THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

Matchbox 14th Street, LLC t/a Matchbox Application for a New Retailer's Class CR License, Entertainment Endorsement, and Sidewalk Café at premises 1901 14th Street, N.W. Washington, D.C. 20009	Case Number: License Number: Order Number:	11-PRO-00093 088258 2012-302

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

ALSO PRESENT: Matchbox 14th Street, LLC, t/a Matchbox, Applicant

Michael Fonseca, Esq., of the firm Mallios & O'Brien, on behalf of the Applicant

Perry Smith, Managing Member, on behalf of the Applicant

Daniel McKay, on behalf of A Group of Five or More Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

We grant the Application for new Retailer's Class CR License, Entertainment Endorsement, and Sidewalk Café (Application) filed by Matchbox 14th Street, LLC, t/a Matchbox, (Applicant) at premises 1901 14th Street, N.W., Washington, D.C., which we find appropriate for the neighborhood where the Applicant seeks to be located.

Furthermore, based on the Applicant's proximity to residential dwellings and our prior determinations of appropriateness in the neighborhood, we limit the hours of operation, sale, and service of alcoholic beverages for the establishment's sidewalk café to no earlier than 10:00 a.m. and no later than 11:00 p.m., Sunday through Thursday; and no earlier than 10:00 a.m. and no later than 11:30 p.m. on Friday and Saturday. Lastly, we also approve the Voluntary Agreement, dated February 20, 2012, between the Applicant and Advisory Neighborhood Commission (ANC) 1B, but note that our condition regarding the Applicant's sidewalk café takes precedence over § 3 of the Voluntary Agreement.

Procedural Background

A Group of Five or More Individuals (Protestants), represented by Daniel McKay, filed a protest against the Application on December 27, 2011, under District of Columbia Official Code § 25-602.

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on January 9, 2012, and a Protest Status Hearing on February 15, 2012. The Protest Hearing occurred on April 11, 2012.

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 § 25-609. Therefore, the great weight requirement does not apply to this matter.

Based on the claims made by the Protestants in their initial protest letter, we may only issue the license if the Applicant can demonstrate that the proposed establishment will not have a negative impact on peace, order, and quiet, residential parking needs, and the safety of pedestrians and vehicles in 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). Further, under § 25-314, based on the issues raised by the Protestants, we may only issue the license if the Applicant shows that "issuance of the license [will not] contribute to an overconcentration of licensed establishments[,] which is likely to affect adversely the locality, section, or portion in which the establishment [proposes to] locate[]." D.C. Code § 25-314(a)(4) (West Supp. 2012).

Finally, we have reviewed the Voluntary Agreement, dated February 20, 2012, executed by the Applicant and ANC 1B, and we find it legally sufficient. Nevertheless, we note that the condition on the Applicant's sidewalk café contained in this Order takes precedence over § 3 of the Applicant's Voluntary Agreement. In all other respects, the Voluntary Agreement is binding on the Applicant under District of Columbia Official Code § 25-446.

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. The Applicant requests a new Retailer's Class CR License located at 1901 14th Street, N.W., Washington, D.C. *ABRA Protest File No. 11-PRO-00093*, Notice of Public Hearing. The Applicant has also requested an Entertainment Endorsement and a sidewalk café. Id.

2. The Applicant's proposed hours of operation and sale and service of alcohol are from 10:00 a.m. to 2:00 a.m. on Sunday; 11:00 a.m. to 2:00 a.m., Monday through Thursday; and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. *ABRA Protest File No. 11-PRO-*00093, *Protest Report*, 9. The Applicant has requested an Entertainment Endorsement with entertainment hours of 10:00 a.m. to 4:00 p.m. Id. We further note that the Voluntary Agreement signed by the Applicant and ANC 1B will limit the Applicant to live entertainment only on Saturday and Sunday, between the hours of 11:00 a.m. and 3:00 p.m. *ABRA Protest File No. 11-PRO-00093, Voluntary Agreement*, § 2 (Feb. 20, 2012).

3. The establishment is located in a C-3-A zone. *Protest Report*, at 5. The records of the Alcoholic Beverage Regulation Administration (ABRA) show that 46 licensed establishments exist within 1,200 feet of the Applicant's establishment. Id. at 5-7. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. Id. at 7.

II. ABRA Investigator Earl Jones

4. ABRA Investigator Earl Jones conducted an investigation of the Application. *Transcript* (*Tr.*), April 11, 2012 at 11. He noted that ten licensees are located within a block and a half of the Applicant's proposed location: Café Collage, Café Saint-Ex, Policy, Source, Masa 14, Black Cat, El Centro DF, Cork Market and Tasting Room, Bar Pilar, and Black & Orange. *Tr.*, 4/11/12 at 11.

5. Based on Investigator Jones's investigation, the establishment's proposed location, 1901 14th Street, N.W., is located in the "Uptown Arts-Mixed Use (Arts) Overlay District." 11 DCMR §§ 1900.1, 1901.1 (West Supp. 2012); *Tr.*, 4/11/12 at 14-15; Supra, at ¶ 1. Under the District of Columbia's zoning law, arts-related uses, such as a restaurant, must "occupy no less than fifty percent (50%) of the ground level of each building on a lot that fronts on 14th Street . . . ." 23 DCMR §§ 1901.1, 1908.l(u) (West Supp. 2012).

6. Investigator Jones, along with other ABRA investigators, monitored the establishment's proposed location on seventeen separate occasions. *Protest Report*, 10-11. Investigator Jones noted that large groups of people frequently walk up and down 14th Street, N.W. Id. at 12; *Tr.*, 4/11/12 at 27. Further, a large number of vehicles pass through the neighborhood on a regular basis. Id. at 14; *Tr.*, 4/11/12 at 27.

7. Investigator Jones also examined the traffic and parking situation in the neighborhood during his investigation. Id. at 12-13. He found that 14th Street, N.W., has a high volume of traffic. Id. at 13. The neighborhood has metered parking available for those seeking to park on the public streets. Id. In addition, U Street Parking offers a public parking lot located at 1925 14th Street, N.W., which has 17 parking spaces. *Protest Report*, 13. The Reeves Center, located at 2000 14th Street, N.W., which is operated by U Street Parking as well, has 365 parking spaces, and is open from 7:00 p.m. to 3:00 a.m. Id.

8. Investigator Jones further examined the neighborhood's public transportation offerings. Id. He observed that Metro buses frequent the area, and he saw that two bus stops are located within one block of the establishment's proposed location. Id.

9. Finally, Investigator Jones examined the crime statistics for 1901 14th Street, N.W. *Protest Report*, 15. Between, February 1, 2011, and February 1, 2012, the Metropolitan Police Department did not receive any calls for service at the establishment's proposed address. Id.

III. Norman Metzger

10. Norman Metzger serves as an ANC Commissioner for ANC-6B03. *Tr.*, 4/11/12 at 38. Matchbox on Capital Hill and Ted's Bulletin, which is also operated by the Applicant's management, is located in Commissioner Metzger's Single-Member District. *Tr.*, 4/11/12 at 39, 46; see also *Tr.*, 4/11/12 at 109-12. Commissioner Metzger has never received any complaints from his constituents regarding the operation of the establishments in his neighborhood. *Tr.*, 4/11/12 at 42-43.

IV. Tanya Evans

11. Tanya Evans currently lives on the corner of 14th Street, N.W, and Wallach Place, N.W., which is "catty-corner" from the Applicant's proposed location. *Tr.*, 4/11/12 at 55; *Protest Report*, Exhibit No. 11. She has resided there for the past three years. *Tr.*, 4/11/12 at 55.

12. Ms. Evans described the neighborhood as "vibrant" and "bustling." *Tr.*, 4/11/12 at 57-58. Yet, she has never found herself disturbed by noise. *Tr.*, 4/11/12 at 58.

13. Ms. Evans is familiar with the Matchbox in Chinatown, which is operated by the Applicant's management. *Tr.*, 4/11/12 at 59; see also *Tr.*, 4/11/12 at 109-12. She noted that during her previous visits to the Matchbox in Chinatown, there have not been many people in the establishment after 10:00 p.m. *Tr.*, 4/11/12 at 60. She further noted that the Chinatown Matchbox was not a loud place. *Tr.*, 4/11/12 at 61.

V. David Tracz

14. David Tracz serves as the Applicant's architect. *Tr.*, 4/11/12 at 74. Based on his research, Mr. Tracz noted that the Applicant's proposed location previously served as a billiard hall, a car dealership, and a nightclub. *Tr.*, 4/11/12 at 76. Mr. Tracz indicated that the Applicant is spending four million dollars to renovate the property. *Tr.*, 4/11/12 at 76.

15. The plans to renovate the property include the addition of a sidewalk café, which will contain fifty-six seats. *Tr.*, 4/11/12 at 77, 79. The establishment intends to install plants and trellising to reduce the noise generated by the sidewalk café. *Tr.*, 4/11/12 at 79, 101.

16. The interior of the establishment will contain 250 seats. *Tr.*, 4/11/12 at 80. The first floor of the establishment will contain rows of booths and tables, including a row of booths running down the center of the establishment. *Tr.*, 4/11/12 at 87, 89. The second floor will have a row of booths running against one of the walls, and contain a railing overlooking the establishment's bar. *Tr.*, 4/11/12 at 88. Mr. Tracz noted that the booths will be stationary. *Tr.*, 4/11/12 at 89.

17. Mr. Tracz further noted that the establishment abuts a post office. *Tr.*, 4/11/12 at 90. The closest residence to the establishment's sidewalk café will be located across the alley neighboring the establishment. *Tr.*, 4/11/12 at 95.

VI. Perry Smith

18. Perry Smith serves as the Applicant's managing partner. *Tr.*, 4/11/12 at 106. The establishment will be part of the Matchbox Food Group. *Tr.*, 4/11/12 at 106, 109-112.

19. Mr. Smith described the Voluntary Agreement he executed with ANC 1B. *Tr.*, 4/11/12 at 107. The Applicant's Voluntary Agreement requires the establishment to cease seating patrons in its sidewalk café at 11:00 p.m. *Voluntary Agreement*, § 3. The Voluntary Agreement further requires the Applicant to close the sidewalk café at midnight. Id. The Voluntary Agreement also prohibits live entertainment in the sidewalk café. Id.

20. Mr. Smith estimates that the establishment's proposed outdoor seating will be approximately eleven feet away from the nearest residential building. *Tr.*, 4/11/12 at 113. Mr. Smith also noted that the patio will be enclosed, so that people cannot sit in it after the business closes. *Tr.*, 4/11/12 at 150.

21. Mr. Smith described the establishment's garbage area. *Tr.*, 4/11/12 at 118. The garbage compactor is located in a back alcove. *Tr.*, 4/11/12 at 118. The establishment's recyclables will be stored in the building's basement, and the establishment will remove recyclables from the property by using a chain lift. *Tr.*, 4/11/12 at 118.

22. He also noted that the establishment is making efforts to encourage patrons to find appropriate parking. *Tr.*, 4/11/12 at 121. The establishment will use social media to promote the use of websites that identify public parking in the surrounding neighborhood. *Tr.*, 4/11/12 at 121, 146. Further, the establishment is not utilizing a valet based on concerns expressed by the local Advisory Neighborhood Commission. *Tr.*, 4/11/12 at 150.

23. Mr. Smith further noted that Matchbox is a food-oriented business. *Tr.*, 4/11/12 at 123. In 2011, 73.8 percent of sales at the Matchbox at Capital Hill were related to the sale of food while alcoholic beverage sales were only 26.2 percent of total sales. *Tr.*, 4/11/12 at 123. Similarly, in 2011, 74.1 percent of sales at the Matchbox in Chinatown were related to the sale of food while the sale of alcoholic beverages were only 25.9 percent of sales. *Tr.*, 4/11/12 at 123. As a result, Mr. Smith believes his proposed establishment will have

similar sales figures, because the establishment will be similar to the Matchboxes in Chinatown and Capital Hill. *Tr.*, 4/11/12 at 124.

VII. Frederick Herman

24. Frederick Herman serves as the Vice President of Operations for the Matchbox Food Group. *Tr.*, 4/11/12 at 184-85. Mr. Herman emphasized that the establishment is not a college bar, and he does not expect large crowds during early morning hours. *Tr.*, 4/11/12 at 187, 189-90

VIII. Daniel McKay

25. Daniel McKay stated that the Protestants do not oppose the Application. *Tr.*, 4/11/12 at 239. Nevertheless, the Protestants request that the establishment abide by hours that respect the needs of residents, and commit to a responsible parking plan. *Tr.*, 4/11/12 at 240-41. Mr. McKay noted that Policy, located at 1904 14th Street, N.W., has not been granted the maximum hours allowed by law.[1] *Tr.*, 4/11/12 at 241. In addition, Mr. Mckay submitted a survey of neighborhood listserv participants that we found unpersuasive. Protestant Exhibit No. 1.

IX. Craig Brownstein

26. Craig Brownstein lives on Wallach Place, N.W. *Tr.*, 4/11/12 at 194. Mr. Brownstein emphasized that the establishment is near residential buildings. *Tr.*, 4/11/12 at 195.

27. Based on Mr. Brownstein's experience living in the neighborhood, the many alcoholic beverage establishments in the neighborhood encourage bar patrons to walk through his neighborhood. *Tr.*, 4/11/12 at 196. Many weekends, inebriated patrons walk through the residential parts of the neighborhood in a loud and obnoxious fashion, which disturbs residents. *Tr.*, 4/11/12 at 196, 201, 214, 230. He also noted that inconsiderate patrons urinate and defecate on residential properties in the neighborhood. *Tr.*, 4/11/12 at 197. In addition, Mr. Brownstein has observed patrons trespass on residents' property by sitting on residents' porches. *Tr.*, 4/11/12 at 197. Mr. Brownstein admitted that he could not identify the establishments that the patrons in his neighborhood were patronizing. *Tr.*, 4/11/12 at 202.

28. Mr. Brownstein further admitted that he did not have a specific issue with Matchbox, and he believes that the Applicant is a good operator. *Tr.*, 4/11/12 at 208.

CONCLUSIONS OF LAW

29. We may only issue a Retailer's Class CR License if the Applicant demonstrates that the proposed establishment will not have a negative impact on peace, order, and quiet, residential parking needs, and the safety of pedestrians and vehicles in the area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b) (West Supp.

[1] We take administrative notice of Policy's official address. See *ABRA Licensing File No. 076804.*

2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2012). Further, under § 25-314, based on the issues raised by the Protestants, we may only issue the license if the Applicant shows that "issuance of the license [will not] contribute to an overconcentration of licensed establishments[,] which is likely to affect adversely the locality, section, or portion in which the establishment [proposes to] locate[]." D.C. Code § 25-314(a)(4) (West Supp. 2012).

30. In this matter, both parties agree that the Applicant merits a Retailer's Class CR License. *Tr.*, 4/11/12 at 281. Nevertheless, the primary concern of the Protestants is the operating hours of the establishment and the sidewalk café. *Tr.*, 4/11/12 at 281. Based on the substantial evidence contained in the record, we find that granting the Applicant the maximum hours allowed by law for the inside of the establishment is appropriate for the neighborhood, based on the Applicant's showing that the establishment will be a food-oriented establishment; that the establishment has sufficient means to control its garbage and litter; that the establishment will not create unreasonable amounts of noise; that the establishment will be located in a neighborhood that has sufficient parking garage spaces available to accommodate the demand for parking created by the restaurant; that the establishment will not pose a danger to vehicles or pedestrians; and that the establishment's presence will not lead to the overconcentration of licensed establishments based on the locations' presence in the Arts Overlay District. Nevertheless, we are persuaded, based on the close proximity of the establishment to residential buildings and our prior precedent regarding the neighborhood, that the sidewalk café should be open no earlier than 10:00 a.m., and no later than 11:00 p.m., Sunday through Thursday, and 11:30 p.m., on Friday and Saturday.

I. Appropriateness

31. Other than the condition we discussed above, we find that in all other respects, the Application is appropriate.

32. We are satisfied that the Application will not have an adverse impact on peace, order, and quiet in the neighborhood. Under § 25-313(a), we must consider "[t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth" Title 25 of the District of Columbia Official Code. D.C. Code §§ 25-313(a)(b)(2) (West Supp. 2012).

33. Based on Matchbox's business model, we are convinced that the Applicant will run an establishment focused on food sales; especially, when the sale of food at similar Matchbox restaurants account for over 70 percent of those establishments' total sales. Supra, at ¶ 23. Furthermore, based on the stationary booths installed by the Applicant throughout the restaurant, it is clear that there is no intention to use the restaurant as a tavern or nightclub. Supra, at ¶ 16. Under these circumstances, we are convinced that the Applicant's patrons will not be engaging in heavy drinking, and the Applicant will not be producing the inebriated crowds that have disturbed residents in the neighborhood. Supra, at ¶¶ 24, 27.

34. We further find that the Applicant has taken responsible measures to prevent the accumulation of litter and trash. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and ". . . 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 (West Supp. 2012). Here, the Applicant has shown that it has an elaborate system to control its trash production, which includes a garbage compactor and a chain lift to move recyclables. Supra, at ¶ 21. As such, we find that the Applicant has sufficient means to control and remove its trash and litter.

35. We also find that the Applicant will not create noise in violation of § 25-725. Under the law, the Applicant must comply with the District's noise level requirements and "not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment." D.C. Code §25-725(a), (c) (West Supp. 2012). Here, the Applicant only abuts a post office, and the Applicant's entertainment hours will end at 3:00 p.m., as indicated by the establishment's Voluntary Agreement. Supra, at ¶¶ 2, 17. Furthermore, the Applicant does not plan to play live music outside of the establishment. Supra, at ¶¶ 19. Under these circumstances, we find that the Applicant will comply with the District of Columbia's noise level requirements, and will not disturb nearby residents.

36. We are further convinced that the Application will not have an adverse impact on residential parking or vehicular and pedestrian safety. Under the law, we must consider "the effect of the establishment on residential parking needs and vehicular and pedestrian safety." D.C. Code § 25-313(a)(3). Here, even though the neighborhood has a high volume of traffic, the record does not contain evidence that pedestrians and vehicles are in danger, nor can we conceive of any manner in which the Applicant's proposed operations threaten pedestrians or vehicles. Supra, at ¶¶ 6-7. Furthermore, the record shows that the nearby parking garages operated by U Street Parking provide adequate parking for the neighborhood. For these reasons, we find that the presence of the Applicant's restaurant will neither strain residential parking resources, nor create a danger to pedestrians or vehicles.

37. Finally, we are satisfied that the presence of the Applicant will not lead to the overconcentration of licensed establishments. Under § 25-314(a)(4), we must consider whether the presence of the Applicant will "contribute to an overconcentration of licensed establishments[,] which is likely to affect adversely the locality, section, or portion in which the establishment [proposes to] locate[]." § 25-314(a)(4). As the facts demonstrate, the Applicant's establishment will be located in an Arts Overlay District. Supra, at ¶ 5. Such districts are intended to encourage the presence of restaurants and other arts-related uses described in the zoning law. See id.; 23 DCMR §§ 1901.1, 1908.l(u). Consequently, the location's zoning designation convinces us that the neighborhood is intended to host a large number of restaurants, like the Applicant's proposed establishment.

II. Conditions on Licensure

38. Based on our review of the evidence and our prior precedent, we find that the establishment is inappropriate for the neighborhood if we grant it the maximum sidewalk café hours allowed by law.

39. Under our statutes, "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. Code § 25-104(e) (West Supp. 2012).

40. In resolving prior protests, we have repeatedly found that we must be cautious in approving licenses near residents and residential zones. See In re B.J. Enterprises, Inc., t/a JP's, Board Order No. 2011-375, ¶ 33 (D.C.A.B.C.B. Aug. 17, 2011); In re NHV Corporation, Inc., t/a Haydee's Restaurant, Board Order No. 2010-433, ¶¶ 47, 49 (D.C.A.B.C.B. Sept. 8, 2010).

41. In addition, we have also previously found that our prior determinations of appropriateness may be persuasive when considering future licensing requests in the same neighborhood. In re Panutat, LLC, t/a Sanctuary 21, Board Order No. 2012-012, ¶ 28 (D.C.A.B.C.B. Jan. 11, 2012) (petition for review filed); see also Springer v. District of Columbia Dep't of Employment Services, 743 A.2d 1213, 1220-21 (D.C. 1999) (saying that "agencies, like courts, must and do favor a policy of *stare decisis* unless unusual circumstances intervene.") In that vein, in Policy, the establishment trading as Policy, located near the Applicant's proposed location at 1904 14th Street, N.W., requested sidewalk cafés on 14th Street, N.W., and T Street, N.W. Supra, at ¶ 25; In re The Griffin Group, LLC, t/a Policy, Board Order No. 2011-357, ¶¶ 1-2, 66 (D.C.A.B.C.B. Sept. 14, 2011). There, similar to the Applicant, Policy indicated that it would install planters and barriers in the sidewalk café area. Policy, Board Order No. 2011-357 at ¶ 66. Nevertheless, we found that the sidewalk café would disturb nearby residents. Id. at ¶¶ 67-68. We, therefore, limited the hours of the sidewalk café to no earlier than 10:00 a.m. and no later than 11:00 p.m., Sunday through Thursday, and no later than 11:30 p.m. on Friday and Saturday.

42. Here, we find that it is in the best interest of the neighborhood to impose the same restrictions on the Applicant's sidewalk café as we imposed in Policy. The Applicant's sidewalk café, estimated to hold fifty-six people, will be approximately eleven feet from the nearest residence. Supra, at ¶¶ 15, 20. Similar to our conclusion in Policy, we find that the consistent presence of such a large group of people will be disturbing to neighboring residents, and potentially interfere with the quiet enjoyment of such residents' property if allowed to occur late into the evening. Furthermore, in light of our determination in Policy, the Applicant's Voluntary Agreement does not go far enough to protect residents' interests in peace, order, and quiet early-morning and late-night hours. Supra, at ¶ 19. Therefore, we condition the approval of the Applicant's Retailer's Class CR License on the Applicant's sidewalk café being operated no earlier than 10:00 a.m. and no later than 11:00 p.m., Sunday through Thursday, and no later than 11:30 p.m., on Friday and Saturday.

III. Conclusion

43. For the foregoing reasons, we find the Application appropriate subject to the conditions described above.

44. 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 (West Supp. 2012). 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 25th day of July 2012, hereby **ORDERS** that the Application for a New Retailer's Class CR License, Entertainment Endorsement, and Sidewalk Café filed by Matchbox 14th Street, LLC, t/a Matchbox, is **GRANTED**, subject to the following conditions:

(1) The hours of operation, sale, and service of alcoholic beverages for the establishment's sidewalk café shall be limited to no earlier than 10:00 a.m. and no later than 11:00 p.m., Sunday through Thursday; and no earlier than 10:00 a.m. and no later than 11:30 p.m. on Friday and Saturday;

(2) Under § 25-446 of the District of Columbia Official Code, the Board **APPROVES** and **INCORPORATES** the Voluntary Agreement attached to this Order, dated February 20, 2012, between the Applicant and ANC 1B. The Applicant's operations are bound by the Voluntary Agreement's terms under § 25-446, subject to the following **MODIFICATIONS**:

a. The first sentence of § 2 shall now read, "There will be live entertainment during Saturday and Sunday brunch only from 11AM-3PM";

b. The last sentence of § 3 shall be deleted;

c. The second sentence of § 4 shall be deleted; and

(3) The Board further notes that our Order and condition conflicts with some terms of the Applicant's Voluntary Agreement. Where such conflict exists, the stricter restriction shall control. Therefore,

a. The Applicant's hours shall be limited to the hours described in § 1 of the Voluntary Agreement;

b. The Applicant's hours of entertainment shall be limited to the hours described in § 2 of the Voluntary Agreement; and

c. The limitation on the hours of the Applicant's sidewalk café contained in this Order shall control in lieu of the hours described in § 3 of the Voluntary Agreement.

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

Mike Silverstein, Member

I concur with the decision approving the Application, but dissent with the condition the majority of the Board chose to impose on the hours of the Applicant's sidewalk café.

Calvin Nophlin, 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).

VOLUNTARY AGREEMENT
CONCERNING CHANGES TO LICENSE

Made the 13th day of February, 2012 by and between Perry Smith, Matchbox Food Group, 806 7th Street NW Ste 300, Washington, DC 20001(hereinafter "Applicant"), and ANC 1B (hereinafter "Protestants").

WHEREAS. Applicant filed with the District of Columbia Alcoholic Beverage Control (ABC) Board (hereinafter" the Board") a request for the issuance of a Retailer's License Class C for Matchbox Restaurant, 1901 14th St NW, 20009; and,

WHEREAS, the parties subsequently have negotiated in an effort to address potential issues and/or concerns with regard to the issuance of the license; and,

WHEREAS, the parties desire to enter into a voluntary agreement, pursuant to DC Official Code Section 25-446 (2001 ed.), commemorating their agreements;

NOW, THEREFORE, the parties agree as follows:

1. **Hours.** Applicant's hours of operation will be Monday through Thursday 11AM-2AM. Friday 11AM-3AM. Saturday 10AM-3AM. Sunday 10AM to 2AM and/or as designated by ABRA. The kitchen will be open until 2 hours before closing.
2. **Interior Entertainment.** There will be a live entertainment jazz band (maximum four pieces) during Saturday and Sunday brunch only from 11AM-3PM. At other times, music will be limited to background and recorded music.
3. **Outside Space.** Patio operations will cease seating patrons at 11pm Monday-Sunday and shall cease all operations and clear all patrons from the outdoor patio no later than 12:00 midnight. No live music, entertainment, or stereo speakers of any kind will be permitted on the patio. Ambient sounds associated with interior speakers will not be considered a violation of the terms or intent of this provision. Applicant agrees that it shall not seek to expand the capacity of the sidewalk café without amendment of this agreement.
4. **Trash/Rodents.** Applicant will have trash/dumpster pickup by a commercial hauler no fewer than 3 times per week. Applicant will also strictly adhere to required and/or voluntary recycling of bottles and cans. Applicant will police the immediate environs of its premises daily and make its best efforts to keep said area clean of trash and debris. Trash pickup will commence no earlier than 7AM and no later than 7PM. Applicant shall deposit trash and garbage only in rodent-proof dumpsters and shall see that dumpster covers fit properly and remain fully closed except for such times when trash and garbage is being added or removed. Applicant will make every reasonable effort to eliminate accessible food sources for rodents, including rat and vermin control for its

property. Applicant shall have the Establishment and the area around the premises cleaned at closing.

5. **Maintenance of Public Space.** Applicant will maintain public space outside the premises, including disposal of trash and debris from the alley behind its premises and the area immediately in front its premises.

6. **Security.** All security personnel employed by applicant will undergo security training to be completed no later than 45 days from the date of hire. Applicant agrees that it shall take all necessary steps to minimize illegal drugs and public drinking, including, without limitation, designating a sufficient number of employees to control unruly patrons. Applicant shall to the full extent permissible by law discourage loitering in the front of the Premises at all times when the Establishment is open to the public, and shall request that any individuals who are simply loitering are asked to move along.

7. **Failure to Adhere.** Applicant acknowledges that failure to adhere to the restrictions recited in paragraphs 3 through 6, inclusive, above, will constitute grounds for the designated representative protestants, whose signatures are affixed hereunto, to petition the Board for issuance of an Order to Show Cause, pursuant to DC Official Code Section 25-447 (2001 ed.), to ascertain Applicant's compliance with the terms of this Agreement and/or if necessary to obtain compliance with these terms. Prior to so petitioning, however, the Designated representative protestants shall notify Applicant of any perceived violations and afford Applicant a minimum of fourteen (14) calendar days in which to address or rectify the perceived violation.

The terms of this Voluntary Agreement in its entirety shall become effective upon ratification of this agreement by the District of Columbia Alcoholic Beverage Control Board. The parties request that the text of the instant Agreement be incorporated in an order of the Board granting Applicant's request for issuance of its Retailer's license Class C.

In further consideration of, and reliance upon the forgoing commitments by Protestants, the Applicant hereby request that its Application for Issuance of its Class C Retailer's License be issued.

In WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the year and day first above written.

PROTESTANTS,

THROUGH THEIR DESIGNATED REPRESENTATIVE PROTESTANTS:

By: Megla Moss 2-20-12
ANC 1B Chairman

APPLICANT

By: _____