

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

In the Matter of:)
)
The Griffin Group, LLC)
t/a Policy)
)
Application for a Substantial Change)
to a Retailer's Class CR License)
)
at premises)
1904 14th Street, N.W.)
Washington, D.C. 20010)
)

License No.: ABRA-076804
Case No.: 11-PRO-00017
Order No.: 2011-357

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Andrew J. Kline, on behalf of the Applicant

Commissioner Ramon Estrada, on behalf of the Protestant, Advisory
Neighborhood Commission 2B

Elwyn Ferris, on behalf of the Protestant, A Group of Five or More
Individuals

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

The Griffin Group, LLC, t/a Policy (Applicant), filed an Application for a Substantial Change to a Retailer's Class CR License, located at 1904 14th Street, N.W., Washington, D.C. The requested substantial change to the operations of the establishment include a sidewalk café with 16 seats on T Street, N.W., and a sidewalk café with 14 seats on 14th Street, N.W. The proposed hours of operation, sales and service on the sidewalk cafés would be Sunday through Thursday, 10:00 a.m. to 11:00 p.m. and Friday and Saturday, 10:00 a.m. to 11:30 p.m. The

Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on April 18, 2011, and a Protest Status Hearing on May 11, 2011.

On March 9, 2011, a protest, only against the sidewalk café on T Street, N.W., was timely filed by Advisory Neighborhood Association (ANC) 2B. ANC 2B was granted standing at the Roll Call Hearing. A second protest, against both sidewalk cafes, was filed by A Group of Five or More Individuals on April 1, 2011, represented by Elwyn Ferris. They were also granted standing at the Roll Call Hearing.

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

The Parties were unsuccessful in reaching a Voluntary Agreement before the Protest Hearing and, thus, the matter was heard by the Board at a Protest Hearing on June 8, 2011.

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

FINDINGS OF FACT

1. The Applicant seeks a Substantial Change to a Retailer's Class CR License. *See* Alcoholic Beverage Regulation Administration (ABRA) Licensing File No. ABRA-076804, ABRA Protest Report, Case Report No. 11-PRO-00017.
2. Specifically, the Applicant seeks a sidewalk café with 16 seats on T Street, N.W., and a sidewalk café with 14 seats on 14th Street, N.W. *See* ABRA Licensing File No. ABRA-076804, ABRA Protest Report, Case Report No. 11-PRO-00017. The Applicant also seeks hours of operation, sales and service on the sidewalk cafés from Sunday through Thursday, 10:00 a.m. to 11:00 p.m. and Friday and Saturday, 10:00 a.m. to 11:30 p.m. *See* ABRA Licensing File No. ABRA-076804, ABRA Protest Report, Case Report No. 11-PRO-00017.
3. The Applicant's establishment is located at 1904 14th Street, N.W., Washington, D.C., and is located within a C3A zone. *See* ABRA Licensing File No. ABRA-076804, ABRA Protest Report, Case Report No. 11-PRO-00017. There are forty-one ABC-licensed establishments within 1,200 feet of the Applicant. *See* ABRA Protest Report, Case Report No. 11-PRO-00017. There are twelve establishments with an ABC license within 1,200 feet of the Applicant with sidewalk café or summer garden that include: Standard (Retailer's Class CR), Bistro La Bonne (Retailer's Class CR), Eatonville (Retailer's Class CR), Bar Pilar, (Retailer's Class CT), Islander Caribbean Restaurant & Lounge (The) (Retailer's Class CR), Cork (Retailer's Class CR), Masa

14 (Retailer's Class CR), Café Saint-Ex (Retailer's Class CT), Indulj (Retailer's Class CT), Almaz Restaurant (Retailer's Class CR), Ilah Bistro (Retailer's Class CR), and Alero Restaurant and Lounge (Retailer's Class CR). *See* ABRA Protest Report, Case Report No. 11-PRO-00017. There are no schools, recreation centers, or public libraries within 400 feet of the establishment. *See* ABRA Protest Report, Case Report No. 11-PRO-00017. The Certificate of Occupancy lists a capacity of 245 seats. *See* ABRA Licensing File No. ABRA-076804.

4. Jabriel Shakoor was assigned to investigate the protests filed against the Application for a Substantial Change. *Transcript, (Tr.)* 6/8/11 at 23. He has been an ABRA investigator for three years. *Tr.*, 6/8/11 at 24. He was assigned to investigate the protest issues of peace, order, and quiet regarding the two applications for a sidewalk café. *Tr.*, 6/8/11 at 24. He testified that there will be nine seats on the sidewalk café located on T Street, N.W.¹ *Tr.*, 6/8/11 at 28, 47.

5. He testified that he interviewed the representative of the Group of Five or More Individuals, Elwyn Ferris, as a part of his investigation. *Tr.*, 6/8/11 at 24. Mr. Ferris told Investigator Shakoor that he resides at 1417 T Street, N.W., and he and his neighbors are opposed to a sidewalk café on T Street, N.W. *Tr.*, 6/8/11 at 24-25. Mr. Ferris believes that the addition of a sidewalk café would create problems such as increased patron noise, additional pedestrian traffic, and overall, would be an unwelcome addition to T Street, N.W.

6. Investigator Shakoor testified that the establishment is located in a commercial C-3-A zone and Mr. Ferris' house is located in a residential R-5-B zone. *Tr.*, 6/8/11 at 25. The location of the sidewalk café is on T Street, N.W., and is also in a commercial zone. *Tr.*, 6/8/11 at 25. It is separated from the nearest residences by a post office that is no longer in use. *Tr.*, 6/8/11 at 26, 36-37, 43. Investigator Shakoor testified that the establishment's commercial zoning is modified by an Arts Overlay District. *Tr.*, 6/8/11 at 35. He also stated that one block north of the establishment at 14th and U Street, N.W., is already implementing the objectives of the Arts Overlay District, with regard to bars, restaurants, and late night activity. *Tr.*, 6/8/11 at 58.

7. Investigator Shakoor stated that an MPD Crime Analysis indicates that there has only been one call for service at the establishment and this was for a theft on March 3, 2011. *Tr.*, 6/8/11 at 26. Although several complaints have been lodged against the establishment, Investigator Shakoor stated that there is no history of the establishment violating its Voluntary Agreement as suggested by the Protestants. *Tr.*, 6/8/11 at 34, 50-53. He further testified that there have been a number of noise complaints in 2010, but none has been filed in 2011. *Tr.*, 6/8/11 at 54. He stated that none of the noise or delivery complaints has been substantiated. *Tr.*, 6/8/11 at 54-55, 59.

8. During Investigator Shakoor's investigation, he observed regular foot traffic, which was heightened during the morning and evening rush hours, both on 14th Street, N.W., and on T

¹ The parties stipulated and the Board takes administrative notice that the Applicant is seeking a sidewalk café for 16 seats on T Street, N.W.

Street, N. W. *Tr.*, 6/8/11 at 26. He stated that the pedestrian traffic is much lighter on T Street, N.W. than it is on 14th Street, N.W. *Tr.*, 6/8/11 at 26.

9. Investigator Shakoor also interviewed the Applicant's manager, Jordan Davidowitz. *Tr.*, 6/8/11 at 27. Mr. Davidowitz informed Investigator Shakoor that the establishment is seeking to increase its food offerings to patrons by offering them upscale outdoor seating. *Tr.*, 6/8/11 at 27. He further stated that there will be no music, live or recorded, on the sidewalk café and that patrons will be reminded to be respectful of the neighborhood. *Tr.*, 6/8/11 at 27. Mr. Davidowitz also told Investigator Shakoor that there are several restaurants on the 14th Street, N.W., corridor that have a sidewalk café. *Tr.*, 6/8/11 at 27. One of the restaurants is Café Saint Ex and its sidewalk café is located on T Street, N.W. *Tr.*, 6/8/11 at 38.

10. Investigator Shakoor testified that the establishment has requested to remain open on the sidewalk cafés until 11:00 p.m. on weekdays and 11:30 p.m. on weekends. *Tr.*, 6/8/11 at 39-40. He is not aware that any other sidewalk café in the same neighborhood closes any earlier. *Tr.*, 6/8/11 at 40.

11. The Applicant called Joel Rosenberg as its first witness. *Tr.*, 6/8/11 at 63. Mr. Rosenberg has lived at 1512 R Street, N.W., since 1975. *Tr.*, 6/8/11 at 64-65, 69, 71. He testified that there are no ABC licensed establishments on his block or the blocks adjacent to his residence. *Tr.*, 6/8/11 at 71-72. He stated that the nearest ABC licensed establishment is two blocks from his home. *Tr.*, 6/8/11 at 73.

12. He has witnessed a lot of changes in the 14th and T Street's neighborhood and he is supportive of the requested sidewalk cafés *Tr.*, 6/8/11 at 64. He testified that the neighborhood was once quite deserted, and the biggest changes include the advent of retail and dining options. *Tr.*, 6/8/11 at 65-66.

13. Mr. Rosenberg testified that he and his girlfriend enjoy outdoor dining, but that most of the options in the area have limited seating and are always full. *Tr.*, 6/8/11 at 66-67, 75. He stated that although there is outside dining located on 17th Street, N.W., he is also looking for new places with a sidewalk café. *Tr.*, 6/8/11 at 67. He is supportive of the sidewalk café at Policy because the establishment is near his residence. *Tr.*, 6/8/11 at 68. He also believes that the addition of the sidewalk café will make the neighborhood safer because of the increased and open activity. *Tr.*, 6/8/11 at 69.

14. The Applicant called John Fanning as its next witness. *Tr.*, 6/8/11 at 80. Mr. Fanning testified that he resides at 1825 13th Street, N.W., two blocks from the establishment. *Tr.*, 6/8/11 at 81. He has lived in the neighborhood over 30 years and is a former three term Advisory Neighborhood Commissioner for Logan Circle. *Tr.*, 6/8/11 at 84.

15. Mr. Fanning stated that the operators of Policy are very community oriented and that they care about the neighborhood and the safety of their patrons. *Tr.*, 6/8/11 at 81, 86-87. He also noted that they host charity and Public Service Area (PSA) events at the establishment. *Tr.*,

6/8/11 at 81-82. He believes that the existence of a sidewalk café will help to deter crime and he noted that Policy's security is often visible to passersby. *Tr.*, 6/8/11 at 82, 87-88. Mr. Fanning also pointed out that there are private residences that are located near Café Saint Ex, which also has outside dining. *Tr.*, 6/8/11 at 83.

16. Mr. Fanning believes that the area on T Street, N.W., is more conducive to a sidewalk café because there is more space to accommodate the seating. *Tr.*, 6/8/11 at 83-84. He also testified that the area is a former red-light district with drugs and prostitution, but that the Arts Overlay District has brought a lot of entertainment and dining opportunities to the neighborhood. *Tr.*, 6/8/11 at 85. He is aware that Policy already has exterior dining, but he stated that he prefers to dine on the sidewalk café as opposed to the roof. *Tr.*, 6/8/11 at 86.

17. The Applicant called Asim Walia as its next witness. *Tr.*, 6/8/11 at 93. Mr. Walia testified that he is a managing partner of the Applicant, Policy Restaurant. *Tr.*, 6/8/11 at 94. In that capacity, he manages the overall operations, handles the finances, and markets the establishment. *Tr.*, 6/8/11 at 95. He stated that he attends every ANC meeting, and that he works closely with the community to address its concerns. *Tr.*, 6/8/11 at 95.

18. Mr. Walia testified that the sidewalk café is important to his restaurant because he needs to compete with the other restaurants in the neighborhood that offer outdoor dining. *Tr.*, 6/8/11 at 96-97. He stated that most people enjoy dining outside and it increases visibility for the restaurant when pedestrians see patrons dining outdoors. *Tr.*, 6/8/11 at 96. Mr. Walia testified that he has walked through the neighborhood and sees other restaurants whose sidewalk cafés are always full and yet, people continue to wait to be seated outside. *Tr.*, 6/8/11 at 97-98. He noted that the brunch offerings at Policy have been slow because when it is beautiful outside, people dine elsewhere. *Tr.*, 6/8/11 at 98.

19. Mr. Walia prepared financial forecasting in the event they would be granted a sidewalk café. *Tr.*, 6/8/11 at 99. He stated that he conservatively estimated, given the number of months one could dine outside, a sidewalk café will generate revenue between \$150,000 and \$160,000 annually. *Tr.*, 6/8/11 at 99. He stated that this is based on six seats on the 14th Street, N.W., sidewalk café and 16 seats on the T Street, N.W., sidewalk café, open seven days a week, with a turnaround of two for each table for the number of hours they're open. *Tr.*, 6/8/11 at 100, 141-143, 145. Mr. Walia testified that if the establishment was permitted full legal hours, the additional hours would generate another \$160,000 annually. *Tr.*, 6/8/11 at 145-146. He stated that the restaurant operated at a loss in 2009 and broke even in 2010. *Tr.*, 6/8/11 at 147. He also stated that the establishment is able to meet the statutory food sales requirements as a licensed Retailer's Class CR. *Tr.*, 6/8/11 at 148-150.

20. Mr. Walia testified that he and his partners are primarily in the food business, and are motivated to offer more dining opportunities for their patrons, to increase their finances and to bring about a safer pedestrian environment. *Tr.*, 6/8/11 at 100-101, 114-115. He stated that the Public Space Committee required revisions to the original plans by reducing the number of seats

on the 14th Street, N.W., sidewalk café because of the bus stop and the tree box. *Tr.*, 6/8/11 at 102-104; Applicant's Exhibit No. 1 and Exhibit No. 2.

21. Mr. Walia has been involved with Policy for over four years when he and his partners took over the abandoned property. *Tr.*, 6/8/11 at 105; Applicant's Exhibit No. 3 and Exhibit No. 4. He stated that the design and construction took two years and the restaurant recently celebrated its two year anniversary. *Tr.*, 6/8/11 at 105. Mr. Walia acknowledged that he has received some complaints and he takes them very seriously. *Tr.*, 6/8/11 at 108. The establishment has a policy that all complaints are addressed within 24 hours. *Tr.*, 6/8/11 at 108, 168. Mr. Walia testified that they are always open to feedback from the community and the signatories to the Voluntary Agreement have his cell number. *Tr.*, 6/8/11 at 168, 171.

22. Mr. Walia testified that when the establishment received noise complaints, they built a wall on the upstairs outdoor patio and hired a sound management company to mitigate the noise levels that emanate from the lounge area. *Tr.*, 6/8/11 at 108-110, 114, 161-162, 176-178. He stated that the wall is an eight foot retaining wall used to block the noise from the neighbors. *Tr.*, 6/8/11 at 110. The sound management company conducted tests and advised the restaurant on adjustments to their sound and music levels. *Tr.*, 6/8/11 at 111, 154-156. He stated that there is no music on the summer garden located on the second floor. *Tr.*, 6/8/11 at 155-156.

23. Mr. Walia also stated that when companies attempt to make deliveries on T Street, N.W., which is prohibited by the Voluntary Agreement, he tells his employees not to accept it. *Tr.*, 6/8/11 at 108. The establishment has made it known to their vendors to not deliver on T Street, N.W., by including the prohibition on their manifest. *Tr.*, 6/8/11 at 108-109. They received 1400 deliveries in 2010, and once in awhile a new driver will be warned not to unload on T Street, N.W. *Tr.*, 6/8/11 at 109, 169-170.

24. Mr. Walia testified that the establishment sent a survey to all of the people who were signatories to the Voluntary Agreement, area residents, and patrons. *Tr.*, 6/8/11 at 112. He stated that the response to the survey was minimal. *Tr.*, 6/8/11 at 113. They reached out to the signatories to meet with them on the sidewalk café issues. *Tr.*, 6/8/11 at 159-160. They are also working to get approvals from the Public Space Committee for sound barriers, trees, and plants to help mitigate noise on the sidewalk cafés *Tr.*, 6/8/11 at 162.

25. Mr. Walia testified that the upstairs lounge is available for large groups, special events, and private functions for any occasion. *Tr.*, 6/8/11 at 125. He noted that their website advertises the lounge, which is often marketed as a late-night happy hour. *Tr.*, 6/8/11 at 125. Mr. Walia acknowledged that his Voluntary Agreement prohibits live music, but does not prohibit DJs. *Tr.*, 6/8/11 at 130. Mr. Walia described the establishment as three stories, with only the first and second level being developed and used; specifically, the restaurant is on the first floor and the second floor houses the lounge. *Tr.*, 6/8/11 at 151-152. He stated that as dinner slows down, more people migrate upstairs, but the kitchen remains open until 11:00 p.m. on week nights and midnight on the weekends. *Tr.*, 6/8/11 at 152. He further stated that alcohol beverage service ends at 12:30 a.m. on week nights and 1:30 a.m. on weekends. *Tr.*, 6/8/11 at 153.

26. Mr. Walia testified that the establishment tried to increase its revenue by other means because the Voluntary Agreement prohibits extended hours to match other area restaurants, or the offering of entertainment, and the signatories were not agreeable to amend the Voluntary Agreement. *Tr.*, 6/8/11 at 131, 173-174. The restaurant has also launched a brunch menu as a means to get more patronage. *Tr.*, 6/8/11 at 131, 135. The restaurant is not a lunch venue because there are not enough business workers during the week in the neighborhood, so they don't open until 5:00 p.m. *Tr.*, 6/8/11 at 132, 135.

27. The establishment has also retained the services of a restaurant consulting company to help increase its revenue. *Tr.*, 6/8/11 at 134. The company recommended increased advertising on social media outlets. *Tr.*, 6/8/11 at 134-135. Mr. Walia acknowledged that they have not adopted or implemented all of the suggestions made by the consulting company. *Tr.*, 6/8/11 at 136.

28. Mr. Walia testified that the restaurant recently closed on six consecutive Mondays because that day is the slowest day of the week and the establishment was undergoing a cleaning and renovations, and new employees were being trained. *Tr.*, 6/8/11 at 139, 175-176. He also testified that the sidewalk café will be sixteen feet long on T Street N.W. *Tr.*, 6/8/11 at 164. He stated that the proposed hours for the sidewalk café are 10:00 a.m. to 3:00 p.m. to accommodate the brunch crowd. *Tr.*, 6/8/11 at 165-166. Patrons would be prohibited from standing on the sidewalk cafés and would only be located there if they have a seat. *Tr.*, 6/8/11 at 166-167.

29. The Applicant called its next witness, Patrick Cirillo. *Tr.*, 6/8/11 at 189. Mr. Cirillo resides at 1512 Caroline Street, N.W. and has lived in the neighborhood for over 15 years. *Tr.*, 6/8/11 at 190. Mr. Cirillo testified in support of the establishment's application and believes that the neighborhood deserves a variety of choices that reflect the people who reside there. *Tr.*, 6/8/11 at 191. He stated that he considers Policy to be respectable, managed by good people who provide jobs, and offer dining and entertainment options for the neighbors. *Tr.*, 6/8/11 at 191.

30. He further stated that he was representing 16 other people who live in the neighborhood and who had signed a petition supporting the sidewalk cafés. *Tr.*, 6/8/11 at 191-197, Applicant Exhibit No. 5. Mr. Cirillo testified that the additional outdoor dining area would allow the neighbors to be part of an urban setting that interacts with all of the sights and sounds of the street activities. *Tr.*, 6/8/11 at 199-200. He also believes that the sidewalk cafés will contribute to the public safety because the sidewalks will be in use by the restaurant patrons and there will be additional lighting. *Tr.*, 6/8/11 at 200-201.

31. Mr. Cirillo testified that the 16 people who signed the petition are residents of Caroline Street, N.W., or 15th Street, N.W., and none of them resides on 14th Street, N.W., or T Street, N.W. *Tr.*, 6/8/11 at 203-204. He stated that none of the residents he asked to sign the petition declined to do so. *Tr.*, 6/8/11 at 204.

32. The Applicant called Jordan Davidowitz as its next witness. *Tr.*, 6/8/11 at 206. Mr. Davidowitz testified that he is the General Manager and has responsibility for the day to day operations, interacting with the customers, managing the staff, and working with ABRA investigators. *Tr.*, 6/8/11 at 207, 230. He testified that he works at the restaurant 70 hours a week. *Tr.*, 6/8/11 at 229.

33. He then described how the sidewalk café would be managed. *Tr.*, 6/8/11 at 207. Mr. Davidowitz noted that the entrance to the establishment is located on 14th Street NW and patrons would enter the restaurant to be seated on the sidewalk cafés. *Tr.*, 6/8/11 at 207-208, 227, 257. He stated that access and egress to the T Street N.W. sidewalk café would be strictly controlled by security because the exits are limited to employees only. *Tr.*, 6/8/11 at 239-241. Patrons cannot walk through the restaurant to exit out onto the T Street N.W. sidewalk café. *Tr.*, 6/8/11 at 243-247.

34. Mr. Davidowitz further added that the establishment is very community oriented and that they host the monthly PSA meetings. *Tr.*, 6/8/11 at 209. He stated that a majority of the events hosted are for nonprofit organizations, such as Howard University and an AIDS fundraiser. *Tr.*, 6/8/11 at 231. He testified that they do not use promoters to promote events at the establishment. *Tr.*, 6/8/11 at 232, 256. The Events Manager handles the screening process and event hosts are required to meet food and liquor minimums and to pay a bartender fee. *Tr.*, 6/8/11 at 233-236. The establishment hosts eight or nine events a year. *Tr.*, 6/8/11 at 254.

35. Mr. Davidowitz further stated that the sidewalk cafés would be used strictly for dining purposes. *Tr.*, 6/8/11 at 209, 239. Last call would be provided to patrons thirty (30) minutes prior to closing the sidewalk cafes. *Tr.*, 6/8/11 at 209-210. He also testified that the operations of the two sidewalk cafés had been reduced to writing in an action plan for staff. *Tr.*, 6/8/11 at 210; Applicant's Exhibit No. 6.

36. Mr. Davidowitz testified that he had also received letters and signatures of neighbors and patrons who supported the sidewalk café applications. *Tr.*, 6/8/11 at 213; Applicant's Exhibit No. 7. He stated that the restaurant has a number of menus ranging from a happy hour menu to a dessert menu. *Tr.*, 6/8/11 at 216; Applicant's Exhibit No. 8. He indicated that they had also produced a brunch menu that they hope to offer to patrons who use the sidewalk cafés. *Tr.*, 6/8/11 at 217.

37. Mr. Davidowitz explained that the use of the term "restolounge" is an abbreviation of restaurant and lounge and is not the signature name for the establishment. *Tr.*, 6/8/11 at 218-219. The restaurant does not have dancing events and he has never seen patrons dancing on the table tops. *Tr.*, 6/8/11 at 219-220, 222. He confirmed that the Voluntary Agreement provides that there is to be no dance floor. *Tr.*, 6/8/11 at 220. He stated that the establishment does permit music in the lounge area, but that the music cannot be heard on the second floor patio. *Tr.*, 6/8/11 at 237, 248.

38. Mr. Davidowitz testified that the outside area of the sidewalk cafés would be surrounded by plant boxes that would serve as a barrier around the seating area. *Tr.*, 6/8/11 at 226.

39 Mr. Davidowitz testified that the establishment has a security plan and that the head of security personnel reports to him. *Tr.*, 6/8/11 at 238. There are security personnel in the back of the restaurant to ensure that patrons are not going into the kitchen area or using the patio area when it is closed. *Tr.*, 6/8/11 at 251-252. He stated that the head of security roams the restaurant to ensure that patrons are not in areas where they are not supposed to be. *Tr.*, 6/8/11 at 253.

40. The Protestants called Tonya Barbour as their first witness. *Tr.*, 6/8/11 at 261. She has resided at 1425 T Street N.W. for 15 years. *Tr.*, 6/8/11 at 262, 281. There are thirty (30) units in her building and she lives on the sixth floor overlooking the establishment. *Tr.*, 6/8/11 at 270-271. She testified that the neighborhood has changed significantly in those years as it has become cleaner and safer. *Tr.*, 6/8/11 at 263. She stated that she is an original signatory to the Voluntary Agreement and that the parties worked very diligently in good faith to develop a fair Voluntary Agreement. *Tr.*, 6/8/11 at 263-264. She believed that the summer garden was the only outdoor space permitted by the Voluntary Agreement. *Tr.*, 6/8/11 at 278-280. She testified further that she is supportive of growth and the prospering of businesses. *Tr.*, 6/8/11 at 263.

41. Ms. Barbour stated that she finds it unreasonable for the establishment to have a sidewalk café on T Street N.W. *Tr.*, 6/8/11 at 264. She is supportive of the 14th Street, N.W., sidewalk café because that street is less residential. *Tr.*, 6/8/11 at 264, 280, 288, 291. She believed that when she signed the Voluntary Agreement, that the second floor patio was going to be the only outdoor space used by the restaurant. *Tr.*, 6/8/11 at 264. She does not believe that the establishment's request for two additional outdoor spaces is a sign of good faith. *Tr.*, 6/8/11 at 264-265.

42. Ms. Barbour testified that the sidewalk café will affect the peace and quiet of the neighborhood. *Tr.*, 6/8/11 at 265. She does not want to wind her way through the seated patrons to make her way home every day. *Tr.*, 6/8/11 at 265, 287, 294. She wants peace and quiet in her neighborhood and she wants the ability to park near her home. *Tr.*, 6/8/11 at 265-266. She testified that on one occasion she drove around the neighborhood for an hour and then had to park six blocks away from her home because she could not find parking on her street. *Tr.*, 6/8/11 at 267-268. She discovered on her walk from the car that the restaurant's valet service was parking cars on her street, which is prohibited by the Voluntary Agreement. *Tr.*, 6/8/11 at 268.

43. She stated that between 1:00 a.m. and 1:30 a.m., the patrons are noisy, obnoxious, and inebriated, and one can hear screaming and the breaking of glass. *Tr.*, 6/8/11 at 271. She believes that the noise can be traced to the Applicant because it did not exist before they opened for business. *Tr.*, 6/8/11 at 272. Her major concern is the noise level that would be generated by the use of the sidewalk cafés. *Tr.*, 6/8/11 at 285-287, 289.

44. Ms. Barbour testified that she attended meetings with the establishment to address other privileges requested by the management. *Tr.*, 6/8/11 at 273. She stated that she could not agree

to an extension of hours because of other issues she has with the operations of the establishment. *Tr.*, 6/8/11 at 273. She stated that she told management that she wanted them to succeed at their business but she did not appreciate the inebriated patrons who exit the establishment, break into parked cars, urinate on the buildings, and bump their heads leaving blood on the sidewalk. *Tr.*, 6/8/11 at 274. She also testified that she can hear music emanating from the second floor patio. *Tr.*, 6/8/11 at 275. She believes that the sidewalk cafés will contribute to more parking problems and traffic congestion. *Tr.*, 6/8/11 at 277, 287.

45. Ms. Barbour agreed that the Applicant is located in an Arts Overlay District and as such, one of the purposes is to promote art uses such as restaurants. *Tr.*, 6/8/11 at 283. She admitted that her opposition of the sidewalk cafés conflicts with the planning objectives of the District of Columbia. *Tr.*, 6/8/11 at 283-284. Ms. Barbour also admitted that she had never seen the plans proposed by the establishment for the sidewalk cafés. *Tr.*, 6/8/11 at 297-298.

46. The Protestants called Margarita Cruz as their next witness. *Tr.*, 6/8/11 at 299. Ms. Cruz testified that she has lived at 1425 T Street N.W. for 16 years. *Tr.*, 6/8/11 at 299, 325. She stated that in those 16 years, the neighborhood has been growing and evolving, and some of the changes have been very positive. *Tr.*, 6/8/11 at 301, 325. She further stated that parking has become ridiculous and she attributes that to the nightlife in the area. *Tr.*, 6/8/11 at 302, 307.

47. Ms. Cruz testified that she does not want a sidewalk café on T Street, N.W., because it will be disruptive due to people standing on the sidewalk. *Tr.*, 6/8/11 at 301-302, 304, 310, 317-319. She stated that even now, the Applicant's employees stand on the sidewalk during their cigarette breaks or break bottles when they're taking out the trash. *Tr.*, 6/8/11 at 302. She also believes that a sidewalk café will bring "not so positive" elements to the neighborhood that weren't there before the restaurant opened. *Tr.*, 6/8/11 at 302, 315.

48. She stated that planters and barriers surrounding the sidewalk café are not enough to prevent people from hanging out on the sidewalk. *Tr.*, 6/8/11 at 303, 310-311. She believes that a sidewalk café with 16 seats could easily become occupied by 20 to 25 people if they are permitted to stand. *Tr.*, 6/8/11 at 303, 317. She also stated that the Applicant's sidewalk café cannot be compared to the sidewalk café at Saint Ex across the street because Saint Ex has only one sidewalk café and it is self-contained. *Tr.*, 6/8/11 at 304. Ms. Cruz testified that the proposed sidewalk café on 14th Street N.W. is feasible, but she believes the sidewalk café proposed for T Street, N.W., would exacerbate the parking problems and create noise. *Tr.*, 6/8/11 at 305.

49. Ms. Cruz further stated that the Applicant is not a restaurant, but rather a club and lounge that permits dancing and partying, which she herself has witnessed. *Tr.*, 6/8/11 at 305-306, 325. She testified that the Applicant employs security and other restaurants in the neighborhood don't have as much security personnel. *Tr.*, 6/8/11 at 308. She questions why the Applicant needs so much security if it is indeed, a restaurant. *Tr.*, 6/8/11 at 308.

50. Ms. Cruz testified that she has witnessed delivery trucks on T Street, N.W., making deliveries to the Applicant through their back door. *Tr.*, 6/8/11 at 309. Those delivery trucks occupy two parking spaces when they are on T Street N.W. *Tr.*, 6/8/11 at 310.

51. Ms. Cruz admitted that she has not seen the plans for the two sidewalk cafés. *Tr.*, 6/8/11 at 311-312. She also admitted that she has frequented sidewalk cafés at other licensed establishments, but that they are not near residential areas. *Tr.*, 6/8/11 at 312-315. She testified that she is glad that the restaurant is located in the neighborhood, but she is opposed to the sidewalk café on T Street N.W. *Tr.*, 6/8/11 at 318, 324. She is concerned about late night hours and excessive noise. *Tr.*, 6/8/11 at 319. She is not agreeable to reducing the number of seats or setting early hours for closure. *Tr.*, 6/8/11 at 318-323.

52. The Protestants called Elwyn Ferris as their next witness. *Tr.*, 6/8/11 at 330. Mr. Ferris testified that he resides at 1417 T Street NW and has lived there for 30 years. *Tr.*, 6/8/11 at 330. He stated that the neighborhood has changed considerably and mostly for the better. *Tr.*, 6/8/11 at 330. He recalled establishing the Orange Hat Patrol in the early years that video-recorded drug dealing and the commission of other crimes. *Tr.*, 6/8/11 at 330. He stated that he has been a very active member of the community over the last 30 years. *Tr.*, 6/8/11 at 330-331.

53. Mr. Ferris testified that he is concerned about the over-saturation of alcohol-licensed establishments and the loss of other kinds of businesses a community needs. *Tr.*, 6/8/11 at 331-332. He stated that he conducted a survey of the neighborhood and obtained 50 signatures of area residents who are opposed to the sidewalk cafés. *Tr.*, 6/8/11 at 332-335; Protestants Exhibit No. 5. Mr. Ferris testified that the area residents are already negatively affected by the restaurant's presence and the sidewalk cafés will further affect them. *Tr.*, 6/8/11 at 335.

54. Mr. Ferris testified that he personally requested Mr. Walia to do a better job of maintaining the public space and the tree box on T Street N.W. *Tr.*, 6/8/11 at 337. He stated that the tree box is always full of trash and garbage and the tree is dead. *Tr.*, 6/8/11 at 337; Protestants' Exhibit No. 6. He believes the tree box is now maintained because the Applicant is before the Board at a Protest Hearing. *Tr.*, 6/8/11 at 338.

55. Mr. Ferris testified that he is also concerned with the Applicant's use of the public bus stop as a way station for the Applicant's valet service. *Tr.*, 6/8/11 at 340, 344. He stated that he has personally witnessed near accidents between Metro buses and patrons' vehicles or the metro buses depositing riders at another area of the sidewalk. *Tr.*, 6/8/11 at 340; Protestants' Exhibit No. 7. He also believes that the owners and employees use the valet parking signs to permanently park their vehicles or they park on the street while they're at work. *Tr.*, 6/8/11 at 344, 378; Protestants' Exhibit No. 8.

56. Mr. Ferris testified that he is a signatory on the Applicant's Voluntary Agreement. *Tr.*, 6/8/11 at 347. He stated that in September 2010, there was a meeting between the owners and the residents to discuss Mr. Walia's request for additional privileges. *Tr.*, 6/8/11 at 347. Mr.

Ferris noted that there was unanimous opposition to grant the Applicant extended operating hours or the T Street N.W. sidewalk café. *Tr.*, 6/8/11 at 347.

57. Mr. Ferris testified that he strongly objects to the T Street N.W. sidewalk café because he believed there was a clear understanding that the only outdoor dining space permitted was the summer garden on the second floor. *Tr.*, 6/8/11 at 349. He is also concerned that Policy is not the restaurant model that the residents were ever promised. *Tr.*, 6/8/11 at 352. He stated that if he had known in the beginning what sort of licensed establishment Policy would become; there would be an entirely different Voluntary Agreement in place. *Tr.*, 6/8/11 at 352. He does not believe that the Applicant has been a good operator or that they work well with the community. *Tr.*, 6/8/11 at 352-253, 371-372. Mr. Ferris stated that he and other residents granted them the privilege to have the 14th Street N.W. sidewalk café. *Tr.*, 6/8/11 at 355, 387, 390.

58. Mr. Ferris testified that the 50 signature petition opposing the T Street N.W. sidewalk café was not prepared for the ABRA Protest Hearing. *Tr.*, 6/8/11 at 362. He said the document was prepared in opposition to the issuance of a public space permit. *Tr.*, 6/8/11 at 363.

59. Mr. Ferris acknowledged that the restaurant is located in an Arts Overlay Zone. *Tr.*, 6/8/11 at 368. He also agreed that provisions for an Arts Overlay Zone include eating and drinking establishments. *Tr.*, 6/8/11 at 369-370. He did not agree that the objective of the Arts Overlay Zone to encourage drinking establishments was contrary to his opinion that there is an oversaturation of licensed establishments in the neighborhood. *Tr.*, 6/8/11 at 371.

60. Mr. Ferris testified that he does not want the sidewalk café on T Street N.W. and no limitations to the proposition would make the sidewalk café more acceptable to him. *Tr.*, 6/8/11 at 382. He stated that he has a general distrust of the Applicant and is concerned about their lack of cooperation and the difficulty in communicating with them. *Tr.*, 6/8/11 at 383-384. He also stated that he has to constantly work with new members of the restaurant's management which has become problematic because they aren't familiar with the terms of the VA. *Tr.*, 6/8/11 at 385.

CONCLUSIONS OF LAW

61. 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 Substantial Change to a Retailer's Class CR License is sought is appropriate for the neighborhood in which it is located. In making its determination, the Board shall consider all relevant evidence, including the effect of the establishment on peace, order, and quiet, noise, residential parking, vehicular and pedestrian safety, and real property values.

62. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the Protest Hearing, the Board finds that the Applicant's plans will not have an adverse impact on property values and residential parking and vehicular and pedestrian safety, and in general, peace, order, and quiet of the neighborhood. Nevertheless, the Board concludes that that Applicant's plans may generate noise in violation of the ABC laws. The Board will deem the Application appropriate and the negative impact on peace, order, and quiet will be alleviated so long as the Applicant complies with the conditions discussed below.

63. 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, no ANC 2B's protest against the T Street N.W. sidewalk café was given the great weight as is required under D.C. Official Code § 25-609.

64. The Board finds that the Substantial Change proposed by the Applicant will not adversely impact residential parking and vehicular and pedestrian safety. Although many of the witnesses testified that parking is a problem in the neighborhood, the Board is satisfied that the parking difficulties will not be further exacerbated by additional seats on the sidewalk cafés. The Board also instructs the Applicant to abide by the terms of its Voluntary Agreement regarding parking. The Board also finds that the Applicant, by encouraging patrons to use valet parking is acting responsibly and appropriately. As such, the Board sees no reason to attribute any problems that residents may have parking in the neighborhood to the addition of sidewalk cafés because the Applicant is discouraging its patrons from taking residential parking spots; and instead, encouraging parking elsewhere.

65. In general, the Board also finds that the Applicant's plans for two sidewalk cafés with limited hours will not have an adverse impact on peace, order, and quiet. The testimony presented by the Protestants indicates that they have issues with the conduct of patrons frequenting ABC-licensed establishments in the neighborhood and attribute these problems to the Applicant because the problems didn't exist prior to the restaurant's opening. However, the Protestants' witnesses could only speculate that the Applicant somehow caused these problems. There was no evidence presented to the Board that linked neighborhood problems of litter,

fighting, drunkenness, or crime directly to the Applicant anymore than another ABC-licensed establishment. On the contrary, witnesses for the Applicant indicated that they welcomed the sidewalk cafés because the presence of patrons dining outdoors would serve to improve public safety for all neighborhood residents.

66. Based on the evidence and testimony presented, it is clear that the Applicant is operating in good faith and sought to work with the community before applying for the substantial changes to its operations. It also appears to the Board that the Applicant is merely seeking to be a more financially sound restaurant by expanding its business model to include two defined sidewalk cafés that are buttressed from the pedestrian walkway by planters and other barriers. The Board will hold the Applicant to its commitment that it put in place planters and other barriers to define the sidewalk café areas.

67. Notwithstanding good intentions, the Board is concerned that the Applicant's plans will create noise and adversely affect the Protestants who live in the neighborhood. D.C. Code § 25-725 (2001) specifically protects people who live in residential zones from noise created by ABC licensed establishments. The Board credits the testimony of Ms. Cruz that she currently hears conversation and noise from the establishment. Furthermore, the Board shares the Protestants' concerns that the shared wall and abutting sidewalk café will create a disturbance.

68. Finally, the Board finds that if the Applicant wants to expand its operations to border a residential zone, it needs to take concrete steps to prevent noise from disturbing nearby residents. As countless hearings before the Board have demonstrated, it is much easier to deal with noise issues before modifications begin. As such, the Board will require that the Applicant takes commercially reasonable steps to mitigate the possible noise generated by the sidewalk cafés.

68. For these reasons, the Board will grant the Application subject to the conditions discussed below.

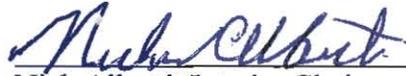
ORDER

Therefore, this 14th day of September 2011, it is hereby **ORDERED** that the Application for a Substantial Change filed by The Griffin Group, LLC, t/a Policy, located at 1904 14th Street, N.W., Washington, D.C., to include a sidewalk café with 16 seats on T Street, N.W., and a sidewalk café with six seats on 14th Street, N.W., be and the same hereby is **GRANTED** so long as it complies with the following conditions:

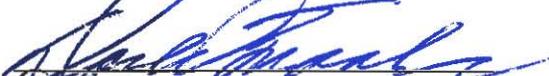
- (1) The Applicant shall limit the number of patrons to six on the 14th Street N.W. sidewalk café at any one time;
- (2) The Applicant shall limit the number of patrons to 16 on the T Street N.W. sidewalk café at any one time;
- (3) The Applicant shall limit ingress and egress to the T Street N.W. sidewalk café from the establishment's entrance and shall prohibit the entry of patrons to the sidewalk café from the street;
- (4) The Applicant shall take commercially reasonable steps to mitigate any potential noise created by the two sidewalk cafes.
- (5) The Applicant shall submit the noise consultant's analysis and recommendations to the Board. As long as a reasonable analysis and proposal is obtained, the Board will deem the Application appropriate if the Applicant agrees to and complies with the noise consultant's recommendations.
- (6) The hours of operation, sales, and service on the sidewalk café shall be 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 11:30 p.m. on Friday and Saturday.

Copies of this order shall be sent to the Petitioner and to the Protestants.

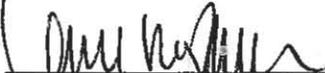
District of Columbia
Alcoholic Beverage Control Board



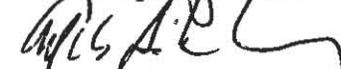
Nick Alberti, Interim Chairperson



Donald Brooks, Member

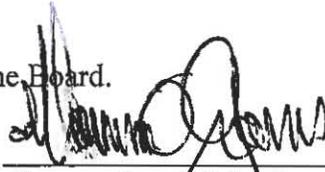


Calvin Nophlin, Member



Mike Silverstein, Member

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



Herman Jones, 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, N.W., Suite 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).