

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

In the Matter of:)	
)	
Eun & Peter, Inc.)	Case Number: 11-PRO-00005
t/a Uncle Lee's Seafood)	License Number: 085918
)	Order Number: 2011-310
Application for a New)	
Retailer's Class A License)	
)	
at premises)	
1100 Eastern Avenue, N.E.)	
Washington, D.C. 20019)	

BEFORE: Donald Brooks, Acting Chairperson
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Eun & Peter, Inc., t/a Uncle Lee's Seafood, Applicant

Kevin Lee, Esq., on behalf of the Applicant

Sylvia A. Brown, on behalf of A Group of Five or More Individuals,
Protestant

Randall Marshall and Ronald F. Strett, on behalf of the Capital View
Civic Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

Eun & Peter, Inc., t/a Uncle Lee's Seafood (Applicant), filed an Application for a new Retailer's Class A License (Application) at premises 1100 Eastern Avenue, N.E., Washington, D.C. The Capitol View Civic Association, represented by Randall Marshall and Ronald F. Strett, and A Group of Five or More Individuals, represented by Sylvia Brown, filed protests on January 3, 2011, and January 8, 2011, respectively. The Board notes that the protests of Alice Bush, Vernessa L. Dickens, and The Eastern Plaza Condominium Association were dismissed because they did not meet the standing requirements of D.C Code § 25-601 (2001). Eun & Peter, Inc., t/a Uncle Lee's Seafood, Board Order No. 2011-098, 1-2 (D.C.A.B.C.B. Feb. 2, 2011). The Alcoholic Beverage Control Board (Board) held the Roll Call Hearing on January 24, 2011, and held a Status Hearing with the parties on March 9, 2011.

The Applicant and the Protestants were unsuccessful in negotiating a Voluntary Agreement before the Protest Hearing at a mediation session held on March 3, 2011. The Protest Hearing was held on April 13, 2011.

The Board notes that on January 24, 2011, the Board received the recommendation of ANC 7C. According to ANC 7C, there are too many liquor serving establishments in the neighborhood, because two additional off-premise retailers are located within 200 feet of the Applicant. In addition, ANC 7C believes that the Applicant is too close to a childcare center and will be a negative influence on the children attending the center. The Board will give ANC 7C's recommendation great weight under D.C. Code § 25-609 (2001).

Pursuant to D.C. Code §§ 25-313, 25-314, and 25-602 (2001) and 23 DCMR § 400.1(a) (2008), the protest issues are whether the Application will adversely impact the peace, order, quiet, residential parking needs, vehicular and pedestrian safety, and real property values of the neighborhood. In addition, the Board must also consider the proximity and effect of the establishment on any schools, recreation centers, day care centers, or public libraries and whether the establishment will unduly attract school-age children going to, present at, or coming from a school, recreation center, day care center, or public library. The Board must also determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the surrounding neighborhood.

In addition, pursuant to D.C. Code § 25-301, before approving the Application, the Board must determine whether the Applicant "is of good character and generally fit for the responsibilities of licensure;" that the Applicant "is at least 21 years of age;" that the Applicant "has not been convicted of any felony in the 10 years before filing the" Application; that the Applicant has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the" Application; that the Applicant "is the true and actual owner of the establishment . . . and he or she intends to carry on the business for himself or herself and not as the agent of [another];" that the "licensed establishment will be managed by the [Applicant] in person or by a Board-licensed manager;" that the Applicant "has complied with all the requirements of this title and regulations issued under this title;" and that the Applicant has not "failed to file required District tax returns or owes more than \$ 100 in outstanding debt to the District as a result of the items specified in § 47-2862(a)(1) through (9), subject to the exceptions specified in § 47-2862(b)." D.C. Code § 25-301(a)-(b) (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

1. The Applicant has submitted an Application for a new Retailer's Class A License. *ABRA Licensing File No. 085918.*
2. The Applicant's establishment is located at 1100 Eastern Avenue, N.E. *ABRA Protest File No. 11-PRO-00005, Protest Report, 2.* The establishment is located in a C-2-

A zone. *Protest Report, 3.* The Little Jewels Child Development Center is located approximately 20 feet from the establishment. *Protest Report, 4.* There are no other District of Columbia ABC-licensed establishments located within 1,200 feet of the Applicant. *Protest Report, 3.* The Applicant has no prior ABC violations. *Protest Report, 6.*

3. Lt. Philip Lanciano works for the Metropolitan Police Department (MPD) and is assigned to the 6th District. *Transcript (Tr.),* April 13, 2011 at 12. MPD's records indicate that there have been 50 calls for service at the Applicant's address. *Tr., 4/13/11* at 13, 63. In total, MPD arrested one person at the address based on a bench warrant, arrested two people for prostitution, and arrested two people for possessing controlled substances. *Tr., 4/13/11* at 13. The rest of the reports involved traffic stops, requests for emergency medical and fire services, reports of suspicious persons, triggered burglar arms, and car accidents. *Tr., 4/13/11* at 13-14. Further, Lt. Lanciano noted that there is an issue with individuals not utilizing crosswalks and speeding. *Tr., 4/13/11* at 58, 63. He believes that the area where the Applicant seeks to locate has a severe prostitution and drug problem. *Tr., 4/13/11* at 14, 16, 30. The Board notes that none of the calls for service are related to the Applicant's activities. *Tr., 4/13/11* at 13. Indeed, in Lt. Lanciano's opinion, the establishment does not have a history of problems and has not caused any issues for MPD. *Tr., 4/13/11* at 29.

4. Alcoholic Beverage Regulation Administration (ABRA) Investigator Ileana Corrales was assigned to investigate the protest against the Applicant. *Tr., 4/13/11* at 60. ABRA Investigators monitored the establishment on eight occasions from March 22, 2011, to April 5, 2011. *Tr., 4/13/11* at 62. They did not observe loitering during their visits. *Tr., 4/13/11* at 63.

5. The establishment is a carry-out restaurant. *Tr., 4/13/11* at 61; *Protest Report, Exhibit No. 3.* It is painted red and has a glass door and sign that says "Uncle Lee's Seafood." *Tr., 4/13/11* at 61.

6. A parking lot is located directly in front of the establishment. *Tr., 4/13/11* at 61. The parking lot has approximately 10 to 15 parking spaces. *Tr., 4/13/11* at 61. ABRA Investigators observing the premises noted that parking was available every time they monitored the establishment. *Tr., 4/13/11* at 62.

7. A "secure trash area" is located to the right of the establishment. *Tr., 4/13/11* at 62. The trash is removed once per week. *Tr., 4/13/11* at 94.

8. Eun Sun Kim, the owner of the establishment, previously held a liquor license in Prince George's County from 1995 to 1997 and sold beer and wine in Hyattsville, Maryland. *Tr., 4/13/11* at 69, 90. Ms. Kim purchased the establishment in October 2010 and opened for business on November 8, 2010. *Tr., 4/13/11* at 69. The business also has a deli. *Tr., 4/13/11* at 70. Ms. Kim would like to sell alcohol in order to improve the profitability of her business. *Tr., 4/13/11* at 70.

9. Ms. Kim has posted a "no loitering" sign inside her business and posted two "no loitering" signs on the outside of the establishment. *Tr., 4/13/11* at 78. The business also

has flood lights installed to illuminate the area outside the establishment. *Tr.*, 4/13/11 at 78.

10. Paul Ents represents the owner of the property where the Applicant's business is located. *Tr.*, 4/13/11 at 92. In his duties as the property's landlord, he examines the Applicant's establishment at least twice per week. *Tr.*, 4/13/11 at 92. Mr. Ents noted that since the establishment opened there is less trash on the property, less loitering, and more customers have been attracted to the area. *Tr.*, 4/13/11 at 93. Mr. Ents has also never observed individuals drinking alcohol from open containers near the property. *Tr.*, 4/13/11 at 93.

11. Leonard Charles Cornish is a regular customer of the Applicant. *Tr.*, 4/13/11 at 102. Mr. Cornish observed that the Applicant has painted and cleaned the establishment. *Tr.*, 4/13/11 at 102. In addition, Mr. Cornish has observed that people do not loiter near the establishment nor has he observed any juvenile crime in the neighborhood. *Tr.*, 4/13/11 at 102-03.

12. Gizachew Andargeh is a neighborhood planner employed by the District of Columbia Office of Planning and presented the Small Area Plan for Deanwood written by his office. *Tr.*, 4/13/11 at 107. The plan calls for "consolidating properties to increase the opportunity to attract neighborhood-serving convenience retail." *Tr.*, 4/13/11 at 109. The term "neighborhood-serving convenience retail" includes delicatessens like the Applicant. *Tr.*, 4/13/11 at 109, 122, 135. Currently, the primary retail outlets in the Capital View neighborhood are corner stores. *Tr.*, 4/13/11 at 131.

13. Charimaine Harris lives in an apartment located at 940 Eastern Avenue, N.E. *Tr.*, 4/13/11 at 137. Ms. Harris consistently finds litter on her property deposited by the patrons of unnamed local retail establishments. *Tr.*, 4/13/11 at 138. Ms. Harris constantly has to pick up bottles and Styrofoam containers left on her property. *Tr.*, 4/13/11 at 139.

14. Cherri Lawson lives in an apartment located at 944 Eastern Avenue, N.E. *Tr.*, 4/13/11 at 147. Ms. Lawson has observed loitering near the Applicant's establishment. *Tr.*, 4/13/11 at 147. In addition, a vendor operates in the parking lot near the Applicant and there are occasional impromptu car washes. *Tr.*, 4/13/11 at 148. Ms. Lawson testified that she does not feel safe walking into the establishment because of the presence of loiterers. *Tr.*, 4/13/11 at 149. She also testified that she also does not feel safe because the establishment utilizes bulletproof glass inside the establishment. *Tr.*, 4/13/11 at 149. Ms. Lawson admitted that some of the people loitering outside the establishment are individuals who bought food at the establishment and are merely consuming it. *Tr.*, 4/13/11 at 154-55.

15. Ms. Lawson testified that when she walked by the establishment on one occasion, an individual affiliated with the vendor that operates in the Applicant's parking lot yelled to the vendor "are you just going to let her walk by like that?" *Tr.*, 4/13/11 at 158. Ms. Lawson viewed the actions of the individual as threatening. *Tr.*, 4/13/11 at 158.

16. Margaret Culbreath lives at 1216 50th Street, N.E. *Tr.*, 4/13/11 at 160. Ms. Culbreath indicated that alcohol is readily available in the community. *Tr.*, 4/13/11 at 162.

She also has observed consistent loitering near the Applicant's premises. *Tr.*, 4/13/11 at 163.

17. Charlene Pierce lives at 5163 Sheriff Road, N.E. *Tr.*, 4/13/11 at 164. Ms. Pierce testified that loitering near the Applicant's establishment is a problem. *Tr.*, 4/13/11 at 165.

CONCLUSIONS OF LAW

18. Pursuant to D.C. Code §§ 25-313, 25-314, and 25-602 (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application for a new Retailer's Class A License is sought is appropriate for the neighborhood in which it is located. As such, the Board must determine whether the Application will adversely impact the peace, order, quiet, residential parking needs, vehicular and pedestrian safety, and real property values of the neighborhood. Further, the Board must determine whether approving the Application will negatively impact the nearby Little Jewels Child Development Center and unduly attract school-age children going to, present at, or coming from the day care center. The Board must also determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the surrounding neighborhood. Finally, pursuant to D.C. Code § 25-301, before approving the Application, the Board must determine whether the Applicant meets the general qualifications for licensure. We find that the Application is appropriate and the Applicant has met the requirements for licensure.

19. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2011) and D.C. Official Code § 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, ANC 7C opposes the Application. According to ANC 7C, there are too many liquor serving establishments in the neighborhood, because two additional off-premise retailers are located within 200 feet of the Applicant. In addition, ANC 7C believes that the Applicant is too close to a childcare center and will be a negative influence on the children attending the center. The Board will address ANC 7C's concerns below.

Peace, Order, and Quiet

20. The Board finds that the Applicant will not adversely impact the peace, order, and quiet of the neighborhood. The law emphasizes that the Board should focus on "[t]he effect of the establishment on peace, order, and quiet, including [Title 25's provisions regarding] noise and litter . . ." § 25-313(b)(2). Here, even though the neighborhood has a high amount of crime, no evidence was presented at the hearing that the Applicant's operations contribute to the criminal activity in the area. Supra, at para. 3.

21. Furthermore, we find that the Protestants' testimony in respect to loitering at the establishment was conclusory and did not sufficiently establish the negative impact on the neighborhood. It is unfortunate that the vendor operating in the Applicant's parking lot engaged in offensive behavior that made Ms. Lawson uncomfortable, but this type of

behavior is not illegal. Supra, at para. 15. Additionally, the Board cannot deny a license to an Applicant merely because the Applicant's patrons are eating food and fraternizing in the Applicant's parking lot, because this behavior alone is constitutionally permitted and not illegal in the District of Columbia. Supra, at para. 14. Had the Protestants been able to produce evidence that the people fraternizing in the Applicant's parking lot were dealing drugs, fighting, consuming alcohol, or engaging in other anti-social behaviors, the Board would be more inclined to deny the Application or take further measures. However, because such evidence was lacking, we find that there is insufficient evidence that approving the Application will encourage loitering.

22. Additionally, there is no evidence that the Applicant's patrons or operations contribute to the litter problem in the neighborhood. The Applicant has a secure trash area that is served once per week, which ensures that the establishment's immediate area will remain clean. Supra, at para. 7, para. 10. The Board credits the Protestants' testimony that litter from the patrons of local businesses is appearing in residents' yards. Supra, at para. 13. Nevertheless, the Protestants did not produce evidence that the litter came from the Applicant.

23. As such, there is no basis for believing that the Applicant will negatively impact the peace, order, and quiet of the neighborhood.

Traffic and Parking

24. We also note that the Applicant will not adversely impact the residential parking and vehicular and pedestrian safety of the neighborhood. The law emphasizes that the Board should focus on "[t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety." Here, the Applicant has a parking lot with over 10 parking spaces. Supra, at para. 6. Furthermore, although evidence was presented that speeding and jaywalking are issues in the neighborhood, no evidence was presented that these occurrences are caused by the Applicant's operations. Therefore, we find that the Applicant will not have an adverse impact on the residential parking needs and vehicular and pedestrian safety of the neighborhood.

Schools, Recreation Centers, Day Care Centers, and Public Libraries

25. Contrary to the arguments made by the Protestants and ANC 7C, there is no evidence that the Applicant will negatively impact the nearby Little Jewels Child Development Center. There was no evidence presented during the hearing that the mere presence of a liquor store is detrimental to children. Further, no evidence was presented that the children at the day care center are even able or old enough to patronize the Applicant's establishment. As such, the Protestants and ANC 7C's claims that the Applicant's operations will be detrimental to the nearby day care center or attract underage children are meritless.

Overconcentration

26. In addition, despite the arguments made by the Protestants and ANC 7C, there is no evidence that the neighborhood is suffering from an overconcentration of ABC-licensed establishments. First, no evidence was presented to the Board that the existing liquor

serving establishments in Maryland are having a negative impact on the neighborhood or that there are a sufficient number of stores to satisfy the neighborhood's demand for alcoholic beverages.

27. The Board further notes that it is inappropriate to consider the presence of liquor stores in Maryland in determining whether the neighborhood is suffering from overconcentration. The law states:

Whether issuance of the license would create or contribute to an overconcentration of *licensed establishments* which is likely to affect adversely the locality, section, or portion in which the establishment is located.

D.C. Code § 25-314(a)(4) (2001) (emphasis added). The term "licensed establishments" in § 25-314 refers only to establishments licensed by this Board, not establishments outside this Board's jurisdiction. As such, the Board cannot consider liquor serving establishments outside of the District of Columbia in determining whether a neighborhood suffers from overconcentration of licensed establishments because such establishments are not "licensed establishments" pursuant to § 25-314(a)(4).

28. As such, the Board finds that approving the Application will not lead to an overconcentration of ABC-licensed establishments.

Property Values

29. The Board further notes that no evidence regarding the establishment's effect on property values was presented during the hearing.

General Qualifications for Licensure

30. Finally, we find that the Applicant has satisfied the general qualifications for licensure contained in D.C. Code § 25-301. We find that the Applicant is of good character and generally fit for licensure, as evidenced by Ms. Kim's prior experience operating a liquor store in the State of Maryland. *Supra*, at para. 8. We further find that the Applicant is at least 21 years of age, has not been convicted of a felony in the past 10 years before filing the Application, and has not been convicted of any misdemeanor in the past 5 years before the filing the Application that bears on her fitness for licensure. We also find that Applicant intends to carry on the business for herself and not as the agent of another and that the business will be managed by the Applicant or her designated Board-licensed manager. Further, the Applicant has complied with all of the requirements Title 25 of the District of Columbia Code and Title 23 of the District of Columbia Municipal Regulations. Finally, the Applicant has not failed to file any tax returns or owes any outstanding debt to the District in excess of \$100.00. As such, the Applicant is fit for licensure.

Conclusion

31. Therefore, for the foregoing reasons, the Board finds that the Application is appropriate and that the Applicant has satisfied the general qualifications for licensure.

In addition, pursuant to D.C. Code § 25-301(a)(1), before approving the Application, the Board must determine whether the Applicant is of good character and generally fit for the responsibilities of licensure.

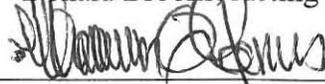
ORDER

Therefore, it is hereby **ORDERED**, on this 20th day of July 2011, that the Application for a new Retailer's Class A License filed by Eun & Peter, Inc., t/a Uncle Lee's Seafood, at premises 1100 Eastern Avenue, N.E., is hereby **GRANTED**.

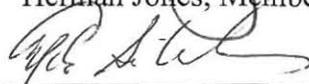
District of Columbia
Alcoholic Beverage Control Board



Donald Brooks, Acting Chairperson



Herman Jones, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).