

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

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In the Matter of:	)		
	)		
Leeds the Way, LLC	)	License Number:	071913
t/a Hank's Oyster Bar	)	Case Number:	10-PRO-00109
	)	Order Number:	2010-595
Application for Substantial Change to a	)		
Retailer's Class CR License	)		
	)		
at premises	)		
1624 Q Street, N.W.	)		
Washington, D.C. 20009	)		

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BEFORE: Charles Brodsky, Chairperson  
Mital Gandhi, Member  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member

ALSO PRESENT: Leeds the Way, LLC, t/a Hank's Oyster Bar, Petitioner  
  
Andrew Kline, on behalf of the Petitioner  
  
David Mallof and Alexis Rieffel, on behalf of A Group of Three or More  
Individuals, Protestants  
  
Michael K. Hibey, Esq., on behalf of the Protestants  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

Leeds the Way, LLC, t/a Hank's Oyster Bar (Petitioner), which holds a Retailer's Class CR License, at premises 1624 Q Street, N.W., Washington, D.C., filed an Application for a Substantial Change to its Retailer's Class CR License (Application). The Application came

before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on August 9, 2010, and a Status Hearing on September 8, 2010.

On July 26, 2010, a protest against the Application was timely filed by A Group of Three or More Individuals represented by David Mallof and Alexis Rieffel (Protestants). Attorney Michael Hibey submitted an Entry of Appearance on behalf of the Protestants on September 29, 2010.

No resolution was reached between the Petitioner and the Protestants before the Protest Hearing. The Protest Hearing was held on November 3, 2010.

The Board notes that the Applicant is located in the East Dupont Circle Moratorium Zone and seeks this Substantial Change as a result of the Board's recent decision to increase the limit on expansions and lateral expansions of ABC establishments in the moratorium zone. *See* 23 DCMR § 306, *et seq.* (2010). The Board further notes that it recently terminated the Applicant's voluntary agreement in Board Order No. 2010-533, which is related to this matter. The Board notes that Advisory Neighborhood Commission (ANC) 2B submitted a November 11, 2010, letter requesting that the Board grant it standing as a protestant but ANC 2B, in a December 1, 2010, letter, subsequently withdrew its request after the Applicant filed an amended sidewalk café application on November 18, 2010. The Board notes that had ANC 2B not withdrawn its request, the Board would have been forced to deny ANC 2B standing and not give its recommendations great weight because the letter of protest was not timely filed with the Board and ANC 2B's recommendations were not received within 7 days of the protest hearing. *See* D.C. Code §§ 25-602(a), 25-609 (2001); *see* ABRA Protest File 10-PRO-00109).

Pursuant to D.C. Official Code § 25-602(a) (2001), the protest issues are whether the Application will adversely impact the peace, order, and quiet, residential parking and vehicular and pedestrian safety, and property values in the neighborhood.

### FINDINGS OF FACT

1. The Applicant has applied to increase its seating by 80 seats and to increase its sidewalk café seating by 20 seats. *ABRA Licensing File No. 071913*. The Applicant proposes to expand its operations into the adjacent building located at 1622 Q Street, N.W. *Transcript (Tr.)*, November 3, 2010, at 27.

2. The Board notes that Board Order No. 2010-533 terminated the voluntary agreement that bound the Applicant. The Board notes that the parties in that matter are the same as the parties now before the Board. The Board also notes that both parties had an opportunity to cross-examine the witnesses who testified in the previous matter. Therefore, the Board takes administrative notice of the Findings of Fact in Board Order No. 2010-533 and adopts them as part of this Order. *Tr.*, 11/3/10 at 62-63.

3. The Board called Investigator David Bailey to testify. *Tr.*, 11/3/10 at 8. Investigator Bailey testified that the establishment's business hours are from 11:00 a.m. to 12:00 a.m., Sunday through Thursday, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday. *Tr.*, 11/3/10 at 10. Investigator Bailey stated that ABRA investigators visited the establishment on 32 separate occasions between August 24, 2010, and October 15, 2010. *Tr.*, 11/3/10 at 12, 14. He stated that the Metropolitan Police Department made two calls for service at the establishment but neither call resulted in an ABRA violation. *Tr.*, 11/3/10 at 12.
4. Investigator Bailey testified that he observed the space that the establishment proposed to occupy. *Tr.*, 11/3/10 at 12-13. He stated that the establishment has not begun construction at this time. *Tr.*, 11/3/10 at 13. He further noted that the proposed property borders residential housing. *Tr.*, 11/3/10 at 13. He stated the building has two floors, one of which appears to be designed as a mezzanine. *Tr.*, 11/3/10 at 13. Investigator Bailey testified that the proposed location shares a common wall with the neighboring residence. *Tr.*, 11/3/10 at 16.
5. Investigator Bailey testified that he viewed the establishment's dumpster during his investigation. *Tr.*, 11/3/10 at 17. He testified that he did not observe any trash overflowing from the dumpster. *Tr.*, 11/3/10 at 17.
6. Investigator Bailey testified that the ABC establishment, Java House, is located almost across the street from where the Applicant proposes to expand. *Tr.*, 11/3/10 at 20-21. He also testified that a series of rowhouses go "all the way down Q Street." *Tr.*, 11/3/10 at 20. He also stated that across from the Applicant, going from Q Street, N.W., heading east from 17th Street, N.W., are commercial-use properties. *Tr.*, 11/3/10 at 21.
7. The Applicant presented its case through the testimony of Steve Combs, Ellen Kirsh, and Jamie Leeds. *Tr.*, 11/3/10 at 25, 39, 53. A copy of the architect's plan for the property where the establishment plans to expand into was provided by the Applicant as well. *ABRA Protest File No. 10-PRO-00109, Licensee Exhibit 1; Tr.*, 11/3/10 at 57.
8. The Applicant called Steve Combs to testify. *Tr.*, 11/3/10 at 25. Mr. Combs stated that he has been a licensed real estate broker for the past 12 years and served as a real estate agent for four years before becoming a real estate broker. *Tr.*, 11/3/10 at 26. He stated that his work is concentrated in Washington, D.C. *Tr.*, 11/3/10 at 27. He stated that he previously lived at 1622 Q Street, N.W., for approximately three years. *Tr.*, 11/3/10 at 27.
9. Mr. Combs stated that he is familiar with real estate values in the area where the Applicant is located. *Tr.*, 11/3/10 at 28. Mr. Combs stated that the existing establishment has had a "positive effect on real estate values in the neighborhood." *Tr.*, 11/3/10 at 29. He explained that when he lived at 1622 Q Street, N.W., the building looked "like a vacant storefront" and attracted the homeless. *Tr.*, 11/3/10 at 29. He further testified that he was assaulted at the address six and half years ago by a homeless individual. *Tr.*, 11/3/10 at 30.

10. Mr. Combs testified that if the Applicant expanded to 1622 Q Street, N.W., it would have a “positive effect” on property values in the neighborhood. *Tr.*, 11/3/10 at 31. He stated that the Applicant would be able to change the “vacant storefront look” of the premises and increase the value of neighboring properties, if the establishment, in its current form, has not done so already. *Tr.*, 11/3/10 at 32-33.

11. Under cross-examination, Mr. Combs admitted that his work primarily focuses on commercial transactions. *Tr.*, 11/3/10 at 33. Although he has purchased residential buildings on behalf of friends, he has never listed a residence. *Tr.*, 11/3/10 at 34. Mr. Combs also admitted that he is not a licensed appraiser. *Tr.*, 11/3/10 at 34. He stated that he is a member of the Restaurant Association of Metropolitan Washington. *Tr.*, 11/3/10 at 34. Mr. Combs further testified that he represented Ms. Jamie Leeds when she leased the Applicant’s current premises. *Tr.*, 11/3/10 at 35.

12. The Applicant called Ellen Kirsh to testify. *Tr.*, 11/3/10 at 39. She stated that she lives at 1743 Q Street, N.W., and has lived there for a year and a half. *Tr.*, 11/3/10 at 40. She stated that the Applicant is one of the best restaurants in the neighborhood. *Tr.*, 11/3/10 at 43. She testified that the Applicant does not disturb the neighborhood. *Tr.*, 11/3/10 at 44. Ms. Kirsh also does not believe that the Applicant’s planned expansion will disturb the neighborhood because the Applicant is a responsible business. *Tr.*, 11/3/10 at 44-45.

13. Ms. Kirsh testified that she believes parking is an issue in the neighborhood. *Tr.*, 11/3/10 at 45. However, she testified that she had “never heard of anyone not being able to find a place to park if they [wanted to park.]” *Tr.*, 11/3/10 at 45.

14. Ms. Kirsh testified that she patronizes the restaurant approximately twice per month. *Tr.*, 11/3/10 at 46. She believes that many of the establishment’s patrons walk to the establishment. *Tr.*, 11/3/10 at 46. She also stated that many tourists frequent the restaurant. *Tr.*, 11/3/10 at 47. Ms. Kirsh admitted that her daughter used to work at the establishment as a chef approximately 18 months ago. *Tr.*, 11/3/10 at 51.

16. The Applicant called Jamie Leeds to testify. *Tr.*, 11/3/10 at 53. She stated that she currently owns the establishment. *Tr.*, 11/3/10 at 54. She seeks to expand her business in order to grow her business and reduce the wait times for tables at her restaurant. *Tr.*, 11/3/10 at 54-55. She stated that she currently has patrons wait on her sidewalk but if the expansion occurs she could have people wait inside the establishment instead. *Tr.*, 11/3/10 at 55. Ms. Leeds also testified that she would like to build a private dining room in order to host small parties at her establishment. *Tr.*, 11/3/10 at 55. She stated that her establishment currently has to turn away requests for private parties. *Tr.*, 11/3/10 at 56. She stated that she plans to offer space for small parties in the mezzanine area in the new property. *Tr.*, 11/3/10 at 56.

17. The Applicant submitted a copy of the architect’s plan for the property where the establishment plans to expand into. *ABRA Protest File No. 10-PRO-00109, Licensee Exhibit 1*; *Tr.*, 11/3/10 at 57. Ms. Leeds stated that she plans to build a vestibule. *Tr.*, 11/3/10 at 58. She

stated that she plans to install a small bar and tables and an Americans with Disabilities Act compliant bathroom. *Tr.*, 11/3/10 at 59. She further stated that the expansion will also include a mezzanine where the private dining area will be. *Tr.*, 11/3/10 at 59. She testified that the private dining area will have 18 seats. *Tr.*, 11/3/10 at 60. She stated that a second bathroom will be located on the second floor, along with more tables and a cold station for producing cold foods. *Tr.*, 11/3/10 at 60. She testified that the garbage area will be on the second floor, which is located on the ground level. *Tr.*, 11/3/10 at 60-61. She also noted that on the second floor there is outdoor seating in the trellis. *Tr.*, 11/3/10 at 65. Ms. Leeds testified that the outdoor seating area will have 20 seats. *Tr.*, 11/3/10 at 66. Ms. Leeds further stated that the plan calls for one entrance on 1622 Q Street, N.W. *Tr.*, 11/3/10 at 67. She further confirmed that she will install the same façade and French doors that she has now. *Tr.*, 11/3/10 at 68.

18. Ms. Leeds explained that the date on Licensee Exhibit 1 is the date of a meeting she had with her architect. *Tr.*, 11/3/10 at 69. She stated that the plans were only finalized in the past couple of weeks. *Tr.*, 11/3/10 at 69.

19. Ms. Leeds stated that her establishment will not change its “manner of operation” once it expands into the new space. *Tr.*, 11/3/10 at 61. She testified that she plans to continue to serve food and drink. *Tr.*, 11/3/10 at 61. She also testified that she does not plan to offer entertainment in the new space. *Tr.*, 11/3/10 at 62. Finally, Ms. Leeds testified that she did not hire a sound engineer to study the impact of noise. *Tr.*, 11/3/10 at 74.

20. Ms. Leeds testified that she requested 104 seats for her establishment as part of the expansion of her establishment. *Tr.*, 11/3/10 at 70. She testified that the first floor will have a bar near the door that will seat nine people. *Tr.*, 11/3/10 at 71. She stated that the bar on the first floor will be three to four feet from the entrance and the bar’s back will face the shared wall between 1622 Q Street, N.W., and 1624 Q Street, N.W. *Tr.*, 11/3/10 at 71. She further testified that facing the rear patio is a residential garage. *Tr.*, 11/3/10 at 91.

21. Ms. Leeds testified that after the expansion, the establishment will continue to have customers to park in the parking lot on P Street, N.W. *Tr.*, 11/3/10 at 74.

22. Ms. Leeds stated that the expansion property’s patio is about five feet from her neighbor’s front steps. *Tr.*, 11/3/10 at 75. Ms. Leeds testified that she is willing work with her neighbors to control noise emanating from the establishment. *Tr.*, 11/3/10 at 76. She testified that if noise from the patio becomes a problem she would be willing to build a structure to block sound transmissions. *Tr.*, 11/3/10 at 77. Ms. Leeds testified that she believes the shared wall between the expansion property and her neighbor is thick enough to block sound transmissions but has not investigated any sort of soundproofing. *Tr.*, 11/3/10 at 79. She further admitted that she has never entered the neighboring property. *Tr.*, 11/3/10 at 79. Ms. Leeds testified that she does not plan to utilize the full hours permitted under the law and will only remain open as market conditions allow. *Tr.*, 11/3/10 at 112. Ms. Leeds further testified that she may keep her establishment open later to accommodate private parties. *Tr.*, 11/3/10 at 111. Ms. Leeds

testified that she is currently applying for the hours that she originally applied for when she first opened her establishment and before she executed a voluntary agreement. *Tr.*, 11/3/10 at 87.

23. Ms. Leeds testified that she believes that five people neighbor the expansion property. *Tr.*, 11/3/10 at 107. She stated that she is investing between \$200,000 to \$250,000 in the expansion for her restaurant. *Tr.*, 11/3/10 at 108. She stated that she plans to employ another 20 to 25 people. *Tr.*, 11/3/10 at 108.

24. Ms. Leeds testified that the property she proposes to expand into currently has an apartment and an artist studio. *Tr.*, 11/3/10 at 113-14. She stated that the property was rezoned and designated a landmark. *Tr.*, 11/3/10 at 114. The Board takes administrative notice that 1622 Q Street, N.W. is located in a C-2-B zone. *Tr.*, 11/3/10 at 118.

25. The Protestant presented its case through the testimony of Abdi Poozesh, Fred Sowers, Alaire Riffel, Robin Diener, and David Mallof. *Tr.*, 11/3/10 at 118, 164, 211, 229, 244. The Protestant also submitted photographs of the property and the establishment. *ABRA Protest File No. 10-PRO-00109, Protestant Exhibit 1.*

26. The Protestant called Abdi Poozesh to testify. *Tr.*, 11/3/10 at 118. Mr. Poozesh stated that he lives at 1620 Q Street, N.W. *Tr.*, 11/3/10 at 119. He testified that he has lived at 1620 Q Street, N.W., for the past seven years with his wife and three adult children. *Tr.*, 11/3/10 at 120. Mr. Poozesh testified that the Applicant's plans will result in his property abutting the Applicant and result in his home sharing a wall with the Applicant. *Tr.*, 11/3/10 at 120-21. He testified that the shared wall is located in his living room on the first floor and in a bedroom on the second floor. *Tr.*, 11/3/10 at 122. Mr. Poozesh testified that he has spent \$300,000 purchasing and fixing-up his home. *Tr.*, 11/3/10 at 158. The Board takes administrative notice that 1620 Q Street, N.W., is located in a R-5-B zone.

27. Mr. Poozesh testified that he opposes the expansion due to concerns regarding noise, trash, and rats. *Tr.*, 11/3/10 at 121. Mr. Poozesh testified that even though there is currently a building separating his home from the Applicant he hears noise and conversations from the establishment in his living room. *Tr.*, 11/3/10 at 121. He testified that some noise is coming from outside the establishment. *Tr.*, 11/3/10 at 122, 136. Mr. Poozesh testified that he also currently hears people walking in the 1622 Q Street, N.W., building, especially in the early morning when everything is quiet. *Tr.*, 11/3/10 at 134, 156.

28. Mr. Poozesh testified that he also believes that the Applicant's proposed plans for the patio would create noise. *Tr.*, 11/3/10 at 134-35. He noted that his patio and the patio at 1622 Q Street, N.W., is only separated by a cinder block wall that is approximately six-feet tall. *Tr.*, 11/3/10 at 135. Mr. Poozesh believes that if the Applicant uses its patio, there will be noise, which will force him to stop using his own patio. *Tr.*, 11/3/10 at 135. Mr. Poozesh stated that his biggest concern is noise coming from patrons sitting in the establishment's sidewalk café and patio. *Tr.*, 11/3/10 at 137.

29. Mr. Poozesh testified that he has not seen the Applicant's proposed expansion plans. *Tr.*, 11/3/10 at 122. Furthermore, no one from the establishment has ever discussed his concerns regarding noise. *Tr.*, 11/3/10 at 122. Mr. Poozesh testified that he never spoke to Ms. Leeds about his concerns regarding noise because other people discouraged him from doing so. *Tr.*, 11/3/10 at 131-33.

30. Mr. Poozesh testified that he believes his property values would decline if the Applicant moves next door to his home. *Tr.*, 11/3/10 at 123. He testified that he hired an appraiser who advised him that his home's value would drop five percent if the Applicant moved into 1622 Q Street, N.W. *Tr.*, 11/3/10 at 123. Mr. Poozesh admitted that he knew that the 1622 Q Street, N.W., was being rezoned. *Tr.*, 11/3/10 at 124. He testified that he chose not to participate in the rezoning process after talking with George Mallios, the owner of the property. *Tr.*, 11/3/10 at 125. Mr. Poozesh testified that he knew the property was going to be rezoned as commercial. *Tr.*, 11/3/10 at 125. He stated that Mr. Mallios told him that a business, such as a bakery or flower shop may move into the establishment. *Tr.*, 11/3/10 at 126. Mr. Poozesh testified that Mr. Mallios offered to participate in the rezoning process for free and make his property commercial. *Tr.*, 11/3/10 at 159. Mr. Poozesh stated that he declined the offer because he already spent a lot of money to make the building residential. *Tr.*, 11/3/10 at 160.

31. Mr. Poozesh does not oppose the Applicant's plans for the inside of the establishment so long as proper soundproofing is installed. *Tr.*, 11/3/10 at 146. However, Mr. Poozesh does not believe that any amount of soundproofing would prevent noise from the Applicant's sidewalk café or patio from being audible in his home. *Tr.*, 11/3/10 at 137. He stated that the Applicant could build a higher wall outside the patio but this would ruin his view. *Tr.*, 11/3/10 at 147. He stated that he currently uses his patio for barbecues and other recreational purposes. *Tr.*, 11/3/10 at 152. Mr. Poozesh stated that his garage is located on the lower level and the patio is located between the building and the garage on the upper level. *Tr.*, 11/3/10 at 163.

32. The Protestant called Fred Sowers to testify. *Tr.*, 11/3/10 at 164. Mr. Sowers testified that he is a member of the Dupont Circle Citizens Association. *Tr.*, 11/3/10 at 209. Mr. Sowers testified that he lives at 1705 Q Street, N.W., with his wife and two adult children. *Tr.*, 11/3/10 at 165. He stated that he has lived at 1705 Q Street, N.W., since 2006. *Tr.*, 11/3/10 at 165. He stated that his property is located about 200 feet from the Applicant's establishment and is across the street. *Tr.*, 11/3/10 at 166. He testified that his third-floor bedroom faces Q Street, N.W. *Tr.*, 11/3/10 at 168. Mr. Sowers testified that he does not believe it is appropriate for establishments to sell alcoholic beverages next to the residential areas of 17th Street, N.W. *Tr.*, 11/3/10 at 202-03. Mr. Sowers testified that there is no mitigation that the Applicant could undertake that would make him change his views. *Tr.*, 11/3/10 at 205.

33. Mr. Sowers stated that the establishment's plans will create parking problems for the neighborhood. *Tr.*, 11/3/10 at 167. He testified that a parking garage for the neighborhood has not opened yet. *Tr.*, 11/3/10 at 167. He further noted that he has, at times, driven around for 30 minutes looking for parking. *Tr.*, 11/3/10 at 199. He also stated that people in his household

will spend the night somewhere else rather than trying to come back and park. *Tr.*, 11/3/10 at 199.

34. Mr. Sowers complained that the patrons of ABC establishments use his wall to have conversations and deposit litter on his property. *Tr.*, 11/3/10 at 166, 176. He stated that patrons from one of the establishments in the neighborhood damaged his car. *Tr.*, 11/3/10 at 167. He also noted that as the nightlife in the area grows there are more “loud conversations, fights, [and] arguments” occurring immediately outside his windows. *Tr.*, 11/3/10 at 167. Mr. Sowers admitted that he does not know whether the patrons sitting on his wall are the Applicant’s patrons. *Tr.*, 11/3/10 at 176. Mr. Sowers testified that he has never complained to ABRA or his local Advisory Neighborhood Commission (ANC) in the past regarding his issues with the Applicant. *Tr.*, 11/3/10 at 181.

35. Mr. Sowers testified that he is currently affected by noise. *Tr.*, 11/3/10 at 196. He testified that he currently has to sleep with headphones on and cannot leave his windows open. *Tr.*, 11/3/10 at 196. He stated that from his balcony that faces 17th Street, N.W., he hears noise that becomes disruptive as it gets later into the evening. *Tr.*, 11/3/10 at 197. He noted that he can hear loud conversations, laughing, and arguments. *Tr.*, 11/3/10 at 197. Mr. Sowers further stated that he believes the Applicant’s proposed use of the patio will create noise. *Tr.*, 11/3/10 at 195. He noted that the alley behind the expansion property tends to create echoes. *Tr.*, 11/3/10 at 196.

36. The Protestant called Alaire Rieffel to testify. *Tr.*, 11/3/10 at 211. Ms. Rieffel stated that she is a member of the Dupont Circle Citizens Association. *Tr.*, 11/3/10 at 219. Ms. Rieffel testified that she lives at 1709 Q Street, N.W., with her husband and has lived at that address for 37 years. *Tr.*, 11/3/10 at 212. Ms. Rieffel testified that the Applicant’s proposed expansion will add to the noise, trash, lack of parking, and put inebriated people on the street. *Tr.*, 11/3/10 at 213-14. Ms. Rieffel testified that she has contacted the police and her ANC regarding her concerns. *Tr.*, 11/3/10 at 219.

37. Ms. Rieffel testified that a month ago she went to pick up the newspaper at her door in the morning and observed a “well-dressed, very clean” man passed out next to her front door. *Tr.*, 11/3/10 at 214. She stated that the man “fit the profile of a Hank’s customer.” *Tr.*, 11/3/10 at 214. Ms. Rieffel admitted that she does not know what establishment the man had frequented. *Tr.*, 11/3/10 at 215. Ms. Rieffel stated that she has only frequented the Applicant’s establishment twice and does not know whether people engaged in binge drinking inside the establishment. *Tr.*, 11/3/10 at 220-21, 227.

38. Ms. Rieffel testified that there are too many ABC establishments in the neighborhood. *Tr.*, 11/3/10 at 215. She stated that she continues to support the moratorium. *Tr.*, 11/3/10 at 215.

39. Ms. Rieffel testified that she finds trash on her property from liquor and food service establishments. *Tr.*, 11/3/10 at 216. She testified that people sit on her wall and leave trash on her property. *Tr.*, 11/3/10 at 217. She testified that people vomit and urinate on her property as

well. *Tr.*, 11/3/10 at 217. She also testified that she has found inebriated individuals on her doorstep in the past. *Tr.*, 11/3/10 at 217. Ms. Rieffel admitted that she cannot say that the trash on her property comes from the Applicant. *Tr.*, 11/3/10 at 217.

40. Ms. Rieffel testified that her property values have increased significantly since she bought her property. *Tr.*, 11/3/10 at 220.

41. The Protestant called Robin Diener to testify. *Tr.*, 11/3/10 at 229. Ms. Diener testified that she lives at 1612 Corcoran Street, N.W. *Tr.*, 11/3/10 at 229. She testified that she is the President of the Dupont Circle Citizens Association. *Tr.*, 11/3/10 at 230.

42. Ms. Diener testified that the establishment is “lovely” and a “good establishment.” *Tr.*, 11/3/10 at 231, 235. However, she stressed that the additional space requested by the Applicant would tax the infrastructure of the neighborhood by creating more noise, trash, and traffic. *Tr.*, 11/3/10 at 231. Ms. Diener testified that the 104 extra seats requested by the Applicant would attract more people to the neighborhood and would make it harder for people to find parking. *Tr.*, 11/3/10 at 237. She stated that the neighborhood does not have the capacity to bear the Applicant’s expansion. *Tr.*, 11/3/10 at 234.

43. Ms. Diener admitted that the Dupont Circle Citizens Association has approved two lateral expansions in the past. *Tr.*, 11/3/10 at 238. Ms. Diener testified that the Board has allowed a certain number of lateral expansions in the moratorium zone. *Tr.*, 11/3/10 at 242.

44. The Protestant called David Mallof to testify. *Tr.*, 11/3/10 at 244. Mr. Mallof testified that he has lived at 1711 Q Street, N.W., for approximately 20 years. *Tr.*, 11/3/10 at 245. Mr. Mallof testified that there is an overconcentration of ABC establishments in the neighborhood surrounding the Applicant. *Tr.*, 11/3/10 at 246-47. Mr. Mallof testified that he believes that the public notice that ABRA posted did not indicate that the Applicant desired a summer garden. *Tr.*, 11/3/10 at 269.

45. Mr. Mallof testified that the Applicant’s plans would make it the only place where a “high intensity commercial operation in the evening would directly abut[] a residence[]” around 17th Street, N.W. *Tr.*, 11/3/10 at 247-48. He stated that Java House across the street is an exception but noted that it closes early and has a 10 to 15 foot walkway before the next commercial property. *Tr.*, 11/3/10 at 249.

46. Mr. Mallof testified that he was not aware of the Applicant’s plans for the façade and the doors. *Tr.*, 11/3/10 at 249. He stated that the ANC never had an opportunity to vote on these plans. *Tr.*, 11/3/10 at 249. He also testified that the Applicant never revealed her plans for the back patio. *Tr.*, 11/3/10 at 250. Mr. Mallof admitted that the building that the Applicant proposes to expand into already has shutter doors. *Tr.*, 11/3/10 at 260.

47. Mr. Mallof testified that the impact on peace, order, and quiet is cumulative. *Tr.*, 11/3/10 at 250. He testified that he is located 280 feet from the establishment and he can hear noise during the evening from the corner where the Applicant is located. *Tr.*, 11/3/10 at 250.

48. Mr. Mallof testified that detailed parking studies were conducted during the moratorium proceedings. *Tr.*, 11/3/10 at 251. He testified that around Dupont Circle and 17th Street, N.W., people are parking in crosswalks and blocking stop signs, which creates a danger for pedestrians. *Tr.*, 11/3/10 at 252. He also noted that Church Street, N.W., suffers from illegal parking. *Tr.*, 11/3/10 at 252. He also noted that the garage near the establishment closes at 11:00 p.m., which reduces parking availability late at night. *Tr.*, 11/3/10 at 252.

49. Mr. Mallof testified that approximately 200 people live within 200 feet of the Applicant's establishment. *Tr.*, 11/3/10 at 255. He further stated that approximately 1000 people live within 600 feet of the Applicant. *Tr.*, 11/3/10 at 255.

### CONCLUSIONS OF LAW

50. Pursuant to D.C. Official Code § 25-313(a) (2009) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application for a Substantial Change to a Retailer's Class CR License is sought is appropriate for the neighborhood in which it is located. As such, the Board finds that the Applicant's plans will not have an adverse impact on property values and residential parking and vehicular and pedestrian safety, and in general, peace, order, and quiet of the neighborhood. Nevertheless, the Board concludes that that Applicant's plans may generate noise in violation of the ABC laws. The Board will deem the Application appropriate and the negative impact on peace, order, and quiet will be alleviated so long as the Applicant complies with the conditions discussed below.

51. 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, no ANC submitted a recommendation at least 7 days before the Protest Hearing under § 25-609 and therefore, the great weight requirement is inapplicable in this matter.

52. First and foremost, the Board agrees with the Applicant that the Substantial Change proposed by the Applicant will not adversely impact property values in the neighborhood. The Board credits Mr. Combs testimony that the Applicant would be utilizing a property that is currently vacant and unused. Further, the Board notes that Mrs. Rieffel testified that her property values have increased. The Board will not rely on Mr. Poozesh's testimony regarding the effect on his property values because there was no way for the Board to judge the appraiser's methods. As such, the Board finds that having the Applicant move into the vacant property can only benefit the property values of the neighborhood.

53. The Board also agrees with the Applicant that the Substantial Change proposed by the Applicant will not adversely impact residential parking and vehicular and pedestrian safety. Although many of the witnesses testified that parking is a problem in the neighborhood, the Board is satisfied that Ms. Leeds, by encouraging patrons to use the parking lot on P Street, N.W., is acting responsibly and appropriately. As such, the Board sees no reason to attribute any problems that residents may have parking in the neighborhood to the Applicant or its future plans because the Applicant is discouraging its patrons from taking residential parking spots; and instead, encouraging parking in the lot on P Street, N.W.

54. In general, the Board also agrees with the Applicant that its plans will not have an adverse impact on peace, order, and quiet. The testimony presented by the Protestants indicates that they have issues with the conduct of patrons frequenting ABC licensed establishments in the neighborhood; however, the Protestants' witnesses could only speculate that the Applicant somehow caused these problems. Simply put, no evidence presented to the Board linked problems with litter, fighting, drunkenness, or crime to the Applicant. Based on the evidence and testimony presented, it is clear that the Applicant is not operating a nightclub or a college bar or even seeking entertainment but rather, is merely expanding its business model as a high-end restaurant. Indeed, even Ms. Diener, the Protestant's own witness, admitted that the Applicant is a good operator. Finally, the ABRA's investigative history shows that violence and disruptive behavior does not occur at the Applicant's establishment. As such, the Board has no reason to believe that the Applicant's patrons are emerging from the establishment ready to cause mayhem, mischief, and destruction.

55. Nevertheless, the Board is very concerned that the Applicant's plans will create noise and adversely affect Mr. Poozesh and the other residents who live in the nearby residential zone. D.C. Code § 25-725 (2001) specifically protects people who live in residential zones from noise created by ABC licensed establishments. The Board credits the testimony of Mr. Poozesh that he currently hears conversation and noise from the establishment and 1622 Q Street, N.W., in his home. Furthermore, the Board shares Mr. Poozesh's concerns that the shared wall and abutting sidewalk café will create a disturbance. Finally, the Board is not satisfied by the Applicant's responses to the Board and Protestant's concerns regarding noise. If the Applicant wants to expand its operations to border a residential zone, it needs to take concrete steps to prevent noise from disturbing nearby residents. As countless hearings before the Board have demonstrated, it is much easier to deal with noise issues before construction begins. As such, the Board will not approve the Application until the Applicant takes commercially reasonable steps to install soundproofing and mitigate the possible noise generated by both the interior and exterior of the establishment.

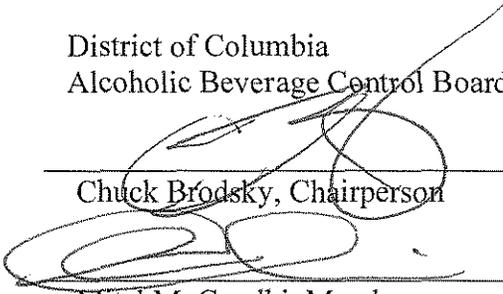
56. For these reasons, the Board will grant the Application subject to the conditions discussed below.

## ORDER

Therefore, this 8th day of December 2010, it is hereby **ORDERED** that the Application for a Substantial Change requested by Leeds the Way, LLC, t/a Hank's Oyster Bar, at premises 1624 Q Street, N.W., Washington, D.C., is hereby **GRANTED** so long as it complies with the following conditions:

- (1) The Applicant shall take commercially reasonable steps to install soundproofing and mitigate any potential noise created by the interior or exterior of the establishment by completing the following actions:
  - a. The Applicant shall obtain the services of a reputable noise consultant, of its choice, to analyze potential noise issues and answer the following questions:
    - i. Will the shared wall between the Applicant and Mr. Poozesh's property be sufficient to prevent sound from the interior of the establishment being heard in Mr. Poozesh's home?
    - ii. Will the operation of a sidewalk café create noise inside Mr. Poozesh's home or deny him usage of his patio?
  - b. The Applicant shall submit the noise consultant's analysis and recommendations to the Board. As long as a reasonable analysis and proposal is obtained, the Board will deem the Application appropriate if the Applicant agrees to and complies with the noise consultant's recommendations.
- (2) The hours of operation, sales, and service on the sidewalk café shall be 11:00 a.m. to 11:00 p.m., Sunday through Thursday, and 11:00 a.m. to midnight, Friday through Saturday.
- (3) Copies of this order shall be sent to the Petitioner and the Protestants.

District of Columbia  
Alcoholic Beverage Control Board



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Chuck Brodsky, Chairperson



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Mital M. Gandhi, Member



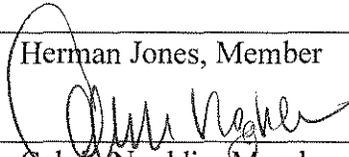
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Nick Alberti, Member



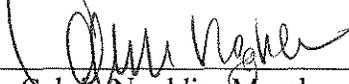
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Donald Brooks, Member



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Herman Jones, Member



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Calvin Nophlin, Member

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 the 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).