

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

In the Matter of:)		
)		
Shin & Jang, Inc.)	Case Number:	11-PRO-00047
t/a King's Deli & Grocery)	License Number:	87806
)	Order:	2012-248
Application for New)		
Retailer's Class A License)		
)		
at premises)		
3651 Georgia Ave, N.W.)		
Washington, D.C. 20010)		
)		

BEFORE: Ruthanne Miller, Chair
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Shin & Jang, Inc., t/a King's Deli & Grocery, Applicant

Kevin Lee, Esq., on behalf of the Applicant

Soo Young Shin, President, on behalf of the Applicant

Kent Boese, on behalf of the Advisory Neighborhood Commission
1A, Protestant

Sylvia Robinson and Darren Jones, on behalf of A Group of Five or
More Individuals, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

An Application for a new Retailer's Class A License (Application) was filed by Shin & Jang, Inc., t/a King's Deli & Grocery (Applicant). The Application was timely protested on October 13, 2011, by Advisory Neighborhood Commission (ANC) 1C, represented by Commissioner Kent Boese, and a Group of Five or More Individuals, on October 26, 2011, represented by Sylvia Robinson and Darren Jones (collectively the "Protestants"). The protest of Co-Founders, Georgia Avenue Community Development

Task Force (GACDTF) was dismissed because the organization is not a civic association incorporated in the District of Columbia, as required by D.C. Official Code § 25-601(3) (2001).

The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 21, 2011, and a Status Hearing on January 11, 2012, in accordance with D.C. Official Code § 25-601 (2001).

No Voluntary Agreement was reached between the Applicant and the Protestants, and thus, the Protest Hearing was held on February 8, 2012.

Under D.C. Official Code § 25-602, the Protestants challenge the appropriateness of the Application on the grounds that it will adversely impact pedestrian safety, and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2012); *ABRA Protest File No. 11-PRO-00047*. Additionally, under § 25-314, the Board must determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the neighborhood.

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 OF FACT

1. The Applicant requests that the Board issue it a Retailer's Class A License for premises located at 3651 Georgia Ave, N.W. *ABRA Protest File No. 11-PRO-00047*,
2. The establishment is located in a C-3-A zone. *Protest Report, 3*. The establishment is also located in the Georgia Avenue (GA) Overlay District. *Protest Report, 3*. The Applicant is located within 400 feet from the Tiny Tots Daycare Nursery. *Protest Report, 5*.
3. There are nine ABC establishments located within 1200 feet of the Applicant; two of the licensees hold Retailer's Class A Licenses, four hold Retailer's Class B Licenses, two hold a Retailer's Class CR License, and one holds a Retailer's Class CN License. *Protest Report, 4 and 7*. The nearest Retailer Class A licensee is Lion's Liquors, located two blocks south of the Applicant at 3614 Georgia Ave., N.W. *Protest Report, 7*. The nearest Retailers Class B licensee is Family Food and Delicatessen Store, located one block north of the Applicant at 3713 New Hampshire Ave., N.W. *Protest Report, 7*.
4. The Applicant has requested hours of operation that begin at 7:00 a.m. and end at 10:00 p.m. on Monday through Friday, and from 8:00 a.m. to 10:00 p.m. on Saturday. *Protest Report, 6*. The Applicant has also requested to sell, serve, and allow the consumption of alcohol on its premises from 9:00 a.m. to 10:00 p.m. on the six days it is open for business. *Protest Report, 6*.
5. Investigator Vincent Parker led the Alcoholic Beverage Regulation Administration's (ABRA) protest investigation of the Application. *Tr., 2/8/12 at 17*.

ABRA investigators monitored the establishment on eight separate occasions between January 12, 2011, and January 30, 2012. *Protest Report*, 6. The establishment was monitored at various times during the day and night. *Protest Report*, 6.

6. On three of the monitoring occasions, ABRA investigators observed loitering. *Tr.*, 2/8/12 at 25, 31-33, 49-50, 61; *Protest Report*, 6. The loiterers appeared to be young to middle aged men, but they did not appear to be vagrants. *Tr.*, 2/8/12 at 25-26. None of the loiterers appeared to be violent or aggressive, and there was no criminal activity observed at the establishment. *Tr.*, 2/8/12 at 26, 34; *Protest Report*, 7. The ABRA investigators did not observe any drug use, public urination, or public consumption of alcoholic beverages during the investigation period. *Tr.*, 2/8/12 at 26; *Protest Report*, 6. Graffiti was observed on the side of the Applicant's building. *Tr.*, 2/8/12 at 39.

7. The establishment has signs posted on the interior and the exterior of the building that read, "No Loitering" and "No Panhandling". *Tr.*, 2/8/12 at 27, Exhibit 20 and 21. The establishment has four surveillance cameras that capture a view of the interior of the premises. *Tr.*, 2/8/12 at 27, 43.

8. Investigator Parker contacted the Metropolitan Police Department (MPD) who confirmed that there have been no calls for service from January 18, 2011, to January 17, 2012. *Tr.*, 2/8/12 at 30; *Protest Report*, 8. Investigator Parker did not check MPD crime statistics beyond the street address of the establishment. *Tr.*, 2/8/12 at 65.

9. The Applicant has installed lighting outside the establishment. *Tr.*, 2/8/12 at 27. Investigator Parker did not observe excessive trash or litter. *Tr.*, 2/8/12 at 44; *Protest Report*, 6. There are four dumpsters located behind the establishment in the alley, and there are public trash cans on Georgia Ave., N/W. *Tr.*, 2/8/12 at 44, 46.

10. Investigator Parker did not interview the owner of the establishment in his preparation of the investigative report. *Tr.*, 2/8/12 at 27. Instead, he interviewed the owner's attorney, Kevin Lee, to gather information for his report. *Tr.*, 2/8/12 at 31, 34.

11. There is no designated parking area for the establishment. *Tr.*, 2/8/12 at 38; *Protest Report*, 8. There is street parking available to customers on Georgia Avenue N.W. and Quebec Place N.W. *Tr.*, 2/8/12 at 38. The establishment is located on a walking route for school-aged children. *Tr.*, 2/8/12 at 45, 58. There is a Safeway grocery store located across Georgia Ave., N.W., approximately north and west of the establishment. *Tr.*, 2/8/12 at 54.

12. During a monitoring period early in the morning, Investigator Parker observed that the establishment was very busy with breakfast customers. *Tr.*, 2/8/12 at 48-49. On another monitoring period around 2:00 P.M., Investigator Parker observed very few customers. *Tr.*, 2/8/12 at 48. The major part of the business was the deli operation. *Tr.*, 2/8/12 at 51. Investigator Parker also observed an active lottery terminal. *Tr.*, 2/8/12 at 51-52.

13. Investigator Parker described the interior of the store. *Tr.*, 2/8/12 at 52; *Protest Report*, 5. There is a walkway from the front entrance where two coolers are located, which contain water, sodas and other beverages. *Tr.*, 2/8/12 at 53. The three grocery

shelves are located in the middle of the store. *Tr.*, 2/8/12 at 53. The ATM machine and the lottery terminal are located near the far right aisle. *Tr.*, 2/8/12 at 53. There are also products located behind the safety glass. *Tr.*, 2/8/12 at 53; *Protest Report*, 5.

14. There are residences located above the commercial property that houses the Applicant and the Dollar Plus Grocery. *Tr.*, 2/8/12 at 55-56. The entrance to the residences is located on Quebec Place, N.W. *Tr.*, 2/8/12 at 55. The neighborhood near the establishment is densely populated due to the large number of row houses. *Tr.*, 2/8/12 at 57.

15. Investigator Parker observed loiterers outside at Giant Liquors, located at 3504 Georgia Ave., N.W. *Tr.*, 2/8/12 at 59-60. The other Retailer's Class A store located nearest to the Applicant, Lion's Liquors, was closed throughout Investigator Parker's investigation. *Tr.*, 2/8/12 at 59.

16. The Applicant, Soo Y. Shin, owns 100% of the controlling shares of the business, and he has operated it for seven years. *Tr.*, 2/8/12 at 66, 94. His establishment occupies 2,000 square feet. *Tr.*, 2/8/12 at 66. Safety glass separates the employee-only area from the customer area. *Tr.*, 2/8/12 at 76.

17. The front of the store contains the commodities, and the customer counter, the kitchen and the storage area are located in the back of the store. *Tr.*, 2/8/12 at 66-67. There are five coolers that sit along the two walls where the customers enter the store. *Tr.*, 2/8/12 at 67. Near the entrance is the ATM machine and the lottery terminal. *Tr.*, 2/8/12 at 67. The cashier and cash register are near the deli counter operation. *Tr.*, 2/8/12 at 67. There is a second cash register on the opposite side of the store for cigarette and lottery sales. *Tr.*, 2/8/12 at 67.

18. Mr. Shin is in charge of the store's operation, but he is willing to hire an experienced ABC manager if he is granted an ABC license. *Tr.*, 2/8/12 at 67-68. He is seeking an increase in operating hours of 7:00 A.M. to 10:00 P.M. during the week, and from 8:00 A.M. to 10:00 P.M. on Saturdays. *Tr.*, 2/8/12 at 68, 98-99. The establishment is closed on Sundays, and the sale of alcoholic beverages will not be available until after 9:00 A.M. *Tr.*, 2/8/12 at 68.

19. Mr. Shin's customers expressed to him their desire for alcoholic products. *Tr.*, 2/8/12 at 68, 75, 96. He did not pay people to support his application. *Tr.*, 2/8/12 at 74-75. He wants to add the sale of alcoholic beverages to his existing business plan of lottery, deli and grocery sales, for the convenience of his customers. *Tr.*, 2/8/12 at 68. The deli portion of his business accounts for 40% to 50% of his total sales, and the lottery sales account for 30% of his business. *Tr.*, 2/8/12 at 84. All other items such as tobacco, snack food, and soft drinks account for 20%. *Tr.*, 2/8/12 at 85. Mr. Shin believes the addition of alcohol sales will increase his business another 30%. *Tr.*, 2/8/12 at 85.

20. Mr. Shin serves 200 to 300 customers every day. *Tr.*, 2/8/12 at 95. About 50% of these customers are from the neighborhood. *Tr.*, 2/8/12 at 95. The remaining customers are commuters, other small business owners, or construction workers. *Tr.*, 2/8/12 at 95.

21. If the ABC license is granted, Mr. Shin intends to add a large refrigeration facility and expand the storage area for maximum efficiency of his operation. *Tr.*, 2/8/12 at 69. His plans for remodeling will also include reducing the amount of safety glass that separates the customers from the clerks. *Tr.*, 2/8/12 at 76. He also intends to implement a bottle return program to address litter and environmental concerns. *Tr.*, 2/8/12 at 85-86. If the bottle return program is successful, Mr. Shin will expand it to include aluminum cans. *Tr.*, 2/8/12 at 86.

22. Mr. Shin intends to sell mostly beer and wine products. *Tr.*, 2/8/12 at 69. He will be surveying his customer base to determine what products he will carry, and he has no intention of selling cheap or small alcoholic products. *Tr.*, 2/8/12 at 69, 81, 88-89, 92-93. He will not sell single beers containing 72 ounces or fewer. *Tr.*, 2/8/12 at 81-82, 93. Mr. Shin will not sell half pints of spirits. *Tr.*, 2/8/12 at 91-92.

23. The alcoholic products will be located at the end of the aisle so that the young people who frequent the deli counter will not be within the vicinity of the alcohol. *Tr.*, 2/8/12 at 69-70. Mr. Shin will also implement solutions to address any problems that arise and to improve relations with the community. *Tr.*, 2/8/12 at 70. He intends to install a change machine for the neighborhood to use for the metro system, and he intends to continue to contribute to the community block party and youth programs. *Tr.*, 2/8/12 at 71.

24. The graffiti has been on the building for about two months, and Mr. Shin intends to paint over the graffiti in the very near future. *Tr.*, 2/8/12 at 72, 97-98. He is willing to purchase and install exterior security cameras and additional flood lights to discourage loitering and criminal behavior. *Tr.*, 2/8/12 at 72. The exterior cameras will cover the front entrance and the entrance in the back alley. *Tr.*, 2/8/12 at 87. There will be a monitor located inside the store in order to observe what the exterior cameras pick up in their viewing range. *Tr.*, 2/8/12 at 87. The interior cameras have hard disk storage capacity for up to two weeks. *Tr.*, 2/8/12 at 88. The same recording and storage capacity will also be used for the newly installed exterior cameras. *Tr.*, 2/8/12 at 88.

25. The trash is picked up twice a week on Tuesdays and Fridays. *Tr.*, 2/8/12 at 72. There is an employee who cleans and picks up trash at 7:00 A.M. and again at 10:00 A.M., and during the afternoon. *Tr.*, 2/8/12 at 72-73. Mr. Shin also cleans whenever he can find free time. *Tr.*, 2/8/12 at 72.

26. Mr. Shin maintains a police log in his establishment and he calls MPD whenever it is necessary. *Tr.*, 2/8/12 at 73. He intends to be more actively assertive in stemming the loitering with the aid of MPD. *Tr.*, 2/8/12 at 74, 83-84. The area containing the alcoholic beverages will be secured to discourage shoplifting. *Tr.*, 2/8/12 at 78.

27. Mr. Shin did not apply for a Retailer's Class C license because it would require a great deal of remodeling to create an on-premises tavern. *Tr.*, 2/8/12 at 79. The building is very old, and the prospect of adding restrooms for customer use is very expensive. *Tr.*, 2/8/12 at 79. The early closing hours would also not be conducive to a prosperous on-premises establishment. *Tr.*, 2/8/12 at 79.

28. Vernelle C. Weldon has lived at 758 Rock Creek Church Road, N.W. since 1961. *Tr.*, 2/8/12 at 101. He is a frequent customer of the Applicant's, and he visits the store

almost daily. *Tr.*, 2/8/12 at 102, 108. He has no concerns if Mr. Shin is granted an ABC license. *Tr.*, 2/8/12 at 102-103, 105. He is supportive of people who try to make an honest living, and he does not believe an ABC license will affect public safety, or the quality of life in the neighborhood. *Tr.*, 2/8/12 at 103, 105. He has not witnessed any loitering in front of the establishment, nor has he observed any criminal activity. *Tr.*, 2/8/12 at 103, 104.

29. J. Mose Montgomery has lived at 753 Quebec Place, N.W. since 1975. *Tr.*, 2/8/12 at 110, 115. He is a regular customer of the Applicant's and he is familiar with the business. *Tr.*, 2/8/12 at 110, 116. He supports Mr. Shin's application for an ABC license because other businesses in the area are licensed and they do not cause problems for the neighborhood. *Tr.*, 2/8/12 at 111-113, 122. To be clear, he supports the sale of wine and beer, but not spirits. *Tr.*, 2/8/12 at 114-115.

30. Mr. Montgomery has witnessed loitering and littering in front of the establishment, but he has also noticed the same problems next door with the check cashing business. *Tr.*, 2/8/12 at 111. He has not noticed loitering in recent days. *Tr.*, 2/8/12 at 111. MPD has increased its presence in the neighborhood. *Tr.*, 2/8/12 at 111. Mr. Montgomery has not observed any criminal activity in the area. *Tr.*, 2/8/12 at 111, 118.

31. The Protestants' called Sylvia Robinson as a witness. *Tr.*, 2/8/12 at 127. Ms. Robinson resides at 733 Euclid Street, N.W., about a quarter of a mile from the establishment. *Tr.*, 2/8/12 at 162. She is a co-founder of the Georgia Avenue Community Development Task Force (Task Force). *Tr.*, 2/8/12 at 128. The Task Force published the Georgia Avenue User Survey (survey) in July 2010 to study goods and services in the Georgia Avenue corridor. *Tr.*, 2/8/12 at 128, 143, 162.

32. Ms. Robinson testified that Georgia Avenue between New Hampshire Ave., N.W. and S Street, N.W., has been neglected because city funding has historically been directed to the 14th Street corridor. *Tr.*, 2/8/12 at 1133-134. The Task Force organized in December 2009 in order to engage the community in the new development along Georgia Avenue. *Tr.*, 2/8/12 at 134. The Task Force meets bi-monthly, and it has been pro-active in inventorying vacant and active properties. *Tr.*, 2/8/12 at 134, 149-150.

33. The survey conducted in 2010 was completed by 690 people, and it profiled the opinions and desires of the people in the community. *Tr.*, 2/8/12 at 135, 140-142. One of the highlights of the survey was a gage on the community's attitude toward ABC- licensed establishments. *Tr.*, 2/8/12 at 135, 144. On the survey results, beer and wine stores had the "least important" ranking among all respondents. *Tr.*, 2/8/12 at 136, 144. Beer and wine stores were also rated as "always available" on Georgia Avenue. *Tr.*, 2/8/12 at 136, 144. Seventy three percent of respondents ranked cleanliness as the reason they do not shop, dine, or enjoy being on Georgia Avenue, and 70% cited public safety as a concern. *Tr.*, 2/8/12 at 137, 144. Ms. Robinson shared a number of quotes from respondents who completed the survey. *Tr.*, 2/8/12 at 137-138, 148.

34. The survey was not a scientific study regarding how the sales or consumption of alcoholic beverages relates to crime and public safety issues. *Tr.*, 2/8/12 at 140. The survey questions did not distinguish between liquor stores and grocery stores that sell beer and wine. *Tr.*, 2/8/12 at 147. The survey was general in nature and addressed the impact

of ABC-licensed establishments on the community, rather than the impact of this particular application on the community. *Tr.*, 2/8/12 at 163.

35. Ms. Robinson is not necessarily concerned with the existing ABC-licensed stores, though she is concerned with adding additional liquor stores to Georgia Avenue, N.W. *Tr.*, 2/8/12 at 151, 159. She also indicated that ABC licensed stores bring a negative element to the neighborhood, and the question becomes one of a trade-off between more businesses and adding more problems. *Tr.*, 2/8/12 at 153-154. She does not want any more Retailer Class A establishments in the neighborhood. *Tr.*, 2/8/12 at 155. Ms. Robinson stated that liquor stores have more of a negative visual impact than the smaller stores that sell beer and wine. *Tr.*, 2/8/12 at 160-161.

36. ANC Commissioner Kent Boese resides at 608 Rock Creek Church Road, N.W., two blocks east of the Petworth metro station. *Tr.*, 2/8/12 at 197, 207. He is a member of ANC 1A in Ward 1. *Tr.*, 2/8/12 at 197. He is familiar with Ward 4 as well, given the proximity of the border between the two Wards. *Tr.*, 2/8/12 at 198. He does not recall any loitering problems at ABC-licensed establishments located in Ward 4. *Tr.*, 2/8/12 at 200, 213. Commissioner Boese does not frequent the Applicant's establishment. *Tr.*, 2/8/12 at 207.

37. He testified on behalf of the Protestants, regarding the overconcentration of ABC-licensed establishments, crime, and litter. *Tr.*, 2/8/12 at 175. He noted that a vast majority of the licensed establishments located on the map of the neighborhood are concentrated in Ward 1, and not Ward 4. *Tr.*, 2/8/12 at 176, Protestants Exhibit No. 1(C). The Applicant's establishment is located in Ward 1, and it is not subject to the single sales ban imposed on Ward 4 licensees. *Tr.*, 2/8/12 at 176-177. The establishment sits south of the Petworth metro station, as do two other Retailer Class A licensees, and there are no Retailer Class A licensed establishments north of the metro station. *Tr.*, 2/8/12 at 177. The south end of the metro station contains mostly commercial properties whereas the area to the north is mostly residential. *Tr.*, 2/8/12 at 218-219.

38. Lion's Liquors, is located at 3614 Georgia Ave., N.W. and is located in 9,300 square feet of space. *Tr.*, 2/8/12 at 178. Commissioner Boese believes that Lion Liquors is adequate to meet the alcoholic beverage needs of the community. *Tr.*, 2/8/12 at 178. Lion's Liquors is remodeling its space with high-end renovations, removal of the bullet-proof safety glass, and restoration of the original tin ceiling. *Tr.*, 2/8/12 at 202. There has been a positive response in the neighborhood to Lion's Liquors' improvements. *Tr.*, 2/8/12 at 202.

39. Commissioner Boese would like to have the Applicant respond more quickly to the graffiti that is marked on his building, as well as more engagement from the Applicant with the community. *Tr.*, 2/8/12 at 203-205, 208. He doesn't understand why the Applicant's proposal for a bottle and aluminum can recycle program hasn't already been implemented. *Tr.*, 2/8/12 at 204.

40. Commissioner Boese noted that the 3600 block of Georgia Ave., N.W. where the Applicant is located, experienced seven incidents of crime since the beginning of the year. *Tr.*, 2/8/12 at 178. He acknowledged that the crimes are not due to the Applicant, but he does believe that concentration of crime in that block may be attributable to the loitering

problem. *Tr.*, 2/8/12 at 180. Loitering is also a problem at Petworth Liquors and Lion's Liquors. *Tr.*, 2/8/12 at 180.

41. Commissioner Boese does not experience loitering problems around the Retailer Class B establishments in his ANC Single Member District. *Tr.*, 2/8/12 at 181, 213. He also noted that the investigative report only addressed MPD crime statistics related to the Applicant's address, and not the block or the neighborhood. *Tr.*, 2/8/12 at 191, 195. Commissioner Boese does not know whether the availability of alcoholic beverages increases or decreases criminal activity. *Tr.*, 2/8/12 at 190, 214.

42. ANC 1A attempts to negotiate Voluntary Agreements with all of its licensees. *Tr.*, 2/8/12 at 187, 219. They have a Voluntary Agreement with Rock Creek Market and Lion's Liquors. *Tr.*, 2/8/12 at 187. Commissioner Boese believes that the community would be more receptive to a Retailer's Class C licensed establishment, and that it would reduce loitering if patrons were consuming alcoholic beverages on-premises. *Tr.*, 2/8/12 at 206, 220-221. The community is not opposed to alcohol, but they would prefer to have licensees partner with the neighborhood to offer meaningful services and products, commensurate with the operations of other vendors. *Tr.*, 2/8/12 at 206-207. The establishment has enough public space to accommodate a sidewalk café if the Applicant were to obtain a Retailer's Class C license. *Tr.*, 2/8/12 at 212.

43. The graffiti has been on the Applicant's building for over a month. *Tr.*, 2/8/12 at 208. Georgia Ave., N.W. was the target of a lot of tagging in the spring of 2011. *Tr.*, 2/8/12 at 208. The District government addresses tagging on public property by cleaning and painting over the graffiti. *Tr.*, 2/8/12 at 209. For private property, the government needs permission from the property owner to remove the graffiti. *Tr.*, 2/8/12 at 209-210. Commissioner Boese believes that unaddressed graffiti encourages loitering. *Tr.*, 2/8/12 at 210-211.

44. Carolyn Matthews has been a resident of 732 Quebec Ave., N.W. since 1971. *Tr.*, 2/8/12 at 224, 226-227, 231. She has witnessed loitering, trespassing on private property, public urination, and illegal drug transactions in her neighborhood. *Tr.*, 2/8/12 at 224, 232. She is working with Assistant Police Chief Diane Groomes, and the Commanders of MPD 3D and 4D, to establish patrols in the neighborhood. *Tr.*, 2/8/12 at 224-225, 231. She does not address her concerns with the owner, but rather she contacts the police. *Tr.*, 2/8/12 at 228. She has not experienced any cooperation on the part of the Applicant until he applied for his ABC license. *Tr.*, 2/8/12 at 228.

45. Ms. Matthews has observed trash and litter on the block. *Tr.*, 2/8/12 at 226. She has taken photographs of people loitering in front of Petworth Liquors. *Tr.*, 2/8/12 at 226. The loitering contributes or exacerbates other activity such as public consumption of alcohol, drug use, and drug dealing. *Tr.*, 2/8/12 at 226. Ms. Matthews testified that the loitering increases in the summer months and that the people who loiter are aggressive and intimidating. *Tr.*, 2/8/12 at 226, 231.

46. Ms. Matthews provided the paper work to the Applicant to have the city government clean and paint over the graffiti on his building. *Tr.*, 2/8/12 at 228-229. She testified that the graffiti has been on his building for over two months and he has done

nothing to address it. *Tr.*, 2/8/12 at 229. She believes that crime and loitering will increase if an ABC license is granted to the Applicant. *Tr.*, 2/8/12 at 231.

47. Esubalew Wondimu operates Family Food and Delicatessen Store, located at 3713 New Hampshire Ave., N.W.. *Tr.*, 2/8/12 at 233-234, 241. He testified that the granting of the Retailer's Class A license to the Applicant would be an economic hardship to his business. *Tr.*, 2/8/12 at 235, 237-238, 245. The economy is not sound and his business is down even without the additional competition. *Tr.*, 2/8/12 at 235, 238, 243, 250.

48. The hardship is due to the fact that Mr. Wondimu's business is located in Ward 4, and thus he is prohibited from selling single containers of beer because of the existing moratorium. *Tr.*, 2/8/12 at 236, 238, 242-243. The Applicant, whose store is located in Ward 1, is not subject to the same ban, and he can sell single containers. *Tr.*, 2/8/12 at 236-237, 244. Mr. Wondimu stated that the Applicant is also advantaged because he has a deli that generates a lot of revenue and Mr. Wondimu does not. *Tr.*, 2/8/12 at 237-238, 243, 245.

49. Mr. Wondimu testified that he does not have any problems with his own operations because he keeps his store clean, litter is picked up, and loitering is discouraged. *Tr.*, 2/8/12 at 240. The people who frequent his store live in the neighborhood. *Tr.*, 2/8/12 at 250-251.

CONCLUSIONS OF LAW

50. Under §§ 25-313 and 25-314 of Title 25 of the District of Columbia Code and § 400.1 of Title 23 of the District of Columbia Municipal Regulations, an Applicant for a new Retailer's Class A License must demonstrate to the Board's satisfaction that the establishment is appropriate for the neighborhood in which it is located. The Protestants challenged the Application on the grounds that it will adversely impact public safety, real property values, and that it will contribute to the overconcentration of ABC-licensed establishments.

51. The Board concludes that the Application will not adversely impact public safety, or real property values of the neighborhood. D.C. Code § 25-313(b)(1)-(4) (Supp. 2010). In addition, the Board finds that the Application will not "create or contribute to an overconcentration of licensed establishments" that will adversely impact the neighborhood in which the establishment is located. D.C. Code § 25-314(a)(1)-(4) (2001).

52. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2011) 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. ANC 1A protests the license on the grounds that granting the application would create or contribute to an overconcentration of licensed establishments. See Protest File No. 11-PRO-00047, Resolution in Protest of Issuance of Retail Class A License to King's Deli & Grocery (July 13, 2011). The Board disagrees with ANC 1A that

granting a Retailer's Class A license to the Applicant will create or contribute to an overconcentration of licensed establishments.

53. The Board concludes that granting the Application will not adversely impact public safety. The Board finds it convincing that ABRA's investigation did not observe any noise, loitering, or criminal activity during the protest period. The Board recognizes that Protestants' witnesses testified that they observed individuals loiter outside the establishment, engage in public drinking and criminal activity, and urinate in public. These are valid concerns, but the Board does not find any evidence that these observations were directly attributable to the Applicant.

54. Additionally, the Board finds that the Applicant's commitment to increase its exterior flood lights, and install additional security cameras to monitor activity at the front and rear doors will help to resolve the community's concerns regarding public safety and loitering. Further, the Board finds that the Applicant's commitment to refrain from selling single containers of beer and half pints of spirits will also help to curb loitering and unwanted activity. However, notwithstanding the Applicant's verbal commitments, the Board will impose the conditions set forth below to further discourage loitering, and allow the establishment to co-exist peacefully with its neighbors.

55. The Board finds that the Applicant will not contribute to the overconcentration of liquor serving establishments in the neighborhood. There are nine other ABC establishments located within 1200 feet of the Applicant, only two of which are Retailer Class A licensees. Mr. Wondimu's concerns about the proximity of the Applicant's establishment relate more to competition in the neighborhood, than to safety or overconcentration. The Applicant's business model, once licensed, will still have the deli counter and its related food sales as the store's highest revenue generator.

56. The Board notes that although the Protestants argued that the overconcentration of licensed establishments may be associated with a number of problems; no actual evidence, was presented to the Board that showed that the neighborhood where the Applicant is located, would suffer any greater adverse impacts due to the addition of one more licensed establishment. Therefore, there is no evidence to support the conclusion that there is an overconcentration of liquor stores or that granting the Application would create or contribute to the overconcentration of ABC-licensed establishments in the Georgia Avenue corridor.

57. The Board also notes that it 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 (2008). Accordingly, based on our review of the Application and the record, we find that the Applicant has good character and is fit for licensure, and has satisfied all remaining requirements imposed by Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations.

58. For these reasons, the Board finds that the Application for a Retailer's Class A license is appropriate.

ORDER

Therefore, the Board, on this 6th day of June 2012, hereby **ORDERS** that the Application for a new Retailer's Class A License filed by Shin & Jang, Inc., t/a King's Deli & Grocery, at premises 3651 Georgia Ave., N.W., Washington, D.C., is hereby **GRANTED**; subject to the following conditions:

- (1) The Applicant shall install and maintain two exterior security cameras. The establishment shall place one camera near the front entrance of the premises, and another near the establishment's entrance in the alley. Both cameras shall provide a complete view of the area around the entrances;
- (2) The Applicant must maintain footage recorded by the security cameras for at least thirty (30) days, and the footage must be made available to MPD or ABRA investigators immediately upon request;
- (3) ABRA shall dispatch an ABRA investigator within forty-five days (45) from the date of this Order to ascertain the Applicant's compliance with the Board's security camera conditions;
- (4) The Applicant shall not divide a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or fewer;
- (5) The Applicant shall not sell, give, offer, expose for sale, or deliver an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or fewer.
- (6) The Applicant shall not sell, give, offer, expose for sale, or deliver miniature half pints of spirits with a capacity of 375 milliliters or fewer.

Copies of this Order shall be sent to the Applicant and to the Protestants.

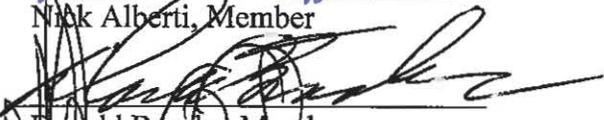
District of Columbia
Alcoholic Beverage Control Board



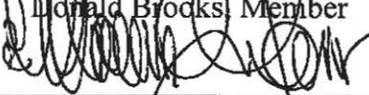
Ruthanne Miller, Chairperson



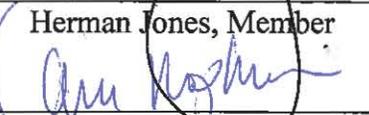
Nick Alberti, Member



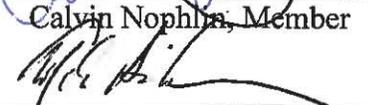
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), 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, 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) 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).