *§§ 25-725* and *25-726*." D.C. Code § 25-313(b)(2) (emphasis added). Based on the language in § 25-313, it is inappropriate for the Board to consider the contribution of patrons and other people to noise to the community when they lack a nexus to the

Applicant's establishment. The Board notes that the Applicant has not yet opened for business and, therefore, the arguments made by the Protestants that the Applicant will contribute to noise in the community are merely speculative. Furthermore, the Protestants have not alleged any facts that would lead the Board to believe that the Applicant or even the Shadow Room has violated the noise laws contained in D.C. Code § 25-725 (2001), which do not apply to the human voice. As such, the Protestants' arguments are insufficient to deny the Applicant's Application.

36. In addition, the Board is not persuaded that granting the Application will reduce property values in the neighborhood. The law states that the Board must determine whether an establishment is appropriate based on the "[t]he effect of the *establishment* on real property values." D.C. Code § 25-313(b)(1) (emphasis added). Based on the language in § 25-313, the Board may only consider the Applicant's effect on property values. During their presentation, the Protestants demonstrated that property values in their community have decreased. Yet, the Protestants failed to link the Applicant's establishment to the reduction in property values and could not show that the District of Columbia considered the effect of local nightclubs when it calculated property values. As such, the Board rejects the Protestants' arguments that approving the Application will reduce the neighborhood's property values.

37. Nevertheless, the Board is concerned that approving the Application will negatively impact traffic and parking conditions in the community. The law states that the Board must determine whether an establishment is appropriate based on the "[t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety." D.C. Code § 25-313(b)(3). The Board credits the Protestants' evidence, through Mr. Mehra and others, that traffic in the neighborhood is a concern. Additional testimony by the Protestants indicated that the alley near the establishment's proposed location, a route used by emergency vehicles, is regularly blocked by the same valet parking service employed by the Applicant. The Board finds this situation unacceptable and is assured that by imposing the conditions listed below the Applicant will not exacerbate the traffic and parking situation in the community.

38. Pursuant to D.C. Official Code § 25-313(b)(2) and 23 DCMR § 400.1(a), the Board must determine whether the Application for a Retailer Class CN License will have an adverse effect on the peace, order, and quiet of the neighborhood; real property values; and residential parking and pedestrian safety. The Board finds that based on the testimony and evidence received by the Board, that the Applicant's proposed plans will adversely affect parking in the community. However, this is insufficient to deny the Application. Instead, the Applicant's compliance with this Order will mitigate any adverse impact on the community. As such, the Board grants the Application on the condition that the Applicant complies with the Board's Order outlined below.

ORDER

Therefore, it is hereby ORDERED on this 4th day of August 2010, that the Application for a Retailer's Class CN License filed by Panutat, LLC, t/a Sanctuary 21, at premises 2131 K Street, N.W., Washington, D.C., be and the same is hereby **GRANTED**;

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

(1) The Applicant must obtain access to 150 parking spaces for its patrons on Friday, Saturday, and Sunday;

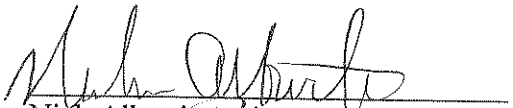
(2) The Applicant shall document how many patrons utilize its parking spaces on Friday, Saturday, and Sunday for a six (6) month period after the establishment opens for business. Upon expiration of the six month period, the Applicant will submit its findings to the Board for review. Upon receiving the Applicant's finding the Board will determine the minimum number of parking spaces the Applicant must maintain in the future. The Applicant will be entitled to a Fact Finding Hearing if it disputes the Board's determination;

(3) The Applicant shall submit to the Board its policies and procedures for preventing traffic around the club. Specifically, the Applicant shall present an off-loading plan that describes how the Applicant shall manage traffic generated from patrons driving to, being dropped off, and leaving Sanctuary 21 by motor vehicle;

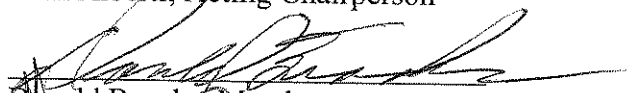
It is **FURTHER ORDERED** that the Motion for Reconsideration of the Board's Oral Ruling Denying the Protestants' Motion to Dismiss submitted by ANC 2A is **DENIED;** and

It is **FURTHER ORDERED** that the Group of Five or More Individuals' Motion for Reconsideration of the Board's Oral Ruling Denying the Protestant's Motion to Dismiss is **DENIED**.

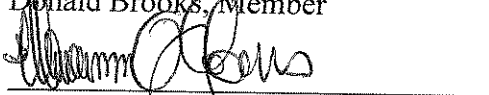
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Acting Chairperson



Donald Brooks, Member



Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 § 1719.1 (April 2004) 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).