

resources to absorb the demand created by Pulse, a nightclub projected to hold at least 1,300 patrons. The addition of Pulse to the neighborhood will displace parking currently used by other clubs, which will cause parking to spill onto residential streets when the clubs are open, encourage more illegal parking, and expose residents to more disturbances caused by club patrons. The Board is also convinced that the addition of Pulse will unacceptably strain the resources of the Metropolitan Police Department to effectively manage the larger crowds that will be attracted to the neighborhood on a regular basis. As a result, the Board denies the Application, because the addition of a large nightclub to the neighborhood will severely exacerbate current problems faced by the community.

Procedural Background

Pulse filed an Application for a New Retailer's Class CN License at 2142 Queens Chapel Road, N.E., Washington, D.C. The Alcoholic Beverage Regulation Administration (ABRA) provided public notice of the Application on January 24, 2014. *Notice of Public Notice*, 1 (ABRA License No. 094074). The final day to submit protest petitions related to the Application was March 10, 2014.

During the protest period, ANC 5C voted to protest the Application on February 19, 2014 and submitted a resolution to ABRA designating Commissioner Karla Butler as the commission's designated representative. *ABRA Protest File No. 14-PRO-00021*, ANC 5C Resolution, 2 (Feb. 19, 2014). In addition, a group of fifty residents and property owners (Odunsi Group) submitted a petition protesting the Application. *ABRA Protest File No. 14-PRO-00021*, Opposition to Alcohol License Application for Pulse Nightclub.

The Board's Agent convened a Roll Call Hearing on March 24, 2014. During the hearing, Pulse challenged the standing of both ANC 5C and the Odunsi Group. The Board's Agent granted standing to both parties over the objection of the Pulse. Subsequently, Pulse submitted a formal Motion to Dismiss (Motion) for consideration by the Board, to which neither ANC 5C or the Odunsi Group responded.

The Board granted-in-part and denied-in-part the motion. In Board Order No. 2014-131, the Board dismissed ANC 5C based Ms. Butler's failure to appear. *In re Pulse Nightclub, LLC, t/a Pulse Nightclub*, Case No. 14-PRO-00021, Board Order No. 2014-131, ¶ 6 (D.C.A.B.C.B. May 7, 2014). The Board further held that Commissioner Butler could not designate Yolanda Odunsi as the ANC's designated representative, based on an email from the Chair of ANC 5C. *Id.* at ¶ 7. The Board dismissed a number of individual signatories to the Odunsi Group based on their failure to appear, but determined that the group retained standing, because enough members appeared at the hearing.¹ *Id.* at ¶ 8. The Board then dismissed Evelyn Fraser, Leslie Satchell, Janay Austin-Carlson, and Katherine Ford from the protest, because they did not sign the original protest petition. *Id.* at ¶ 9.

¹ The Board incorrectly characterized the Odunsi Group as a group of six, when it should have been characterized as a group of five after the Board dismissed Evelyn Fraser in the replacement order. *In re Pulse Nightclub, LLC, t/a Pulse Nightclub*, Case No. 14-PRO-00021, Board Order No. 2014-131, 1 n. 1, ¶¶ 8-9 (D.C.A.B.C.B. May 7, 2014).

Karla Butler, on behalf of the ANC and the Odunsi Group, filed a motion for reinstatement, which garnered an objection from the Applicant. *Protestant's Motion to Reinstate ANC 5C and Group of Five or More Protest*, 1-5 (May 3, 2014) [*Protestant's Motion to Reinstate*]. The Applicant also requested a different geographic designation for review by the Board.

The Protest Status Hearing then occurred on May 1, 2014. The parties then proceeded to a Protest Hearing on May 14, 2014, where each party argued its respective cases. After the hearing, the Applicant filed proposed findings of fact and conclusions of law, which the Board considered in deciding this case.²

I. Great Weight

We further recognize that ANC 5C properly submitted its recommendation opposing the Application. *ANC 5C Resolution*, 1-2 (Feb. 19, 2014).³ Under District of Columbia Official Code §§ 1-309.10(d) and 25-609, the Board will give great weight to an ANC's properly adopted written recommendations. See *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Official Code §§ 1-309.10(d), 25-609 (West Supp. 2011). Accordingly, the Board "must elaborate, with precision, its response to the ANC[']s issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. Because ANC 5C is a party to this matter, the Board's Conclusions of Law will directly address the issues and concerns raised by the ANC.

II. Question Presented

The issues presented to the Board, and raised by the Protestants, under District of Columbia Official Code § 25-602, are whether the Applications will adversely impact the peace, order, and quiet; residential parking; and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014); *ANC 5C Resolution*, 1-2; *Odunsi Group Protest Petition*, 1.

² The Board does not address Pulse's argument that the Board cannot consider the individual operating history of the members of the limited liability company, because the Board does not rely on such facts as a basis for denial of the Application. *Applicant's Proposed Findings of Facts and Conclusions of Law*, 31. Nevertheless, the Board notes that this argument is incorrect in light of the newly enacted D.C. Official Code § 25-301(a-1). D.C. Official Code §§ 25-101(6) (defining "applicant" as "... each member of an applicant . . . limited liability company"); 25-301(a-1) ("To determine whether an applicant for a new license meets the criteria of subsection (a)(1) of this section, the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant").

³ The Applicant's argument that the ANC must be dismissed is rendered moot, because, even if the Board dismissed the ANC, the Odunsi Group would remain as a protestant. *Applicant's Proposed Findings of Fact and Conclusions of Law*, 21. Furthermore, even if the Board's determination regarding the standing of the parties were overturned, the Board may rely on the evidence and testimony in the record to determine whether Pulse merits a presumption of appropriateness under D.C. Official Code § 25-311(a). Consequently, even if both parties were not entitled to standing, the Board would reach the same result based on the record. See also *In re Colin Unlimited, LLC, t/a Saki*, Case No. 10-PRO-00180, Board Order No. 2011-447 (D.C.A.B.C.B. Oct. 19, 2011) (the Board denied an application *sua sponte* because it found the application inappropriate for Adams Morgan).

RESOLUTION OF PRELIMINARY PROCEDURAL MATTERS

The Board addressed the pending motions before proceeding to adjudicate the matter on the merits.

I. THE BOARD VACATES BOARD ORDER NO. 2014-131 INsofar AS IT DISMISSED ANC 5C AND THE ODUNSI GROUP.

The Board finds good cause to reinstate ANC 5C and the individuals dismissed from the Odunsi Group under 23 DCMR § 1601.6, because Ms. Butler's absence was caused by the death of her father. *Transcript (Tr.)*, May 14, 2014 at 20. The Board further finds that Ms. Butler's failure to serve the Applicant does not prevent the Board from rendering a decision in accordance with 23 DCMR § 1703.8. Finally, the Board finds that Ms. Butler had the authority to designate Ms. Odunsi as the ANC and Odunsi Group's representative. For these reasons, the Board vacates Board Order No. 2014-131 insofar as it dismissed ANC 5C and the Odunsi Group from the protest.

a. The Board finds good cause to reinstate ANC 5C and the members of the Odunsi Group that failed to appear at the Roll Call Hearing under 23 DCMR § 1601.6(b).

The Board finds that ANC 5C and the Odunsi Group demonstrated good cause where the group's designated representative was absent due to the death of her father and notified the agency of her absence. Under § 1601.6, the "[f]ailure to appear at the administrative review hearing either in person or through a designated representative may result in denial of the license application or dismissal of a protest unless good cause is shown for the failure to appear . . . [including, but not limited to] death or sudden illness in the immediate family, such as spouse, partner children, parents, siblings" 23 DCMR § 1601.6(b) (West Supp. 2014).

On March 24, 2014, Ms. Butler informed ABRA that she could not appear at the hearing due to the death of her father and intended to appoint Ms. Odunsi as the representative for both parties. *Protestant's Motion to Reinstate*, ¶ 3; Exhibit C. The funeral was scheduled for March 20, 2014, in Chicago, IL. *Id.* at Exhibit B. Under these circumstances, the Board finds that Ms. Butler, and the individuals she represented, had good cause for missing the Roll Call Hearing; especially, when Ms. Butler made efforts to notify the agency that she would be absent before the hearing.⁴

⁴ There is no need for Ms. Butler to prove she was absent from the District of Columbia on March 24, 2014 as argued by the Applicant. *Opposition*, 5; *Applicant's Proposed Findings of Fact and Conclusions of Law*, 21. The Board does not expect someone who recently lost a parent to be able to operate effectively during an administrative proceeding.

b. The failure to serve the Applicant does not prevent the Board from reinstating ANC 5C and the Odunsi Group in accordance with 23 DCMR § 1703.8.

The Applicant claims that Ms. Butler failed to serve her Motion for Reinstatement on the Applicant. *Opposition to Motion to Reinstate Protest*, 3 [*Opposition*]. Nevertheless, under § 1703.8, “Failure to serve all parties of record, or their designated representatives, may result in the Board delaying action on the matter at issue until such time as service is properly accomplished.” 23 DCMR § 1703.8 (West Supp. 2014). Here, it is clear that the Applicant had actual notice of the motion and had an opportunity to reply orally and in writing. *Opposition*, 3 (¶12); *Transcript (Tr.)*, May 14, 2014 at 10. As a result, the Board finds no reason to delay consideration of the Motion for Reinstatement in accordance with § 1703.8.⁵

c. Commissioner Butler had the authority to designate Ms. Odunsi as the ANC’s designated representative.

The Board based its decision finding that Ms. Odunsi could not represent ANC 5C on an email from ANC 5C’s chair that such a designation violated the ANC’s rules. *Id.* at ¶ 7. In error, the Board relied on this statement without properly considering the ANC’s actual rules. Article II, § 3(a) of the ANC’s bylaws state, “[t]he Commission may initiate its own proposals for District Government action. (a) All proposals initiated by the Commission for District Government action must be signed by the chairperson and the recording secretary.” *Motion to Dismiss Protest for Lack of Standing*, By-Laws of Advisory Neighborhood Commission 5C, Art. II, § 3(a). This rule does not mandate that the designated representative of the ANC be a commissioner or prohibit a commissioner from transferring their representative authority in an administrative hearing to another individual or entity, if the situation requires such action.

The Board further notes that the ANC, either through its Chair or another representative, did not file a formal objection with the Board regarding the designation of Ms. Odunsi; therefore, the Board can only presume that the official position of the ANC is to support the designation made by Commissioner Butler on its behalf.⁶ For this reason, the Board finds that Ms. Odunsi had the authority to represent both the ANC and the

⁵ The Board finds the Applicant’s citation of *McLaughlin* unpersuasive. *McLaughlin v. Fidelity Sec. Life Ins.*, 667 A.2d 105, 106 (D.C. 1995). The case has no relation to the regulations promulgated in Title 23 of the D.C. Municipal Regulations. Furthermore, the court solely addressed the issue of “whether a default judgment obtained without proper service of process must be vacated on the motion of a defendant who had personal knowledge of the action,” which has nothing to do with the present case. *Id.* Finally, based on counsel’s filing of a response to Ms. Butler’s motion, it appears the Applicant may have waived its right to object to a lack of service. *Id.* at 106 n.5 (“In the present case, *McLaughlin* never filed an answer or a responsive motion; therefore, he did not waive his right to proper service of process.”)

⁶ The Board further questions whether the Applicant has standing to raise the issue of the ANC’s representation or compliance with its own bylaws when the matter involves a determination as to whether a coordinate government entity complied with its own rules. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 589 (D.C. 1998) (saying case law “preclude[s] the Board from reviewing the decisions of coordinate administrative departments and acting in effect as a court of appeals”); *Applicant’s Proposed Findings of Fact and Conclusions of Law*, 19-21.

Odunsi Group when she appeared at the Roll Call Hearing. Therefore, the Board vacates Board Order No. 2014-131 insofar as it dismisses the Odunsi Group and ANC 5C for failing to appear, because Ms. Butler properly transferred her authority to Ms. Odunsi. Letter from Commissioner Karla Butler, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control (ABC) Board (Mar. 24, 2014).⁷

The Board notes that the dismissal of Evelyn Fraser, Leslier Satchell, Janay Austin-Carlson, and Katherine Ford shall remain in effect, because they were dismissed under D.C. Official Code § 25-602 for failing to submit a timely protest petition. In re Pulse Nightclub, LLC, t/a Pulse Nightclub, Board Order No. 2014-131, at 4.

d. The Board denies the Applicant's submission of additional evidence after the close of the record.

Before making its findings of fact, the Board addresses Pulse's attempt to reopen the record prior to the issuance of this decision. Pulse submitted new parking contracts to the Board after the close of the record.⁸ The Board did not receive a response from the ANC and the Odunsi Group regarding this submission. Under § 1717.1,

No document or other information shall be accepted for the record after the close of a hearing, except as follows:

(a) Until all parties are afforded due notice and an opportunity to rebut the information; or

(b) Upon official notice of a material fact not appearing in the evidence in the record, in accordance with D.C. Official Code § 2-509(b)⁹.

23 DCMR § 1717.1 (West Supp. 2014). Section 1717.1 does not mandate that the Board reopen the record; instead, it merely sets the procedures for accepting new evidence into the record, if the Board, in its discretion, chooses to do so. Id.

It has been said that prior to reopening the record,

⁷ Separate and apart from the above, if the Board's reasoning were found to be inadequate, the Board would waive the appearance and service requirements related to the Roll Call Hearing and Ms. Butler's motion for in the interest of justice. Under §§ 1600.2 and 1700.2, "[t]he Board may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter which is not required by the Act in any proceeding after duly advising the parties of its intention to do so." 23 DCMR §§ 1600.2, 1700.2 (West Supp. 2014). Here, it is undisputed that Ms. Butler's father passed away and the funeral was four days before the hearing, Ms. Butler attempted to appoint a designated representative, informed ABRA of her absence, and attempted to designate a new representative before the hearing. The Applicant also had actual notice of Ms. Butler's motion and an opportunity to address her claims. For these reasons, the Board would waive the requirements of Chapter 16 and Chapter 17 as it applies to Ms. Butler's appearance at the Roll Call Hearing and the service of her motion.

⁸ Considering this new information required the Board to delay the issuance of the Order.

⁹ The Board does not find that § 2-509(b) is implicated in this matter because the Board is not crediting the new information. D.C. Official Code § 2-509(b) ("Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary").

. . . the court must consider the timeliness of the motion, the character of the testimony, and the effect of granting the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

King v. United States, 550 A.2d 348, 354 (D.C. 1988).

The Board denies the request because it is untimely and involves evidence that was created after the protest hearing.

First, the request is untimely. As the court noted in King, “timeliness” may be viewed from the perspective of “the time which elapsed or in relation to the defendant’s diligence.” King v. United States, 550 A.2d 3 at 354. The Board notes that Pulse did not request that the record be left open or formally move to reopen the record during the hearing, even though it was apparent that the language of the TagB parking contract did not coincide with the testimony of Aldo Truong.¹⁰ *Transcript (Tr)*, May 14, 2014 at 378-380. As a result, the Board rejects the request to reopen the record based on Pulse’s lack of diligence in notifying the Board of the request.¹¹

Second, the Board rejects the request based on the character of the evidence. Here, Pulse is essentially submitting new contracts created after the protest hearing. The Board does not support turning § 1717 into a “test-run” mechanism; whereby, licensees change their evidence when it is shown that their case is flawed. To do so, would simply be unfair and unnecessarily drag out the protest process. Instead, the Board supports an interpretation of Title 23 that encourages applicants to submit their best case on the day of the protest hearing—not afterwards.

Therefore, the motion to reopen the record is denied.¹²

¹⁰ The Board recognizes that Mr. Truong indicated he was willing to have the agreements “clarified and revised,” but this did not constitute a formal motion or put the protestants on notice that Pulse intended to reopen the record during the hearing. *Tr.*, 5/14/14 at 400-01.

¹¹ The Board notes that this case is not similar to King, where the defendant made the request “a very short time after the defense had rested” and before closing arguments. King v. United States, 550 A.2d 348, 351, 354 (D.C. 1988)

¹² The Board notes that even the Board accepted and credited the new evidence submitted by Pulse this would not change this result in this case. As the record shows, even though the TagB valet has access to the Days Inn parking lot, the hotel’s guests are entitled to park in the lot at the same time. Infra, ¶ 17. As a result, the Board is not satisfied that Pulse can confirm the number of spots it will have access to on a given night, or even that the Days Inn has the capacity to hold three hundred vehicles. Infra, at ¶ 30.

II. THE BOARD DENIES THE APPLICANT'S REQUEST TO CHANGE THE GEOGRAPHIC DESIGNATION OF THE PROTEST.

The Board affirms its decision to set the geographic area under review as the area located within 1,200 feet of the establishment, which is the standard designation under the law. 23 DCMR § 1607.2. The Applicant has requested that the Board solely look to the area within 600 feet of the establishment; however, the Board deems this selection inappropriate. *See Applicant's Proposed Findings of Fact and Conclusions of Law*, 18.

In establishing the geographic area under review, the Board may select an area of 600 feet, 1,200 feet, or 1,800 feet. 23 DCMR § 1607.7. In making this determination, the Board shall consider, among other factors, “. . . the overall characteristics of the area, including population, density, and general commercial and residential activities” and “[g]eographical factors, such as parks, rail lines, major thoroughfares, bodies of water, cemeteries, and unimproved or unused property, which may tend to define physically an area to be considered.” 23 DCMR §§ 1607.6, 1607.8 (West Supp. 2014).

Here, the Applicant's basis for choosing a designation of 600 feet is the fact that the area is designated a manufacturing zone. *Tr.*, 5/14/2014 at 44.¹³ The Board finds this reasoning insufficient to justify changing the designation from 1,200 feet to 600 feet, because it does not consider the population density, the presence of other licensed establishments in the neighborhood, and there is no evidence that geographic factors render portions of the area inaccessible or unusable by the public, or otherwise physically define the area surrounding the establishment.¹⁴ In addition, Pulse's proposed designation

¹³ Pulse argues that the Board is “negat[ing] by administrative fiat the commercial character of commercial zoning solely to appease residents” *Proposed Findings of Fact and Conclusions of Law*, 30. This argument ignores the court's discussion of the relation between the zoning laws and the alcoholic beverage control laws in *Panutat*, where the court stated,

. . . District of Columbia law directs that the Board . . . consider matters including residential parking needs, vehicular and pedestrian safety, and “peace, order, and quiet.” D.C.Code § 25–313(b)(2). Moreover, D.C.Code § 25–314(c) provides that “[i]n the case of applications for nightclub or tavern licenses, the Board shall consider whether the proximity of the establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” Section 25–314(c) reflects *a recognition by the Council of the District of Columbia that “a nightclub, by its very nature, may be inappropriate for the [commercial] area where it is to be located when other [commercial] establishments would not be inappropriate.”* Committee Report at 41. In light of the foregoing provisions *and the legislative intent to give priority to nearby residence-district concerns over nightclub uses in areas zoned for commercial use*, we cannot accept Panutat's argument that the Board's Order contravened District of Columbia zoning law.

Panutat, LLC v. D.C. Alcoholic Beverage Control Bd., 75 A.3d 269, 278 (D.C. 2013) (emphasis added and footnotes removed). As a result, it well-settled that a proposed location's zoning designation is not binding on the Board, and that the Board is entitled to consider the effect of the establishment on nearby residents. Therefore, the Board finds Pulse's geographic designation argument wholly unpersuasive.

¹⁴ For example, as a matter of dicta, the Board could consider reducing the size of the protest area when the licensee will only be open to workers located in an office building, and not the general public. Likewise, the Board would consider increasing the geographic designation where the applicant proposes to use off-site parking lots that could, in effect, extend the impact of the licensee's operations.

completely ignores the presence of residents near the proposed location. See D.C. Official Code § 25-314(c). Therefore, the Applicant's geographic designation is denied.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings of fact:

I. Background

1. The Applicant has submitted an Application for a New Retailer's Class CN License. *ABRA Licensing File No. 094074*, Application. The establishment will be located at 2142 Queens Chapel Road, N.E. Id.
2. Pulse is located in a C-M-2 commercial zone. *Protest Report*, at 5 (May 2014). Eight establishments are located within 1,200 feet of the proposed location. Id. at 6. There are no schools, recreation centers, or public libraries located within 400 feet of the proposed location. Id.
3. Pulse proposes to have hours of operation of 8:00 a.m. to 5:00 a.m. Id. at 7. Further, the establishment's proposed hours of sale, service, and consumption of alcoholic beverages will run from 8:00 a.m. to 2:00 a.m. during the week and 8:00 a.m. to 3:00 a.m. on Friday and Saturday. Id.

II. ABRA Investigator Earl Jones

4. ABRA Investigator Earl Jones investigated the Application on behalf of the Board and reported his findings during the hearing. *Tr.*, 5/14/14 at 58-59.
5. The proposed location is bounded by Adams Place, N.E., and Bladensburg Road, N.E. Id. at 60. The three most prominent establishments located near the proposed location are Stadium (Retailer's Class C Nightclub License), Echostage (Retailer's Class C Nightclub License), and The Scene (Retailer's Class CX License). Id.; *Protest Report*, at 6. Stadium is located directly across the street from Pulse's proposed location and Echostage neighbors Stadium. *Tr.*, 5/14/14 at 66-67. In addition, The Scene, on Adams Place, N.E., is approximately 400 to 500 feet away from the proposed location. Id. at 67.
6. Currently, the proposed location serves as a parking lot for the other nearby venues. Id. at 66, 81-82, 97. Stadium has its own parking lot, but Echostage and The Scene do not have their own parking lot. Id. at 67, 69.
7. Echostage regularly hosts eighteen and over and twenty-one and under events. Id. Many patrons under the age of twenty-one arrive by private bus. Id. at 68, 75. When Echostage is open to the public, Echostage uses a valet service that parks cars in the area or the location proposed by Pulse. Id. at 68-69.
8. Investigator Jones has observed the Days Inn parking lot on multiple occasions. Id. at 101. Currently, the lot is generally full on a regular basis. Id. at 101-02.

9. Investigator Jones observed that the closest residential street is located approximately 1,000 to 1,500 feet away from the proposed location. Id. at 73.
10. Investigator Jones estimates that if the proposed location opens, there will likely be 5,000 people coming to the neighborhood on a regular basis. Id. at 74-75.
11. Investigator Jones has monitored the area as part of his duties as an investigator. Id. at 84. He described the area as a “club zone” that features heavy pedestrian activity on weekends. Id. at 104. Based on his observations, the area suffers from a parking problem. Id. at 84, 86. In his experience, there are some nights where traffic is “unbelievable.” Id. at 88. He further noted that the establishments in the area often close after Metro’s regular hours. Id. at 127
12. He also has observed patrons fighting and throwing bottles on the Queens Chapel Bridge around 3:00 a.m. and 4:00 a.m. on six or seven occasions. Id. at 85, 109. Investigator Jones noted that the fights he observed occurred in residential areas. Id. at 115.

III. Metropolitan Police Department Sergeant Raphael Radon

13. Metropolitan Police Department (MPD) Sergeant Raphael Radon serves as the Supervisor for the Fifth District in Police Service Area (PSA) 505. Id. at 128-29. Pulse’s proposed location sits in Sgt. Radon’s PSA. Id. at 129. He has also served on a number of MPD Reimbursable Details in the neighborhood. Id. at 130, 177-78. He admitted that he has only served as a supervisor of PSA 505 for approximately five months and he is “new” to the PSA. Id. at 151.
14. Sgt. Radon is responsible for managing traffic in the PSA. Id. at 133. While he said that at times the area presents “challenging” traffic situations, he believes his management plan addresses these issues. Id. at 132-33. He noted that traffic requires special attention around club closing time, which occurs around 2:30 a.m. and 3:30 a.m. depending on the night. Id. at 133. He noted that officers manage traffic and crowds by shutting down specific streets and controlled crossings. Id. at 162.
15. In his experience, he has not noticed emergency vehicles having issues responding to venues in the area or passing through the area. Id. at 134. While emergency vehicles should not take Bladensburg Road, N.E., emergency vehicles can access the area through Evarts Street, N.E., 24th Street, N.E., Lawrence Avenue, N.E., and Montana Avenue, N.E. Id. at 134.¹⁵ Sgt. Radon admitted that 24th Street N.E., and Lawrence Street, N.E., are residential streets and that if these vehicles had their sirens on they may disturb residents. Id. at 166-67.
16. On January 6, 2014, Sgt. Radon saw an “epic” crowd of 6,000 to 7,000 people arrive to the area during a special event at a club. Id. at 160-61. MPD only had ten officers to manage the crowd on that night. Id. at 163. Based on Sgt. Radon’s experience, MPD did not have enough officers to manage the crowd on this occasion. Id. at 164-65.

¹⁵ The Board takes administrative notice of the proper names of the streets mentioned by Sgt. Radon.

17. Sgt. Radon noted that the neighborhood has various parking resources. Id. at 138. Specifically, there are garages, parking lots, off-site parking at the Days Inn, and spots in the neighborhood. Id. at 138-40. The proposed location is currently used by valets to park vehicles. Id. at 188, 192. Sgt. Radon estimated that the Days Inn parking lot has approximately 300 spaces; however, these spaces are also used by the hotel's guests. Id. at 271; see also id. at 397-98.

18. Sgt. Radon described the crime situation in the neighborhood. Id. at 141-42. The most common complaint in the neighborhood involves theft from vehicles. Id. at 141. In addition, a few months ago a stabbing occurred at a club. Id. at 142.

19. Sgt. Radon further addressed the trash and litter situation in the neighborhood. Id. at 146. He noted that he has observed club staff clean the area and pick up trash and litter on the streets after closing. Id.

IV. Richard Bartel

20. Richard Bartel examined traffic and parking issues in the neighborhood. Id. at 214-15.

21. Mr. Bartel has a degree in "human factors engineering" and "experimental psychology." Id. at 215. He also previously worked as a safety engineer for the Federal Aviation Administration. Id. He has also investigated plane crashes and participated in studies involving aircraft routes. Id. He previously worked for the International Civil Aviation Organization and the International Society of Air Investigators. Id. at 217-218. He also worked for the United States Air Force at the New Mexico Air Force Safety Center. Id. at 218. Mr. Bartel's experience related to traffic, parking, and pedestrian and vehicular safety comes from his experience as co-chair of ANC 3C04's safety committee, time as a reserve police officer, and a private investigator for law firms involved in traffic accident cases. Id. at 219, 223.

A. The Board does not deem Mr. Bartel an expert witness, because the Applicant failed to demonstrate that he has sufficient education and experience to opine on traffic and parking matters.

22. The Board denies Pulse's motion to declare Mr. Bartel an expert witness. As noted in case law, "[i]n order to qualify as an expert witness and render an opinion, the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth." Otis Elevator Co. v. Tuerr, 616 A.2d 1254, 1256 (D.C. 1992) (quotation marks omitted). Further, "[t]here has to be a fit between the witness's experiential qualifications and the testimony to be offered; [a] witness may be qualified as an expert on certain matters and not others." Jones v. United States, 990 A.2d 970, 979 (D.C. 2010) (quotation marks omitted).

23. The Applicant called Mr. Bartel to the stand to testify on the issue of whether the addition of Pulse will have an adverse impact on residential parking needs and pedestrian and vehicular safety. D.C. Official Code § 25-313(b)(3). Mr. Bartel's experience relates

to air safety, and if this case involved a plane nose-diving into Bladensburg Road, N.E., the Board would qualify Mr. Bartel as an expert witness. Nevertheless, there is insufficient evidence in the record showing that Mr. Bartel has been educated specifically in traffic or parking issues or has significant experience applying his expertise to traffic and parking issues. While Mr. Bartel may have experience with traffic and parking as an ANC Commissioner, reserve police officer, and private investigator, this is not the type of experience that qualifies one as an expert on these issues. *Supra*, at ¶ 21. Consequently, the Board does not qualify Mr. Bartel as an expert witness in this case.

B. Mr. Bartel's Observations

24. Mr. Bartel did a two-day study of the neighborhood on a Friday and Saturday before the hearing. *Id.* at 232. He limited his study to a qualitative investigation. *Id.* at 232. As part of his study, Mr. Bartel drove and walked around the neighborhood every two hours between 7:00 p.m. and 3:00 a.m. *Id.* at 236. He then interviewed people on the street, parking attendants, the manager of the local 7-11 and McDonald's, employees of the local towing company, and the manager of the Days Inn. *Id.* at 236.

25. During his study, Mr. Bartel observed a parking lot off Queens Chapel Road, N.E. that offers valet parking during club hours. *Id.* at 244-47; *Applicant's Exhibit No. 31*. A parking lot is also available across the street from the proposed location. *Tr.*, 5/14/14 at 248; *Applicant's Exhibit No. 2*. Parking was also available on Adams Place, N.E. *Id.* at 249-51. There are also vertical parking spaces on the north side of Queens Chapel Road, N.E. *Tr.*, 5/14/14 at 251-52; *Applicant's Exhibit No. 4*. A valet parking station is also located along Bladensburg Road, N.E. *Tr.*, 5/14/14 at 252-53; *Applicant's Exhibit No. 5*. The proposed location has a garage with enough parking spaces for twenty-four vehicles. *Tr.*, 5/14/14 at 255; *Applicant's Exhibit Nos. 9, 10*. Based on his observations, Mr. Bartel concluded that parking was available on the days he observed the neighborhood. *Tr.*, 5/14/14 at 264.

26. Mr. Bartel noted that Queens Chapel Road, N.E., was empty around club opening time on Friday and Saturday. *Tr.*, 5/14/14 at 247; *Applicant's Exhibit No. 1*. Around 9:00 p.m., vehicles began parking on Adams Place, N.E. *Tr.*, 5/14/14 at 249; *Applicant's Exhibit No. 3*. He noted that the Days Inn parking lot appeared full around 11:00 p.m. on Friday night and 10:00 p.m. on Saturday night. *Tr.*, 5/14/14 at 252-53; *Applicant's Exhibit No. 6*. When he observed Echostage, he observed that there was minimal traffic. *Tr.*, 5/14/14 at 256-57; *Applicant's Exhibit No. 11*. Mr. Bartel observed the bridge on Queens Chapel Road, N.E., around midnight on Friday, he observed minimal pedestrian and vehicle traffic. *Tr.*, 5/14/14 at 259; *Applicant's Exhibit No. 14*.

27. Mr. Bartel confirmed the existence of the TagB valet agreement, but did not personally confirm whether the parking lot had three-hundred spaces. *Id.* at 311-13.

28. Mr. Bartel admitted that he was unaware if The Scene was open and operating when he made his observations of the neighborhood. *Tr.*, 5/14/14 at 290-91. Mr. Bartel further admitted the Board that his study could only provide the Board with a small "sample size." *Id.* at 294.

V. Aldo Troung

29. Aldo Troung is one of the managing members of Pulse. Id. at 334-35. Pulse will operate as a restaurant that serves pizza six days per week. Id. at 335. The establishment will also operate as a bar and nightclub on Friday and Saturday, and during special events. Id. The establishment's proposed sidewalk café will be used for restaurant dining. Id. at 348. Mr. Troung indicated that the new architectural plans for the establishment indicate that the establishment will hold 1,300 people, not 2,000 people. Id. at 335.

30. Mr. Truong described the establishment's parking resources. Id. at 336. Mr. Troung represented that Pulse has an agreement for use of the parking spaces provided by TAG-B Valet Parking, LLC, at the Days Inn; nevertheless, Mr. Troung did not personally verify the three-hundred figure provided by the Days Inn. Id. at 302-03, 305, 336, 388-89, 393-94; *Valet Parking Services Agreement* (Tag-B). Pulse has also secured an agreement with Eko Parking, LLC, (Eko) to provide eighty spaces at 2122 24th Place, N.E. Id. at 337; *Parking Services Agreement* (Eko LLC). Mr. Troung could also not independently verify that the lot provided by Eko would provide eighty spaces or that the lot provided by DC Life had seventy parking spaces. Id. at 390-91, 393-95. The establishment further entered into an agreement with DC Life Parking, LLC (DC Life), to provide seventy parking spaces at 2120 Bladensburg Road, N.E. Id. at 337; *Parking Services Agreement* (DC Life Parking LLC).¹⁶

31. Mr. Truong expressed a willingness to hire the MPD Reimbursable Detail at the establishment. Id. at 340. He also intends to hire a cleaning crew to pick up litter and trash and have waste removal occur a minimum of three times per week.. Id. at 340-41

32. Mr. Troung also described the steps Pulse will take to ensure compliance with the District's noise laws. Id. at 341. Pulse will install sound proof panels throughout the venue. Id. In addition, the foyer will be built in a manner to block sound from escaping the establishment. Id.

33. Pulse will purchase the premises on May 30, 2014. Id. at 341. The premises will no longer be used for parking after this date. Id. at 342.

34. Pulse intends to provide training for its staff. Id. at 344. The training will be conducted by a third party. Id. The topics of the training will include identification, searches, conflict resolution procedures, incident reporting, and responsible alcohol service. Id. at 344-45.

35. Pulse will have approximately 120 employees. Id. at 362. He admitted that employees will use some of the parking spaces provided by Pulse. Id.

36. Mr. Troung described the establishment's nightclub operations. Id. at 368-69. The establishment will use employees to act as promoters. Id. at 368-69. Furthermore, the establishment will primarily provide DJ entertainment when the establishment is operating as a club. Id. at 369.

¹⁶ The Applicant submitted an amended parking agreement after the close of the hearing stating that it had exclusive use of the 300 parking spaces.

37. Mr. Troung could not guarantee that the Days Inn parking lot would have three hundred parking spaces. Id. at 388-89. Mr. Troung could also not independently verify that the lot provided by Eko would provide eighty spaces or that the lot provided by DC Life had seventy parking spaces. Id. at 390-91, 393-95.

VI. Camila Faulkner

38. Camilar Faulkner resides on 20th Street, N.E., approximately three blocks from the establishment's proposed location. Id. at 412. Ms. Faulkner has found that nightclub patrons are engaging in anti-social behavior in her neighborhood. Id. at 415-16. On one occasion, two girls were found urinating in her yard. Id. at 416. On two occasions, she has observed intoxicated individuals get into cars and drive away. Id. She regularly finds broken glass outside her home and has also found personal items on her property. Id. at 420, 424.

39. On one occasion she observed a fight outside her home. Id. at 420. During the fight, she saw one girl get undressed and throw her clothes and jewelry in the street. Id. at 420-21.

40. Ms. Faulkner has observed that nightclub patrons regularly park near her home. Id. at 417. She also noted that she hears car doors slamming in her neighborhood all night long. Id. at 416.

41. Ms. Faulkner recalls observing Mr. Bartel taking pictures near her. Id. at 41819. She was standing outside in her yard at the time. Id. at 418. She noted that Mr. Bartel did not ask her any questions. Id.

VII. Martha Ward

42. Martha Ward lives on South Dakota Avenue, N.E. Id. at 432. She noted that the area suffers from traffic when clubs in the area are open. Id.

VIII. Frances Penn

43. Frances Penn lives on Franklin Street, N.E. Id. at 444. As chair of the Fifth District Citizen Advisory Council, her group has heard complaints from residents regarding the clubs in the area. Id. at 444, 451. Many residents are complaining that they have nowhere to park when the clubs are open. Id. at 445. She has also heard complaints about trash and noise. Id. at 446-47.

IX. Yolanda Odunsi

44. Yolanda Odunsi lives on Franklin Street, N.E., and has lived there since 2003. Id. at 454. As a resident, the traffic generated by the nightclubs frustrates her. Id. at 456. She has observed vehicles park on the sidewalk outside Echostage and Pulse's proposed location. Id. at 457. She noted that the sidewalk area on Queens Chapel Road, N.E., was filled with parked vehicles on May 3, 2014, around 3:00 a.m. Id. at 458.

45. Ms. Odunsi observed that the police blocked the Bladensburg Road, N.E., entrance to Queens Chapel Road, N.E., on May 3, 2014. Id.

X. Letters and Emails

46. The Board acknowledges the submission of letters and emails from members of the community in accordance with § 1701.6. 23 DCMR § 1701.6 (West Supp. 2014). Multiple building owners reported that illegal parking is occurring on their property. The owners of 2210 Adams Place, N.E., noted that they experience “. . . unauthorized and illegal parking along side of the Property and Adams Place in front of the Property.” Letter from Commercial Brokers LLC to Karla Butler, Commissioner (Sept. 11, 2013). The owners of 2144-2146 Queens Chapel Road, N.E., noted that they also continue to experience “unauthorized and illegal parking along Queens Chapel Road on the east side of the Property and Adams Place on the north side of the Property. Letter from Gary Hiller, Title Counsel, to Karla Butler, Commissioner (July 31, 2013). Finally, the owner of 2142 Queens Chapel, N.E., noted that they experience “. . . unauthorized and illegal parking in front of the Property.” Letter from Edward A Demers, Managing Member, to Karla Butler, Commissioner (Nov. 21, 2013).

47. Tara Jamison reports that she can hear music from neighborhood establishments in her home located in the Fort Lincoln area. Email from Tara Jamison to Debbie Steiner (Mar. 27, 2014). LaNita Winfield and others report that nightclub patrons regularly “park on our neighborhood streets, commit crimes or crimes are committed because of their presence . . . , routinely litter, disturb the peace by screaming, yelling obscenities, and screeching tires” Email from LaNita S. Winfield, to Kenyan McDuffie, Councilmember (Feb. 11, 2014); see also Email from Nasser Manasterli and Stephanie Lair, to Kenyan McDuffie, Councilmember (Feb. 11, 2014); Email from Linda Louers to Kenyan McDuffie, Councilmember (Feb. 17, 2014); Email from March S. Jones to Kenyan McDuffie, Councilmember (Feb. 12, 2014); Email from Lahaja Furaha to Kenyan McDuffie, Councilmember (Feb. 12, 2014); Email from Carlos Davis to Kenyan McDuffie, Councilmember (Mar. 7, 2014).

48. MPD Commander Solberg, who supervises Police District 5D, wrote the following to ANC Commissioner Karla Butler: “Unfortunately, at 3 or 4 am when these clubs all close and empty their patrons into the same small congested area, we know that traffic issues, drunken arguments, and disorderly (often criminal) behavior result.” Email from Andrew Solberg, Commander, 5D, to Karla Butler, Commissioner (Jan. 18, 2014). He also wrote, “I am quite aware of the effect this has on the neighbors in the nearby community.” Id.

CONCLUSIONS OF LAW

49. The Board may approve an Application for a New Retailer’s Class CN License if the Applicant demonstrates that the proposed establishment will not have an adverse impact on the area located within 1,200 feet of the establishment. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the issue in this case is whether the Application will have a negative impact on peace, order, and quiet; residential parking needs; and pedestrian and vehicular safety.

50. Under the appropriateness test, “. . . ; the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located” D.C. Official Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2014).

I. THE APPLICATION WILL HAVE AN ADVERSE IMPACT ON RESIDENTIAL PARKING AND VEHICULAR AND PEDESTRIAN SAFETY.

51. The Board finds that the addition of the large nightclub proposed by the Applicant will unacceptably exacerbate residential parking problems and threaten vehicular pedestrian safety in the neighborhood. Therefore, the Board denies the Application.

52. “In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . The effect of the establishment upon residential parking needs and vehicular and pedestrian safety” D.C. Official Code § 25-313(b)(3); see also D.C. Official Code §§ 25-101(35A), 25-314(a)(4).

53. Prior decisions of the District of Columbia Court of Appeals and the Board further explain the appropriateness test. In Panutat, the court held that the Board may deem an application inappropriate even though there is no evidence in the record that the Applicant is “responsible for” the facts causing an adverse impact. Panutat, LLC v. D.C. Alcoholic Beverage Control Bd., 75 A.3d 269, 274 (D.C. 2013). Consequently, the Board may consider the impact a “not-yet-located establishment” will have on the neighborhood. Id. at 276.

54. In Muir, the court affirmed that the Board may deny a license when it is satisfied that the addition “. . . of another license in the area will only contribute to . . . existing problems” Muir v. D.C. Alcoholic Beverage Control Bd., 450 A.2d 412, 413 (D.C. 1982); see also Panutat, 75 A.3d at 275 (saying it was reasonable for the Board to determine whether “. . . another establishment at the same location will exacerbate existing issues”). Further, as noted in Le Jimmy, “[t]he Board is permitted to consider the effect a prospective licensee will have on parking problems and traffic patterns.” Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd., 433 A.2d 1090, 1093 (D.C. 1981).

55. In CAG, the court upheld the Board’s determination to issue a license where “. . . the Board found that no evidence was introduced to contradict licensee's testimony of there being 20 parking spaces behind the building which can be used by customers, that no complaints had ever been received with respect to the adequacy of such facilities, and there was not enough business to justify keeping an employee for the purpose of parking customer cars.” Citizens Ass'n of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Bd., 280 A.2d 309, 311 (D.C. 1971).

56. The Board is persuaded that granting the license will exacerbate existing problems regarding vehicular and pedestrian safety and residential parking. First, the Board credits Ms. Odunsi’s testimony that vehicles regularly park on the sidewalk near the proposed

location. Supra, at ¶ 44. Under § 2405.1 of Title 18 of the D.C. Municipal Regulations, “no person shall stop, stand, or park a motor vehicle or trailer in any of the following places, except when necessary to avoid conflict with other traffic, or at the direction of a police officer or traffic control device . . . [o]n the sidewalk . . .” 18 DCMR § 2405.1, (h) (West Supp. 2014). As a result, the Board finds that granting the application will encourage additional vehicles to illegally park on and obstruct neighborhood sidewalks.

57. Second, separate and apart from the above, the Board is not convinced that the neighborhood has sufficient parking resources to manage the demand for parking that will be created by the proposed establishment’s future customers. The record shows an absence of significant public transportation services, such as Metro, near the proposed location; as a result, a majority of patrons must use a vehicle to visit establishments in the neighborhood. Supra, at ¶¶ 7, 11. Neither The Scene or Echostage have their own parking lots. Supra, at ¶ 6. Echostage is currently using Pulse’s current location for parking and the Days Inn lot already fills up with vehicles, even though Pulse has not opened. Supra, at ¶¶ 7, 8. In addition, many nightclub patrons visiting the area currently park in residential areas—which causes disturbances in those neighborhoods—or park illegally on private property. Supra, at ¶¶ 11, 40, 43-44, 46-47. Further, this case is unlike CAG, because the record shows that there are insufficient parking facilities to meet the demand of patrons. Id. Consequently, in accordance with Panutat, Muir, and Le Jimmy, the Board can only conclude that the addition of Pulse will further exacerbate parking issues in the neighborhood by attracting more vehicles to the neighborhood and displacing parking resources already used by current licensees, which will cause more patrons to park in residential areas or park illegally.¹⁷

58. The Board is not persuaded by the evidence submitted by Pulse that it can operate without overtaxing the neighborhood’s limited parking resources. See Applicant’s Proposed Findings of Fact and Conclusions of Law, 21. Testimony and evidence may be found unreliable and lacking credibility when there is a “specific and legitimate reason[] for doing so.” Jones v. District of Columbia Dept. of Employment Services, 41 A.3d 1219, 1222 (D.C. 2012). The Board did not find Mr. Bartel’s conclusions persuasive, because he only looked at an isolated time period and his observations did not reflect the neighborhood’s regular experience. Compare supra, at ¶ 24 with supra, at ¶¶ 11, 14, 40, 43, 46-48; see also Tr., 3/14/14 at 293-94, 318, 320, 328.¹⁸ The Board credits Sgt. Radon’s testimony that the neighborhood has various parking lots and garages. Supra, at ¶ 17. However, the evidence also shows that the majority of the parking obtained by Pulse

¹⁷ Separate and apart from this reasoning, if the Board’s refusal to accept and credit the new parking contracts is upheld, the Board would find the establishment inappropriate, because it does not have sufficient parking to meet the needs of its patrons.

¹⁸ The Board also questions the validity of Mr. Bartel’s study. During his testimony, Mr. Bartel did not provide the Board with a scientific or technical basis that justified his conclusion, nor did he share his data with the Board. Further, without even addressing the hearsay issue, it is unclear how the Board can determine whether Mr. Bartel’s interviews were conducted in a consistent manner with people in the neighborhood. Supra, at ¶ 41.

would be at the expense of or in competition with other licensees, which means that the addition of Pulse will merely exacerbate current issues.¹⁹

59. The Board also disagrees with Pulse that this case is similar to Le Jimmy. See Applicant's Proposed Findings of Fact and Conclusions of Law, 18. In Le Jimmy, the prior Board's determined that the establishment was inappropriate based on traffic and parking issues. Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd., 433 A.2d 1090, 1093 (D.C. 1981). The court noted that "Petitioner is not required to prove there is no parking problem in Georgetown in order to qualify for a license." Id. Instead, the Board may ". . . consider the effect a prospective licensee will have on parking problems and traffic problems," as well as the unique nature of the establishment and its proposed location. Id. There, the record demonstrated that the licensee operated a legitimate 50-seat restaurant that offered no entertainment in a neighborhood where people commonly walked. Id. The record further demonstrated that there were two commercial lots near the establishment and the opposition consisted of general complaints. Id. Unlike Le Jimmy, Pulse proposes to operate a large nightclub with an occupancy of at least 1,300 people in a neighborhood where there is insufficient parking and a lack of significant public transportation services available. Supra, ¶¶ 29, 56-57. For these reasons, the Board finds that the Applicant failed to meet its burden of proof under § 25-313(b)(3).

II. THE APPLICATION WILL HAVE AN ADVERSE IMPACT ON PEACE, ORDER, AND QUIET.

60. The Board also concludes the addition of Pulse will unacceptably strain police resources and unduly burden the neighborhood's peace, order, and quiet.

61. "In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . The effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." D.C. Official Code § 25-313(b)(2); see also D.C. Official Code §§ 25-101(35A), 25-314(a)(4).

62. In Riverfront, the Board denied an application for a new license because it lacked confidence ". . . that MPD has sufficient resources to police the establishment and the surrounding streets during events . . ." In re Dos Ventures, LLC, t/a Riverfront at the Ball Park, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 50 (D.C.A.B.C.B. Nov. 13, 2013).

63. As in Riverfront, the addition of another large capacity nightclub will unacceptably strain police resources. The Applicant has proposed to build an establishment with a capacity of 1,300 people. Supra, at ¶ 29. Currently, when in operation, the establishments in the area attract approximately 5,000 people to the neighborhood. Supra, at ¶ 10.

¹⁹ As a matter of dicta, the Board notes that this conclusion regarding traffic and parking is consistent with the Board's recent factual findings regarding The Scene and Club Illusions. In re MPAC, LLC, t/a The Scene, Case No. 14-251-00133, Board Order No. 2014-239, ¶ 81 (D.C.A.B.C.B. May 31, 2014) (The Board found that frequent traffic jams occur on Adams Place, N.E., and crowds are forced to walk in the streets); 2101 Venure, LLC, t/a Club Illusions, Case No. 12-PRO-00054, Board Order No. 2013-004, ¶¶ 23, 28 (D.C.A.B.C.B. Jan. 2012) (finding that the addition of a new 1,200 occupant nightclub near Bladensburg Road, N.E., and New York Avenue, N.E., would expose patrons to dangerous traffic conditions).

Nevertheless, the area has attracted 6,000 people for a popular event. Supra, at ¶ 16. According to Sgt. Radon, MPD does not have sufficient resources to manage the crowd when the crowd exceeds 6,000 people, even though establishments in the area regularly hire the MPD Reimbursable Detail. Supra, at ¶¶ 13, 16. Under these circumstances, the Board can only conclude that the addition of Pulse will regularly lead to crowds over 6,000 people, which will lead to the creation of crowds beyond MPD's ability to properly police. See supra, at ¶ 48.

64. Separate and apart from the above, the Board further finds that the addition of Pulse will encourage nightclub patrons to travel through residential neighborhoods and disturb residents. The Board is persuaded by the testimony of Investigator Jones and Ms. Faulkner that patrons frequently fight and engage in other anti-social behavior in nearby residential areas. Supra, ¶¶ 12, 38-39; see also supra at ¶¶ 47-48.²⁰ Based on the lack of significant public transportation resources, the addition of Pulse will simply encourage more patrons to treat nearby residential streets as a parking lot, which will increase the likelihood of anti-social behavior occurring near residences. Supra, at ¶ 57. Consequently, the Board finds that the Applicant failed to meet its burden of proof under § 25-313(b)(2).²¹

ORDER

Therefore, it is hereby **ORDERED**, on this 6th day of August 2014, that the Application for a New Retailer's Class CN License filed by Pulse Nightclub, LLC, t/a Pulse Nightclub, at premises 2142 Queens Chapel Road, N.E., is hereby **DENIED**. The Applicant is further prohibited from submitting a successive application in accordance with D.C. Official Code § 25-338(a) for five (5) years from the date of this Order.

IT IS FURTHER ORDERED that Board Order No. 2014-131 is vacated, except for the portion of the order dismissing Evelyn Fraser, Leslier Satchell, Janay Austin-Carlson, and Katherine Ford from the protest.

IT IS FURTHER ORDERED that ABRA shall refer this matter to the Department of Public Works based on evidence in the record showing vehicles violating § 2405.1(h) on a regular basis. 18 DCMR § 2405.1(h) (West Supp. 2014) (prohibiting parking on the sidewalk).

Copies of this Order shall be delivered to the Applicant, ANC 5C, and the Protestants.

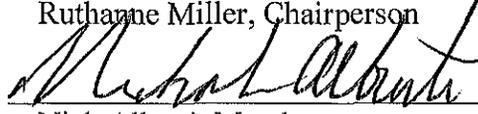
²⁰ As a matter of dicta, this conclusion is consistent with recent findings that fighting frequently occurs in the neighborhood. In re MPAC, LLC, t/a The Scene, Board Order No. 2014-239, at ¶ 78 (saying "officers . . . are often required to respond to fights . . . where Adams Place, N.E., meets Queens Chapel Road, N.E.").

²¹ Pulse argues that the Board's decision to deny the license amounts to the imposition of an illegal moratorium. *Applicant's Proposed Findings of Fact and Conclusions of Law*, 34. However, the court has already rejected this line of argument in Panutat. Panutat, 75 A.3d at 277 (rejecting the argument that the denial of a license amounted to a "*de facto* moratorium"). The Board notes that this decision is based solely on the unique character of the neighborhood and the Application before the Board. Had the licensee presented the Board with plans to operate a different kind of establishment (e.g., a 50-person venue, a coffeehouse, or a bowling alley) the Board could not say that it would have reached the same result.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, 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, N.W., 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, District of Columbia 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).