

(hereinafter “Applicant” or “Darnell’s”) on the condition that the establishment cease operating its Summer Garden at 10:00 p.m., Sunday through Thursday, and 11:00 p.m. on Friday and Saturday) and that it submit a new Certificate of Occupancy reflecting the Summer Garden pursuant to Title 23 of the District of Columbia Municipal Regulations (DCMR) § 1005.1.

Procedural Background

The Notice of Public Hearing advertising Darnell’s Application was posted on November 21, 2014, and informed the public that objections to the Application could be filed on or before January 5, 2015. *ABRA Protest File No. 15-PRO-00002, Notice of Public Hearing [Notice of Public Hearing]*. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 1B, a Group of Five or More Individuals, Josephine Poole and David Riley, Abutting Property Owners. *ABRA Protest File No. 15-PRO-00002, Roll Call Hearing Results*.

The parties came before the Board’s Agent for a Roll Call Hearing on January 20, 2015, where the ANC and David Riley were granted standing to protest the Application. The Board dismissed the protest of Josephine Poole for failure to attend the Roll Call Hearing. *See Board Order No. 2015-084*.

On February 18, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 8, 2015.

The Board recognizes that an ANC’s properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2014). Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646.

In this instance, the Board notes that the ANC entered into a Settlement Agreement with the Applicant, and thus the issues raised by the ANC in its protest have been addressed. That Settlement Agreement was approved by the Board on March 11, 2015. *See Board Order No. 2015-085*. As a result of the Board’s approval of the Settlement Agreement, the ANC withdrew its protest. The Group of Five or More Individuals was dismissed by the Board, leaving only the Abutting Property Owner as the sole Protestant to the renewal of the license.

Based on the narrow issue raised by the Abutting Property Owner in its Protest, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order and quiet. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. This license was transferred from Assefa Kidane t/a Manchester Bar and Restaurant. The Applicant submitted a Transfer Application without a Substantial Change. ABRA Licensing File No. ABRA-095113. As such, all conditions placed on the license at the time of transfer remain attached to the transferred license pursuant to D.C. Official Code §§ 25-316 and 25-405. The transfer was approved by the Board on November 4, 2014. ABRA Licensing File No. ABRA-095113.

A. Hours of Operations, and Sales, Service and Consumption

2. The establishment's current hours of operation are as follows: 8:00 a.m. to 11:00 p.m., Sunday through Thursday, and 8:00 a.m. to 1:00 a.m. on Friday and Saturday. *ABRA Licensing File No. ABRA-095113.*

3. The establishment's hours of alcoholic beverage sales, service, and consumption are as follows: 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 1:00 a.m. on Friday and Saturday. *ABRA Protest File No. 15-PRO-00002, Notice of Public Hearing.*

B. Entertainment

4. The establishment's Entertainment Endorsement is limited to the interior, and the hours of entertainment are as follows: 6:00 p.m. to 11:00 p.m., Sunday through Thursday, and 6:00 p.m. to 1:00 a.m. on Friday and Saturday. *ABRA Licensing File No. ABRA-095113.*

C. Summer Garden

5. The establishment's Summer Garden hours of operation are as follows: 8:00 a.m. to 11:00 p.m. Sunday through Thursday, and 8:00 a.m. to 12:00 a.m. on Friday and Saturday. *ABRA Licensing File No. ABRA-095113.*

6. Finally, the establishment's hours of alcoholic beverage sales, service and consumption in the Summer Garden are as follows: 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m. on Friday and Saturday. *ABRA Licensing File No. ABRA-095113.*

7. The Summer Garden contains seating for 24 patrons transferred from the Manchester Bar and Restaurant license on November 4, 2014, though ABRA records do not contain a current Certificate of Occupancy that reflects the seating or occupancy of the Summer Garden. *ABRA Licensing File No. ABRA-095113.*

II. Testimony of ABRA Investigator Zachary Vick

8. Former ABRA Investigator Zachary Vick investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 15-PRO-00002, Protest Report (Apr. 2015) [Protest Report]*.
9. The establishment is located in a residential district with residences located on either side of the property, and a commercial district is located to the south. *Tr. 4/8/15 at 25, 36.* There are 39 licensed establishments within 1,200 feet of the establishment. *Tr. 4/8/15 at 25.* Fifteen of the licensed establishments are Retailer Class CR restaurants, two are retailer Class B licensees, two are retailer class CX multi-purpose licensees, 18 are taverns and two are nightclubs. *Tr. 4/8/15 at 25.* In addition to the nightclubs, 25 of the establishments have an Entertainment Endorsement and 12 have a Summer Garden Endorsement. *Tr. 4/8/15 at 25.*
10. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *ABRA Protest File No. 15-PRO-00002.*
11. ABRA investigative personnel monitored Darnell's on 11 separate occasions from March 12, 2015 to April 1, 2015. *Tr. 4/8/15 at 30, 42-43.* The establishment was open only three times during the monitoring period. *Tr. 4/8/15 at 30, 41-42.* ABRA investigators did not observe any criminal activity, excessive trash, or hear excessive noise during these monitoring visits. *Tr. 4/8/15 at 30, 40.* A regulatory inspection was conducted on March 27, 2015, and no ABRA violations were found as a result of the inspection. *Tr. 4/8/15 at 30, 40, 44.*
12. Former Investigator Vick contact the Office of Unified Communications for the number of calls for service to 944 Florida Avenue N.W., the establishment's address. *Tr. 4/8/15 at 31.* There were 23 calls for service between March 1, 2014 and March 1, 2015, most of which were calls for disorderly conduct. *Tr. 4/8/15 at 31.*
13. Former Investigator Vick also checked ABRA records for noise violations. *Tr. 4/8/15 at 31.* There was one violation dated January 17, 2015, for Case Number 15-CMP-00166 which remained pending at the time of the Protest hearing. *Tr. 4/8/15 at 31-32.*
14. Former Investigator Vick interviewed the Applicant and the Protestants as a part of his investigation. *Tr. 4/8/15 at 26.* The Applicant informed former Investigator Vick that further limiting the hours would harm the licensee's ability to be profitable. *Tr. 4/8/15 at 26.* The Protestants would like the hours reduced such that closing occurs at 10:00 p.m. *Tr. 4/8/15 at 26.*
15. The Applicant noted that he has entered into a Settlement Agreement with the ANC, and that he voluntarily lowers the music in the rear room at night when requested. *Tr. 4/8/15 at 25.* The Protestants informed former Investigator Vick that Darnell's has a negative effect on the peace, order and quiet due to the noise generated by the establishment and the strain placed on the limited parking spaces in the neighborhood. *Tr. 4/8/15 at 27.*

III. Testimony of Michael Istok

16. Michael Istok testified on behalf of the Applicant. *Tr.* 4/8/15 at 49. He lives across the street from the establishment on the 4th floor of a condominium building located at 2120 Vermont Avenue, N.W. *Tr.* 4/8/15 at 49, 55. He has lived there for three and one half years. *Tr.* 4/8/15 at 49. He has frequented the establishment several times. *Tr.* 4/8/15 at 49-50.

17. Mr. Istok described the patrons as typically in their 40's, and many of them are professionals. *Tr.* 4/8/15 at 50. He has also utilized the Summer Garden where other patrons engage in drinking, smoking and conversation. *Tr.* 4/8/15 at 51. There is no entertainment on the Summer Garden. *Tr.* 4/8/15 at 51.

18. Mr. Istok has never been disturbed by the noise emanating from the establishment. *Tr.* 4/8/15 at 51. He walks his dog during the evenings and at night, and has never heard any excessive noise. *Tr.* 4/8/15 at 51, 55. Likewise, he has never heard any excessive noise as he comes and goes in the neighborhood. *Tr.* 4/8/15 at 51.

19. Mr. Istok does not believe that Darnell's has a negative impact on the community. *Tr.* 4/8/15 at 52. He has never seen anyone littering nor has he seen litter associated with Darnell's. *Tr.* 4/8/15 at 52. He has not witnessed any rowdy patrons. *Tr.* 4/8/15 at 53. He testified that parking can be challenging, but there are a lot of cars in the neighborhood that belong to people who are patronizing the U Street establishments. *Tr.* 4/8/15 at 53-54.

IV. Testimony of David Riley

20. David Riley testified on behalf of the Protestants. *Tr.* 4/8/15 at 62. He resides at 912 W Street N.W. across from the Applicant's Summer Garden. *Tr.* 4/8/15 at 63-64, 112. He also owns a two unit flat located at 909 W Street N.W. *Tr.* 4/8/15 at 63. When Mr. Riley moved into the neighborhood in 1945, the establishment was utilized as a laundry mat. *Tr.* 4/8/15 at 104.

21. Mr. Riley is not opposed to ABC licensed establishments in the neighborhood. *Tr.* 4/8/15 at 63. In fact, he served as a supporting witness for the previous licensee, Assefa Kidane, who operated a quiet, little restaurant at that location. *Tr.* 4/8/15 at 63.

22. The previous licensee leased the business to Darnell Perkins for several previous years, and during this time, the relationship between Mr. Riley and Mr. Perkins deteriorated. *Tr.* 4/8/15 at 64. Mr. Riley testified that Mr. Perkins holds loud parties on the premises and that the Applicant operates after its authorized hours. *Tr.* 4/8/15 at 64.

23. When the neighborhood calls MPD, Mr. Perkins will utilize outside spotters to run into the bar and turn down the music. *Tr.* 4/8/15 at 64-65. When MPD leaves the area, the establishment turns the music back up. *Tr.* 4/8/15 at 64. Mr. Riley used to call ABRA and DCRA to file complaints, but he no longer does so because the agencies are not responsive. *Tr.* 4/8/15 at 109.

24. Mr. Riley is aware that the establishment has incurred fines for various violations related to noise and entertainment. *Tr.* 4/8/15 at 65. The violations are dated December 2010, December

2012, and January 2013. *Tr.* 4/8/15 at 71. Mr. Perkins was the ABC Manager during those years the establishment was cited, but he was not the owner. *Tr.* 4/8/15 at 72-73.

25. Mr. Riley stated that for the three to four weeks leading up to the Protest hearing, the establishment has not been open for business on Fridays, and only once on a Saturday night. *Tr.* 4/8/15 at 76, 82. This makes it difficult for an ABRA investigator to conduct a thorough investigation for the Protest hearing. *Tr.* 4/8/15 at 77, 82.

26. With regard to quality of life issues, Mr. Riley testified that patrons will exit the establishment from the Summer Garden and urinate on the trees in his yard. *Tr.* 4/8/15 at 77-79. In the past, he has had to push other patrons out of his yard who were there to urinate. *Tr.* 4/8/15 at 80-81. Patrons can enter and exit the Summer Garden without going through the interior of the establishment. *Tr.* 4/8/15 at 77-78.

27. Mr. Riley testified that the music emanating from the establishment is loud. *Tr.* 4/8/15 at 77, 107-108. As a result, the tenants in his two unit house cannot open their windows and enjoy fresh air during the summer months. *Tr.* 4/8/15 at 84. Some of the tenants have vacated the property due to the noise, and this affects Mr. Riley's income. *Tr.* 4/8/15 at 112-113. The noise from the Summer Garden includes loud screams and inebriated patrons trying to sing along with the music from the inside of the bar. *Tr.* 4/8/15 at 114-116. Mr. Perkins makes no effort to control the noise created by the patrons on the Summer Garden. *Tr.* 4/8/15 at 116-117.

28. Other quality of life issues that concern Mr. Riley are the trash bins that sit outside of the Summer Garden. *Tr.* 4/8/15 at 84. They are unclean and attract rats. *Tr.* 4/8/15 at 84.

29. Mr. Riley is requesting that the Board amend the hours in the Summer Garden to reflect a closing time of 10:00 p.m. *Tr.* 4/8/15 at 85-87, 106-107. Additionally, he would like to have the Applicant soundproof the interior of the establishment. *Tr.* 4/8/15 at 86, 113.

V. Testimony of Josephine Poole

30. Josephine Poole testified on behalf of the Protestants. *Tr.* 4/8/15 at 119. She has resided at 907 W Street NW, on the floor above the Applicant's bar, for 15 years. *Tr.* 4/8/15 at 119, 127, 141, 144.

31. Prior to the existing establishment, the establishment housed a store and a restaurant. *Tr.* 4/8/15 at 120. The current owner operates the establishment as a bar and grill. *Tr.* 4/8/15 at 120. She has called the police to complain about the noise that enters her residence through the vent in the floor. *Tr.* 4/8/15 at 120-121, 141. She can also smell the alcohol through the vent. *Tr.* 4/8/15 at 141-142. Additionally, she hears the noise that emanates from the Summer Garden which sits below her back bedroom window. *Tr.* 4/8/15 at 120. The noise bounces off the walls and shakes her pictures. *Tr.* 4/8/15 at 120, 144.

32. MPD responds to the complaints but rather than talking to Ms. Poole, they address the matter with Mr. Perkins. *Tr.* 4/8/15 at 120. She testified that he the lowers the volume of the music in the presence of the police, but then he turns it back up when they leave. *Tr.* 4/8/15 at 120.

33. On one occasion, the noise was so bad, Ms. Poole had to leave her home until the establishment closed for the night because she couldn't sleep. *Tr.* 4/8/15 at 122. She has tried to resolve the noise concern with the landlord for over five years. *Tr.* 4/8/15 at 122, 143.

34. Ms. Poole described the noise emanating from the interior and exterior of the operations of the establishment. *Tr.* 4/8/15 at 129. With regard to the inside operations of the establishment, Ms. Poole can hear the establishment's entertainment in her living room. *Tr.* 4/8/15 at 129, 136. The music is louder on the W Street side of her apartment because the bar is located under her bedroom. *Tr.* 4/8/15 at 129. She can also hear the patrons' voices when they talk. *Tr.* 4/8/15 at 129, 136-137. The restaurant portion of the establishment is located in the front of the premises and it is not as noisy. *Tr.* 4/8/15 at 138-141. She would like the Applicant to install soundproofing and reduce the volume of the music. *Tr.* 4/8/15 at 130-131.

35. With regard to the exterior operations, Ms. Poole picks up the discarded beer and wine bottles, as well as cigarette butts and other litter. *Tr.* 4/8/15 at 129-130.

CONCLUSIONS OF LAW

36. The Board may approve an Application to Renew a Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

37. Furthermore, “. . . the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Official Code § 25-314(c).

I. THE BOARD FINDS THAT THE APPLICATION FILED BY DARNELL'S IS APPROPRIATE FOR THE NEIGHBORHOOD SUBJECT TO CERTAIN CONDITIONS.

38. Under the appropriateness test, “. . . , the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2014).

39. The Board finds that the application for renewal of Darnell's license is appropriate for the neighborhood subject to the following conditions: (1) neither Darnell's, nor its patrons, shall generate any noise during Darnell's operation that may be heard in a residence; and 2) the hours

of operation of the Summer Garden be limited to 10:00 p.m. Sunday through Thursday, and 11:00 p.m. on Friday and Saturday.

40. The Board finds that Darnell's generation of excessive noise render the Application inappropriate unless subject to conditions. "In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider ". . . noise, rowdiness, loitering, litter, and criminal activity. 23 DCMR § 400.1(a) (West Supp. 2014).

41. The Board notes that the key issue of concern for the Abutting Property Owner in this case is the establishment's use of the Summer Garden. *Supra*, at ¶ 22. There are several instances in the record where Mr. Riley and Ms. Poole testify to noise that keeps them from the full use and enjoyment of their property. The Board credits the testimony of Ms. Poole who stated that the noise from the interior of the establishment enters her residence through the venting system, and that noise generated by the Summer Garden can be heard through her bedroom window. *Supra*, at ¶ 30; 33.

42. The Board also credits Mr. Riley who testified that the violations of peace, order and quiet have affected his economic interests due to the difficulty in retaining tenants. *Supra*, at ¶ 26.

43. Under D.C. Official Code § 25-104(e), the Board, in issuing licenses, "may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located." D.C. Official Code § 25-104(e).

44. Here, based on the evidence available within the Board's record regarding the proximity of residences to the establishment and repeated issues of noise emanating from the establishment, the Board finds that the Applicant shall not generate any noise that can be heard in a residence. Additionally, the establishment's hours of operations in the Summer Garden shall be reduced as set forth below.

II. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 2B'S ISSUES AND CONCERNS.

45. ANC 1B's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Darnell's impact on peace, order, and quiet; residential parking and safety. Letter from James A. Turner, Chair, ANC 1B, to Ruthanne Miller, Chair, Alcoholic Beverage Control Board (Dec. 5, 2014) [*Protest Letter of ANC 1B*]. The Board notes that the previously approved Settlement Agreement satisfies the concerns of ANC 1B.

III. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

46. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *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 (West Supp. 2014).

47. Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 1st day of July, 2015, hereby **APPROVES** the Application to Renew a Retailer's Class CT License at premises 944 Florida Avenue, N.W., Washington, D.C., filed by Darnell Perkins & Associates, LLC, t/a Darnell’s.

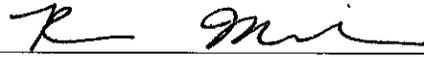
It is **FURTHER ORDERED** that the hours of operation, sales, service and consumption of alcoholic beverages of the Summer Garden be limited to 10:00 p.m. Sunday through Thursday, and 11:00 p.m. on Friday and Saturday.

It is **FURTHER ORDERED** that Darnell’s, shall submit a new Certificate of Occupancy reflecting the Summer Garden by no later than thirty (30) days from the date of this Order or its Summer Garden Endorsement shall be rescinded.

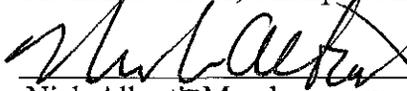
It is **FURTHER ORDERED** that Darnell’s, nor its patrons, shall generate any noise that may be heard in a residence while in operation.

The ABRA shall deliver a copy of this order to the Applicant, ANC 1B, and David Riley.

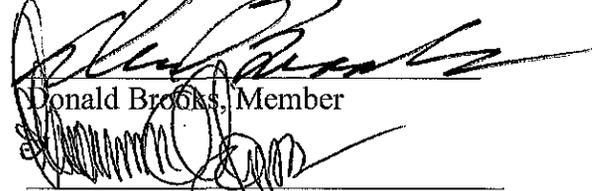
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



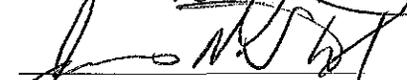
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), 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, Reeves Center, 2000 14th Street, N.W., 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, 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:)	
)	
Darnell Perkins & Associates, LLC)	
t/a Darnell's)	
)	
Application for Renewal of a)	Case No. 15-PRO-00002
Retailer's Class CT License)	License No. ABRA-095113
)	Order No. 2015-085
at premises)	
944 Florida Avenue, N.W.)	
Washington, D.C. 20002)	

Darnell Perkins & Associates, LLC, t/a Darnell's (Applicant)

James A. Turner, Chairperson, Advisory Neighborhood Commission (ANC) 1B

Jerrold Johnson, on behalf of A Group of Five or More Individuals

W. David Riley, Abutting Property Owner (Protestant)

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

**ORDER ON SETTLEMENT AGREEMENT, WITHDRAWAL OF
ANC 1B'S PROTEST AND DISMISSAL A GROUP OF
FIVE OR MORE INDIVIDUALS' PROTEST**

The Application filed by Darnell Perkins & Associates, LLC, t/a Darnell's, for renewal of its Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on January 20, 2015, and a Protest Status Hearing on February 18, 2018, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 1B entered into a Settlement Agreement (Agreement), dated February 11, 2015, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson James A. Turner, on behalf of ANC 1B, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 1B.

In addition, the Board dismissed the Protest of the Group of Five or More Individuals pursuant to D.C. Official Code § 25-609(b), which states that "...In the event that an affected ANC submits a settlement agreement to the Board on a protested license application, the Board, upon its approval of the settlement agreement, shall dismiss any protest of a group of no fewer than 5 residents or property owners meeting the requirements of § 25-601(2)..."

Accordingly, it is this 11th day of March, 2015, **ORDERED** that:

1. The Protest of ANC 1B in this matter is hereby **WITHDRAWN**;
2. The above-referenced Settlement Agreement, dated February 11, 2015, submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order;
3. The Protest of the Group of Five or More Individuals is **DISMISSED**;
4. Copies of this Order shall be sent to the Applicant, ANC 1B, the Group of Five or More Individuals, and W. David Riley, Abutting Property Owner.

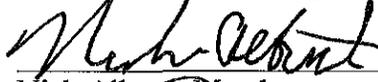
The Board **ADVISES** the Parties that due to the dismissal of the protest of Josephine Poole, Abutting Property Owner, pursuant to Board Order No. 2015-084, the remaining parties to this cause of action are the Applicant and Mr. Riley, Abutting Property Owner.

The Board **FURTHER ADVISES** that the Protest Hearing is scheduled for April 8, 2015 at 1:30 p.m. Parties are to submit their Protest Information Forms (PIF) to ABRA and serve the PIF on the opposing party seven (7) days in advance of the hearing.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



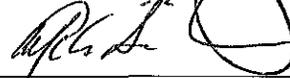
Nick Alberti, Member



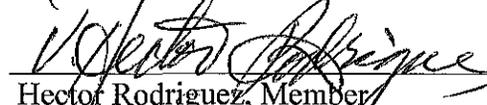
Donald Brooks, Member



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).

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 11 day of February, 2015, by and between Darnell Perkins and Associates, LLC t/a Darnell's (hereinafter the "Licensee"), and the Advisory Neighborhood Commission 1B, (hereinafter "ANC 1B").

WHEREAS, licensee has assumed the rights under the Retailers Class C Tavern License, formerly held by Manchester Bar and Grill, LLC, located at 944 Florida Avenue N.W., Washington, DC.

WHEREAS, licensee will agree to adopt certain measures to address the concerns of ANC 1B and its constituents and to include this Agreement as a formal condition of its application for renewal, and ANC 1B agrees to such renewal provided that such Agreement is incorporated into the Board's Order approving such renewal application, which is thereby conditioned upon compliance with such Agreement, and

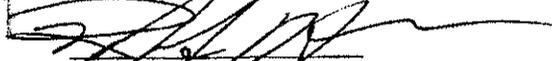
NOW THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

1. NATURE OF BUSINESS: Licensee will operate at all times a bona-fide Class C Tavern (as such term is defined in Alcohol Beverage Control Board statutes and regulations).
2. HOURS OF OPERATION: Law of the license assigned will permit applicant hours in all spaces. Friday and Saturday hours will apply to the night before all District of Columbia and federal holidays and other extended hours nights as designated by ABRA.
3. NOISE SUPPRESSION: licensee agrees that the Bar and Lounge shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-72S. In addition,
 - a) Licensee acknowledges that ANC 1B is particularly concerned regarding the potential for noise emanating from the establishment and Licensee agrees to post signage requesting that customers keep their voices down while in the summer garden area and when exiting the establishment.
 - b) At no time shall amplified music be played outside.
 - c) Licensee agrees to keep all windows closed during operating hours.
 - d) Licensee agrees to keep all doors closed except when patrons are in the process of entering or exiting the establishment.
 - e) Licensee agrees to install curtains on the windows of the rear room of the establishment to dampen noise transmission.
4. TRASH PICK UP AND REMOVAL: Licensee will maintain regular trash and garbage removal service three times during the week. Licensee shall keep dumpster lids tightly closed and will take preventative measures to help control the pest and rodent population. Trash and recycle disposal and pickup shall only occur between 7 a.m. and 11 p.m.

ANC 1B agrees to the renewal of the license upon execution of this Agreement, provided that this Settlement Agreement is incorporated into the Board's order renewing the license, and will not protest the upcoming renewal of license.

IN WITNESS WHEREOF, the Parties place their signature to this agreement:

For ANC 1B:



Robb Hudson
Commissioner 1B11

For Darnell Perkins & Associates, LLC:



James A. Turner
Chair ANC 1B, Commissioner 1B09

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

_____)	
In the Matter of:)	
Assefe Kidane)	
t/a Manchester Bar & Restaurant)	
Application for a New Retailer's)	Case No. 61127-06/117P
License Class "CT")	License No. 75377
at premises)	Order No. 2008-001
944 Florida Ave., N.W.)	
Washington, D.C.)	
_____)	

BEFORE: Peter B. Feather, Chairperson
Judy A. Moy, Member
Albert G. Lauber, Member
Mital M. Gandhi, Member¹

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

Assefe Kidane, on behalf of Manchester Bar & Restaurant, the Applicant

Philip Spalding, Commissioner, on behalf of Advisory Neighborhood Commission 1B, Protestant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Application, filed by Assefe Kidane, t/a Manchester Bar & Restaurant (Applicant) for a new Retailer's Class "CT" License at premises 944 Florida Ave., N.W., Washington D.C., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on September 13, 2006. Pursuant to D.C. Official Code § 25-602 (2006 Supp.), a timely protest was filed in opposition to the Application by Advisory Neighborhood Commission (ANC) 1B.

Pursuant to D.C. Official Code § 25-313(b), the filed protest issues are whether the issuance of the license would adversely affect: (1) the peace, order, and quiet of the

¹ ABC Board Member Mital M. Gandhi was not in attendance for this hearing and did not deliberate or vote on this matter. Former ABC Board Member Vera Abbott heard this case but is no longer on the Board and did not deliberate or vote on this matter.

neighborhood; (2) residential parking needs and vehicular and pedestrian safety and (3) real property values. ANC 1B also expressed concern regarding the Applicant's proposed hours of operation and request for a summer garden in light of the residential zoning of the area surrounding the establishment.

The case came before the Board for a public protest hearing on August 15, 2007. At the conclusion of the protest hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the Parties, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located in Ward 1 at 944 Florida Ave., N.W. (Alcoholic Beverage Regulation Administration (ABRA) Application File No. 61127.) The Applicant's current Certificate of Occupancy, dated May 17, 2006, indicates that the establishment is located in a residential use district (R5B) and specifically located in Square 357 which is designed for residential use. (ABRA Application File No. 61127; Tr. 8/15/07 at 17, 61.) The Applicant has applied for a new Class "CT" Retailer's liquor license with an occupancy load of 30 patrons inside of the premises and a summer garden with seating for 24 patrons. (ABRA Application File No. 61127; Tr. 8/15/07 at 88.) The Applicant's requested hours of operation for inside of the establishment are Sunday through Thursday, 8:00 a.m. to 2:00 a.m. and Friday and Saturday, 8:00 a.m. to 3:00 a.m., and for the summer garden Sunday through Thursday, 8:00 a.m. to 1:00 a.m. and Friday and Saturday, 8:00 a.m. to 2:00 a.m. (ABRA Application File No. 61127.)
2. ANC 1B filed a timely protest letter dated August 4, 2006 protesting the issuance of a new Class "CT" Retailer's license to the Applicant. (ABRA Application File No. 61127.) The protest letter indicates that at a regularly scheduled meeting on August 3, 2006, ANC 1B voted to protest the license application based upon concerns regarding peace, order, and quiet, parking, and the effect on neighborhood real property values. (ABRA Application File No. 61127.) The protest letter also states ANC 1B's view that granting a "CT" Retailer's license in a residential block would be inappropriate and that the hours of operation applied for by the Applicant and the inclusion of a summer garden would be inconsistent with the existing residential nature of the block. (ABRA Application File No. 61127.)
3. The Applicant's establishment is located within the vicinity of other Alcoholic Beverage Control (ABC) licensed establishments such as the 930 Club, Class "CX" located at 815 V Street, N.W. (Tr. 8/15/07 at 41.) More importantly, Duffy's Irish Restaurant, a Class "CR" licensed restaurant located at 2106 Vermont Avenue, N.W., is approximately 314 feet from the Applicant's establishment and is located in a mixed residential and commercial use zone. (ABRA Application File No. 61127; Tr. 8/15/07 at 36, 59.) The Applicant's establishment is also located in proximity to Howard University at 2225 Georgia Avenue N.W., and D. Brown's Day Care Center at 2117 10th Street N.W. (ABRA Application File No. 61127; Tr. 8/15/07 at 37.)

4. David Pinkney has resided at 907 W Street, N.W., for more than three years. (Tr. 8/15/07 at 22.) His apartment is in the residential part of the building at 944 Florida Avenue, N.W., and sits above the proposed establishment. (Tr. 8/15/07 at 22.) Mr. Pinkney believes that it is difficult to determine whether the proposed tavern will produce problems until the tavern is open and operating. (Tr. 8/15/07 at 23.) He supports growth and economic development in the neighborhood and believes that the Applicant should be given a chance to operate the tavern. (Tr. 8/15/07 at 24-25, 28.) He has not heard any negative comments from the neighborhood about the proposed establishment. (Tr. 8/15/07 at 27.)

5. David Riley has been a resident of the 9th Street and Florida Avenue, N.W. neighborhood since 1970 and he lives diagonally across the street from the proposed tavern. (Tr. 8/15/07 at 39, 46.) He stated that the proposed tavern location used to be a Laundromat and then a lounge. (Tr. 8/15/07 at 23.) He does not believe that the proposed tavern would have a negative impact on the neighborhood. (Tr. 8/15/07 at 40.) His apartment is located within proximity of the 930 Club which has a much larger capacity and operates longer hours in the morning. (Tr. 8/15/07 at 40.) Mr. Riley believes the Applicant should be given a chance to open his proposed establishment. (Tr. 8/15/07 at 41.) He does not believe that the proposed tavern's presence would create additional parking problems because there is parking available on Sherman Avenue and on W Street, N.W. (Tr. 8/15/07 at 46-47.) He also does not believe that the proposed tavern's outside summer garden will generate a lot of noise. (Tr. 8/15/07 at 48.)

6. Cheryl Courtt resides at 1438 Florida Avenue, N.W., and is a resident of ANC 1B. (Tr. 8/15/07 at 54.) She works as the Policy Director for the Coalition for Smarter Growth. (Tr. 8/15/07 at 54.) Her responsibilities include working on land use and transportation policy in the Washington metropolitan region. (Tr. 8/15/07 at 54.) She also serves as the Chair of the Parking and Transportation Committee for the Shaw Neighborhood Association. (Tr. 8/15/07 at 55.) Ms. Courtt is the Ward 1 appointee to the Comprehensive Plan Revision Task Force whose plan was adopted in December 2006. (Tr. 8/15/07 at 55.) The comprehensive plan addresses land use and zoning issues. (Tr. 8/15/07 at 55.) With regard to Square 357 where the proposed establishment is located, the area is designated to be a residential square. (Tr. 8/15/07 at 56.) Ms. Courtt is unaware of any proposals that will change the designation of Square 357 from the current zoning of R5B. (Tr. 8/15/07 at 57.) Ms. Courtt also is familiar with the Duke Plan which was issued in 2005 and is a leading document for redevelopment. (Tr. 8/15/07 at 58.) The Duke Plan also does not propose any future change to the residential designation of Square 357. (Tr. 8/15/07 at 58.) The Office of Tax and Revenue (OTR) lists 944 Florida Avenue N.W., as Use Code I which is a designation for residential property. (Tr. 8/15/07 at 71.)

7. Philip Spalding, is a Commissioner of ANC 1B and is the single member ANC Commissioner for the area in which the proposed tavern is located. (ABRA Application File No. 61127.) He indicated that ANC 1B is protesting the application on the basis of peace, order, and quiet, parking, and the effect on neighborhood property values. (Tr. .

8/15/07 at 14.) Mr. Spalding stated that ANC 1B believes that the license class, the hours of operation and the hours of the use of the summer garden as proposed are inappropriate for a location that is housed entirely within a residentially zoned block. (Tr. 8/15/07 at 15.) He noted that Square 357 is triangular in shape and the underlying zoning of the block is R5B. (Tr. 8/15/07 at 18.) Currently all of the properties in the block including the proposed establishment are listed as residential use by OTR. (Tr. 8/15/07 at 18-19.) Mr. Spalding explained that the zoning in the block in question is determined by the zoning administrator. The zoning administrator assigns the codes that OTR bases their tax levies. (Tr. 8/15/07 at 73.) Though the block is zoned entirely residential, the zoning administrator can entertain a use that is inconsistent with the underlying zoning such as a commercial/restaurant use. (Tr. 8/15/07 at 73.) Commissioner Spalding states that Square 357 is composed of modest, single-family row homes. (Tr. 8/15/07 at 90.) ANC 1B is concerned that granting a license to the Applicant will affect the peace, order and quiet and the parking availability of the constituents located in the same neighborhood. (Tr. 8/15/07 at 91.) Commissioner Spalding stated that ANC 1B is not opposed to new licenses but it is sensitive to the location and intensity of the use described in the application. (Tr. 8/15/07 at 92.) Mr. Spalding indicated that ANC 1B is asking the ABC Board to deny the application for a tavern license to Manchester Bar and Restaurant. (Tr. 8/15/07 at 92.)

8. Assefe Kidane is the owner of Manchester Bar and Restaurant. (ABRA Application File No. 61127.) He has applied for a "CT" Retailer's license with a summer garden. (ABRA Application File No. 61127; Tr. 8/15/07 at 8.) He has owned several properties, restaurants and taverns in the District of Columbia. (Tr. 8/15/07 at 93.)

CONCLUSIONS OF LAW

9. Pursuant to D.C. Official Code § 25-313(a), 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 issuance of a new Retailer's Class "CT" License, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

10. 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 1B filed a timely protest letter dated August 4, 2006 protesting the issuance of a new Class "CT" Retailer's license to the Applicant. The protest letter indicated that at a regularly scheduled meeting on August 3, 2006, ANC 1B voted to protest the license application based upon concerns regarding peace, order, and quiet, parking, and the effect on neighborhood real property values. The protest letter also expresses ANC 1B's view that granting a "CT" Retailer's license in a residential neighborhood would be inappropriate and that the hours of

operation and the inclusion of a summer garden would be inconsistent with the residential nature of the block. The Board agrees with ANC 1B that the hours proposed by the Applicant in its license application for both inside of the establishment and for the summer garden would adversely affect peace, order, and quiet and real property values of this residentially zoned block. Based upon the testimony provided in favor of the licensee by Mr. Pinkney and Mr. Riley, the Board does not find ANC 1B's concerns to warrant denying this license application. The Board is generally not supportive of restricting the hours of operation for new applicants, however, in light of ANC 1B's concerns and the fact that the Applicant's establishment is located in a residentially zoned block, the Board believes limiting the Applicant's hours of operation to be justified in this instance. As such, the Board is restricting the establishment's indoor hours of operation to Sunday through Thursday, 8:00 a.m. to 12:00 a.m.; and Friday and Saturday, 8:00 a.m. to 1:00 a.m. The Board is restricting the establishment's hours of operation on the summer garden to Sunday through Thursday, 8:00 a.m. to 11:00 a.m.; and Friday and Saturday, 8:00 a.m. to Midnight. The Board has found these hours to be reasonable for similar establishments adjacent to blocks or neighborhoods that are primarily zoned residential.

11. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 400.1(a) (2004), the Board must determine whether the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood. The Board found based upon the testimony of Mr. Pinkney and Mr. Riley that the Applicant's establishment will not have an adverse impact on peace, order, and quiet with the hours restrictions imposed by the Board. Specifically, the Board found credible the testimony of Mr. Riley that the establishment would not have a negative impact on the neighborhood and that the proposed summer garden would not generate a lot of noise. The Board also believes that ANC 1B's peace, order, and quiet concerns, particularly with regard to patrons leaving the establishment, can be further addressed by 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. 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).

12. With regard to the issue of parking, the Board must determine whether the issuance of a new Retailer's Class "CT" 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 based upon the testimony of Mr. Riley that the establishment will not have an adverse effect on residential parking needs and vehicular and pedestrian traffic. Specifically, Mr. Riley indicated that the proposed tavern would not create any parking problems for the neighborhood and that there is plenty of parking available on neighboring streets.

13. The Board finds that with the above-referenced hours restrictions being imposed by the Board and based upon the record as a whole, that the Applicant's establishment will not have an adverse impact on real property values.

14. In making this decision, the Board recognizes that D.C. Official Code § 25-336 contains a general prohibition against issuing retailer's licenses, including taverns, in residential-use districts. While the Applicant's establishment at issue is clearly located in a residential-use district, D.C. Official Code § 25-336, currently contains, through emergency and temporary legislation enacted by the Council, an exception when a license of the same class is operating an establishment within 400 feet of the Applicant's establishment. In this case, Duffy's Irish Restaurant is currently operating approximately 314 feet from the Applicant's establishment and also holds a Class "C" license. As a result, the Board finds that the recently created exception applies in this case.

ORDER

Therefore, it is hereby **ORDERED** on this 28th day of November 2007 that the Application for a new Retailer's Class "CT" License filed by Assefe Kidane, t/a Manchester Bar and Restaurant, at 944 Florida Ave., N.W., Washington, D.C., be and the same is hereby **GRANTED**.

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

1. The Applicant shall post signage encouraging its employees and patrons to be considerate of neighboring residents and to keep conversations and noise levels down to a minimum;
2. The establishment's indoor hours of operation shall be Sunday through Thursday, 8:00 a.m. to 12:00 a.m.; and Friday and Saturday, 8:00 a.m. to 1:00 a.m.; and
3. The establishment's hours of operation on the summer garden shall be Sunday through Thursday, 8:00 a.m. to 11:00 a.m.; and Friday and Saturday, 8:00 a.m. to Midnight.

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, 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).

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

_____)	
In the Matter of:)	
Assefe Kidane)	
t/a Manchester Bar & Restaurant)	
Application for a New Retailer's)	Case No. 61127-06/117P
License Class "CT")	License No. 75377
at premises)	Order No. 2008-071
944 Florida Ave., N.W.)	
Washington, D.C.)	
_____)	

BEFORE:

Peter B. Feather, Chairperson
Judy A. Moy, Member
Albert G. Lauber, Member
Mital M. Gandhi, Member

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

Assefe Kidane, on behalf of Manchester Bar & Restaurant, the Applicant

Philip Spalding, Commissioner, on behalf of the Advisory Neighborhood Commission 1B, Protestant

AMENDED ORDER

The Application, filed by Assefe Kidane, t/a Manchester Bar & Restaurant (Applicant) for a new Retailer's Class "CT" License at premises 944 Florida Ave., N.W., Washington D.C., initially came before the Alcoholic Beverage Control Board (Board) for a public protest hearing on August 15, 2007. On November 27, 2007, the Board issued Order No. 2008-001, approving the Application for a new Retailer's Class "CT" license with certain conditions to include setting the establishment's hours of operation from Sunday through Thursday, 8:00 a.m. to 11:00 a.m. and Friday and Saturday, 8:00 a.m. to 1:00 a.m.

The initial Order of the Board contained a typographical error regarding the establishment's hours of operation. It is intended by the Board that the ordering

paragraph setting forth the Applicant's hours of operation should read, "from Sunday through Thursday, 8:00 a.m. to 11:00 p.m.; Friday and Saturday, 8:00 a.m. to 1:00 a.m".

ORDER

Therefore, it is hereby **ORDERED** on this 6th day of February 2008 that:

1. The establishment's hours of operation shall be Sunday through Thursday, 8:00 a.m. to 11:00 p.m. and Friday and Saturday, 8:00 a.m. to 1:00 a.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.