

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

<b>In the Matter of:</b>	)	
	)	
Giron and Martinez, Inc.	)	
t/a Acuario	)	
	)	
Application for Substantial Change	)	
to Retailer's Class CR License	)	License No. 74502
	)	Order No. 2010-317
at premises	)	
3410 11 <sup>th</sup> Street, N.W.	)	
Washington, D.C. 20010	)	
	)	

Giron and Martinez, Inc., t/a Acuario, Applicant

Cliff Valenti, Chairperson, Advisory Neighborhood Commission (ANC) 1A

Tim Turner, on behalf of a Group of Five or More Individuals ("Group of Five")

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

**ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST**

The official records of the Alcoholic Control Board (Board) reflect that Giron and Martinez, Inc., t/a Acuario, Applicant for a Substantial Change to a Retailer's Class CR license located at 3410 11<sup>th</sup> Street, N.W., Washington D.C., and ANC 1A have entered into a Voluntary Agreement ("Agreement"), dated December 14, 2009, setting forth the terms and conditions that govern the operation of the Applicant's establishment. This Agreement constitutes a withdrawal of the Protest of this Application by ANC 1A. The Group of Five remains a Protestant.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Commissioner Betty Pair are signatories to the Agreement.

**Giron and Martinez, Inc.**  
**t/a Acuario**  
**License No. 74502**  
**Page Two**

Accordingly, it is this 7<sup>th</sup> day of April 2010, **ORDERED** that:

1. The Application filed by Giron and Martinez, Inc., t/a Acuario, for a Substantial Change to its Retailer's Class CR license located at 3410 11<sup>th</sup> Street, N.W., Washington, D.C., is **GRANTED**;

2. The Protest of ANC 1A in this matter is hereby **WITHDRAWN**;

3. This above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and

4. Copies of this Order shall be sent to the Applicant, ANC 1A, and the Group of Five.

Giron and Martinez, Inc.  
t/a Acuario  
License No. 74502  
Page Three

District of Columbia  
Alcoholic Beverage Control Board

\_\_\_\_\_  
Mital M. Gandhi, Member



\_\_\_\_\_  
Nick Alberti, Member

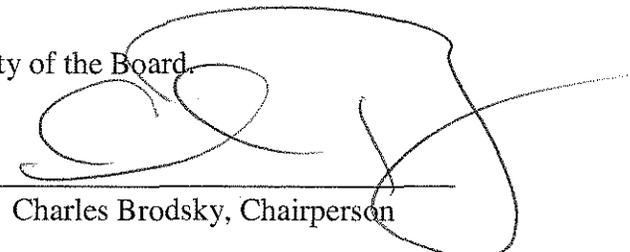


\_\_\_\_\_  
Donald Brooks, Member



\_\_\_\_\_  
Herman Jones, Member

I dissent from the position taken by the majority of the Board.

  
\_\_\_\_\_  
Charles Brodsky, Chairperson

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, 1250 U Street, N.W., 3<sup>rd</sup> Floor, Washington, D.C. 20009.



## ADVISORY NEIGHBORHOOD COMMISSION 1A

ANC 1A01 - Lisa Kralovic  
ANC 1A02 - Calvin Woodland  
ANC 1A03 - Luis Morales  
ANC 1A04 - Betty Pair  
ANC 1A05 - William Jordan

ANC 1A06 - Samuel Johnson  
ANC 1A07 - James Simcox  
ANC 1A08 - Cliff Valenti  
ANC 1A09 - LaKeisha Thomas  
ANC 1A10 - Lenwood Johnson  
ANC 1A11 - Sandra Scotland

### VOLUNTARY AGREEMENT

**THIS AGREEMENT**, made and entered into this 14<sup>th</sup> day of December 2009, by and between Giron and Martinez, Inc., T/A Acuario, License Number 74502, License Class "C", located at 3410 – 3412 Eleventh Street, NW, Washington, DC 20010 (hereinafter the "Applicant") and the Advisory Neighborhood Commission 1A, on behalf of the community of Single Member District 1A-06 (hereinafter the "Protestant").

**WHEREAS**, Applicant having filed an application with the District of Columbia Alcohol Beverage Control Board (hereinafter the "ABC Board") for issuance of a modification to its class "C" license for the premises of 3410 – 3412 Eleventh Street, NW, Washington, DC 20010, which application is before the ABC Board in case number 09-CMP-00745.

**WHEREAS**, Protestant having timely filed before the ABC Board a protest opposing the granting of the referenced application; and

**WHEREAS**, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will adopt certain measures to address Protestant's concerns, and Protestant will agree to the modification of the ABC License and withdraw its protest.

**NOW THEREFORE**, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

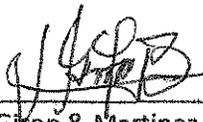
- 1. Noise Suppression:** There shall be no loud music performed in the establishment. Sound emanating from any part of the establishment shall not be audible in residential structures in the vicinity or on the sidewalks across the street from and adjacent to the restaurant on Park Road and 11<sup>th</sup> Street. The Applicant's operation shall be at all times in compliance with the DC Noise Control Act. Applicant will encourage, to the best of its ability, employees and patrons, by posted signs or other printed notation (easily visible to the naked eye on both the exterior and interior of the premises), to be considerate of residents in the neighborhood after departing the premises, by keeping conversations and other noises at a level that will not disturb the *peace, order, quiet and tranquility* of residents in the enjoyment of their homes or generate a noise complaint, and to respect the property of the residents by not urinating or trespassing upon the same. All due diligence will be made by the Applicant to ensure there is no loitering in front of or in the vicinity of the establishment, especially loud cursing, public drunkenness, fighting or other acts of aggression.
- 2. Hours of Operation:** Applicant may open its doors to receive patrons from 10:00 a.m. to 2:00 a.m. Monday through Thursday, Friday and Saturday from 10:00 a.m. to 3:00 a.m., and Sunday from 10:00 a.m. to 2:00 a.m. Last call will be one hour before closing times. Karaoke (live

entertainment) will be allowed on **Friday and Saturday only** from 8:00 p.m. until 1:00 a.m. with no employees of the establishment allowed to participate in said karaoke at any time. Alcoholic beverages may not be carried out of the establishment. Food service will be available at all times during the hours of operation. No other forms of entertainment such as dancing, lewd behavior or inappropriate activities will be allowed at any time. Curtains in the front windows will remain open at all times during the hours of operation. Applicant agrees to close down karaoke promptly at 1:00 a.m. and have no after-hours entertainment.

3. **Trash Removal:** Applicant will maintain regular trash/garbage removal service. Trash/garbage shall be removed from the trash and dumpster area, which shall be kept clean at all times, at a minimum of 4 times per week (days for removal to be decided by Applicant and business necessity). Trash trucks shall not come before 9:00 a.m. on weekdays and 10:00 a.m. on weekends. Applicant will empty bottles by noontime each day and not empty trash after 6:00 in the evening. Applicant shall *enclose* the dumpsters and keep dumpster lids tightly closed so that rodents cannot enter them and odors are better controlled. Applicant will conduct regular rodent and pest (insect) abatement. The property currently used by Applicant for its dumpsters is not part and parcel of Applicant's premises. Applicant agrees to keep area used to store dumpsters clean at all times and will promptly notify the proper DC department of any items illegally dumped and request removal of said items.
4. **Removal of Grease and Oils:** Applicant will provide for the proper removal of grease and oils and will not deposit these substances in dumpster.
5. **Litter and Debris Removal:** Applicant will maintain free of trash and litter the public space and streets to a minimum of 18 feet from the curb, adjacent to the front of the premises along 11<sup>th</sup> Street, in compliance with applicable DC regulations in this respect and as often as needed, but at least twice daily.
6. **Food Service to Liquor Ratio:** Applicant will comply in all respects with the requirements of its license or other requirements of the law, including maintaining the appropriate ratio between food service and liquor sales (45 percent liquor sales and 55 percent food sales, or that ratio mandated by District regulations pursuant to its class "C" license). Applicant shall refuse to sell alcohol or cigarettes to legally underage persons and *refuse* to sell alcohol to inebriated [drunk] persons.
7. **Ingress and Egress:** No patron shall be allowed ingress or egress at any location except at the designated building's entrances for restaurant patronage except where this event may occur at the designated emergency exits.
8. **Public Space/Private Property Usage:** No tables or structures shall be placed outside the building without proper licensing and notification. Applicant shall reconstruct, according to proper building codes in effect, structure it has erected at rear of premises.
9. **Employment Practices:** Applicant will make its best effort to recruit, hire and maintain employees from the Columbia Heights neighborhood and adjacent areas.

10. **Right to Protest:** The parties agree that if reasonable discussions of violations are not resolved, then any failure of Applicant to adhere to foregoing commitments would constitute a breach of this agreement and provide grounds for the Protestant to petition the ABC Board for issuance of an Order to Show Cause, as provided by DC regulations.

IN WITNESS WHEREOF, the parties place their signatures to this agreement, this 14<sup>th</sup> day of December 2009.

   
Giron & Martinez, Inc. T/A Acuario Betty Pair for ANC 1A

BY: \_\_\_\_\_



**ADVISORY NEIGHBORHOOD COMMISSION 1A**

*ABMA  
12/22/09*

ANC 1A01 - Lisa Kralovic  
ANC 1A02 - Calvin Woodland  
ANC 1A03 - Luis Morales  
ANC 1A04 - Betty Pair  
ANC 1A05 - William Jordan

ANC 1A06 - Samuel Johnson  
ANC 1A07 - James Simcox  
ANC 1A08 - Cliff Valenti  
ANC 1A09 - LaKeisha Thomas  
ANC 1A10 - Lenwood Johnson  
ANC 1A11 - Sandra Scotland

15 December 2009

Mr. Nicholas Alberti, Chair  
Alcoholic Beverage Control Board  
Alcoholic Beverage Regulation Administration  
941 North Capitol Street, NE  
Suite 7200  
Washington, DC 2002

RE: License Nr. 74502/Case Nr. 09-CMP-00745/Giron & Martinez, Inc., T/A Acuario

Dear Mr. Alberti:

Enclosed is the Voluntary Agreement ANC 1A has negotiated with the referenced establishment and its principals. ANC 1A hereby formally withdraws the protest it had in the case and requests that this Voluntary Agreement be recorded with the license.

Please call me if you have any questions about this Voluntary Agreement. I was assisted in the negotiation by Mr. George Escobar, Deputy Director of OLA, who acted as our translator.

Sincerely,

Betty Pair  
Commissioner 1A 04

BP/tbm  
Enclosure

Cc: Cliff Valenti, Chair ANC 1A  
File

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

\_\_\_\_\_ )  
In the Matter of: )  
 )  
Giron and Martinez, Inc. )  
t/a Acuario )  
Application for Renewal )  
Of a Class CR License ) Case No. 61075-07/052P  
at premises ) License No. 74502  
3410 11th Street, N.W. ) Order No. 2008-196  
Washington, D.C. 20010 )  
\_\_\_\_\_ )

BEFORE: Peter B. Feather, Chairperson  
Judy A. Moy, Member  
Mital M. Gandhi, Member

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

Donnie Gonzalez, on behalf of the Applicant

Dottie Love Wade, Chair, and Samuel Johnson, Commissioner, on  
behalf of Advisory Neighborhood Commission 1A

Tim Turner, on behalf of the Columbia Pristine Condo Association

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

The Application, filed by Giron and Martinez, t/a Acuario, (Applicant) for Renewal of its Retailer's Class CR License at premises 3410 11<sup>th</sup> Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on June 20, 2007. Protests against the Application were timely filed in the case by Advisory Neighborhood Commission (ANC) 1A by letter dated May 16, 2007 and by the Columbia Pristine Condo Association by letter dated May 1, 2007.

The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the renewal of the Applicant's 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 a public protest hearing on February 20, 2008. 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 counsel, and the documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant is requesting the renewal of its Retailer's Class CR license. (ABRA Licensing File No. 74502.) The Applicant's establishment is located in the Columbia Heights neighborhood in Ward 1 at 3410 11<sup>th</sup> Street, N.W., where it has operated since 2005. (Tr. 2/20/08 at 28, 83.) It is located in a C2A Zone. (ABRA Exhibit No. 1.) The establishment is bounded by Park Road, N.W. to the west, Monroe Street, N.W. to the east, 13<sup>th</sup> Street N.W. to the north and 11<sup>th</sup> Street N.W. to the south. (Tr. 2/20/08 at 28; ABRA Exhibit No. 1.) The neighborhood is comprised of a mixture of commercial and residential buildings. (Tr. 2/20/08 at 28; ABRA Exhibit No. 1.) There are approximately 13 Alcoholic Beverage Control (ABC) licensed establishments within 1,000 feet of the Applicant's establishment. (Tr. 2/20/08 at 28; ABRA Exhibit No. 1.) Street parking is available in the vicinity of the establishment and consists of metered and non-metered parking spots. (Tr. 2/20/08 at 29; ABRA Exhibit No. 1.) The parking availability is limited by "no parking" zones and "commercial vehicle loading" zones. (Tr. 2/20/08 at 29; ABRA Exhibit No. 1.) There are eight bus stops located in the vicinity of the establishment. (Tr. 2/20/08 at 29; ABRA Exhibit No. 1.)

2. The establishment has a certificate of occupancy for 39 patrons, but there is no Entertainment Endorsement. (Tr. 2/20/08 at 40-41, 111-112; ABRA Licensing File No. 74502.) The Applicant's hours of sale and service of alcohol are Sunday from 10:00 a.m. to 2:00 a.m., Monday to Thursday from 8:00 a.m. to 2:00 a.m. and Friday and Saturday from 8:00 a.m. to 3:00 a.m. (Tr. 2/20/08 at 29; ABRA Licensing File No. 74502.) The Applicant disposes of its waste in three trash containers behind the restaurant in the public alley. (Tr. 2/20/08 at 29.) The establishment's trash is collected three times a week on Tuesdays, Thursdays and Saturdays. (Tr. 2/20/08 at 29, 39.)

3. By letter dated May 16, 2007, ANC 1A protested the Applicant's license application to renew its Class CR license. (ABRA Protest File No. 07/052P.) ANC 1A's letter indicates that the parties were unable to negotiate a settlement and that the granting of the renewal application would impact the peace, order, and quiet, of the neighborhood. (ABRA Protest File No. 61075-07/052P.) Specifically, ANC 1A is concerned about noise levels, public urination, trash removal and the construction of an illegal structure in the rear of the property. (ABRA Exhibit No. 1.) The Columbia Pristine Condo Association filed a letter of protest dated May 1, 2007 setting forth its concerns about the establishment's impact on the peace, order and quiet of the neighborhood. (ABRA Protest File No. 61075-07/052P.) Specifically, the Columbia Pristine Condo Association is concerned about the Applicant's lack of adherence to the District of Columbia rules and regulations, the overserving of patrons, excessive noise and matters concerning trash removal and storage. (ABRA Exhibit No. 1.)

4. Amanda Sheehan has been an investigator with the Alcoholic Beverage Regulation Administration (ABRA) since February 5, 2007. (Tr. 2/20/08 at 25.) Her duties include conducting inspections and investigations in ABC licensed establishments throughout the District of Columbia. (Tr. 2/20/08 at 25.) She was assigned to conduct an investigation regarding the protest of the Applicant's license renewal and she prepared a report dated February 8, 2008 regarding her findings. (Tr. 2/20/08 at 25-26, 35.) Investigator Sheehan and other ABRA investigators visited the establishment on 29 separate occasions between December 12, 2007 and January 8, 2008 during afternoon and evening hours. (Tr. 2/20/08 at 30, 36-37; ABRA Exhibit 1.) During the times the establishment was monitored, the ABRA Investigators did not observe loitering, trash, intoxicated persons or public urination. (Tr. 2/20/08 at 31; ABRA Exhibit 1.) Nor did the investigators hear excessive noise. (Tr. 2/20/08 at 31, 39.) There was, however, one incident of an aggravated assault that took place at the establishment on June 6, 2007 where a patron struck another patron over the mouth with a vase. (Tr. 2/20/08 at 32, 41-42, 45-46.)

5. On January 14, 2008, Investigator Sheehan conducted a regulatory inspection of the establishment where she interviewed the owner, Victor Giron. (Tr. 2/20/08 at 30.) She observed that the establishment's ABC licenses and other required permits were posted properly and that the establishment was orderly and clean. (Tr. 2/20/08 at 30.) Investigator Sheehan also observed that the windows at the front of the establishment were either blacked-out or tinted, prohibiting people on the outside of the establishment from looking inside. (Tr. 2/20/08 at 30, 32, 38.) She noticed a structure at the rear of the establishment that had been constructed in such a way that it closed off the rear exit of the establishment. (Tr. 2/20/08 at 30, 32, 43.) Investigator Sheehan referred the construction and structure to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). (Tr. 2/20/08 at 30, 32, 47.) With no rear exit to the establishment, the trash is removed from the restaurant through the front door and around the back to the alley. (Tr. 2/20/08 at 50.)

6. During the monitoring site visits, Investigator Sheehan did observe that there was little street parking available in the vicinity of the establishment. (Tr. 2/20/08 at 31.) There was also minimal vehicular or pedestrian safety concerns observed by the ABRA investigators. (Tr. 2/20/08 at 31, 35.) Investigator Sheehan witnessed the use of security at the front door of the establishment to monitor patrons who enter and exit the restaurant. (Tr. 2/20/08 at 50.)

7. Anderson Liriano is an Officer with the Metropolitan Police Department (MPD). (Tr. 2/20/08 at 55.) He has been assigned to the neighborhood in which the establishment is located for about six months. (Tr. 2/20/08 at 55, 62.) His experience with the establishment has always been good and, but for the one incident of aggravated assault, there have been no problems in the six months he has patrolled that neighborhood. (Tr. 2/20/08 at 56.) Officer Liriano has not received calls regarding loud music, nor has he witnessed any fighting in the vicinity of the restaurant. (Tr. 2/20/08 at 63, 68.) He does not believe that the restaurant has a negative impact on the community. (Tr. 2/20/08 at 57, 65.) Officer Liriano believes that presence of MPD officers helps to deter crime and

unseemly behavior that might occur. (Tr. 2/20/08 at 59.) He does not believe that traffic or street parking is a problem in that locale. (Tr. 2/20/08 at 68.)

8. Rudy Lara is a licensed paramedic with the District of Columbia. (Tr. 2/20/08 at 76.) He is assigned to Unit 21 in Adams Morgan and his unit has responsibility for the Adams Morgan and Columbia Heights neighborhoods. (Tr. 2/20/08 at 76.) He is also a patron of the restaurant. (Tr. 2/20/08 at 76.) He has not observed overly drunk patrons departing the establishment nor has he witnessed patrons who would pose a threat to themselves or to the community.(Tr. 2/20/08 at 77, 81.)

9. Mr. Giron and his wife, Carmen Martinez are the owners of the Acuario Restaurant. (Tr. 2/20/08 at 82.) Mr. Giron started receiving complaints from the neighborhood about six months after they opened. (Tr. 2/20/08 at 83.) The complaints regarded patrons fighting, fornicating inside the restaurant and urinating outside of the restaurant. (Tr. 2/20/08 at 83.) He was also aware that members of the community claimed that there was prostitution at the restaurant. (Tr. 2/20/08 at 88.) Mr. Giron stated that there is no proof of that behavior and he has not witnessed his patrons urinating in public. (Tr. 2/20/08 at 88, 111.) The establishment has one bartender and three waitresses. (Tr. 2/20/08 at 109.) Mr. Giron testified that he, his wife, and the waitresses have had alcohol awareness training. (Tr. 2/20/08 at 110.) Most of the Applicant's patrons live in the neighborhood. (Tr. 2/20/08 at 113.)

10. With regard to trash removal, Mr. Giron is now having the trash hauled away from the establishment four times a week. (Tr. 2/20/08 at 108.) He also testified that due to complaints from the neighbors, Mr. Giron is no longer removing the trash from the restaurant late at night or early in the morning. (Tr. 2/20/08 at 90-91.) The trash is being removed at 10:00 a.m. when he opens the restaurant. (Tr. 2/20/08 at 91, 108.) The reason the trash is removed through the front door is because the back door no longer exists due to the new structure. (Tr. 2/20/08 at 90.) The structure at the rear of the establishment was constructed because Mr. Giron was robbed three times in the course of several weeks and meat and seafood were stolen from his cooler and freezers. (Tr. 2/20/08 at 91, 94-95.) The structure was put in place to deter the food theft but DCRA placed a stop order on the structure because Mr. Giron didn't have the proper permits. (Tr. 2/20/08 at 92, 94-97.) He did not discuss the construction of the rear structure with members of the neighborhood nor has he reached out to the neighborhood in any fashion to discuss their concerns. (Tr. 2/20/08 at 103.) Mr. Giron is agreeable to constructing a back door and to building a taller fence between the establishment and the Columbia Pristine Condo Association. (Tr. 2/20/08 at 169.)

11. Mr. Giron explained that the tinted windows are in place to protect the patrons from the morning sun and because drunks walk along the sidewalk outside of the establishment and peer inside where the patrons are dining. (Tr. 2/20/08 at 92, 105.) Mr. Giron is aware of his responsibilities to his customers and for his customers' behavior while they are patrons in his establishment. (Tr. 2/20/08 at 107.)

12. With regard to security, there are four cameras monitoring the restaurant, three inside the establishment, and one on the outside viewing the alley and trash area. (Tr. 2/20/08 at 112, 125-126.) The cameras have a hard disk that stores surveillance for a couple of days and they record 24 hours a day, seven days a week. (Tr. 2/20/08 at 113, 128.) Mr. Giron has also hired one security personnel to search patrons for knives and guns when they enter the establishment. (Tr. 2/20/08 at 113.)

13. Mitch Bullock has been in the business of professional security for 18 years. (Tr. 2/20/08 at 118-119.) He has worked as a bodyguard providing personal protection and he has worked security for concerts. (Tr. 2/20/08 at 118.) Mr. Bullock handles security for the Applicant on Friday and Saturday nights from 9:00 p.m. to 3:00 a.m and has worked there for a little over a year. (Tr. 2/20/08 at 118, 124.) He makes certain that no one enters the establishment inebriated nor does he allow patrons to drive away under the influence of alcohol. (Tr. 2/20/08 at 119-120.) There has only been the one incident of aggravated assault while he has been on duty. (Tr. 2/20/08 at 121.) When Mr. Bullock sees patrons starting to urinate on the property, he stops them and encourages them to return inside to use the restroom. (Tr. 2/20/08 at 122, 127.) If the community witnesses people loitering outside of the establishment, it is because the D.C. smoking ban forces patrons to smoke outside. (Tr. 2/20/08 at 123.) If the smokers get too loud, Mr. Bullock makes certain they quiet down. (Tr. 2/20/08 at 123.)

14. Dottie Love Wade is the chairperson of ANC 1A and she is a lifelong resident of Ward 1. (Tr. 2/20/08 at 132.) She and ANC 1A have made every effort to broker a negotiated settlement with the Applicant in order to ensure the peace, quiet, and safety of all residents and businesses. (Tr. 2/20/08 at 132.) Chairperson Love Wade talked to many people, held numerous meetings with the Protestants and attempted to hold meetings with the establishment's owners. (Tr. 2/20/08 at 139.) ANC 1A remains open to a negotiated settlement and stands ready to work with the business. (Tr. 2/20/08 at 132-133.) Chairperson Love Wade noted that there is a lot of support in the neighborhood for and against the Applicant. (Tr. 2/20/08 at 132-133.)

15. Chairperson Love Wade explained that ANC 1A's proposed Voluntary Agreement seeks trash pick up four times a week and requests contact information for two people at the establishment so that they can be reached if and when a concern arises. (Tr. 2/20/08 at 133-134, 146-147.) ANC 1A would also like to have the Applicant erect a taller fence and a gate between the establishment and the Columbia Pristine Condo Association. (Tr. 2/20/08 at 134, 147-148.) The gate would give the restaurant egress to remove the trash from the rear of the establishment instead of dragging it out the front entrance and down around the building. (Tr. 2/20/08 at 134.) ANC 1A would require that the Applicant not locate its trash bins on private property but rather keep them in the alley. (Tr. 2/20/08 at 135, 148.) ANC 1A is agreeable to allowing the Applicant to remain open until 2:00 a.m. on weeknights and 3:00 a.m. on weekend nights. (Tr. 2/20/08 at 138, 143, 148-149.)

16. Samuel Johnson is a Commissioner in ANC 1A and the establishment is located in his Single Member District. (Tr. 2/20/08 at 3.) He stated that there were some concerns about the construction at the rear of the establishment and about the fence, but that ANC

1A's real concern is that the Applicant sign the Voluntary Agreement. (Tr. 2/20/08 at 153.) Commissioner Johnson testified that ANC 1A wants nice restaurants like Acuario but they do not want Columbia Heights to become party central like the Adams Morgan neighborhood. (Tr. 2/20/08 at 153-154.) They want the Applicant to enter into a Voluntary Agreement in order to maintain the peace, order and quiet of the neighborhood. (Tr. 2/20/08 at 154.) If the Applicant were willing to sign the proposed Voluntary Agreement, Commissioner Johnson would be more than happy to support their efforts to renew their license. (Tr. 2/20/08 at 167.)

17. Tim Turner is the representative for the Columbia Pristine Condo Association. (Tr. 2/20/08 at 10-11.) He testified that the residents are willing to allow the Applicant to open for maximum operating hours as long as they address the noise abatement issue and as long as they either remove the illegal structure at the rear of the establishment or build a taller fence between the establishment and the condominiums. (Tr. 2/20/08 at 155-156.) At one point the Applicant agreed to place noise abatement windows in the establishment. (Tr. 2/20/08 at 162.) The residents would also request that the Applicant enclose the trash cans to prevent rat infestation and they want the Applicant to remove the trash from the establishment through a rear egress. (Tr. 2/20/08 at 156.) Additionally, Mr. Turner finds it very disconcerting that the Applicant does not fully comprehend his liability as a licensed establishment. (Tr. 2/20/08 at 157.) He has personally witnessed patrons leaving the establishment so inebriated that they urinate on their own cars and then they drive away. (Tr. 2/20/08 at 157.) Mr. Turner urges the Board not to renew the Applicant's license until they have entered into a Voluntary Agreement addressing the concerns of the Columbia Pristine Condo Association residents. (Tr. 2/20/08 at 157, 168.)

### CONCLUSIONS OF LAW

18. 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 upon which this determination must be made and the findings of fact adduced at the protest hearing, the Board concludes that the Applicant has demonstrated that the renewal of its Retailer's Class CR License, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

19. 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, ANC 1A sent a protest letter to the Board, dated May 16, 2007, stating its concerns regarding the impact of the renewal of the license on the peace, order, and quiet of the neighborhood. The Board found ANC 1A's concerns to merit consideration and to be entitled to great weight in this case.

20. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and 23 DCMR § 400.1(a) (2004), the Board must determine under the appropriateness standard whether renewing the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood. The Board did not find based upon the testimony of Investigator Sheehan that the granting of a renewal of the Applicant's license would adversely affect the peace, order, and quiet of the neighborhood. For example, Investigator Sheehan's visits to the establishment did not reveal any significant problems with peace, order, and quiet that were attributable to the establishment. Specifically, she indicated that during the 29 visits she and other ABRA investigators made to the establishment, they did not observe loitering, trash, intoxicated patrons or public urination. Neither she nor the other ABRA investigators heard excessive noise emanating from the establishment. In addition to the numerous visits, a regulatory inspection conducted by Investigator Sheehan revealed that the Applicant was complying with ABC regulations in that the license and other permits were posted properly. She also observed that the establishment was clean and orderly. The testimony of MPD Officer Liriano and Paramedic Lara also indicated that they were not aware of any problems with peace, order, and quiet at the establishment. Furthermore, while the Board has reservations about the Applicant's stated need for tinted windows, it does note that the Applicant has taken steps to hire security personnel for the weekend nights and to install four security cameras to monitor patrons and other activity.

21. In this particular matter, the Board took into account the testimony of ANC 1A Chairperson Love Wade and ANC 1A06 Commissioner Johnson regarding the renewal of the Applicant's license on the peace, order, and quiet, of the neighborhood. Specifically, Chairperson Love Wade testified that ANC 1A worked very hard to broker a Voluntary Agreement to ensure the peace, quiet and safety of the neighborhood residents and businesses and that ANC 1A remains open to discussions and settlement. Chairperson Love Wade stated that the terms of the proposed Voluntary Agreement require the Applicant to have his trash picked up four times a week, that the Applicant erect a taller fence and gate between the Columbia Pristine Condo Association and to locate the trash bins on property that is not privately held by another. Likewise, Commissioner Johnson testified that ANC 1A wants very much to have establishments such as the Applicant's located in the neighborhood, but he has concerns about the neighborhood becoming too much of a party area. The Board is sympathetic to ANC 1A's concerns and to the extent that there are problems resulting from the Applicant's operation of the restaurant, the Board would encourage all parties to meet to discuss in good faith solutions to such problems.

22. With regard to the issue of peace, order and quiet, the Board also took into consideration the testimony of Tim Turner, who served as the representative for the Columbia Pristine Condo Association. Mr. Turner testified that the Columbia Pristine Condo Association is concerned about the noise emanating from the establishment and he noted that at one point the Applicant agreed to place noise abatement windows in the restaurant. The residents are also concerned that the Applicant enclose the trash cans to prevent rat infestation and that he removes the trash from the establishment through a rear egress. The Board found persuasive Mr. Turner's testimony that he has personally

witnessed patrons leaving the establishment so inebriated that they urinate on their own cars and then drive away. The Board shares Mr. Turner's concern that the Applicant needs to fully comprehend the laws and regulations that govern an ABC licensed establishment and that the Applicant understand his liability to his patrons. In that regard, the Board is requiring the Applicant and its employees to successfully complete TIPS training.

23. In consideration of the testimony of ANC 1A and the Columbia Pristine Condo Association regarding the noise concerns that affect the peace, order, and quiet of neighboring residents, the Board is requiring the Applicant to take steps to abate the noise levels emanating from the establishment. Additionally, the Board believes that requiring the Applicant to post signage encouraging its employees and patrons to be considerate of neighboring residents and to keep conversations and noise levels down to a minimum will also reduce the establishment's impact on the peace, order and quiet of the neighborhood. In making this decision, the Board notes that it has the authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

24. With regard to the issue of parking, the Board must determine whether renewing the Applicant's Retailer's Class CR License will have an adverse effect on residential parking needs and vehicular and pedestrian safety pursuant to D.C. Official Code § 25-313(b)(3) (2001). The Board finds no evidence from the record as a whole that the establishment will have an adverse effect on residential parking needs and vehicular and pedestrian safety. The testimony provided by Officer Liarano indicates that he does not believe the establishment creates any parking problems for the neighborhood. Additionally, the Applicant testified that most of his patrons live in the neighborhood and walk to the establishment.

25. The Board finds no evidence based upon the record as a whole, that the Applicant's establishment would have an adverse impact on real property values.

26. Lastly, the Board would note that the record reflects that some accord was reached by the parties during the protest hearing. Chairperson Love Wade indicated in her testimony that ANC 1A is not opposed to allowing the establishment to remain open until 2:00 a.m. Sunday through Thursday and 3:00 a.m. on Friday and Saturday. Mr. Turner testified that the residents are willing to allow the Applicant to open for maximum operating hours as long as they address the noise abatement issue. Likewise, Mr. Giron is agreeable to constructing a back door for trash removal and to building a taller fence and gate between the establishment and the Columbia Pristine Condo Association. Finally, ANC 1A stated that in its negotiations, it requested that the Applicant have its trash removed from the premises four times a week. The testimony reveals that not only has the Applicant already implemented the increased trash removal days, but the establishment has altered the time of day the trash is hauled to the back of the alley pursuant to the request of the neighborhood.

## ORDER

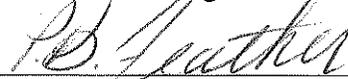
Therefore, it is hereby **ORDERED** on this 14th day of May 2008 that the Application to renew its Retailer's Class CR License filed by Giron & Martinez, Inc., t/a Acuario at 3410 11<sup>th</sup> Street, N.W., Washington, D.C., be and the same is hereby **GRANTED**.

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

1. The Applicant's hours of alcohol sales, service and consumption shall be from 10:00 a.m. to 2:00 a.m., on Sunday through Thursday and from 10:00 a.m. to 3:00 a.m. on Friday and Saturday;
2. The Applicant shall take alcohol awareness training within 90 days with training for all wait staff on the proper sale and service of alcohol to intoxicated patrons and to ascertain the legal age of customers purchasing alcohol and for the prevention of the sale of alcohol to minors. The Applicant shall also abide by all ABRA regulations regarding the ownership of the license and all other provisions applicable to liquor licensees;
3. The Applicant will strictly comply with D.C. Official Code §25-725 (2001) and will make architectural improvements to the property to implement noise abatement measures. The Applicant shall also ensure that any noise emanating from inside the establishment will not be audible in residential structures, in the vicinity or on the sidewalks across the street from and adjacent to the restaurant on Park Road, N.W., and 11<sup>th</sup> Street, N.W. Should any sound or noise emanating from the establishment, be heard in any premises other than the establishment, Applicant will take immediate remedial action;
4. The Applicant shall post signs or provide written information that encourages its employees and patrons to be considerate of neighboring residents and to keep conversations and noise to a minimum when departing the establishment;
5. The Applicant shall post and maintain "No Loitering," signs on the premises. The Applicant will also ask loiterers to "move on" whenever they are loitering on the premises;
6. The Applicant shall maintain regular trash/garbage removal service four times a week from the trash storage area. Additionally, the Applicant will ensure that this area, as well as adjacent public property, are regularly kept clean. The Applicant shall deposit trash and garbage only in rodent-proof dumpsters and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. The Applicant will make every reasonable effort to eliminate food sources for rodents; and

7. The Applicant shall not sell alcoholic beverages to any person who appears to be intoxicated.
8. The Applicant agrees to maintain open communication with ANC 1A and the Columbia Pristine Condo Association. The Applicant, upon notice from ANC 1A, will attend or will send a representative to attend meetings to confer and address in good faith, issues that arise under the terms of this Order. The Applicant shall ensure that its contact information is made known to ANC 1A and the Columbia Pristine Condo Association, and that the contact information is kept current at all times.
9. The Applicant will remove all tinting material from the windows of the establishment such that the windows are transparent or clear from the outside and the inside of the restaurant.

District of Columbia  
Alcoholic Beverage Control Board



Peter B. Feather, Chairperson



Judy A. Moy, Member



Mital 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).