

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

In the Matter of:)	
)	
Fikre Market, Inc.)	Order No.: 2010-343
t/a Capitol View Market)	Case Number: 09/075P
)	License Number: 76250
Application for a Substantial Change to Retailer's Class B License)	
)	
at premises)	
4920 Central Avenue, N.E.)	
Washington, D.C. 20019)	
)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member

ALSO PRESENT: Fikre Market, Inc., t/a Capitol View Market, Applicant

Mr. Khaliq Elhillali, on behalf of Advisory Neighborhood
Commission 7C

Dr. Victor Vandell, on behalf of Capitol View Civic Association and
Group of Five or More Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

Fikre Market, Inc., t/a Capitol View Market (Applicant), filed an Application for a Substantial Change to its Retailer's Class B License at premises 4920 Central Avenue, N.E., Washington, D.C. The Applicant seeks to extend its hours of operation from 6:00 a.m. until 12:00 a.m., seven days a week. The Application initially came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on October 13, 2009.

Protests against the application were timely filed by Advisory Neighborhood Commission (ANC) 7C by letter dated September 28, 2009; Capitol View Civic Association by letter received September 28, 2009; and a Group of Five or More Individuals by petition received by ABRA on September 28, 2009.

ANC 7C was dismissed at the Roll Call Hearing on October 13, 2009, because it failed to appear and was subsequently reinstated to the Protest by the Alcoholic Beverage Control Board (Board) on October 28, 2009, by Board Order No. 2009-251.

No Voluntary Agreement was reached between the Applicant and the Protestants before the Protest Hearing. The Application was heard at a Protest Hearing on April 14, 2010.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the request for a substantial change to the licensee's operations in order to allow for extended hours would adversely impact the peace, order, and quiet in the neighborhood and be a detriment to the community.

FINDINGS OF FACT

1. The Applicant is requesting a substantial change to his Retailer's Class B License. *ABRA Licensing File No. 076250*. Accordingly, the Applicant has requested that the Board approve his request to extend his hours of operation from 6 a.m. to 12 a.m., seven days a week. *ABRA Licensing File No. 076250*.

2. The Applicant's establishment is located at 4920 Central Avenue, N.E. *ABRA Licensing File No. 076250*. It is located within a R-5-A zone. *ABRA Exhibit No. 4*. The establishment is located between 49th Street, N.E., and Sycamore Road, N.E. *ABRA Exhibit No. 9*. The neighborhood is mostly residential but the establishment is located in a small shopping center along with a few other stores. *ABRA Exhibit No. 10-13*. There are no ABC licensed establishments within 1200 feet of the Applicant. *ABRA Exhibit No. 5*. Finally, there are no schools, recreation centers, public libraries or day care centers located within 400 feet of the establishment. *ABRA Exhibit No. 6*.

3. The Applicant's current hours of sale and service of alcohol are Sunday, 10 a.m. to 10 p.m., and Monday through Saturday, 9:00 a.m. to 10:00 p.m. *ABRA Licensing File No. 076250*.

4. In a letter, dated September 28, 2009, ANC 7C protested the Applicant's Application for extended hours because it would be a detriment to the community. *See ABRA Protest File 076250-09/075P*. In a letter received on September 28, 2009, the Capitol View Civic Association protested the Applicant's Substantial Change. *See ABRA Protest File 076250-09/075P*. Finally, Ronnie Streff, representing a Group of Five or More Individuals, submitted a petition to the Board on September 28, 2009, which claimed that approving the Application would encourage loitering and increase litter. *See ABRA Protest File 076250-09/075P*. Khaliq Elhillali, Chair of ANC 7C attended and participated

in the Protest Hearing on behalf of ANC 7C. *Transcript April 14, 2010 (hereinafter Tr. 4/14/10)* at 2. Dr. Victor Vandell, Vice President of the Capitol View Civic Association, attended and participated on behalf of the Capitol View Civic Association and the Group of Five or More Individuals. *Tr., 4/14/10* at 2.

5. The Board called ABRA Investigator Vincent Parker, who prepared the Protest Investigation Report in this matter, as its witness. *Tr., 4/14/10* at 6. He was assigned to conduct an investigation regarding the protest of the Applicant's Application for an extension of hours. *Tr., 4/14/10* at 7. He visited the establishment thirteen times from March 16, 2010, to March 30, 2010. *See ABRA Protest File 076250-09/075P*. Based on his investigation, he observed that the Applicant was a small grocery store located approximately three blocks from Kelly Miller Middle School. *Tr., 4/14/10* at 13. He stated that during his investigation he did not observe any ABC violations, criminal activity, fighting, loitering, or littering in or near the establishment. *Tr., 4/14/10* at 14. Investigator Parker stated that he occasionally saw children acting rowdy in the vicinity of the Applicant's establishment both before and after school. *Tr., 4/14/10* at 14. However, he stated that the noise was no louder than the street noise heard from East Capitol Street at various times during the day. *Tr., 4/14/10* at 14.

6. Investigator Parker stated that the Applicant's customers appeared to be orderly during his investigation. *Tr., 4/14/10* at 15. He noticed many children were consuming junk food. *Tr., 4/14/10* at 15. Further, he noted that many of the children who visited the Applicant's establishment were either going to or coming from Kelly Miller Middle School. *Tr., 4/14/10* at 15. Investigator Parker testified that he never observed any minor purchase or request alcohol. *Tr., 4/14/10* at 15.

7. During Investigator Parker's investigation, he never observed panhandling. *Tr., 4/14/10* at 15. Specifically, he stated that, during school days, children who congregated outside the establishment usually dispersed by 4:00 p.m. *Tr., 4/14/10* at 16. The largest crowd that he observed loitering near the Applicant's establishment occurred between 3:30 p.m. and 4:00 p.m. and consisted of approximately twenty-five school-age children. *Tr., 4/14/10* at 26. He also stated that some children did linger near the establishment after making a purchase but not for an extensive period of time. *Tr., 4/14/10* at 28. In addition, after 5:00 p.m., Investigator Parker testified that he frequently noticed older customers, who drove to the establishment, patronize the Applicant's establishment. *Tr., 4/14/10* at 27.

8. Investigator Parker also contacted the Metropolitan Police Department (MPD) and obtained a crime analysis for that area. *Tr., 4/14/10* at 16. MPD's report indicated that there were 47 calls for service made to 4920 Central Avenue, N.E., between January 1, 2010, and March 16, 2010. *Tr., 4/14/10* at 16. According to Investigator Parker, no call led to an ABRA violation. *Tr., 4/14/10* at 16.

9. Investigator Parker stated that the store's merchandise is enclosed in glass and customers must walk up to the glass and request the products they want at a small window in the front of the establishment. *Tr., 4/14/10* at 18-19. Customers have access to an ATM

Machine and a lottery self-pay machine outside the enclosed glass area. *Tr.*, 4/14/10 at 19. Investigator Parker noted that the store sold small canned goods. *Tr.*, 4/14/10 at 20. Investigator Parker testified that he witnessed customers purchase grocery items from the store. *Tr.*, 4/14/10 at 20. Investigator Parker believed that there were no grocery stores within walking distance of the Applicant's establishment. *Tr.*, 4/14/10 at 30. He observed that patrons mostly bought lottery tickets and occasionally alcohol, cigarettes, and groceries. *Tr.*, 4/14/10 at 35.

10. Investigator Parker testified that there are two gas stations four blocks from the Applicant's establishment on the corner of Benning Road and East Capitol Street. *Tr.*, 4/14/10 at 23. According to Investigator Parker, there did not appear to be any other convenience stores that served the neighborhood. *Tr.*, 4/14/10 at 23.

11. Investigator Parker testified that he drove down 49th Street and Central Avenue and did not observe a large amount of litter. *Tr.*, 4/14/10 at 29. He noted that there were no trash cans along Central Avenue and that the Applicant had a trash can and dumpster located in the rear of the store. *Tr.*, 4/14/10 at 37. Furthermore, Investigator Parker did not notice any parking issues. *Tr.*, 4/14/10 at 29.

12. Investigator Parker did not believe that the children loitering around the Applicant's establishment were the Applicant's children. *Tr.*, 4/14/10 at 31. Furthermore, Investigator Parker did not contact the parents of the children who he observed and he noted that Kelly Miller Middle School declined to comment about the Applicant or their students. *Tr.*, 4/14/10 at 31.

13. Dr. Vandell, the Vice-President of the Capitol View Civic Association, testified that his Protestant group opposed the extension of the Applicant's hours because it would negatively impact children and harm the quality of life in the neighborhood. *Tr.*, 4/14/10 at 39. He noted that the Applicant's establishment is located in a residential zone with many single family units, apartment homes, and a new senior citizen home. *Tr.*, 4/14/10 at 40.

14. Dr. Vandell testified that he believed the Applicant's establishment was unsightly because of the plexiglass. *Tr.*, 4/14/10 at 41. Dr. Vandell further testified that he was concerned about the 47 police calls to the Applicant's establishment. *Tr.*, 4/14/10 at 42. He argued that extending the hours would lead to more police calls to the establishment. *Tr.*, 4/14/10 at 42. Dr. Vandell stated that the Applicant was not willing to discuss the negative effects his establishment has on the community and was unwilling to enter into an agreement with his group regarding the operation of the establishment. *Tr.*, 4/14/10 at 43, 62-63. He also stated that the community often had to pick up litter left by the Applicant's customers. *Tr.*, 4/14/10 at 44. Finally, he stated that he was concerned that the Applicant's request would encourage further loitering. *Tr.*, 4/14/10 at 55.

15. Dr. Vandell was concerned about children obtaining access to candy and junk food before and after school if the Applicant's establishment had its hours extended. *Tr.*, 4/14/10 at 39, 41, 47. Dr. Vandell asserted that allowing children greater access to candy and junk food had a negative impact on the children and the neighborhood. *Tr.*, 4/14/10 at

39, 41. He further testified that he was most concerned about the Applicant opening earlier because it would give children access to junk food before school. *Tr.*, 4/14/10 at 53. He admitted that if the Applicant's request was not granted the children could buy candy at the gas stations nearby but contended that denying the Application would reduce access. *Tr.*, 4/14/10 at 58.

16. Dr. Vandell testified that his group was not against the Applicant selling alcohol within the confines of the law. *Tr.*, 4/14/10 at 51. He stated that he was unaware if the Applicant was in violation of District of Columbia law or ABRA regulations. *Tr.*, 4/14/10 at 65. Finally, Dr. Vandell testified that he would not object if the Applicant maintained the same hours that he does now. *Tr.*, 4/14/10 at 74.

17. Dr. Vandell stated that he wanted to see the owner do more to prevent loitering. *Tr.*, 4/14/10 at 67. For example, he would like to see the Applicant's employees leave the store and tell customers not to loiter outside the establishment. *Tr.*, 4/14/10 at 68-69. He stated that he never called the police himself in response to loitering at the Applicant's establishment but stated that the Applicant's employees did ask a neighbor, who was a police officer, to come over and disperse loiterers a number of times. *Tr.* 4/14/10 at 85, 86. He also testified that he wanted to see the owner place trash cans and signs urging customers to use the trash cans around the store. *Tr.*, 4/14/10 at 70. Finally, he also wanted the owner to reach out to the community to discover if there were any issues with litter and his establishment. *Tr.*, 4/14/10 at 71.

18. Dr. Collins testified that she is a resident of the District of Columbia and has lived in the area where the Applicant's establishment is located for approximately 64 years. *Tr.*, 4/14/10 at 87. She opposed the Applicant's request because she believed it would just exacerbate the current issues the community has with the Applicant's business. *Tr.*, 4/14/10 at 89. She stated that she lives 70 to 80 feet away from the establishment. *Tr.*, 4/14/10 at 88. She stated that on many occasions she has had to pick up trash all around her house. *Tr.*, 4/14/10 at 88. She did not believe there was a trash can in the front of the store and believed that if the Applicant placed one there, it would remedy some of the litter problem. *Tr.*, 4/14/10 at 90. Dr. Collins did not believe there were any public trash cans near the Applicant's store. *Tr.*, 4/14/10 at 91.

19. The Protestants also submitted a letter written by Ronnie Streff protesting the Applicant's Application for extended hours. *Tr.*, 4/14/10 at 94. Mr. Streff complained that the plexiglass utilized by the business was detrimental to the community and dissuaded people from patronizing the establishment. *See ABRA Protest File 076250-09/075P*. Mr. Streff asserted that Investigator Parker did not see much trash because the community cleaned it up. *See ABRA Protest File 076250-09/075*. Furthermore, Mr. Streff noted that Tony's Market, four blocks away from the Applicant, did sufficient business with its hours, 9:00 a.m. to 9:00 p.m., Monday through Saturday, and 9:00 a.m. to 8:00 p.m. on Sunday. *See ABRA Protest File 076250-09/075P*. Furthermore, he complained that loiterers, panhandlers, and bootleggers around the store were discouraging seniors from frequenting the area around the Applicant's store. *See ABRA Protest File 076250-09/075P*. He also

accused the establishment of opening early on March 22, 2010. *See ABRA Protest File 076250-09/075P.*

20. Mr. Khaliq Elhillali testified on behalf of ANC 7C. *Tr.*, 4/14/10 at 96. He stated that ANC 7C was concerned about the crime that occurred in the vicinity of the Applicant's establishment. *Tr.*, 4/14/10 at 96. He stated that children from the Kelly Miller Middle School were engaging in crimes and violence and stores, like the Applicant's, created places for the children and criminals to congregate. *Tr.*, 4/14/10 at 99. Mr. Elhillali stated that he opposed extending the Applicant's hours in the morning because of the children and in the evening because of the possibility of crime. *Tr.* 4/14/10 at 102-103. Mr. Elhillali could not point to any specific crime that occurred because of the Applicant's establishment. *Tr.*, 4/14/10 at 112. Finally, he testified that he was unaware if truant children were being served at the Applicant's establishment. *Tr.*, 4/14/10 at 108, 110.

21. Mr. Khaliq Elhillali stated that trash from the store was being seen two blocks away from the establishment. *Tr.*, 4/14/10 at 97. He also testified that he believed trash cans and signs would remedy the litter situation. *Tr.*, 4/14/10 at 109.

CONCLUSIONS OF LAW

22. Pursuant to D.C. Official Code § 25-313(a) (2009), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a substantial change to a liquor license is sought is appropriate for the neighborhood in which it is located. The Board concludes that the Applicant has demonstrated that the Application for an extension of hours, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

23. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. Here, ANC 7C, in a letter dated September 28, 2009, stated the ANC's view that extending the Applicant's hours would be a detriment to the community. Furthermore, during the hearing, Mr. Khaliq Elhillali testified that the ANC was concerned that if the Board accepted the Applicant's Application it would encourage crime and litter.

24. The Board is not convinced by the ANC's contention that approving the Applicant's Substantial Change will increase crime in the neighborhood. The Protestants have failed to demonstrate that there is any sort of nexus between the Applicant's establishment and crime in the neighborhood. According to Investigator Parker, the majority of the crowds outside the store disperse by 4:00 p.m. As a result, whether the Applicant closes at 9 p.m. or 12 p.m. it will have no impact on the crime situation in the neighborhoods surrounding the Applicant's establishment. The Board simply cannot accept mere speculation, as the Protestants urge, as a reason to reject the Applicant's Substantial Change.

25. On the other hand, the Board, like ANC 7C, is concerned about the Applicant's impact on litter in the community. As Mr. Elhillali testified, litter produced by the Applicant's customers is appearing in other areas of the neighborhood. Furthermore, Mr. Streff's letter stated that individuals in the community were cleaning up litter deposited on their property. In addition, Dr. Collins stated that she often found litter around her house. Nevertheless, the litter complained of by the Protestants, is likely caused by the lack of public trash cans in the neighborhood. As such, the Board believes that if the Applicant placed a trash can in front of his establishment and emptied it when it became full this would sufficiently remedy the litter issues raised during the Protest Hearing. As a result, this concern by ANC 7C alone is not sufficient to prove that granting the Application would have a detrimental impact on the community.

26. The Board will not address the Protestant's arguments about the Applicant selling candy and junk food to children because this issue is not within the purview of the Board under 23 DCMR § 400 (2004).

27. Furthermore, the Board is not convinced that the loitering observed outside the Applicant's establishment warrants Board action. The loitering outside the Applicant's establishment appears to be brief, lasting until 4:00 p.m. and consisting solely of children leaving the nearby middle school. As a result, the Protestants have not demonstrated how allowing the Applicant to open earlier or close later will result in more loitering or even that loitering is a serious problem in the vicinity of the establishment.

28. Pursuant to D.C. Official Code § 25-313(b)(2) and 23 DCMR § 400.1(a) the Board must determine whether the Application for extended hours of the Applicant's Retailer Class B License will have an adverse effect on the peace, order, and quiet of the neighborhood. The Board finds that based on the testimony of Dr. Vandell, Mr. Elhillali, Dr. Collins, Investigator Parker, and the Protestant's submissions that the extension of hours requested by Applicant, with the restrictions described below, will not adversely affect the peace, order, and quiet of the neighborhood or be a detriment to the community. Specifically, Investigator Parker's investigation did not reveal any negative impact that approving the Application would have on noise, crime, parking, property values, public drunkenness, or loitering. Furthermore, the littering issue raised by the Protestants is easily addressable without rejecting the Applicant's Application. As such, the Board finds that the Applicant's Substantial Change.

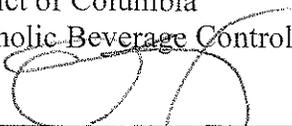
ORDER

Therefore, it is hereby ORDERED on this 19th day of May 2010, that the Application to extend the Applicant's hours of operation to 6 a.m. to 12 a.m., seven days a week, filed by Fikre Market, Inc., t/a Capitol View Market (Applicant), at premises 4920 Central Avenue, N.E., Washington, D.C., be and the same is hereby **GRANTED**;

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

1. The Applicant shall be required to place and maintain a garbage can in front of the establishment during his approved hours of operation. The Applicant shall be required to empty the trash can when it becomes full.

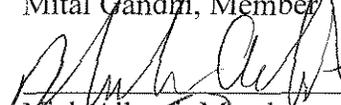
District of Columbia
Alcoholic Beverage Control Board



Charles Brodsky, Chairperson



Mital Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (April 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).