

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

In the Matter of:)

Restaurant Enterprises, Inc.)
t/a Smith Point)

Application for Substantial Change)
(Summer Gardens))
to Retailer's Class CR License)

Case No. 10-PRO-00131
License No. ABRA-060131
Order No. 2011-233

at premises)
1338 Wisconsin Avenue, N.W.)
Washington, D.C. 20007)

Restaurant Enterprises, Inc., t/a Smith Point (Applicant)

Bill Starrels, Commissioner, on behalf of Advisory Neighborhood Commission (ANC) 2E

Jennifer Altemus, President, Citizens Association of Georgetown (CAG)

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

**ORDER ON AMENDMENT TO VOLUNTARY AGREEMENT AND
WITHDRAWAL OF PROTESTS**

The official records of the Alcoholic Beverage Control Board (Board) reflect that Restaurant Enterprises, Inc., t/a Smith Point (Applicant), has submitted an Application for a Substantial Change to include two new summer garden areas, one in the rear with 36 patrons and the other on the side with 24 patrons, to its Retailer's Class CR License, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., having been protested, came before the Board for a Roll Call Hearing on October 25, 2010, a Protest Status Hearing on November 17, 2010, and a Protest Hearing on January 12, 2011, in accordance with D.C. Official Code § 25-601 (2001).

After the Protest Hearing, but before a final decision and Order was issued by the Board, the Parties requested that the Board approves the Amendment to Voluntary Agreement in lieu of issuing an Order on the merits.

Restaurant Enterprises, Inc.
t/a Smith Point
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The Applicant and ANC 2E entered into a Voluntary Agreement (Agreement), dated March 7, 2000, setting forth the terms and conditions by which the Applicant would operate its establishment. This matter comes now before the Board to consider the Parties' Amendment to Voluntary Agreement (Amendment), dated January 31, 2011, in accordance with D.C. Official Code § 25-446 (2001).

The official records of the Board reflect that the Parties have agreed to amend the original Agreement and the Applicant; Bill Starrels, on behalf of ANC 2E; and Jennifer Altemus, on behalf of CAG, are signatories to the Amendment. The Amendment has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the Amendment, all terms and conditions of the original Agreement not amended by the Amendment shall remain in full force and effect.

This Amendment also constitutes a withdrawal of the Protests filed by ANC 2E and CAG of this Application.

Accordingly, it is this 22nd day of June 2011, **ORDERED** that:

1. The Application filed by Restaurant Enterprises, Inc., t/a Smith Point, for a Substantial Change to include two new summer garden areas, to its Retailer's Class CR License, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of 2E and CAG in this matter are hereby **DISMISSED**;
3. The above-referenced Amendment to Voluntary Agreement by and between Restaurant Enterprises, Inc., t/a Smith Point, located at 1338 Wisconsin Avenue, N.W., Washington, D.C., ANC 2E, and CAG, to the existing March 7, 2000 Agreement is **APPROVED** and **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant, ANC 2E, and CAG.

Restaurant Enterprises, Inc.
t/a Smith Point
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Page 3

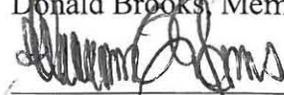
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



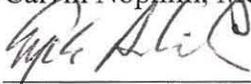
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.



VERITAS

Veritas Licensing & Legislative Affairs

Andrew J. Kline* Director

Terry Brennan License Administrator

Jes Julius Executive Assistant

February 8, 2011

VIA E-MAIL AND HAND DELIVERY

Thea D. Davis
Assistant Attorney General
Office of the General Counsel
Alcoholic Beverage Regulation Administration
1250 U Street, N.W., 3rd Floor
Washington D.C. 20009

RECEIVED
2011 FEB -8 P 1:31
DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION

**RE: Restaurant Enterprises, Inc t/a Smith Point ("Applicant")
Advisory Neighborhood Commission 2E ("ANC 2E")
Citizens Association of Georgetown ("CAG");
Amendment to Agreement for Smith Point
1338 Wisconsin Avenue, NW**

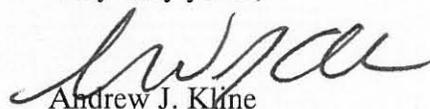
Dear Ms. Davis:

The parties were able to come to an agreement to resolve the protest that was filed in connection with the Applicant's renewal of its Class CT license. Enclosed is a fully executed Amendment to Agreement signed in counterpart by Robert Blair on behalf of the Applicant, William Starrels on behalf of ANC 2E and Jennifer Altemus on behalf of CAG.

We respectfully request that the Board issue an Order approving the enclosed Amendment, dismiss the protest, and instruct ABRA staff to update the Applicant's license if necessary. Also, as I had previously conveyed to you by email, it is no longer necessary for an Order to be completed in connection with the protest hearing that occurred on January 12, 2011.

Do not hesitate to contact me if you, the Board, or ABRA staff have questions in connection with this matter.

Very truly yours,



Andrew J. Kline

AJK/jrj

cc: Martha Jenkins, General Counsel, ABC Board
LaVerne Fletcher, ABRA
Cynthia Simms, ABRA
Bill Starrels, ANC 2E
Jennifer Altemus, CAG
Bo Blair

*A non-lawyer representative providing representation before DC departments and agencies as permitted by statute or agency rule.

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT, made this 2/15 day of January, 2011, between Restaurant Enterprises, Inc. t/a Smith Point ("Applicant"), Advisory Neighborhood Commission 2E ("ANC 2E") and the Citizen's Association of Georgetown ("CAG")

WITNESSETH

WHEREAS, the parties entered into an Agreement dated March 7, 2000 related to the Applicant's operation of its restaurant business located at 1338 Wisconsin Avenue, NW, ABC Application No. 11297;

WHEREAS, the parties desire to amend the Agreement upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises above-recited, the covenants and promises set forth below, and other good and valuable consideration, the parties agree as follows:

1. Section 2 of Agreement. Section 2 of the Agreement is deleted in its entirety, and replaced with the following:

2. The restaurant will have a capacity of 170 persons, provided there shall not be more than 65 seated persons in the summer garden areas.

2. Noise. No music, recorded or otherwise, shall be played in the summer garden areas of the restaurant. No music or noise from the premises shall be audible in any residence or any hotel.

3. No Promoters. Applicant shall, at all times, manage its establishment and under no circumstances shall operation and control of the establishment be ceded to any promoter.

4. Amendment of Application. Upon approval of this Amendment by the Alcoholic Beverage Control Board, Applicant's license application shall be deemed amended, consistent with Section 1 of this Amendment.

5. Withdrawal of Protests. Upon approval of this Amendment by the Alcoholic Beverage Control Board, the protests of Applicant's substantial change filed by ANC 2E and CAG shall be deemed withdrawn.

6. Authority. This Amendment to Agreement is executed by the A.B.C. Liason of ANC 2E, but is necessarily conditioned upon and subject to the approval of ANC 2E at a duly called meeting.

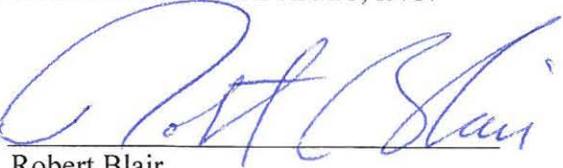
7. Agreement in Effect. Except as otherwise specifically provided herein, the Voluntary Agreement remains in full force and effect.

8. Counterparts. This Agreement will be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment and of the date of year first above written.

APPLICANT:

RESTAURANT ENTERPRISES, INC.

BY: 

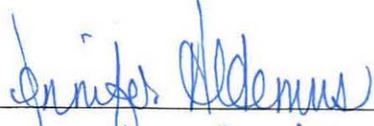
Robert Blair

ANC 2E

BY: _____

Print Name: _____

CAG

BY: 

Print Name: Jennifer Altemus

7. Agreement in Effect. Except as otherwise specifically provided herein, the Voluntary Agreement remains in full force and effect.

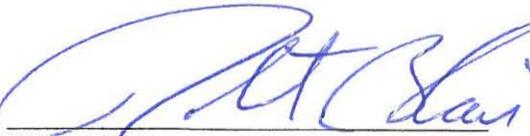
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IN WITNESS WHEREOF, the parties have executed this Amendment and of the date of year first above written.

APPLICANT:

RESTAURANT ENTERPRISES, INC.

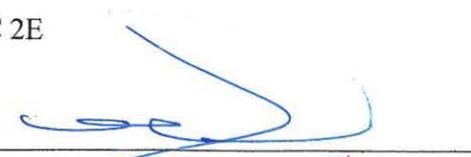
BY: _____


Robert Blair

ANC 2E

BY: _____

Print Name: _____


William Stone

CAG

BY: _____

Print Name: _____

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**



DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION

SUMMER GARDEN/SIDEWALK CAFÉ ENDORSEMENT

License Number: <u>ALBA 60131</u>	Date Accepted: <u>8-12-2010</u>	<input checked="" type="checkbox"/> New	Ward/ANC: <u>2B</u>	Accepted by: <u>[Signature]</u>
Fees Paid: \$	From	To	Issue Date:	From To
Date Approved by Board: / /	Initial: →	<u>[Signature]</u>		
Date Denied by Board: / /	Initial: →			

TO BE COMPLETED BY APPLICANT

1. Licensee Name (Last, First, Middle): <u>Restaurant Enterprises Inc</u>	2. Trade Name <u>Smith Point</u>
3. Premise Address <u>1338 Wisconsin Ave NW</u>	4. Telephone Number <u>(202) 333-9003</u>

5. List below the occupancy and number of seats

<input type="checkbox"/> Establishment Number of Seats:	<input checked="" type="checkbox"/> Summer Garden Number of Seats: <u>60</u>	<input type="checkbox"/> Sidewalk Café Number of Seats:
--	---	--

6. List the hours below:

Days	Hours of Operations		Sale of Alcoholic Beverage Hours	
	From	To	From	To
Sunday	<u>11 AM</u>	<u>1:30 AM</u>	<u>11 AM</u>	<u>1:30 AM</u>
Monday	<u>11 AM</u>	<u>2 AM</u>	<u>11 AM</u>	<u>1:30 AM</u>
Tuesday	<u>11 AM</u>	<u>2 AM</u>	<u>11 AM</u>	<u>1:30 AM</u>
Wednesday	<u>11 AM</u>	<u>2 AM</u>	<u>11 AM</u>	<u>1:30 AM</u>
Thursday	<u>11 AM</u>	<u>1:30 AM</u>	<u>11 AM</u>	<u>1:30 AM</u>
Friday	<u>11 AM</u>	<u>2:30 AM</u>	<u>11 AM</u>	<u>2:30 AM</u>
Saturday	<u>11 AM</u>	<u>2:30 AM</u>	<u>11 AM</u>	<u>2:30 AM</u>

If applicant is a sole proprietor, the individual must sign, if Partnership, each partner must sign, if Corporation, President or Vice President must sign, if LLC, managing member must sign the below certification.

7. Certification: I hereby certify under penalty of perjury that the information in this application is true and correct. I also certify that the above licensee is the true and actual owner of the business.

Printed name: Robert Blair
 Signature: [Signature] Subscribed and sworn to before me on this 5th day of August, 2010.
 Notary Public: [Signature] My commission expires March 2, 2012

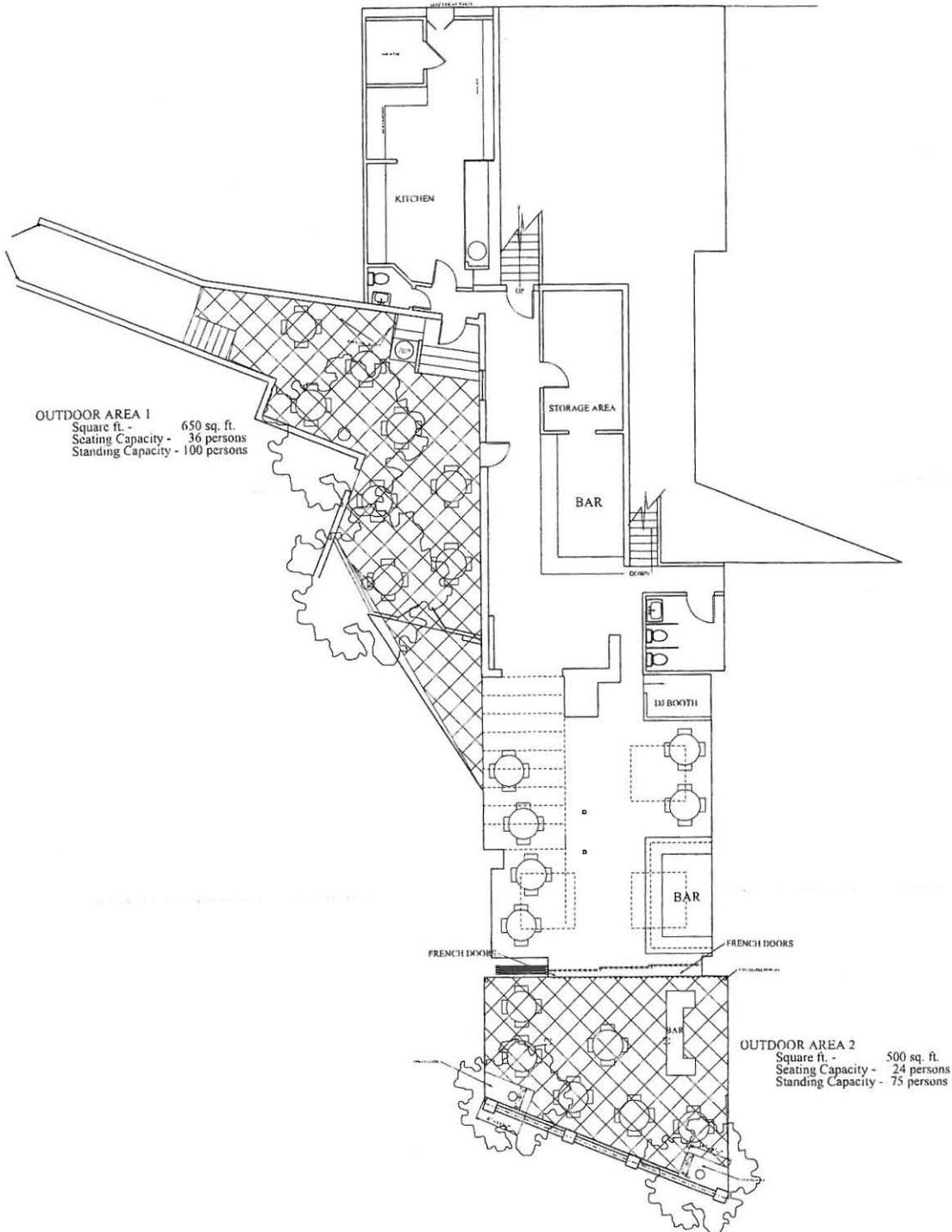
Printed name: _____
 Signature: _____ Subscribed and sworn to before me on this _____ day of _____, 20____. My commission expires on _____

Printed name: _____
 Signature: _____ Subscribed and sworn to before me on this _____ day of _____, 20____. My commission expires on _____

8. Please provide the following documents:
- Copy of the Certificate of Occupancy (please include the number of seats for the Summer Garden);
 - A letter from the Landlord giving permission to licensee to serve Alcoholic Beverages on the Summer Garden;
 - Public Space Permit and Certificate of Use for Sidewalk Café;
 - A diagram, or photograph of premise showing the designated area for the Summer Garden/Sidewalk Café.

SPECIAL NOTICE

The District of Columbia will provide the appropriate services and auxiliary aids, including sign language interpreters, whenever necessary to ensure effective communication with members of the public who are deaf, hearing impaired or who have other disabilities affecting communications. Requests for services and auxiliary aids should be made at least ten (10) days prior to any scheduled hearing. Please notify the ADA Coordinator at (202) 442-4423.



OUTDOOR AREA 1
 Square ft. - 650 sq. ft.
 Seating Capacity - 36 persons
 Standing Capacity - 100 persons

OUTDOOR AREA 2
 Square ft. - 500 sq. ft.
 Seating Capacity - 24 persons
 Standing Capacity - 75 persons

August 1, 2010

To The Alcoholic Beverage Regulation Administration:

I, Matthew E. Donahue, landlord to Restaurant Enterprises Inc. t/a Smith Point, give permission to serve alcoholic beverages in the summer garden.

Sincerely,

A handwritten signature in black ink that reads "Matthew E. Donahue". The signature is written in a cursive style with a large, sweeping initial "M".

Matthew E. Donahue

App file

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

In the Matter of:)
)
Restaurant Enterprises, Inc.)
t/a Smith Point)
Renewal Application for a Retailer's)
License Class "CR" at premises)
1338 Wisconsin Ave., N.W.)
Washington, D.C.)
)
Applicant)
_____)

Case No.: 11297-02/072P
Order No.: 2005-26

BEFORE: Charles A. Burger, Chairperson¹
Vera M. Abbott, Member
Audrey E. Thompson, Member
Judy A. Moy, Member
Peter B. Feather, Member²
Albert G. Lauber²
Eartha Isaac²

ALSO PRESENT: Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

Stephen O'Brien, Esquire, on behalf of the Applicant

Cynthia Anthony, Christian Mulder, Esther Dijkstra, Larry Birns,
and Kathryn Arnow, on behalf of the Protestants

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

The application, filed by Restaurant Enterprises, Inc., ("Applicant"), t/a Smith Point, for a renewal of its Retailer's License Class "CR" at premises 1338 Wisconsin Avenue, N.W.,

¹ Former ABC Board Chairperson Roderic L. Woodson, Esquire, presided over the February 19, 2003 proceeding. Mr. Woodson is no longer a member of the ABC Board. Current Chairperson Charles A. Burger participated as a member of the ABC Board during the February 19, 2003 proceeding and served as Interim Chairperson for both the May 7, 2003 and October 22, 2003 proceedings.

² ABC Board members Peter B. Feather, Albert G. Lauber, and Eartha Isaac were not members when these proceedings were initiated and did not participate or vote on this matter.

Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on May 8, 2002. It was determined that timely protests were filed pursuant to D.C. Official Code § 25-601 (2001) by various District of Columbia residents including Cynthia Anthony, Ester Dijkstra, Lawrence Birns, Christian Mulder, Philip Hemily, and Kathryn Arnow. The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the establishment: (1) adversely affects the peace, order, and quiet of the neighborhood and (2) is in compliance with conditions placed on the Applicant's license, including the terms of its March 7, 2000 voluntary agreement with Advisory Neighborhood Commission ("ANC") 2E.

The case was initially scheduled to come before the Board for a public protest hearing on February 26, 2003; however, on February 19, 2003, the Board granted a motion for a continuance made by the Applicant. The case subsequently came before the Board for public protest hearings on May 7, 2003 and October 22, 2003. At the conclusion of the October 22, 2003 protest hearing, the Board took its decision in this matter under advisement. The Board having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located at 1338 Wisconsin Avenue, N.W., on the west side of Wisconsin Avenue, N.W., and on the south side of Dumbarton Street, N.W. (Tr. 5/7/03 at 11; Alcoholic Beverage Regulation Administration ("ABRA") Exhibit No. 1³; ABRA Application File No. 011297.) The Applicant holds a Class "CR01" retailer's license. (ABRA Exhibit No. 1 at 1-2; ABRA Application File No. 011297.) The premises is zoned C-2-A, which is designed to provide facilities for shopping and business needs, housing and mixed uses for large segments of the city outside of the central core areas. (ABRA Exhibit No. 1 at 1; ABRA Application File No. 011297.) The establishment is located in the same vicinity as the following Alcoholic Beverage Control ("ABC") establishments: Au Pied de Cochon⁴, 1335 Wisconsin Avenue, N.W.; Towne Wine & Liquor, 1326 Wisconsin Avenue, N.W.; the Daily Grill Restaurant, 1310 Wisconsin Avenue, N.W.; Paolo's, 1303 Wisconsin Avenue, N.W.; and, Billy Martin's Tavern, 1264 Wisconsin Avenue, N.W. (ABRA Exhibit No. 1 at 1; See Application File No. 5228.)

2. The establishment is currently operating in the basement of a two story brick dwelling. (ABRA Exhibit No. 1 at 2.) The establishment's approved hours of operation are Monday through Wednesday, 5:00 p.m. to 2:00 a.m.; Thursday, 11:00 a.m. to 2:00 a.m.; Friday and Saturday, 11:00 a.m. to 3:00 a.m.; and, Sunday, 11:00 a.m. to 2:00 a.m. (ABRA Exhibit No. 1 at 2.) The establishment serves American and seafood cuisine.

³ A copy of ABRA Investigator Juliana Tengen's April 29, 2003 Investigative Report was provided to both parties at the May 7, 2003 hearing and is designated as ABRA Exhibit No. 1. (Tr. 5/7/03 at 10-11.)

⁴ The ABC license held by Au Pied de Cochon at 1335 Wisconsin Avenue, N.W., is now owned and operated at the same location by R&A Restaurant Development Company Georgetown, LLC, t/a Five Guys.

(ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.) The establishment offers recorded contemporary music. (ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.) The establishment consists of a kitchen, dining area with approximately forty (40) tables and nine (9) stools, a bar, two (2) bathrooms, and an office space. (ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.)

3. The Certificate of Occupancy ("COO") authorizes the establishment to use the basement premises for eighty-five (85) seats. (ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.) There is also a capacity placard posted in the establishment for two-hundred and twenty (220) patrons standing. (ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.) However, the establishment has a voluntary agreement, dated March 17, 2000, with Advisory Neighborhood Commission ("ANC") 2E, which contains conditions on the Applicant's license that have been approved by the Board. (ABRA Application File No. 011297.) Paragraph 1 of the establishment's agreement states in relevant part that the establishment "shall keep its kitchen open until two hours before closing." (ABRA Application File No. 011297.) Paragraph 2 of the establishment's agreement with ANC 2E states in relevant part that the establishment "will have a maximum capacity, as established by its Certificate of Occupancy, of 85 persons, including standing room for not more than 11 persons. (ABRA Exhibit No. 1 at 2; ABRA Application File No. 011297.)

4. ANC 2E did not file a protest; however, Tom Birch, ANC 2E Chairperson, on behalf of ANC 2E, filed timely comments, dated February 13, 2003, informing the Board that a motion was passed by ANC 2E on February 4, 2003, at its regularly scheduled public meeting, supporting the efforts of the Protestants in opposing the renewal of the Applicant's Class "CR" Retailer's License. (See Application File No. 011297.)

5. ABRA Investigator Juliana Tengen visited the establishment a total of seven (7) times. (Tr. 5/7/03 at 11, 38; ABRA Exhibit No. 1 at 2.) Specifically, Investigator Tengen visited the establishment on Friday, January 3, 2003, from 8:30 p.m. to 10:00 p.m.; Friday, January 3, 2003, from 1:30 a.m. to 3:30 a.m.; Thursday, January 16, 2003, from 9:00 p.m. to 11:00 p.m.; Saturday, January 18, 2003, from 12:30 a.m. to 3:30 a.m.; Friday, January 31, 2003, from 2:00 a.m. to 3:00 a.m.; Friday, February 14, 2003, from 12:30 a.m. to 3:30 a.m.; and, Saturday, February 15, 2003, from 2:00 a.m. to 3:30 a.m. (ABRA Exhibit No. 1 at 2.)

6. Investigator Tengen found the establishment to be a sit-down restaurant, which serves food until about 12:30 a.m. (Tr. 5/7/03 at 20-21.) Investigator Tengen described the patrons she saw exiting the establishment as being in their twenties (20s) and thirties (30s). (Tr. 5/7/03 at 21-22.) Investigator Tengen did not observe a valet service being offered to patrons of the establishment. (Tr. 5/7/03 at 49.)

7. Investigator Tengen observed two (2) entrances to the establishment; one entrance on Wisconsin Avenue, N.W., and a second entrance on O Street, N.W. (Tr. 5/7/03 at 22-24.) Investigator Tengen observed that both of the establishment's doors, one on Wisconsin Avenue, N.W., and one on O Street, N.W., remained closed. (Tr. 5/7/03 at

22.) Investigator Tengen never observed a line outside of the entrance on Wisconsin Avenue, N.W.; however, Investigator Tengen did observe a crowd outside of the entrance on O Street, N.W. (Tr. 5/7/03 at 24.) Investigator Tengen was informed by Robert Blair, President of Restaurant Enterprises, Inc., that the entrance on O Street, N.W., was used to control the noise and traffic on Wisconsin Avenue, N.W., as well as for safety reasons. (Tr. 5/7/03 at 24.)

8. With respect to noise, Investigator Tengen witnessed patrons making noise outside as they exited the establishment on January 18, 2003; however, Investigator Tengen did not hear any musical noise emanating from the establishment. (Tr. 5/7/03 at 11-12, 38; ABRA Exhibit No. 1 at 3.) Investigator Tengen found that the establishment played recorded music that sounded loud inside of the establishment, but could not be heard outside of the establishment. (Tr. 5/7/03 at 22.) Investigator Tengen did not have access to the back area of the establishment while observing the establishment's noise levels, and therefore she could not observe noise levels near the back windows and rooms of the adjacent property owners located in the rear of the establishment. (Tr. 5/7/03 at 44.)

9. With respect to rowdiness, Investigator Tengen did not observe any activity that could be characterized as rowdy. (Tr. 5/7/03 at 12.)

10. With regard to loitering, Investigator Tengen did not witness any loitering by patrons of the establishment. (Tr. 5/7/03 at 12.)

11. With regard to littering, on February 14, 2003 Investigator Tengen observed: 1) patrons exiting the establishment with bottles and cups; 2) a patron break a bottle in front of the establishment as they got into a cab; and, 3) a patron leave a plastic cup in a flower bed, by a wall on Wisconsin Avenue, N.W. (Tr. 5/7/03 at 12-13, 30, 32.) Investigator Tengen could not determine whether the littered bottles or cups contained alcoholic beverages, or what contents, if any, were inside the bottles and cups. (Tr. 5/7/03 at 13, 32.) Investigator Tengen was informed by Mr. Blair that patrons are allowed to take bottles and cups of water with them as they leave the establishment. (Tr. 5/7/03 at 32.)

12. With regard to the maximum capacity issue, Investigator Tengen verified that the Applicant's March 7, 2000 voluntary agreement with ANC 2E, indicates that the establishment's maximum capacity, as authorized by its COO, is for eighty-five (85) persons, including standing room for eleven (11) persons. (Tr. 5/7/03 at 15-16, 19; ABRA Application File No. 011297.) Investigator Tengen confirmed that the establishment's COO is for eighty-five (85) persons. (Tr. 5/7/03 at 25.) Investigator Tengen also observed a capacity placard at the establishment for two-hundred and twenty (220) persons, which Mr. Blair informed Investigator Tengen was for standing capacity and was obtained from the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"). (Tr. 5/7/03 at 25, 31.) Investigator Tengen stated that Mr. Blair obtained the standing capacity placard by using a different drawing -- which included a patio diagram to enlarge the space -- from the drawing in the Applicant's ABRA Application File. (Tr. 5/7/03 at 26.) Investigator Tengen found that the establishment was always overcrowded, to the point where she would bump into patrons walking

through the establishment. (Tr. 5/7/03 at 28.) Mr. Blair informed Investigator Tengen that the capacity for the establishment was reflected in the standing capacity placard mounted on the wall. (Tr. 5/7/03 at 28-29.) Investigator Tengen explained to Mr. Blair that neither the capacity listed on the establishment's COO nor the capacity reflected in the establishment's voluntary agreement were the same as the standing capacity placard mounted on the wall of the establishment. (Tr. 5/7/03 at 29.)

13. Investigator Tengen found that the establishment was crowded almost every night she visited the establishment, with at least one hundred (100) people inside of the establishment each time she visited, excluding her first visit to the establishment. (Tr. 5/7/03 at 15.) Specifically, on January 3, 2003, Investigator Tengen observed over one hundred (100) patrons standing inside of the establishment. (Tr. 5/7/03 at 45; ABRA Exhibit No. 1 at 3.) Investigator Tengen noted that on January 3, 2003, she spoke with an employee of the establishment who indicated that the counting device -- known as a "clicker" -- used by the establishment to count the number of patrons inside of the establishment showed that one hundred and seventy (170) patrons were inside of the establishment. (Tr. 5/7/03 at 13-14, 32-34; ABRA Exhibit No. 1 at 3.) Investigator Tengen observed that on January 3, 2003, there was an employee counting individuals as they entered the establishment; however, there was no employee counting individuals as they exited the establishment. (Tr. 5/7/03 at 33-35.) On January 31, 2003, Investigator Tengen also observed over one hundred (100) individuals inside of the establishment. (Tr. 5/7/03 at 14.) Investigator Tengen did not observe the establishment charging patrons for admission. (Tr. 5/7/03 at 26.)

14. On February 14, 2003, Investigator Tengen observed the establishment exceed its maximum capacity. (Tr. 5/7/03 at 48.) Specifically, on February 14, 2003, Investigator Tengen spoke with an employee of the establishment who indicated that there were one hundred and seventy-seven (177) patrons inside of the establishment. (Tr. 5/7/03 at 14-15, 32.) On February 14, 2003, Investigator Tengen observed a crowd of about thirty-five (35) individuals outside of the establishment waiting to enter the establishment. (Tr. 5/7/03 at 27-28.)

15. Investigator Tengen spoke with Mr. Blair on several occasions in reference to the protest issues. (Tr. 5/7/03 at 16; ABRA Application File No. 011297.) Investigator Tengen also spoke with the Protestants who informed her that the establishment was using an outdoor patio, which has an awning that was erected without a permit. (Tr. 5/7/03 at 16-17.) Investigator Tengen described the patio as a small area with stairs going up to O Street, N.W., and a door connecting the patio to the kitchen. (Tr. 5/7/03 at 18.) Investigator Tengen saw trash in the patio area, including empty cases of beer; however, she never observed patrons on the patio. (Tr. 5/7/03 at 18-19, 51.) Investigator Tengen found that DCRA never issued a permit to the Applicant to erect the awning. (Tr. 5/7/03 at 16-17.) Investigator Tengen stated that when she spoke with Mr. Blair, he indicated that the awning was already there when he took over the business. (Tr. 5/7/03 at 17.) Investigator Tengen explained to Mr. Blair that the voluntary agreement states that an awning could not be erected without authorization from the Old Georgetown

Board, the U.S. Commission of Fine Arts, the Historic Preservation Review Board, and DCRA. (Tr. 5/7/03 at 17; ABRA Application File No. 011297.)

16. Investigator Tengen observed the front door of the establishment on Wisconsin Avenue, N.W., being opened for patrons by an employee checking IDs. (Tr. 5/7/03 at 22-23.) Investigator Tengen noticed that there was always a person checking IDs at the front door of the establishment on Wisconsin Avenue, N.W., and that the men with clickers by the entrance on O Street, N.W., occasionally checked IDs when patrons entered the establishment through that entrance. (Tr. 5/7/03 at 22-23.) Investigator Tengen indicated that the establishment manually checks IDs. (Tr. 5/7/03 at 25.) Investigator Tengen never witnessed any uniformed security personnel working at the establishment. (Tr. 5/7/03 at 25.) Investigator Tengen never observed any fighting or scuffling at the establishment. (Tr. 5/7/03 at 37.)

17. Daniel H. Godin is a Patrol Officer with the Metropolitan Police Department ("MPD") and is assigned to the Second District, Patrol Service Area ("PSA") 206. (Tr. 5/7/03 at 55.) Officer Godin has been assigned to PSA 206 for approximately four (4) years. (Tr. 5/7/03 at 76.) Officer Godin indicated that the geographic boundaries of PSA 206, are east to west from 28th Street, N.W., and M Street, N.W., to the Exxon gas station at 3607 M Street, N.W.; and the northern and southern boundaries are from the K Street, N.W., to the south side of P Street, N.W. (Tr. 5/7/03 at 78.) Officer Godin's tour of duty is from 10:30 p.m. to 7:00 a.m. (Tr. 5/7/03 at 55.)

18. Officer Godin noted that there are approximately thirty (30) ABC establishments located in PSA 206. (Tr. 5/7/03 at 78.) Officer Godin goes into ABC establishments that have had problems in the past and less frequently visits responsible ABC establishments who have not had problems with underage drinking. (Tr. 5/7/03 at 79.) Officer Godin has attended one PSA meeting. (Tr. 5/7/03 at 76-77.) Officer Godin stated that his PSA lieutenant, Lieutenant Carter, has discussed the establishment with him. (Tr. 5/7/03 at 77.)

19. Officer Godin noted that the establishment is located at the intersection of Wisconsin Avenue, N.W., and Dumbarton Street, N.W., on the west side of the street. (Tr. 5/7/03 at 56.) Officer Godin stated that Dumbarton Street, N.W., does not cross both sides of Wisconsin Avenue, N.W., and that if a patron exits the establishment they would need to cross Wisconsin Avenue, N.W., to get to Dumbarton Street, N.W. (Tr. 5/7/03 at 56-57.) Officer Godin testified that upon exiting the establishment and making a left, the closest street on the west side of Wisconsin Avenue, N.W., is O Street, N.W. (Tr. 5/7/03 at 57.) Officer Godin indicated that he is always on patrol in the area surrounding the establishment. (Tr. 5/7/03 at 66.)

20. Officer Godin visited the establishment between forty (40) and fifty (50) times over a three (3) year period. (Tr. 5/7/03 at 57, 80.) Officer Godin has spoken to Mr. Blair on several occasions during visits to the establishment due to complaints. (Tr. 5/7/03 at 81-82.) Officer Godin has never made any arrests or issued any citations for underage drinking at the Applicant's establishment and has never had to respond to the

establishment because of fighting or unruly behavior inside of the establishment. (Tr. 5/7/03 at 58, 61.) Officer Godin did not recall ever witnessing unruliness inside of the establishment. (Tr. 5/7/03 at 58.) Officer Godin stated that patrons of the establishment dress neatly and range from mid-twenties (20s) to early thirties (30s). (Tr. 5/7/03 at 58.) Officer Godin did not consider the establishment or its patrons to be a source of disruption in the surrounding neighborhood. (Tr. 5/7/03 at 59.)

21. Officer Godin explained that each time a complaint is called into MPD usually two (2) officers are dispatched to respond to the complaint. (Tr. 5/7/03 at 61.) Officer Godin has responded between thirty (30) and forty (40) times to complaints called into MPD by Christian Mulder. (Tr. 5/7/03 at 60, 64.) On one particular occasion, in response to a complaint made by Mr. Mulder, he and Officer Fetting responded to the establishment and encountered Mr. Mulder blocking the O Street, N.W., entrance to the establishment. (Tr. 5/7/03 at 61-63, 68-69.) Officer Godin recalled that there were approximately ten (10) people waiting outside of the establishment. (Tr. 5/7/03 at 62.) Officer Godin indicated that Mr. Mulder was wearing a red or pink lei and was accompanied by his wife, Esther Dijkstra. (Tr. 5/7/03 at 68, 73.) Officer Godin observed Mr. Mulder standing in the doorway of the establishment saying, "Please come in. It's free tonight. You don't have to pay your \$5 door fee. Please come in." (Tr. 5/7/03 at 69-70.) Officer Godin stated that Mr. Mulder was causing a disruption and was asked to move by both he and Officer Fetting. (Tr. 5/7/03 at 62.) Officer Fetting threatened to arrest Mr. Mulder if he did not move out of the doorway. (Tr. 5/7/03 at 73.) Officer Godin and Officer Fetting spoke with Mr. Mulder at the corner of Wisconsin Avenue, N.W., and O Street, N.W., after they got him to move away from the entrance. (Tr. 5/7/03 at 62.) Officer Godin and Officer Fetting both believed Mr. Mulder was under the influence of alcohol at the time of the incident. (Tr. 5/7/03 at 63.)

22. With regard to the maximum capacity issue, Officer Godin did not know the maximum capacity of the Applicant's establishment. (Tr. 5/7/03 at 71.) Officer Godin did not look at the Applicant's voluntary agreement. (Tr. 5/7/03 at 72.) Officer Godin recalled seeing over one hundred (100) people inside of the premises during his visits to the establishment. (Tr. 5/7/03 at 84-85.) Officer Godin stated that he was never concerned about overcrowding inside of the establishment and that the establishment would be crowded on weekends, but not to the point where it was excessive or dangerous. (Tr. 5/7/03 at 84.) Officer Godin never observed the patio of the establishment being used. (Tr. 5/7/03 at 83.)

23. Boyd Lewis has resided at 3134 Dumbarton Street, N.W., for approximately eleven (11) years. (Tr. 5/7/03 at 88-89.) He is familiar with the establishment because he patronizes the establishment and noted that in recent months he frequented the establishment two (2) to three (3) times per month. (Tr. 5/7/03 at 88-89, 92, 97.) Mr. Lewis eats dinner at the establishment and occasionally stays at the establishment until closing time. (Tr. 5/7/03 at 89, 99, 101.) He usually goes to the establishment on Fridays and occasionally on Thursdays. (Tr. 5/7/03 at 98.)

24. With regard to rowdiness and noise, Mr. Lewis has never witnessed any disruptive behavior inside of the establishment nor has he ever seen an unruly crowd at the establishment. (Tr. 5/7/03 at 89.) He walks home when he leaves the establishment because he lives about one hundred yards (100) away from the establishment. (Tr. 5/7/03 at 88, 90, 98-99.) Mr. Lewis indicated that while walking home from the establishment, he has never heard patrons of the establishment yelling or screaming throughout the neighborhood at closing time. (Tr. 5/7/03 at 90.) He has never seen patrons of the establishment leave the establishment and get into cars parked on his block. (Tr. 5/7/03 at 100.) Since the establishment's opening, he has not noticed an increase in the level of noise or late night disruption. (Tr. 5/7/03 at 91.) Mr. Lewis does not hear noise on Dumbarton Street, N.W., emanating from the establishment. (Tr. 5/7/03 at 103.)

25. Mr. Lewis has never paid a door fee to enter the establishment and has never observed other patrons paying door fees. (Tr. 5/7/03 at 92-93.) He usually arrives at the establishment around midnight and enters the establishment through the entrance on O Street, N.W., where the patio area is located. (Tr. 5/7/03 at 92, 101.) Mr. Lewis has observed a doorman at the entrance on O Street, N.W. (Tr. 5/7/03 at 101.) He has never used the patio area of the establishment; however, Mr. Lewis has seen other patrons drinking in the patio area. (Tr. 5/7/03 at 94, 102.)

26. Mr. Lewis finds the establishment to be a fun, neighborhood hangout with a young, lively crowd whose ages range from the twenties (20s) to the thirties (30s). (Tr. 5/7/03 at 95-99.) He indicated that the establishment has dancing and a disc jockey playing music. (Tr. 5/7/03 at 96.)

27. James Linen has resided at 3140 Q Street, N.W., for eight (8) years and has lived in Georgetown for seventeen (17) years. (Tr. 5/7/03 at 106.) He served as an ANC Commissioner from 1997 to 1998. (Tr. 5/7/03 at 107.) During his time as an ANC Commissioner, Mr. Linen became familiar with ABC establishments in the Georgetown area. (Tr. 5/7/03 at 108.) He recalled that while serving as ANC Commissioner he dealt a lot with establishments where people were getting shot and stabbed; where fighting occurred; and, where underage drinking was a problem. (Tr. 5/7/03 at 111.) Mr. Linen believed that the Applicant's establishment is the embodiment of what the community has been trying to encourage in Georgetown. (Tr. 5/7/03 at 111.) He described the establishment's crowd as being in their twenties (20s), thirties (30s), and forties (40s), as well as being upscale and well dressed. (Tr. 5/7/03 at 112.) Mr. Linen found that the establishment's patrons tend to be residents of Georgetown as well as Glover Park. (Tr. 5/7/03 at 111.)

28. Mr. Linen has patronized the Applicant's establishment since its opening. (Tr. 5/7/03 at 108.) He frequents the establishment seven (7) or eight (8) times per month, on Thursdays, Fridays, and Saturdays. (Tr. 5/7/03 at 108, 122, 128-129.) Mr. Linen patronizes the establishment for the food and the company and often stays until closing time. (Tr. 5/7/03 at 108-109, 125.) Mr. Linen stated that the majority of patrons leave the establishment around closing time and that he walks home when he leaves the establishment at closing time. (Tr. 5/7/03 at 110.)

29. Mr. Linen recalled that for the first few months after the establishment opened, there would be between five (5) and twenty (20) patrons having dinner; however, now the establishment appears to be quite popular. (Tr. 5/7/03 at 112-113, 129.) He noted that the establishment's kitchen was not always functioning and that it took a little while for the establishment to pull everything together. (Tr. 5/7/03 at 116.) Mr. Linen stated that on Thursdays the establishment tends to stop serving dinner around 11:00 p.m. (Tr. 5/7/03 at 114.) He stated that on Fridays, after the establishment stops serving dinner, some of the tables get moved as more patrons come later to have drinks, but the tablecloths remain on the tables. (Tr. 5/7/03 at 114-115.) Mr. Linen stated that tables remain in the middle of the back room and that there are tables along the walls and that patrons sit at the tables and have drinks. (Tr. 5/7/03 at 114-115.) He noted that the establishment transitions from a dinner crowd to a bar crowd between 11:30 p.m. and 1:00 a.m. (Tr. 5/7/03 at 130-131.) Mr. Linen indicated that the establishment does not have a dance floor, but that patrons do dance to recorded music. (Tr. 5/7/03 at 124.)

30. Mr. Linen indicated that he does not pay a door fee when he comes to the establishment late in the evening. (Tr. 5/7/03 at 115.) He noted that occasionally there are patrons that hang out on the establishment's patio, talking and having a drink; however, he stated that the patio is rarely a place where patrons congregate and he has rarely noticed noise emanating from the patio area. (Tr. 5/7/03 at 115-116.) Mr. Linen has never observed the establishment offer any alcoholic beverage promotions. (Tr. 5/7/03 at 131.)

31. With regard to rowdiness, Mr. Linen indicated that when the establishment first opened he noticed a few skirmishes occur, but nothing egregious or violent. (Tr. 5/7/03 at 109.) He recalled that on those occasions the establishment's management acted quickly and efficiently. (Tr. 5/7/03 at 109.) Mr. Linen has not observed any similar conduct by patrons inside the establishment recently. (Tr. 5/7/03 at 109.) He stated that the patrons he observes while walking home from the establishment do not act in a manner that is disruptive to the peace and quiet of the neighborhood and that their behavior is exemplary. (Tr. 5/7/03 at 110, 125.)

32. With regard to the maximum capacity issue, Mr. Linen noted that on a typical Friday there are over one hundred (100) patrons inside of the establishment. (Tr. 5/7/03 at 115.)

33. Mr. Linen remembered meeting and having a conversation with Mr. Mulder. (Tr. 5/7/03 at 117-119.) He recalled that during his conversation with Mr. Mulder, Mr. Mulder complained to members of MPD about Mr. Linen. (Tr. 5/7/03 at 121.) Mr. Linen stated that during that same conversation, MPD told Mr. Linen that Mr. Mulder called MPD frequently and that they never saw any reason why they needed to go to the Applicant's establishment, and that they believed it was a drain on police resources to respond to Mr. Mulder's complaints. (Tr. 5/7/03 at 121.)

34. Robert Vanasse resides at 1529 34th Street, N.W., and has resided in the Georgetown area since 1986. (Tr. 5/7/03 at 135.) He attended the establishment's opening and has been a regular patron of the establishment ever since. (Tr. 5/7/03 at 135-136.) Mr. Vanasse has dinner at the establishment about twice a month and drinks at the establishment about two (2) to four (4) times per month. (Tr. 5/7/03 at 136.) He typically goes for drinks at the establishment on Thursdays through Saturdays, around 10:00 p.m. or 11:00 p.m. (Tr. 5/7/03 at 136.) Mr. Vanasse frequently stays at the establishment until it closes, around 2:30 a.m. or 3:00 a.m. (Tr. 5/7/03 at 137, 142.) When he stays until closing, Mr. Vanasse leaves with a lot of other patrons and he walks home. (Tr. 5/7/03 at 137-138.)

35. Mr. Vanasse noted that when the Applicant's establishment first opened it was more of a bar business, but within a year the establishment developed a reputation for quality food. (Tr. 5/7/03 at 151.) He has been very impressed with the Applicant's food and the chef's ability to bring in high quality food at reasonable prices. (Tr. 5/7/03 at 146-147.)

36. With regard to noise and rowdiness, Mr. Vanasse stated that when he leaves the establishment at closing time Wisconsin Avenue, N.W., is crowded with people leaving different neighboring establishments such as the Daily Grill, Apollo's, and Au Pied De Cochon; and, therefore it is hard to determine where the noise is coming from. (Tr. 5/7/03 at 138, 143.) Mr. Vanasse finds the patrons of the establishment to be upscale and educated and that the most noise he has observed being made by the establishment's patrons can be attributed to those hailing cabs. (Tr. 5/7/03 at 138-139.)

37. Mr. Vanasse testified that the establishment's Wisconsin Avenue, N.W., entrance is used primarily during dinner hours and in the winter, and that the side exit, at O Street, N.W., is used after dinner hours and in the summer to keep the crowds away from Wisconsin Avenue, N.W. (Tr. 5/7/03 at 137, 140.) Mr. Vanasse usually leaves from the O Street, N.W., exit during the summer. (Tr. 5/7/03 at 137.) Mr. Vanasse has seen crowds outside of the establishment's Wisconsin Avenue, N.W., entrance and has observed people waiting to have their IDs checked. (Tr. 5/7/03 at 140.) Mr. Vanasse believes the Applicant moved the ID checking side over to the O Street, N.W., entrance so as not to inconvenience people walking up and down Wisconsin Avenue, N.W. (Tr. 5/7/03 at 140.)

38. Franklin Lindsay Stroud has resided at 1213 35th Street, N.W., for two (2) years and was born and raised in the Georgetown area. (Tr. 5/7/03 at 153.) He first visited the establishment around the time it opened and patronizes the establishment about twice a month. (Tr. 5/7/03 at 154.) Mr. Stroud has dined at the establishment approximately ten (10) times. (Tr. 5/7/03 at 158.)

39. Mr. Stroud walks home along O Street, N.W., when he stays at the establishment until closing. (Tr. 5/7/03 at 155.) He stated that when he leaves the establishment around last call, there are generally between twenty-five (25) to thirty (30) people exiting the establishment over a twenty (20) minute period. (Tr. 5/7/03 at 155-156.) When he walks

home from the establishment late at night, Mr. Stroud usually sees his neighbors who are also patrons of the establishment. (Tr. 5/7/03 at 156.)

40. With regard to rowdiness, Mr. Stroud stated that while walking home he has never observed patrons of the establishment causing a disruption in the neighborhood. (Tr. 5/7/03 at 157.) While walking home from the Applicant's establishment late at night on a Friday or Saturday, Mr. Stroud sees numerous patrons leaving different neighboring establishments. (Tr. 5/7/03 at 156.)

41. With regard to the maximum capacity issue, Mr. Stroud stated that late at night he has observed around one hundred and twenty (120) to one hundred and thirty (130) patrons inside of the establishment. (Tr. 5/7/03 at 157-158.)

42. Bill Starrels is the Commissioner for ANC 2E-05 and Chair of the ABC Committee for ANC 2E. (Tr. 5/7/03 at 160-61; See Protest File No. 11297-02/072P.) He has served on ANC 2E for three (3) years. (Tr. 5/7/03 at 160.) Commissioner Starrels' duties as ABC Committee Chair involve keeping up with Georgetown's restaurant and bar scene by reviewing ABC licenses, working on voluntary agreements, and visiting the establishments. (Tr. 5/7/03 at 161.)

43. Commissioner Starrels has been inside of the Applicant's establishment many times. (Tr. 5/7/03 at 161.) He believes that the establishment currently sells more beer than food and that the history of the establishment's operation has not been that of a restaurant. (Tr. 5/7/03 at 180.) Commissioner Starrels has occasionally observed the establishment charging a cover fee and at times he has observed the establishment using a guest list. (Tr. 5/7/03 at 162, 191-193.) He has used the establishment's Wisconsin Avenue, N.W., entrance; however, he has also observed the establishment use the O Street, N.W., entrance late at night. (Tr. 5/7/03 at 162-163.) Commissioner Starrels noted that the sidewalk on O Street, N.W., is wider than the sidewalk on Wisconsin Avenue, N.W. (Tr. 5/7/03 at 182.) He stated that if you leave the establishment from the O Street, N.W., exit and go west on O Street, N.W., you encounter a boutique pet store, then a Chinese carryout, then a driveway, then single family houses, then a church, and then a residential area. (Tr. 5/7/03 at 182.)

44. With regard to the maximum capacity issue, Commissioner Starrels noted that his last visit to the Applicant's establishment was approximately six (6) weeks ago, during which he spoke with Mr. Blair and he observed that the establishment was not overly crowded. (Tr. 5/7/03 at 161-164.) He stated that he did not see any evidence of the establishment serving food at around 12:30 a.m. and that he did not observe any tables towards the front of the establishment. (Tr. 5/7/03 at 167-168.) During this same visit to the establishment, Mr. Blair discussed and showed Mr. Starrels two (2) different signs illustrating two (2) different occupancies for the establishment. (Tr. 5/7/03 at 164-165, 205.) Commissioner Starrels noted that the establishment's voluntary agreement provides that the maximum capacity of the establishment is eighty-five (85) persons, including a seating capacity of sixty-four (64) at sixteen (16) tables, a standing capacity of eleven (11), and the bar having ten (10) seats. (Tr. 5/7/03 at 164-165, 167, 179.)

Commissioner Starrels testified that during that same visit he decided not to walk through the Applicant's establishment for personal safety reasons. (Tr. 5/7/03 at 169, 197.) Commissioner Starrels recalled overlooking the establishment from the parking lot of the Georgetown Inn, and observing how long and narrow a portion of the establishment was, and envisioning how difficult it would be for patrons to get out if there was ever a problem. (Tr. 5/7/03 at 197.)

45. With regard to rowdiness, Commissioner Starrels indicated that the patrons of the establishment were loud while going into the establishment and appeared to be intoxicated. (Tr. 5/7/03 at 165-166.)

46. Commissioner Starrels stated that Mr. Blair attended an ANC 2E meeting when the establishment first opened and that Mr. Blair described the establishment as an upscale Nantucket Bay seafood restaurant. (Tr. 5/7/03 at 169-170.) Commissioner Starrels also recalled the issue of parking for the establishment's patrons being discussed at that same ANC meeting. (Tr. 5/7/03 at 170.) At a more recent ANC meeting, Mr. Blair made a presentation to ANC 2E where he indicated that he had never been cited by the Fire Marshal; however, Commissioner Starrels remembered an incident where the establishment was full and the Fire Marshal instructed Mr. Blair to unchain the O Street, N.W., entrance for safety reasons. (Tr. 5/7/03 at 171, 173-174.) Commissioner Starrels stated that at that same meeting, the parties came to an understanding that the establishment would create a panic bar door. (Tr. 5/7/03 at 174.)

47. Commissioner Starrels testified that in March of 2003, the ANC held a meeting in which it took a unanimous vote on a resolution to support the protest of the Applicant's renewal application. (Tr. 5/7/03 at 172, 184.) Commissioner Starrels testified that at that same ANC meeting, approximately eight (8) or ten (10) individuals made presentations and asked for the ANC's support in protesting the Applicant's renewal application. (Tr. 5/7/03 at 184-186, 189, 191.) Commissioner Starrels noted that Mr. Blair attended that same ANC meeting along with about six (6) individual supporters of the establishment. (Tr. 5/7/03 at 186, 188-191.) Commissioner Starrels stated that while none of his constituents have expressed support for the establishment, outside of this meeting, he is aware that a handful of people like the establishment and patronize it. (Tr. 5/7/03 at 191, 213.) Commissioner Starrels testified that the recent tragedies in Chicago and Rhode Island helped to convince the ANC to support protesting the Applicant's renewal application. (Tr. 5/7/03 at 197.) Commissioner Starrels indicated that ANC 2E did not file a protest against the Applicant's renewal application because the ANC gave the Applicant the benefit of the doubt after the Applicant assured the ANC that it would correct its ways by bringing in a chef and creating a nice menu, as well as emphasizing the strength of its voluntary agreement and the establishment's small COO. (Tr. 5/7/03 at 174-175, 195-196.) Commissioner Starrels testified that complaints by four (4) or five (5) individuals about the establishment have remained constant at the ANC meetings. (Tr. 5/7/03 at 195, 213.)

48. Commissioner Starrels recommended that the establishment make use of its chef and operate within the constraints of its COO. (Tr. 5/7/03 at 196.) Commissioner

Starrels testified that ANC 2E's main point of concern regarding the establishment is the issue of overcrowding and the potential safety hazards presented by the establishment's overcrowding given its COO. (Tr. 5/7/03 at 201-203.) Commissioner Starrels stated that the establishment's propensity for overcrowding becomes a peace, order, and quiet issue because these large crowds, who have been drinking and having a good time in a noisy atmosphere, inevitably spill out into the streets of Georgetown during the late hours. (Tr. 5/7/03 at 203.)

49. Christian Mulder has lived in Georgetown for ten (10) years. (Tr. 10/22/03 at 6, 104, 120.) He lives approximately one hundred (100) to one hundred and twenty (120) feet away from the Applicant's establishment. (Tr. 10/22/03 at 40, 64.) Mr. Mulder first visited the Applicant's establishment in the summer of 2001 because he observed his street becoming noisy late at night. (Tr. 10/22/03 at 6-7, 122.) He testified that he visited the establishment twice in August of 2001 and that on both occasions he observed over two hundred (200) patrons inside of the establishment drinking and dancing, as well as patrons drinking on the outside patio area. (Tr. 10/22/03 at 7.) Mr. Mulder also recalled that he had to pay five dollars (\$5.00) to enter the establishment. (Tr. 10/22/03 at 7.) He indicated that he was surprised a nightclub could move into the neighborhood without a protest being filed. (Tr. 10/22/03 at 7-8.) Mr. Mulder decided to protest the renewal of the Applicant's license in the spring of 2002. (Tr. 10/22/03 at 8-9.) He testified that another visit to the establishment on April 20, 2002, confirmed his decision to protest the Applicant's license after he was again made to pay five dollars (\$5.00) to enter the establishment and he again observed patrons drinking on the patio. (Tr. 10/22/03 at 9.)

50. On April 20, 2002, Mr. Mulder and his wife took pictures inside of the establishment. (Tr. 10/22/03 at 9-12, 16-19; Protestants' Exhibit Nos. 1(a)-(c).) He described the first picture as depicting himself at a bar inside of the Applicant's establishment, surrounded by a crowd of about twenty (20) or (30) individuals. (Tr. 10/22/03 at 20; Protestants' Exhibit No. 1(a).) Mr. Mulder described the second picture as depicting his wife inside of the Applicant's establishment, surrounded by patrons and tables with beer bottles. (Tr. 10/22/03 at 20; Protestants' Exhibit No. 1(b).) He described the third picture as depicting himself standing in the establishment's patio area, next to another patron holding a beer in his hand. (Tr. 10/22/03 at 20; Protestants' Exhibit No. 1(c).)

51. With regard to the maximum capacity issue, Mr. Mulder stated that on June 1, 2002, he and his wife videotaped the entrance and exits of the establishment, and observed two-hundred and forty-six (246) individuals exiting the establishment between 2:43 a.m. and 3:10 a.m. (Tr. 10/22/03 at 21.) He visited the establishment on Saturday, June 1, 2002, and was charged a five dollar (\$5.00) entrance fee. (Tr. 10/22/03 at 22-23.) Mr. Mulder testified that on that same evening he counted approximately two hundred and fifty (250) patrons inside of the establishment and approximately seventy (70) patrons in the patio area of the establishment. (Tr. 10/22/03 at 22-23.)

52. Mr. Mulder indicated that on Friday, June 21, 2002, he videotaped the establishment and observed about one hundred and sixty-three (163) people entering the

establishment up until 2:00 a.m., and that he counted two-hundred and twenty-five (225) people exiting the establishment that same night. (Tr. 10/22/03 at 23-24.) He visited the establishment on Saturday, June 22, 2002, after midnight, and counted approximately one hundred and twenty (120) to one hundred and thirty (130) patrons inside of the establishment, including ten (10) people on the patio drinking. (Tr. 10/22/03 at 24.) Mr. Mulder also testified that on that same night he ran into a friend trying to enter the establishment who informed him that the Fire Marshal was inside the establishment and that no more people were being let inside the establishment. (Tr. 10/22/03 at 24, 78.) He stated that on Saturday, August 24, 2002, he videotaped the establishment and observed two hundred and ten (210) people exiting the establishment, and twelve (12) people entering the establishment between 2:30 a.m. and 3:15 a.m. (Tr. 10/22/03 at 24-25.)

53. Mr. Mulder stated that between September 2002 and December 2002 he tried to visit the establishment between four (4) and five (5) times and was never allowed to enter. (Tr. 10/22/03 at 25, 108.) One Saturday morning in October, after being refused admission to the establishment, a doorman working for the establishment informed Mr. Mulder that the establishment normally allows in one hundred and eighty (180) people. (Tr. 10/22/03 at 25.) Mr. Mulder testified that he always observes long lines outside of the establishment. (Tr. 10/22/03 at 30.) He indicated that he has never observed employees of the establishment attempt to disburse the crowds that form as patrons exit the establishment. (Tr. 10/22/03 at 109-110.)

54. With regard to loitering and rowdiness, Mr. Mulder provided to the Board a DVD depicting his filming of the establishment on three (3) separate occasions: Saturday, June 1, 2002, between 2:43 a.m. and 3:15 a.m.; Friday, June 14, 2002, between 2:45 a.m. and 3:10 a.m.; and Saturday, June 22, 2002. (Tr. 10/22/03 at 34-35, 38; Protestants' Exhibit No. 4.) The DVD displayed instances of patrons loitering in front of the establishment; crowds of patrons on the sidewalk of Wisconsin Avenue, N.W., attempting to enter the establishment, forcing pedestrians to walk in the street; patrons waiting in the street for cabs; patrons jay-walking; and, patrons exiting the establishment in a loud, disorderly manner. (Tr. 10/22/03 at 38-51; Protestants' Exhibit No. 4.) Mr. Mulder testified that he has observed patrons of the establishment urinate in the alley across from his house. (Tr. 10/22/03 at 30.)

55. Mr. Mulder stated that he and his wife moved their master bedroom from the front of their house to the back of their house because of the amount of noise made by patrons leaving the establishment on Friday and Saturday nights. (Tr. 10/22/03 at 61-63.) Au Pied de Cochon, an ABC establishment located at the corner of Wisconsin Avenue, N.W., and Dumbarton Street, N.W., is approximately one hundred (100) feet from Mr. Mulder's house. (Tr. 10/22/03 at 86.) Mr. Mulder was often awoken by the car stereos of patrons of Au Pied de Cochon who usually parked in an empty bank parking lot adjacent to his house. (Tr. 10/22/03 at 85-87, 135.) Mr. Mulder wrote an e-mail to ANC 2E, dated April 22, 2002, in which he complained about the "nightly turmoil caused by patrons of Au Pied de Cochon" citing its patrons as being intoxicated, loud, and prone to vandalizing and fighting. (Tr. 10/22/03 at 88-92, 101-102; Applicant's Exhibit No. 7.)

Mr. Mulder testified that he wrote the e-mail prior to videotaping the Applicant's establishment and that before videotaping the Applicant's establishment he could not clearly distinguish where the noise was coming from, so he assumed the noise came from Au Pied de Cochon. (Tr. 10/22/03 at 102-103.) Mr. Mulder testified that when he is awoken by the sounds of rowdy pedestrians, they are more than likely patrons exiting the Applicant's establishment. (Tr. 10/22/03 at 85.)

56. Mr. Mulder testified that he has made about twenty (20) 911 calls to complain about the establishment's noise level and the occupancy of the establishment. (Tr. 10/22/03 at 31.) He stated that in May of 2002 Lieutenant Brian Bray advised him to call MPD regarding the operation of the establishment. (Tr. 10/22/03 at 94-95, 97, 99.)

57. Mr. Mulder wants the establishment to abide by its maximum capacity of eighty-five (85) and wants the establishment to close by 12:30 a.m. (Tr. 10/22/03 at 126-127.) He contended that the patrons of the Applicant's establishment exit the establishment in a loud, inebriated state causing disruption to the neighborhood. (Tr. 10/22/03 at 132-133.) Mr. Mulder stated that on a Friday or Saturday night, it takes patrons about fifteen (15) to twenty (20) minutes to disperse throughout the surrounding streets after exiting the establishment. (Tr. 10/22/03 at 134.) He noted that the establishment responded to the community's complaints about noise levels by moving both the entrance and exit to O Street, N.W. (Tr. 10/22/03 at 136.)

CONCLUSIONS OF LAW

58. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the protest hearings, the Board concludes that the Applicant has demonstrated that the renewal of its Retailer's License Class "CR" -- with the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which the establishment is located.

59. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) 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). In this instance, Tom Birch, ANC 2E Chairperson, on behalf of ANC 2E, filed timely comments in a letter dated February 13, 2003, supporting the efforts of the Protestants in opposing the renewal of the Applicant's Class "CR" Retailer's License. The ANC 2E letter provides that ANC 2E is in support of the protest of the Applicant's liquor license but it does not indicate what protest issues or concerns ANC 2E supports, as required by D.C. Official Code § 1-309.10(d) (2001). The oral testimony provided by ANC 2E Commissioner Bill Starrels revealed that ANC 2E's primary concern regarding the operation of the establishment is the issue of overcrowding due to the establishment not following its eighty-five (85) person COO, as required by its March 7, 2000 voluntary agreement. The Board did not,

however, receive within seven days of Commissioner Starrels' testimony written documentation from ANC 2E approving and supporting the testimony of Commissioner Starrels, which is required for the testimony to be given great weight, by being considered the same as if provided in advance by ANC 2E in writing, pursuant to D.C. Official Code § 1-309.10(d)(4)(2001). Notwithstanding, the Board's finding that ANC 2E's comments do not satisfy the requirements of D.C. Official Code §1-309.10(d) (2001), ANC 2E does have a Board approved voluntary agreement with the Applicant dated March 7, 2000 that the establishment is required to follow, pursuant to D.C. Official Code § 25-315(b)(1) (2001). As discussed below, the Board agreed with the position of ANC 2E Commissioner Starrels that the establishment is in violation of paragraph two (2) of its voluntary agreement, which requires the establishment's capacity to not exceed eighty-five (85) persons, and finds that the establishment's violation of paragraph two (2) has led to some peace, order and quiet issues in the neighborhood, including loitering and overcrowding.

60. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 400.1(a) (2004), the Board must determine whether the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood. With regard to loitering and noise by patrons, the Board finds based upon the testimony and evidence presented by Mr. Mulder, Investigator Tengen, and Mr. Vanesse that some loitering and noise by the Applicant's patrons does occur, primarily at closing, around the outside of the establishment. Specifically, Mr. Mulder provided to the Board a DVD depicting his filming of the establishment around closing time on three (3) separate occasions: Saturday, June 1, 2002, between 2:43 a.m. and 3:15 a.m.; Friday, June 14, 2002, between 2:45 a.m. and 3:10 a.m.; and Saturday, June 22, 2002. The DVD displayed specific instances of patrons of the establishment loitering in front of the establishment and patrons waiting in the street for cabs. Mr. Mulder also observed patrons hanging out and drinking alcoholic beverages on the establishment's outdoor patio area, which has not been approved for alcoholic beverage consumption. Additionally, the testimony of Mr. Vanasse indicated that patrons do make some noise while hailing cabs. The Board finds that limiting the establishment to its Board approved capacity of eighty-five (85) persons, as discussed below, will significantly reduce the number of patrons exiting the establishment at closing time and decrease the amount of loitering and noise that occurs at the entrance(s) and exit(s) of the establishment, including on Wisconsin Avenue, N.W., and O Street, N.W. Additionally, the Board finds that requiring the Applicant to stop selling or serving alcoholic beverages by 1:30 a.m. on weekdays and 2:30 a.m. on weekends will also help to stagger patrons exiting the establishment prior to the establishment's permitted closing time of 2:00 a.m. on weekdays and 3:00 a.m. on weekends. Furthermore, the Board finds that requiring the Applicant to not permit the patio area to be used by patrons other than for ingress and egress into the establishment will help to prevent loitering and noise from occurring by patrons on the patio area. The Board notes it has the authority to place conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

61. With respect to rowdiness, the Board finds based upon the testimony of Officer Godin, Mr. Lewis, Mr. Linen, and Mr. Stroud that the establishment's patrons are

generally not rowdy and that the rowdiness that occurs by some individuals walking through the surrounding streets of the Applicant's establishment -- as mentioned by Mr. Mulder -- cannot be directly attributed to the Applicant's patrons. Specifically, the Board finds convincing the testimony of Officer Godin who has patrolled PSA 206 -- where the Applicant's establishment is located -- for approximately four (4) years. For example, Officer Godin's testimony revealed that he has never considered the Applicant's establishment or its patrons to be a source of disruption in the surrounding neighborhood. Furthermore, the testimony of the Applicant's patrons including Mr. Lewis, Mr. Linen, and Mr. Stroud, all of whom live within walking distance of the establishment and often walk home from the establishment late at night, supported Officer Godin's testimony that the Applicant's patrons do not act in a rowdy manner or disrupt the peace, order, and quiet of the neighborhood. Specifically, Mr. Lewis noted that while walking home from the establishment, he has never heard patrons of the establishment yelling or screaming throughout the neighborhood at closing time. Additionally, Mr. Linen and Mr. Stroud both testified that while walking home neither of them has observed patrons of the establishment causing disturbances in the surrounding neighborhood. The testimony of Investigator Tengen did reveal that on January 18, 2003 the Applicant's patrons were making some noise outside as they exited the establishment; however, Investigator Tengen did not observe any activity associated with the Applicant's patrons that could be characterized as rowdy. Furthermore, the testimony of Mr. Vanasse indicated that when he leaves the Applicant's establishment at closing time, Wisconsin Avenue, N.W., is crowded with people leaving different neighboring ABC establishments such as the Daily Grill, Apollo's, and Au Pied De Cochon; and, therefore it is hard to determine from where the noise is coming.

62. With respect to noise emanating from the establishment, the Board finds based upon the testimony of Investigator Tengen and Mr. Lewis that noise cannot be heard emanating from the Applicant's establishment. Specifically, the testimony of Investigator Tengen revealed that while the recorded music played inside the establishment sounded loud, Investigator Tengen could not hear musical noise outside of the establishment. Furthermore, the testimony of Mr. Lewis revealed that noise from the Applicant's establishment cannot be heard on Dumbarton Street, N.W.

63. With regard to litter, the testimony of Investigator Tengen revealed that there are some problems with litter in the immediate vicinity of the Applicant's establishment. Specifically, the testimony of Investigator Tengen indicated that the Applicant's patrons are allowed to exit the establishment with bottles and cups containing water, and that litter, in the form of cups and bottles, is left by patrons of the establishment on Wisconsin Avenue, N.W. The testimony of Investigator Tengen also revealed that on one occasion a patron exited the Applicant's establishment in possession of a glass bottle, which the patron then broke in front of the establishment while getting into a cab. The Board finds that requiring the Applicant to not permit patrons to exit with glass bottles provided by the establishment as well as requiring the Applicant after closing, or more frequently if necessary, to pick-up trash, including discarded cups and bottles, in the immediate vicinity of the establishment, pursuant to D.C. Official Code § 25-726 (2001), will help curtail the amount of litter found outside of the Applicant's establishment. The Board

notes that it has authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

64. The Board finds that with the conditions listed above, the establishment will not have an adverse effect on peace, order, and quiet in the neighborhood pursuant to D.C. Official Code § 25-313(b)(2) (2001).

65. Pursuant to D.C. Official Code § 25-313(b)(1) (2001), the Board finds no evidence from the record as a whole that the establishment will have an adverse effect on real property values. The Board notes that the Protestants did not raise this as a protest issue.

66. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds no evidence from the record as a whole that the establishment will have an adverse effect on the parking needs of vehicular and pedestrian safety. The Board notes that the Protestants did not raise this as a protest issue.

67. Additionally, pursuant to D.C. Official Code § 25-315(b)(1) (2001), the Board must determine whether the Applicant is in compliance with existing ABC laws and regulations, including the terms of its voluntary agreement. Specifically, the Board must determine whether the Applicant violated paragraph two (2) of its March 17, 2000 voluntary agreement with ANC 2E, which states in relevant part that the restaurant will have a maximum capacity, as established by its COO, of eighty-five (85) persons, including standing room for not more than eleven (11) persons. In this case, the testimony of Investigator Tengen, Mr. Linen, Mr. Stroud, Commissioner Starrels, and Mr. Mulder revealed that the Applicant was in violation of paragraph two (2) of its voluntary agreement on a number of occasions. Specifically, Investigator Tengen observed the establishment to be crowded with at least one hundred (100) people inside of the establishment on almost each visit to the establishment. For example, Investigator Tengen's testimony revealed that on one of her visits the establishment's doorman showed Investigator Tengen the "clicker" being used to count the number of patrons entering the establishment and the "clicker" indicated that one hundred and seventy (170) patrons were inside of the establishment that evening. Additionally, the testimony of both Mr. Linen and Mr. Stroud confirmed that on a typical late evening there are more than one hundred (100) patrons inside of the Applicant's establishment. Furthermore, the testimony of Mr. Mulder revealed that a doorman working for the Applicant admitted to Mr. Mulder that the establishment normally allows up to one hundred and eighty (180) people inside the premises. The testimony of Mr. Mulder also revealed that the Applicant on at least two (2) occasions allowed over two hundred (200) patrons inside of the establishment.

68. The Board is requiring the Applicant to operate with a maximum capacity of eighty-five (85) as established by the Applicant's COO and as required by the Applicant's March 17, 2000 voluntary agreement. The Board is also requesting that the Applicant use a clicker or a similar device to count the number of patrons entering and exiting the establishment after 11 p.m. Additionally, in response to potential safety hazards raised by ANC 2E Commissioner Starrels, the Board is requiring the Applicant to keep both the

Wisconsin Avenue, N.W., entrance and the O Street, N.W., entrance open at all times during which the establishment is operating at maximum capacity as provided by the Applicant's COO. This condition is being placed on the Applicant by the Board due to Board concerns regarding potential safety problems at the establishment in light of the narrowness and configuration of the establishment. The Board notes that it has authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

69. It is worth noting that the testimony of Investigator Tengen revealed that the establishment obtained a standing capacity placard from DCRA for two hundred and twenty (220) persons, which was mounted on the wall of the establishment, and that the owner of the establishment was using this capacity placard as its standing capacity. However, D.C. Official Code § 25-762(1) (2001) is clear that licensees are required to obtain approval from the Board prior to increasing the occupancy of their licensed establishment. In this case, the license was initially issued to the Applicant based upon a certificate of occupancy for eighty-five (85) persons. A request to increase the establishment's occupancy, pursuant to D.C. Official Code § 25-762(1) (2001) has never been received by the Board. It is also worth mentioning that the licensee holds a CR01 retailer's license, which is for a restaurant with a capacity of 99 or fewer persons. Furthermore, the Board notes that the Applicant's decision to obtain a standing placard from DCRA for 220 persons does not relieve the Applicant of its legal requirement to follow the terms of its voluntary agreement, pursuant to D.C. Official Code § 25-315(b)(1) (2001). Finally, the testimony of Mr. Mulder revealed that on several occasions patrons were drinking alcoholic beverages on the establishment's outdoor patio area, an area that is not approved for alcoholic beverage consumption on the Applicant's license. The Applicant's non-compliance with paragraph two (2) of its voluntary agreement as well as the Applicant's permitting alcoholic beverages to be consumed on the outdoor patio area were factors the Board considered in deciding whether or not to renew the Applicant's license.

70. The testimony of Investigator Tengen and ANC 2E Commissioner Starrels also raised concerns for the Board regarding the establishment not keeping its kitchen open until at least two hours prior to closing, as required by D.C. Official Code § 25-101(43) and paragraph 1 of the establishment's voluntary agreement. Specifically, the testimony of Investigator Tengen indicated that the establishment served food during her weekend visits until 12:30 a.m. However, the establishment's permitted closing time on Friday and Saturday nights is 3:00 a.m., which requires the establishment's kitchen to stay open and be able to serve food until 1:00 a.m. This was a factor the Board considered in deciding whether or not to renew the Applicant's license.

ORDER

Therefore, it is hereby **ORDERED** on this 9th day of February, 2005, that the renewal application for a Retailer's Class "CR" License filed by Restaurant Enterprises, Inc., t/a Smith Point, 1338 Wisconsin Avenue, N.W., be and the same is hereby, **GRANTED**.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become a term of the license:

1. The Applicant shall operate with a maximum capacity of eighty-five (85) persons as established by the Applicant's COO and as required by the Applicant's March 17, 2000 voluntary agreement;
2. The Applicant shall use a clicker or a similar device to count the number of patrons entering and exiting the establishment after 11 p.m.;
3. The Applicant shall stop selling or serving alcoholic beverages at 1:30 a.m. Monday through Friday, and at 2:30 a.m., on Saturday and Sunday;
4. The Applicant shall not permit the patio area to be used by patrons other than for ingress and egress into the establishment;
5. The Applicant shall not permit patrons to exit with glass bottles provided by the establishment;
6. The Applicant shall after closing, or more frequently if necessary, pick-up trash, including discarded cups and bottles, in the immediate vicinity of the establishment, pursuant to D.C. Official Code § 25-726 (2001);
7. The Applicant shall keep both the Wisconsin Avenue, N.W., entrance and the O Street, N.W., entrance open at all times during which the establishment is operating at maximum capacity as provided by the Applicant's COO; and
8. The Applicant's kitchen must stay open and be able to serve food until at least two (2) hours prior to closing.

Restaurant Enterprises, Inc.
t/a Smith Point
February 9, 2005

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger
Charles A. Burger, Chairperson

Vera M. Abbott
Vera M. Abbott, Member

Audrey E. Thompson
Audrey E. Thompson, Member

Judy A. Moy
Judy A. Moy, Member

Not Voting
Peter B. Feather, Member

Not Voting
Albert G. Lauber, Member

Not voting
Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002. Also, pursuant to section 11 of this decision within ten (10) days 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 (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).

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

In the Matter of :)

Restaurant Enterprises, Inc.)
t/a Divers Down)

Application for a Retailer's Class)
CR License – new)

Application No. 11297 - 00030P

1338 Wisconsin Avenue, N.W.)
Washington, D.C.)
_____)

**Art Schultz, Chair of the ABC Committee, Advisory Neighborhood Commission 2E,
Protestant**

Michael Fonseca, Esquire, on behalf of Applicant

**BEFORE: Roderic L. Woodson, Esquire, Chair
Vera Abbott, Member
Ellen Opper-Weiner, Esquire, Member
Audrey E. Thompson, Member**

**ORDER ON WITHDRAWN PROTEST
AND VOLUNTARY AGREEMENT**

The matter, having been protested, came before the Board for public hearing on March 8, 2000, in accordance with D.C. Code Section 25-115(c)(5)(1999 Supp.), providing for the protestants to be heard. Art Schultz, Chair of the ABC Committee for the Advisory Neighborhood Commission 2E, filed a protest letter dated February 22, 2000.

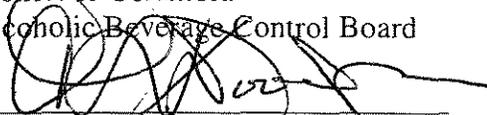
The official records of the Board reflect that the parties have now reached an agreement that has been reduced to writing, and has been properly executed and filed with the Board. Pursuant to the agreement dated March 7, 2000, the protestant has agreed to withdraw the opposition, provided however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the Agreement.

**Restaurant Enterprises, Inc.
t/a Divers Down
Page two**

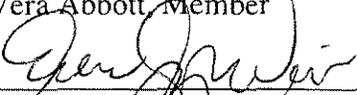
Accordingly, it is this 28th day of JUNE 2000, **ORDERED** that:

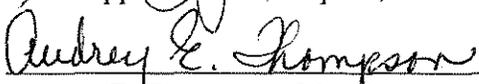
1. The opposition of Art Schultz, Chair of the ABC Committee for the Advisory Neighborhood Commission 2E, be, and the same hereby, is **WITHDRAWN**;
2. The application of Restaurant Enterprises, Inc. t/a Divers Down for a retailer's class CR license (renewal), located at 1338 Wisconsin Avenue, N.W., Washington, D.C., be, and the same hereby, is **GRANTED**;
3. The above-referenced agreement between the parties, be, and the same hereby, is **INCORPORATED** as part of this **ORDER**; and,
4. Copies of this Order shall be sent to the Protestant and the Applicant.

District of Columbia
Alcoholic Beverage Control Board


Roderic L. Woodson, Esquire, Chair


Vera Abbott, Member


Ellen Opper-Weiner, Esquire, Member


Audrey E. Thompson, Member

AGREEMENT

#11297

BRA/ABC 38
2001 MAR -8 AM 9:57

Made this 7th day of March, 2000, between Restaurant Enterprises, Incorporated, t/a

Divers Down ("the Applicant") and Advisory Neighborhood Commission 2E ("the ANC").

WITNESSETH

Whereas, before the District of Columbia Alcoholic Beverage Control (ABC) Board is the Applicant's application for a Class "CR" license for the premises at 1338 Wisconsin Avenue, NW, ABC Application #11297; and,

Whereas, such premises are within the jurisdictional boundaries of the ANC; and,

Whereas, the parties desire to enter into an agreement commemorating certain understandings regarding the Applicant's operating plans;

Now, therefore, in consideration of the premises above recited, and the covenants and promises set forth below, the parties agree as follows:

1. The Applicant shall operate a bona fide restaurant on its premises, and consistent therewith shall keep its kitchen open until two (2) hours before closing as provided at 23 DCMR § 200.7(a).
2. The restaurant will have a maximum capacity, as established by its Certificate of Occupancy, of 85 persons, including standing room for not more than 11 persons. It shall have seating for 64 persons at 16 tables.
3. The bar will have a maximum of 10 seats.
4. The hours of operation will be until 2:00 a.m. Sunday through Thursday, and until 3:00 a.m. Friday and Saturday.
5. The Applicant shall provide two-hour validated patron parking at the nearest available commercial lot.
6. The Applicant shall present no form of entertainment other than recorded contemporary music.
7. The Applicant will not install a dance floor.

8. The Applicant will erect no exterior signs or awnings, or interior signs, including neon, visible from the exterior, without prior Old Georgetown Board, U.S. Commission of Fine Arts, Historic Preservation Review Board, and D.C. Department of Consumer Regulatory Affairs approval.
 - A. The Applicant agrees to keep from the windows of the premises all promotional signs, banners, inflatable devices, and other such items, other than those specifically tied to a seasonal sale or celebration; these seasonal items shall be on display for no more than 30 days.
 - B. The Applicant agrees that external seasonal decorations (such as holiday lights in the Christmas/Kwanza/Hanukkah tradition) shall be utilized for no more than eight weeks.
9. A professional, licensed management team conversant with all aspects of this Agreement, and applicable ABC regulations, will be on the premises during all hours of operation.
10. Any and all contemplated changes to Applicant's operation, as set forth herein, will be brought to the attention of the ANC prior to implementation and will be implemented only after ABC Board approval, if such approval may be required.
11. The Applicant agrees that, out or regard for the health of employees, patrons, and the citizens of the community, all applicable regulations regarding waste, sanitation, litter, and vector control shall specifically be in compliance.
12. The Applicant agrees that no use of public space shall be initiated without specific application to the ANC and approval by the Public Space Committee of the Department of Public Works; any subsequent use of public space shall be strictly in conformity with DPW standards.
13. In consideration of, and in reliance upon, the commitments reflected in paragraphs 1 through 12 above, the ANC will communicate to the ABC Board its support to the Applicant's pending license application.
14. The parties further agree that any failure of Applicant to adhere to the foregoing commitments will constitute grounds for the ANC to petition the ABC Board for issuance of an order to show cause pursuant to 23 DCMR §1513.5.

In witness whereof, the parties have affixed hereunto their hands and seals on the year and day first above written.

RESTAURANT ENTERPRISES INCORPORATED

By: Robert K. Blair
Robert K. Blair
President

ADVISORY NEIGHBORHOOD COMMISSION 2E

By: Felix E. Pulido
Chairman

With a quorum present at a duly noticed public meeting, this Agreement was adopted by ANC 2E on February 29, 2000.

Barbara J. Teague
Secretary