



Class CT License. We also approve the Voluntary Agreement, dated March 19, 2012, submitted by the Applicant during the hearing, and incorporate the agreement's terms into this Order.

### *Procedural Background*

Two Groups of Five or More Individuals (Protestants), one represented by Bertha Dudley and Stanley Mayes, and the other represented by Erica Hurtt, timely filed a protest against the Application under District of Columbia Official Code § 25-602.

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on December 27, 2011, and a Protest Status Hearing on February 8, 2012. The Protest Hearing occurred on March 21, 2012. The Board left the record open until April 9, 2012, in order to give Advisory Neighborhood Commission (ANC) 1B additional time to vote on the proposed Voluntary Agreement with the Applicant.

The Board notes that ANC 1B was dismissed from this protest, because a representative of the ANC did not appear at the Protest Status Hearing. In re All Souls, LLC, t/a All Souls, Board Order No. 2012-094, 1-2 (D.C.A.B.C.B. Mar. 7, 2012). Nevertheless, ANC 1B properly submitted a recommendation under District of Columbia Official Code § 25-609. The Board recognizes that 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); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). Accordingly, the Board "must elaborate, with precision, its response to the ANC[']s issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, ANC 1B recommends that we deny the Application, because it will negatively impact the neighborhood's peace, order, and quiet. Therefore, although ANC 1B was dismissed as a Protestant, the Board will accord ANC 1B's recommendation great weight as required by law.

We further note that our decision also considers the issues raised by the Protestants; namely, that the Application is inappropriate on the grounds that it will adversely impact the peace, order, quiet, pedestrian safety, and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2012); *Protest Petition*, 1. Further, our decision also considers the proximity of the establishment to any schools; "the effect of the establishment on the operation and clientele of [nearby] schools;" whether the establishment will unduly attract school-age children going to, present at, or coming from a school; and "[w]hether issuance of the license would create or contribute to an overconcentration of licensed establishments . . . ." D.C. Code § 25-314(a) (West Supp. 2012).

Finally, we have reviewed the Voluntary Agreement submitted by the Applicant, and find it legally sufficient. Therefore, we incorporate its terms into this Order, and make it binding on the Applicant, Erica Hurtt, Peter Patel, and Bonnie Bogle under District of Columbia Official Code § 25-446.

## FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

### I. Background

1. The Applicant requests that the Board issue it a Retailer's Class CT License at premises 725 T Street, N.W., Washington, D.C. See ABRA Protest File No. 11-PRO-00057. The Board further notes that the Applicant has unilaterally amended its Application so that the establishment's operating hours begin at 5:00 p.m., Monday through Friday, and has withdrawn its request for outdoor seating. *Transcript (Tr.)*, March 21, 2012 at 6; *ABRA Licensing File No. 088179*; Letter from Andrew J. Kline to Alcoholic Beverage Regulation Administration (Mar. 16, 2012).
2. The Applicant presented a proposed Voluntary Agreement with ANC 1B, Erica Hurtt, Peter Patel, and Bonnie Bogle to the Board. See ABRA Protest File No. 11-PRO-00090, Voluntary Agreement. We take administrative notice that ANC 1B voted not to approve the agreement; and therefore, is no longer a party to the agreement. Therefore, the agreement is solely between the Applicant, Erica Hurtt, Peter Patel, and Bonnie Bogle.
3. The establishment is currently under construction, and not open to the public at this time. *Tr.*, 3/21/12 at 24. The establishment will be located in a commercial C-2-A zone. *ABRA Protest File No. 11-PRO-00090, Protest Report*, at 4. The records of the Alcoholic Beverage Regulation Administration (ABRA) show that 32 licensed establishments exist within 1,200 feet of the Applicant's establishment. *Id.* at 5-6. There are no recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 7. Nevertheless, the Cleveland Elementary School, at premises 1825 8th Street, N.W., is located 193 feet from the establishment. *Id.* A map produced by the Geographic Information System shows that Mesobe Restaurant and Deli Market, which holds a Retailer's Class CR License, is located within 400 feet of Cleveland Elementary School. See ABRA Protest File No. 11-PRO-00090, GIS Map (Jun. 4, 2012).

### II. ABRA Investigation

4. ABRA Investigator Tyrone Lawson investigated the Application for ABRA. *Tr.*, 3/21/12 at 12. ABRA Investigators monitored the establishment on 25 separate occasions between February 9, 2012, and March 13, 2012. *Tr.*, 3/21/12 at 25.
5. During his investigation, Investigator Lawson personally observed the parking situation in the area surrounding the establishment. *Tr.*, 3/21/12 at 23-250. The area has "a combination of residential parking, off-street parking, pay-to-park-meters . . ." *Tr.*, 3/21/12 at 24. There are 15 to 20 unrestricted spaces on 8th Street, N.W. *Tr.*, 3/21/12 at 24. Investigator Lawson found that Valet USA, a valet company, operates gated parking lots, which are open from 7:00 a.m. to 7:00 p.m. *Tr.*, 3/21/12 at 24; *Protest Report*, at 7. Lastly, there are three public parking lots near the neighborhood. *Tr.*, 3/21/12 at 7.

6. Investigator Lawson further observed the traffic situation near the establishment. *Tr.*, 3/21/12 at 26-27. During his visits, he saw open parking spots on T Street, N.W., and Georgia Avenue, N.W. *Tr.*, 3/21/12 at 26, 42; 52. Furthermore, he observed that the 700 block of T Street, N.W., did not experience heavy traffic during non-business hours. *Tr.*, 3/21/12 at 26.

7. The area surrounding the establishment is also served by various modes of public transportation. *Protest Report*, at 8. The establishment is located one block away from metro bus routes 70, 79, 93, X3, and Benning Road Line. *Id.* Furthermore, the Shaw-Howard University Metro-Rail Station is located two blocks south of the establishment. *Id.*; *Tr.*, 3/21/12 at 42-43.

8. ABRA also monitored the establishment for potential peace, order, and quiet issues. *Tr.*, 3/21/12 at 25. Records provided by the Metropolitan Police Department (MPD) indicated that there were three calls for service made for 723 T Street, N.W., between February 14, 2011, and February 14, 2012. *Protest Report*, at 13.

9. Investigator Lawson described the Cleveland Elementary School, which is located across from the Applicant's proposed address. *Tr.*, 3/21/12 at 31. The school has a playground surrounded by a 12-foot wrought iron fence, which users can only access from the school building. *Tr.*, 3/21/12 at 31, 44; *see also Tr.*, 3/21/12 at 263. The playground is visible from the premises sought by the Applicant. *Tr.*, 3/21/12 at 32. Investigator Lawson noted that during his investigation, the playground was usually unused after 4:30 p.m. *Tr.*, 3/21/12 at 35.

10. Investigator Lawson further noted that the area is undergoing significant development. *Tr.*, 3/21/12 at 64. Currently, a new apartment building and the Howard Theatre are undergoing construction. *Tr.*, 3/21/12 at 64.

### **III. ANC Commissioner Myla Moss**

11. Commissioner Myla Moss serves as the Advisory Neighborhood Commissioner for ANC 1B01, and has lived in the LeDroit Park neighborhood since 1999. *Tr.*, 3/21/12 at 70-71. The establishment will be located in Commissioner Moss's single-member district. *Tr.*, 3/21/12 at 70.

12. Commissioner Moss described the state of the neighborhood surrounding the establishment. *Tr.*, 3/21/12 at 71. In her experience, the neighborhood has a reputation for prostitution and drug activity. *Tr.*, 3/21/12 at 71. Furthermore, she noted that the Applicant's chosen location has been vacant for the past 10 years. *Tr.*, 3/21/12 at 73.

13. Commissioner Moss noted that the establishment is near a Bikeshare station. *Tr.*, 3/21/12 at 96. The Bikeshare station is located on the corner of 7th Street, N.W., and T Street, N.W. *Tr.*, 3/21/12 at 96.

### **IV. Kip Patrick**

14. Kip Patrick has lived at 1804 4th Street, N.W., for the past three years. *Tr.*, 3/21/12 at 105. Mr. Patrick lives approximately six to eight doors away from Cleveland

Elementary School. *Tr.*, 3/21/12 at 105. As a resident of the neighborhood, Mr. Patrick regularly observes people consuming alcohol in public and finds empty liquor containers near Cleveland Elementary School. *Tr.*, 3/21/12 at 107.

#### **V. David Batista**

15. David Batista is one of the principals of the Respondent's business. *Tr.*, 3/21/12 at 120. Mr. Batista has been employed in the hospitality industry since 1996. *Tr.*, 3/21/12 at 121.

16. Mr. Batista's vision for the establishment is that it will serve as a small neighborhood bar that serves high quality food. *Tr.*, 3/21/12 at 122-23. The establishment, in total, will only occupy 775 square feet, and only has room for 40 to 45 seats. *Tr.*, 3/21/12 at 123, 134. At most, Mr. Batista estimates that the establishment will have a maximum capacity of 55 people. *Tr.*, 3/21/12 at 175. He also plans to have a large window facing Cleveland Elementary School. *Tr.*, 3/21/12 at 163, 193.

17. The establishment intends to store trash and recycling in the back of the building. *Tr.*, 3/21/12 at 195. Mr. Batista noted that he has observed litter and trash related to the consumption of alcoholic beverages in public in the neighborhood surrounding the establishment's proposed location. *Tr.*, 3/21/12 at 144, 156-57.

#### **VI. Erica Hurtt**

18. Erica Hurtt lives at 1905 8th Street, N.W., which is next door to the establishment's proposed address. *Tr.*, 3/21/12 at 205-06. The Applicant's establishment will share a wall with Ms. Hurtt's rental property. *Tr.*, 3/21/12 at 206. Ms. Hurtt is concerned that the establishment will make her property less attractive to potential renters. *Tr.*, 3/21/12 at 207.

#### **VII. Bertha Dudley**

19. Bertha Dudley lives at 1836 8th Street, N.W. *Tr.*, 3/21/12 at 227. She stated that individuals drink in public in her neighborhood, create noise, and utilize the neighborhood's parking resources. *Tr.*, 3/21/12 at 232. Nevertheless, she could not definitively attribute these harms to individuals attending local on-premise retail establishments. *Tr.*, 3/21/12 at 232.

#### **VIII. Tosha Bitho**

20. Tosha Bitho lives at 1822 9th Street, N.W. *Tr.*, 3/21/12 at 242. Ms. Bitho noted that the neighborhood has a reputation for drug activity and public drinking. *Tr.*, 3/21/12 at 253.

21. Ms. Bitho has a child enrolled at Cleveland Elementary School. *Tr.*, 3/21/12 at 242. The school officially closes at 3:15 a.m., and the school's afterschool activities last until 6:00 p.m. *Tr.*, 3/21/12 at 264-65. Ms. Bitho is concerned that the establishment's patrons will be able to observe the school's playground area. *Tr.*, 3/21/12 at 242. Furthermore, she is concerned that children will be able to see patrons inside the

establishment while on the playground. *Tr.*, 3/21/12 at 242-243. Nevertheless, Ms. Bitho admitted that, in her knowledge, children do not use the playground unless there is an adult present. *Tr.*, 3/21/12 at 262. In addition, she also admitted that the school employs a security guard that remains on school grounds while people are using the building. *Tr.*, 3/21/12 at 264.

**IX. Esther Layne**

22. Esther Layne has lived at 1802 8th Street, N.W., for the past forty years. *Tr.*, 3/21/12 at 272. Ms. Layne noted that the neighborhood near the establishment has had a reputation for drug and other criminal activity in the past. *Tr.*, 3/21/12 at 273.

**X. Anwar Saleem**

23. Anwar Saleem lives at 1810 8th Street, N.W., and has grandchildren that attend Cleveland Elementary School. *Tr.*, 3/21/12 at 301. He described the elementary school as a “blue ribbon school.” *Tr.*, 3/21/12 at 302. He is concerned that children will be harmed if they can see the establishment while school is in session. *Tr.*, 3/21/12 at 321.

**XI. Jana Baldwin**

24. Jana Baldwin serves as the Public Safety Chair for the LeDroit Park Civic Association. *Tr.*, 3/21/12 at 329. Ms. Baldwin noted that the Howard Theatre will be located one block away from the school. *Tr.*, 3/21/12 at 338.

25. She stated that public urination and public drinking is an issue in the neighborhood. *Tr.*, 3/21/12 at 331. Indeed, she regularly finds discarded alcohol containers littered throughout the area. *Tr.*, 3/21/12 at 333.

**CONCLUSIONS OF LAW**

26. We find the Application for a new Retailer’s Class CT License at premises 725 T Street, N.W., filed by All Souls, LLC, t/a All Souls, appropriate for the neighborhood. We find that the transformation of a vacant property into a business will have a positive impact on the neighborhood’s peace, order, and quiet and real property values. We further find that there is sufficient parking in the neighborhood to support the addition of the Applicant’s small establishment, and the availability of public transportation will not result in a negative impact on vehicular and pedestrian safety and the availability of residential parking. We also find that the neighborhood’s growing importance as a source of art and entertainment indicates that there is sufficient demand to justify the addition of the Applicant’s tavern. Finally, we find that the establishment will not have a negative impact on the students and operation Cleveland Elementary School or unduly attract school-age children.

**I. Peace, Order, and Quiet**

27. We find that the Applicant will not have an adverse impact on the neighborhood’s peace, order, quiet. By law, the Board is required to examine “[t]he effect of the establishment on peace, order, and quiet . . . .” D.C. Code § 25-313(b)(2) (West Supp.

2012). Here, the neighborhood has a history of suffering from quality of life issues, such as public drinking and drug activity. Supra, at ¶¶ 12, 14, 22, 25. Nevertheless, there is no evidence that the Applicant will contribute to this activity. We note that the Applicant is not permitted to sell closed containers, so the Applicant is not allowed to provide alcohol to customers who seek to drink in public. D.C. Code § 25-113(a)(2) (West Supp. 2012). Furthermore, we are convinced that replacing the vacant building at 725 T Street, N.W., with a vibrant business will discourage antisocial behavior in the immediate vicinity. As a result, we find that the Applicant will have a positive impact on the neighborhood's peace, order, and quiet.

28. By law, the Board must also consider whether the establishment will create noise or litter in violation of District of Columbia Official Code §§ 25-725 and 25-726. § 25-313(b)(2). We note that the establishment has not applied for an entertainment endorsement; therefore, we have no reason to believe that the Applicant will create unlawful noise. Furthermore, we have no reason to believe that the Applicant will create litter, because the on-premise license requested by the Applicant does not allow patrons to leave the premises with open containers. See § 25-113(a)(2). Furthermore, the establishment has an obligation to keep its trash area clean and orderly; therefore, the Applicant is already legally obligated to ensure that its trash area does not interfere with Ms. Hurtt's property in accordance with the law. D.C. Code § 25-726 (West Supp. 2012); supra, at ¶¶ 17-18.

29. Therefore, we disagree with ANC 1B's recommendation, and we find that the Applicant has proven that it will not have an adverse impact on the neighborhood's peace, order, and quiet.

## **II. Vehicular and Pedestrian Safety and Residential Parking**

30. We further find that the establishment will not have an adverse impact on vehicle and pedestrian safety and the availability of residential parking. By law, the Board is required to examine "[t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . . ." D.C. Code § 25-313(b)(3) (West Supp. 2012). Here, the record shows that the establishment will fit approximately 55 patrons; thus, the establishment will not create a large demand for parking in the neighborhood. Supra, at ¶ 16. Furthermore, we are convinced by Investigator Lawson's observations that there is sufficient parking available in the neighborhood, including a number of parking lots. Supra, at ¶¶ 6. Finally, we credit Commissioner Moss and Investigator Lawson's testimony that there are plenty of nearby public transportation options, including Metro-Bus, Metro-Rail, and Bikeshare. Supra, at ¶¶ 7, 13. As a result, we find that the Applicant has shown that it will not have a negative impact on residential parking needs or vehicular and pedestrian safety.

## **III. Real Property Values**

31. The Board also finds that the establishment will have a positive effect on real property values in the neighborhood. By law, the Board is required to examine "[t]he effect of the establishment on real property values . . . ." D.C. Code § 25-313(b)(1) (West Supp. 2012). Here, the establishment will utilize a building that has been vacant for the

past 10 years. Supra, at ¶ 12. We find that the Applicant's usage of the vacant property will have a positive impact on the neighborhood's property values.

#### IV. Overconcentration

32. The Board further finds that the establishment will not contribute to the overconcentration of alcoholic beverage establishments in the neighborhood. By law, the Board is required to examine "[w]hether issuance of the license would create or contribute to an overconcentration of licensed establishments . . . ." § 25-314(a)(4). Here, there are 32 licensed establishments within 1,200 feet of the Applicant's proposed address. Supra, at ¶ 3. Nevertheless, we think the construction of the Howard Theatre demonstrates that the neighborhood will be an important part of the District of Columbia's art, culture, and entertainment scene in the future. Supra, at ¶¶ 10, 24. As a result, based on the large demand for liquor-serving establishments that such areas create, there is no evidence, at this time, that the neighborhood is suffering from the overconcentration of licensed establishments.

#### V. Cleveland Elementary School

33. The Board also finds that the Applicant's proximity to Cleveland Elementary School does not pose a risk to students or the school's operations, and it will not unduly attract school-age children. By law, in considering the Application we must examine the proximity of the establishment to any schools. D.C. Code §25-314(a)(1). In addition, we must also consider the "the effect of the establishment on the operation and clientele of [nearby] schools;" and whether the establishment will unduly attract school-age children going to, present at, or coming from a school. D.C. Code § 25-314(a)(2)-(3).

34. Here, we find that the Applicant's proximity to Cleveland Elementary School does not pose a risk to students or the school's operations. We note that the establishment will not begin operations until 5:00 p.m.; therefore, even though it is located across the street from a school, it will not be operating during normal school hours, which end at 3:15 p.m. Supra, at ¶¶ 1, 9, 21. Furthermore, even though some afterschool activities will occur during the establishment's operations, we note that the school's playground is only accessible from inside the school and is protected by a 12-foot fence. Supra, at ¶¶ 9, 21. As a result, it is highly unlikely that the Applicant's patrons would be in a position to interfere with students or access school property.

35. In addition, we further find that the establishment will not attract school-age children going to, present at, or coming from Cleveland Elementary School. Here, the tavern will not be open until 5:00 p.m. during the week. Supra, at ¶ 1. Furthermore, there is no evidence that the school's students regularly wander the neighborhood without an adult present. As a result, there is no evidence that the establishment will attract school-age children.

36. Finally, we reject the Protestants' unsubstantiated assertion that the mere sight of the Applicant's tavern will be detrimental to the students of Cleveland Elementary School. The Council of the District of Columbia specifically exempted licensees from the 400-foot zone of exclusion surrounding schools when a license of the same class is already located within the exclusion zone. D.C. Code § 25-314(b)(1), (b)(3) (West Supp. 2012). We are

not convinced the Council would have created this exception to the 400-foot rule if it believed that the mere sight of a liquor-serving establishment would be harmful to children. Indeed, if we accepted the Protestants' argument that mere sight of adults in a tavern consuming alcohol is harmful to children, the Board would similarly have to ban children from:

- (1) entering restaurants that serve alcohol to patrons;
- (2) attending sporting events where alcohol may be consumed by adult fans;
- (3) eating dinner with their parents if wine is served with the parents' meal;
- (4) participating in religious ceremonies where wine is part of the service; and
- (5) walking through neighborhoods with large concentrations of liquor-serving establishments during the daytime, such as Adams Morgan and U Street.

As these scenarios demonstrate, the proposition argued by the Protestants is unworkable, unreasonable, and not in accordance with current societal practices. Consequently, without additional evidence, we cannot conclude that the mere sight of the Applicant's business will be harmful to the students of Cleveland Elementary School.

37. Therefore, we find that the proximity of the Applicant to Cleveland Elementary School will not interfere with the students and operations of the school, nor unduly attract school-age children.

## **VI. Outstanding Issues**

38. During the hearing, the Protestants challenged the measurements used by the Alcoholic Beverage Control Board to determine whether the establishment qualified for an exception to the 400-foot exclusion rule contained in § 25-314(b). We note that under § 25-314(b)(3), "The 400-foot restriction shall not apply if there exists within 400 feet a currently-functioning establishment holding a license of the same class at the time that the new application is submitted." § 25-314(b)(3). Furthermore, "In establishing the distance between one or more places, (such as the actual distance of one licensed establishment from another or the actual distance of a licensed establishment from a school), the distance shall be measured linearly by the Board and shall be the shortest distance between the property lines of the places." 23 DCMR § 101.2 (West Supp. 2012).

39. We note that there is no evidence in the record that the Geographic Information System (GIS) is flawed or incorrect. Therefore, we affirm the finding by the ABRA, based on the GIS, that the Applicant qualifies for the exception under § 25-314(b)(3), because Mesobe Restaurant and Deli Market, which holds a Class C License, is located within 400 feet of Cleveland Elementary School. Supra, at ¶ 3.

40. Finally, we note that the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact.");

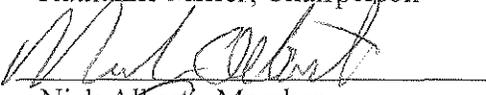
23 DCMR § 1718.2 (West Supp. 2012). Accordingly, based on our review of the Application and the record, we find that the Applicant is of good character and is fit for licensure, and has satisfied all remaining requirements imposed by Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations.

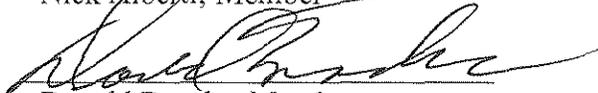
### **ORDER**

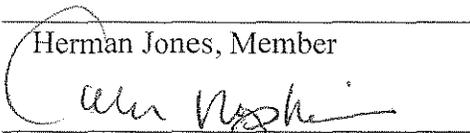
Therefore, the Board, on this 20th day of June 2012, hereby **ORDERS** that the Application for a new Retailer's Class CT License filed by All Souls, LLC, t/a All Souls, is **GRANTED**. Furthermore, under § 25-446 of the District of Columbia Official Code, the Board **APPROVES** the Voluntary Agreement, dated March 19, 2012, between the Applicant, Erica Hurtt, Peter Patel, and Bonnie Bogle. The Voluntary Agreement's terms are incorporated into this Order and are binding on the Applicant under § 25-446. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestants.

District of Columbia  
Alcoholic Beverage Control Board

  
Ruthanne Miller, Chairperson

  
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, Member

  
Calvin Nophlin, Member

  
Mike Silverstein, Member

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

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