

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

_____)		
In the Matter of:)		
)		
Monroe Street Restaurant, Inc.)	License No.:	01855
t/a Colonel Brooks Tavern/Island Jim's)	Case No.:	10-PRO-00066
)	Order No.:	2010-582
Application to Renew a)		
Retailer's Class CR License)		
)		
at premises)		
901 Monroe Street, N.E.)		
Washington, D.C. 20017)		
_____)		

BEFORE: Nick Alberti, Acting Chairperson
 Donald Brooks, Member
 Herman Jones, Member
 Calvin Nophlin, Member

ALSO PRESENT: Jim Stiegman, on behalf of the Applicant

 Bennie Cass, Esq., on behalf of the Protestants

 Martha Jenkins, General Counsel
 Alcoholic Beverage Regulation Administration

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

Monroe Street Restaurant, Inc., t/a Colonel Brooks Tavern/Island Jim's (Licensee), filed an Application to renew its Retailer's Class CR License at premises 901 Monroe Street, N.E., Washington, D.C. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 14, 2010, and a Status Hearing on July 21, 2010.

On May 24, 2010, a protest against the Application was timely filed by A Group of Five or More Individuals represented by Brenda Monique White and Curtis Knight (Protestants). The Protestants were granted standing at the Roll Call Hearing.

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the renewal of the license will adversely impact the peace, order, and quiet of the neighborhood and whether residential parking and vehicular and pedestrian safety will be adversely impacted.

No Voluntary Agreement was reached between the Applicant and the Protestants prior to the Protest Hearing and thus the matter was heard by the Board at a Protest Hearing on September 15, 2010.

At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, the parties' Proposed Findings of Facts and Conclusions of Law, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Licensee seeks to renew its Retailer's Class CR License. *See ABRA Licensing File No. 01855, ABRA Protest Report, Case Report No. 10-CMP-00066.*
2. The Licensee's establishment is located at 901 Monroe Street, N.E. *ABRA Licensing File No. 01855.* It is located within a C1 zone in an area of the District of Columbia known as Brookland. *ABRA Protest Report, Case Report No. 10-CMP-00066.* There are two licensed ABC licensed establishments within 1,200 feet of the Applicant: Bobby's Q (Retailer's Class CR) and The Library Saloon (Retailer's Class CT). *ABRA Protest Report, Case Report No. 10-CMP-00066.*
3. By petition, a Group of Five or More Individuals protested the Application to renew the Retailer's Class CR License. *See ABRA Protest File 10-PRO-00101.* The Protestants claimed that granting the renewal of the license would be detrimental to peace, order, and quiet in the neighborhood, and it would adversely affect the residential parking and vehicular and pedestrian safety. *See ABRA Protest File 10-PRO-00101.* Mr. Bernie Cass, Esq. represented the Protestants and Mr. Jim Stiegman represented the Licensee.
4. The Board called ABRA Investigator Ileana Corrales to testify. *Tr., 9/15/10 at 19.* She interviewed the Protestants who indicated that their concerns with the renewal of the license was the result of noisy patrons in the rear parking lot. *Tr., 9/15/10 at 19.* There was also a concern regarding the limited parking for area residents. *Tr., 9/15/10 at 22.*
5. Investigator Corrales testified that the establishment is a two story, medium sized restaurant located within a C-1 zone in the Brooklyn neighborhood. *Tr., 9/15/10 at 22, 39.* The Licensee informed Investigator Corrales that he has owned the restaurant for 30 years and that he has always been in compliance with ABC laws and regulations. *Tr., 9/15/10 at 23.*
6. With regard to parking, Investigator Corrales testified that there are two parking lots for the establishment's patrons. *Tr., 9/15/10 at 23.* There is a large lot behind the restaurant that has

approximately 45 parking spaces and a second lot at the end of the block that has eight parking spaces. *Tr.*, 9/15/10 at 23, 25-26, 37. There is also two hour metered street parking available. *Tr.*, 9/15/10 at 37-38, 46. The establishment is also located across the street from the Metro which provides public transportation. *Tr.*, 9/15/10 at 42.

7. With regard to noise, Investigator Corrales stated that the Applicant tends to serve a mature crowd aged 30 and older and that his business relies heavily on food sales more than alcohol sales, so rowdy patrons are not a concern. *Tr.*, 9/15/10 at 24.

8. Investigator Corrales testified that ABRA investigators visited the establishment unannounced at various times during the day on 13 separate occasions from July 22, 2010, to August 29, 2010. *Tr.*, 9/15/10 at 24-27; *ABRA Protest Report No. 10-PRO-00110*. During these visits, investigators did not notice trash, noise, or litter. *Tr.*, 9/15/10 at 24, 26, 44. The dumpster located behind the establishment was policed well. *Tr.*, 9/15/10 at 44-45. She further noted that there was no noise emanating from the establishment nor were there any noisy patrons loitering outside the establishment. *Tr.*, 9/15/10 at 24, 26, 44. The visits revealed that parking was available at several locations. *Tr.*, 9/15/10 at 24, 28-29.

9. Investigator Corrales described the interior of the restaurant. *Tr.*, 9/15/10 at 31. She stated that it has a bar with approximately 19 bar stools and booths are located in the main dining area. *Tr.*, 9/15/10 at 31. There is also a smaller dining area with 30 seats. *Tr.*, 9/15/10 at 32. There is also a larger dining area beyond the bar called Island Jim's, which is used for private parties. *Tr.*, 9/15/10 at 33. Finally, there is a summer garden that has 64 seats. *Tr.*, 9/15/10 at 33. The establishment also has an Entertainment Endorsement on its license that permits the use of DJs. *Tr.*, 9/15/10 at 34. Entertainment is only permitted on Tuesdays, Wednesdays and Saturdays, but the establishment does not always have entertainment on those nights. *Tr.*, 9/15/10 at 35-36.

10. The Licensee presented no witnesses but Mr. Steigman presented his own testimony, subject to cross-examination for the record. *Tr.*, 9/15/10 at 51-112. Mr. Steigman stated that in addition to the older, mature crowd, the establishment is located within a couple of blocks from Catholic University and there is a younger crowd that frequents the business too. *Tr.*, 9/15/10 at 53. He also testified that they do not offer entertainment. *Tr.*, 9/15/10 at 53. The establishment does have an Entertainment Endorsement, but the band that used to play on Tuesday nights, has since disbanded and has not played at the establishment since January 2010. *Tr.*, 9/15/10 at 53. Additionally, Mr. Steigman canceled his \$1,000 annual ASCAP and VMI licenses in February and disconnected the speakers. *Tr.*, 9/15/10 at 53, 55, 76. Mr. Steigman has no intention of having entertainment in the future. *Tr.*, 9/15/10 at 72.

11. Mr. Steigman testified that Island Jim's was a stand-alone restaurant with its own kitchen, bar and menu but that it operated under the same license as Colonel Brooks. *Tr.*, 9/15/10 at 72. He further testified that there has been no entertainment at Island Jim's since the summer of 2006 and that in December 2006, Island Jim's closed as a free-standing restaurant. *Tr.*, 9/15/10 at 54, 73. The seating at Island Jim's is now used as auxiliary seating for the

establishment. *Tr.*, 9/15/10 at 54. It is used primarily on nice weather days because the outside seating supports six to ten tables. *Tr.*, 9/15/10 at 75. There is no music offered outside anymore. *Tr.*, 9/15/10 at 76. Mr. Steigman discourages patrons from smoking out front on the sidewalk by designating an area on the patio for smokers. *Tr.*, 9/15/10 at 77-78.

12. With regard to parking, Mr. Steigman testified that by 7:30 a.m., most of the parking area in the neighborhood is full. *Tr.*, 9/15/10 at 61. The parking is utilized by working people from other neighborhoods in Ward 5 who drive to the metro station. *Tr.*, 9/15/10 at 61, 66. Mr. Steigman stated that by 6:00 p.m., at the end of the working day, these same cars are gone and so there are no parking issues in the neighborhood in the evenings. *Tr.*, 9/15/10 at 61. Mr. Steigman clarified that he was not suggesting that customers do not park in the street, but it is very unlikely that they would park around the corner in the residential neighborhood. *Tr.*, 9/15/10 at 62-63.

13. With regard to trash, litter and the dumpster, Mr. Steigman testified that his trash is not picked up at 3:30 a.m. *Tr.*, at 9/15/10 at 68. He uses a company by the name of Consolidated Waste Industries whose employees don't go to work until between 5:30 a.m. and 6:00 a.m. *Tr.*, 9/15/10 at 68, 81, 149. Mr. Steigman's own waste truck driver does not get to the establishment until between 9:30 a.m. and 10:00 a.m. *Tr.*, 9/15/10 at 68. The trash truck drives into the parking lot and unloads the dumpsters two days a week, Tuesdays and Thursdays at around 9:30 a.m. *Tr.*, 9/15/10 at 80. Mr. Steigman uses two dumpsters; one is for recycling and the other is for compacting trash and waste. *Tr.*, 9/15/10 at 80, 104. Mr. Steigman is willing to have the dumpsters unloaded no earlier than 7:00 a.m. and no later than 9:00 p.m. *Tr.*, 9/15/10 at 102.

14. Mr. Steigman further testified that although a patron may drop litter on the street, the establishment is not a carry-out restaurant and they do not use paper products or serve beer in bottles or cans. *Tr.*, 9/15/10 at 69-70, 79. The establishment's property is fenced and the dumpster sits at the back of the lot and is surrounded by a building and the six foot fence. *Tr.*, 9/15/10 at 69. Mr. Steigman stated that he does a very good job of taking care of the property and has devoted a lot of effort and energy into landscaping and flowers. *Tr.*, 9/15/10 at 69-70.

15. Mr. Steigman does not believe the establishment impacts the peace, order, and quiet of the neighborhood because the public alley complained of by the Protestants does not abut the establishment's property. *Tr.*, 9/15/10 at 71. A fence separates the property from the alley. *Tr.*, 9/15/10 at 71.

16. The establishment is not open for breakfast but staff starts to arrive in the morning and they all park in the parking lot. *Tr.*, 9/15/10 at 81-82. Deliveries of food, wine, and beer arrive between 7:30 a.m. and 11:00 a.m. *Tr.*, 9/15/10 at 82. Tuesdays and Thursdays are the busiest days for bulk receipts of goods. *Tr.*, 9/15/10 at 82-83. Fresh produce is delivered daily between 8:00 a.m. and 9:00 a.m. and the fish deliveries are between 7:30 a.m. and 8:00 a.m. *Tr.*, 9/15/10 at 83. The delivery trucks also utilize the parking lot for off-loading. *Tr.*, 9/15/10 at 83. It would be very inconvenient for Mr. Steigman if the Board were to require that the restaurant could not receive or accept deliveries until after 9:00 a.m. *Tr.*, 9/15/10 at 85.

17. Mr. Steigman testified that he infrequently attends Advisory Neighborhood Commission (ANC) or other community meetings. *Tr.*, 9/15/10 at 86. But he knows some of his neighbors well because they are customers of the restaurant. *Tr.*, 9/15/10 at 87. He allows students from the computer training center located across the street to use his parking lot until 11:00 a.m. *Tr.*, 9/15/10 at 88. He contributes dinners and donates to organizations around the community. *Tr.*, 9/15/10 at 88-89. Mr. Steigman lives in Adams Morgan and has been active in the city since 1974. *Tr.*, 9/15/10 at 89. He has never received any noise complaints from the residents. *Tr.*, 9/15/10 at 99. The Metropolitan Police Department (MPD) has been called to the establishment to address thefts from autos and to ensure that a barred patron would not re-enter the restaurant. *Tr.*, 9/15/10 at 100. The calls to MPD have come from management and not area residents. *Tr.*, 9/15/10 at 101. Additionally, the Licensee has never been cited by the D.C. Department of Health or investigated by any D.C. agency. *Tr.*, 9/15/10 at 111-112.

18. Mr. Steigman testified that he contracts with Valley Proteins to handle the disposal of the restaurant's oil and grease. *Tr.*, 9/15/10 at 107. Valley Proteins provides the restaurant with a large vat which is well maintained and emptied quarterly throughout the year. *Tr.*, 9/15/10 at 107-108, 110. There is no leakage from the vat. *Tr.*, 9/15/10 at 108. The establishment uses a sump pump to drain rain water out of the parking lot which then runs into a storm sewer at the corner of the street. *Tr.*, 9/15/10 at 108-109.

19. The Protestants called Mrs. Mary E. Franklin-Knight to testify regarding the residential area surrounding the restaurant. *Tr.*, 9/15/10 at 115-121. Ms. Knight stated that she has never complained to the licensee or called MPD, but rather she "just dealt with it" and prayed that the noise would end. *Tr.*, 9/15/10 at 122-123. She indicated that she did however, report the noise concerns to her ANC Commissioner, Carolyn Steptoe. *Tr.*, 9/15/10 at 123. She also accompanied her husband 20 years earlier to file a complaint about departing patrons urinating on their way home. *Tr.*, 9/15/10 at 124-125.

20. The Protestants then called Dallas Wilson to testify. *Tr.*, 9/15/10 at 126. Mr. Wilson indicated that he resides at 346 10th Street, N.E. *Tr.*, 9/15/10 at 127. He testified that he has not experienced any noise concerns regarding the Licensee's dumpster since the neighbors filed the protest against the renewal of the ABC license. *Tr.*, 9/15/10 at 127, 137-138. He stated that within the six months preceding the protest hearing, the dumpster was being emptied at 3:00 a.m. or 4:00 a.m. by Waste Management. *Tr.*, 9/15/10 at 128-129, 137-138. Under further examination, Mr. Wilson admitted that the early morning trash collection was coming from St. Anthony's/All Saints Catholic Church across from his house and not Mr. Steigman's property. *Tr.*, 9/15/10 at 129-130, 137.

21. Mr. Wilson testified that a six foot fence separates the restaurant's property from his property. *Tr.*, 9/15/10 at 130. He stated that one early Sunday morning, a party was held at 906 Monroe Street N. E., and he witnessed two people climbing over the fence into his neighbor's yard. *Tr.*, 9/15/10 at 131, 139. Mr. Wilson indicated that he was not sure the two fence climbers were coming from the restaurant, but they were coming over the fence from the restaurant's

property. *Tr.*, 9/15/10 at 131-132, 139, 143-146. Mr. Wilson further testified that he has seen trash and litter but is uncertain from where it comes. *Tr.*, 9/15/10 at 132-133. He stated that his complaint with regard to the establishment lies more with the noise than the trash. *Tr.*, 9/15/10 at 136-137, 148.

22. In closing, the Protestants requested that the Board require the Licensee to conspicuously post signage to remind staff and patrons to consider neighborhood parking needs and to monitor the parking behavior and to utilize and maintain high intensity flood lights on the exterior of the premises so as to fully light any abutting alleyway from dusk to dawn. *Tr.*, 9/15/10 at 158. The Protestants submitted a proposed Voluntary Agreement and a proposed Order into the record following the conclusion of the Protest Hearing. *ABRA Protest File No. 10-CMP-00066*.

CONCLUSIONS OF LAW

23. Pursuant to D.C. Official Code § 25-313(a), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an ABC license is sought is appropriate for the neighborhood in which it will be located. Under D.C. Official Code § 25-313, to qualify for the issuance, renewal, transfer of a license to a new location, or approval of a substantial change in operation as determined by the Board, an applicant shall demonstrate that the establishment is appropriate for the area where it will be located. In making its determination, the Board shall consider all relevant evidence, including the effect of the establishment on peace, order, and quiet, noise, and parking and pedestrian safety. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the Protest Hearing, the Board concludes that the Applicant has demonstrated that the renewal of the Retailer's Class "CR" License is appropriate for the area in which the establishment is located.

24. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (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, ANC 5A did not file a protest or a resolution.

25. The Board's finding that the renewal of the license will not affect peace, order, and quiet of the neighborhood is underscored by the testimony of the Board's witness, Investigator Corrales and the testimony of the Licensee. There was ample testimony from Investigator Corrales that during the 13 separate monitoring visits made to the establishment by ABRA investigators, there was never any observation of trash, noise or litter. Additionally, the Licensee testified that he has owned the establishment for 30 years and has always been in compliance with the laws and regulations that govern licensed establishments.

26. Specifically, with regard to the issue of residential parking, the Board must determine whether renewing the Applicant's CR License will have an adverse effect on residential parking

needs pursuant to D.C. Official Code § 25-313(b)(3). The Board is not convinced by the Protestants' arguments that the establishment itself contributes to the neighborhood parking problems. On the contrary, the Board is convinced that the presence of the metro station across the street from the restaurant limits the availability of parking on the public streets from those District residents who drive to the metro station. However, Investigator Corrales testified that metered street parking is just one of the parking options available to patrons. Her testimony and that of the Licensee indicate that there are two parking lots available for use by the restaurant's customers. One of the parking lots has 45 parking stalls and the second one has eight stalls.

27. In addition, while residential parking was raised as one of the appropriateness standards for the Board's consideration in granting the renewal application, neither of the Protestants' witnesses expressed concern with the parking situation. It appears to the Board that due to the dearth of testimony from the Protestant's witnesses on this issue that the witnesses either did not view parking as an issue or could not attribute it to the establishment. As a result, the Board finds that granting the renewal of the license will not have an adverse effect on residential parking.

28. The Board is not persuaded by the Protestants' contention that approving the renewal of the license creates or exacerbates noise problems. As noted above, during Investigator Corrales' visits, there was no noise emanating from the establishment nor were there any noisy patrons loitering outside the restaurant. The Licensee testified that though he has Board approval to provide entertainment, he does not provide it and has not since the beginning of the year. Moreover, he testified that he has disconnected his outside speakers and has canceled his ASCAP and VMI licenses so he can no longer provide music.

29. Additionally, the Board gives no credibility to the noise concerns raised by the Protestants' witnesses. Ms. Knight testified that she had not taken her concerns to the Licensee or to MPD but rather addressed them with her ANC Commissioner. Mr. Wilson admitted that the noise from the early morning unloading of the dumpster was attributable to the Catholic Church across the street from his house and not the Licensee. Testimony bore out that the trash haul company witnessed by Mr. Wilson is Waste Management and the company used by the Licensee is Consolidated Waste Industries. Lastly, the Licensee is agreeable to having his trash picked up no earlier than 7:00 a.m., which is his current practice.


30. With regard to trash and litter, the Board finds Investigator Corrales' testimony credible that she did not observe any litter problems during her monitoring periods. Mr. Wilson testified that he has witnessed trash and litter but is not certain it is attributable to the Licensee.

31. Accordingly, the Board finds that the Licensee has demonstrated that the renewal Application for a Retailer's Class CR License is appropriate for the location and does not adversely impact the peace, order, and quiet of the neighborhood, residential parking, or pedestrian or vehicular safety.

ORDER

Therefore, this 1st day of December 2010, it is hereby **ORDERED** that the Application to Renew the Retailer's Class CR license requested by Monroe Street Restaurant, Inc., t/a Colonel Brooks Tavern/Island Jim, at premises 901 Monroe Street, N.E., Washington, D.C., is hereby **GRANTED**. Copies of this order shall be sent to the Licensee and the Protestants.

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Acting Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, 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. 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).