

FINDINGS OF FACT

1. The Applicant is the holder of a Retailer's Class A License at the location of 1500 Massachusetts Avenue, S.E., Washington, D.C., which is located within ANC 6B. See *Alcoholic Beverage Regulation Administration (ABRA) Fact Finding File No. 060626.*
2. ANC 6B noticed an opposition to this request by way of a letter, dated May 12, 2011, to the Chairman of the Board stating that the Commission voted (8-0-1) to oppose granting S & J Liquors an exemption from the sale of single sales, half-pint, and smaller spirits. See *ABRA Fact Finding File No. 060626.*
3. The Applicant has operated a store in its present location for approximately 25 years. *Transcript (Tr.)*, June 22, 2011 at 11.
4. Roland Charles Harvey lives at 1826 Massachusetts Avenue, S.E., which is three blocks away from the establishment. *Transcript (Tr.)*, June 22, 2011 at 10, 24. Mr. Harvey buys beer and plays the lotto at the establishment several days per week. *Tr.*, 6/22/11 at 17. Mr. Harvey believes that the area around the Applicant's establishment is safe and clean. *Tr.*, 6/22/11 at 14. Finally, the establishment has not had signs in the window for the past four to five years. *Tr.*, 6/22/11 at 16.
5. The establishment cleans the alley behind the establishment on a daily basis. *Tr.*, 6/22/11 at 59. The establishment has had no ABC violations in the past 12 months. See *ABRA Fact Finding File No. 060626, Applicant Affidavit.* The Applicant has also made contributions to local community causes. *Applicant Affidavit.*
6. Chairperson Glick testified in opposition to the Application. *Tr.*, 6/22/11 at 24. Between 2001 and 2003, Chairperson Glick has "picked up a lot of trash and empty bottles on the streets and alleys of the neighborhood." *Tr.*, 6/22/11 at 24. In addition, neighbors located near the 1500 block of Massachusetts Avenue, S.E., "still have a lot of problems with . . . trash [and bottles] all over [the] block." *Tr.*, 6/22/11 at 24.
7. Chairperson Glick testified that the ban on the sale of singles has benefited the neighborhood. *Tr.*, 6/22/11 at 25. Specifically, there has been a large decrease in the amount of litter and trash in the neighborhood. *Tr.*, 6/22/11 at 25. However, the neighborhood still has a problem with large amounts of litter from food. *Tr.*, 6/22/11 at 25. Furthermore, Chairperson Glick has observed the remains of 32-ounce and 40-ounce beers in the neighborhood. *Tr.*, 6/22/11 at 26, 37, 55.
8. ANC 6B is near a large number of social service programs. *Tr.*, 6/22/11 at 27. Reservation 13's D.C. Campus is located on the 1900 block of Massachusetts Avenue, S.E., and houses approximately 1,100 homeless people. *Tr.*, 6/22/11 at 27, 51. Additionally, there are over 500 people living at a nearby methadone clinic. *Tr.*, 6/22/11 at 27.

9. ANC 6B receives many complaints about people urinating and defecating in the alley behind the Applicant's establishment, which Chairperson Glick described as a "public toilet." *Tr.*, 6/22/11 at 29, 33, 36, 45.

10. Finally, as indicated by ANC Commissioner Carol Green, Eastern Thrifty Market, which is located in ANC 6B, was allowed to sell singles for one year and the neighborhood experienced increased trash and "uncivil behavior." *Tr.*, 6/22/11 at 47.

CONCLUSIONS OF LAW

11. 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. Official Code §§ 25-345 and 25-346.

12. 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).

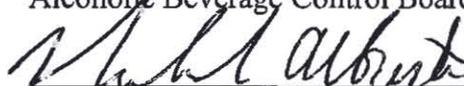
13. The Board also recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2011) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 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. ANC 6B opposes the Applicant's request because allowing the sale of single containers of alcoholic beverages will be detrimental to the quality of life in ANC 6B. *ABRA Fact Finding File No. 060626, Recommendation of ANC 6B, 1-2*. We agree with ANC 6B and deny the Application.

14. Although the Applicant made a proper request, has no history of violations, and has contributed to local community causes, we deny the request based on the opposition of ANC 6B and evidence that lifting the ban will have a negative impact on the neighborhood. We credit the evidence and testimony presented by ANC 6B that prior attempts to lift the ban for other establishment had a negative impact on the community, because it increased the amount of trash and anti-social behavior in the neighborhood. Supra, at para. 10. In addition, based on the significant litter and trash problems faced by the establishment's neighbors, we are concerned that granting an exception would exacerbate these problems. Supra, at para. 6-7. Indeed, alcohol containers are currently found littered throughout the neighborhood. Supra, at para. 7. Finally, we find that it would irresponsible to grant an exception when there are frequent incidents of public urination and defecation in the alley behind the establishment. Supra, at para. 9. As such, we deny the Application.

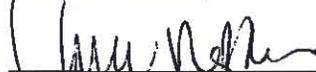
ORDER

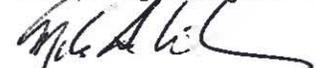
Based on the foregoing findings of fact, conclusions of law, and the entire record herein, the Board on this 14th day of September 2011, hereby **ORDERED** that the Application of Watson Deli, Inc., t/a S & J Liquors, for an Exception to the Single Sales Restriction is **DENIED**. Copies of this Order shall be sent to the Applicant and ANC 6B.

District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member


Calvin Nophlin, Member


Mike Silverstein, Member

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


Herman Jones, Member

Pursuant to 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, 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 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 (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).