THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
R & J, 24 Liquors, Inc.	)	
t/a Town Square Gourmet	)	Case Number: 12-PRO-00022
	)	License Number: 78664
	)	Order Number: 2012-501
Application to Renew a	)	
Retailer's Class A License	)	
	)	
at premises	)	
4418 MacArthur Blvd NW	)	
Washington, D.C.	)	
	)	

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

ALSO PRESENT: Richard Kim, Owner, on behalf of the Applicant

James Shin, on behalf of the Applicant

Commissioner Stuart Ross, Advisory Neighborhood Commission (ANC) 3B, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

This matter arises from the Application to Renew a Retailer's Class A License (Application) filed by R & J, 24 Liquors, Inc., t/a Town Square Gourmet, (Applicant) at premises 4418 MacArthur Blvd N.W., Washington, D.C. 20006. Advisory Neighborhood Commission 3B (ANC) filed a protest against the Application, stating (1) that the

Applicant's establishment has a negative impact on the neighborhood's peace, order, and quiet; (2) that it operates in violation of District law; (3) that the Applicant has violated the voluntary agreement; and (4) that the Applicant has repeatedly sold alcohol to minors. The ANC requests that the Alcoholic Beverage Control Board (Board) deny the renewal of the Applicant's license. The Board finds in favor of the Applicant, and renews the Applicant's license without conditions, because, the Applicant's operations do not have a negative impact on the neighborhood's peace, order, and quiet. While the Applicant was cited in February, 2012 for the sale of alcoholic beverages to minors and its failure to conduct a proper check of identification, Applicant has revamped its operations to ensure that it does not violate District law, particularly with regard to the checking of identification in order to prevent the sale of alcohol to minors.[1] Moreover, the Alcoholic Beverage Regulation Administration's (ABRA) investigation of the Applicant's operations, including repeated observations of the establishment, found that no violations of ABRA law and regulations by the establishment had occurred since then.

Procedural Background

ABRA gave notice on March 5, 2012 that the Applicant had filed to renew its Retailer's Class A License. The ANC, represented by Chairman Stuart Ross and Commissioner Ann Hass, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602.

The parties came before the Board for a Roll Call Hearing on April 30, 2012 and a Protest Status Hearing on June 6, 2012. The Protest Hearing occurred on August 15, 2012.

The Board notes that the ANC properly submitted a recommendation under D.C. Official Code § 25-609 by filing with the Board a letter dated April 15, 2012 stating that the ANC had voted unanimously at a duly noticed meeting on April 4, 2012 to protest the license renewal application of Town Square Gourmet. The protest grounds were: (1) the adverse impact on the establishment of peace, order and quiet pursuant to D.C. Official Code § 25-313; and (ii) the applicant's poor record of compliance with DC laws and regulations pursuant D.C. Official Code § 25-315.

The Board recognizes that an ANC's properly adopted written recommendations must receive 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. 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. We acknowledge the issues and concerns raised by ANC 3B, and accord them great weight in our Conclusions of Law.

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[1] The ANC raised, in its protest, a purported violation in April, 2011 of a voluntary agreement. However, neither in the Protest as filed nor in the hearing was this violation elaborated upon by the ANC. Accordingly, the Board dismissed this protest ground, as the Board does not have any information upon which to consider this issue. As for the Protest issue of repeated sales to minors, the Board is aware of the serious issue and has docketed an enforcement action in which Applicant will be required to address these allegations, pursuant to required due process and procedural requirements of the laws regulating the regulation of such establishments. We note that, if the Applicant is found by the Board to be guilty of the alleged violations, the Applicant may be fined, have its license suspended or revoked, or have conditions imposed on its operations.

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:

A. Investigator Erin Mathieson

1. ABRA Investigator Erin Mathieson conducted an investigation of the Application, and authored the Protest Report submitted to the Board. *Transcript*, August 15, 2012 at 15; see generally *ABRA Protest File No. 12-PRO-00022, Protest Report*. According to the Protest Report, the Applicant seeks to renew its Retailer's Class A License. *Protest Report*, at 1. The Applicant's establishment sits in a C-1 commercial zone, which permits neighborhood retail and personal service establishments. *Id.* at 3. ABRA's records show that there are no other ABRA licensed establishments located within 1,200 feet of the establishment. *Id.* at 4. Moreover, there are no recreation centers, public libraries, schools, or day care centers operating within 400 feet of the establishment. *Id.* A review of Metropolitan Police Department (MPD) records indicates that three calls were made concerning the establishment on February 18, 2012. Otherwise, there are no MPD reports for the period from June 22, 2011 through June 21, 2012. *Id.* at 8, *Tr.* at 27-28.

2. The establishment's hours of operation are from 8:00 a.m. through 10:00 p.m. Monday through Friday and from 9:00 a.m. through 10:00 p.m. on Saturday, with alcohol sales permitted during all hours except the first hour of operations on Monday through Friday. *Id.* at 5. The establishment also sells other food items and has a full service deli in the rear. *Id.* at 5.

3. The establishment has four parking spaces at the front that are marked for "customer parking only." Additionally, there is street parking along MacArthur Boulevard, N.W. in front of the establishment that allows for two hour parking from 9:30 a.m. until 8:30 p.m. *Id.* at 7. There is a Metrobus D5 stop within walking distance of the establishment. *Id.* at 7. There is not a large amount of pedestrian traffic, although there are sidewalks on either side of the street with marked crosswalks adjacent to the establishment. *Id.* at 7.

4. The ABRA investigator visited the Applicant's establishment on 29 separate occasions between June 8, 2012, and August 4, 2012. *Id.* at 5-6. None of the visits showed any issues with regard to adequate parking, noise, or disturbance of the peace issues. *Id.* at 5-6, *Tr.* at 21. In addition, the ABRA investigator conducted a regulatory inspection on August 2, 2012, at which no ABRA violations were found. *Id.* at 6. In response to Board questions, Ms. Mathieson stated that in her observations of the establishment, she did not notice anyone who appeared to be underage entering the establishment. *Tr.* at 26.

5. Ms. Mathieson, in response to questions from Mr. Ross, elaborated on the investigation she carried out in response to the MPD reports submitted to ABRA on February 28, 2012. Ms. Mathieson stated that she interviewed a student, Andrew Harvey,

a 20-year old who had been cited by the Montgomery County Maryland Police Department (MCPD) for illegal possession of alcoholic beverages. *Tr.* at 36. Mr. Harvey told Ms. Mathieson that he had been told that anyone could purchase alcoholic beverages at the establishment and that he had been regularly purchasing alcoholic beverages at that location since October, 2011. *Tr.* at 36-37. Mr. Harvey also told Ms. Mathieson that he did not possess a fake ID, that only on several occasions was he carded and that, when customers were in the store, the owner appeared nervous and told him to wait until the establishment was empty before he would sell him alcoholic beverages. *Tr.* at 37.

6. Ms. Mathieson, in response to questions from Mr. Ross, also stated that she had interviewed Detective William Morrison of the MCPD, who had stated that, on six different dates when the MCPD was monitoring the establishment, they had followed a number of apparently underage persons from the establishment to just across the Maryland/District of Columbia border and had cited minors for illegal possession of alcoholic beverages, which they believed had been obtained from the establishment.[2] *Tr.* at 38.

B. Commissioner Stuart Ross

7. Commissioner Stuart Ross, on behalf of the ANC, stated that the ANC's concerns were centered on the sale by the establishment of alcoholic beverages to minors and the operation of the establishment in violation of law. *Id.* at 2; *Tr.* at 13. Mr. Ross stated that the establishment had become a haven for minors from Maryland and Virginia seeking to purchase alcoholic beverages and that the establishment had been involved in the sale of alcoholic beverages to minors, in violation of District law. *Protest Report* at 2; *Tr.* at 13. Additionally, Mr. Ross stated that the owner of the establishment was convicted of selling alcohol to minors in Virginia and was on probation for that conviction. *Id.* at 2; *Tr.* at 13. Moreover, Mr. Ross stated that Channel 9 News had aired several reports about the establishment, including a story on a large number of citations that were issued by the MCPD. *Id.* at 2; *Tr.* at 16-17. Finally, Mr. Ross stated that the establishment brought illegality, not peace, to the neighborhood and that it attracted people who violate the law and disrupt the peace and harmony of the surrounding area. *Id.* at 2.

C. Detective Aaron Bailey

8. Detective Aaron Bailey of the MCPD testified concerning the surveillance operation of the establishment by the MCPD. Detective Bailey stated that in 2011 the MCPD established a holiday task force dealing with driving while intoxicated (DWI) and underage drinking issues. *Tr.* at 71. Detective Bailey stated that intelligence obtained from teens found in possession of alcoholic beverages had led them to the establishment as a source for alcoholic beverages where IDs were not checked. *Tr.* at 71.

9. Detective Bailey stated that around Thanksgiving, 2011, plain clothes members of the MCPD began conducting surveillance of the establishment and noticed that a large number of drivers who appeared to be underage in vehicles tagged in Maryland and

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[2] Again, as noted above, the Board is aware of the serious issue concerning sales to minors by this establishment and will address this issue in a Show Cause Proceeding pending before the Board (Case #12-251-00107).

Virginia were frequenting the establishment. *Tr.* at 75. The MCPD began following the Maryland tagged vehicles into Montgomery County whereupon they conducted traffic stops and, if alcohol was plainly visible in the vehicles, cited the occupants for possession and interviewed them to determine where they had obtained the alcoholic beverages. *Tr.* at 75-76. Detective Bailey stated that he had personally intercepted vehicles coming from the establishment around five or six times during the surveillance operation. *Tr.* at 81. All of those stopped by Detective Bailey possessed only Maryland identification, not fake identification. *Tr.* at 84. Further, during his interviews, Detective Bailey stated that he was told that no identification was requested prior to the sale of the alcoholic beverages at the establishment. *Tr.* at 84-85. Detective Bailey also testified that during surveillance the MCPD officers were able to witness the transactions involving sale to underage person within the store and did not witness any requests for identification prior to the sales being made. *Tr.* at 102-104.

10. No surveillance activities have occurred by MCPD since February, 2012, nor is Detective Bailey aware of any underage purchases of alcohol at the establishment since February, 2012. *Tr.*. at 100

D. Richard Kim

11. Investigator Mathieson interviewed Richard Kim, the owner of the establishment, in connection with his establishment's application for a license renewal. *Protest Report* at 3. Mr. Kim stated that there were no issues with disruption of the peace, order and quiet of the neighborhood. *Id.* at 3. Mr. Kim also stated that, with regard to sales to underage persons, he had taken measures to prevent further incidents of that nature. *Id.* at 3., *Tr.* at 47. Mr. Kim stated that he had attended training at ABRA on how to detect fake IDs and also had purchased an ID scanner. *Id.* at 3, *Tr.* at 47. Mr. Kim also stated that he now asks for name and date of birth while holding IDs and refuses to sell alcoholic beverages to anyone without identification. *Id.* at 3, *Tr.* at 47. Mr. Kim is also now referring to the ID book issued by ABRA when checking IDs. *Tr.* at 65.

CONCLUSIONS OF LAW

12. The Board has the authority to renew the Applicant's Retailer's Class B License if we deem it appropriate for the neighborhood in which the license is located, and the Applicant otherwise qualifies for licensure. D.C. Code §§ 25-301, 25-313, 25-315. We may also impose conditions on the Applicant's license if we deem such conditions to "be in the best interest of the locality, section, or portion of the District where licensed establishment is . . . located." D.C. Code § 25-104(e).

I. Peace, Order, and Quiet

13. The ANC argues that renewing the Applicant's license will have a negative impact on the neighborhood's peace, order, and quiet. While there have been some issues in the recent past concerning the sale of alcoholic beverages to underage persons from surrounding jurisdictions, which is the subject of a separate Board proceeding, we do not see the Applicant's operations having a negative impact on the neighborhood's peace, order, and quiet. Moreover, the Applicant has demonstrated to the Board that there have been noticeable improvements to the operation of the establishment.

14. By law, the Board is required to examine "[t]he effect of the establishment on peace, order, and quiet . . . ." D.C. Code § 25-313(b) (2). While we acknowledge the ANC's concerns about a pattern of sales to minors, we do not find that this issue, in and of itself, is sufficiently significant for us to find that the establishment negatively impacts on the peace, order and quiet of the surrounding community. Indeed, according to Inspector Mathieson, there do not appear to be any such impacts on the community by this establishment. *Protest Report* at 5-6, *Tr.* at 21. Moreover, to the extent that there previously had been loitering at the establishment, the Protest Report and testimony support the conclusion that this negative aspect has abated since the establishment was cited by ABRA in February of this year. *Tr.*. at 100. Moreover, Inspector Mathieson determined that the Applicant has made significant improvements in identifying persons who are ineligible to purchase alcoholic beverages at the establishment. *Protest Report* at 3, *Tr.* at 47.

15. By law, the Board must also consider whether the establishment will create noise in violation of D.C. Official Code § 25-725. § 25-313(b)(2). Inspector Mathieson noted in her report that, from her numerous observations of the establishment in connection with this application, there was no activity that would indicate an issue with noise. *Protest Report* at 7. Furthermore, the ANC did not provide any testimony or documentary evidence of a noise problem.

16. In addition, the Board must further consider whether the establishment will create litter in violation of D.C. Official Code § 25-726. § 25-313(b)(2). Under §25-726, "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(a). The Protest Report did not find any evidence of a litter problem at or surrounding the establishment. *Protest Report*, Ex. 6.

17. Therefore, we conclude that renewing the Application does not threaten the neighborhood's peace, order, and quiet.

II. Compliance with Laws and Regulations

18. The ANC argues that Applicant has demonstrated a poor record of compliance with the laws and regulations to which the Applicant is subject. As noted above, Commissioner Ross stated both to Investigator Mathieson and to the Board that the establishment has become a haven for minors from Maryland and Virginia seeking to purchase alcoholic beverages and that the establishment has been involved in the sale of alcoholic beverages to minors, in violation of District law. *Protest Report* at 2; *Tr.* at 13. Mr. Ross also stated that the establishment brings illegality, not peace, to the neighborhood and that it attracts people who violate the law and disrupt the peace and harmony of the surrounding area. *Id.* at 2. Mr. Ross' testimony was bolstered by testimony from Detective Bailey of the MCPD, who provided eyewitness testimony concerning the sale of alcoholic beverages to minors that had been occurring in the latter part of 2011 and the first part of 2012. *Tr.* at 75-104.

19. The Board understands that the purported sale of alcohol to minors and the purported failure to appropriately check identification prior to purchase of alcoholic beverages are serious issues that merit review by the Board. Indeed, the Board has scheduled a proceeding to do just that and can invoke serious sanctions on the establishment if the violations are proven to be correct. As regards any pattern of noncompliance with laws and regulations, ABRA's investigative history, the Protest Report and the record of this proceeding do not show a pattern of noncompliance with laws and regulations. What the record does show is that the licensee has taken measures to aggressively check identification and to prevent further incidents of sales to minors. *Id.* at 3, *Tr.* at 47. In addition, the record shows that the licensee has attended training sessions at ABRA on how to detect fake IDs and also has purchased an ID scanner. *Id.* at 3, *Tr.* at 47. Thus, the Applicant has demonstrated to the Board that there have been noticeable improvements to the operation of the establishment. We therefore find that there is no pattern of the applicant violating District laws and regulations applicable to its operations that would cause the Board to deny reissuance of the license.

III. Conclusion

20. We are only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its 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. Accordingly, based on our review of the Application and the record, we find the Applicant has generally demonstrated its good character and fitness for licensure, and has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 20th day of November, 2012, hereby **ORDERS** that the Application to Renew a Retailer's Class A License filed by R & J, 24 Liquors, Inc t/a Town Square Gourmet, is **GRANTED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

I respectfully dissent.

My colleagues use a strict construction of the standard of peace, order and quiet, and correctly point out that there have been no documented incidents of sales to minors in eight months. I would argue for a more expansive construction of the peace, order, and quiet (POQ) standard, but only in the most extreme cases. I believe this is one such case.

The facts of this case are so clear and so striking as to merit an expansive view of the POQ standard. Montgomery County Police were so concerned about the number of underage minors illegally obtaining liquor at this establishment that they took the extraordinary step of crossing the DC border and conducting stakeouts. They then followed the cars of customers with Maryland plates. When those cars crossed into Maryland, they stopped them, and arrested numerous underage minors.

A Montgomery County detective testified it was well-known in his jurisdiction that Town House Gourmet was a place where underage minors could obtain alcoholic beverage. He described one stakeout, comparing the teenagers to sharks "in a feeding frenzy." This is intolerable.

I believe the ANC has met the burden of proving that the licensee has repeatedly violated the POQ standard and those violations have been so egregious over so long periods of time that we should not trust the licensee to strictly obey the law in the future. I therefore vote against renewal of the license, believing that the licensee's privilege to sell alcoholic beverages should be revoked in the interest of peace, order, quiet, and public safety.

Mike Silverstein, 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).