

and February 22, 2011, but were unable to negotiate a Voluntary Agreement. The Protest Hearing was heard by the Board on June 15, 2011.

ANC 2B submitted a recommendation in accordance with D.C. Code § 25-609 on October 19, 2010. The Board will give great weight to ANC 6A's recommendation, which recommends denial of the Application, because the establishment adversely impacts the peace, order, and quiet of the neighborhood. See Protest File No. 10-PRO-00164, Letter from ANC 2B (Nov. 11, 2010).

The protest issues raised by the Protestants, pursuant to D.C. Code § 25-602, are whether the Application will adversely impact the peace, order, quiet of the neighborhood. The Board will also determine whether the Application will adversely impact the residential parking, vehicular and pedestrian safety, and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b)(1)-(3); 23 DCMR §§ 1607.2; 1607.7(b) (2008). Further, because the Applicant is seeking the renewal of its license, the Board will consider "the licensee's record of compliance with" Title 25 of the District of Columbia Official Code and Title 23 of the District of Columbia Municipal Regulations and any conditions placed on the license during the period of licensure, including the terms of [the establishment's] voluntary agreement." D.C. Code § 25-315(b)(1) (2001).

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 renew its Retailer's Class CT License. See ABRA Protest File No. 10-PRO-00164.
2. ABRA Investigator Jabriel Shakoor was assigned to investigate the protest of the establishment. *Transcript (Tr.)*, June 15, 2011 at 20. ABRA investigators monitored the establishment from February 24, 2011, to May 28, 2011. *Tr.*, 6/15/11 at 23. ABRA monitored the establishment on 55 separate occasions. *Tr.*, 6/15/11 at 24. Investigator Shakoor specifically observed the interior of the establishment while it was in operation and the area outside the establishment during both the daytime and evening hours. *Tr.*, 6/15/11 at 23.
3. The Applicant's establishment is located at 2147 P Street, N.W. *ABRA Protest File No. 10-PRO-00164, Protest Report, 2.* The establishment is located in a C-2-C zone. *Protest Report, 3.* There are 37 ABC-licensed establishments within 1,200 feet of the Applicant. *Protest Report, 3.* There are no schools, recreation centers, public libraries, or daycare centers within 400 feet of the Applicant. *Protest Report, 5.*
4. The establishment is located on three floors. *Tr.*, 6/15/11 at 22. The first floor serves as a restaurant and the second and third floors operate as lounges that offer entertainment. *Tr.*, 6/15/11 at 22. The second floor has dance space and the third floor has a number of couches. *Tr.*, 6/15/11 at 28-30.

5. Andrew Huff serves as Councilmember Jack Evans's Director of Communications and is also the Councilmember's liaison to Dupont Circle. *Tr.*, 6/15/11 at 84.

Councilmember Evans asked Mr. Huff to read a statement during the protest hearing on behalf of the Protestants. *Tr.*, 6/15/11 at 84, 87; *Protestants' Exhibit No. 2*. Mr. Huff testified that Ward 2 has the highest concentration of ABC-licensed establishments in the District of Columbia and has a heavy mix of commercial and residential properties. *Tr.*, 6/15/11 at 85. Mr. Huff stated that the majority of ABC-related complaints that are received by Councilmember Evans's office involve the Applicant's establishment. *Tr.*, 6/15/11 at 86, 116-17. Mr. Huff testified that the establishment is a drain on the District's police and agency resources and that the establishment is detrimental to the neighborhood's quality of life, especially public safety. *Tr.*, 6/15/11 at 86-87, 99-100.

6. The Metropolitan Police Department (MPD) Crime Analysis Unit reported that MPD received 31 calls for service in 2009, 19 calls in 2010, and 2 calls for service in 2011. *Tr.*, 6/15/11 at 22. Only 10 of the calls led to actual police reports being written. *Tr.*, 6/15/11 at 27.

7. The Applicant's investigative history shows the following violations:

- (a) on October, 24, 2009, the establishment did not have an ABC Manger on duty and was fined \$500.00 on May 11, 2010;
- (b) on April 14, 2010, the Applicant agreed to pay a \$500.00 fine, as part of an offer-in-compromise, in order to settle charges that the establishment violated its Voluntary Agreement and that an investigator employed by the Alcoholic Beverage Regulation Administration (ABRA) was inappropriately touched at the establishment on December 22, 2009;
- (c) on September 8, 2010, the Applicant agreed to pay a \$500.00 fine and receive a 2 day suspension, stayed for one year, as part of an offer-in-compromise, in order to settle charges that it violated its Voluntary Agreement on May 24, 2010; and
- (d) on May 25, 2011, the establishment failed to make its Voluntary Agreement accessible and failed to post and carry its licenses in its establishment, which resulted in a \$250.00 fine.

Protest Report, 11-12.

8. Robert Sole owns Apartment 701 in the Dupont West building. *Tr.*, 6/15/11 at 123. The apartment faces the Palomar Hotel. *Tr.*, 6/15/11 at 123. Mr. Sole has no complaints regarding the establishment's restaurant operations; rather, he is concerned about the establishment's nightclub activities. *Tr.*, 6/15/11 at 124.

9. Mr. Sole finds it difficult to sleep when the establishment is operating as a nightclub. *Tr.*, 6/15/11 at 125. As stated by Mr. Sole, large crowds of the establishment's patrons congregate outside the Dupont West building. *Tr.*, 6/15/11 at 124. The crowds are noisy and occasional fights break out in the crowd. *Tr.*, 6/15/11 at 125-26.

10. Mr. Sole complained that the establishment's operations deny the public use of the sidewalk. *Tr.*, 6/15/11 at 133. The establishment regularly ropes off a large area of the sidewalk, which creates congestion on the sidewalk. *Tr.*, 6/15/11 at 124, 127; *Protestants' Exhibit No. 7, Photograph Nos. 5, 14, 16-19*. Furthermore, the large crowds, entering, leaving, or loitering near the establishment, make it difficult for pedestrians to use the sidewalk when the establishment is having late night events. *Tr.*, 6/15/11 at 133, 137; *Protestants' Exhibit No. 7, Photograph Nos. 5, 14, 16-19*. Indeed, on some occasions, Mr. Sole was forced to walk into the street or walk on the other side of the street to walk past the establishment. *Tr.*, 6/15/11 at 137. Mr. Sole has observed that the establishment's crowds do not disperse until at least an hour after the establishment closes. *Tr.*, 6/15/11 at 142.

11. Mr. Sole testified that he heard increasingly loud noises outside his apartment around 3:30 a.m. on April 24, 2011. *Tr.*, 6/15/11 at 128-29. Mr. Sole then observed from his balcony that people were running up and down the street. *Tr.*, 6/15/11 at 129. He also observed people fist-fighting and striking each other, people picking up chairs left out by local establishments, and throwing them at other people. *Tr.*, 6/15/11 at 129. Mr. Sole called the police to report the violence and five to six squad cars responded to the area. *Tr.*, 6/15/11 at 130.

12. Commissioner Kevin O'Connor serves on Advisory Neighborhood Commission (ANC) 2B and represents Single-Member District 2B02. *Tr.*, 6/15/11 at 75. As indicated by ANC Commissioner Kevin O'Connor, the police must continually disperse crowds in front of the establishment. *Tr.*, 6/15/11 at 224.

13. Brian Lowry lives in a condominium located in the Dupont West building at 2141 P Street, N.W., which is located in a C-2-C zone. *Tr.*, 6/15/11 at 144, 227; District of Columbia Office of Zoning, DC Zoning Map (see 2141 P Street, N.W.). He lives in Unit 505, which faces the establishment. *Tr.*, 6/15/11 at 227. Mr. Lowry has called the police regarding disturbances that have occurred outside the establishment. *Tr.*, 6/15/11 at 229. Specifically, Mr. Lowry has observed fighting outside the establishment. *Tr.*, 6/15/11 at 229-30. Mr. Lowry has also observed that the crowds outside of the establishment do not disperse. *Tr.*, 6/15/11 at 230.

14. John Hammond lives at 2141 P Street, N.W., in Unit 904. *Tr.*, 6/15/11 at 247. Mr. Hammond has observed that the crowds outside the Dupont West building are patrons of the Applicant's establishment. *Tr.*, 6/15/11 at 276.

15. Many of the Protestants' witnesses complained about noise emanating from the establishment and from crowds loitering outside the establishment. *Tr.*, 6/15/11 at 98, 125, 145, 228-29. Investigator Shakoor only observed noise emanating from the establishment when he stood in front of the establishment's entrance. *Tr.*, 6/15/11 at 26.

16. Investigator Shakoor noticed that some people, not necessarily the Applicant's patrons, park briefly in front of the Dupont West's garage. *Tr.*, 6/15/11 at 42. He noted that some vehicles often park there to pick up patrons and then move on. *Tr.*, 6/15/11 at 42.

17. Rick Schreiber lives in an apartment in the Dupont West condominium building, located at 2141 P Street, N.W. *Tr.*, 6/15/11 at 144. The apartment is located on the southwest side of the building and looks over the front entrance of the Applicant's establishment. *Tr.*, 6/15/11 at 144. Mr. Schreiber recorded video footage of the front entrance of the establishment in the early morning of May 1, 2011. *Tr.*, 6/15/11 at 144, 149, 171. The footage begins at 2:54 a.m. and records the establishment's front entrance for 40 minutes. *Tr.*, 6/15/11 at 145, 152. Mr. Schreiber recorded the footage from his apartment's balcony. *Tr.*, 6/15/11 at 150.

18. The video footage recorded by Mr. Schreiber begins five minutes before the establishment closes. *Tr.*, 6/15/11 at 153. In pertinent part, the video shows various cars double parked near the establishment, which temporarily stops traffic on P Street, N.W., a two lane road. *Tr.*, 6/15/11 at 154-55; *Protestants' Exhibit No. 3*, 5:01-6:42, 14:48-15:14, 15:37-20:00, 22:42-23:14, 25:29-26:55. The video also shows a vehicle parked in front of the ramp into the West Dupont condominium's garage, staying there from 3:10 a.m. until after 3:30 a.m. *Protestants' Exhibit No. 3*; *Protestants' Exhibit No. 4*. Finally, the video shows police officers using their loudspeaker to tell the crowd in front of the establishment to disperse and then shows a number of officers get out of their vehicles and disperse the crowd on foot. *Protestants' Exhibit No. 4*; *Tr.*, 6/15/11 at 172-73. According to Mr. Schreiber the events shown in the video occur a few times per month. *Tr.*, 6/15/11 at 175.

19. The Applicant employed the MPD Reimbursable Detail in 2010 but has not employed the detail in 2011. *Tr.*, 6/15/11 at 27, 37, 167. The Applicant's Voluntary Agreement, approved by the Board on July 18, 2008, states:

Applicant, along with other business owners of Dupont West P Street, will continue to contribute funds to pay for the services of two-uniformed MPDC officers to monitor and patrol the 2000 and 2100 blocks of P Street . . . Such security officer will be engaged during peak hours of nightlife activities on Friday nights, Saturday mornings and Saturday nights/Sunday mornings midnight to 4:00AM subject to MPDC conditions. *If, for any reason, the neighborhood effort is discontinued and or ABRA subsidies are discontinued, Applicant continues to agree to pay for this detail.*

Bouzid, Inc. t/a Marrakesh Palace Pasha Lounge, Board Order No. 2008-230, 4-5 (D.C.A.B.C.B. Jul. 17, 2008) (emphasis added).

20. The Protestants presented the Board with a number of videos found on Youtube.com, taken by third parties, which show the establishment's operations on unidentified evenings. *Protestants' Exhibit No. 6A*. The video, titled: "CEO Spenna Birthday Bash," shows women wearing only body paint, but does not show actual nudity, because the women's genitals appear to be opaquely covered. *Protestants' Exhibit No. 6A* (CEO Spenna Birthday Bash); D.C. Code § 25-101(34) ("Nude performance" means dancing or other entertainment by a person whose genitals, pubic region, or buttocks are less than completely and opaquely covered and, in the case of a female, whose breasts are less than completely and opaquely covered below a point immediately above the top of the areola.").

CONCLUSIONS OF LAW

21. Pursuant to D.C. Code § 25-313(a) (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application to renew a Retailer's Class CT License is sought is appropriate for the neighborhood in which it is located. The Protestants challenged the Application on the grounds that it will adversely impact the peace, order, and quiet of the neighborhood. The Board finds that the Application is appropriate for the neighborhood subject to the following conditions:

- (1) the Applicant's hours of entertainment shall be limited to 1:00 a.m., Sunday through Thursday, and limited to 2:00 a.m. on Friday and Saturday;
- (2) the Applicant shall install security cameras outside the establishment and the cameras shall monitor at least 50 feet of sidewalk space in front of the establishment;
- (3) the Applicant shall maintain footage recorded by its security cameras for at least 30 days;
- (4) the Applicant shall hire the MPD Reimbursable Detail for at least four hours anytime the establishment has entertainment or dancing;
- (5) the MPD Reimbursable Detail shall be present for at least one hour after the establishment closes.

We find that the addition of the MPD Reimbursable Detail and security cameras will resolve the parking and peace, order, and quiet issues experienced by the Protestants. As such, we find that the conditions imposed by the Board obviate the need to cancel the Applicant's license.

22. 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 2B protests the license on the grounds that renewing the license will negatively impact the peace, order, and quiet of the neighborhood. See Protest File No. 10-PRO-00164, Letter from ANC 2B (Nov. 11, 2010). We disagree with ANC 2B that canceling the license is necessary. Instead, we find that there is no reason to cancel the license when the conditions outlined above are sufficient to protect the peace, order, and quiet of the neighborhood.

23. The record shows that conditions must be placed on the establishment's license in order to preserve the peace, order, and quiet of the neighborhood. D.C. Code § 25-313(b)(2). The evidence shows that the Applicant is not sufficiently controlling the crowds outside of its establishment. Multiple witnesses testified that the crowds outside the establishment are loud and unruly and that patrons loitering outside the establishment occasionally engage in fighting. Supra, at para. 9, para. 11, para. 13. In addition, we find

it troubling that the establishment's unwieldy crowds are continually blocking the sidewalk and have to be repeatedly dispersed by the police. Supra, at para. 10, para. 12, para. 18. Lastly, the Board finds it concerning that the establishment's unwieldy crowd is remaining in the area, long after the establishment has closed, which only amplifies the harm experienced by the neighborhood. Supra, at para. 10, para. 13. As such, based on these facts, we find that conditions are required to maintain the peace, order, and quiet of the neighborhood.

24. We further find that the Applicant's current operations are having an adverse impact on residential parking needs. D.C. Code § 25-313(b)(3). It is simply unacceptable for the establishment's patrons to continually block the Dupont West's garage. Supra, at para. 16, para. 18.

25. The Board is also concerned by the Applicant's past failures to comply with the ABC statutes and regulations and current non-compliance with its Voluntary Agreement. We note that compliance with the ABC statutes and regulations, as well as the establishment's Voluntary Agreement, is a factor in determining whether to renew the Applicant's license. D.C. Code § 25-315(b)(1) (2001). Nevertheless, here, the Applicant has committed a number of secondary tier violations in the past. Supra, at para. 7. In addition, the record shows that the Applicant has discontinued paying for the MPD Reimbursable Detail, even though the Voluntary Agreement clearly obligates the Applicant to hire the detail for the establishment. Supra, at para. 19.

26. Finally, there is insufficient evidence in the record to demonstrate that the Applicant is in violation of the noise prohibitions found in D.C. Official Code § 25-725. The noise prohibitions contain specific exceptions for establishments located in commercial zones. See D.C. Code § 25-725 (2001). None of the evidence presented by the Protestants appears to overcome this exception, because the Dupont West building is located in a commercial zone. Supra, at para. 13.

27. The conditions stated above will require the establishment to provide for an MPD Reimbursable Detail and to have security cameras monitor the area outside the establishment. These conditions, which will increase MPD's presence in the neighborhood, will help control the establishment's crowds, deter anti-social behavior, and improve the residential parking situation in the neighborhood. For these reasons, we find that the Application is appropriate only if the Applicant complies with the conditions outlined by the Board in this Order.

28. On a final note, the only issue raised by the Protestants pursuant to D.C. Official Code § 25-602 is whether the Application will adversely impact the peace, order, and quiet of the neighborhood. As such, the Board is not required to make findings of fact related to any other issues. 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). Therefore, based on our review of the Application and the record, we find that the Applicant has satisfied any additional remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations that have not been expressly discussed in this Order.

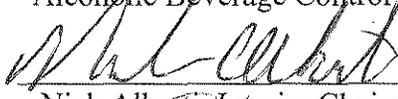
ORDER

Therefore, it is hereby **ORDERED**, on this 28th day of September 2011 that the Application for Renewal of its Retailer's Class CT License filed by Bouzid, Inc., t/a Marrakesh Palace Pasha Lounge at premises 2147 P Street, N.W., is hereby **GRANTED** subject to the following conditions:

- (1) the Applicant's hours of entertainment shall be limited to 1:00 a.m., Sunday through Thursday, and limited to 2:00 a.m. on Friday and Saturday;
- (2) the Applicant shall install security cameras outside the establishment and the cameras shall monitor at least 50 feet of sidewalk space in front of the establishment;
- (3) the Applicant shall maintain footage recorded by its security cameras for at least 30 days;
- (4) the Applicant shall hire the MPD Reimbursable Detail for at least four hours anytime the establishment has entertainment or dancing; and
- (5) the MPD Reimbursable Detail shall be present for at least one hour after the establishment closes.

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

District of Columbia
Alcoholic Beverage Control Board



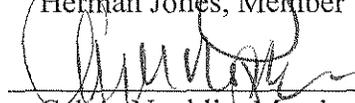
Nick Alberti, Interim Chairperson



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, 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, 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).