

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

In the Matter of:)	
)	
Acott Ventures, LLC)	License Number: 075871
t/a Shadow Room)	Case Numbers: 11-PRO-00146
)	11-PRO-00022
Application to Renew a)	Order Number: 2012-013
Retailer's Class CN License and)	
Application for a Substantial Change)	
(Summer Garden))	
)	
at premises)	
2131 K Street, N.W.)	
Washington, D.C. 20037)	

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

ALSO PRESENT: Acott Ventures, LLC, t/a Shadow Room, Applicant

Edward S. Grandis, Esq., on behalf of the Applicant

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

Rebecca K. Coder, Chairperson, Advisory Neighborhood
Commission (ANC) 2A, Protestant

Florence Harmon, Commissioner, ANC 2A, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

I. Procedural History

Acott Ventures, LLC, t/a Shadow Room, (Applicant) filed an Application to renew its Retailer's Class CN License and an Application for a Summer Garden (collectively the "Applications") at premises 2131 K Street, N.W., Washington, D.C. Advisory Neighborhood Commission (ANC) 2A, represented by Commissioner Florence Harmon,

and A Group of Five or More Individuals, represented by Chris Labas (collectively the “Protestants”) filed timely protests against the Applications. The Application to Renew the Applicant’s Retailer’s Class CN License came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 22, 2010, and a Protest Status Hearing on January 5, 2011. The Application for a Summer Garden came before the Board for a Roll Call Hearing on May 9, 2011, and a Protest Status Hearing on June 8, 2011. The Board combined both matters into a single protest on June 8, 2011. The Protest Hearing for both matters occurred on June 22, 2011, and July 13, 2011.

We recount this matter’s procedural history and resolve the various motions filed by the parties before the Protest Hearing. We dismissed Olga Rios from the Group of Five or More Individuals because she did not sign the protest letter. Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2011-213, 1-2 (D.C.A.B.C.B. May 11, 2011). Additionally, the Applicant submitted a Motion to Dismiss the protest, which we rejected on February 23, 2011, because we determined that the Protestants satisfied District of Columbia Official Code § 25-445, and that Commissioner Harmon did not have a conflict of interest. Acott Ventures, LLC, t/a Shadow Room, Board Order No. 2011-145, 1-2 (D.C.A.B.C.B. Feb. 23, 2011).

The Protestants also submitted a Motion to Recuse, which we received on April 20, 2011. The Motion to Recuse requests that former Chairperson Charles Brodsky recuse himself from this matter. See ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Protestants’ Motion to Recuse. We granted the Motion, but note that the issue is now moot, because former Chairperson Brodsky no longer serves on the Board. See Thorn v. Walker, 912 A.2d 1192, 1195 (D.C. 2006).

We also reject the Protestants’ Motion for Continuance, dated April 30, 2011. The Applicant replied to the Protestants’ arguments on May 2, 2011. We note that a hearing “may be continued for good cause” if there is “good and sufficient cause for continuance” or an “extreme emergency.” D.C. Code § 441(a) (West Supp. 2011). The Protestants’ requested that the Board postpone the hearing, because the Protestants’ required more time to serve the Washington Wizards players allegedly involved in a criminal incident at the establishment. Furthermore, the Protestants requested that the Board consider the fact that they had not received a response to their Motion to Recuse. Finally, they requested that the Board postpone the hearing, because of the remand of the Board’s decision involving Sanctuary 21, which involves similar parties, but a different license. We found that the reasons listed by the Protestants did not constitute good cause or an extreme emergency, because the Board granted the Motion to Recuse, the Sanctuary 21 proceeding has no bearing on this matter, and we cannot delay a hearing while the Protestants search for evidence. As such, we denied the Motion for Continuance.

The Protestants also submitted a Motion to Extend Hearing Time and Compel Service of Subpoenas, dated May 2, 2011. The Protestants requested that the Board grant the Protestants an additional 30 minutes to present evidence and compel the issuance of subpoenas to two Washington Wizards players: Andray Blatche and JaVale McGahee. We granted the request for more time.

Nevertheless, we reject the Protestants’ request to compel the issuance of subpoenas against Mr. Blatche and Mr. McGahee. We note that the Alcoholic Beverage

Regulation Administration (ABRA) attempted to serve Mr. Blather and Mr. McGee under District of Columbia Official Code § 25-443(a). Nevertheless, the Board could not serve the players at the address provided by the Protestants, because Attorney Gary Kolker indicated that the Washington Wizards would not accept subpoenas on behalf of individual players. Although we are empowered to compel the appearance of persons subpoenaed by the Board, we see no reason to compel these players' appearance. The relaxed rules of evidence afforded to administrative agencies allow the Protestants to submit hearsay evidence in lieu of the players' testimony, including police reports and ABRA Case Reports. As such, we deny the Protestants' request to compel the appearance of Mr. Blather and Mr. McGee.

The Applicant, in a Motion to Correct the Record, also requested that the Board correct the record and strike erroneous statements made by ABRA Investigator Earl Jones, Board Member Silverstein, and Interim Chairperson Alberti. The Applicant also requested that the Board strike previous versions of Case No. 09-251-00249, and rely solely on the corrected report submitted by ABRA's Enforcement Division. In a letter dated August 22, 2011, the Protestants responded to the Applicants' submission by requesting that the Board add additional Metropolitan Police Department (MPD) reports to the Applicant's investigative history; the Board strike an altered video submitted by the Applicant; and that we strike Investigator Jones's statements related to the video.

Although we will instruct ABRA to correct the Applicant's investigative history, we deny both parties' Motions to Strike. None of the statements or evidence highlighted by the parties is inadmissible. Further, we deny the Applicant's request to strike the statements made by Board Member Silverstein and Interim Chairperson Alberti. Board Member statements do not constitute sworn testimony or evidence. We also deny the Protestants' request to include the MPD 251 reports submitted by the Protestants in the Applicant's investigative history. As a matter of agency policy, an establishment's official investigative history only records investigations performed by ABRA, not MPD. Yet, we note that this decision does not preclude the Board from reviewing or relying upon any MPD documents submitted by the parties into evidence. As such, there is no reason to strike any of the evidence or statements highlighted by the parties, and we will give the evidence the weight it deserves.

We also note that the Protestants have submitted Proposed Findings of Fact and Conclusions of Law, which is included in this matter's record.

II. Board Request for Further Information

The Board also left the record open after the close of the hearing in order to obtain further information regarding the establishment's parking arrangements under § 1717. 23 DCMR § 1717 (2008). During the Protest Hearing, Swaptak Das said, "I have an agreement with my landlord that gives me right to the [building's] parking garage for the life of my lease at any time I want it after 6:30 p.m. It's in my lease." *Transcript (Tr.)*, June 22, 2011 at 174, 210. The Board then requested that the Applicant submit the lease to the Board after the hearing. *Tr.* 6/22/11 at 211.

The Applicant submitted the lease and a valet contract between Atlantic Services Group, Inc., and Panutat, LLC, on October 4, 2011. In a letter, dated November 8, 2011,

the Protestants replied to the Applicant's submission. The Board found the materials submitted nonresponsive, because they did not affirm or address Mr. Das's statements. See generally, *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Shadow Room Retail Lease, Atlantic Services Group, Inc., Contract*. The Board, then, requested further information from the Applicant on October 19, 2011. In response, the Applicant submitted a letter from Yohannes Kifle, the general manager of Atlantic Services Group, Inc. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Letter from Yohannes Kifle to Jonathan Berman, Assistant Attorney General* (Oct. 27, 2011) (*Kifle Letter*). The Protestants replied on November 8, 2011, and asked the Board to strike this response, which we deny, because the Applicant's response is germane to the issues in this matter. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Protestants' Reply to Licensee's Filings of Inadequate Documentation of Parking Arrangements Required by Board's 9/5/07 and ANC 2A Voluntary Agreement* (Nov. 8, 2011). The Board then reviewed the Applicant's letter and found it insufficient, because we are not convinced that Mr. Kifle is in a position to discuss the Applicant's specific legal rights to the parking garage under the Applicant's lease. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, E-mail from Jonathan Berman, Assistant Attorney General, to Swaptak Das* (Nov. 4, 2011). The Applicant, then, submitted a letter arguing that there is sufficient parking near the establishment, and it would rely on its previous submissions. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Letter from Matthew LeFande, Esq., to Jonathan Berman, Assistant Attorney General* (Dec. 1, 2011). The Protestants replied to the Applicant's submission on December 8, 2011.

On the record, Mr. Das asserted that his lease gave him the right to use the building's parking garage after 6:30 p.m. Nevertheless, the lease does not specifically address this assertion; thus, we cannot credit Mr. Das's testimony regarding the building's parking garage. We strongly advise the Applicant to take greater care when presenting testimony to the Board in the future—or risk destroying its credibility.

III. Great Weight

We further recognize that ANC 2A properly submitted its recommendation to deny the Applications on November 8, 2010. See *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, ANC 2A Resolution* (Nov. 6, 2010). Under District of Columbia Official Code §§ 1-309.10(d) and 25-609, the Board will give great weight to an ANC's properly adopted written recommendations. See *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d), 25-609 (West Supp. 2011). 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.

ANC 2A recommends that the Board deny both Applications. *ANC 2A Resolution, 1*. The ANC asserts that the Applicant will have a deleterious impact on the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the neighborhood. *ANC 2A Resolution, 1*. ANC 2A bolsters its case by highlighting the complaints and police reports generated by the operation of the establishment and the noise and traffic caused by patrons of the establishment. *ANC 2A Resolution, 1*. Furthermore, ANC 2A asserts that the establishment has a negative impact on properties near the alley and near Schneider's Triangle. *ANC 2A Resolution, 1*. Our specific response to ANC

2A's issues and concerns appears in our Conclusions of Law, found below. See infra ¶¶ 38-41, 43.

IV. Question Presented

The issues presented to the Board, and raised by the Protestants, under District of Columbia Official Code § 25-602, are whether the Applications will adversely impact the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. 23 DCMR §§ 1607.2; 1607.7(b) (2008). Further, because the Applicant is seeking the renewal of its license, the Board will consider “the licensee's record of compliance with” Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations, and any conditions placed on the license during the period of licensure, including the terms of [the establishment's] voluntary agreement.” D.C. Code § 25-315(b)(1) (2001).

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 OF FACT

I. Background

1. The Applicant has submitted an Application to renew its Retailer's Class CN License. *ABRA Licensing File No. 075871*. The Applicant also submitted an Application for a Summer Garden that requested a twenty-five seat summer garden with hours of operation from 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday. *ABRA Licensing File No. 075871*. ABRA assigned Investigator Jones to investigate the current protest and compile the protest reports related to the protest of the Applications. *Transcript (Tr.)*, June 22, 2010 at 18.

2. The Applicant's establishment is located at 2131 K Street, N.W. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Protest Report (Renewal)*, 2. The establishment is located in a C-3-C zone. *Protest Report (Renewal)*, 4. The Bright Horizons Children Center is located within 400 feet of the establishment. *Protest Report (Renewal)*, 7. No public libraries or day care centers are located within 400 feet of the establishment. *Protest Report (Renewal)*, 7. There are thirty-six ABC-licensed establishments within 1,200 feet of the establishment. *Protest Report (Renewal)*, 5; *Tr.*, 6/22/11 at 21.

3. Rebecca Coder serves as the Chairperson of ANC 2A. *Tr.*, 7/13/11 at 89. Chairperson Coder testified that seventy-five ABC-licensed establishments are located in ANC 2A. *Tr.*, 7/13/11 at 90. Many of the establishments close between 11:00 p.m. and 12:00 a.m. *Tr.*, 7/13/11 at 90; *Protestants' Exhibit No. 9*.

4. The establishment is located on the first floor. *Tr.*, 6/22/11 at 22. Twenty-five feet of sidewalk space separate the front door of the establishment and K Street, N.W. *Tr.*, 6/22/11 at 22. The establishment has an entrance hallway that leads to the establishment's dance floor and a large bar area. *Tr.*, 6/22/11 at 22-23. A hallway in the rear of the

establishment leads to the establishment's restrooms, cold storage area, and office. *Tr.*, 6/22/11 at 23. An alley in the rear of the establishment passes by both residential and commercial buildings. *Tr.*, 6/22/11 at 22. Specifically, residential buildings are located on the 22nd Street, N.W., side of the alley. *Tr.*, 6/22/11 at 29-30. Patrons may enter the alley behind the establishment by leaving through the front of the establishment and turning to the right. *Tr.*, 6/22/11 at 47.

5. Swaptak Das is a joint-owner of the establishment, and described its operations. *Tr.*, 6/22/11 at 110. The establishment primarily opens for business on Thursdays, Fridays, and Saturdays. *Tr.*, 6/22/11 at 111. On Thursdays, the establishment opens from 10:00 p.m. until 2:00 a.m. *Tr.*, 6/22/11 at 111. On Friday and Saturday, the establishment is open from 10:00 p.m. until 3:00 a.m. *Tr.*, 6/22/11 at 111.

6. Mr. Das also described the entertainment offered by the Applicant. *Tr.*, 6/22/11 at 112. The establishment generally plays popular music, including, but not limited to, "top 40, house, [and] hip hop." *Tr.*, 6/22/11 at 112. In addition, the establishment hosts special events for professional organizations and hosts birthday parties. *Tr.*, 6/22/11 at 112. Currently, the establishment does not have a college night. *Tr.*, 6/22/11 at 111, 163.

7. Mr. Das described the roles of his employees. *Tr.*, 6/22/11 at 151. The establishment has five managers and fifteen security personnel. *Tr.*, 6/22/11 at 151. Eleven of the fifteen security staff, and all of the establishment's owners, have received HOST security training. *Tr.*, 6/22/11 at 151.

8. The establishment often uses promoters to attract patrons to the establishment. *Tr.*, 6/22/11 at 167. The establishment does not turn the establishment's operations over to its promoters. *Tr.*, 6/22/11 at 171. Specifically, the establishment's ownership and security are always present during events organized by the establishment's promoters. *Tr.*, 6/22/11 at 171.

9. The establishment has two signs posted in the establishment. *Tr.*, 6/22/11 at 140, 142. One sign requests that patrons consider the establishment's neighbors and keep the noise level to a minimum. *Tr.*, 6/22/11 at 140; *Applicant's Exhibit No. 5*. Another sign instructs patrons that parking in the alley and parking behind the building is prohibited. *Tr.*, 6/22/11 at 141-42; *Applicant's Exhibit No. 5*.

10. The establishment uses stanchions and ropes in front of the establishment to direct lines of people seeking entrance into the establishment. *Tr.*, 6/22/11 at 198. The establishment's security checks customers' identification documents and performs pat downs. *Tr.*, 6/22/11 at 198. The establishment's line queues towards 21st Street, N.W. *Tr.*, 6/22/11 at 221.

11. The establishment intends to open a ten square foot summer garden. *Tr.*, 6/22/11 at 28. The summer garden will be located to the right of the establishment's front door, in an indentation in the building's structure. *Tr.*, 6/22/11 at 38-39; *Protest Report (Renewal), Exhibit No. 16*. The Applicant will store equipment for the patio in a nearby room and will not leave the equipment outside after the close of business. *Tr.*, 6/22/11 at 214.

12. Mr. Das envisions that the Applicant will use the sidewalk café as an outdoor lounge. *Tr.*, 6/22/11 at 199. The establishment would like to open a summer garden in order to compete with other establishments that have summer gardens in the neighborhood. *Tr.*, 6/22/11 at 148. Mr. Das also wants to provide an area for customers to escape the establishment's music and talk on their phones outside. *Tr.*, 6/22/11 at 148. The proposed summer garden will have a maximum capacity of 25 persons. *Tr.*, 6/22/11 at 150. Mr. Das intends to make the summer garden smoke-free, with the goal of moving smokers away from the building. *Tr.*, 6/22/11 at 154.

II. ABRA Investigation

13. ABRA investigated the establishment on fourteen separate occasions between January 7, 2011, and June 11, 2011. *Tr.*, 6/22/11 at 20, 32. On Saturday, January 15, 2011, ABRA investigators monitored the establishment from 2:50 a.m. to 3:10 a.m. *Tr.*, 6/22/11 at 53. Investigator Jones observed patrons waiting for the valet service or their rides, and observed vehicles pulling up to the establishment's entrance. *Tr.*, 6/22/11 at 54. Investigator Jones noted that, although traffic was heavy, there were no traffic jams in the area. *Tr.*, 6/22/11 at 54-55. According to the protest report, ABRA investigators monitored the establishment on Wednesday, January 19, 2011, from 11:40 p.m. to 12:00 a.m., and did not hear any noise. *Protest Report (Renewal)*, 10. Further, on Saturday, January 22, 2011, ABRA investigators monitored the establishment from 12:00 a.m. to 12:30 a.m., and reported that they did not observe traffic congestion or noise. *Tr.*, 6/22/11 at 57. On Thursday, June 9, 2011, from 11:30 p.m. to 12:00 a.m., ABRA investigators monitored the establishment and observed that the valet stand in front of the establishment was slowing traffic down as patrons entered and left their vehicles. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Protest Report (Substantial Change)*, 10; *Tr.*, 6/22/11 at 98-99. Finally, Investigator Jones did not observe sick, intoxicated, or belligerent patrons during the investigation period. *Tr.*, 6/22/11 at 108.

III. Peace, Order, and Quiet

14. The Metropolitan Police Department (MPD) reported that it received approximately 123 calls for service at 2131 K Street, N.W., between January 7, 2009, and January 18, 2011. *Tr.*, 6/22/11 at 26, 45. None of the MPD incident reports submitted by the Protestants indicates that Applicant or its employees caused, encouraged, permitted, allowed, or was responsible for any of the unlawful conduct that may have occurred inside or outside the establishment. *ABRA Protest File Nos. 10-PRO-00146, 11-PRO-00022, Protestants Exhibit No. 8; Protestants' Proposed Findings of Fact, Conclusions of Law, and Order*, ¶ 6.

15. At a prior hearing, MPD Sergeant Vernon Grundger testified that from the end of 2008 to 2010 there were approximately 20 incidents in and around the establishment. *Tr.*, 10-PRO-00003, April 28, 2010 at 23.¹ He testified that the amount of incidents at the

¹ The transcript from the Sanctuary 21 hearing was accepted into evidence by the Board for the purpose of introducing the testimony of MPD Sergeant Vernon Grundger and MPD Sergeant Carlos Bundy, who were subpoenaed to testify but did not appear at the hearing. *Tr.*, July 13, 2011 at 5.

establishment is normal for establishments in the neighborhood. *Tr.*, 10-PRO-00003, 4/28/10 at 42.

16. Anthony Zagotta lives at 1010 22nd Street, N.W., and has lived at that address for the past nine years. *Tr.*, 6/22/11 at 269. Mr. Zagotta lives in a townhouse. *Protestants' Exhibit No. 2*. Mr. Zagotta's home is most accessible from the service road that is near the establishment. *Tr.*, 6/22/11 at 272-73. Mr. Zagotta has observed nightclub patrons fighting outside his residence. *Tr.*, 6/22/11 at 283. Further, Mr. Zagotta has observed that the street near the establishment is very loud on Thursday, Friday, and Saturday nights. *Tr.*, 6/22/11 at 273. As a result, the Applicant's patrons frequently awaken Mr. Zagotta as they leave the neighborhood. *Tr.*, 6/22/11 at 283-84.

17. Chris Labas serves as the property manager of 1099 22nd Street, N.W., and lives in the building. *Tr.*, July 13, 2011 at 30. Mr. Labas has served as the property manager of the building for eleven years. *Tr.*, 7/13/11 at 30. As property manager, Mr. Labas has received complaints about the establishment from residents. *Tr.*, 7/13/11 at 39-42, 52; *Protestants' Exhibit No. 6*. Residents living in Mr. Labas's building regularly complain about vehicles stopping near the building, car radios, and loud conversations occurring near the property. *Tr.*, 7/13/11 at 52.

18. Investigator Jones did not observe shouting, loud music, or boisterous activity in the area around the establishment during his investigation of the protest. *Tr.*, 6/22/11 at 25, 47. He observed patrons walking up and down the alley; however, none of the patrons exhibited a belligerent attitude or appeared intoxicated. *Tr.*, 6/22/11 at 30-31.

19. Mr. Das testified that he received a noise complaint from Commissioner Harmon on September 11, 2009. *Tr.*, 6/22/11 at 114. He testified that the establishment had closed early because business was slow and the MPD Reimbursable Detail left earlier than usual. *Tr.*, 6/22/11 at 114. As indicated by the establishment's video footage, Commissioner Harmon entered the establishment around 2:00 a.m. on September 11, 2009. *Tr.*, 6/22/11 at 115, 123, *Applicant's Exhibit No. 1*.

20. Trevor Neve lives at 1099 22nd Street, N.W., and has lived there for the past seventeen years. *Tr.*, 6/22/11 at 309. Mr. Neve lives in apartment 408, which overlooks 22nd Street, N.W. *Tr.*, 6/22/11 at 309. Mr. Neve's building is close to the George Washington University, which is located across Washington Circle. *Tr.*, 6/22/11 at 319. Mr. Neve testified that he is regularly awakened by noise at least twice per week and his wife uses earplugs when she sleeps. *Tr.*, 6/22/11 at 311, 325. Mr. Neve indicates that incidents regularly occur on Thursday, Friday, and Saturday nights. *Tr.*, 6/22/11 at 325. On one occasion, Mr. Neve observed a female nightclub patron on the hood of an SUV. *Tr.*, 6/22/11 at 322. He noted that two male patrons then helped the female patron into the SUV and drove off. *Tr.*, 6/22/11 at 366.

IV. Parking and Traffic

21. Parking spaces are available in the area around the establishment. *Protest Report (Renewal)*, 11. There are five valet parking spaces and five metered spaces located in front of the establishment. *Protest Report (Renewal)*, 11; *Applicant's Exhibit No. 5*. There are also additional metered spaces located along K Street, N.W. *Protest Report (Renewal)*, 11.

Also, there are several parking spaces located on the 1000 block of 21st Street, N.W., 22nd Street, N.W., and L Street, N.W, after 6:30 p.m. *Protest Report (Renewal)*, 11. In addition, the establishment's valet utilizes the garage owned by Atlantic Services Group, Inc., to park patron's vehicles. *Protest Report (Renewal)*, 11.

22. Investigator Jones noted that K Street, N.W., always experiences traffic from vehicles heading towards Washington Circle and Georgetown, not just the establishment. *Tr.*, 6/22/11 at 59. In addition, vehicles frequently use the service road near the establishment. *Tr.*, 6/22/11 at 59. Finally, the service lane is often used by a local hospital. *Tr.*, 6/22/11 at 147.

23. The establishment employs a valet service that has access to approximately 75 parking spaces. *Tr.*, 6/22/11 at 120; *Applicant's Exhibit No. 2*; see also *Kifle Letter*, at 1. The establishment rarely uses all of the available parking spaces. *Tr.*, 6/22/11 at 134; *Applicant's Exhibit No. 4*.

24. In addition, at a prior hearing, MPD Sergeant Carlos Bundy testified that the establishment is located on a one-way street, which also serves as a hospital route. *Tr.*, 10-PRO-00003, 4/28/10 at 65. According to Sgt. Bundy, the Applicant's valet service is double-parking cars in the alley, which, in turn, interferes with the progress of emergency vehicles. *Tr.*, 10-PRO-00003, 4/28/10 at 65-66. Sgt. Bundy admitted that the establishment has the right to five parking spaces near the loading dock in the alley. *Tr.*, 10-PRO-00003, 4/28/10 at 76. Based on the location of the establishment, he believes that the Applicant is acting in good faith. *Tr.*, 10-PRO-00003, 4/28/10 at 69. Sgt. Bundy noted that the owners of the establishment have asked MPD to ticket illegally parked vehicles and moved their valet stations down the street so that the valet can park cars faster. *Tr.*, 10-PRO-00003, 4/28/10 at 76.

25. Both Mr. Zagotta and Mr. Labas discussed the traffic and parking situation near the establishment. *Tr.*, 6/22/11 at 77, 273. Mr. Zagotta has observed that taxis and the valet service create congestion around the service road. *Tr.*, 6/22/11 at 273. Mr. Labas testified that he no longer receives frequent complaints of vehicles parking illegally in the alley by the establishment. *Tr.*, 7/13/11 at 77.

V. Trash and Litter

26. The establishment uses a trash dumpster in the rear of the establishment. *Tr.*, 6/22/11 at 22. Investigator Jones observed the trash area and found that it was "clean and orderly." *Tr.*, 6/22/11 at 23.

27. Both Mr. Zagotta and Commissioner Harmon have found promotional materials littering the neighborhood. *Tr.*, 6/22/11 109-10, 273-74, 276. Mr. Zagotta has found promotional materials advertising various DJs on 22nd Street, N.W. *Tr.*, 6/22/11 at 273-74, 276. In turn, Commissioner Harmon testified that she has found brochures in front of Shadow Room on multiple occasions. *Tr.*, 7/13/11 at 109-10.

VI. Real Estate Values

28. David DeSantis is an owner and broker at TTR Sotheby's International Realty. *Tr.*, 6/22/11 at 244. Mr. DeSantis's firm serves the entire Mid-Atlantic area and sells approximately \$1 billion in real estate every year. *Tr.*, 6/22/11 at 244. Mr. DeSantis's firm is offering a unit for sale at 1099 22nd Street, N.W. *Tr.*, 6/22/11 at 251-52.

29. Mr. DeSantis's firm presented a pricing analysis of 1099 22nd Street, N.W., produced by his firm. *Tr.*, 6/22/11 at 246. Thirteen units at 1099 22nd Street, N.W., have been sold since 2007. *Tr.*, 6/22/11 at 247. The prices of units have tracked the general real estate market in Washington, D.C. *Tr.*, 6/22/11 at 247-48.

30. Mr. DeSantis noted that property values of 1099 22nd Street, N.W., declined between 2008 and 2009 due to the bad economy. *Tr.*, 6/22/11 at 247-49, 252. Accordingly, Mr. DeSantis described the price of the units at 1099 22nd Street, N.W., as high in 2007, lower in 2008 and 2009, and stable in 2010. *Tr.*, 6/22/11 at 247-48. In 2007, the price per square foot at 1099 22nd Street, N.W., was \$481.00. *Tr.*, 6/22/11 at 248. In 2008, none of the units in the building were sold. *Tr.*, 6/22/11 at 248. In 2009, the price per square foot was \$359.00. *Tr.*, 6/22/11 at 248.

31. Nevertheless, the property values of condominiums at 1099 22nd Street, N.W., recovered in 2010 and 2011. *Tr.*, 6/22/11 at 249, 259. In 2010, the price per square foot increased to \$431.00. *Tr.*, 6/22/11 at 249. In 2011, the one unit that has been sold was priced at \$477.00 per square foot. *Tr.*, 6/22/11 at 249. Currently, the three units for sale are advertised at \$565.00 per square foot. *Tr.*, 6/22/11 at 249. Based on this information, Mr. DeSantis concluded that property values are "doing quite well" and that there is an upward trend in the property values of the units located at 1099 22nd Street, N.W. *Tr.*, 6/22/11 at 249, 259.

VII. Investigative History

32. The Board takes administrative notice of the Applicant's investigative history. The Board required the establishment to submit a new security plan on October 1, 2009. *Protest Report (Renewal)*, 13. In addition, the Applicant previously agreed to pay a \$500.00 fine on February 17, 2010, for failing to have a copy of its Voluntary Agreement on its premises.² *Protest Report (Renewal)*, 13; *ABRA Show Cause File No. 09-251-00249*.

CONCLUSIONS OF LAW

33. Under District of Columbia Official Code §§ 25-313 and 25-315, an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application to renew a Retailer's Class CN License and Application for a Summer Garden are sought will not adversely impact the peace, order, and quiet; residential parking needs;

² ABRA's official files related to this incident have been corrected to reflect that the Applicant only agreed to settle the charge that it violated the rule that requires the Applicant to maintain a copy of its Voluntary Agreement on its premises, and nothing more.

vehicular and pedestrian safety; and real property values of the neighborhood. We find that the Application to Renew is appropriate subject to the following conditions:

- (1) The Applicant and its agents are not permitted to distribute flyers to its patrons on the establishment's premises; and
- (2) The establishment shall keep the front and immediate vicinity of the establishment free of debris and litter in accordance with District of Columbia Official Code § 25-726.

Nevertheless, we find that the Application for a Summer Garden is inappropriate; thus, we deny the Applicant's request for a summer garden.

34. In order for the Board to grant the Applications, the Board must find that they are appropriate. D.C. Code §§ 25-313(a), 25-315 (West Supp. 2011). When considering appropriateness, the Board considers the effect of the establishment on real property values; peace, order, and quiet; residential parking needs; and vehicular and pedestrian safety. § 25-313(b)(1)-(3) (West Supp. 2011). In addition, in the case of a renewal, the Board shall also consider a licensee's compliance with the alcoholic beverage control laws, applicable Board Orders, and the establishment's Voluntary Agreement. D.C. Code § 25-315(b) (West Supp. 2011).

35. We also find that our previous decisions regarding the appropriateness of a nightclub at 2131 K Street, N.W., are relevant to the question presented here. When we first issued the Applicant its liquor license in 2007, we were concerned that the Applicant would have a negative impact on the neighborhood's peace, order, and quiet. Acott Ventures, LLC, t/a Shadow, Board Order No. 2007-072, 9-10, (D.C.A.B.C.B. Sept. 5, 2007). Based on these concerns, we conditioned licensure on the establishment having a maximum capacity of 300 patrons. Id. at 12. We permitted the Applicant to apply for greater occupancy after September 5, 2008, because we believed that the Applicant deserved an opportunity to prove that the establishment's operations would not disturb the community. Id.

36. Five years after our initial issuance of a license to the Applicant, we again addressed the appropriateness of a nightclub at 2131 K Street, N.W., in Sanctuary 21. In Sanctuary 21, we denied Sanctuary 21, a separate applicant, a Retailer's Class CN License for the basement of 2131 K Street, N.W., which is located in the same building as the Applicant.³ Panutat, LLC, t/a Sanctuary 21, Board Order No. 2012-012, ¶¶ 26-35 (D.C.A.B.C.B. Jan. 11, 2011). Based on the evidence presented to the Board, we concluded that issuing Sanctuary 21 a license would result in a sharp increase in patron-related disturbances and lead to worrisome problems. Id. at ¶¶ 31, 33. Nevertheless, although we relied on evidence related to Shadow Room's operations, we emphasize that in Sanctuary 21 we did not find that Shadow Room, in and of itself, is adversely impacting

³ We note that many of the same individuals are involved in Sanctuary 21 and the instant case; however, the applicants in both matters are separate and distinct corporations. Thus, we emphasize that the Board is treating Sanctuary 21 and Shadow Room as separate entities, and not piercing the corporate veil. Instead, we only rely on Sanctuary 21 as persuasive authority regarding appropriateness in the area surrounding 2131 K Street, N.W.

the neighborhood. Instead, our decision in Sanctuary 21 merely concludes that the combination of Sanctuary 21's occupancy of 250 patrons with Shadow Room's occupancy of 300 patrons is too much for the neighborhood to handle. Id. at ¶¶ 26, 34.

37. Unlike our decision in Sanctuary 21, we find that Shadow Room merits renewal. We are convinced that some nightclub activity is appropriate for the neighborhood, because the establishment is located in a commercial zone. Supra, ¶ 2. Thus, we are persuaded that our original limitation, limiting Shadow Room to an occupancy of 300 patrons, is appropriate for the neighborhood, and properly balances the interests of businesses and residents.

38. We, further, find that the Protestants' complaints regarding peace, order, and quiet are not sufficient to justify canceling the Applicant's license. We credit Sgt. Grundger's testimony that the number of incidents at Shadow Room is normal for establishments in the area. Supra, at ¶ 15. Moreover, the Applicant's investigative history reveals that it has only committed one secondary tier violation in the past. Supra, at ¶ 32. Under these circumstances, the Board does not have sufficient justification to cancel the Applicant's license.

39. We also find that the Application will not adversely impact the neighborhood's real property values. Mr. DeSantis's testimony convinces the Board that the bad economy caused the previous decline in property values experienced by the neighborhood, not the Applicant. Supra, at ¶¶ 29-31. Indeed, the record demonstrates that property values in the neighborhood have recovered and continue to increase. Supra, at ¶ 31.

40. In addition, while we recently found that the combination of two nightclubs at 2131 K Street, N.W., would threaten the safety of vehicles and pedestrians, we do not believe the Applicant, without the presence of Sanctuary 21, merits the same finding at this time. Panutat, LLC, t/a Sanctuary 21, Board Order No. 2011-482 at ¶ 34. In the case of the Applicant, a number of positive developments related to traffic and parking have occurred. First, the establishment has moved its valet station down the street so that it can park vehicles faster. Supra, at ¶ 24. Second, the record shows that complaints of illegal parking in the service lane no longer occur on a frequent basis. Supra, at ¶ 25. Thus, we cannot find at this time that the establishment poses a threat to residential parking needs or vehicular and pedestrian safety. Of course, the parties should keep in mind that the Board is free to revisit this issue in future licensing hearings if we observe a worsening pattern of interference with emergency vehicles, or other problems.

41. Finally, although we will not revoke the Applicant's license, the Protestants' presentation demonstrates the need for further conditions on the Applicant's license related to trash and litter. We credit the testimony of Mr. Zagotta and Commissioner Harmon that promotional materials regularly litter the area outside the establishment. Supra, at ¶ 27. We note that District of Columbia Official Code § 25-726 states that "The licensee under a retailer's license shall 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. 2011). Thus, the Applicant has an affirmative duty to keep the area outside its establishment free of litter. Consequently, we are conditioning licensure on the Applicant keeping the area

around its establishment clean, as well as refraining from distributing flyers to its patrons on the establishment's premises.

42. Therefore, we renew the Applicant's license subject to the condition that the establishment cease distributing flyers and keep its premises clean.

43. Finally, although we renew the Applicant's license, we deny the Application for a Summer Garden, because we find that it will adversely impact the neighborhood's peace, order, and quiet. We credit the testimony of Mr. Labas, Mr. Zagotta, and Mr. Neve that the Applicant's patrons are noisy and occasionally engage in disruptive behavior near their residences. Supra, at ¶¶ 16-17, 20. Although we do not find that these incidents justify revoking the Applicant's license, we find that these types of incidents weigh against allowing the Applicant to have a summer garden. Permitting the Applicant to allow its patrons to consume alcohol outside or increasing the total amount of patrons allowed to patronize the establishment will lead to further disturbances of the neighborhood's peace, order, and quiet.

44. For the foregoing reasons, we renew the Applicant's Retailer's Class CN License, but deny the Application for a Summer Garden.

45. On a final note, the only issues raised by the Protestants under District of Columbia Official Code § 25-602 are whether the establishment will negatively impact the neighborhood's real property values; peace, order, and quiet; residential parking needs; and vehicular and pedestrian safety. As such, the Board is not required to make findings of fact related to any other issues. 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). Therefore, based on our review of the Application and the record, we find that the Applicant 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 that we have not expressly discussed in this Order.

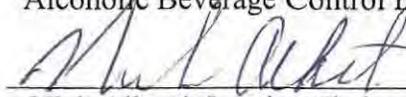
ORDER

Therefore, it is hereby **ORDERED**, on this 11th day of January 2011, that the Application to renew a Retailer's Class CN License filed by Acott Ventures, LLC, t/a Shadow Room, at premises 2131 K Street, N.W., is hereby **GRANTED**, subject to the following conditions:

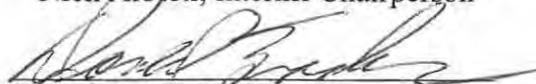
- (1) The Applicant and its agents are not permitted to distribute flyers to its patrons on the establishment's premises; and
- (2) The establishment shall keep the front and immediate vicinity of the establishment free of debris and litter in accordance with District of Columbia Official Code § 25-726.

Furthermore, we **DENY** the Application for a Summer Garden. Copies of this Order shall be sent to the Applicant, ANC 2A, and the Protestants.

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member

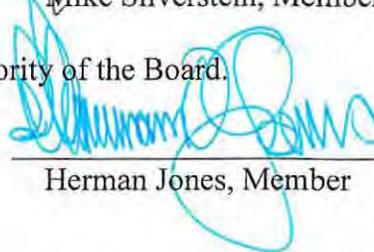


Calvin Nophlin, Member



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, 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 (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).