THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Backdoor, Inc.	)	
t/a Bachelor's Mill/Back Door Pub	)	Case Number: 12-PRO-00061
	)	License Number: 011277
	)	Order Number: 2013-003
Application to Extend Hours of	)	
Operation for Retailer's Class CT License	)	
	)	
at premises	)	
1104 8th Street, S.E.	)	
Washington, D.C. 20003	)	
	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: David Lewis, President, on behalf of the Applicant

Timothy Brown, Vice-President, on behalf of the Applicant

Carlton Robinson, Vice-President and General Manager, on behalf of the Applicant

Commissioner Carol Green, Advisory Neighborhood Commission (ANC) 6B, on behalf of Protestant

Commissioner Kirsten Oldenburg, Advisory Neighborhood Commission (ANC) 6B, on behalf of Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

This matter arises from the Application filed by Backdoor, Inc., t/a Bachelor's Mill/Back Door Pub (Applicant), which possesses a Retailer's Class CT License at premises located at 1104-8th Street, S.E., Washington, D.C. 20003, pursuant to D.C. Official Code § 25-404, for a substantial change to its license in order to extend for one hour the closing of the establishment. The closing hours Sunday through Thursday would change from 2:00 a.m. to 3:00 a.m. and the closing hours on Friday and Saturday would change from 3:00 a.m. to 4:00 a.m. Applicant requests the additional hour to implement soft closing procedures. Advisory Neighborhood Commission 6B (ANC) filed a protest against the Application, stating that the Applicant's establishment has a negative impact on the neighborhood's peace, order, and quiet and that the additional hour would only serve to accentuate the problem. The Board denies the Application, finding that the Applicant has failed to demonstrate that the proposed change in the nature of the establishment's operations is appropriate for its location. Further, the Board finds that the Applicant's extended operations would likely have a negative impact on the neighborhood's peace, order, and quiet.

Procedural Background

ABRA gave public notice on May 18, 2012 that the Applicant had filed an application for a substantial changed to its Retailer's Class C License. ANC 6B, represented by Chairman Andrew Critchfield, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602.

The parties came before the Board for a Roll Call Hearing on July 16, 2012 and a Protest Status Hearing on September 12, 2012. The Protest Hearing occurred on October 24, 2012.

The Board notes that the ANC properly submitted a recommendation under D.C. Official Code § 25-609 by filing with the Board a letter dated June 12, 2012 stating that it had voted unanimously at a duly noticed meeting of the Commission to protest the Applicant's Substantial Change Application. The protest ground was the adverse impact of the establishment on peace, order and quiet pursuant to D.C. Official Code § 25-313.

The Board recognizes that an ANC's properly adopted written recommendations must receive great weight from the Board. See *Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609. 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. We acknowledge the issues and concerns raised by ANC 6B, and accord them great weight in our Conclusions of Law.

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:

A. Investigator Ileana Corrales

1. ABRA Investigator Ileana Corrales conducted an investigation of the Application. *Transcript*, October 24, 2012 at 12; see generally *ABRA Protest File No. 12-PRO-00061.* According to Ms. Corrales, the Applicant sought to extend its hours of operation for its Retailer's Class CT License. Tr. at 11. Investigator Corrales interviewed Commissioner Green of ANC 6B in connection with this Application and was told that the ANC opposed the Application on the grounds that it would increase noise in the surrounding area and that there were existing issues with patrons exiting the establishment. Tr. at 12. The Applicant's establishment sits in a C-3-A commercial zone within the Capitol Hill Overlay District. Tr. at 14. ABRA's records show that there are two other ABRA licensed establishments located within 1,200 feet of the establishment. *Id.* at 14. Moreover, there is a charter school and an early development intervention center located within 400 feet of the establishment. *Id.* A review of Metropolitan Police Department (MPD) records indicates that twenty-four calls were made to the establishment's address for the period from June 6, 2011 through October 8, 2012. Three calls resulted in reports being transmitted to ABRA. *Tr.* at 15.

2. The establishment's hours of operation are Sunday through Thursday from 4:00 p.m. through 2:00 a.m. and on Fridays and Saturdays from 4:00 p.m. through 3:00 a.m., with alcohol sales permitted during all hours. *Id.* at 14. Live Entertainment (in the form of a DJ) is offered Sunday from 8:00 p.m. to 12:00 a.m., Monday through Wednesday from 6:00 p.m. to 1:00 a.m., Thursday from 10:00 p.m. to 2:00 a.m. and Friday and Saturday from 10:00 p.m. to 3:00 a.m. Id. The establishment also has karaoke on the second floor. Id. The establishment also sells non-alcoholic beverages and snack foods. *Id.*

3. The establishment does not have any off-street parking, but there are on-street parking spaces in front of the establishment. Tr. at 20-22. As for public transportation, there are two Metro Stops—Eastern Market and Navy Yard—located in close proximity to the establishment. *Id.*

4. The ABRA investigators monitored the establishment on ten separate occasions from September 20, 2012 through October 16, 2012. *Id.* at 15. None of the visits showed any issues with regard to adequate parking, noise, or disturbance of the peace issues. *Id.*

B. Carlton Robinson

5. Mr. Robinson testified that last call for drinks occured 30 minutes before closing and that, 15 minutes before closing, the establishment turned on the lights, collected drinks and started moving patrons outside, where security staff disbursed the patrons, assisted by

the police reimbursable detail on certain nights. Tr. at 36-37. He further testified that the security staff regularly patrol the perimeter and that, every hour beginning at 10:30 p.m., they patrol 7th, 8th, 9th, L and M Streets as well as Potomac Avenue. Tr. at 38. Most of the patrons arrived by car and were instructed to park along 8th Street from M Street to Virginia Avenue and along M Street. Tr. at 41-42. Very few patrons were pedestrians. Tr. at 48. Mr. Robinson testified that he was not aware of noise issues and that no resident had complained to him about noise. Tr. at 43-44. He also told Commissioner Green that he was unaware of the 7 police calls, six for disorderly conduct and one for assault that according to Commissioner Green had occurred during the past four months in the 1000 block of 7th Street, SE, one block from the establishment. Tr. at 50. Finally, in response to Board questions, Mr. Robinson stated that he believed the soft closing would allow for conversations to be concluded within the establishment rather than out on the street where it could be noise problem for the residents. Tr. at 60-62.

C. Kirsten Oldenburg

6. Commissioner Oldenberg is the Single Member District Commissioner for the area in which the establishment is located. Tr. at 81. Commissioner Oldenberg introduced e-mails from residents describing the types of complaints that the residents had had with patrons of the establishment over the past several years and introduced a summary police report of incidents occurring in the 1100 block of 7th Street during a five month period in 2002. Tr. at 97. According to the e-mails, patrons continue to party outside of the establishment after closing by turning on their car radios and drinking, while threatening neighbors who came out to complain. Id. at 96-97. She expressed her concern that the additional hour would simply extend the current situation for an additional hour. Id. at 99-100. Furthermore, she expressed a concern that the Applicant had failed to show that patrons would stay in the establishment for the extra hour and "sober up" rather than simply bring the party outside. Tr. at 100.

D. Paul Ghiotto

7. Mr. Ghiotto lives in the 900 block of Potomac Avenue, S.E. He opposed the Application because from his observations over the past three years he did not believe that it will change the patrons' behavior. Mr. Ghiotto had become used to being awakened at closing time by the noise from patrons exiting the establishment and returning to their parked cars along his block and believed that the extra hour will only serve to move the noise further into the morning hours. Tr. at 112. Furthermore, Mr. Ghiotto had personally observed large groups of persons hanging out on the street after closing time and drinking, yelling, playing loud music and getting into their cars when clearly intoxicated. Id. at 129-131. Mr. Ghiotto believed that these persons were patrons of the establishment due to the fact that there were not, to his knowledge, any licensed establishments still open at that hour in that part of the neighborhood. Tr. at 132-133. Finally, Mr. Ghiotto contended that a review of the police reports and the time listed for the incidents showed that there was a direct correlation between the incidents and the closing time for the establishment. Tr. at 116-117; Report, Exh. 11.

CONCLUSIONS OF LAW

8. The Board has the authority to approve a substantial change in the operation of a licensed establishment if the Applicant demonstrates to the satisfaction of the Board that the proposed change in the nature of operation is appropriate for the area of the District where the establishment is located. D.C. Code § 25-404. In determining appropriateness, the Board will look at the evidence provided to the Board, including the effect on property values, the effect on peace, order and quiet and the effect on residential parking and vehicular and pedestrian safety. D.C. Code § 25-313.

I. Peace, Order, and Quiet

9. One of the factors that the Applicant needs to demonstrate is that the effect of its application will not present a negative impact on the peace, order and quiet of the neighborhood in which it is located. D.C. Code § 25-313(b) (2). In this matter, Applicant has not effectively demonstrated to the satisfaction of the Board that the extension of hours sought will not have a negative impact on the peace, order and quiet of the neighborhood. The Applicant has not shown how the demonstration project for which Applicant seeks approval will modulate the behavior of its patrons around closing time. To the contrary, the testimony on behalf of the Protestants shows an on-going pattern of negative behavior by patrons of the establishment. The Board is concerned that, without a fully fleshed out plan, all that the additional hour will serve to do is to add an additional hour to the disruption of the peace, order and quiet that the neighborhood seeks to restore. Moreover, Protestants have shown that the patrons tend to continue their loud and boisterous activities after closing by turning on their car radios and continuing to drink and talk loudly. Applicant has not shown that the neighborhood sweeps by Applicant's security personnel cover the streets of most concern or the times when they would be most effective. Furthermore, testimony by ABRA and the Protestants indicated that this establishment is the only establishment in the neighborhood that is open late into the evening, which obviates the need for a "soft closing," a technique that is mainly used to allow for gradual disbursal of large numbers of patrons in order to preserve the peace, order and quiet of the neighborhood. That simply is not necessary here.

10. In addition, the Board must further consider whether the Application will not have a negative impact on litter. Under §25-726, "The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter." D.C. Code § 25-726(a). The testimony from Protestants indicated that the patrons of the establishment already have a negative impact on litter. The Board fails to see how allowing the extension of the closing hour will not have a negative impact on the litter issue that is prevalent today.

11. Therefore, we conclude that Applicant has not demonstrated to the Board's satisfaction that the application will not have a negative impact on the peace, order and quiet of the area in which it is located.

II. Vehicular and Pedestrian Safety.

12. Another of the factors requires the Applicant to demonstrate that its Application will not present a negative impact on residential parking or vehicular and pedestrian safety. D.C. Code § 25-313(b) (3). In this matter, Applicant has not demonstrated to the satisfaction of the Board that the extension of hours sought will not have a negative impact on such matters. Again, to the contrary, the testimony at the hearing showed that patrons continue to drive to the establishment and park their vehicles on neighborhood streets rather than utilizing parking lots or public transportation, thereby limiting the amount of parking available to residents. As for vehicular and pedestrian safety, the testimony indicated that patrons continued to consume alcoholic beverages when they had returned to their vehicles, thereby demonstrating a negative impact both on vehicular and pedestrian safety. Moreover, testimony indicated that patrons harassed both pedestrians and those residents who came out of their residences to request that the patrons modulate their behavior so as not to disturb the residents.

13. Therefore, we conclude that Applicant has not demonstrated to the Board's satisfaction that the application will not have a negative impact on residential parking or on vehicular and pedestrian safety.

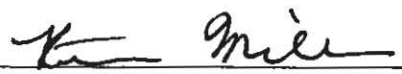
III. Conclusion.

14. We are only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its 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. Accordingly, based on our review of the Application and the record, we find the Applicant has not demonstrated that its change in operation is appropriate for its location in the District of Columbia.

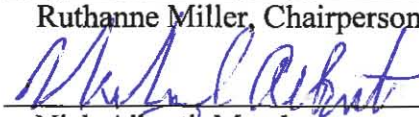
ORDER

Therefore, the Board, on this 9th day of January, 2013, hereby **ORDERS** that the Application for a Substantial Change to Retailer's Class C License filed by Backdoor, Inc., t/a Bachelor's Mill/Back Door Pub, is **DENIED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

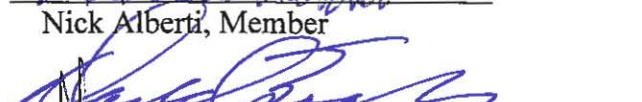
District of Columbia
Alcoholic Beverage Control Board



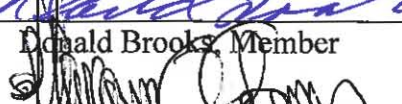
Ruthanne Miller, Chairperson



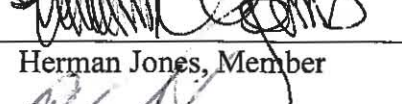
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, 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, NW, 400S, Washington, D.C. 20009.

Also, under 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 under 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).