THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)		
	)		
Ng Shu Kwan	)	Case Number:	11-PRO-00057
t/a Chinatown Market	)	License Number:	19616
	)	Order Number:	2012-168
Application to Renew a	)		
Retailer's Class B License	)		
	)		
at premises	)		
521 H Street, N.W.	)		
Washington, D.C. 20008	)		
	)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member
Jeannette Mobley, Member

ALSO PRESENT: Ng Shu Kwan, t/a Chinatown Market, Applicant

Paul L. Pascal, Esq., of the firm Pascal & Weiss, P.C., on behalf of the Applicant

Risa Hirao, Esq., of the firm Pascal & Weiss, P.C., on behalf of the Applicant

Michael S. Anderson, on behalf of A Group of Five or More Individuals, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Ng Shu Kwan, t/a Chinatown Market, (Applicant) filed an Application to renew its Retailer's Class B License (Application) at premises 521 H Street, N.W., Washington, D.C. A Group of Five or More Individuals (Protestants), represented by Michael S.

Anderson, filed a protest against the Application on November 14, 2011, under District of Columbia Official Code § 25-602.[1]

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 28, 2011, and a Protest Status Hearing on January 18, 2012. The Protest Hearing occurred on February 29, 2012.

I. ANC Recommendation

The Board recognizes that an Advisory Neighborhood Commission's (ANC) 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); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). 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. The Board notes that no Advisory Neighborhood Commission has submitted a recommendation related to the Application under D.C. Code § 25-609. Therefore, the great weight requirement does not apply to this matter.

II. Issues

The Protestants challenge the Application's appropriateness on the grounds that it will adversely impact peace, order, quiet, pedestrian safety, and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2012); *Protest Petition*, 1. Further, under § 25-315, the Board will also consider "the licensee's record of compliance with" Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations and any conditions placed on the license during the period of licensure, including the terms of [the establishment's] voluntary agreement." D.C. Code § 25-315(b)(1) (West Supp. 2012).

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, the Applicant's Proposed Findings of Fact and Conclusions of Law, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

I. Background

1. The Applicant requests that the Board renew its Off-Premise Retailer's Class B License located at 521 H Street, N.W., Washington, D.C. See *ABRA Protest File No. 11-PRO-00057*.

[1] We note that the Downtown Neighborhood Association initially sought to protest the Application; however, the association was denied standing as a protestant based on its failure to appear at the Protest Status Hearing on January 18, 2012. In re Ng Shu Kwan, t/a Chinatown Market, Board Order No. 2012, 049, 1-2 (D.C.A.B.C.B. Jan. 25, 2012).

2. The establishment is located in the area of the city known as Chinatown. *Transcript* (*Tr.*), February 29, 2012 at 41. Chinatown is a large arts and entertainment district with a large number of residents. *Tr.*, 2/29/12 at 41. The establishment is located in a C-2-C zone. *ABRA Protest File No. 11-PRO-00057, Protest Report,* 3. The records of the Alcoholic Beverage Regulation Administration (ABRA) show that 69 licensed establishments exist within 1,200 feet of the Applicant's establishment. Id. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. Id. at 6, Exhibit No. 5.

3. The Applicant's establishment is located on the northeast corner of H Street, N.W. *Tr.*, 2/29/12 at 41. The Applicant's entrance faces this corner. *Tr.*, 2/29/12 at 41

4. A bus stop operated by the Washington Metropolitan Area Transit Authority is located directly in front of the establishment. *Tr.*, 2/29/12 at 42. Three bus routes pass the establishment: the 80, the 6B, and the X2. *Tr.*, 2/29/12 at 45. Investigator Parker observed that a bus passes the establishment at least ten times per hour. *Tr.*, 2/29/12 at 45. In addition, intercity commercial buses stop and pickup riders a couple of doors away from the establishment. *Tr.*, 2/29/12 at 126.

5. The Applicant's establishment is a small grocery store. *Tr.*, 2/29/12 at 42. The establishment has two grocery aisles and wall coolers that offer both alcoholic and nonalcoholic beverages. *Tr.*, 2/29/12 at 42. The front of the establishment has a small area dedicated to wine. *Tr.*, 2/29/12 at 42. The cashier's station is located near the front of the store. *Tr.*, 2/29/12 at 42. The establishment does not have any security cameras. *Tr.*, 2/29/12 at 46. A sign posted by the establishment reads, "No Drugs No Loitering No Drinking No Disorderly Conduct." *Protest Report*, Exhibit No. 17. The Applicant's license allows the establishment to sell alcoholic beverages seven days per week from 9:00 a.m. to 9:00 p.m. *Tr.*, 2/29/12 at 42.

II. ABRA Investigation

6. The Alcoholic Beverage Regulation Administration (ABRA) assigned ABRA Investigator Vincent Parker to investigate the protest in January 2012. *Tr.*, 2/29/12 at 34. ABRA monitored the establishment on eleven separate occasions, but never before 11:15 a.m. *Tr.*, 2/29/12 at 43; *Protest Report*, 8. Investigator Parker observed individuals loitering outside of the establishment during the investigation. *Tr.*, 2/29/12 at 43-44. He believed that many of the loiterers were homeless. *Tr.*, 2/29/12 at 50. Indeed, he often observed individuals panhandling in the neighborhood. *Tr.*, 2/29/12 at 45, 58. Investigator Parker also observed that the establishment's employees kept the area surrounding the establishment clean. *Tr.*, 2/29/12 at 44, 70.

7. During the investigation, ABRA investigators tested the Applicant's compliance with the Ward 6 moratorium against the sale of individual containers of alcohol under 70 ounces and the prohibition against selling go-cups. *Tr.*, 2/29/12 at 47; see also D.C. Code §§ 25-346, 25-741 (West Supp. 2012). On February 17, 2012, an undercover ABRA investigator attempted to purchase a single beer and a go-cup from the establishment. *Tr.*, 2/29/12 at 46-47. The establishment's cashier complied with the law and refused to make the sale. *Tr.*, 2/29/12 at 47.

8. There is no evidence in the record that suggests the establishment threatens pedestrian safety. *Tr.*, 2/29/12 at 48; *Protest Report*, 10. Likewise, there is no evidence in the record that the Applicant is having a negative impact on real property values.

9. The Metropolitan Police Department reported that from January 23, 2011, to January 22, 2012, there were 18 calls for service. *Protest Report*, 11. None of the calls led to violations of the alcoholic beverage control laws. Id.

10. As of February 29, 2012, the establishment has not violated the District of Columbia's alcoholic beverage control laws in the past four years. *ABRA Protest File No. 11-PRO-00057, Protest Report*, 11.

III. Victor Rolando Quinto

11. Victor Rolando Quinto owns Wok and Roll, located at 604 H Street, N.W., Washington, D.C. *Tr.*, 2/29/12 at 95. Mr. Quinto noted that members of the Chinese community frequent the establishment, because the Applicant sells many Chinese products. *Tr.*, 2/29/12 at 99. As a neighborhood business owner, Mr. Quinto has observed that a large homeless population frequents Chinatown regularly. *Tr.*, 2/29/12 at 100-01.

IV. Lee Kim Yoen

12. Kim Ling Lee lives at the Wah Luck House, which is located at 800 6th Street, N.W., Washington D.C. *Tr.*, 2/29/12 at 115. Mr. Lee is a regular customer of the establishment, and often buys vegetables and Chinese noodles. *Tr.*, 2/29/12 at 115, 117. Mr. Lee has observed the establishment's employees ask loiterers to move away from the establishment. *Tr.*, 2/29/12 at 118.

V. Kevin Ng

13. Kevin Ng is the son of Shu Kwan Ng, the owner of the establishment. *Tr.*, 2/29/12 at 120. Mr. Ng holds an ABC Manager's License and helps his father operate the store. *Tr.*, 2/29/12 at 121. The establishment cleans the area surrounding the store approximately three times per day. *Tr.*, 2/29/12 at 127. Furthermore, the establishment keeps its trash bins closed and locked. *Tr.*, 2/29/12 at 128.

14. Mr. Ng noted that the store closes at 9:00 p.m., even though the establishment's Voluntary Agreement authorizes the establishment to remain open until 9:30 p.m. *Tr.*, 2/29/12 at 123.

VI. Shu Kwan Ng

15. Shu Kwan Ng owns the establishment along with a few other members of his family. *Tr.*, 2/29/12 at 143. Mr. Ng also owns the building housing the establishment. *Tr.*, 2/29/12 at 152. Mr. Ng's customers generally purchase groceries, cigarettes, and beer. *Tr.*, 2/29/12 at 157. Approximately half of the establishment's revenue comes from the sale of alcoholic beverages. *Tr.*, 2/29/12 at 159.

VII. Nicholas Chappelear

16. Nicholas Chappelear works as a valet manager at the Fairfield Inn & Suites located at 500 H Street, N.W. *Tr.*, 2/29/12 at 165, 168. Mr. Chappelear, who can observe the establishment from the hotel's valet area, regularly sees the Applicant's customers lined up outside the establishment from 9:00 a.m. to 11:00 p.m. *Tr.*, 2/29/12 at 172, 190. On occasion, he has observed some of the Applicant's customers leave the establishment in an intoxicated state and loiter by the hotel. *Tr.*, 2/29/12 at 172, 175, 197. Mr. Chappelear has observed the establishment's patrons harass the hotel's patrons and its employees. *Tr.*, 2/29/12 at 172. The harassment consists of panhandling and unsolicited conversations. *Tr.*, 2/29/12 at 193. Finally, on one occasion, Mr. Chappelear saw an individual leave the Applicant's store with an alcoholic beverage, drink from a bottle, and then fall on the bottle in the middle of the street. *Tr.*, 2/29/12 at 172, 198.

VIII. Max Brown

17. Max Brown resides at 475 H Street, N.W., and operates Chinatown Coffee Company. *Tr.*, 2/29/12 at 201. Mr. Brown regularly observes the Applicant's patrons lining up in front of the establishment around 9:15 a.m. when he walks his children to school. *Tr.*, 2/29/12 at 203-07. Mr. Brown also often observes people drinking outside the establishment at all hours of the day. *Tr.*, 2/29/12 at 205, 207-08. Mr. Brown noted that he regularly observes individuals dividing packages of alcoholic beverages among themselves. *Tr.*, 2/29/12 at 222.

18. Mr. Brown further witnessed the establishment selling alcohol to a customer outside the establishment. *Tr.*, 2/29/12 at 218. As indicated by Mr. Brown, he witnessed one of the establishment's employees accept money from a person standing outside the establishment's door. *Tr.*, 2/29/12 at 218. Mr. Brown then saw the establishment's employee hand the individual an alcoholic beverage. *Tr.*, 2/29/12 at 218.

IX. Carol Rognrud

19. Carol Rognrud lives at 809 6th Street, N.W. *Tr.*, 2/29/12 at 236. Ms. Rognrud frequently walks by the establishment on a daily basis and rides the X2 bus. *Tr.*, 2/29/12 at 236.

20. Ms. Rognrud has observed the establishment's employees selling alcohol to people on the streets from the establishment's door around 9:00 a.m. *Tr.*, 2/29/12 at 238, 254. At least twice per week, she sees the Applicant's employees accepting money through the bars on the establishment's door, and witnesses them pass individual containers of beer to people outside of the establishment. *Tr.*, 2/29/12 at 238, 252.

X. Michael Anderson

21. Michael Anderson resides at 809 6th Street, N.W. *Tr.*, 2/29/12 at 280. Mr. Anderson has witnessed the Applicant's regular customers defecate and urinate in the alley by his residence. *Tr.*, 2/29/12 at 286. Mr. Anderson has observed one of the Applicant's customers vomit on a lamppost directly in front of his building. *Tr.*, 2/29/12 at 286-87.

Mr. Anderson has also observed the Applicant's practice of selling alcoholic beverages from the establishment's door. *Tr.*, 2/29/12 at 308.

22. Mr. Anderson also took a video of Shu Kwan Ng, the establishment's owner, selling alcohol from the establishment's door at 9:00 a.m. on a Sunday. *Tr.*, 2/29/12 at 308. The video shows two males standing outside the establishment's door. *Video (02)*, 00:01. The establishment's owner, Mr. Sh Kwan Ng, is standing in the establishment's doorframe and wearing a red polo shirt and a red jacket. Id. The video shows the establishment's owner hand one of the men standing outside the door a two pack of beer. Id.

CONCLUSIONS OF LAW

24. In order to renew the Applicant's license, the Applicant must demonstrate that the Application will not adversely impact the peace, order, quiet, pedestrian safety, and real property values of the area located within 1,200 feet of the establishment. D.C. Code §§ 25-311(a), 25-313(b), 25-602 (West Supp. 2012), *Protest Petition*, 1. In making this determination, the Board shall consider the Applicant's record of compliance with the alcoholic beverage control laws. § 25-315(b)(1).

25. We renew the license, because, in general, the Applicant has demonstrated familiarity with the District of Columbia's alcoholic beverage control laws; has a history of compliance with those laws; operates a clean and orderly establishment; and there is no evidence that the establishment has an adverse impact on pedestrian safety or real property values in the neighborhood. Specifically, the establishment demonstrated its familiarity with the alcoholic beverage control laws by refusing to sell an undercover ABRA investigator a go-cup and single container of beer in violation of the law. Supra, at ¶ 7. The Applicant does not have a history of violations of the alcoholic beverage control laws. Supra, at § 9. The establishment maintains the area surrounding the establishment in a clean and orderly manner. Supra, at ¶¶ 6, 13. Finally, we see no convincing evidence that the establishment is having a negative impact on pedestrian safety or real property values. See supra, at ¶ 8.

26. Nevertheless, despite our decision to renew the Applicant's license, we cannot ignore the Protestants' valid concerns regarding the effect of the establishment on peace, order, and quiet. We credit the testimony of the Protestants' witnesses that many of the Applicant's customers loiter outside the establishment, engage in public drinking, and defecate and urinate in public. Supra, at ¶¶ 16, 17, 20.

27. Furthermore, we find that the sale of alcoholic beverages at the door of the establishment violates § 25-112(a). Under § 25-112(a), an off-premise licensee is only authorized "to sell alcoholic beverages from the place described." Off-premise licensees, such as the Applicant, are not permitted to make alcoholic beverage sales outside their premises. Supra, at ¶ 1. Therefore, the Applicant must immediately cease selling and distributing beverages from the establishment's door, or it will be in violation of § 25-112(a). Supra, at ¶¶ 6, 18, 20-22.

28. In light of these facts, we will only renew the license on the condition that the Applicant not begin alcoholic beverage sales before 11:00 a.m., ceases selling alcohol from

its front door in violation of § 25-112(a), and installs security cameras on the outside of the establishment. See D.C. Code § 25-724 (West Supp. 2012). Specifically, we are convinced that later morning operating hours will discourage customers from lining up outside the establishment, and eliminate the early-morning public drinking that occurs outside the establishment. Supra, at ¶¶ 6, 16-17, 20. We are also ordering the Applicant to make alcoholic beverage sales only from its sales counter, which will ensure that sales lawfully occur inside the store. Finally, the presence of security cameras will discourage individuals from loitering, drinking outside the establishment, and engaging in criminal activity. We are confident that these measures will allow the establishment to co-exist peacefully with its neighbors.

29. Finally, we note that 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 (2008). Accordingly, based on our review of the Application and the record, we find that the Applicant is of good character and is fit for licensure, and has satisfied all remaining requirements imposed by Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations.

ORDER

Therefore, the Board, on this 23rd day of May 2012, hereby **ORDERS** that the Application for Renewal of its Retailer's Class B License filed by Ng Shu Kwan, t/a Chinatown Market, is **GRANTED**, subject to the following conditions:

(1) The Applicant shall install and maintain two security cameras. The establishment shall place one camera on the side of the premises and another near the establishment's front entrance. Both cameras shall provide a complete view of the establishment's front entrance;

(2) The Applicant must maintain footage recorded by the security cameras for at least thirty (30) days;

(3) ABRA shall dispatch an ABRA Investigator within forty-five days (45) from the date of this Order to determine whether the Applicant has complied with the Board's security camera conditions;

(4) When not making deliveries to residences and businesses, the Applicant shall only sell alcoholic beverages from its sales counter. The Applicant shall not sell, deliver, or distribute alcoholic beverages to customers standing next to or directly outside the establishment, which is a violation of District of Columbia Official Code § 25-112(a); and

(5) The Applicant may not begin selling alcoholic beverages until 11:00 a.m.

The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Jeannette Mobley, 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).