

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Harris Teeter, LLC
t/a Harris Teeter

Petition to Amend or
Terminate a Settlement Agreement
for a Retailer's Class B License

at premises
1631 Kalorama Road, N.W.
Washington, D.C. 20009

License Number: ABRA-095171
Order Number: 2015-004

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

**ORDER UNILATERALLY AMENDING PETITIONER'S
SETTLEMENT AGREEMENT**

Harris Teeter, LLC, t/a Harris Teeter (Petitioner) filed a Petition to Unilaterally Amend or Terminate its Settlement Agreement (Petition) in order to amend its Settlement Agreement, originally approved on October 21, 2009. See Board Order No. 2009-250.

The Petitioner's Petition is authorized by D.C. Official Code § 25-446. Notice of Petition was placarded on the Petitioner's premises and published in the D.C. Register on October 31, 2014. At the end of the protest period, the Alcoholic Beverage Control Board did not receive any objections to the filing. Therefore, the Petition is uncontested.

The Board is only required to produce findings of fact and conclusions of law on contested issues of fact. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2. Accordingly, based on the Board's review of the Petition, Petitioner has satisfied all remaining requirements imposed by Title 25 and Title 23 to merit the termination or amendment of its settlement agreement by the Board.

The Petitioner seeks to amend its Settlement Agreement for purposes of extending the hours of sales for beer and wine. The hours requested are as follows: Sunday through Saturday, 7:00 a.m. to 12:00 midnight.

ORDER

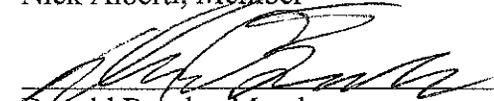
Therefore, it is hereby **ORDERED** on this 7th day of January, 2015, that:

1. The Petition to Unilaterally Amend its Settlement Agreement, approved on October 21, 2009, filed by Harris Teeter, LLC, t/a Harris Teeter, at premises 1631 Kalorama Road, N.W., Washington, D.C., is hereby **GRANTED**;
2. The Petitioner's Retailer Class B License will be reissued to reflect its new hours of sales Sunday through Saturday from 7:00 a.m. to 12:00 midnight;
3. All terms and conditions of the original Agreement, not amended by this Order, shall remain in full force and effect; and
4. A copy of this Order shall be delivered to the Petitioner and to ANC 1C.

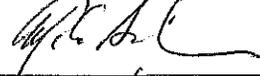
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson

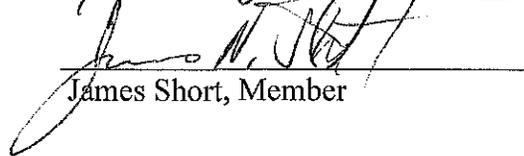

Nick Alberti, Member


Donald Brooks, Member

Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) 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) (2004).

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

_____)
In the Matter of:)
)
Harris Teeter, Inc.)
t/a Harris Teeter)
)
Holder of a)
Retailer's Class B License)
)
at premises)
1631 Kalorama Road, N.W.)
Washington, D.C. 20012)
_____)

License No. ABRA-073993
Order No. 2014-382

Harris Teeter, Inc., t/a Harris Teeter (Licensee)

Brian Hart, Commissioner, Advisory Neighborhood Commission (ANC) 1C

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ORDER ON SECOND AMENDMENT TO SETTLEMENT AGREEMENT

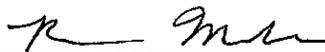
The official records of the Alcoholic Beverage Control Board (Board) reflect that Harris Teeter, Inc., t/a Harris Teeter, (Licensee), and ANC 1C entered into Settlement Agreement (Agreement), dated October 11, 2006 and an Amendment to Settlement Agreement, dated October 7, 2009, that governs the operation of the Licensee's establishment. This matter comes now before the Board to consider the Parties' Second Amendment to Settlement Agreement (Second Amendment), filed on September 24, 2014, in accordance with D.C. Official Code § 25-446 (2001).

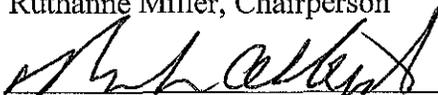
The Amendment has been reduced to writing and has been properly executed and filed with the Board. The Licensee and Commissioner Brian Hart, on behalf of ANC 1C, are signatories to the Amendment.

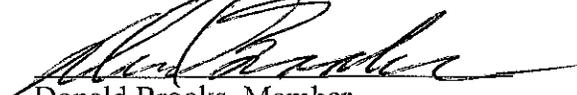
Accordingly, it is this 15th day of October, 2014, **ORDERED** that:

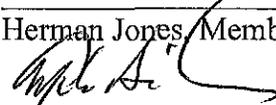
1. The above-referenced Second Amendment to Settlement Agreement, filed on September 24, 2014, submitted by the Parties to govern the operations of the Licensee's establishment is **APPROVED** and **INCORPORATED** as part of this Order;
2. All terms and conditions of the original Agreement and Amendment, not amended by the Second Amendment, shall remain in full force and effect; and
3. Copies of this Order shall be sent to the Licensee and ANC 1C.

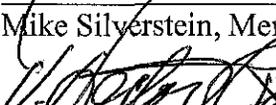
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson

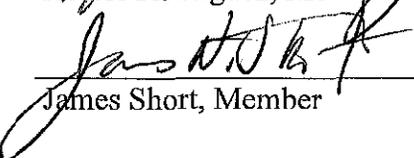

Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to D.C. Official Code § 25-433, any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

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 D.C. Official Code § 25-433, 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).

Second Amendment to Settlement Agreement

Whereas Harris Teeter, Inc. ("Harris Teeter") and Advisory Neighborhood Commission 1C ("ANC1C") previously entered into a cooperative or voluntary agreement dated October 11, 2006 (the "Settlement Agreement");

And whereas Harris Teeter and ANC1C entered into an amendment to the Settlement Agreement on October 7, 2009 (the "First Amendment");

And whereas Harris Teeter and ANC1C have now agreed to further amend the Settlement Agreement as of September [], 2014;

Therefore, Harris Teeter and ANC1C agree that the Settlement Agreement is amended as follows:

- Paragraph 4 is amended by striking "9 a.m." and inserting "7 a.m." in its place.
- Paragraph 10 is deleted in its entirety and replaced with the following: "The Applicant will not sell single containers of beer less than 20 oz. The Applicant will not break apart a manufacturer's packaging in order to accomplish sales of single containers of beer. The single containers of beer that are sold by the Applicant will consist of imported and craft beers."

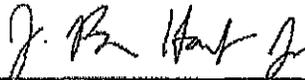
Except as set forth above, the terms of the Settlement Agreement, including its First Amendment, remain in full force and effect.



Harris Teeter

By: Taryn G. Meia

Title: Vice President



ANC1C

By: Brian Hart

Title: Commissioner, ANC 1C01

Chair, ABC and Public Safety Committee ANC 1C

PASCAL & WEISS, P.C.
ATTORNEYS AT LAW
1008 PENNSYLVANIA AVENUE, SE
WASHINGTON, DC 20003-2142
(202) 544-2200

PAUL L. PASCAL (DC & MD)
ANTON MAX WEISS (DC & MD)
RISA HIRAO (DC, MD, NJ & VA)

TELECOPIER
(202) 544-5839

E-MAIL ADDRESSES:
ppascal@pascalweiss.com
aweiss@pascalweiss.com
rhirao@pascalweiss.com

September 24, 2014

Fred Moosally, Director
ABC Board
2000 14th Street, NW
Washington, DC 20009

VIA HAND DELIVERED

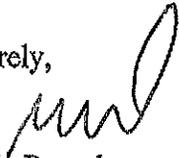
**Re: Harris Teeter, Inc - Second Amendment to Settlement Agreement
ABC License No. ABRA-073993
1631 Kalorama Road, NW, Washington, DC**

Dear Mr. Moosally:

Enclosed please find a copy of the Second Amendment to Settlement Agreement regarding Harris Teeter, Inc. located at 1631 Kalorama Road, NW. Please submit this to the Board as soon as possible.

Thank you for your consideration.

Sincerely,


Paul L. Pascal
Attorney at Law

Enclosure

PLP:je

cc: Karen Jackson, Pat Jenkins & Sean Gordy, ABRA
ANC 1C


1.25.14
2PM SEP 24 P 3:11

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)
)
Harris Teeter, Inc.,)
t/a Harris Teeter)
)
Holder of a Retailer's)
Class B License) License No. 73993
) Order No. 2009-250
at premises)
1631 Kalorma Road, N.W.)
Washington, D.C. 20009)
_____)

Harris Teeter, Inc., t/a Harris Teeter (Licensee)

M. Mindy Moretti, Vice-Chair, Advisory Neighborhood Commission 1C (ANC 1C)

BEFORE: Peter B. Feather, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON AMENDMENT TO VOLUNTARY AGREEMENT

On October 8, 2009, ANC 1C submitted a letter to advise the Alcoholic Beverage Control Board ("Board") that ANC 1C voted unanimously to support an Amended Voluntary Agreement, dated October 7, 2009, between ANC 1C and Licensee ("Amendment"). The Amendment will allow the establishment to remain open until 12 a.m. with the sales of alcoholic beverages ending at 10 p.m. provided that the Licensee adheres to three caveats outlined in the Amendment. On October 14, 2009, the Board approved the Amendment.

The Amendment has been reduced to writing and has been properly executed and filed with the Board. The Licensee and Vice-Chair M. Mindy Moretti of ANC 1C are signatories to the Agreement.

Accordingly, it is this 21st day of October 2009, **ORDERED** that:

1. The above-referenced Amendment submitted by the parties to govern the

operations of the Licensee's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and

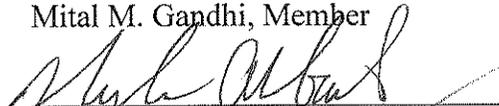
2. Copies of this Order shall be sent to the Licensee and ANC 1C.

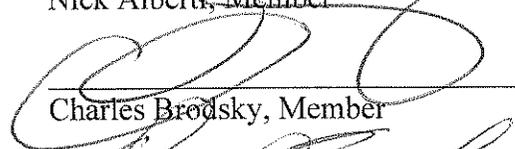
District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson

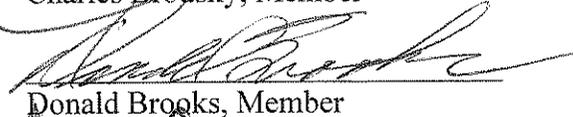


Mital M. Gandhi, Member

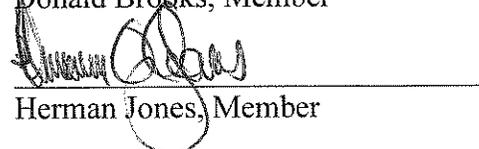

Nick Alberti, Member



Charles Brodsky, Member



Donald Brooks, Member



Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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.

Harris Teeter AMENDMENT TO VOLUNTARY AGREEMENT

THIS AMENDMENT TO VOLUNTARY AGREEMENT is made on this 7th day of October 2009 by and between Harris Teeter, Inc. t/a Harris Teeter, Inc., License #73993 (Licensee), and Advisory Neighborhood Commission ANC1C (collectively, the Parties).

RECITALS

WHEREAS, Applicant and ANC1C entered into a Voluntary Agreement dated October 11, 2006 concerning the Licensee's Retailer's Class B alcoholic beverage license for an establishment located at 1631 Kalorama Road, NW, Washington, D.C.; and

WHEREAS, in the Original Voluntary Agreement, ANC1C requested and Licensee agreed to specific controls regarding the Hours of Operation; and

WHEREAS, the Parties have agreed to enter into this Amendment to Voluntary Agreement to permit the Licensee to permanently extend its Hours of Operation (but **NOT** Sales of Alcoholic Beverages) until 12 a.m. (midnight) as set forth more clearly below; and

WHEREAS, the Parties request that the Alcoholic Beverage Control Board approve this Amendment to Voluntary Agreement conditioned upon the Licensee's compliance with the terms of this written Amendment and the previously executed Voluntary Agreement; and

NOW, THEREFORE, in consideration of the recitals set forth above, it is mutually understood and agreed by and between the undersigned Parties to amend the previously executed Voluntary Agreement as follows:

- 1) Establishment agrees to have security officers or store personnel make several hourly sweeps of the outdoor area surrounding the store to ensure the safety of the property and that cars are not double-parked in front of the store; and
- 2) Establishment agrees to post signage at the front of store forbidding people from tying up their dogs while inside the store; and
- 3) Establishment agrees to comply with requirements set forth under Chapters 27 through 29 of the District of Columbia Municipal Regulations related to noise control and maximum noise levels.
- 4) **Agreement Otherwise Unamended.** Except as otherwise provided herein, the terms and conditions of the previously executed Voluntary Agreement are expressly reaffirmed and remain in full force and effect.

ANC

M. Mindy Moretti, ANC1C Vice Chair/Chair ABC & Public Safety Committee

By: Printed Name



Signature

Licensee

Harris Teeter, Inc.
Establishment's Name



By: Printed Name/ Title

Vice President

Protestant by letter dated March 28, 2007. On September 12, 2007, the Board issued a written order dismissing the Dorchester 5 and L. Napoleon Cooper from the case. The dismissal was based upon the Applicant's written Motion to Dismiss that was argued at the July 11, 2007 protest hearing. The two remaining Protestants in the case are RCNA and a group of 5 or more individuals represented by Campbell C. Johnson, III.

The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the issuance of the license would adversely impact: (1) the peace, order, and quiet of the neighborhood, and (2) residential parking and vehicular and pedestrian safety.

The case came before the Board for public protest hearings on June 13, 2007, July 11, 2007 and October 23, 2007. At the conclusion of the October 23, 2007 protest hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is a large grocery store to be located at 1631 Kalorama Road, N.W., in a commercial area zoned C-2-B. (ABRA License File No. 73993; ABRA Investigative Report dated June 2007.) The establishment is bounded by Euclid Street, N.W. to the North, 18th Street, N.W. to the East, and 16th Street, N.W. to the West. (ABRA License File No. 73993.) The Applicant is requesting a new Class "B" retailer's license with alcohol sales less than 15% of its annual gross receipts. (ABRA License File No. 73993.) The Applicant has entered into a detailed four-page voluntary agreement with ANC 1C, dated October 11, 2006. (ABRA License File No. 73993.) The voluntary agreement has 31 conditions, including not allowing the Applicant to sell malt liquor or single containers of beer in any size. (ABRA License File No. 73993.)
2. There are three other ABC establishments with Class "B" retailer's licenses located within a three block radius of Harris Teeter. (Tr. 10/23/07 at 165, 178.) These are: (1) Kalorama Deli and Grocery, located at 2343 17th Street, N.W.; (2) Euclid Market, located at 1700 Euclid Street, N.W.; and (3) Dorchester Market and Deli, located at 1632 Kalorama Road, N.W. (Tr. 10/23/07 at 165, 178.) H.D. Cooke Elementary School is located more than 400 feet from the establishment. (ABRA Investigative Report dated June 2007.)
3. ABRA Investigator Chris Scurlock and other ABRA Investigators visited the establishment on 25 occasions between March 28, 2007 and May 25, 2007. (Tr. 10/23/07 at 166, 172, 195, 205.) Investigator Scurlock observed the establishment between 20 to 30 minutes during his visits. (Tr. 10/23/07 at 195.) He did not observe any problems with loitering. (Tr. 10/23/07 at 177.) ABRA investigator Scurlock indicated that the amount of litter in the surrounding area, including the sidewalks and alleys, was minimal despite the fact that it was a high construction area. (Tr. 10/23/07 at 177.) He did not believe that the Applicant's proposed hours of operation would negatively impact the neighborhood. (Tr. 10/23/07 at 177.)

4. With regard to traffic, Investigator Scurlock stated that the surrounding streets were narrow but that during the day and early evening hours the streets and parking were accessible. (Tr. 10/23/07 at 168, 204.) Specifically, regardless of the time of day, two to three parking spaces were available near the establishment including Kalorama Road and 17th Street, N.W. (Tr. 10/23/07 at 196-197, 206.) He acknowledged that parking in the area was limited during the nighttime hours as a lot of the parking spaces are utilized by patrons of neighboring establishments. (Tr. 10/23/07 at 168, 206.) He indicated that large delivery trucks could pose a problem depending upon the time of day that they deliver. (Tr. 10/23/07 at 204-205.) However, Investigator Scurlock did not observe any incidents that posed a safety issue to pedestrians or vehicles during his visits. (ABRA Investigative Report dated June 2007.) He did not observe any school children during his visits. (Tr. 10/23/07 at 205.) Investigator Scurlock indicated that traffic would be most congested during the early mornings and the mid-evenings. (Tr. 10/23/07 at 206-207.)

5. Daniel Byron Van Pelt is a transportation engineer and a principal with Gorove/Slade Associates, which is a traffic and parking consulting firm. (Tr. 6/13/07 at 131.) He has ten years of experience in this field, including working in the Washington D.C. area. (Tr. 6/13/07 at 132.) Mr. Van Pelt was his company's project manager for the Applicant's location and was responsible for conducting a traffic study and laying out the Applicant's parking garage circulation. (Tr. 6/13/07 at 133-134.) He indicated that the project has taken about two years. (Tr. 6/13/07 at 134.) The Applicant has a Truck Management Plan (Plan), that restricts the number and size of trucks, and the time of day that trucks can make delivery. (Tr. 6/13/07 at 135-136; Tr. 10/23/07 at 300; Applicant's Exhibit A-1.) The Plan allows for up to 40 daily deliveries between Monday and Saturday and up to 15 deliveries on Sundays. (Tr. 6/13/07 at 137, 143; Tr. 10/23/07 at 312.) This includes two to three alcohol deliveries a day and approximately 15 deliveries per week. (Tr. 6/13/07 at 138, 143.) The Plan also requires a dock manager to supervise and coordinate deliveries to the grocery store. (Tr. 6/13/07 at 136-137, 168, 178.) Deliveries are permitted at the establishment under the plan until 9:00 p.m. (Tr. 6/13/07 at 165, 169.) Alcohol deliveries will only take place in the loading zone on 17th Street as it can accommodate two trucks at the same time. (Tr. 6/13/07 at 177; Tr. 10/23/07 at 312.)

6. The Plan reflects that traffic on several streets surrounding the establishment will become one-way streets, including one-way westbound from 16th to 17th and one-way northbound on 17th Street, N.W., due to the existing narrowness of these streets. (Tr. 6/13/07 at 138-139; Tr. 10/23/07 at 306-307.) A field test was conducted on April 13, 2007 which reflected that the loading dock met expectations. (Tr. 6/13/07 at 139.) There was also a traffic impact study that was conducted that reflects that there would be about 100 trips to the establishment during evening peak hours. (Tr. 6/13/07 at 140-141; Tr. 10/23/07 at 301.) Peak hours are 8:15 a.m. to 9:15 a.m. and 5:15 p.m. to 6:15 p.m. (Tr. 6/13/07 at 167-168; Tr. 10/23/07 at 299.) The traffic study was conducted in the fall of 2004 and completed on July 14, 2005. (Tr. 6/13/07 at 163.) The parking garage contains 85 parking spaces for the Applicant's customers and 33 additional parking spaces that will be available until other office space is filled. (Tr. 6/13/07 at 141, 174.) All 118 of these parking spaces would be available during peak evening hours. (Tr. 6/13/07 at 141,

174.) He indicated that the number of parking spaces available is adequate and consistent with other grocery stores in the District. (Tr. 6/13/07 at 141, 173.) Mr Van Pelt noted that the parking garage plan turned out quite well and will function properly. (Tr. 10/23/07 at 303.) He indicated that the loading dock will be able to safely handle 40 foot trucks. (Tr. 10/23/07 at 304-305.) Mr. Van Pelt believed that the impact of alcohol sales at the establishment would be negligible to residential parking and pedestrian safety. (Tr. 6/13/07 at 143; Tr. 10/23/07 at 306.)

7. David John Tujetsch is a District Manager with Harris Teeter and will be operating this location. (Tr. 10/23/07 at 49, 109.) He indicated that Harris Teeter is a high-end quality retailer with a heavy focus on customer service. (Tr. 10/23/07 at 51.) They are a family friendly supermarket that sells traditional and organic grocery store items. (Tr. 10/23/07 at 51, 63.) With regard to alcohol, they sell high end wines and domestic and imported specialty beers. (Tr. 10/23/07 at 51.) The establishment makes a concerted effort to keep the establishment and its shelves and floors clean. (Tr. 10/23/07 at 56.)

8. Mr. Tujetsch is familiar with the voluntary agreement with ANC 1C. (Tr. 10/23/07 at 76.) The Applicant will not be selling single containers of beer under the agreement. (Tr. 10/23/07 at 81.) He identified the written procedures that the establishment has in place to prevent the sale of alcohol to minors. (Tr. 10/23/07 at 78.) This policy requires each employee who checks out alcohol to score 100 percent on the test and be retested every six months. (Tr. 10/23/07 at 79, 145.) The Applicant will have security at the location and will immediately address any loitering either by asking loiterers to move on or by calling MPD. (Tr. 10/23/07 at 82, 154-155.) He believed having a security guard will help to maintain the peace, order, and quiet of the neighborhood. (Tr. 10/23/07 at 83.)

9. Mr. Tujetsch expects approximately 15 alcohol deliveries a week. (Tr. 10/23/07 at 83.) For all of the Applicant's deliveries, including alcohol deliveries, there will be a dock manager outside who will ensure that traffic stays clear and free of congestion and that trucks back in properly. (Tr. 10/23/07 at 83-84, 102-105, 116.) Deliveries will start at 7:00 a.m. to about 10:00 a.m. (Tr. 10/23/07 at 84.) He stated that the Applicant's alcohol sales are eight to nine percent of total store sales with wine sales generally between five and six percent and beer between two and three percent. (Tr. 10/23/07 at 85-86.) He indicated that only one in every 200 customers will come to the establishment and just to buy alcohol. (Tr. 10/23/07 at 86.) Based on the store's neighborhood, he believes that 60 percent of customers will be walk in customers. (Tr. 10/23/07 at 87.) He stated the garage has approximately 118 spots, 85 of which are specifically for Harris Teeter, and that this is more than enough parking for customers at this location. (Tr. 10/23/07 at 87, 96, 128, 132.) The establishment will also have bike racks in front of the store. (Tr. 10/23/07 at 94.) The establishment's peak hours are 4 p.m. to 8 p.m. during the week as well as Saturday and Sunday. (Tr. 10/23/07 at 89, 152.) He indicated that the store will not have an adverse impact on peace order and quiet or residential parking and vehicular and pedestrian safety. (Tr. 10/23/07 at 89-90, 95.)

10. Mr. Tujetsch expects the establishment to have between 2,000 and 3,500 customers daily. (Tr. 10/23/07 at 93.) The establishment's loading dock will be able to unload two trucks at the same time. (Tr. 10/23/07 at 101.) Deliveries will be made at the loading dock on 17th Street. (Tr. 10/23/07 at 106, 133, 152.) Mr. Tujetsch has been able to find parking on the street. (Tr. 10/23/07 at 107.) He indicated that the store is generally not busy in the morning. (Tr. 10/23/07 at 152.)

11. Don Deutsch, Jr., is the Senior Managing Director of Faison & Associates (Faison), which is a development firm based in Charlotte, that also has a fairly large operation in the District. (Tr. 10/23/07 at 209, 231.) Faison is the developer of the project as well as the developer of a 46 unit condominium project across the street at 1701 Kalorama Road, N.W., named Delancey Lofts. (Tr. 10/23/07 at 209, 233-235.) Mr. Deutsch has been with Faison for four or five years. (Tr. 10/23/07 at 232.) He indicated that they purchased 1701 Kalorama approximately four years ago to turn it into condominiums. (Tr. 10/23/07 at 210, 225.) The building is currently open and is primarily owner occupied. (Tr. 10/23/07 at 236.) Mr. Deutsch indicated that Douglas Jemal was also looking at some higher density options for the Citadel building, found a good fit with Harris Teeter, and started to redesign the building for retail use. (Tr. 10/23/07 at 211.) He did not believe there would be any problems with the Applicant's store and indicated that good retail, including the Applicant's establishment, will have a positive impact on peace, order, and quiet and the security of the neighborhood. (Tr. 10/23/07 at 212, 215, 233.)

12. Mr. Deutsch was visiting the Applicant's location four times a week at different times of the day, including early mornings, when he started development of both the Applicant's location and 1701 Kalorama. (Tr. 10/23/07 at 216.) He did observe some children in the area but did not observe a high concentration of school children going through this area. (Tr. 10/23/07 at 216, 224-225.) He indicated that the traffic study expects 60 percent of the patrons to be walking traffic. (Tr. 10/23/07 at 216.) He believed that the establishment would have a high level of walk-in traffic and noted that Adams Morgan is one of the higher density neighborhoods in the District. (Tr. 10/23/07 at 216-217.)

13. With regard to real property values, Mr. Deutsch indicated that the proximity of a grocery store was one of the top questions asked related to the sale of the condominiums at 1701 Kalorama. (Tr. 10/23/07 at 217.) He noted that Harris Teeter will increase residential property values around it and that they were willing to invest in 1701 Kalomara based upon the expectation that Harris Teeter would be coming to the Citadel building. (Tr. 10/23/07 at 217-218.)

14. With regard to parking, Mr. Deutsch indicated that 85 parking spaces have been dedicated to Harris Teeter. (Tr. 10/23/07 at 219.) Additionally, there are 33 spaces that have been set aside for prospective office use that would be available to Harris Teeter during off-hours, which are after 5:30 p.m. (Tr. 10/23/07 at 220-221.) Mr. Deutsch believed that this was a sufficient number of parking spaces for the establishment. (Tr.

10/23/07 at 223.) He indicated that each unit at 1701 Kalorama Road, N.W., has its own parking space. (Tr. 10/23/07 at 228.)

15. Mr. Deutsch believed they had made extraordinary efforts to address Mark Rasmussen's noise and lighting concerns due to the fact that his residence is located directly across from the Applicant's driveway to the parking garage. (Tr. 10/23/07 at 237.) Specifically, his concerns were taken into account as part of the traffic studies in determining the traffic load on Kalorama Road. (Tr. 10/23/07 at 237-238.) Additionally, they conducted light studies in Mr. Rasmussen's home to determine the impact of the car lights. (Tr. 10/23/07 at 238-240.) This resulted in an adjustment to decrease the amount of light entering his home that comes from the cars in the parking garage. (Tr. 10/23/07 at 238-240.) Additionally, the Applicant is using down-directed lights on the building instead of externally directed lights to decrease the impact of lighting on his home. (Tr. 10/23/07 at 239.)

16. Suzanna Patricia Moss indicated that she lived at 1701 Kalorama Road, Unit 309, which she purchased when it opened in February 2006. (Tr. 10/23/07 at 250, 277.) She stated that when she was searching for a place to live she was influenced by the fact that Harris Teeter was coming to the neighborhood. (Tr. 10/23/07 at 250-251.) Ms. Moss is a D.C. real estate agent for Sotherby's International Realty. (Tr. 10/23/07 at 251.) She sold 20 percent of the units in the Delancey building and noted that one of the selling points for buyers was that Harris Teeter was coming to the neighborhood. (Tr. 10/23/07 at 255-256.) Ms. Moss believed that having a full-service grocery store located nearby will positively impact local property values. (Tr. 10/23/07 at 268-269.)

17. Peter Lyden held a position with the RCNA in April 2004. (Tr. 10/23/07 at 322.) RCNA did support an exception in July 2004 to the Adams Morgan Moratorium for new Class "B" retailers for 18th Street, N.W. and Columbia Road, N.W., but this position of support did not apply to the Reed Cooke Zoning Overlay. (Tr. 10/23/07 at 322-328.)

18. Robert Smith currently works full-time at the Sitar Arts Center (Center) as the Student Director and Outreach Coordinator. (Tr. 10/23/07 at 334-335.) The Center provides arts education, including visual art and music lessons. The Center is located at 1700 Kalorama Road, Suite 101, at the corner of 17th Street and Kalorama Road diagonally across from Harris Teeter. (Tr. 10/23/07 at 339, 343, 349, 355-356.) In his position as Outreach Coordinator, he goes to different schools and tells them about the Center. (Tr. 10/23/07 at 334.) He oversees registered students throughout a 16 week semester. (Tr. 10/23/07 at 334.) Most of the students are between seven to 14 years of age. (Tr. 10/23/07 at 339.) The Center is primarily open between 3:30 p.m. and 7:00 p.m. weekly and has morning classes one day per week from 9:30 a.m. until 12:00 noon. (Tr. 10/23/07 at 340, 351.) The Center also has some evening events and has Saturday hours from 12:00 noon until 3:00 p.m. (Tr. 10/23/07 at 341, 351.) Mr. Smith notices many of the children coming to the Center from Marie Reed Elementary School who are not walking by the proposed Harris Teeter location. (Tr. 10/23/07 at 343, 345, 352-353, 361.) There are children who cross the intersection of 17th and Kalorama and come to the

Center from other locations. (Tr. 10/23/07 at 356-357.) The Center has a capacity of 500 people. (Tr. 10/23/07 at 345.)

19. Mr. Smith indicated that the nearby streets are narrow and that there is a need for parking in the area. (Tr. 10/23/07 at 348.) He stated that it would be hard for him to speculate on the impact of the establishment with a liquor license. (Tr. 10/23/07 at 349.) Mr. Smith did not have an opinion or enough information to know whether the establishment should have a liquor license. (Tr. 10/23/07 at 358.) He did not know if deliveries to the establishment's loading zone on 17th Street would pose a safety hazard but he did have some concerns regarding pedestrian safety. (Tr. 10/23/07 at 349-350.)

20. Ms. Esperanza Paz resides at 1400 Fairmont Street, N.W., and works at H.D. Cooke Elementary School as a registrar. (Tr. 10/23/07 at 364, 367, 384.) She has lived in the neighborhood since 1998. (Tr. 10/23/07 at 364.) As part of her job she works closely with children who attend the school and who live in the neighborhood with their parents. (Tr. 10/23/07 at 364-366.) H.D. Cooke is currently undergoing renovation, and has been closed for almost four years, causing the school to be temporarily located at 300 Bryant Street, N.W. (Tr. 10/23/07 at 367, 384.) Students generally get to Bryant Street by buses provided by the school. (Tr. 10/23/07 at 367.) There are four buses in the morning; four buses at 3:30 p.m. and three buses at 6:00 p.m. (Tr. 10/23/07 at 367-368, 385.) She indicated that the buses return on Kalorama and that traffic is congested at 6:30 p.m. (Tr. 10/23/07 at 368.)

21. Ms. Paz believed traffic would be more congested and more dangerous if the Applicant obtained a liquor license. (Tr. 10/23/07 at 369.) She stated that while she is waiting outside for parents to pick up their children, the children are sometimes roaming around the corner. (Tr. 10/23/07 at 369.) Ms. Paz was opposed to the Applicant obtaining a liquor license. (Tr. 10/23/07 at 382, 389.) The school is planning to reopen in August 2009. (Tr. 10/23/07 at 384-385.)

22. Jeffrey Wilkes has been a neighborhood resident since 1979, and is the current Vice President of RCNA. (Tr. 10/23/07 at 402.) He lives several blocks from the establishment but has been on the H.D. Cooke Elementary School Improvement Team since 2001, which is managing the modernization of the facility. (Tr. 10/23/07 at 402-403, 420, 427.) Mr. Wilkes indicated that there are actually five buses in the morning that pick up kids for the music program at 7 a.m., three more buses at 7:30 a.m. and a late bus at 8:00 a.m. (Tr. 10/23/07 at 404, 423.) He stated that there are three buses in the afternoon and three in the evening. (Tr. 10/23/07 at 424.) Mr. Wilkes believed that it is currently difficult for two large vehicles to pass each other on many of the streets, including Euclid Street. (Tr. 10/23/07 at 405, 407.) He clarified that there are currently 285 students at the school and that the capacity of the new school will be 440 students. (Tr. 10/23/07 at 405.) Mr. Wilkes noted that a number of students live across 16th Street N.W. and cross 16th Street, N.W. and walk along Euclid Street, N.W. (Tr. 10/23/07 at 405, 415.) He has pedestrian safety concerns regarding Euclid Street that kids from H.D. Cooke will dart out on the street when they are not supposed to. (Tr. 10/23/07 at 408, 417.) Mr. Wilkes believed making the streets one-way would make it easier for trucks to

get in and out but was concerned in the event that a truck blocked traffic on Euclid Street. (Tr. 10/23/07 at 409-410.) He was concerned that granting an alcohol license would result in more delivery trucks. (Tr. 10/23/07 at 418, 429.)

23. Mr. Wilkes noted that Harris Teeter is a great store but that this was not the best location for it. (Tr. 10/23/07 at 410, 428.) He believed it will also make it difficult for him to find a parking space. (Tr. 10/23/07 at 411.) Mr. Wilkes was not in favor of the establishment having a liquor license. (Tr. 10/23/07 at 411.) He thought it was a good idea to delay granting the license, and allow the Applicant to open without alcohol, to ease the impact of the establishment. (Tr. 10/23/07 at 413-414.)

24. ANC 1C Commissioner Nancy Shia has lived in the neighborhood for 35 years. (Tr. 10/23/07 at 435.) She is also on the H.D. Cooke Elementary School Improvement Team as well as a member of the Home School Association. (Tr. 10/23/07 at 436.) H.D. Cooke Elementary School is located in Ms. Shia's single member District. (Tr. 10/23/07 at 436.) Ms. Shia is aware of the school's program of using buses to transfer students. (Tr. 10/23/07 at 436.) She identified photos that she took on January 30, 2007 of buses from the school coming around Kalorama Road and having difficulty turning north on 17th Street as well as traffic congestion of 17th Street. (Tr. 10/23/07 at 437-438, 445.) Ms. Shia did not believe making the roads one-way would help the buses turning up 17th Street. (Tr. 10/23/07 at 460.) She thought that four or five buses arrive in the morning between 7:00 a.m. and 8:15 a.m. and three to four buses in the afternoon between 3:15 p.m. and 4:00 p.m. and in the evening between 6:15 p.m. and 7:00 p.m. (Tr. 10/23/07 at 440-441.) Ms. Shia indicated that there are children waiting outside for their parents; some of whom who don't show up until 7:00 p.m. or 7:30 p.m. (Tr. 10/23/07 at 441.) She noted that the use of buses to transfer students should end by August 2009. (Tr. 10/23/07 at 465.)

25. Ms. Shia indicated that her main concern was the children who are walking around from H.D. Cooke and Marie Reed Elementary School. (Tr. 10/23/07 at 452.) She noted that these children will not be walking around in hoards but rather in groups of two and three. (Tr. 10/23/07 at 452.) Ms. Shia stated that when kids start fussing and fighting with each other, that one might jump in the street and get hit by a vehicle. (Tr. 10/23/07 at 452, 466-467.) She indicated that it was unclear what the increase in traffic would be like and she was in favor of delaying the issuance of a license to the Applicant and seeing how the truck patterns and traffic flow work prior to adding the 15 alcohol trucks a week. (Tr. 10/23/07 at 453, 457-458.) Ms. Shia stated that while it is only 15 trucks, she noted that one truck can lengthen a school day by 15 minutes when the children are forced to sit on the school bus. (Tr. 10/23/07 at 458) She was familiar with the Applicant's voluntary agreement where ANC 1C voted to support the Application. (Tr. 10/23/07 at 471.)

26. Pat Patrick has lived in the Adams Morgan community for 35 years. (Tr. 10/23/07 at 479.) He currently lives in the Dorchester House, which is contiguous with the Applicant's building. (Tr. 10/23/07 at 479.) Mr. Patrick is also the President of the Adams Morgan Business and Professional Association. (Tr. 10/23/07 at 480.) He has been a commercial real estate broker for the last twenty years. (Tr. 10/23/07 at 480.) Mr.

Patrick is very familiar with real estate in Adams Morgan and has put approximately 325 to 350 commercial establishments into Adams Morgan. (Tr. 10/23/07 at 481, 501.) His chief concern is the safety of the children. (Tr. 10/23/07 at 482-484, 488.) Mr. Patrick indicated that in the morning there are three to four dozen children walking to Marie Reed Elementary School from Kalorama Road or 17th Street. (Tr. 10/23/07 at 483.) He indicated that after school, there are more children as they stop at the Center. (Tr. 10/23/07 at 483.) Mr. Patrick was also in favor of delaying the Applicant's liquor license for a period of six months to a year in light of the increase in traffic and trucks that the Applicant's establishment will bring. (Tr. 10/23/07 at 486-487, 500.)

27. Mark Rasmussen owns the property at 1654 Kalorama Road and currently resides in another part of the District on 16th Street. (Tr. 10/23/07 at 510, 512.) He is the landlord for the property at 1654 Kalorama Road and has tenants who live there. (Tr. 10/23/07 at 510, 512, 528.) This property is located directly opposite the driveway for the Applicant's parking garage. (Tr. 10/23/07 at 512.) Mr. Rasmussen is concerned that cars exiting the Applicant's parking garage will impact the living conditions of his property. (Tr. 10/23/07 at 510.) Specifically, that as cars exit at night, the headlights wash across his front window. (Tr. 11/14/07 at 510.) Mr. Rasmussen's concern is that if there are a number of cars coming out on a regular basis at night with their headlights on, they are going to peer into his front window. (Tr. 10/23/07 at 511.) He is also concerned about noise caused by cars coming from the parking garage, including car radios, screeching wheels, and honking horns. (Tr. 10/23/07 at 511.) Mr. Rasmussen had no evidence that noise would be a problem and only speculated that it would be, given the size of the garage. (Tr. 10/23/07 at 515, 525.)

28. Bryan Weaver lives at 1812 Calvert Street, N.W. and is the Chairperson of ANC 1C. (Tr. 10/23/07 at 531.) He is also the founder of a non-profit organization that coordinates mentoring programs for local teens, including study abroad programs. (Tr. 10/23/07 at 531.) His organization intends to make use of facilities located in the same building as the Sitar Center. (Tr. 10/23/07 at 532.) Mr. Weaver stated that there are three programs, a primary plus program, a middle school program, and a high school program, that all require space for mentoring and after school work. (Tr. 10/23/07 at 533.) He clarified that these three programs would mentor approximately 250 children from the community and that a large portion of these children would be located in the same building as the Sitar Center. (Tr. 10/23/07 at 533.) Mr. Weaver noted that this part of the neighborhood has a lot of kids in it every day. (Tr. 10/23/07 at 534.)

29. Mr. Weaver indicated that there was a split with ANC 1C on Harris Teeter and that it was one of the most difficult voluntary agreements to negotiate. (Tr. 10/23/07 at 535.) He noted that ANC 1C voted four to three in favor of the voluntary agreement at a public meeting and that he was the deciding vote. (Tr. 10/23/07 at 536, 547.) Mr. Weaver stated that the issue of delaying a license to the Applicant was not before ANC 1C but that he did see some value in it. (Tr. 10/23/07 at 537.)

CONCLUSIONS OF LAW

30. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence and testimony upon which this determination must be made, the Board concludes that the Applicant has demonstrated that the issuance of a new Class "B" retailer's license, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

31. 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). In this case, after filing a timely protest, ANC 1C voted 4 to 3 at a public meeting to enter into a voluntary agreement with the Applicant, dated October 11, 2006, and withdraw its protest. The October 11, 2006 voluntary agreement is a well thought out detailed four-page agreement that consist of 31 terms that ANC 1C is asking the Board to adopt. The Board finds these terms, including restrictions on the sale of single containers of beer to be reasonable. As such, the Board finds the recommendations of ANC 1C contained in the agreement to be entitled to great weight and is adopting them as conditions on the Applicant's license.

32. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and 23 DCMR § 400.1(a) (2004), the Board must determine whether the issuance of a new Class "B" retailer's license will have an adverse effect on the peace, order, and quiet of the neighborhood. The Board finds based upon the testimony of Investigator Scurlock, Mr. Tujetsch, and Mr. Deutsch that the granting of a new Class "B" retailer's license would not adversely affect the peace, order, and quiet of the neighborhood. For example, Investigator Scurlock's visits to the establishment did not reveal any problems with loitering and he found the amount of litter in the surrounding area, including the sidewalks and alleys, to be minimal despite the fact that it was a high construction area. Additionally, the testimony of Mr. Tujetsch reflected that the Applicant makes a concerted effort to keep the store and its shelves and floors clean and will have a security guard at the establishment to immediately address any loitering issues. Furthermore, the testimony of Mr. Deutsch reflected that good retail, such as the Applicant's establishment, would have a positive impact on the peace, order, and quiet and the security of the neighborhood.

33. The testimony of Mr. Rasmussen indicated that he was concerned about noise; however, he had no evidence that noise would be a problem and acknowledged that he was only speculating that it would be a problem given the size of the Applicant's garage. Mr. Rasmussen also had some concerns about headlights from cars leaving the garage peering into his front window. However, the Board found based upon the testimony of Mr. Deutsch that the Applicant has made a good-faith effort to implement measures to address this concern.

34. Pursuant to D.C. Official Code § 25-313(b)(3) (2001) and 23 DCMR § 400.1(b) (2004), the Board must determine whether the issuance of a new Class "B" retailer's license to the Applicant will have an adverse effect on residential parking needs. The Board finds based upon the testimony of Mr. Van Pelt, Mr. Deutsch, and Mr. Tujetsch that the granting of a new license would not adversely affect residential parking. Specifically, the testimony of Mr. Van Pelt, Mr. Deutsch, and Mr. Tujetsch revealed that: (1) the parking garage has 118 parking spaces with 85 spaces designated to Harris Teeter; (2) the remaining 33 parking spaces would be available to Harris Teeter during off-hours, which are after 5:30 p.m.; (3) a traffic study revealed that approximately 60 percent of customers visiting the establishment are expected to be walk-in customers; and (4) all three of these individuals indicated that the parking garage contained a sufficient number of parking spaces for the establishment.

35. The Board is also required to consider the license's impact on vehicular and pedestrian safety. The testimony of Investigator Scurlock revealed that he did not observe any incidents that posed a safety issue to pedestrians or vehicles during his visits. Additionally, the testimony of Mr. Van Pelt and Mr. Tujetsch indicated that the Applicant's establishment has a Truck Management Plan in place and that a dock manager will remain in place for all deliveries, including alcoholic beverage deliveries. The Board believes that the presence of an outside dock manager is important and it is adopting the requirement that the dock manager be present for alcoholic beverage deliveries as a condition of the Applicant's license. However, concerns were raised by a number of Protestants, including Mr. Wilkes, Ms. Shia, and Mr. Patrick, regarding pedestrian and vehicular safety, primarily related to the safety of children walking to and from Marie Reed Elementary School, the Center, and from bus transfers carrying H.D. Cooke Elementary School children. As such, the Board is limiting the hours that alcoholic beverage deliveries can occur on Monday through Friday to between 8:30 a.m. and 3:00 p.m. Specifically, the testimony put forth by the Protestants reflected that several school buses pick up children near the Applicant's establishment as late as 8 a.m. and start dropping children off around 3:30 p.m. Additionally, the testimony indicated that children are in the area of the establishment after 3:30 p.m., including activities at the Sitar Center. The Board believes that limiting the Applicant's alcoholic beverage delivery times to those occasions when children are generally in school will help to alleviate potential vehicular and pedestrian issues as the result of a number of children walking and being transported in this area. Additionally, a number of the Protestants suggested allowing the establishment to open but delaying the issuance of a license to the Applicant for a period of six months to a year to address this potential concern. In this instance, the Board did not find there to be sufficient evidence to warrant delaying the issuance of a license to the Applicant. However, the Board does believe that it is a good idea to schedule a fact-finding hearing with the Applicant one-year from the date of this order to monitor: (1) the effectiveness of the Truck Management Plan and the Dock Manager; and (2) the impact of the weekly fifteen (15) alcoholic beverage deliveries on vehicular and pedestrian safety; and (3) whether it is necessary to maintain the Board's limitation on alcoholic beverage delivery hours. As such, the Board is scheduling a hearing with the parties to this case, as well as ANC 1C, for February 25, 2009.

36. The Board finds based upon the testimony of Mr. Deutsch and Ms. Moss that the Applicant's establishment will actually increase property values and it will not have an adverse impact on real property values. Specifically, the testimony of Mr. Deutsch revealed that the proximity of a grocery store to 1701 Kalorama Road, N.W., was one of the top questions asked related to the sale of these condominiums. This fact was verified by the testimony of Ms. Moss who indicated that she sold 20 percent of the condominium units at 1701 Kalorama Road, N.W., and that one of the selling points for buyers was that Harris Teeter is coming to the neighborhood.

37. Pursuant to D.C. § 25-314, the Board is required to consider (1) the proximity of the establishment to schools, recreation centers, day care centers, and public libraries, (2) the effect of the establishment on the operation and clientele of these facilities, and (3) whether school age children will be unduly attracted to the establishment. The Board finds no evidence based upon the record as a whole, that the Applicant's establishment would have an adverse impact on the above referenced schools and facilities such as the Center. The Board would note that the testimony of Mr. Smith from the Center indicated that it would be hard for him to speculate on the impact of the Applicant's establishment with a liquor license. The Board also found based upon the testimony of Ms. Moss and Mr. Deutsch that there was a demand for this type of establishment in the neighborhood and that the granting of a Class "B" retailer's license would not create an overconcentration of ABC licenses in the neighborhood.

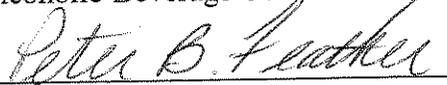
ORDER

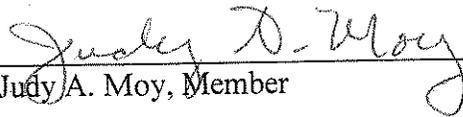
Therefore, it is hereby **ORDERED** on this 27th day of February 2008 that the Application for a new Class "B" retailer's license filed by Harris Teeter, Inc., t/a Harris Teeter at premises 1631 Kalorama Road, N.W., Washington, D.C., be and the same is hereby **GRANTED**.

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 shall be required to follow the terms of its voluntary agreement with ANC 1C, dated October 11, 2006;
2. The Applicant shall maintain a dock manager outside during alcoholic beverage deliveries;
3. The Applicant's weekly alcoholic beverage deliveries shall not exceed fifteen (15);
4. Alcoholic beverage deliveries occurring on Monday through Friday shall occur between the hours of 8:30 a.m. and 3:00 p.m.; and
5. The Applicant shall return for a fact-finding hearing on February 25, 2009 at 1 p.m.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Judy A. Moy, Member

Albert G. Lauber, Member


Mital M. Gandhi, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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 § 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).

Advisory Neighborhood Commission 1C Cooperative Agreement

Pursuant to the provisions of Title 25, Section 446 the parties hereto, Harris Teeter, Inc., and the Advisory Neighborhood Commission 1C, (the ANC); enter into this Voluntary Agreement this 11 day of ~~September~~, 2006.

Whereas, Applicant's application for a Retailer's Class "B" license at its Harris Teeter store location at 1631 Kalorama Rd, Washington, D.C. 20009 (the premises), ABC Application #~~13993~~, ABC License # _____, is now pending before the District of Columbia Alcoholic Beverage Control Board (ABC), and

Whereas, the premises are within the boundaries of ANC 1C, and

Whereas, the parties desire to enter into a voluntary agreement governing certain understandings regarding the issue of a Retailer's Class "B" liquor license at the subject premises:

Now Therefore Be It Resolved, the parties agree as follows:

1. Applicant will take action reasonable and necessary to prohibit and prevent loitering and panhandling within 100 feet of the premises by:
 - a. Posting and maintaining "No Loitering, No Panhandling" signs on the premises. These signs will be printed in English and Spanish and will be posted within 30 days after an alcoholic beverage license is issued; and the signs will also request customers not to contribute to panhandlers on the premises. The Applicant will also ask loiterers to "move on" whenever they are observed on the premises.
 - b. Calling the Metropolitan Police Department (MPD) if a crime is witnessed. The Applicant will maintain a log of calls made to MPD, and will make such log available to be seen upon initiation of protest proceedings until resolution of protest.
2. The Applicant shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the premises, or other property used by the Applicant to conduct business, are kept free of litter by a daily program of sweeping. The Applicant will comply with all applicable litter control laws.
3. Hours of Operation: Applicant will initially maintain maximum hours of operation of 7 a.m. until 11 p.m. from opening date through second Memorial Day following opening date. For a trial period from the second Memorial Day of operation through Labor Day of the same year, Applicant may opt for hours of operation of 7am until midnight. This trial period will assess the impact of midnight closing on peace, order, and quiet in the community. During August of that summer, the parties will review the results of the trial and discuss whether permanent extension to midnight can be agreed to. Thereafter, if the extension to midnight is agreed to the parties will adopt an amendment to this Voluntary Agreement and submit the amendment to the ABC board for approval. If the midnight

closing time is not agreed to, closing hour will automatically revert on the day after the second Labor Day to 11 p.m. Absent agreement, the applicant reserves the right to seek hours past 11 p.m. through the application to ABC Board for "substantial change," in which case ANC 1C will have the right to protest based on "adverse effects on peace, order, and quiet in the community."

4. Hours of Alcohol sales: Applicant will maintain hours for beer and wine sales from 9a.m. to 10 p.m.
5. The Applicant shall take reasonable measures to control the parking and pedestrian traffic issues that may arise due to increased traffic in the area by its patrons, including but not limited to asking patrons who are double parked to move. Further, in order to alleviate the potential parking problems, signs will be clearly posted notifying patrons of free parking in the parking garage.
6. The Applicant shall ensure that graffiti is not allowed to remain on any exterior portion of the premises, in particular the back wall of the building. The Applicant will work to have the graffiti removed as quickly as possible, but in no event more than two weeks (14 days) after its first appearance.
7. The Applicant shall ensure, pursuant to D.C. Law, that when it snows or when ice forms, all public sidewalks surrounding the building are cleared of snow from the building to the curb within 24 hours of the ending of the snowfall or formation of the ice.
8. The Applicant agrees to maintain any city flower/tree boxes on the public sidewalk in the front of the premises.
9. The Applicant will maintain human and or/electronic surveillance in its aisles in which beer and wine are displayed.
10. The Applicant will not sell single containers of beer in any size.
11. The Applicant shall not sell any single serving containers of wine under 750 milliliters, unless said wine containers are sold in packages of four or more bottles.
12. The Applicant shall not sell malt liquor; the applicant shall not sell any fortified wines; and the applicant shall sell premium and imported beers and wines.
13. In the event that the ANC finds objectionable certain alcohol products that the Applicant begins to sell, the Applicant will make itself available to meet with the ANC for the purpose of discussing the ANC's concern and the possibility of withdrawing such item(s), if (after listening to and discussing the ANC's position) it concurs with the ANC's position on the matter.
14. The Applicant shall post in a conspicuous place where alcoholic beverages are sold in the store, a sign which reads in both Spanish and English "Warning: Drinking Alcoholic Beverages During Pregnancy Can Cause Birth Defects."
15. The Applicant will work cooperatively with the neighborhood to promote alcohol abuse programs. The Applicant will place alcohol awareness and anti-drug literature in the beer and wine section of the store and regularly distribute the literature to the youth who

reside in the ANC 1C community through the public schools and recreation centers located within its boundaries. The Applicant also agrees to participate in at least one among several youth-oriented programs (as identified by ANC 1C) each year addressing alcohol or drug-related issues.

16. The Applicant will cooperate with the ANC in efforts to alleviate alcohol abuse problems, illegal drug activity and loitering by participating in ANC and community meetings as circumstances may warrant. The Applicant shall reasonably cooperate with the ANC to improve the overall environment in and immediately around the premises to make a more pleasant, safe area for residents, customers and businesses.
17. The Applicant agrees not to post advertisements for beer and wine on the windows or doors of the store, or on the exterior of the premises.
18. The Applicant agrees not to post any advertisements or flyers for alcoholic beverages on any public space, including light posts, mailboxes or automobiles in the neighborhood.
19. Applicant agrees to maintain a full-range of fresh, frozen and canned food items as well as other domestic products.
20. The Applicant will prohibit the consumption of alcoholic beverages purchased at the store, on the premises and its parking lot and take the necessary actions to prevent said consumption. Nothing contained herein will preclude wine tastings as permitted by law and regulation.
21. The Applicant shall not directly sell or deliver alcoholic beverages to any persons who appear to be intoxicated.
22. The Applicant will prohibit the sale of alcoholic beverages to minors.
23. The Applicant agrees to program its checkout scanners to prompt its clerks to check the identification of any customer purchasing alcoholic beverages although the Applicant shall only demand certain identification from any person seeking to buy alcoholic beverages at its store who appears to be under 30 years of age. Certain identification includes requesting a valid identification document that is officially issued by an agency of a local, state, or federal government. That identification document must contain the name, date of birth, signature and photograph of the bearer. In the event a cashier is handed an identification document that the cashier believes to be faked, fraudulent, or stolen, the cashier shall seek out an ABC Manager on duty for further examination of the document.
24. The Applicant will program its checkout scanners to prompt its sales clerks to refuse a sale when a purchase of an alcoholic beverage is attempted outside the hours allowed by law.
25. The Applicant agrees to participate in an ABC Board-approved course in alcoholic beverage sales management and shall not sell alcoholic beverage products at any time when a licensed ABC Manager is not on duty.
26. The Applicant agrees to establish and maintain a training program for all cashiers employed by the Applicant at the time the ABC license is granted, and for all persons

(prior to their commencing work) who become employed as cashiers after such time, specifically instructing them as to the prohibitions and requirements in sections 21 through 26 above, as well as any other prohibitions and requirements under the ABC laws and regulations that may apply to their work. In the event a cashier violates any of such prohibitions and requirements, the Applicant shall take appropriate disciplinary action.

27. The Applicant agrees to keep a copy of this agreement available at the store at all times.
28. The provisions of this agreement cannot be changed unless express written consent is given by Applicant and the ANC, and approved by the ABC Board.
29. In consideration of and reliance upon the commitments reflected in the above paragraphs, the ANC IC agrees to withdraw its protest of the Applicant's pending license application.
30. The parties further agree that failure by the Applicant to adhere to the foregoing Cooperative Agreement will constitute grounds for the ANC to petition the ABC Board to issue a Notice of Show Cause as provided in Title 25, Section 447.
31. The parties further agree that in the event of the sale of this retail grocery store during this license period, the Applicant will notify the ANC prior to the effective date of the sale and will notify the new owner of the terms of this Cooperative Agreement.



(Harris Teeter)



(ANC IC) CHAIRPERSON,
ANC IC