

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

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In the Matter of:	)		
	)		
Panutat, LLC	)	License No.:	83267
t/a Sanctuary 21	)	Case No:	10-PRO-00003
	)	Order No:	2012-012
Applicant for a New	)		
Retailer's Class CN License	)		
	)		
at premises	)		
2131 K Street, N.W.	)		
Washington, D.C. 20037	)		

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**BEFORE:** Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ALSO PRESENT:** Panutat, LLC, t/a Sanctuary 21, Applicant

Matthew LeFande, Esq., on behalf of the Applicant

Emanuel Mpras, Esq., on behalf of the Applicant

Richard Aguglia, Esq., on behalf of  
Advisory Neighborhood Commission 2A

Chris Labas, on behalf of A Group of Five or More Individuals

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER STRIKING BOARD ORDER NO. 2010-418 AND FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

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## PROCEDURAL BACKGROUND

Panutat, LLC, t/a Sanctuary 21, (hereinafter “Applicant” or “Sanctuary 21”) filed an Application for a new Retailer’s Class CN License for the basement of premises 2131 K Street, N.W. Protests against the Application were timely filed by Advisory Neighborhood Commission (ANC) 2A, by letter dated March 23, 2010, and A Group of Five or More Individuals, by a petition filed with the Board on February 7, 2010 (collectively, the “Protestants”). The Application initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on February 22, 2010, and a Status Hearing on March 24, 2010. The Board held the Protest Hearing on April 28, 2010.

On August 4, 2010, we granted the Application. Panutat, LLC, t/a Sanctuary 21, Board Order No. 2010-418, 11 (D.C.A.B.C.B. Aug. 4, 2010). The Protestants appealed the Board’s decision. Upon the motion of both the Board and the Protestants, the District of Columbia Court of Appeals remanded the case back to the Board in order for the Board to reconsider Board Order No. 2010-418. See Labas v. District of Columbia Alcoholic Beverage Control Bd., Nos. 10-AA-1245 & 10-AA-1549 (D.C. 2011).

On September 28, 2011, the Board conducted a Remand Hearing for the purpose of resolving the following legal issues:

- (1) whether issuing a license to Sanctuary 21 violates the terms of the Voluntary Agreement that applies to the license controlled by Acott Ventures, LLC, t/a Shadow Room, (Shadow Room) ABRA License No. 075871, holder of a Retailer’s Class CN License;
- (2) whether the Board may issue a license to Sanctuary 21 if Shadow Room controls the basement space; and
- (3) whether the Board may issue a license to Shadow Room inconsistent with the Board’s previous Order limiting Shadow Room to 300 patrons.

In addition, if the Board determines that Sanctuary 21’s Application is not prohibited as a matter of law, the Board also has to consider whether it is appropriate to exclude evidence related to the effect of Shadow Room on the neighborhood.

In summation, the Board concludes that the Application is not prohibited as a matter of law. First, the Voluntary Agreement only applies to Shadow Room, not Sanctuary 21; therefore, it has no relevance to the present matter. Second, the Board’s previous Order, limiting Shadow Room to 300 patrons, only applies to Shadow Room, not Sanctuary 21; therefore, it may only be used as persuasive authority regarding appropriateness. Third, even if we find that Shadow Room controls the basement space, the Protestants are not entitled to judgment as a matter of law. We note that 23 DCMR § 405 permits the Board to issue a license to an applicant, even if the space is controlled by another licensee, so long as the Board finds that the applicant has satisfied § 405, and issuance is contingent on the occupying licensee withdrawing from the space.

Having addressed these threshold legal arguments, the Board must address Sanctuary 21's appropriateness for the neighborhood under District of Columbia Official Code § 25-313. During the protest hearing held on April 28, 2010, the Board erroneously excluded evidence related to Shadow Room's impact on its neighborhood. *Transcript (Tr.)*, April 28, 2010 at 10; see generally *Panutat, LLC, t/a Sanctuary 21*, Board Order No. 2010-418. The Board's previous decision failed to consider that "[r]elevant evidence means evidence having *any tendency* to make the existence of any fact that is of consequence more or less probable than it would be without the evidence." *Hunter v. U.S.*, 980 A.2d 1158, 1164 (D.C. 2009) citing *Foreman v. United States*, 792 A.2d 1043, 1049 (D.C.2002) (emphasis added). Evidence of a current establishment's operations are relevant to determining whether licensing yet another establishment at the same location will exacerbate existing issues and, therefore, whether it is appropriate for the neighborhood. Further, given the overlapping ownership of Sanctuary 21 and Shadow Room, evidence of Shadow Room's operations appear plainly relevant to whether the "new" owner will operate the establishment without having a detrimental impact on the neighborhood. Under these circumstances, we cannot sustain the argument that the operation of Shadow Room has no relevance to the Application's appropriateness. In order to correct this error of law, we strike Board Order No. 2010-418, and must, once again, address the appropriateness of the Application; this time taking into consideration all relevant evidence.

### **PREHEARING MOTIONS**

Before taking up the issue of appropriateness, we note that on September 19, 2011, the Protestants renewed their Motion to Dismiss (Motion) based on the issues raised by the Protestants in their appeal. *ANC 2A's Renewed Motion to Dismiss Application for License filed by Panutat, LLC t/a Sanctuary 21 and to Revoke License No. ABRA-083267 (Retail Class "C" Night Club) Granted by the Board, 1*. Based on our reasoning above, we deny the Motion. However, rather than dismiss the Motion out of hand, we will elaborate further on our aforementioned legal conclusions as part of our response to the Protestants' Motion.

#### **I. THE ISSUES RAISED BY THE PROTESTANTS DO NOT ENTITLE THEM TO JUDGMENT AS A MATTER OF LAW AND THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT MUST BE ADDRESSED BY THE BOARD.**

The Protestants assert that the license held by Shadow Room covers the basement space sought by the Applicant. *Id.* at 3. As such, the Protestants argue that the Board should dismiss the Application, because the space is already occupied by Shadow Room. Furthermore, the Protestants argue that the Application should be dismissed, because the agreement violates the Voluntary Agreement, and violates a Board Order limiting Shadow Room's occupancy. *Id.* at 5, 7. Nevertheless, these arguments fail to take into account that Shadow Room's Voluntary Agreement does not apply to Shadow Room, that the conditions placed on Shadow Room's license by the Board only apply to Shadow Room, and that the Board may grant Sanctuary 21 a license if the Application complies with 23 DCMR § 405 and licensure is conditioned on Shadow Room withdrawing from the basement of 2131 K Street, N.W.

We note that we will only grant a Motion to Dismiss if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." *Holland v.*

Hannan, 456 A.2d 807, 814 (D.C. 1983). As such, we address the Protestants' arguments regarding Shadow Room's Voluntary Agreement, Shadow Room's control of the basement space, and potentially conflicting Board Orders using this standard.

**A. The Protestants are not entitled to judgment as a matter of law because Shadow Room's Voluntary Agreement does not prohibit Sanctuary 21's Application, because the Voluntary Agreement only applies to Shadow Room.**

On its face, Shadow Room's Voluntary Agreement only applies to Shadow Room. In general, a voluntary agreement settles a protestants' suit against an applicant in exchange for imposing conditions on the applicant's license. See D.C. Code § 25-446 (West Supp. 2011). We interpret all voluntary agreements according to their terms, as if they were contracts. Café Eagle, LLC, t/a Café Eagle, Board Order No. 2011-470, ¶ 15 (D.C.A.B.C.B. Dec. 7, 2011). In pertinent part, Shadow Room's Voluntary Agreement states:

The Shadow Room agrees to withdraw its request to increase the capacity of its licensed premises subject to the provisions of this Agreement's Binding Effect and Withdrawal of Protest section . . . . It is understood by the parties that Shadow Room will not apply to the ABC Board for any increase in occupancy without first appearing before ANC-2A at a publicly-noticed meeting. Nothing herein shall be construed to prohibit the Shadow Room from making any other future requests to the ABC Board for changes in its occupancy.

Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2008-300 (D.C.A.B.C.B. Nov. 12, 2008). The Voluntary Agreement contains no language that the occupancy restrictions apply to other corporate entities or the corporation's owners in their individual capacities.<sup>1</sup> Therefore, the Voluntary Agreement only binds Acott Ventures, LLC, the owner of Shadow Room, not Panutat, LLC, a distinct corporation. Therefore, Shadow Room's Voluntary Agreement is irrelevant and has no bearing in this matter.

We also will not pierce Sanctuary 21's corporate veil and apply the Voluntary Agreement to Sanctuary 21, as advocated by the Protestants. Piercing the corporate veil requires the Protestants to show that "there is (1) unity of ownership and interest, and (2) use of the corporate form to perpetuate fraud or wrong." Lawlor v. District of Columbia, 758 A.2d 964, 975. (D.C. 2000). When piercing the corporate veil, "No single factor is dispositive," and "considerations of justice and equity may justify piercing the corporate veil." Id. Here, the Board's protest rules give the Protestants an opportunity to argue directly against the Application. More importantly, the Board's protest rules prevent the Applicant from unilaterally selling and serving alcohol at a new establishment without public notice and comment and permission from the Board. Finally, there is no evidence in the record that the Applicant has commingled personal and corporate funds, failed to inadequately capitalize the corporation, hold board meetings, or elect corporate

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<sup>1</sup> Further, even if the Voluntary Agreement applied to the Applicant, the agreement only requires that the Applicant appear before ANC 2A before requesting an increase in occupancy, nothing more. As a result, the agreement does not bar the Applicant from applying for an expansion or a new license; instead, it only provides a small technical or procedural hurdle for the Applicant to overcome. See D.C. Code § 25-338(b) (West Supp. 2011).

officers. See Flocco v. State Farm Mut. Auto. Ins. Co., 752 A.2d 147, 155 (D.C. 2000); Estate of Raleigh v. Mitchell, 947 A.2d 464, 470-471 (D.C. 2008). Consequently, we fail to see how the Applicant is perpetuating any type of fraud, wrong, or injustice on the Protestants. Id. Therefore, we find that the Voluntary Agreement does not prohibit Sanctuary 21's Application.

**B. The Protestants are not entitled to judgment as a matter of law, because the Board's previous Order, limiting Shadow Room to 300 patrons, only applies to Shadow Room, not Sanctuary 21; and, in the alternative, even if it did, it is a question of material fact as to whether the condition is still necessary.**

In Board Order No. 2007-072, we limited Shadow Room to 300 patrons in order to preserve the neighborhood's peace, order, and quiet. Acott Ventures, LLC, t/a Shadow, Board Order No. 2007-072, 12, (D.C.A.B.C.B. Sept. 5, 2007). The Board is entitled to impose conditions on licensees when the Board finds that such conditions are "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. 2011).

As noted above, in section I(A), Sanctuary 21 and Shadow Room are separate entities. The Board did not intend that the condition imposed on Shadow Room would control any other entity. Yet, even if the condition applied to Sanctuary 21, it is a question of material fact as to whether the condition is still necessary. We note that the standard for imposing a condition is whether the condition is in the best interests of the community. Consequently, we cannot foreclose the possibility that the "best interests" of the community have changed; therefore, a question of material fact remains that the Board must address.

**C. Finally, even if Shadow Room is found to control the basement, the Protestants are not entitled to judgment as a matter of law, because 23 DCMR § 405 permits the Board to issue a license to an applicant, even if the space is controlled by another licensee, so long as the Board finds that the applicant has satisfied § 405, and issuance is contingent on the occupying licensee withdrawing from the space.**

The alcoholic beverage control (ABC) laws do not require the Board to dismiss the Application if Shadow Room is found to control the basement space. Here, the Applicant requested approval of its Application under § 405 in a letter, dated March 4, 2010. *ABRA Licensing File No 083267, Letter from Swaptak Das to the Alcoholic Beverage Control Board*, (Mar. 4, 2010) (*Letter*, March 4, 2010). The Applicant averred that it had a lease for the basement space, but would not obtain a Certificate of Occupancy or business license until the Board approved its liquor license. *Letter*, March 4, 2010.

Under § 405 of the District of Columbia Municipal Regulations, an applicant may apply for a space already occupied by another licensee. Among other requirements, an applicant merely has to demonstrate to the Board that it possesses a bona fide agreement to occupy the premises. 23 DCMR § 405.1(c) (2008). Thus, granting the Application under § 405 does not depend on whether another licensee currently controls the requested space. Indeed, as long as the Applicant otherwise qualifies for licensure, a simple order granting licensure, contingent on

Shadow Room withdrawing from the basement space and Sanctuary 21's compliance with § 405 is all that is needed to grant the Application. Consequently, as a matter of law, the Board is not required to dismiss the Application if Shadow Room controls the basement of 2131 K Street, N.W.

As such, we deny the Protestants' Motion, and we will address this matter on its merits.

### **QUESTION PRESENTED**

We note that the issues raised by the Protestants under District of Columbia Official Code § 25-602, are whether the Application will adversely impact the peace, order, and quiet; residential parking needs; vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313 (West Supp. 2011); 23 DCMR §§ 1607.2; 1607.7(b) (2008).

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, the record created on April 28, 2010, and September 28, 2011, both parties' Proposed Findings of Fact and Conclusions of Law, and all documents comprising the Board's official file, makes the following:

### **FINDINGS OF FACT**

1. Sanctuary 21 has applied for a Retailer's Class CN License located in the basement of premises 2131 K Street, N.W., Washington, D.C. *ABRA Licensing File No. 083267*. Shadow Room currently occupies the first floor and basement of 2131 K Street, N.W. *ABRA Licensing File No. 83267*; *Acott Ventures, LLC, t/a Shadow Room*; Board Order No. 2007-072, ¶¶ 1, 31 (D.C.A.B.C.B. Sept. 5, 2007).<sup>2</sup> The establishment is located in a C-3-C zone. *ABRA Exhibit No. 3*. The proposed location is 290 feet from the Bright Horizons Daycare Center. *ABRA Exhibit No. 6*. There are approximately 37 ABC-licensed establishments within 1,200 feet of the Applicant's proposed location. *ABRA Exhibit No. 5*. There is a class R-5-E zone located on 22nd Street, N.W., located around the corner from the Applicant's proposed location. *ABRA Exhibit No. 19*.
2. The Applicant proposes to operate 9:00 a.m. to 3:00 a.m., Sunday through Thursday, and 9:00 a.m. to 4:00 a.m., Friday and Saturday. *ABRA Protest File 076250-09/075P, Protest*

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<sup>2</sup> We overturn the Board's previous finding that Shadow Room's license does not apply to the basement space. We reached this conclusion because we erroneously believed that "[t]he document that determines the space an establishment may utilize to sell and serve alcohol is the ABC license itself." *Panutat, LLC, t/a Sanctuary 21*, Board Order No. 2010-418, 2 (D.C.A.B.C.B. Aug. 4, 2010). Based on this reasoning, we concluded that Shadow Room did not control the basement, because Shadow Room's license indicated that Shadow Room was only authorized to sell alcoholic beverages on the first floor. *Id.* Nevertheless, we reject this reasoning, because Board Order No. 2007-072 granted Shadow Room a license that covered both the basement and first floor of 2131 K Street, N.W. *Acott Ventures, LLC, t/a Shadow Room*; Board Order No. 2007-072, ¶¶ 1, 31 (D.C.A.B.C.B. Sept. 5, 2007). We note that a clerical error cannot overturn the ultimate decision of the Board. See *Parreco v. District of Columbia Rental Housing Com'n*, 885 A.2d 327, 331 n. 5 (concluding that a clerical error cannot overturn the hearing examiner's conclusions of law). For this reason, we find that Shadow Room license covers both the first floor and the basement of 2131 K Street, N.W.

*Report, 5.* Sanctuary 21 also proposes to sell alcohol 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *ABRA Protest File 076250-09/075P, Protest Report, 5.*

3. The Board called ABRA Investigator David Bailey to testify. *Tr., 4/28/10 at 44.* Investigator Bailey monitored the establishment on fourteen separate occasions between April 2, 2010, and April 18, 2010. *Tr., 4/28/10 at 49; ABRA Protest File 076250-09/075P, Protest Report, 7-8.*

4. Numerous metered parking spots are located near the establishment's proposed location. *Tr., 4/28/10 at 47.* The 1000 block of both 21st Street, N.W., and 22nd Street, N.W., has public parking spaces available after 6:30 p.m. *Tr., 4/28/10 at 47.* Three parking garages are located near the establishment. *Tr., 4/28/10 at 47-48.* The parking garages close by 7:00 p.m. and do not open during the weekend. *Tr., 4/28/10 at 47-48, 130.* The establishment is located near a bus stop, and a metro station is only a few blocks away. *Tr., 4/28/10 at 152-55.*

5. The Protestants called Sergeant Vernon Keith Grundger with the Metropolitan Police Department (MPD) to testify. *Tr., 4/28/10 at 22.* According to Sgt. Grundger, Shadow Room employs two police officers as part of the MPD Reimbursable Detail, Thursday through Saturday. *Tr., 4/28/10 at 37, 39, 41.* The MPD Reimbursable Detail stays until 11:30 p.m., or until all patrons have left the area. *Tr., 4/28/10 at 37, 39, 41.* MPD reported that fourteen calls for service occurred at 2131 K Street, N.W., that resulted in ABRA generating an investigative report. *ABRA Exhibit No. 37.*

6. Sgt. Grundger also observed that Shadow Room's valet service interferes with MPD's operations. *Tr., 4/28/10 at 38.* Sgt. Grundger has repeatedly witnessed the valet service parking patrons' cars in a manner that blocks emergency vehicles. *Tr., 4/28/10 at 38.* Sgt. Grundger described the valet service as "out of control," because MPD repeatedly tells the valet service not to park vehicles in public spaces; yet, the valet service continues to do so. *Tr., 4/28/10 at 38-39.*

7. The Protestants also called MPD Sgt. Carlos Bundy to testify. *Tr., 4/28/10 at 64.* As noted by Sgt. Bundy, Shadow Room is located on a one-way street that also serves as a hospital route. *Tr., 4/28/10 at 65.* Sgt. Bundy has witnessed Shadow Room's current valet service double parks cars in the alley near the establishment, which, at times, interferes with emergency vehicles and traffic headed towards L Street, N.W. *Tr., 4/28/10 at 65-66.* Sgt. Bundy admitted that Shadow Room has the right to five parking spaces in the establishment's loading dock. *Tr., 4/28/10 at 76.*

8. The Applicant called Swaptak Das to testify on behalf of Sanctuary 21. *Tr., 4/28/10 at 77.* According to Mr. Das, Sanctuary 21's primary entertainment will come from DJs. *Tr., 4/28/10 at 79.* The Applicant plans to build an establishment with a maximum occupancy of 250 people. *Tr., 4/28/10 at 112.*

9. The owners of Sanctuary 21 consist of Das Enterprises, Inc., Swaptak Das, Stephen Acott, and Panutat Khunachak. *See ABRA Licensing File No. 083267.* Similarly, the owners of

Shadow Room consist of Swaptak Das, Stephen Acott, and Panutat Knunachak. See ABRA Licensing File No. 075871.

10. Mr. Das is aware of the parking situation near Shadow Room. *Tr.*, 4/28/10 at 79. Accordingly, Mr. Das stated that Shadow Room's door staff encourages vehicles to move, and regularly asks the MPD Reimbursable Detail to keep cars moving. *Tr.*, 4/28/10 at 76, 79. Mr. Das regularly observes cars parking illegally in the alley, and he complains to the police when appropriate. *Tr.*, 4/28/10 at 76, 80.

11. Approximately 20 percent of Shadow Room's patrons use the club's valet service. *Tr.*, 4/28/10 at 87. According to Mr. Das, the valet service normally parks about 20 cars per night. *Tr.*, 4/28/10 at 81. During the Presidential Inauguration, the valet service parked 40 cars. *Tr.*, 4/28/10 at 101-02. Shadow Room has moved its valet service away from the premises in order to mitigate the effect of large groups of patrons leaving the establishment at the same time. *Tr.*, 4/28/10 at 82.

12. Mr. Das stated that the establishment will make efforts to mitigate potential public safety issues. *Tr.*, 4/28/10 at 82. He plans to escort patrons to their vehicles if they request it, and all of the employees will receive an escort to their vehicles at the end of the night. *Tr.*, 4/28/10 at 83. In addition, Mr. Das stated that the establishment will use the services of the MPD Reimbursable Detail. *Tr.*, 4/28/10 at 83.

13. Mr. Das averred that Shadow Room and Sanctuary 21 will operate as separate entities. *Tr.*, 4/28/10 at 114. Although the two establishments are located in the same building, customers will not have access to both venues from within either establishment. *Tr.*, 4/28/10 at 114. An elevator that requires a key to operate connects both establishments' premises. *Tr.*, 4/28/10 at 113-14.

14. The Protestants called Joe Mehra, a traffic expert, to testify. *Tr.*, 4/28/10 at 121-22. Mr. Mehra reviewed traffic conditions between the intersection of K Street, N.W., and 22nd Street, N.W., between 5:00 p.m. and 6:00 p.m. *Tr.*, 4/28/10 at 126-27. Based on his study, he determined that the area is experiencing an average delay of 55 seconds. *Tr.*, 4/28/10 at 127-28. Specifically, on N Street, N.W., in front of the Applicant's proposed location, two lanes are available 7:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m. *Tr.*, 4/28/10 at 128. Only one lane is available during all other hours. *Tr.*, 4/28/10 at 128.

15. According to Mr. Mehra, peak traffic hours occur between 5:00 p.m. and 6:00 p.m. *Tr.*, 4/28/10 at 139. Mr. Mehra stated that he observed traffic in the area on four separate occasions, but he did not review conditions between 11:00 p.m. and 3:00 a.m. *Tr.*, 4/28/10 at 132. He admitted that the levels of service in the area could change depending on the hour. *Tr.*, 4/28/10 at 139. Mr. Mehra admitted that he could not obtain data to perform an analysis of the traffic after 11:00 p.m. *Tr.*, 4/28/10 at 143.

16. The Protestants also called ANC Commissioner Florence Harmon to testify and to describe the neighborhood. *Tr.*, 4/28/10 at 158. The neighborhood surrounding the proposed location of Sanctuary 21 has a "residential character," because the neighborhood has many

condominiums, townhouses, and residences located around the establishment. *Tr.*, 4/28/10 at 159, 161-62; *ABRA Protest File 076250-09/075P, Protestant Exhibit 5*. In addition, the block where Sanctuary 21 is located is split by a commercial zone and a residential zone. *Tr.*, 4/28/10 at 163.

17. Commissioner Harmon also discussed MPD's crime statistics from 2008 to 2009 for the area surrounding Sanctuary 21's proposed location. *Tr.*, 4/28/10 at 179-81. Within 500 feet of the proposed location, Commissioner Harmon reported that violent crimes increased 100 percent and assaults with dangerous weapons increased 300 percent. *Tr.*, 4/28/10 at 181-82; *ABRA Protest File 076250-09/075P, Protestant Exhibit 6*. Furthermore, within 250 feet of the proposed location, violent crimes increased 500 percent and assaults with a deadly weapon increased 200 percent. *Tr.*, 4/28/10 at 182; *ABRA Protest File 076250-09/075P, Protestant Exhibit 7*. MPD's records indicate that there were 82 calls for service at 2131 K Street, N.W.<sup>3</sup> *ABRA Protest File 076250-09/075P, Protestant Exhibit 1* (Sept. 28, 2011).

18. In addition, the Protestants submitted 11 MPD incident reports into the record. *Tr.* September 28, 2011, at 39; *Protestants Exhibit No. 1* (Sept. 28, 2011). They describe a number of incidents occurring in and around Shadow Room, including assaults and reports of lost property. *Protestants Exhibit No. 1* (Sept. 28, 2011). Nevertheless, none of the reports submitted by the Protestants indicates that Shadow Room caused, encouraged, permitted, allowed, or was responsible for any of the unlawful conduct that may have occurred inside or outside the establishment. *Protestants Exhibit No. 1*.

19. Commissioner Harmon, in her capacity as an ANC Commissioner, has received noise complaints related to Shadow Room. *Tr.*, 4/28/10 at 185, 203-04. Furthermore, the noise coming from Shadow Room's patrons disturb Commissioner Harmon's sleep at least once per week. *Tr.*, 4/28/10 at 201. In addition, on at least one occasion, Commissioner Harmon has heard Shadow Room's patrons yelling loudly. *Tr.*, 4/28/10 at 187.

20. Chris Labas testified on behalf of the Protestants. *Tr.*, 4/28/10 at 212. Mr. Labas lives in the building located at 1099 22nd Street, N.W., and serves as the building's property manager. *Tr.*, 4/28/10 at 212. Mr. Labas has observed an increase in the amount of defecation and litter in the alley behind his complex and on 22nd Street, N.W. *Tr.*, 4/28/10 at 216-17, 236. Mr. Labas has also witnessed individuals urinating, vomiting, defecating, and littering near his property and has filed approximately 25 to 50 complaints with MPD. *Tr.*, 4/28/10 at 227-228.

21. The antisocial behavior experienced by the neighborhood is largely caused by the patrons of Shadow Room. *Tr.*, 4/28/10 at 217-36. Specifically, on one occasion, Mr. Labas witnessed a male urinate on a building that shares a driveway with his complex and, then, enter Shadow Room's line. *Tr.*, 4/28/10 at 229. Further, from his home, Mr. Labas has observed individuals dressed as if they are going to a nightclub come from 2131 K Street, N.W., and congregate in front of his building. *Tr.*, 4/28/10 at 230. Finally, Mr. Labas noted that, after Shadow Room opened, the amount of litter in the community increased. *Tr.*, 4/28/10 at 236.

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<sup>3</sup> Without knowing the details of each individual call, we cannot find that the Applicant caused or permitted the alleged incidents referenced in the Calls for Service Data Log to occur.

22. Mr. Labas has witnessed Shadow Room's valet service impede traffic by parking too many vehicles in the alley. *Tr.*, 4/28/10 at 219. For example, on one occasion, Mr. Labas has driven into the alley and, before he could drive through, had to wait 10 minutes for the valet service to move cars out of the way. *Tr.*, 4/28/10 at 219. In addition, residents at Mr. Labas's building regularly complain that the valet service is parking cars in the complex's trash area and loading dock. *Tr.*, 4/28/10 at 219-20, 223, 237; *ABRA Protest File 076250-09/075P, Protestant Exhibit 8*.

23. Mr. Labas has observed crowds of people engage in loud talking, fighting, playing music, and revving car engines around 11:30 p.m. and between 2:00 a.m. and 4:00 a.m. on or near 22nd Street, N.W. *Tr.*, 4/28/10 at 225, 240. Mr. Labas also noted that the frequency of disturbing incidents has increased over time. *Tr.*, 4/28/10 at 224. As a result, a year ago, disturbances occurred two to three times per month but, since January or February, they now occur every Thursday night. *Tr.*, 4/28/10 at 224.

24. According to Mr. Labas, the neighborhood has changed since 2006. *Tr.*, 4/28/10 at 232. A new condominium complex opened on 22nd Street, N.W., and New Hampshire Avenue, N.W. *Tr.*, 4/28/10 at 232. Furthermore, the Ritz-Carlton Hotel opened a restaurant on 23rd Street, N.W., and L Street, N.W. *Tr.*, 4/28/10 at 232. According to Mr. Labas, both properties are more than 500 feet away from 2131 K Street, N.W. *Tr.*, 4/28/10 at 232.

25. Trevor Neve testified in opposition to the Application. *Tr.*, 4/28/10 at 242. Mr. Neve lives at 1099 22nd Street, N.W., and is the president of his condominium association. *Tr.*, 4/28/10 at 243. The Office of Tax and Revenue determined that the condominiums in Mr. Neve's complex have had their property values decline fifteen percent, as compared to a 3.7 percent citywide decline in condominium property values. *Tr.*, 4/28/10 at 247-48, 253, 255. For example, Unit 102 was worth \$553,510 in 2010 and proposed to be worth \$472,360 in 2011. *Tr.*, 4/28/10 at 247. Mr. Neve concluded that the nightclub in the area was detracting from the area's property values. *Tr.*, 4/28/10 at 254. Nevertheless, we do not find this conclusion credible, because Mr. Neve is not an expert in real estate, and his opinion did not sufficiently consider other factors that could negatively impact the neighborhood's property values. *Tr.*, 4/28/10 at 253-44.

### **CONCLUSIONS OF LAW**

26. Under District of Columbia Official Code § 25-313, Sanctuary 21 must demonstrate to the Board's satisfaction that the Application is appropriate for the neighborhood in which it is located. The record demonstrates that allowing Shadow Room and Sanctuary 21 to increase their combined occupancy beyond 300 patrons will adversely impact the neighborhood surrounding 2131 K Street, N.W. We, therefore, deem the Application for a Retailer's Class CN License inappropriate.

**I. ANC 2A’S RECOMMENDATION MERITS GREAT WEIGHT.**

27. The Board also recognizes that under District of Columbia Official Code § 1-309.10(d) and District of Columbia 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[’s] issues and concerns.” Foggy Bottom Ass’n, 445 A.2d at 646. Here, ANC 2A recommends denying the Application, because it will adversely impact the peace, order, and quiet of the neighborhood. We agree with ANC 2A’s recommendation. Our discussion, below, explains the Board’s reasoning and addresses ANC 2A’s concerns; thus, satisfying the great weight requirement.

**II. THE APPLICATION IS INAPPROPRIATE, BECAUSE THE ADDITIONAL NIGHTCLUB PATRONS THAT THE ESTABLISHMENT WILL ATTRACT WILL HAVE A DETRIMENTAL IMPACT ON PEACE, ORDER, AND QUIET AND VEHICULAR AND PEDESTRIAN SAFETY.**

28. The Board cannot ignore its prior determinations of appropriateness regarding the area surrounding Sanctuary 21. Although Shadow Room and Sanctuary 21 are distinct corporations, they share similar management and will be located in the same building. Supra, at ¶¶ 1, 9. As a result, evidence of Shadow Room’s impact on the neighborhood is highly probative to the issues raised by the Sanctuary 21 Application. In Board Order No. 2007-072, we previously addressed the appropriateness of a nightclub at 2131 K Street, N.W., when we granted a Retailer’s Class CN License to Shadow Room. Acott Ventures, LLC, t/a Shadow, Board Order No. 2007-072, 11 (D.C.A.B.C.B. Sept. 5, 2011). Based on concerns that granting the license would adversely impact peace, order, and quiet, the Board limited the establishment’s capacity to 300 patrons for both floors. Id. at ¶ 31. The Board then stated that this limitation was intended “for a one-year trial period rather than on a permanent basis.” As such, the Board permitted Shadow Room to apply for a substantial change to increase its occupancy after September 5, 2008. Id.

29. In revisiting this limitation, here, the question before the Board is whether Shadow Room, authorized for an occupancy of 300 patrons, and Sanctuary 21, seeking an occupancy of 250 patrons, is appropriate for the neighborhood. Id.; supra, at ¶ 8. The answer to this question is no. Based on the effect of Shadow Room on the neighborhood, we find that approving the Sanctuary 21 Application will adversely impact peace, order, and quiet and vehicular and pedestrian safety in the neighborhood.

**A. Issuing Sanctuary 21 a Retailer’s Class CN License will adversely impact the neighborhood’s peace, order, and quiet, because the neighborhood does not have the capacity to handle a large influx of additional nightclub patrons.**

30. The law states that the Board must determine whether an establishment is appropriate based on the “[t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2) (West Supp. 2011).

31. The record shows that the neighborhood does not have the capacity to deal with additional nightclub patrons. As indicated by the Protestants, Shadow Room's patrons regularly disturb nearby residents by yelling, fighting, playing music, and revving their car engines. Supra, at ¶¶ 19, 21, 23. More disturbingly, Shadow Room's patrons frequently defecate, litter, and urinate, around and on the property managed by Mr. Labas. Supra, at ¶¶ 20-21. Approving Sanctuary 21's Application will add more nightclub patrons to the neighborhood; thus, creating more peace, order, and quiet problems than the neighborhood can handle.

**B. Sanctuary 21's Application will adversely impact vehicular and pedestrian safety in the neighborhood, because the additional patrons will create impediments to the flow of traffic near the establishment.**

32. The Board must determine whether an establishment is appropriate based on "[t]he effect of the establishment upon . . . vehicular and pedestrian safety." D.C. Code § 25-313(b)(3) (West Supp. 2011).

33. We find that the neighborhood does not have the capacity to handle the additional traffic that Sanctuary 21 will create. As indicated by Mr. Das, vehicles currently park illegally in the alley near the establishment. Supra, at ¶ 10. In addition, as testified by Mr. Labas, Shadow Room's valet service regularly trespasses on his employer's property by parking vehicles in his building's trash and loading dock areas. Supra, at ¶ 22. Moreover, the valet service continually parks vehicles in a manner that interferes with emergency vehicles. Supra, at ¶¶ 6-7; *Tr.*, 4/28/10 at 38 (lines 6-9), 65 (lines 15-22), 66 (lines 1-3). As such, we fear that if we approve the Application, it will cause increased traffic in the area surrounding the establishment, and severely delay emergency vehicles; thus, potentially creating a life-threatening situation for vehicles and pedestrians (as well as people in need of rescue) on a recurring basis.

**CONCLUSION**

34. The record before us indicates that, unless Shadow Room limits its occupancy to 50 people, Sanctuary 21 and Shadow Room will have a combined occupancy that far exceeds the 300-person limitation that the Board previously found appropriate. *ABRA Licensing File No. 075871, Certificate of Occupancy*; supra, at ¶ 8. Based on the neighborhood's experience with Shadow Room, we can only conclude that increasing the number of patrons at 2131 K Street, N.W., will adversely impact peace, order, and quiet and vehicular and pedestrian safety in the neighborhood. Supra, at ¶¶ 6, 7, 10, 19, 21, 23. We, therefore, deny the Application.

35. On a final note, the only issues raised by the Protestants under District of Columbia Official Code § 25-602 and 23 DCMR § 1601.8 are whether the Application will adversely impact the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the neighborhood. As such, the Board is not required to make findings of fact related to any other issues, which includes the Protestants' fitness for licensure arguments, newly raised in their Proposed Findings of Fact and Conclusions of Law. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (2008). As

such, this Order does not address any other issues, and denies the Application solely on the grounds indicated above.

**ORDER**

Therefore, on this 11th day of January 2012, it is hereby **ORDERED** that the Application for a Retailer's Class CN License filed by Panutat, LLC, t/a Sanctuary 21, at premises 2131 K Street, N.W., Washington, D.C., is hereby **DENIED**. Accordingly, Board Order No. 2010-418 is **VACATED**.

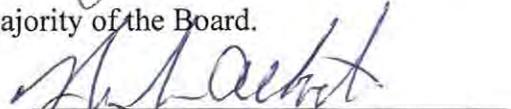
District of Columbia  
Alcoholic Beverage Control Board

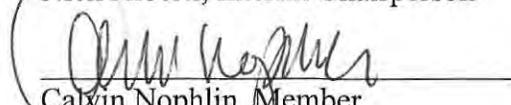
  
Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

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

  
Nick Alberti, Interim Chairperson

  
Calvin Nophlin, 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, Reeves Center, 2000 14th Street, N.W., 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, District of Columbia 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 (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).