

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

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| In the Matter of: |) | |
| NHV Corporation, Inc. |) | License Number: 024663 |
| t/a Haydee's Restaurant |) | Case Number: 10-PRO-00012 |
| Application for a Class Change to a Retailer's Class CN License |) | Order No.: 2010-464 |
| at premises |) | |
| 3102 Mount Pleasant Street, N.W. |) | |
| Washington, D.C. 20010 |) | |

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: NHV Corporation, Inc., t/a Haydee's Restaurant, Applicant

Robert P. Waldeck, Esq., on behalf of the Applicant

Sam Broeksmit, on behalf of the Mount Pleasant Neighborhood Alliance
(MPNA), Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

Jonathan Berman, Assistant Attorney General
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

NHV Corporation, Inc., t/a Haydee's Restaurant (Applicant), filed an Application for a Class Change to a Retailer's Class CN License. The Application initially came before the Alcoholic Beverage Regulation Administration (ABRA) for a Roll Call Hearing on March 22, 2010 and a Status Hearing was held on April 21, 2010.

Protests against the application were timely filed by the Mount Pleasant Neighborhood Alliance (MPNA) by letter dated March 8, 2010. A Group of Five or More Individuals timely filed a petition to protest the Application on March 8, 2010; however, the Group of Five or More Individuals was dismissed at the Protest Hearing for failing to submit their Protest Information Form (PIF) seven days prior to the Protest Hearing.

No Voluntary Agreement was reached between the Applicant and the Protestants before the Protest Hearing. The Protest Hearing was held on May 26, 2010.

On May 23, 2010, Denise Wiktor, on behalf of the Group of Five or More Individuals, filed a preliminary motion asking the Board to allow the Group of Five or More Individuals to file its PIF after the due date. The Board heard oral arguments regarding the Motion during the Protest Hearing. *Transcript May 26, 2010 (hereinafter Tr., 5/26/10)* at 5. Ms. Wiktor admitted that the PIF was not filed in a timely manner with the Board. *Tr., 5/26/10* at 7. The Applicant claimed that granting the Group of Five or More Individuals' Motion would result in prejudice because the Applicant did not have time to prepare for the additional witnesses that the Group of Five or More Individuals wanted to present to the Board. *Tr., 5/26/10* at 10. In a six to one vote, with Board Member Ghandi dissenting, the Board voted to dismiss the Group of Five or More Individuals' Motion. *Tr., 5/26/10* at 13-14. As such, the Group of Five or More Individuals was dismissed from the Protest. *Tr., 5/26/10* at 14.

Both the Applicant and the MPNA submitted Proposed Findings of Fact and Conclusions of Law after the Protest Hearing, which have been added to the record. The Protestant also submitted further information after the Protest Hearing on May 26, 2010, but this information will not be addressed in this decision because it was received after the record was closed. *See* 23 DCMR § 1717.1 (2008).

Pursuant to D.C. Official Code § 25-602(a) (2009), the protest issues are whether the Applicant's Application for a Class Change to a Retailer's Class CN License would adversely impact the peace, order, and quiet, residential parking and pedestrian safety, and real estate values in the Applicant's neighborhood.

FINDINGS OF FACT

1. The Applicant is requesting to change its Retailer's Class CR License to a Retailer's Class CN License. *ABRA Licensing File No. 024663.*

2. The Applicant's establishment is located at 3102 Mount Pleasant Street, N.W. *ABRA Licensing File No. 024663*. It is located within a C-2-A zone. *ABRA Exhibit No. 12-15*. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *ABRA Exhibit No. 17*. Finally, there are 19 ABC licensed establishments within 1200 feet of the Applicant. *ABRA Exhibit No. 18*.

3. The Applicant's current hours of operation are from 11:00 a.m. to 1:30 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday. *ABRA Licensing File No. 024663*. The Applicant's current hours to sell and serve alcohol are from 11:00 a.m. to 1:30 a.m., Sunday through Thursday, and 11:00 a.m. to 2:30 a.m., Friday and Saturday. *ABRA Licensing File No. 024663*. Finally, the Applicant's hours of entertainment are 11:00 a.m. to 1:30 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday. *ABRA Licensing File No. 024663*.

4. The Board called Investigator Susan Mitchell, who prepared the Protest Investigation Report in this matter, as its witness. *Tr.*, 5/26/10 at 29. Investigator Mitchell monitored the Applicant on 12 separate occasions between May 4, 2010, and May 19, 2010. *Tr.*, 5/26/10 at 37. The Investigator testified that the Applicant is surrounded by a mix of commercial and residential buildings. *Tr.*, 5/26/10 at 30, 42. According to Investigator Mitchell, the Applicant has been in business since 1997 and serves Spanish-style food. *Tr.*, 5/26/10 at 30. She stated that the majority of the Applicant's patrons live in the Mount Pleasant neighborhood. *Tr.*, 5/26/10 at 44.

5. The Protestant called Mr. Neal Adejunmobi, an auditor employed by ABRA, to testify. *Tr.*, 5/26/10 at 45. Mr. Adejunmobi reviewed the Applicant's quarterly statements submitted to ABRA. *Tr.*, 5/26/10 at 53. According to Mr. Adejunmobi, from January 2010 to March 2010, the Applicant's percentage of food sales was 69 percent. *Tr.*, 5/26/10 at 53. During fiscal year 2009, the Applicant's percentage of food sales was 68 percent and the Applicant had an average food sale per occupant of \$4,080.00 per person. *Tr.*, 5/26/10 at 53. During fiscal year 2008, the Applicant's percentage of food sales was 62 percent and the Applicant had an average food sales per occupant was \$4,177.00 per person. *Tr.*, 5/26/10 at 53-54. Finally, during fiscal year 2007, the Applicant had a food sales per occupant of \$3,956.00 per person. *Tr.*, 5/26/10 at 55. In conclusion, Mr. Adejunmobi stated that the Applicant is in compliance with ABRA's food sales requirements for restaurants. *Tr.*, 5/26/10 at 56.

6. The Applicant called Ms. Nimiah Haydee Vanegas to testify. *Tr.*, 5/26/10 at 57-58. Ms. Vanegas stated that she is the President of NHV Corporation, Inc. *Tr.*, 5/26/10 at 59. Ms. Vanegas stated that there is a Haydee's located in Mount Pleasant, which has been in existence for 20 years, and another Haydee's located at 6303 Georgia Avenue, N.W., which has been in existence for ten years and currently holds a nightclub license. *Tr.*, 5/26/10 at 59-60.

7. Ms. Vanegas testified that Alex Kramer, President of the Mount Pleasant Business Association, supports the Applicant's Application. *Tr.*, 5/26/10 at 61, 63. Mr. Kramer wrote a

letter in support of the Application, stating that the Applicant “demonstrates responsible business practices” and engages in “generous community service.” *ABRA Exhibit No. 20*. Ms. Vanegas also noted that All-Ways Mount Pleasant supported the Application because the Applicant is currently running another nightclub on Georgia Avenue, N.W., that is “. . . orderly, and an asset to its neighborhood” and the Applicant’s business in Mount Pleasant has operated “responsibly” for the past 20 years. *ABRA Exhibit No. 23*. The Applicant also noted that Neighbor’s Consejo, a local community group, and Eva Young, the founder of La Tranza Leadership, supported the Application. *Tr.*, 5/26/10 at 66-67. Ms. Vanegas admitted that only 70 percent of the signatories to a petition in support of the Application, which contained 350 names, were Mount Pleasant residents. *Tr.*, 5/26/10 at 72, 94.

8. Ms. Vanegas stated that if the Applicant receives a Retailer’s Class CN License, the establishment would continue to operate its kitchen and serve food. *Tr.*, 5/26/10 at 74. Ms. Vanegas further attested that if the Board approves the Application, the hours for the kitchen would not change. *Tr.*, 5/26/10 at 74. She further attested that, other than offering music, the establishment would not make any major changes to its operations. *Tr.*, 5/26/10 at 75.

9. Ms. Vanegas stated that the establishment has submitted its Security Plan and that the establishment’s employees regularly receive training from the Restaurant Association of Metropolitan Washington (RAMW). *Tr.*, 5/26/10 at 77-78. According to Ms. Vanegas, RAMW provides 12 hours of training to each employee for \$175 per person. *Tr.*, 5/26/10 at 78.

10. Ms. Vanegas averred that she wants a Retailer’s Class CN License in order to obtain more business from private parties. *Tr.*, 5/26/10 at 104. If the Application is approved, she would no longer be bound by the District of Columbia’s food sales requirements for Retailer’s Class CR Licenses. *Tr.*, 5/26/10 at 104. As a result, the Applicant would no longer have to require private parties to buy certain amounts of food in order to stay within the allowed food sales to alcohol sales ratio. *Tr.*, 5/26/10 at 104. The Applicant stated that she did not apply for a Retailer’s Class CT License because she wanted her two establishments to utilize the same menu and noted that she has not had any issues with her establishment on Georgia Avenue, N.W., that is licensed as a nightclub. *Tr.*, 5/26/10 at 105. Ms. Vanegas also stated that she wanted a Retailer’s Class CN License because nightclubs were allowed to have music without an entertainment endorsement. *Tr.*, 5/26/10 at 113. Ms. Vanegas feared that if she was required to obtain an entertainment endorsement, then MPNA would oppose the Applicant’s entertainment endorsement in the future. *Tr.*, 5/26/10 at 113.

11. According to Ms. Vanegas, the Applicant is only applying for an extension of its entertainment hours so the establishment can play music later in the day. *Tr.*, 5/26/10 at 106. She emphasized that her hours of sale and service of alcoholic beverages will remain the same. *Tr.*, 5/26/10 at 107. According to Ms. Vanegas, in the past, the Board has restricted the Applicant’s hours of entertainment until 11:00 p.m., Sunday through Wednesday, until midnight, on Thursday, and until 1:00 a.m., Friday and Saturday. *Tr.*, 5/26/10 at 116.

12. Ms. Vanegas stated that she wants local Mount Pleasant bands to play in her establishment. *Tr.*, 5/26/10 at 108. Ms. Vanegas stated that her plans will not impact noise in the community because, if approved, she will utilize the same building and the same “double windows.” *Tr.*, 5/26/10 at 109.
13. Ms. Vanegas noted that she wants to stay open to provide entertainment for people who work late. *Tr.*, 5/26/10 at 109-10. She noted that the 42 bus is often full at 11:00 p.m. *Tr.*, 5/26/10 at 109.
14. Ms. Vanegas stated that her establishment is allowed to apply a cover charge but has yet to do so. *Tr.*, 5/26/10 at 111.
15. Ms. Vanegas stated that she plans to expand her establishment to include another room. *Tr.*, 5/26/10 at 113. Currently, the establishment’s occupancy is limited to 99 people. *Tr.*, 5/26/10 at 114. The Applicant currently occupies the mezzanine and the main floor of her building. *Tr.*, 5/26/10 at 114. Ms. Vanegas stated that if allowed to expand to the other room in her building, she would be able to increase the Applicant’s occupancy to 142 persons. *Tr.*, 5/26/10 at 115. Finally, although the establishment currently has one exit, she stated that the Department of Consumer and Regulatory Affairs (DCRA) has approved plans to add another one. *Tr.*, 5/26/10 at 124.
16. Ms. Vanegas testified that her establishment utilizes valet parking. *Tr.*, 5/26/10 at 123. She stated that the majority of her customers arrive by public transportation, by foot, or by bicycle. *Tr.*, 5/26/10 at 123.
17. The Applicant also called Commissioner Gregg Edwards to testify. *Tr.*, 5/26/10 at 125-26. Commissioner Edwards stated that he lives in Mount Pleasant and serves as the chair of Advisory Neighborhood Commission (ANC) 1D. *Tr.*, 5/26/10 at 127. Commissioner Edwards stated that he represents ANC Single Member District 4. *Tr.*, 5/26/10 at 128. Commissioner Edwards testified that the ANC voted unanimously to support the Application. *Tr.*, 5/26/10 at 130; *ABRA Protest File 024663/10-PRO-00012, ANC 1D Resolution: Night club liquor license for Haydee’s Restaurant.*
18. Commissioner Edwards stated that he continually deals with parking issues as part of his job as an ANC Commissioner. *Tr.*, 5/26/10 at 131. According to Commissioner Edwards, there are 2,000 on-street parking spots in Mount Pleasant. *Tr.*, 5/26/10 at 131. Nevertheless, Commissioner Edwards stated that residents of ANC 1D own approximately 4,500 vehicles. *Tr.*, 5/26/10 at 131. He stated that there are about 850 single family homes and 4,500 apartments located in ANC 1D. *Tr.*, 5/26/10 at 131. Commissioner Edwards noted that many people who live in the apartment buildings do not own cars and those that do own cars share parking spaces with merchants in the community. *Tr.*, 5/26/10 at 131. He further noted that neighborhoods where houses are located have many parking spots available during the day but empty spots are hard to find at night when people return from work. *Tr.*, 5/26/10 at 132. Finally, Commissioner Edwards noted that nighttime parking restrictions last until 8:00 p.m. *Tr.*, 5/26/10 at 132.

Commissioner Edwards stated that granting the Applicant's Application would not change the parking situation in the neighborhood. *Tr.*, 5/26/10 at 133. The Commissioner noted that the Office of Planning has stated that further development of the commercial strip in Mount Pleasant will not create more traffic because people with cars are just as likely to travel to other areas of the city. *Tr.*, 5/26/10 at 134. Commissioner Edwards stated that commercial parking is available and gives the community access to several thousand parking spots. *Tr.*, 5/26/10 at 144-45

19. Commissioner Edwards stated that granting the Applicant's Application is necessary to protect peace, order, and quiet in the neighborhood. *Tr.*, 5/26/10 at 134-35. According to Commissioner Edwards, the Urban Land Institute reports that Mount Pleasant's commercial viability is threatened by having a billion dollar center on 14th Street, N.W. *Tr.*, 5/26/10 at 134. As such, Commissioner Edwards stated that granting the Application is necessary to prevent the commercial strip from devolving. *Tr.*, 5/26/10 at 135.

20. Commissioner Edwards further testified about property values in the neighborhood. *Tr.*, 5/26/10 at 135. Accordingly, he reported that the median rental price for commercial property went from \$32.00 per foot in 2005 to \$45.00 per foot in 2010. *Tr.*, 5/26/10 at 135. Commissioner Edwards noted that a pizzeria is currently renting space at a cost of \$49.00 per foot. *Tr.*, 5/26/10 at 135-36. He further noted that some businesses have left the neighborhood because rent prices have escalated rapidly. *Tr.*, 5/26/10 at 136.

21. Commissioner Edwards stated that his ANC has not formally taken a position regarding the Applicant's request for extended entertainment hours. *Tr.*, 5/26/10 at 147. Nevertheless, Commissioner Edwards noted that generally the voluntary agreements that his ANC concludes with ABC establishments do not include limits to a licensee's entertainment hours. *Tr.*, 5/26/10 at 147.

22. The Applicant then called Ronald "Rick" Massumi to testify on behalf of the Application. *Tr.*, 5/26/10 at 154. Mr. Massumi stated that he lives at 1606 Hobart Street, N.W., and is a homeowner in Mount Pleasant. *Tr.*, 5/26/10 at 156, 162. He stated that it takes him less than two minutes to walk to the Applicant's establishment. *Tr.*, 5/26/10 at 156. 24. Mr. Massumi stated that he supports the Application for a Retailer's Class CN License. *Tr.*, 5/26/10 at 156. Mr. Massumi stated that in his opinion, Ms. Vanegas is a responsible business owner. *Tr.*, 5/26/10 at 158. He further noted that he has patronized the Applicant's establishment since 1997. *Tr.*, 5/26/10 at 168.

23. Mr. Massumi stated that when he first moved to the neighborhood there were significant peace, order, and quiet issues. *Tr.*, 5/26/10 at 158. He stated that there used to be over 200 homeless people in Mount Pleasant, many of whom suffered from substance abuse and mental health issues. *Tr.*, 5/26/10 at 158-59. He stated that the homelessness problem was alleviated when a social service program began distributing aid in non-residential areas. *Tr.*, 5/26/10 at 159. Finally, Mr. Massumi asserted that any problems related to gang violence are not related to ABC establishments because many gang members are in high school and do not go to bars to drink. *Tr.*, 5/26/10 at 160. Mr. Massumi then credited improvements to peace, order, and quiet

in the neighborhood to restoring entertainment in Mount Pleasant in 2007. *Tr.*, 5/26/10 at 160. He stated that there is less tension between various ethnic groups who live in Mount Pleasant. *Tr.*, 5/26/10 at 161.

24. Mr. Massumi testified that home prices have fallen in his neighborhood. *Tr.*, 5/26/10 at 162. He asserted that home prices fell because the neighborhood is still “scary,” especially after midnight. *Tr.*, 5/26/10 at 162. Furthermore, Mr. Massumi stated that home prices fell because of the recent collapse of the real estate market and have nothing to do with the commercial strip where the Applicant seeks to obtain a nightclub license. *Tr.*, 5/26/10 at 163.

25. Mr. Massumi stated that he often passes the Applicant’s establishment and has never detected excessive noise coming from the premises. *Tr.*, 5/26/10 at 164. He further added that he has never seen any rowdiness in the vicinity of the Applicant’s establishment. *Tr.*, 5/26/10 at 168.

26. Sam Broeksmit was called to the stand in order to testify on behalf of the Protestants. *Tr.*, 5/26/10 at 171. Mr. Broeksmit stated that nightclubs are inappropriate for Mount Pleasant. *Tr.*, 5/26/10 at 172. Mr. Broeksmit testified that immediately adjacent to all of the commercial properties in Mount Pleasant are residences. *ABRA Exhibit No. 18; Tr.*, 5/26/10 at 173. Mr. Broeksmit testified that to the west of the commercial strip where the Applicant is located are single-family residences and to the east are high-density apartments. *Tr.*, 5/26/10 at 173. He further testified that there are no alleys or buffers between the commercial strip and residences. *Tr.*, 5/26/10 at 177. Mr. Broeksmit also noted that there is a high concentration of young, school-age children and parents in Mount Pleasant. *ABRA Protest File 10-PRO-00012, Protestant Exhibit 2, A-25-A-27; Tr.*, 5/26/10 at 176. Mr. Broeksmit noted that Mount Pleasant has a high percentage of married couples with children and noted that 21 percent of the residents of Mount Pleasant are under the age of 18. *ABRA Protest File 10-PRO-00012, Protestant Exhibit 2, A-39, A-42; Tr.*, 5/26/10 at 176. Mr. Broeksmit also testified that nightclubs are more appropriate for formerly light industrial areas of the city or downtown. *Tr.*, 5/26/10 at 177. He noted that a nightclub license would allow the Applicant to engage in any form of entertainment for the full amount of legal hours. *Tr.*, 5/26/10 at 177-78. Finally, based on the large number of families that live in Mount Pleasant, Mr. Broeksmit asserted that a nightclub is inappropriate for Mount Pleasant because the neighborhood has a higher expectation of peace, order, and quiet. *Tr.*, 5/26/10 at 176.

27. Mr. Broeksmit also asserted that Mount Pleasant has parking problems. *Tr.*, 5/26/10 at 178. The intersections of Harvard Street, N.W., and Mount Pleasant Street, N.W., have delays greater than 80 seconds per vehicle during both the morning and evening peak periods. *ABRA Protest File 10-PRO-00012, Protestant Exhibit 5, I-48, I-49; Tr.*, 5/26/10 at 180. Furthermore, the intersection of Adams Mill Road, N.W., and Kenyon Street, N.W., have delays of 80 seconds per vehicle. *ABRA Protest File 10-PRO-00012, Protestant Exhibit 5, I-48, I-51 (see map); Tr.*, 5/26/10 at 180. Mr. Broeksmit also noted that in residential areas the occupancy of parking spots ranges from 80 percent to 100 percent. *Tr.*, 5/26/10 at 180.

28. Mr. Broeksmit further attested that the burden of proving appropriateness is on the Applicant and that the Applicant has not provided an assessment of appropriateness. *Tr.*, 5/26/10 at 183.

29. Mr. Broeksmit also noted that the Applicant's building was historically a mixed use commercial and residential building. *Tr.*, 5/26/10 at 184. Currently, the two floors above the restaurant are serving as small offices. *Tr.*, 5/26/10 at 184.

30. According to Mr. Broeksmit, the Applicant's business objectives could be accomplished through a license other than a Retailer's Class CN License, which have greater protections for the surrounding neighborhood and are more appropriate for Mount Pleasant. *Tr.*, 5/26/10 at 184. Mr. Broeksmit argued that nightclubs do not require entertainment endorsements and there is no way to challenge their entertainment operations without challenging the entire license. *Tr.*, 5/26/10 at 185.

31. Under cross-examination, Mr. Broeksmit admitted that when a licensee receives a new class of license the establishment is not required to change its business practices. *Tr.*, 5/26/10 at 199. Mr. Broeksmit stated that he did not commission an independent study to argue that the Application was inappropriate for the locality but instead used various existing studies. *Tr.*, 5/26/10 at 203. Mr. Broeksmit stated that the studies shown to the Board indicate that granting the Retailer's Class CN License to the Applicant would exacerbate the parking situation in Mount Pleasant by creating an increased demand for parking spaces. *Tr.*, 5/26/10 at 204-05. Mr. Broeksmit asserted that granting the nightclub license would be detrimental to residential property values. *Tr.*, 5/26/10 at 207-08. According to Mr. Broeksmit, if approved, Mount Pleasant's property values would decline because the area would become a nightclub zone and would influence whether individuals want to move into the community. *Tr.*, 5/26/10 at 208. Mr. Broeksmit further admitted that there is no evidence that people engaging in public urination in Mount Pleasant are patrons of the Applicant. *Tr.*, 5/26/10 at 239. Moreover, Mr. Broeksmit admitted that he has never complained to ABRA about the Applicant's activities nor has any specific complaints regarding the Applicant's business practices. *Tr.*, 5/26/10 at 208.

32. Mr. Broeksmit stated that he prefers that the Board issue the Applicant a Retailer's Class CT License. *Tr.*, 5/26/10 at 212. He argued that a tavern license would provide greater limits on the Applicant's ability to stay open past 2:00 a.m. *Tr.*, 5/26/10 at 212. Furthermore, granting a tavern license would not encourage others to open a nightclub in Mount Pleasant. *Tr.*, 5/26/10 at 213. He also noted that a tavern license provides additional protection to the community because the Applicant would be required to obtain an entertainment endorsement before it could allow dancing. *Tr.*, 5/26/10 at 214. Mr. Broeksmit stated that a tavern license would allow the community to discuss the Applicant's business activities during each renewal period. *Tr.*, 5/26/10 at 216. Mr. Broeksmit admitted that his organization could enter into a voluntary agreement with a nightclub license holder. *Tr.*, 5/26/10 at 240.

33. Mr. Broeksmit stated that MPNA supported adding an additional hour to the Applicant's license. *Tr.*, 5/26/10 at 217. Mr. Broeksmit also asserted that the Applicant's entertainment

hours should end at 12:00 a.m. on weekdays and 2:00 a.m. on weekends. *Tr.*, 5/26/10 at 222. Mr. Broeksmit testified that closing at 2:00 a.m. is less likely to disturb families with children. *Tr.*, 5/26/10 at 225.

34. According to Mr. Broeksmit, he testified that the Applicant engages in responsible business practices. *Tr.*, 5/26/10 at 228. Mr. Broeksmit did not have any specific actions he would ask the Applicant to take in order reduce his establishment's effect on parking and noise in the community. *Tr.*, 5/26/10 at 237. In regards to litter, Mr. Broeksmit stated that the Applicant should clean the area around his property to prevent cigarette butts from accumulating. *Tr.*, 5/26/10 at 237.

35. Ms. Denise Wiktor testified on behalf of the Protestant. *Tr.*, 5/26/10 at 250. She testified that she has lived in Mount Pleasant since 1981 and lives four blocks away from the Applicant. *Tr.*, 5/26/10 at 251, 277. She stated that she is concerned that the Applicant will cease serving food and that parking in Mount Pleasant will be negatively impacted if the Application is approved. *Tr.*, 5/26/10 at 252. She stated that over half the people who signed the petition filed by the Applicant in support of its Application do not live within walking distance or have easy access to public transportation. *Tr.*, 5/26/10 at 255. Ms. Wiktor noted that the buses in Mount Pleasant stop running around 1:30 a.m. and the garage closes at 12:30 a.m., which encourages more of the Applicant's patrons to drive. *Tr.*, 5/26/10 at 255. Ms. Wiktor, who suffers from a disability that impairs her walking, stated that she is especially concerned about the parking issue because commercial traffic forces her to park blocks away from her home. *Tr.*, 5/26/10 at 255.

36. Ms. Wiktor also stated that, in her experience as a former public space manager for the District Department of Transportation, she is concerned about the establishment's fire safety. *Tr.*, 5/26/10 at 256. Ms. Wiktor stated that the establishment's access from Irving Street, N.W., has been sealed off and there is only one exit from that area. *Tr.*, 5/26/10 at 256. In addition, she alleged that open drums of oil are located behind the establishment. *Tr.*, 5/26/10 at 256.

37. Under cross-examination, Ms. Wiktor admitted that she was not aware that the Applicant is currently negotiating with the landowners who sealed off the Applicant's access to Irving Street, N.W., in order to get permission to install a door in the fence so that people can get out. *Tr.*, 5/26/10 at 259. Furthermore, Ms. Wiktor testified that she was unaware that the DCRA has approved an application to create another exit on the side of the Applicant's establishment. *Tr.*, 5/26/10 at 259. Ms. Wiktor also admitted that a door next to the Applicant's establishment leads to a corridor that opens onto Mount Pleasant Street, N.W. *Tr.*, 5/26/10 at 261. Ms. Wiktor also admitted that she was not actually aware of whether the Applicant's patrons regularly drive to the establishment but has seen patrons exit cars and patronize the establishment in the past. *Tr.*, 5/26/10 at 264.

38. Ms. Wiktor testified that the demographics of the neighborhood have changed in the past few years. *Tr.*, 5/26/10 at 268. She stated that the Deauville apartment building fire eliminated a number of apartments in Mount Pleasant, which reduced the number of people in the streets. *Tr.*, 5/26/10 at 268; *see also ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 4, pg.*

19. Furthermore, she stated that more people in the neighborhood have families. *Tr.*, 5/26/10 at 268.

39. Ms. Wiktor stated that she would like to see the Applicant's entertainment hours limited to until 11:00 p.m., Monday through Thursday, and 2:00 a.m. on Friday and Saturday. *Tr.*, 5/26/10 at 271.

40. The Protestant submitted an analysis done in 2009 by PES/Retail Compass on behalf of the District of Columbia Office of Planning, titled: "Mt. Pleasant Market Analysis." *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 4.* The report stated that "Mt. Pleasant Street does not have the dimensions or the capacity to support destination-oriented traffic." *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 4, pg. 20.* The report further noted that the neighborhood has parking concerns and there is limited space for new parking construction. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 4, pg. 20.* The report concluded that "resources [in Mt. Pleasant] will be better allocated to enhancing and improving the neighborhood-serving elements of this retail district." *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 4, pg. 20.*

41. The Protestant also submitted a report written in 2009 by Daniel Consultants, Inc., for the District Department of Transportation (DDOT). *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 5.* The report projected that the delays at the intersection of 16th Street, N.W., and Irving Street, N.W., and the intersection of 16th Street, N.W., and Lamont Street, N.W., will degrade to between 55 seconds and 80 seconds per vehicle over the next 10 years during the morning peak traffic period and over the next 20 years during the afternoon peak traffic period. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 5, pg. I-48, I-53.*

42. The Protestant also submitted a report written in 2008 by The Urban Institute for the District of Columbia Office of Planning, titled: "State of Washington, D.C.'s Neighborhoods." *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 2.* The report notes that Mount Pleasant, defined as Cluster 2 in Ward 1, has the third highest concentration of public school and public charter school students in the District of Columbia. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 2, pg. 48.* The report also noted that 11.5 percent of Mount Pleasant's married couples had children and that 21.8 percent of the population of Mount Pleasant was comprised of children in 2000. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 2, A-39, A-42.* The report also stated that 49.8 percent of the households in Mt. Pleasant are nonfamily households. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 2, A-41.* Finally, the report noted that the birthrate in Washington, D.C., in 2005 was 13.9 percent but the birthrate in Mount Pleasant was 17.6 percent, approximately 26 percent higher than the city's average birthrate. *ABRA Protest File 024663/10-PRO-00012, Protestant Exhibit No. 2, A-78.*

43. The Board takes administrative notice that the Applicant's premises located at 3102 Mount Pleasant Street, N.W., is located in a commercial zone and shares a block with an R-4

residential zone surrounded by Irving Street, N.W., to the south, 17th Street, N.W., to the west, and Kenyon Street, to the north.

CONCLUSIONS OF LAW

44. Pursuant to D.C. Official Code § 25-313(a) (2009) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application for a Class Change to a Retailer's Class CN License is sought is appropriate for the neighborhood in which it is located. The Board concludes that the Applicant has not demonstrated that the Application for a Class Change is appropriate for Mount Pleasant.

45. 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 1D supports the Applicant's Application but, as Commissioner Edwards admitted, has not addressed the Applicant's request for extended entertainment hours. The Board finds that its conclusions below adequately address the points raised by the ANC.

46. In order to determine whether an establishment is appropriate for the "portion of the District where it is to be located," the Board "shall consider all relevant evidence." D.C. Code § 25-313(a)-(b) (2009). Accordingly, the statute suggests that the Board consider the effect of the establishment on real property values, peace, order, and quiet, residential parking, pedestrian safety, and the potential impact on noise and litter. D.C. Code § 25-313(b)(1)-(3). In light of these factors, the Board is persuaded by the Protestant's arguments that allowing the Applicant to change its Class CR License to a Class CN License is inappropriate for Mount Pleasant due to Mount Pleasant's residential character and the neighborhood's current problems with traffic and parking.

47. Evidence presented by the Protestant demonstrated that Mount Pleasant is a highly residential neighborhood. The Urban Institute's report showed that the neighborhood has one of the highest birthrates in the District of Columbia, Mount Pleasant has the third highest concentration of students, and that 21.8 percent of the population is children under the age of 18. Further, the Board credits Sam Broeksmit's testimony that the commercial strip where the Applicant is located is surrounded by residences. The Board also notes that the Applicant shares a block with an R-4 residential zone. As such, the Board agrees with the Protestant that Mount Pleasant has a strong residential character.

48. Evidence presented by the Protestant also demonstrated that Mount Pleasant has a severe and growing traffic problem. Ms. Wiktor told the Board that she has trouble finding parking near her home. Mr. Broeksmit testified that the intersections at Harvard Street, N.W., and Mount Pleasant Street, N.W., and Adams Mill Road, N.W., and Kenyon Street, N.W., both had delays of 80 seconds per vehicle at various times during the day. Furthermore, Mr. Broeksmit testified

that in residential areas of Mount Pleasant, approximately 80 to 100 percent of the parking spaces are currently utilized. The report created for the District of Columbia Office of Planning noted that there is limited space for new parking construction in Mount Pleasant. Finally, the report created for DDOT indicated that traffic problems will only get worse in Mount Pleasant over the next 10 to 20 years. Therefore, the Board agrees with the Protestant that Mount Pleasant faces a severe traffic and parking problem.

49. Based on Mount Pleasant's strong residential character and severe traffic problems, nightclub activities may impose an unacceptable burden on the residents of Mount Pleasant. In spite of the Applicant's assurances that it does not intend to change its business practices significantly and will continue to serve food, the Board cannot presume that this will always be the case. Issuing the Applicant a Class CN License would allow the Applicant to have any form of entertainment it chooses and have a dance floor larger than 140 square feet without obtaining an entertainment endorsement from the Board. *Compare* D.C. Code § 25-113(c)(1) (2010) to D.C. Code § 25-113a (2005). Based on the evidence presented, the Board finds that the Applicant's neighbors deserve the opportunity to object to entertainment that may impact their neighborhood and their quality of life.

51. In lieu of issuing the Applicant a Retailer's Class CN License, the Board encourages the Applicant to apply for a Retailer's Class CT License. A tavern license may be more appropriate for the Applicant's establishment because it will give local residents an opportunity to object to entertainment that may threaten Mount Pleasant's peace, order, and quiet.

52. Pursuant to D.C. Official Code § 25-313(b)(2) and 23 DCMR § 400.1(a), the Board must determine whether the Application for a Class Change to a Retailer's Class CN License will have an adverse impact on peace, order, and quiet and will effect residential parking in Mount Pleasant. The Board finds that based on the testimony of Investigator Mitchell, Ms. Vanegas, Mr. Broeksmit, Ms. Wiktor, Commissioner Edwards, Mr. Massumi, and the evidence presented by both parties, that the Applicant's request is inappropriate for Mount Pleasant. As such, the Board denies the Application for a Class Change to a Retailer's Class CN License.

ORDER

Therefore, it is hereby ORDERED on this 8th day of September 2010, that the Application for a Class Change to Retailer's Class CN License filed by NHV Corporation, Inc., t/a Haydee's Restaurant (Applicant), at premises 3102 Mount Pleasant Street, N.W., Washington, D.C., be and the same is hereby **DENIED**.

District of Columbia
Alcoholic Beverage Control Board

Charles Brodsky, Chairperson



Mital M. Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

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



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.

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).