

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

In the Matter of:)	
)	
Eastern Thrifty Market, LLC)	
t/a Eastern Thrifty Market)	
)	License No.: 080728
Application for Single Sales)	Order No.: 2010-428
Exception to a Retailer's)	
Class B License)	
)	
at premises)	
1620 A Street, S.E.)	
Washington, D.C. 20003)	

BEFORE: Nick Alberti, Acting Chairperson
Donald Brooks, Member
Herman Jones, Member
Michael Silverstein, Member
Calvin Nophlin, Member

ALSO PRESENT: Eastern Thrifty Market, LLC t/a Eastern Thrifty Market, Applicant

Nan Ye, Interpreter

Mary Wright, Commissioner, Advisory Neighborhood
Commission (ANC) 6B

Carol Green, Commissioner, Advisory Neighborhood Commission
(ANC) 6B

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On June 14, 2010, Eastern Thrifty Market, LLC, t/a Eastern Thrifty Market (Applicant) filed a request for an exception to the Single Sales Restriction, which was opposed by the Advisory Neighborhood Commission (ANC) 6B where the Applicant's establishment is located. ANC 6B notified the Alcoholic Beverage Control Board (Board) of its opposition on March 10, 2010 and July 14, 2010. The Board considered

the request, the opposition thereto, and the Applicant's history, and determined that a Fact Finding Hearing was necessary.

On July 21, 2010, the Board held a Fact Finding Hearing in this matter. The Board, having considered the evidence, the testimony of the witness, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant is the holder of a Retailer's Class B License at the location of 1620 A Street, S.E., Washington, D.C., which is located within ANC 6B. *See Alcoholic Beverage Regulation Administration (ABRA) Fact Finding File*, License No. 080728.

2. ANC 6B submitted an opposition to this request by way of a letters to the Chairman of the Board stating that the Commission voted not to support an exemption to the "Consolidated Mt. Pleasant, Ward 2 and Ward 6 Single Sales Moratorium Act of 2008" for the Applicant. *See ABRA Fact Finding File*, License No. 78243, letters dated March 10, 2010 and July 14, 2010, from Chairperson David F. Garrison.

3. Mr. Hong Deng appeared before the Board for the Fact Finding Hearing as the owner of the establishment known as Eastern Thrifty Market. *Transcript, July 21, 2010* (hereinafter *Tr.*; at 7/21/10), at 6. Mr. Deng stated that his business relies on the sale of small items to customers and does not sell bulk items. *Tr.*, at 7/21/10 at 8. He stated that he has seen his revenue decline because of the restriction. *Tr.*, at 7/21/10 at 8. He also stated that the restriction was preventing him from selling certain products that were not available in multiples or in packs. *Tr.*, at 7/21/10 at 13. The establishment does not have any prior violations. *ABRA Investigative History for Eastern Thrifty Market*. Nevertheless, the Applicant is alleged to have violated the moratorium on single sales and the establishment's voluntary agreement on May 22, 2010, which has not been adjudicated. *See Case #10-CMP-00108*.

4. Mr. Deng testified that the restriction on the sale of individual containers of alcohol has not reduced the amount of litter found in the street. *Tr.*, at 7/21/10 at 8. Mr. Deng stated that he cleans the street immediately near his establishment. *Tr.*, at 7/21/10 at 45.

5. Mr. Deng stated that 50 to 60 percent of his inventory is made of beer or wine. *Tr.*, at 7/21/10 at 14. He stated that after the restriction was enacted his sales decreased by 60 percent. *Tr.*, at 7/21/10 at 21.

6. In addition to selling alcohol, the Applicant also sells bread, candy, and household items. *Tr.*, at 7/21/10 at 24.

7. Commissioner Wright stated that the moratorium on the sale of singles has reduced loitering, littering, and anti-social behavior in the community. *Tr.*, at 7/21/10 at 25. She stated that many people complained about public urination and finding cans and

bottles on their property before the ban went into effect. *Tr.*, at 7/21/10 at 25-27. She stated that the restriction on the sale of individual containers of alcohol has improved the quality of life in the neighborhood. *Tr.*, at 7/21/10 at 26.

8. Commissioner Wright testified that no other store near the Applicant has an exemption from the single sales moratorium. *Tr.*, at 7/21/10 at 28. She stated that approximately 12 people, who live near the Applicant, came to the ANC's meeting in order to object to lifting the restriction on the sale of singles at the Applicant's establishment. *Tr.*, at 7/21/10 at 29-30. She stated that the members of the public who attended the meeting were concerned that lifting the restriction would encourage public urination, littering, and noise. *Tr.*, at 7/21/10 at 32.

9. Commissioner Wright stated that, before the moratorium, people who bought alcohol from the Applicant were dropping litter in residents' yards. *Tr.*, at 7/21/10 at 35. Commissioner Green stated that individuals are currently dropping soda cans and bottles in people's yards and theorized that people drinking alcohol are more likely to litter. *Tr.*, at 7/21/10 at 35.

10. Commissioner Green stated that Eastern High School is two blocks from the Applicant's establishment. *Tr.*, at 7/21/10 at 36. Commissioner Green has stated that, since enacting the moratorium, loitering outside the Applicant's establishment has decreased. *Tr.*, at 7/21/10 at 38. Commissioner Green or Commissioner Wright stated that they had never contacted the school to complain about schoolchildren loitering near the Applicant's establishment. *Tr.*, at 7/21/10 at 38-39.

11. The Board took administrative notice that two ABC establishments are located near the Applicant. *Tr.*, at 7/21/10 at 39. These stores are not authorized to sell singles and are approximately within two blocks of the Applicant. *Tr.*, at 7/21/10 at 39-40. Commissioner Green testified that another liquor store is located on Kentucky Avenue and is approximately four blocks from the Applicant. *Tr.*, at 7/21/10 at 41.

12. Mr. Deng testified that he has never called the police to complain about loitering or public urination while working in the store. *Tr.*, at 7/21/10 at 46.

13. The Applicant has the support of 69 people who live near his establishment but does not have the support of ANC 6B. *See ABRA Fact Finding File*, License No. 78243, *See Application for Exception to Single Sales Restrictions*, letter dated July 14, 2010, from Chairperson David Garrison.

CONCLUSIONS OF LAW

14. The "Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008" became effective on December 24, 2008, which established a moratorium on the sale of beer, malt liquor, and ale in the size of 70 ounces or less. The law allows a licensee to apply for an exception to the moratorium's restriction. *See D.C. Code §§ 25-345 and 25-346*. In determining whether to grant an exception to the moratorium, the

Board shall give great weight to the ANC where the licensee is located and consider “[w]hether [an] exception will negatively impact the enforceability and effectiveness of the ban,” the absence of any primary or secondary tier violations, evidence of participation in the community and attendance at ANC and Police Service Area community meetings, and “[c]lear and convincing evidence that there have been no significant adverse community impacts, such as loitering, littering, or other anti-social behavior in the vicinity of the licensee establishment.” D.C. Code § 25-346(c)(2)(A)-(E).

15. The Board is not persuaded by the ANC’s arguments. 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). Accordingly, the Board “must elaborate, with precision, its response to the ANC issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. Here, ANC 6B alleged that if the Board granted the Applicant an exception this would lead to littering, loitering, noise, and anti-social behavior.

16. Based on testimony from both the Applicant and the ANC Commissioners present at the hearing, the ANC has provided insufficient evidence that granting the Applicant an exception will have a negative impact on the community. Testimony by both parties indicates that littering in the community continues unabated and neighbors still find cans and bottles on their property. In regards to loitering, the ANC merely demonstrated that at times children from the local school congregate outside the Applicant’s establishment. Nevertheless, the ANC failed to show that this loitering created a serious problem for the community and was encouraging crime or disturbing the Applicant’s neighbors. The ANC also failed to provide any testimony regarding any potential noise issues. Lastly, although the evidence presented by the ANC shows that individuals in the neighborhood are engaged in public urination, the ANC failed to tie this problem to the Applicant’s patrons. As such, the Board finds that there is no evidence that lifting the restrictions on the Applicant’s business will have a negative impact on the community.

17. In addition, the Board will not consider charges that have not been adjudicated. As such, the Applicant has no history of violations.

18. The Board also notes that the Applicant has attended an ANC meeting in the past and has received the support of 69 people.

19. Finally, based on the Board’s previous experience enforcing D.C. Code § 25-326, granting individual exceptions to the moratorium do not undermine the effectiveness of the moratorium or the Board’s ability to enforce the ban. Furthermore, the Board notes that the ANC presented no evidence on this issue.

20. Based on the testimony provided, the questions from the Board, and the Board’s official file, which contains the opposition letter from ANC 6B, the Board grants the Application for an Exception to the Single Sales Restriction.

ORDER

Based on the findings of fact and conclusions of law, it is, by the Board on this 18th day of August, hereby **ORDERED** that the Application of Eastern Thrifty Market, LLC, t/a Eastern Thrifty Market, for an Exception to the Single Sales Restriction is **GRANTED**.

District of Columbia
Alcoholic Beverage Control Board



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member

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

The licensee provided insufficient evidence that granting an exception will not have a negative impact on the community. Furthermore, we are not persuaded that the Applicant cannot succeed without the ability to sell single containers of beer and ale. The two ABC establishments located near the Applicant have maintained vibrant and successful businesses without the ability to sell single containers of beer and ale.



Nick Alberti, Acting Chairperson



Mike Silverstein, 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, 1250 U Street, N.W., Third Floor, Washington, D.C. 20009.