THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:		
Capitol Market, LLC t/a Capitol Market	Case No.: License No: Order No:	16-PRO-00016 091021 2016-480
Application for a Substantial Change to a Retailer's Class A License		
at premises 2501 N. Capitol Street, N.E. Washington, D.C. 20002		

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

ALSO PRESENT: Capitol Market, LLC, t/a Capitol Market, Applicant

Efrem Abraham and Mebrahtialen Gebrkidan on behalf of the Applicant

Laura Jackson, President, and Kirby Vining on behalf of the Stronghold Civic Association, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

The Alcoholic Beverage Control Board (Board) denies the Application for a Substantial Change to a Retailer's Class B License filed by Capitol Market, LLC, t/a Capitol Market, (hereinafter "Applicant" or "Capitol Market") to convert the license into a Retailer's Class A License because there is sufficient evidence that granting the request would further encourage loitering, public drinking, and public intoxication in the neighborhood. The Applicant is further advised that a settlement agreement is attached to the license, that it must a possess a copy of it

on the premises at all times, and that it must follow the settlement agreement at all times, or face a potential enforcement action. D.C. Official Code §§ 25-446, 25-711. The Board advises the Applicant that a copy of the agreement may be obtained from ABRA upon request if it does not have a copy of it in its possession. *In re Hyun Ok Kim, t/a Fairway Market*, Case No. 10049-02/0009P, Board Order No. 2002-103 (D.C.A.B.C.B. Jun. 19, 2002).

Procedural Background

The Notice of Public Hearing advertising Capitol Market's Application was posted on January 15, 2016, and informed the public that objections to the Application could be filed on or before March 21, 2016. *ABRA Protest File No. 16-PRO-00016*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 5E and the Stronghold Civic Association. *ABRA Protest File No. 16-PRO-00016*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on April 4, 2016, where all of the above-mentioned objectors were granted standing to protest the Application. On May 25, 2016, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on June 29, 2016.

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 Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Official Code §§ 1-309.10(d); 25-609. 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. Nevertheless, the ANC withdrew its protest; therefore, the ANC is no longer a party to this matter. *In re Capitol Market, LLC, t/a Capitol Market*, Case No. 16-PRO-00016, Board Order No. 2016-413, 1 (D.C.A.B.C.B. Jun. 29, 2016).

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016).

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. Capitol Market has submitted an Application for a Substantial Change to a Retailer's Class B License at 2501 N. Capitol Street, N.E., Washington, D.C., for the purpose of converting its license into a Retailer's Class A License so that it may sell spirits in addition to beer and

wine. *Notice of Public Hearing*. The Board notes that this business was issued a license in a residential zone in accordance with D.C. Official Code § 25-336.

II. ABRA Investigator Jason Peru

2. ABRA Investigator Jason Peru investigated the Application. The Applicant is located in a R3 residential zone and the neighborhood is exclusively residential. *Transcript* (*Tr.*), June 29, 2016 at 27, 35. No schools, libraries, or daycare centers are located within 400 feet of the establishment. *Id.*

3. ABRA monitored the establishment on eight occasions between May 31, 2016 and June 20, 2016. *Id.* at 27-28. During his visits, he did not observe trash or loitering. *Id.* at 31-32.

4. Investigator Peru discussed parking in the neighborhood. *Id.* at 28. Capitol Market is located near a Metrobus stop. *Id.* The store has no dedicated parking. *Id.* at 36. Residents with a Zone 5 parking permit may park on Channing Street, N.E., which also has two hour parking during the week. *Id.* There is on-street parking on North Capitol Street, N.E., after 6:00 p.m. during the week. *Id.* Investigators observed heavy traffic during their monitoring, but little pedestrian traffic. *Id.*

III. Mebrahtialen Gebrkidan

5. The ownership of Capitol Market gained control of the business in 2013. *Id.* at 40. They are applying for a Class A license because their customers want to buy liquor at the store. *Id.* The store currently sells groceries, beer, and wine. *Id.* at 46. The store also has trash pickup every Thursday and Friday. *Id.* at 51.

6. Mebrahtialen Gebrkidan indicated that the ownership would call the police when they witness people loitering nearby. *Id.* at 44. He indicated that the ownership has trouble controlling loitering because the premises have no security cameras, but indicated that they were willing to install them. *Id.*

IV. Laura Jackson

7. Laura Jackson serves as the President of the Stronghold Civic Association. *Id.* at 75. She has observed individuals drinking beer in the alley by the store on a regular basis. *Id.* at 107-08.

V. Jason Orfanon

8. Jason Orfanon lives on Bryant Street, N.E., and lives about one block away from the store. *Id.* at 127. His home is over a mile away from the nearest grocery store, post office, and pharmacy. *Id.* at 145. A community center is being built near Capitol Market and will be open in the near future. *Id.* at 146.

9. He has regularly observed people loiter outside the store, drink alcohol, smoke, and gamble. *Id.* at 129-130, 141. He has also observed individuals loitering outside, walk into the

store, and purchase single cans of beer. *Id.* at 129-30. Furthermore, he has observed that the neighborhood is often littered with empty beer cans, chip bags, and other empty snack packaging. *Id.* Mr. Orfanon is concerned that if the establishment is permitted to sell spirits, people will buy large bottles, share them, and get drunk faster. *Id.* at 144.

10. Mr. Orfanon has observed that Capitol Market has not complied with the Settlement Agreement attached to the license by not installing security cameras or complying with the prohibition against exterior advertisements. *Id.* at 133; *In re Hyun Ok Kim, t/a Fairway Market*, Case No. 10049-02/0009P, Board Order No. 2002-103, *Settlement Agreement*, §§ B, D (D.C.A.B.C.B. Jun. 19, 2002); *see also id.* at 171.

VI. Chris Leptak

11. Chris Leptak lives on Channing Place, N.E., on the same block as the store. *Tr.*, 6/29/16 at 147. The community where Capitol Market is located is highly residential, because it is located within an R-3 residential zone, and located across the street from an R-4 residential zone. *Id.* at 149.

12. Mr. Leptak frequently drives in the neighborhood. *Id.* at 155. He frequently observes Capitol Market's patrons double park around the store, which causes traffic congestion on North Capitol Street, N.E. *Id.* at 155-56. The store also does not have dedicated parking or loading zone. *Id.* at 156.

13. Mr. Leptak complained about the litter deposited by the store's patrons. *Id.* The store's patrons are dropping cigarette waste, trash bags, and snack packaging on the ground, which ends up in people's yards. *Id.*

14. Mr. Leptak also complained about people loitering near his house. *Id.* at 159. He has observed people get drunk and engage in fighting. *Id.*

VII. Kate Segarra

15. Kate Segarra lives on North Capitol Street, N.E., about one block from the store. *Id.* at 179. Ms. Segarra regularly finds beer cans, lotto tickets, candy wrappers and other snack packaging in her yard. *Id.* at 181, 183. She also observes many patrons leaving the store with single cans of beer and drinking outside the entrance and in the alleyways near the premises. *Id.* at 182-83, 185. She also experiences numerous catcalls when she passes the establishment. *Id.* at 183. She notes that there are no people loitering when the store is closed. *Id.* at 186.

16. Ms. Segarra has observed drivers drive the wrong way down the alley by her home with cans of open beer in the vehicle. *Id.* at 187.

VIII. Katherine Young

17. Katherine Young lives on Franklin Street, N.E., near the store. *Id.* at 190-91. She also has witnessed loitering in the neighborhood and indicates that she often faces catcalls when walking by people loitering. *Id.* at 192, 197.

CONCLUSIONS OF LAW

18. The Board may approve an Application for a Substantial Change to a Retailer's Class B License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016).

I. The Frequent Loitering and Public Drinking in the Neighborhood Merits the Denial of the Conversion Request.

19. The Board denies the Application because issuing a Class A license will only exacerbate existing issues regarding loitering and public drinking.

20. Under the appropriateness test, "the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . . ." D.C. Official Code § 25-311(a). The Board shall only rely on "reliable" and "probative evidence" and base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2016). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

21. In determining appropriateness, the Board must consider whether the applicant's future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the "District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986," Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); *see Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) ("However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725."). As part of its analysis, the Board should evaluate each "unique" location "according to the particular circumstances involved" and attempt to the determine the "prospective" effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant's efforts to mitigate or alleviate operational concerns, the "character of the neighborhood," the character of the establishment, and the license holder's future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee's "past and future efforts" to control

negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant's efforts to "alleviate" operational concerns); *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia's Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

22. "In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider "noise, rowdiness, loitering, litter, and criminal activity." 23 DCMR § 400.1(a) (West Supp. 2016).

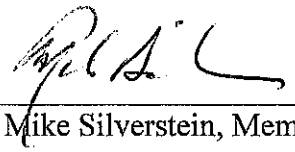
23. In *Good Hope Deli*, the Board denied an application by an Off-Premise Retailer's Class B License to convert its license into a Class A. *In re S&A Deli, Inc., t/a Good Hope Deli & Market*, Case No. 14-PRO-0074, Board Order No. 2015-062 (D.C.A.B.C.B. Mar. 4, 2015). In part, the decision was based on evidence that individuals were loitering and drinking near the establishment on a regular basis. *Id.* at ¶¶ 6, 17, 31.

24. In this case, Capitol Market seeks a Retailer's Class A License for the purpose of selling spirits, in addition to beer and wine that it already sells. *Supra*, at ¶ 1. The neighborhood is highly residential, the store itself is located in a residential zone, and the nearest commercial area is about a mile away. *Supra*, at ¶¶ 8, 11. Multiple witnesses complained about loitering and illegal public drinking, and showed that the store facilitates this antisocial behavior by acting as a source for alcohol. *Supra*, at ¶¶ 9, 14-15. Moreover, based on current activity in the neighborhood, the Board is persuaded that adding spirits, even if only sold in large containers, will encourage people further to drink alcohol in public and allow people drinking in public to become intoxicated faster. Thus, the Protestant has convinced the Board that adding spirits to the neighborhood would be a volatile mix and exacerbate existing issues.

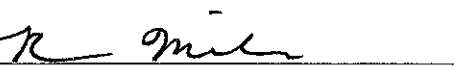
ORDER

Therefore, the Board, on this 10th day of August 2016, hereby **DENIES** the Application filed by Capitol Market, LLC, t/a Capitol Market. **IT IS FURTHER ORDERED** that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision. Finally, the Board **ADVISES** the Applicant that it is obligated to comply with its settlement agreement. If the Applicant requires a copy, it may request a copy from ABRA. The ABRA shall deliver a copy of this order to the parties.

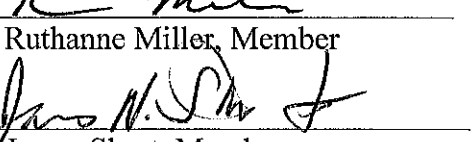
District of Columbia
Alcoholic Beverage Control Board



Mike Silverstein, Member

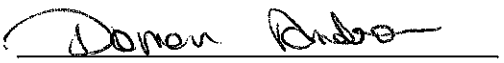


Ruthanne Miller, Member

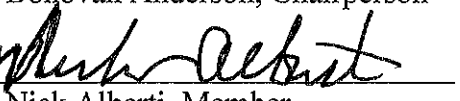


James Short, Member

I dissent from the position taken by the majority of the Board.



Donovan Anderson, Chairperson



Nick Alberti, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).