

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

In the Matter of:)	
)	
3313 11th Hospitality, LLC)	Case Number: 10-PRO-00139
t/a To Be Determined)	License Number: 85471
)	Order Number: 2011-170
Application for a new)	
Retailer's Class CR License)	
)	
at premises)	
3313 11th Street, N.W.)	
Washington, D.C. 20010)	

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

ALSO PRESENT: 3313 11th Hospitality, LLC, t/a To Be Determined, Applicant

Andrew Kline, Non-Lawyer Representative, on behalf of the Applicant

Sally Tyler, on behalf of A Group of Five or More Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

3313 11th Hospitality, LLC, t/a To Be Determined (Applicant), filed an Application for a new Retailer's Class CR License (Application) at premises 3313 11th Street, N.W., Washington, D.C. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 8, 2010, and a Status Hearing on December 8, 2010. The Protest Hearing occurred on January 5, 2011.

A protest against the Application was filed by A Group of Five or More Individuals (Protestants) on October 25, 2010. *See Alcoholic Beverage Regulation Administration (ABRA) Protest File No. 10-PRO-00139.* Sally Tyler is the Protestants' designated representative. No Advisory Neighborhood Commission (ANC) submitted a resolution or recommendation regarding the Application to the Board in accordance with D.C. Code § 25-609 (2001).

The Applicant and the Protestants were unsuccessful in negotiating a Voluntary Agreement before the Protest Hearing.

Pursuant to D.C. Official Code § 25-602(a) (2001), the protest issues are whether the Application adversely impacts the neighborhood's peace, order, quiet, real property values, residential parking needs, and vehicular and pedestrian safety.

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 requests that the Board issue it a new Retailer's Class CR License for premises 3313 11th Street, N.W.
2. The Applicant's establishment is located at 3313 11th Street, N.W. *ABRA Protest File No. 10-PRO-00139, Protest Report, 2.* The establishment is located in a C-2-A zone. *ABRA Protest File No. 10-PRO-00139, Protest Report, 4.* The Applicant is not located within 400 feet of any schools, recreation centers, public libraries, or day care centers. *ABRA Protest File No. 10-PRO-00139, Protest Report, 6.* The interior of the establishment is estimated to hold 47 patrons and the establishment's sidewalk café is estimated to hold 16 patrons. *ABRA Protest File No. 10-PRO-00139, Protest Report, 7.* There are 13 ABC-licensed establishments located within 1200 feet of 3313 11th Street, N.W. *ABRA Protest File No. 10-PRO-00139, Protest Report, 5.*
3. The Applicant has applied for the maximum hours allowed under the law for the proposed establishment's hours of operation and sale and service of alcoholic beverages for both the interior of the establishment and the establishment's sidewalk café. *ABRA Protest File No. 10-PRO-00139, Protest Report, 7-8.*
4. The Board called ABRA Investigator Earl Jones to testify. *Transcript., January 5, 2011 at 12.* Investigator Jones is employed by ABRA and conducted a protest investigation related to the Application. *Tr., 1/5/11 at 14.* He noted that the proposed site of the establishment is bound by Lamont Street, N.W., to the south; Park Road, N.W., to the north; 13th Street, N.W., to the west; and Sherman Avenue, N.W., to the east. *Tr., 1/5/11 at 14-15.* He noted that there are two other ABC-licensed establishments located on the same block as the proposed establishment; specifically, RedRocks and 11th Hour Wine Bar. *Tr., 1/5/11 at 15.* He noted that no nearby establishments had rooftop seating. *Tr., 1/5/11 at 27.*
5. Investigator Jones testified that ABRA monitored the proposed establishment's address on 12 different occasions. *Tr., 1/5/11 at 16.* ABRA monitored the address from December 9, 2010, to December 23, 2010. *Tr., 1/5/11 at 16.* Investigator Jones personally observed the address on eight separate occasions. *Tr., 1/5/11 at 16.* He noted that he observed few parking issues, did not hear any noise, or see excessive traffic. *Tr., 1/5/11 at 16-17.*

6. Investigator Jones noted that the proposed address for the new establishment is currently a vacant building. *Tr.*, 1/5/11 at 17. As such, he noted that the Applicant has a clean record with ABRA and has no ABC violations. *Tr.*, 1/5/11 at 17. Investigator Jones also noted that there were no calls for service at the proposed establishment's address. *Tr.*, 1/5/11 at 17.

7. Investigator Jones described the parking and traffic situation near the establishment's proposed location. *Tr.*, 1/5/11 at 19. He noted that all of the streets near the establishment had two hour parking zones. *Tr.*, 1/5/11 at 20. He did not observe many people waiting for parking spaces. *Tr.*, 1/5/11 at 20. Investigator Jones noted that 14th Street, N.W., has heavy traffic but the Applicant's proposed location is two streets away from 14th Street, N.W. *Tr.*, 1/5/11 at 21. Investigator Jones stated that he personally had no trouble finding parking near the establishment. *Tr.*, 1/5/11 at 34.

8. Investigator Jones testified that two residences neighbored the establishment's proposed location. *Tr.*, 1/5/11 at 22. He noted that a pet supply store is located next door as well. *Tr.*, 1/5/11 at 25.

9. Investigator Jones noted that properties to the north and south of the proposed establishment are zoned commercial. *Tr.*, 1/5/11 at 36. He noted that to the north of the proposed location is a rooming house that no person lives in permanently. *Tr.*, 1/5/11 at 34-35.

10. The Board notes that Exhibit No. 28 shows two windows overlooking the establishment's proposed rooftop seating area. *ABRA Protest File No. 10-PRO-00139, Protest Report Exhibit No. 28.*

11. The Applicant made its case through the testimony of four witnesses. The Applicant called Michael Robbins, David Shoemaker, Bill Boyle, and Jackie Greenbaum to testify. *Tr.*, 1/5/11 at 40, 47, 57, 71.

12. Michael Robbins testified that he lives at 607 Bonifant Street, N.W., which is seven blocks from Jackie Greenbaum's restaurant in Silver Spring, Maryland. *Tr.*, 1/5/11 at 40, 45. He noted that Ms. Greenbaum also owns the Quarry House, which is about four blocks from his house. *Tr.*, 1/5/11 at 41. He noted that Ms. Greenbaum's restaurants in Silver Spring are located a half block from residences. *Tr.*, 1/5/11 at 45-46. Mr. Robbins noted that Ms. Greenbaum is active in his Silver Spring community, testifying that she participates in community events and is a member of the community's listserv. *Tr.*, 1/5/11 at 41. Mr. Robbins believes that Ms. Greenbaum would respond appropriately to any potential problems that her proposed establishment may cause. *Tr.*, 1/5/11 at 44.

13. David Shoemaker testified that he lives at 3325 11th Street, N.W, and works as a chef at Meridian Pint. *Tr.*, 1/5/11 at 47, 52. He lives approximately five doors from the establishment's proposed location. *Tr.*, 1/5/11 at 47. Mr. Shoemaker has lived in the neighborhood for eight years. *Tr.*, 1/5/11 at 47. He stated that he supports the Application because the proposed location is currently a "blighted building." *Tr.*, 1/5/11 at 48.

14. Mr. Shoemaker testified that he supports the Applicant's plan to have rooftop seating at her establishment. *Tr.*, 1/5/11 at 49-50. He believes that attracting people to the neighborhood will make the community safer. *Tr.*, 1/5/11 at 50.

15. Mr. Shoemaker discussed the transportation situation in the neighborhood. *Tr.*, 1/5/11 at 51. He testified the proposed location is near the Georgia-Petworth Metro and Columbia Heights Metro. *Tr.*, 1/5/11 at 51. Furthermore, he noted that many people choose to travel by foot in the neighborhood. *Tr.*, 1/5/11 at 51.

16. Bill Boyle testified that he lives at 3338 Sherman Avenue, N.W. *Tr.*, 1/5/11 at 58. He noted that his residence is located to the northeast of the proposed establishment. *Tr.*, 1/5/11 at 57. Mr. Boyle supports the Application because he believes that Ms. Greenbaum is a responsible business owner. *Tr.*, 1/5/11 at 59.

17. Mr. Boyle testified that he is employed as a consultant and he focuses on transportation issues. *Tr.*, 1/5/11 at 61. He stated that the establishment would not have a significant impact on parking because it has fewer than 100 seats. *Tr.*, 1/5/11 at 61. He noted that the neighborhood did not attract a lot of drivers. *Tr.*, 1/5/11 at 62. He noted that the DC USA mall, which is close to the proposed location, has a huge parking lot that is often "three-quarters empty." *Tr.*, 1/5/11 at 61-62.

18. Jackie Greenbaum testified that she owns Jackie's Restaurant and Quarry House Tavern in Silver Spring. *Tr.*, 1/5/11 at 72. She stated that Jackie's Restaurant has been in operation since 2004. *Tr.*, 1/5/11 at 72. She stated that Jackie's Restaurant is a "casual fine dining restaurant" that serves "contemporary American" fare. *Tr.*, 1/5/11 at 72. She stated that Jackie's Restaurant has a price point in the 20 dollar range. *Tr.*, 1/5/11 at 73. She noted that Jackie's Restaurant was listed as one of the top 40 restaurants in the area by the Washingtonian Magazine and has been praised by a number of organizations. *Tr.*, 1/5/11 at 73; *see ABRA Protest File No. 10-PRO-00139, Applicant's Exhibit No. 4, 5.*

19. Ms. Greenbaum described the Quarry House. *Tr.*, 1/5/11 at 75. The Quarry House is a neighborhood tavern in Silver Spring. *Tr.*, 1/5/11 at 76. She stated that the establishment has an extensive beer list but maintains its character as a restaurant. *Tr.*, 1/5/11 at 76. She noted that the establishment abides by Montgomery County's minimum food service requirements. *Tr.*, 1/5/11 at 76.

20. Ms. Greenbaum described her plans for her proposed establishment on 11th Street, N.W. *Tr.*, 1/5/11 at 78. She stated that she wants to build a Mexican eatery. *Tr.*, 1/5/11 at 78. She stated that she plans to provide vegetarian cuisine and provide a "newer spin on authentic Mexican cuisine." *Tr.*, 1/5/11 at 78; *see ABRA Protest File No. 10-PRO-00139, Applicant's Exhibit No. 3.* Ms. Greenbaum stated that the establishment plans to charge between \$10.00 and \$14.00 for entrées. *Tr.*, 1/5/11 at 79. She also noted that the establishment will serve "designer margaritas and premium tequilas." *Tr.*, 1/5/11 at 104.

21. Ms. Greenbaum described the proposed layout of the establishment. *Tr.*, 1/5/11 at 85. The proposed establishment will be 830 square feet. *Tr.*, 1/5/11 at 86; *see ABRA Protest File No. 10-PRO-00139, Applicant's Exhibit No. 1.* The dining room and bar area will be in the front of the establishment on the first floor. *Tr.*, 1/5/11 at 86. The kitchen will be on the first floor as well. *Tr.*, 1/5/11 at 86. The front of the roof deck will face

11th Street, N.W. *Tr.*, 1/5/11 at 87. A storage room, one-story tall, and a stairwell will be located in the rear of the roof deck, towards the middle of the roof. *Tr.*, 1/5/11 at 87; *see ABRA Protest File No. 10-PRO-00139, Applicant's Exhibit No. 6*. Behind the storage room will be rooftop equipment. *Tr.*, 1/5/11 at 87. The interior of the restaurant will have an occupancy of 54 people. *Tr.*, 1/5/11 at 109.

22. Ms. Greenbaum described the floor plan for the first floor of the establishment. *Tr.*, 1/5/11 at 91. The entrance of the establishment will be on 11th Street, N.W. *Tr.*, 1/5/11 at 91. On the right side of the first floor, there will be six tables for four and 12 tables for two. *Tr.*, 1/5/11 at 91. Further, on the left side of the first floor there will be a built-in, 11 seat bar. *Tr.*, 1/5/11 at 91. The proposed establishment's kitchen and prep area, as well as the bathrooms, are located beyond the bar. *Tr.*, 1/5/11 at 91.

23. Ms. Greenbaum also described the establishment's floor plan for the roof. *Tr.*, 1/5/11 at 91. The seating area is near the part of the building facing 11th Street, N.W. *Tr.*, 1/5/11 at 91. The roof only has an occupancy of 38 people. *Tr.*, 1/5/11 at 92.

24. Ms. Greenbaum noted that the storage room will act as a barrier to the residences behind the establishment. *Tr.*, 1/5/11 at 88. She stated that the storage room acts as both a visual barrier and a sound barrier. *Tr.*, 1/5/11 at 94. She noted that she has consulted with a sound expert and is considering retaining another sound expert to find ways to mitigate noise. *Tr.*, 1/5/11 at 95. Finally, she stated that she is considering installing lattices and extending the walls in order to protect the proposed establishment's neighbors. *Tr.*, 1/5/11 at 95.

25. Ms. Greenbaum described her plans for the rooftop seating area. She stated that there are no plans to install a bar on the roof. *Tr.*, 1/5/11 at 92. She also noted that she has no plans to apply for an Entertainment Endorsement or provide recorded music on the roof. *Tr.*, 1/5/11 at 95-96.

26. Ms. Greenbaum further noted that her plans keep the easement clear and unobstructed. *Tr.*, 1/5/11 at 97. She noted that the public will not be permitted to be in the back of the establishment. *Tr.*, 1/5/11 at 97. She stated that establishment will only store two garbage dumpsters and a walk-in refrigerator in the rear of the establishment in order to keep the easement clear. *Tr.*, 1/5/11 at 114-15.

27. Ms. Greenbaum stated that she has applied for a small sidewalk café. *Tr.*, 1/5/11 at 98. The sidewalk café will only have room for 16 seats. *Tr.*, 1/5/11 at 98.

28. Ms. Greenbaum described her establishment's trash removal service. She stated that she will have trash pickup scheduled for six days per week. *Tr.*, 1/5/11 at 97. She noted that the trash removal service will have to lift her trash dumpsters over the easement in order to remove the trash. *Tr.*, 1/5/11 at 116. She stated that the trash truck will pull into the alley north of the proposed establishment and then the dumpsters will be moved to the trash truck for removal. *Tr.*, 1/5/11 at 162. She stated that her establishment will prevent rodent infestations by keeping the trash area clean, frequently emptying the establishment's trash bins, and hiring an extermination service. *Tr.*, 1/5/11 at 117.

29. Ms. Greenbaum testified that there are currently two windows that will face the roof of her restaurant. *Tr.*, 1/5/11 at 121; *see ABRA Protest File No. 10-PRO-00139, Protest Report Exhibit No. 28*. She stated that the windows belong to residences in the neighboring building. *Tr.*, 1/5/11 at 120-21. She stated that the first floor of the neighboring building is commercial and the rest of the building is residential. *Tr.*, 1/5/11 at 121.

30. Ms. Greenbaum testified that she considered the needs of residents overlooking her proposed establishment. *Tr.*, 1/5/11 at 123. The proposed establishment's plans call for four foot walls to be built on the roof. *Tr.*, 1/5/11 at 123. In addition, Ms. Greenbaum testified that she planned to install plantings and wall barriers on the roof. *Tr.*, 1/5/11 at 123. Ms. Greenbaum admitted that the windows shown in Exhibit No. 28 will "sit above" the four foot wall she plans to build. *Tr.*, 1/5/11 at 123, 127. She stated that the distance between the residential windows facing the rooftop and the area where patrons will be sitting is only a few feet. *Tr.*, 1/5/11 at 134, 155.

31. Ms. Greenbaum testified that she consulted with Martin Beam, a certified noise consultant regarding her plans. *Tr.*, 1/5/11 at 131-32. Ms. Greenbaum admitted that Mr. Beam only provided an initial consultation and did not perform any noise tests. *Tr.*, 1/5/11 at 145. Ms. Greenbaum testified that she was willing to retain a noise expert to recommend appropriate noise abatement measures for her future restaurant. *Tr.*, 1/5/11 at 146. Ms. Greenbaum testified that she did not want to retain a sound engineer until she knew that she was approved to sell alcohol at the proposed establishment. *Tr.*, 1/5/11 at 160.

32. Ms. Greenbaum testified that the first floor of her establishment will share a wall with a residential building. *Tr.*, 1/5/11 at 138; *ABRA Protest File No. 10-PRO-00139, Protest Report Exhibit No. 11*. She stated that the wall will remain a masonry wall once her restaurant is constructed. *Tr.*, 1/5/11 at 138. She testified that she plans to install some additional woodwork on the wall. *Tr.*, 1/5/11 at 139. Ms. Greenbaum testified that she has no further plans to soundproof the shared wall. *Tr.*, 1/5/11 at 138.

33. Ms. Greenbaum testified that demand for rooftop seating would decline after 11:00 p.m. *Tr.*, 1/5/11 at 141. She testified that reducing her rooftop seating by half would hurt her business. *Tr.*, 1/5/11 at 150-51.

34. Ms. Greenbaum testified that she planned to play background music for ambience at the proposed establishment. *Tr.*, 1/5/11 at 152.

35. Ms. Greenbaum testified that she would be willing to eliminate the tables closest to the bay window of the residence next door. *Tr.*, 1/5/11 at 313; *see ABRA Protest File No. 10-PRO-00139, Applicant's Exhibit No. 7*. She testified that she was willing to configure her rooftop seating arrangement to reduce the number of seats to 32. *Tr.*, 1/5/11 at 315. She also stated that she would be willing to consider erecting a barrier to protect the neighbor's bay window from sound. *Tr.*, 1/5/11 at 313-14.

36. Ms. Greenbaum stated that she is committed to creating incentives for her patrons to forgo using vehicles to travel to her establishment. *Tr.*, 1/5/11 at 314. She stated that she was planning to offer discounts to customers that ride bicycles to her establishment and

plans to retain a “pedi-cab company.” *Tr.*, 1/5/11 at 314. She also believes that many people will walk to the establishment. *Tr.*, 1/5/11 at 314.

37. The Protestants made their case through the testimony of four witnesses. The Protestants called Sally Tyler, Sandra Casanova, Cleve Palmer, and William Brown to testify. *Tr.*, 1/5/11 at 164, 212, 240, 271.

38. Sally Tyler testified that she lives at 1033 Lamont Street, N.W., and has lived there since 2000. *Tr.*, 1/5/11 at 164. She stated that there are six ABC-licensed establishments near her home; four ABC-licensed establishments having opened within two blocks of her home in the past five years. *Tr.*, 1/5/11 at 165. Ms. Tyler noted that she can see the location of the proposed establishment from her home and noted that it is only 15 to 20 feet away. *Tr.*, 1/5/11 at 173-74; *ABRA Protest File No. 10-PRO-00139, Protestants Exhibit No. 1-7*. She further noted that her property and the establishment’s proposed location share a property line. *Tr.*, 1/5/11 at 192.

39. Ms. Tyler testified that noise has increased in the neighborhood due to the presence of the ABC-licensed establishments. *Tr.*, 1/5/11 at 166. She has noticed that the noise in the neighborhood increases when groups of patrons leave various establishments after last call is made. *Tr.*, 1/5/11 at 166. She is also concerned about noise created by the restaurant from throwing out garbage and noise created from the trash being collected by the establishment’s waste management service. *Tr.*, 1/5/11 at 172, 187-88, 198.

40. Ms. Tyler also complained about parking in the neighborhood. *Tr.*, 1/5/11 at 166. She stated that, like many people who live in the area, she only has access to on-street parking. *Tr.*, 1/5/11 at 166. She stated that she does not move her car at night because she is afraid she will lose her parking spot. *Tr.*, 1/5/11 at 166. Further, if she has to drive at night she is often forced to park a few blocks away from her home, which she believes is unsafe. *Tr.*, 1/5/11 at 167.

41. Ms. Tyler stated that her primary concern was that the Applicant’s proposed plans for the rooftop will create noise and disturb the peace, quiet, and order of the neighborhood. *Tr.*, 1/5/11 at 183. Ms. Tyler believes that any rooftop or outdoor seating at the establishment should end at the same time as other licensees in the neighborhood. *Tr.*, 1/5/11 at 185. She believes that allowing approximately 40 people on the roof at a time will create a lot of noise. *Tr.*, 1/5/11 at 194.

42. Ms. Tyler was concerned about the Applicant’s noise mitigation measures. She noted that the Applicant cannot demonstrate how much noise reduction the storage unit on her roof will actually provide. *Tr.*, 1/5/11 at 208-09.

43. Sandra Casanova testified that she lives at 1035 Lamont Street, N.W. *Tr.*, 1/5/11 at 212. She stated that she has lived on Lamont Street, N.W., for the past 28 years. *Tr.*, 1/5/11 at 212. She stated that she lives in an apartment on the first floor and that there are two apartment units in the upper levels of the building. *Tr.*, 1/5/11 at 213. She stated that she lives in an apartment with her mother and daughter. *Tr.*, 1/5/11 at 213.

44. Ms. Casanova discussed her concerns regarding the Applicant’s plans for the roof. Ms. Casanova testified that her back bedroom window is approximately six feet from the

proposed establishment's wall. *Tr.*, 1/5/11 at 217 She stated that the roof of the establishment is directly behind her home. *Tr.*, 1/5/11 at 219. She is further concerned about plans to place an air conditioning unit on the roof. *Tr.*, 1/5/11 at 224. She admitted that her residence will not face the roof's proposed seating area but rather the location where the storage room and the air conditioning unit will be located. *Tr.*, 1/5/11 at 224-25. She believes that rooftop seating at the establishment should cease at 10:00 p.m. *Tr.*, 1/5/11 at 236.

45. Ms. Casanova testified that noise in Columbia Heights has increased as the area has become more developed. *Tr.*, 1/5/11 at 218. She stated that she often hears rowdy patrons exiting establishments, which echoes through her back rooms. *Tr.*, 1/5/11 at 218-19.

46. Ms. Casanova testified that finding on-street parking has become more difficult. *Tr.*, 1/5/11 at 219. She stated that after 8:00 p.m. it becomes difficult to find parking in the neighborhood. *Tr.*, 1/5/11 at 219.

47. Cleve Palmer testified that he lives at 1031 Lamont Street, N.W. *Tr.*, 1/5/11 at 240. He stated he has lived at 1031 Lamont Street, N.W., for the past 34 years and currently resides there with his wife and adult son. *Tr.*, 1/5/11 at 241. Mr. Palmer noted that his property is approximately ten feet from the establishment. *Tr.*, 1/5/11 at 245. He noted that his son's bedroom faces the establishment's proposed location. *Tr.*, 1/5/11 at 244.

48. Mr. Palmer disagreed with the ABRA Investigator's conclusion in respect to parking. *Tr.*, 1/5/11 at 249. He stated that even though he has special parking privileges as a Ward 1 resident, it is still difficult to find parking during peak business hours. *Tr.*, 1/5/11 at 250. Mr. Palmer stated he sometimes has to park a block or two away from his home. *Tr.*, 1/5/11 at 251.

49. William Brown testified that he lives at 1215 Lamont Street, N.W. *Tr.*, 1/5/11 at 272. He stated that he lives approximately half a block from the proposed establishment. *Tr.*, 1/5/11 at 272. He stated that he serves as the Chair of Advisory Neighborhood Commission (ANC) 1A and is employed by the District of Columbia City Council. *Tr.*, 1/5/11 at 272-73.

50. Commissioner Brown stated that he has lived in his home for the past ten years. *Tr.*, 1/5/11 at 275. He stated that the neighborhood was very dangerous between the years 2000 and 2003 and he would regularly hear gunshots in the evening. *Tr.*, 1/5/11 at 275. He stated that after 2005 there were issues with criminals targeting visitors to the neighborhood. *Tr.*, 1/5/11 at 276.

51. Commissioner Brown noted that no other ABC establishments on the 11th Street corridor has rooftop seating. *Tr.*, 1/5/11 at 277. He is concerned that the Applicant's rooftop seating area would be directly adjacent to the bedrooms of the proposed establishment's neighbors. *Tr.*, 1/5/11 at 280. Mr. Brown noted that no other establishment in the neighborhood has outdoor seating past 12:00 p.m. *Tr.*, 1/5/11 at 282.

52. Commissioner Brown described the noise situation in the neighborhood. He noted that the crowd at Room 11 can be heard halfway down Lamont Street, N.W., even though the crowd there is not rowdy. *Tr.*, 1/5/11 at 284. Mr. Brown admitted that Room 11 has

no barriers that stop the noise from travelling down the street. *Tr.*, 1/5/11 at 286. Commissioner Brown stated that he would prefer that the proposed establishment's rooftop seating cease at 10:00 p.m. during the week and 12:00 p.m. during the weekend. *Tr.*, 1/5/11 at 305.

CONCLUSIONS OF LAW

53. Pursuant to D.C. Official Code § 25-313(a) (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 new Retailer's Class CR License is sought is appropriate for the neighborhood in which it is located. The Protestants challenged the Application on the grounds that it would adversely impact peace, order, quiet, real property values, residential parking, and pedestrian safety. The Board finds that the Application is appropriate so long as certain conditions are met. The Board explains its reasoning below.

54. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2010) 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, no ANC submitted a recommendation at least seven days before the Protest Hearing under § 25-609 and therefore, the great weight requirement is inapplicable in this matter.

55. As a preliminary matter, the Board finds that there is no evidence that the Application will cause a decline in property values. The Applicant will presumably improve a vacant building, which can only benefit the neighborhood. The Board also notes that the Protestants did not present any evidence that property values in the neighborhood would decline if the Application was granted.

56. Further, there is no evidence that the establishment will have an adverse impact on residential parking or vehicular or pedestrian safety. The Board credits the testimony of Investigator Jones, who stated that he did not observe any traffic or parking problems. Indeed, both Ms. Tyler and Mr. Palmer stated that they are able to find parking within a few blocks of their homes. Although the Board will consider the impact of an establishment on traffic and parking in a neighborhood, there is no guaranteed right to a parking spot outside one's home.

57. Nevertheless, the Board is concerned that granting the Application without conditions will negatively impact the peace, order, and quiet of the establishment's neighbors.

58. In the past, the Board has not been persuaded by arguments that an establishment will disturb residents in commercial zones by creating noise, because D.C. Code § 25-725 (2001) provides ABC-licensed establishments in commercial zones broad exemptions to the noise prohibitions contained in the ABC laws. *See, e.g., Eatonville, Inc., t/a Eatonville* Board Order No. 2010-538, 6 (Oct. 27, 2010). However, this strict approach no longer is warranted given recent changes to the District of Columbia's disorderly conduct laws.

59. The Council of the District of Columbia recently passed a law stating: “It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.” D.C. Code § 22-1321(d) (Supp. 2010). As such, the Board finds that it now has a duty to consider the impact of noise on a neighborhood, even if such noise is exempted by § 25-725, because creating unreasonably loud noises after 10:00 p.m. is now deemed disorderly conduct and D.C. Code § 25-823(2) empowers the Board to punish ABC licensees that allow “unlawful” or “disorderly” conduct to occur on their premises.

60. In that vein, the Board is concerned that the wall that the proposed establishment shares with the neighboring residential building is not properly soundproofed. As such, the Board instructs the Applicant to provide commercially reasonable soundproofing to ensure that noise from the establishment will not disturb the adjoining neighbor.

61. Further, the Board is also concerned that the Applicant’s proposed plans threaten the ability of the Applicant’s neighbors to enjoy peace and quiet in their homes; especially, when multiple bedroom windows will only be a few feet from the Applicant’s rooftop seating. The Board believes that the planned storage room on the roof will provide some sound protection; however, the Board finds that more protections are warranted. Consequently, the Board will not allow the Application to use the rooftop after 11:00 p.m., Sunday through Thursday, and past 12:00 a.m. on Friday and Saturday. The Board finds that such a limitation is appropriate based on testimony that other establishments in the area end their outdoor seating around these times. In addition, the Board is conditioning licensure on keeping seats away from the nearby bay window in order to protect the privacy and peace, order, and quiet of the neighbors who overlook the rooftop deck.

62. Based on the above, the Board finds that the Application is appropriate so long as the Applicant complies with the conditions stated below.

ORDER

Therefore, it is hereby **ORDERED**, on this 20th day of April 2011, that the Application for a new Retailer’s Class CR License filed by 3313 11th Hospitality, LLC, at premises 3313 11th Street, N.W., is hereby **GRANTED** subject to the following:

- (1) the Applicant’s hours of operation for the rooftop shall last until 11:00 p.m., Sunday through Thursday, and 12:00 a.m. on Friday and Saturday;
- (2) the area defined by the front edge of the roof and a line parallel to the front edge of the roof that extends from the rear edge of the adjacent building’s front most side window frame across the entire width of the roof shall not contain tables and chairs nor shall the Applicant be permitted to use this area as part of its general business operations (See Figure 1 for guidance);
- (3) the Applicant must build the proposed storage unit;
- (4) the Applicant shall obtain the services of a reputable noise consultant, of its choice, to analyze potential noise issues and answer the following question:

- a. Will the shared wall between the Applicant and neighboring residence be sufficient to prevent sound from the interior of the establishment being heard in the residence?
- (5) The Applicant shall submit the noise consultant's analysis and recommendations to the Board. As long as a commercially reasonable analysis and proposal to cure any potential noise issues are obtained, the Board will deem the Application appropriate if the Applicant agrees to and complies with the noise consultant's recommendations;
- (6) Copies of this Order shall be delivered to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board

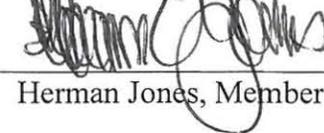
Charles Brodsky, Chairperson



Nick Alberti, Acting Chairperson



Donald Brooks, Member



Herman Jones, Member

Calvin Nophlin, Member



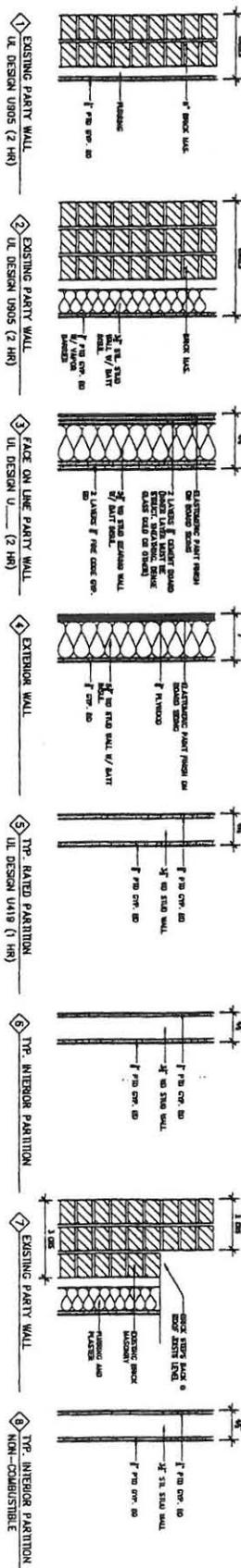
Mike Silverstein, Member

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).

PARTITION SCHEDULE

NOTE: USE MOISTURE RESISTANT GYP. BO. (GREEN BOARD) AT ALL BATHROOMS AND KITCHENS



OCCUPANCY CALCULATIONS

LEVEL	USE	AREA/NET/USABLE	CALC. (TOTAL)	OCCUPANTS
LEVEL 1	EXISTING F - THEATER/PAUSE	300 SF	1 PER 10 SF	30
	EXISTING F - MAIN	22 LUMBER DECK	1 PER 24"	11
	EXISTING F - PAUSE/VIEW/STAIR	200 SF	1 PER 200 SF	1
LEVEL 2	THEATER	400 SF	1 PER 100 SF	4
ROOF DECK	ROOF DECK - VARIOUS/CLIMB	800 SF	1 PER 10 SF	80

EGRESS CALCULATIONS

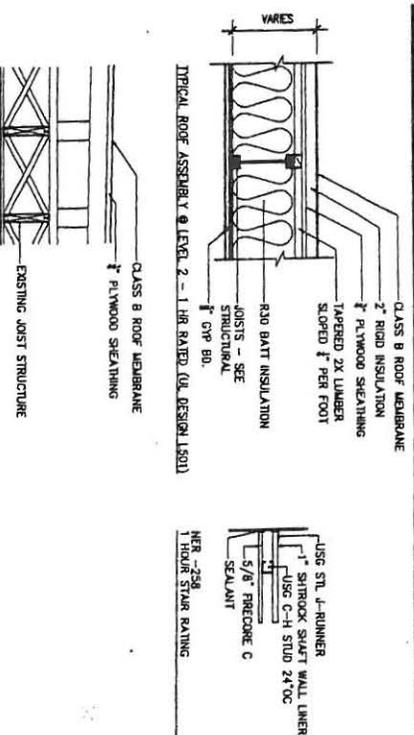
(PER IBC TABLE 1005.1)

LEVEL 1:
 30 PERSONS / 1 EXIT = 30 PERSONS PER EXIT
 30 PERSONS x 0.15' / PERSON = 5.7' EGRESS REQ'D
 LEVEL 2 & ROOF DECK:
 37 PERSONS / 1 EXIT = 37 PERSONS PER EXIT
 37 PERSONS x 0.15' / PERSON = 5.7' EGRESS REQ'D
 USE 36" x 80" DOORS

FIRE & LIFE SAFETY NOTES

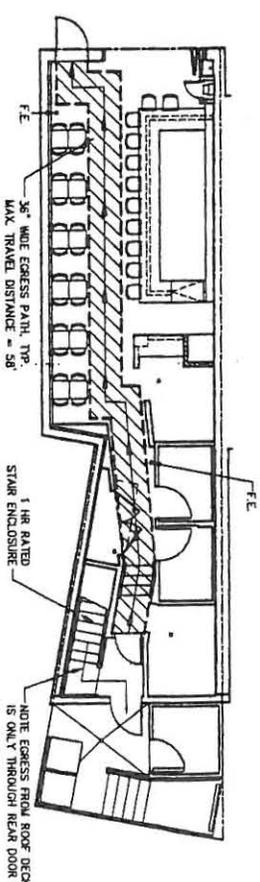
PROVIDE AT LEAST 1 TYPE ZAIOR-C FIRE EXTINGUISHER IN SECTION 906 PER FC 2006

FLOOR CEILING ASSEMBLIES



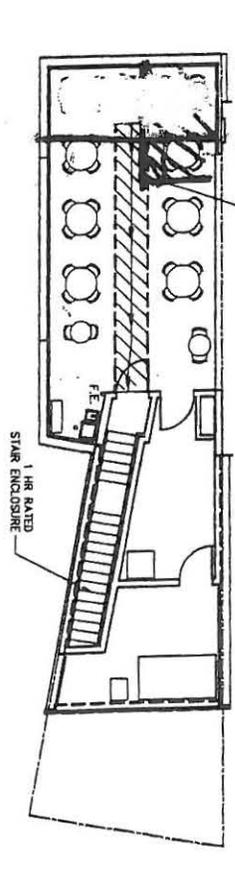
01 LEVEL 1 EGRESS PLAN

SCALE: 1/8" = 1'-0"



02 LEVEL 2 EGRESS PLAN

SCALE: 1/8" = 1'-0"



ISSUE	DATE
PERMIT	07/14/10

3313 11TH ST. HOSPITALITY, LLC
 3313 11TH STREET NW
 WASHINGTON, DC 20010

HUSTED DESIGN
 1019 7TH STREET NW
 WDC 20001

DRAWING TITLE: SCHEDULES & EGRESS PLANS

SHEET NO: A 0