

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

In the Matter of:)		
)	Case No.:	14-PRO-0074
S&A Deli, Inc.)	License No:	ABRA-93974
t/a Good Hope Deli & Market)	Order No:	2015-062
)		
Application for a Substantial Change to)		
Retailer's Class B License)		
)		
at premises)		
1736 Good Hope Road, SE)		
Washington, D.C. 20020)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: S&A Deli, Inc., t/a Good Hope Deli & Market, Applicant

Kevin Lee, Esq., on behalf of the Applicant

Barbara Clark, Advisory Neighborhood Commission (ANC) 8A,
Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) finds that the Application for a Substantial Change to a Retailer's Class A License filed by S&A Deli, Inc. t/a Good Hope Deli & Market, (hereinafter "Applicant" or "Good Hope & Deli Market") is inappropriate for the neighborhood due to the unacceptable level of crime, disorder, and other antisocial behavior occurring in the community, which makes adding additional alcohol privileges in the neighborhood inappropriate. Consequently, the Board denies the Application.

Procedural Background

The Notice of Public Hearing advertising Good Hope Deli & Market's Application was posted on August 15, 2014, and informed the public that objections to the Application could be filed on or before September 29, 2014. *ABRA Protest File No. 14-PRO-0074*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received a timely filed protest letter from the ANC 8A. *ABRA Protest File No. 14-PRO-0074*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 14, 2014, where the above-mentioned objectors were granted standing to protest the Application. On November 5, 2014, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 10, 2014.

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. Code §§ 1-309.10(d); 25-609 (West Supp. 2014). 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. The Board notes that it received a written recommendation from ANC 8A. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

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. 2014).

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. Testimony of ABRA Investigator Kofi Apraku

1. ABRA Investigator Kofi Apraku investigated the Application and prepared the Protest Report submitted to the Board. *Tr.* 12/10/14 at 105; *ABRA Protest File No. 14-PRO-0074, Protest Report [Protest Report]*. The protest was filed on the basis of peace, order and quiet; pedestrian and vehicle safety; and parking and real property values. *Transcript [Tr.] 12/10/14* at 106.
2. The proposed establishment is located in a C-2-A zone. *Protest Report*, at 1. C-2-A zones permit matter-of-right low density development, including office employment centers, shopping centers, medium-bulk mixed use centers, and housing to a maximum lot occupancy of 60% for residential use and 100% for all other uses, a maximum FAR of 2.5 for residential use and 1.5 FAR for other permitted uses, and a maximum height of fifty (50) feet. *Id.* at 2.
3. ABRA personnel monitored Good Hope Deli & Market on nine separate occasions from November 13, 2014 to December 1, 2014. *Tr.*, at 108-09. During the course of monitoring the establishment, ABRA investigators did not observe any loitering, criminal activity, or excessive trash. *Id.* at 109. Further, there were no noise issues related to the establishment identified during the protest period. *Id.* The establishment has no violations listed in its investigative history. *Id.*
4. According to the public notice, Good Hope Deli and Market's current hours of operation are as follows: 7:00 a.m. to 10:00 p.m., Sunday through Saturday. *Protest Report*, at 3; *See also Notice of Public Hearing.*

II. Testimony of Reverend Thompson

5. Reverend Wanda Thompson is the Pastor of the Ambassador Baptist Church located at 1412 Minnesota Avenue, SE. *Id.* at 19, 31. She is concerned with the wide availability of liquor stores in the neighborhood as well as the proximity of the establishment to a community school and library. *Id.* at 22.
6. More specifically, Reverend Thompson has observed loitering around the establishment and has seen the after-effects of such behavior in the neighborhood. *Id.* at 36. As an example, Rev. Thompson offered assistance to a young lady who was staggering across the street who appeared to be under the influence of alcohol. *Id.* at 37. The young lady vomited directly in front of Reverend Thompson's church. *Id.*

III. Testimony of Lieutenant Craig Royal

7. Lieutenant Craig Royal, of the Metropolitan Police Department (MPD), is in charge of Police Service Area (PSA) 701, the geographic area within which this establishment is located. *Tr.*, at 39. In the surrounding neighborhood of the establishment, there is a methadone clinic that is in the 1300 Block of Good Hope Road, as well as a myriad of services to help the under-privileged such as So Others Might Eat. *Id.* at 64. Additionally, there is Court Supervision for Released Individuals (CSOSA) located at 14th and Good Hope Road, about two blocks away

from the establishment. *Id.* at 99-100. CSOSA is a program where offenders are released based upon their compliance with certain conditions such as negative drug and alcohol testing. *Id.* at 99-100.

8. MPD has instituted a “Safe Passages” program which is a way that provides a safe journey for children traveling to and from school. *Id.* at 41. One location that has been noted as a problem area is near the library at 18th and Good Hope Road. *Id.* at 41-42. To monitor activity in this area, the program deploys MPD officers as well as the School Security Division personnel to ensure the children’s safety. *Id.*

9. The community library is located directly across the street from Anacostia High School. *Id.* at 60. Within three blocks nearby, there is an elementary school. *Id.* at 61.

10. The issues that MPD currently faces in this area is use of force, which means that officers have to use actual force in making apprehensions of suspects. *Id.* Lieutenant Royal has personally done two uses of force in this neighborhood while on duty. *Id.*

11. One recent incident occurred involving the 6th and 7th District police officers as well as the school resources officers. *Id.* There was a large fight that included children from the local schools. *Id.* at 62.

12. Lieutenant Royal has reviewed a total of 47 calls for service at this establishment’s location. *Id.* at 77. The nature of these calls vary between criminal reports of assault, theft, and calls made by the Applicant when danger was perceived. *Id.* at 77-80.

IV. Testimony of Deborah Akwei

13. Deborah Akwei testified on behalf of the Protestant. *Id.* at 253-73. Ms. Akwei resides in the closest residential property to the Applicant’s establishment. *Id.* at 254. Ms. Akwei firmly believes that the community does not need another Class A retailer. *Id.* at 260-65.

V. Testimony of Commissioner Barbara Clark

14. Commissioner Barbara Clark is the Chair of ANC 8A and 8A02, the geographic jurisdiction within which Good Hope Deli is located. *Id.* at 275.

15. There is another Class A liquor store within one block of Good Hope Deli. *Id.* at 277.

VI. Testimony of Commissioner Greta Fuller

16. Commissioner Greta Fuller is a Commissioner for ANC 8A06 and also a resident of Ward 8. *Id.* at 309.

17. Commissioner Fuller is concerned with the loitering that takes place in front of the establishment as well as the surrounding neighborhood. *Id.* at 322. She is also concerned that another Class A license will encourage people to purchase alcohol. *Id.* at 310-11. She believes

that this increased availability of alcohol will further disturb common public areas of the neighborhood such as the community park, where many people frequently use drugs and alcohol. *Id.*

VII. Testimony of Commissioner Graylin Presbury

18. Graylin Presbury testified on behalf of the Protestant. *Id.* at 332. Mr. Presbury is a resident of Ward 8 and is the President of the Fairlawn Citizens Association. *Id.* at 332-33. Mr. Presbury agrees with the testimony provided by the Protestants.

VIII. Testimony of Seres Snyder

19. Ms. Seres Snyder is the owner of Good Hope Deli & Market. *Id.* at 126. This establishment has been operating for the past eight years. *Id.* at 143.

20. Upon receipt of the Retailers Class A License, the establishment plans to transform the current empty space into a liquor only sales area. *Id.* at 132. No one under the age of 21 nor visibly intoxicated patrons will be permitted to enter this area. *Id.* at 132-33.

21. The establishment has three visible “No Loitering” signs inside and outside of the establishment. *Id.* at 129.

22. Since first obtaining a Retailers Class B license, Good Hope Deli & Market changed its security system. *Id.* at 130. The establishment now has two cameras outside, one showing the parking lot and the other showing the street. *Id.* at 130.

IX. Testimony of Eugene Howard

23. Mr. Eugene Howard testified on behalf of the Applicant. *Id.* at 172-200. He is a resident within the surrounding community of the establishment. *Id.* at 172. He has resided in this location for about five years. *Id.* at 172-73.

24. During the time that Mr. Howard has lived near the establishment, he has not observed any loitering or panhandling in front of the establishment. *Id.* at 174. He also has not observed any children drinking alcohol around the establishment. *Id.* Additionally, he has not seen people drinking from open containers. *Id.* He has seen some arguing between children back and forth, but no violent criminal activity. *Id.* at 175.

X. Testimony of Thomas Kennerly

25. Thomas Kennerly testified on behalf of the Applicant. *Id.* at 202-27. He has resided in the community surrounding Good Hope Deli & Market for 12 years. *Id.* at 204. His home is located around the corner from the establishment. *Id.*

26. Mr. Kennerly is a former business owner of Alabama Convenience [located at 2209 Alabama Ave., Washington, D.C. 20020], a store similar to Good hope Deli & Market. *Id.* at

207. Mr. Kennerly is aware that the Applicant typically only allows three children in the store at one time, a practice that he observed while in business. *Id.*

CONCLUSIONS OF LAW

27. 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. 2014). 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. 2014).

28. The appropriateness test has never been limited to mere compliance with the law. *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.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,¹ the “character of the neighborhood,”² the character of the establishment,³ and the license holder’s future plans.⁴ Thus, the appropriate test seeks to determine whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. 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).

I. THE APPLICATION IS INAPPROPRIATE FOR THE NEIGHBORHOOD WHERE AN ADDITIONAL RETAILER’S CLASS A ESTABLISHMENT WILL BE DISRUPTIVE TO THE NEIGHBORING COMMUNITY.

29. The Board finds that the application filed by Good Hope Deli & Market is inappropriate for the neighborhood due to the adverse effects that adding an additional Class A establishment

¹ *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).

² *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

³ *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, 801 (D.C. 1970).

⁴ *Sophia's Inc.*, 268 A.2d at 800.

will have on the neighboring community. 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. 2014).

30. “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. 2014).

31. In this case, the character of the neighborhood can only be described as a hotspot for crime and disorder, which merits denial of the Application. The presence of Anacostia High School, an elementary school, a library, and various social services ensures the regular presence of children and people seeking assistance from social services. *Supra*, at ¶¶ 5, 7-9. As reported by the witnesses, there are frequent incidents of crime, violence, and other types of antisocial behavior that regularly require the use of force by MPD. *Supra*, at ¶¶ 6-7, 10-12. Indeed, even the local park has become a destination for drug and alcohol use. *Supra*, at ¶ 17. In fact, the MPD believes that crime and disorder in this neighborhood are so bad that it has established a “safe passages” program with the goal of protecting children on their way to and from school. *Supra*, at ¶ 8. Under these circumstances, the Board is not going to add to the neighborhood’s litany of woes by granting additional liquor selling privileges, which will simply encourage additional crime, loitering, and public drinking. Therefore, the Board finds that the Applicant failed to meet its burden of proof under D.C. Official Code § 313(b)(2).

II. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 8A’S ISSUES AND CONCERNS.

32. ANC 8A’s written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Good Hope Deli Market’s impact on peace, order, and quiet; residential parking and safety; and real property values. *ABRA Protest File No. 14-PRO-0074*, Letter from Barbara Clark, Chair, ANC 8A, to Ruthanne Miller, Chair, Alcoholic Beverage Control Board (Sep. 28, 2014) [*ANC Protest Letter*]. More specifically, in its letter, the ANC expressed the concern that another Class A establishment would disturb the peace, quiet and order of the neighborhood, promote noise and litter, decrease pedestrian safety and parking, decrease property value and create an overconcentration of liquor stores in the community. The ANC also highlighted that within four-hundred feet of the establishment, there is a community library, senior citizens’ residential community, two mental health facilities and another liquor store. *Id.* The Board notes that it specifically addressed these concerns in Paragraphs 27 through 31 of this Order.

III. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

33. Finally, 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. 2014). Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

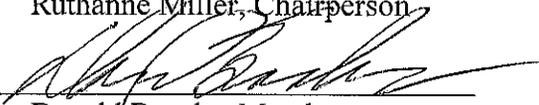
Therefore, the Board, on this 4th day of March 2015, hereby **DENIES** the Application for a Substantial Change to Retailers’ Class A License at 1736 Good Hope Road, SE filed by S&A Deli, Inc. t/a Good Hope Deli & Market.

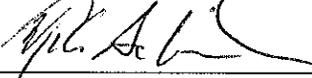
IT IS FURTHER ORDERED that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

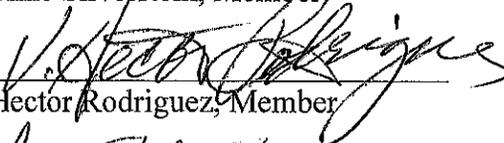
The ABRA shall deliver a copy of this order to the Applicant and ANC 8A.

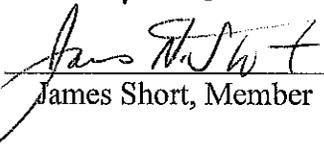
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Donald Brooks, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

I dissent from the majority opinion of the Board to deny the Application for a Substantial Change to Retailers' Class A License at 1736 Good Hope Road, SE filed by S&A Deli, Inc. t/a Good Hope Deli & Market. I credit the Applicant's testimony supporting her claim that she has been a responsible operator of a Class B license. *Supra*, at ¶¶ 19-22. The Applicant provided credible testimony about the successful steps she has taken to prevent her current operation as a Class B licensed establishment from interfering with the peace, order and quiet of the area. The Protestants did not dispute that testimony. The Applicant also testified to constructive steps she would take to prevent negative effects to peace, order and quite if she were granted Class A license for Good Hope Deli & Market. *Supra*, at ¶ 20.

The Protestants provided no compelling testimony to support their claims that the operation of a Class A license for Good Hope Deli & Market, in lieu of a Class B license will interfere with the peace order and quiet or the area. Nor did the Protestants show that it will have a negative effect on parking, vehicular and pedestrian safety or surrounding property values. The Protestants' entire case rests on what they perceive to be the negative effects of alcohol consumption on the broader community. The Protestants testified that they often observed persons consuming alcohol in public in the neighborhood parks and throughout the community, and frequently observed intoxicated persons, but failed to provide evidence that such behavior is linked to the current operations Good Hope Deli & Market. The Protestants also noted the existence of schools, a library and organizations that provide social services in the surrounding community but failed to demonstrate how granting a Class A license to the Applicant would impact the school students and clients of the surrounding social services. The Protestants did not offer any testimony from school or library administrators, or persons with direct knowledge of the operations of the social service organization to support their conjecture that the operation of a Class A license in lieu of a Class B license would be detrimental to students or clientele of the social service organizations or to the community at large.

The decision of the Board's majority relies, in part, on the testimony of Reverend Thompson regarding the effects of alcohol consumption on the community, yet Reverend Thompson acknowledged her testimony was "not specific to the owner or the specific business [Good Hope Market & Deli] and whether or not they are in compliance at all or how they are acting." *Supra*, at ¶ 35.

The approval of a Class A license for Good Hope Deli & Market would be a change from a Class B license to a Class A license. The approval of this license is not the introduction of alcohol beverage sales at a location where none currently exists. It is an incremental change that would simply allow the establishment to sell spirits in addition to its current sales of wine, beer and ale. The Board concluded in March 2012 that the 'section' (as defined by D.C. Official Code § 25-101(46)), surrounding Good Hope Deli & Market, is appropriate for a Class A license when it approved the renewal of a Class A license for Union Liquors. As recently as May 2014, the Board concluded that the 'section', which contains Good Hope Deli & Market, is appropriate for a Class B license when it approved a Class B license for the establishment. The majority's decision to deny the Class A license appears to be at variance with its past decisions regarding whether this local ('section') is appropriate for off premise alcohol beverage license retailers.

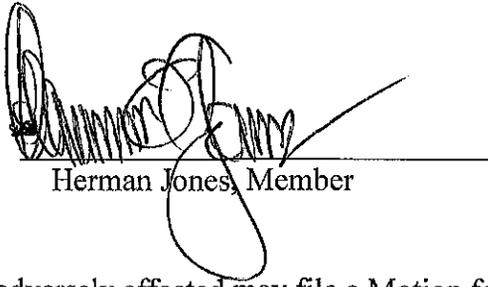
It is for these reasons that I dissent from the opinion of the majority. I recommend that Good Hope Deli & market be granted a Class A license with the restriction that it be prohibited from selling spirits in containers with a volume less than 750 ml; a restriction intended to discourage the public consumption of alcohol.


Nick Alberti, Member

I dissent from the decision of the majority to deny the Application for a Substantial Change to Retailers' Class A License at 1736 Good Hope Road, SE filed by S&A Deli, Inc. t/a Good Hope Deli & Market for the same reasons noted by Board Member Alberti. Additionally, I believe that the majority of the Board did not appropriately credit the testimony of the Applicant as to how it would mitigate its potential negative contribution to the peace, order and quite of the neighborhood. I credit the testimony of the Applicant detailing the steps proposed to augment its already existing measures designed to mitigate the negative impact to the peace, order and quiet of this neighborhood under the operations of its existing Class B license. Given the testimony of both the Applicant and the Protestants, the operations under the Class B license have had no known negative impact on the peace, order and quiet of the area.

In my opinion, the majority placed greater weight on the testimony offered by the Protestants where they speculated as to what may possibly happen rather than the proven track record of the Class B operations at the establishment. Further, it appears to me that the majority did not fairly credit the testimony of what the Applicant will do to augment its operations.

It is for these reasons that I dissent from the opinion of the majority. I recommend that Good Hope Deli & market be granted a Class A license with no additional stipulations.



Herman Jones, Member

Pursuant to 23 DCMR § 1719.1, 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).