

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

In the Matter of:

Rail Station Lounge, LLC
t/a Rail Station Lounge

Application for New
Retailer's Class CT License

at premises
2001 Benning Road, N.E.
Washington, D.C. 20002

)
)
) Case Number: 10-PRO-00153
) License Number: 085098
) Order: 2011-216

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

ALSO PRESENT: Rail Station Lounge, LLC, t/a Rail Station Lounge, Applicant

Robert Coomber, on behalf of the Applicant

Frazier Walton, on behalf of the Kingman Park Civic Association,
Protestant

Veronica Raglin, on behalf of A Group of Five or More Individuals,
Protestant

Lisa White, Commissioner, Advisory Neighborhood Commission
(ANC) 7D

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

An Application for a new Retailer's Class CT License (Application) was filed by Rail Station Lounge, LLC, t/a Rail Station Lounge (Applicant). The Application was timely protested by a Group of Five or More Individuals, represented by Veronica Raglin, and the Kingman Park Civic Association (KPCA), represented by Frazer Walton, Jr. (collectively the "Protestants") on November 9, 2010, and November 12, 2010, respectively. The Application came before the Alcoholic Beverage Control Board (Board)

for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 12, 2011, in accordance with D.C. Official Code § 25-601 (2001).

No Voluntary Agreement was reached between the Applicant and the Protestants before the Protest Hearing; however, during the Protest Hearing the Applicant submitted a Voluntary Agreement negotiated with ANC 7D.

The Protest Hearing was heard on March 2, 2011. The Board also received the recommendation of Advisory Neighborhood Commission 7D, dated February 27, 2011, during the Protest Hearing.

After the Protest Hearing, the Protestants filed a Motion for Recusal on March 25, 2011. The Board also received an amended Application from the Applicant on April 22, 2011, at the request of the Board. See ABRA Licensing File No. 085098. Upon learning of the amended Application, the Protestants filed a Motion opposing the amendment on April 28, 2011. The Applicant replied to the Protestants' Motion on May 3, 2011. The Protestants filed their reply on May 3, 2011, as well.

Pursuant to D.C. Code §25-602(a), the protest issues are whether the Application will adversely impact the peace, order, quiet, residential parking needs, vehicular and pedestrian safety, and real property values of the neighborhood. In addition, the Board must also consider the proximity and effect of the establishment on any schools, recreation centers, day care centers, or public libraries and whether the establishment will unduly attract school-age children going to, present at, or coming from a school, recreation center, day care center, or public library. Finally, the Board must determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the neighborhood.

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

FINDINGS OF FACT

1. The Applicant requests that the Board issue it a Retailer's Class CT License for premises located at 2001 Benning Road, N.E. *ABRA Protest File No. 10-PRO-00153, Protest Report, 8.*
2. The establishment is located in a C-2-A zone. *Protest Report, 8.* The Applicant is located 165 feet from the Friendship Public Charter School, Blow Pierce Junior Academy Campus. *Protest Report, 6.* There are five ABC establishments located within 1200 feet of the Applicant; three of the licensees hold Retailer's Class A Licenses, one holds a Retailer's Class B License, and one holds a Retailer's Class CR License. *Protest Report, 5.* None of the ABC establishments near the Applicant have an entertainment or cover charge endorsement on their licenses. *Transcript (Tr.), March 2, 2011 at 19-20.* The Langston Bar & Grill, which holds a Retailer's Class CR License, is located within 400 feet of the Blow Pierce Junior Academy Campus. *ABRA Protest File No. 10-PRO-00153, GIS Map of the Langston Bar & Grill.*

3. The Applicant has requested hours of operation that begin at 6:00 p.m. daily and end at either 2:00 a.m. during the week and 3:00 a.m. on Friday and Saturday. *Protest Report, 10*. The Applicant has also requested to sell, serve, and allow the consumption of alcohol on its premises from 6:00 p.m. to 2:00 a.m. daily. *Protest Report, 8*. Finally, the Applicant has requested hours of entertainment that run from 6:00 p.m. to 12:00 a.m. daily. *Protest Report, 8*.

4. The Applicant presented its case through the testimony of four witnesses. Specifically, Genea Garcia, Randy Johnson, Michael Richardson, and ANC Commissioner Lisa White testified. *Tr.*, 3/2/11 at 3, 90, 122, 128-29. The Applicant also submitted two letters from ANC Commissioner Lisa White, which contained Commissioner White's membership card for the KPCA; pictures of the inside of the establishment and area where the establishment is located; a copy of a Voluntary Agreement between the Applicant and ANC 7D, which has not been approved by the Board; a report titled "Blight Free Philadelphia;" data from Zillow.com, a real estate website; and a crime statistics report from the Metropolitan Police Department (MPD). *ABRA Protest File No. 10-PRO-00153, Applicant's Exhibit Nos. 1-8*.

5. The Protestants presented their case through the testimony of four witnesses. Specifically, Joseph Powell, Veronica Raglin, Joan Johnson, and Janice McCree testified. *Tr.*, 3/2/11 at 195, 222, 271, 275. The Protestants also submitted a report titled: "Alcohol Outlets as Attractors of Violence and Disorder: A Closer Look at the Neighborhood Environment; another report titled: "Alcohol and Environmental Justice: The Density of Liquor Stores and Bars in Urban Neighborhoods in the United States;" and pictures of the area surrounding the establishment. *ABRA Protest File No. 10-PRO-00153, Protestant's Exhibit Nos. 1-11*.

6. Investigator Tryone Lawson led the Alcoholic Beverage Regulation Administration's (ABRA) protest investigation of the Application. *Tr.*, 3/2/2011 at 16. ABRA investigators monitored the establishment on 31 separate occasions between January 5, 2011, and February 24, 2011. *Tr.*, 3/2/11 at 20-21. The establishment was monitored at various times during the day and night. *Tr.*, 3/2/11 at 21-22. ABRA investigators did not observe any loitering, noise, or other ABC violations during the investigation period. *Tr.*, 3/2/11 at 21.

7. The establishment has an occupancy of 200 people and is only located on one floor. *Tr.*, 3/2/11 at 48; *ABRA Licensing File No. 085098; Certificate of Occupancy*. The main entrance of the proposed establishment is located on Benning Road, N.E. *Tr.*, 3/2/11 at 20. In order to enter the establishment, patrons must enter two sets of doors coming from Benning Road, N.E, and walk down a few steps. *Tr.*, 3/2/11 at 55, 73-74. The establishment is located underground in the building's basement and has no windows. *Tr.*, 3/2/11 at 73-75; *Applicant's Exhibit No. 3*.

8. Randy Johnson, the brother of Chioke Johnson, owns the building where the establishment is located and will serve as the Applicant's landlord. *Tr.*, 3/2/11 at 92, 110, 119. He currently has entered into a lease with the Applicant. *Tr.*, 3/2/11 at 115. The Applicant will pay rent on a monthly basis to Mr. Johnson and pay a percentage of the utilities and taxes owed by the building. *Tr.*, 3/2/11 at 116, 119-20.

9. As indicated by Mr. Johnson, the building previously housed a long standing jazz nightclub that originally opened in the 1950's. *Tr.*, 3/2/11 at 92-93. The Board notes that Duke Ellington performed at the original nightclub. *Tr.*, 3/2/11 at 144. After the jazz nightclub closed, the building was used for storage. *Tr.*, 3/2/11 at 93. Currently, a braid shop is located in the storefront part of the building. *Tr.*, 3/2/11 at 118.

10. As testified by Mr. Johnson, the basement where the establishment is located was soundproofed by the previous nightclub owners. *Tr.*, 3/2/11 at 96. Mr. Johnson has never heard anyone complain about parking, crime, or noise at the establishment. *Tr.*, 3/2/11 at 96.

11. Genea Garcia owns 49 percent of the establishment and Chioke Johnson owns 51 percent of the establishment. *ABRA Licensing File No. 085098, Amended Application*. Ms. Garcia will be in charge of managing the establishment and Mr. Johnson will be in charge of the establishment's operations. *Tr.*, 3/2/11 at 64-67, 77. The establishment intends to hire five employees; namely, two security staff, two floor managers, and one wait staff. *Tr.*, 3/2/11 at 67-68. Ms. Garcia and Mr. Johnson intend to manage the establishment themselves and may hire an additional manager in the future. *Tr.*, 3/2/11 at 79.

12. The establishment is not planning to install a kitchen at this time. *Tr.*, 3/2/11 at 81. As a result, the establishment will not prepare food itself but will rely on caterers to prepare the establishment's food. *Tr.*, 3/2/11 at 49. During events, the establishment plans to hire a caterer to provide buffet style food. *Tr.*, 3/2/11 at 49.

13. The establishment plans to regularly offer entertainment. Ms. Garcia intends to work directly with entertainer's booking agents to obtain acts for her establishment. *Tr.*, 3/2/11 at 78. The establishment plans to play recorded music after the establishment's entertainment hours expire at midnight. *Tr.*, 3/2/11 at 61.

14. The Board has previously approved temporary licenses for the Applicant before the protest period. *Tr.*, 3/2/11 at 31. As a result, the establishment is not opened regularly for business and is only open for special events. *Tr.*, 3/2/11 at 69. Previously, the establishment had live jazz and R&B bands, poetry readings, comedians, and individual singers perform at the establishment at approximately eight separate events in the past year. *Tr.*, 3/2/11 at 43, 47. Every event had a minimum of two security staff on duty during the event and approximately 40 to 80 people attended. *Tr.*, 3/2/11 at 50, 72. The Metropolitan Police Department's (MPD) Tactical Crime Analysis and Intelligence Branch reports that MPD responded to an alleged disorderly conduct incident at the establishment on September 26, 2010, but this did not lead to any ABC violations. *Protest Report, Exhibit No. 49*.

15. The Board notes that Ms. Garcia has never received any complaints regarding her events in the past. *Tr.*, 3/2/11 at 40. Further, Joseph Powell, the President of the KPCA, did not notice any adverse impacts on the community when the Applicant previously utilized the temporary permits issued by ABRA. *Tr.*, 3/2/11 at 204.

16. The establishment is located near a R-4 residential zone. *Tr.*, 3/2/11 at 19. There are residences located approximately a block and a half away from the establishment. *Tr.*,

3/2/11 at 62. No residences are directly adjacent to the establishment. *Tr.*, 3/2/11 at 62. The Board notes that the establishment's immediate neighborhood is blighted. *Tr.*, 3/2/11 at 136; *Applicant's Exhibit Nos. 3-4*.

17. As indicated in MPD's Crime Statistics Report, there were 61 violent crimes and 123 property-related crimes in 2010 that occurred within 1000 feet of the Applicant's address. *Applicant's Exhibit No. 8*. Specifically, as Ms. Janice McCree testified, there is an issue with drunkenness and violence in the community. *Tr.*, 3/2/11 at 277; *Licencee's Exhibit No. 8*.

18. There is parking available on Benning Road, N.E. *Tr.*, 3/2/11 at 20. Further, an unpaved alleyway near Benning Road, N.E., has unrestricted parking. *Tr.*, 3/2/11 at 20. The residential streets near and surrounding Benning Road, N.E., also have limited parking 7:00 a.m. to 8:30 p.m., Monday through Friday, for zones 6 and 7 parking permit holders. *Tr.*, 3/2/11 at 20.

19. As observed by Ms. Garcia, there is ample parking in the neighborhood because the parking in the area is generally vacant and businesses in the area close at night. *Tr.*, 3/2/11 at 70. Indeed, Mr. Richardson, who drove to the establishment to attend a special event at the establishment, had no trouble finding parking. *Tr.*, 3/2/11 at 124. Finally, Ms. Joan Johnson, a member of the KPCA, has never observed any problems with traffic or parking when the Applicant held events in the past. *Tr.*, 3/2/11 at 274.

20. As indicated in the Protest Report, the establishment is accessible by public transportation. *Protest Report, 6*. Bus stops are located one block east and one block west of the establishment. *Protest Report, 6*. The following bus routes service the establishment's address: the S41, X1, X3, Benning Road Line, X2 Benning Road/H Street Line, and the Benning Road H Street Express. *Protest Report, 6-7*. Furthermore, the establishment will be accessible by streetcar when the new system is built by the District of Columbia. *Tr.*, 3/2/11 at 56-57. Tracks for the streetcar system have been laid right in front of the establishment on Benning Road, N.E. *Tr.*, 3/2/11 at 58.

21. Ms. Garcia is a real estate agent and is familiar with the real estate market in the District of Columbia. *Tr.*, 3/2/11 at 39-40, 44. As testified by Ms. Garcia, an influx of new businesses in an area tends to increase property values because it makes the area more attractive. *Tr.*, 3/2/11 at 40. Furthermore, the Zillow Home Value Index, demonstrates that home prices in Washington, D.C., and Kingman Park increased steadily between 2001 and 2006 and have leveled off since that time. *Applicant's Exhibit No. 7*.

22. The Board also notes that vacant properties have a negative impact on housing prices. *Applicant's Exhibit No. 6*; Temple University Center for Public Policy, *Blight Free Philadelphia*, 21 (2001) (The report concluded that "[h]ousing closer to abandoned properties had lower prices, all things being equal, than property located farther from abandoned buildings.").

23. The front entrance of the establishment is located 165 feet from the nearby Friendship Edison Charter School, Blow Pierce Campus. *Protest Report, 6*. The yard of the school is located approximately one block away from the establishment; however, the yard is blocked by a fence and locked during the evening. *Tr.*, 3/2/11 at 24-25, 29. The

school also has a parking lot for staff that is equipped with a mechanical gate. *Tr.*, 3/2/11 at 25.

24. The Board notes that the establishment will not be open during school hours. *Tr.*, 3/2/11 at 39.

25. A sign at the school reads: “No sale, possession or use of drugs or alcohol within 1000 feet. Violators will be prosecuted.” *Tr.*, 3/2/11 at 240; *Protestant’s Exhibit No. 9-11*. The Board notes that the sign and its underlying authority does not impact or alter the Board’s ability to issue an ABC license within 1000 feet of a school.

26. As testified by Ms. Raglin, the overconcentration of liquor serving establishments in minority communities may be detrimental to other local retail establishments. *Tr.*, 3/2/11 at 230.

27. The Board notes the following passages from the report “Alcohol and Environmental Justice” submitted by the Protestants: “Data from some cities suggest that the physical availability of alcohol is a contextual factor that may increase alcohol consumption and alcohol-related problems over what individuals in those communities would otherwise consume, although data from other cities find no evidence for this.” *Protestant’s Exhibit No. 2*; John A. Romley, Deborah Cohen, Jeanne Ringel, and Roland Sturm, *Alcohol and Environmental Justice: The Density of Liquor Stores and Bars in Urban Neighborhoods in the United States*, *Journal of Studies on Alcohol and Drugs*, 49 (2007) reprinted in Rand Corporation, *Health* (2008)

In addition, the report made the following conclusions:

First, blacks face higher densities of liquor stores than do whites. Second, minorities in lower-income neighborhoods have more liquor stores in their neighborhoods than whites in lower- and higher-income neighborhoods. Third, minority youth have more liquor stores in their neighborhoods than do white youth. Fourth, the density of liquor stores and bars decreases with increased income, especially for minorities In view of alcohol retailing’s adverse consequences, these disparities may represent an import kind of environmental injustice, and further research is warranted.

Romley, et al., at 54.

28. Finally, the Board also notes the following passage from “Alcohol Outlets as Attractors of Violence and Disorder” submitted by the Protestant: “Research examining cross-sectional relationships between high densities of bars/taverns and nightclubs has found support for the bars-as-crime attractors argument.” *Protestant’s Exhibit No. 1*; Urban Institute, *Alcohol Outlets as Attractors of Violence and Disorder: A Closer Look at the Neighborhood Environment*, 104 (2008).

29. ANC 7D negotiated a Voluntary Agreement with the Applicant. *Tr.*, 3/2/11 at 141; *Applicant’s Exhibit No. 5*. The Board takes administrative notice that, as of the Protest Hearing, the Voluntary Agreement had not been approved by the Board.

30. ANC Commissioner Lisa White obtained copies of various voluntary agreements from other ANCs, including ANC 6A, because ANC 7D does not have a lot of experience dealing with ABC applications. *Tr.*, 3/2/11 at 143. Commissioner White was directed to voluntary agreements on ANC 6A's website by ANC 6A Commissioners Adam Healy and Drew Ronneburg. *Tr.*, 3/2/11 at 168.

31. Interim Chairperson Alberti did not participate in the conversations between ANC Commissioners Adam Healy, Drew Ronneburg and Lisa White. *Tr.*, 3/2/11 at 168-69. In addition, Interim Chairperson Alberti was unaware that Commissioner White contacted ANC 6A to obtain copies of voluntary agreements executed by ANC 6A before the hearing. *Tr.*, 3/2/11 at 169. The Board notes that Interim Chairperson Alberti does not participate in any ABC matters that come before ANC 6A.

CONCLUSIONS OF LAW

32. The Board will first address the Motions submitted by the Protestants before addressing this matter on the merits. The Protestants have requested that Interim Chairperson Alberti recuse himself from this matter, strike the Voluntary Agreement submitted by the Applicant, and reject the amended Application. The Board denies the Protestants' Motions in their entirety.

I. Motion for Recusal

33. The Board addresses the Protestants' Motion for Recusal first because it raises issues of fundamental fairness and due process. As a preliminary matter, the Board notes that it has the discretion to "commit[] the disqualification decision entirely to" an individual Board Member or decide "itself [to] disqualify [the] member." Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 65-66 (D.C. 2001). Here, the Board decides this Motion without the participation of Interim Chairperson Alberti, who has recused himself from the Motion and leaves the recusal decision to the Board.

34. The question presented to the Board is whether Interim Chairperson Alberti, who serves as a Commissioner on Advisory Neighborhood Commission (ANC) 6A and screens himself from any matters related to his work as a Board member, must recuse himself from the current protest. Specifically, must Interim Chairperson Alberti recuse himself from the present protest where ANC Commissioner Lisa White, serving on ANC 7D, contacted ANC Commissioners on the same ANC that Interim Chairperson Alberti serves on in order to obtain copies of voluntary agreements executed by ANC 6A before entering into the agreement with the Applicant.

35. The Board finds that under these facts there is no reason to question Interim Chairperson Alberti's impartiality and finds that there is no reason for Interim Chairperson Alberti to recuse himself.

36. The Applicant signed a Voluntary Agreement with ANC 7D, which, at the time of the Protest Hearing, had not been approved by the Board or binding on the Applicant. Commissioner Lisa White, testifying for the Applicant, stated that she copied voluntary agreements utilized by ANC 6A. Commissioner White testified during the Protest Hearing

that Commissioners Adam Healy and Drew Ronneburg, who serve on ANC 6A, told her where to find copies of voluntary agreements executed by the ANC on ANC 6A's website. *Protestant's Kingman Park Civic Association and the Group of Five's Motion For Recusal*, 2.

37. Interim Chairperson Alberti is an ANC Commissioner and serves on ANC 6A with Commissioners Adam Healy and Drew Ronneburg. The Board notes that, in his capacity as an ANC representative, Interim Chairperson Alberti screens himself from all ABC matters that ANC 6A deals with. Furthermore, on the record, Interim Chairperson Alberti stated that he "had no part of [the] discussion" referenced by Commissioner White.

38. Based on these facts alone, the Protestants argue that Interim Chairperson Alberti appears to have a conflict of interest.

39. There is no statute or regulation that governs the recusal of Board members. Morrison v. District of Columbia Board of Zoning Adjustment, 422 A.2d 347, 349 (D.C. 1980). Instead, "it has generally been recognized that the same rules requiring the recusal of judicial officers are applicable to administrative officers . . . act[ing] in an adjudicative . . . capacity." *Id.* In seeking the recusal of a Board member, a party must "allege facts that (1) are "material and stated with particularity;" (2) are "such that, if true[,] they would convince a reasonable [person] that a bias exists;" and (3) "show [that] the bias is personal as opposed to judicial, in nature." Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 65 (D.C. 2001) citing Carter v. Carter, 615 A.2d 197, 199 (D.C. 1992) (citations omitted).

40. In Dupont Circle Citizens Association, the Protestants challenged the Board's decision to disqualify Board Member Dennis Bass from the protest. *Id.* at 64-65. There, before becoming a Board Member, Board Member Bass served as an ANC Commissioner and published an article criticizing a former Board Member for granting a license to the applicant; asked a member of the Council of the District of Columbia to pass legislation barring the issuance of a license to the applicant; and finally, testified before the Board in opposition to a previous application for licensure submitted by the applicant in that case. *Id.* at 65. Under these circumstances, the Court of Appeals agreed with the Board's decision to disqualify Board Member Bass. *Id.*

41. Here, in contrast to Dupont Circle Citizens Association, the Board is not convinced by the Protestants' arguments that there is conflict of interest in this matter. Interim Chairperson Alberti was not involved in the brief exchange that Commissioner White had with Commissioners Ronneburg and Healy. Further, there is also no evidence in the record that indicates Commissioners Ronneburg and Healy did anything more than help Commissioner White find information on ANC 6A's website. As a result, given the fact that Interim Chairperson Alberti screens himself from all ABC matters that ANC 6A deals with, no reasonable person would believe that Interim Chairperson Alberti has a conflict of interest or even the appearance of one in this matter.

42. In addition, nothing in the facts raised by the Protestants violate the Judicial Code of Conduct.

43. In respect to disqualification of a judge, Judicial Canon 3E states, in pertinent part, that:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) . . . the judge has been a material witness concerning [the matter in controversy].

District of Columbia Courts, Code of Judicial Conduct, Canon 3E (1995).

44. None of the facts raised by the Protestants demonstrate a violation of the Judicial Code of Conduct. As the record demonstrates, Interim Chairperson Alberti has no personal prejudice concerning the parties, has no individual knowledge of the facts outside of those obtained during the hearing, and is not a material witness in this matter.

45. As such, the Protestants claim of bias is without merit and is unanimously denied by the Board.

II. Motion to Strike Voluntary Agreement

46. During the hearing, the Board denied the Protestants' Motion titled: "Joint Motion of the Kingman Park Civic Association and the Group of Five to Strike the Voluntary Agreement Entered Into Between the Applicant and the 7D ANC Commission and for Sanctions." *Tr.* 3/2/11 at 187-88, 194. The Board accepted the Voluntary Agreement into evidence because "the wishes of the persons voting, owning property or residing in the vicinity" are potentially relevant to the Board. 23 DCMR § 1718.4(c) (2008). The Board finds that ANC 7D falls within the category of individuals outlined in § 1718.4(c). As a result, the Voluntary Agreement is admissible as evidence only insofar as it demonstrates ANC 7D's support for the Application.

47. The Protestants, in their Motion, argue that the ANC 7D did not provide proper notice to the community, had a conflict of interest when it entered into a Voluntary Agreement with the Applicant, and that the agreement is not in accordance with D.C. Code § 25-446.

48. The Protestants' Motion is not well taken because the Protestants do not have standing to challenge validity of the Voluntary Agreement and, even if the Protestants had standing, their interpretation of D.C. Code § 25-446(a) is completely incorrect.

49. The validity of a Voluntary Agreement between an Applicant and an ANC may not be challenged by a third party. In order to have standing, protestants must allege that "the 'challenged action has caused [them] injury in fact . . .'" Miller v. District of Columbia Bd. of Zoning Adjustment, 948 A.2d 571, 574 (D.C. 2008) citing Dupont Circle Citizens Ass'n v. Barry, 455 A.2d 417, 421 (D.C. 1983). An injury in fact must be concrete,

particularized and not conjectural or hypothetical; “mean[ing] that the injury must affect the [protestant] in a personal and individual way.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 560 n.1 (1992). As such, no protestant has standing to bring a suit over a generalized grievance, which “claim[s] only harm to . . . every “citizen’s interest in the proper application of the . . . laws” Id. at 573-74.

50. The Protestants cannot demonstrate an injury in fact because an invalid Voluntary Agreement, which only places restrictions on a licensee’s ABC license, is only potentially injurious to the parties that executed the agreement. Here, the Protestants lack any relationship to the Voluntary Agreement entered into by the Applicant and ANC 7D because they are not parties to it. As such, it is clear to the Board that the Protestants are not affected by the Voluntary Agreement and are merely attempting to assert a generalized grievance. As such, the Protestants’ Motion must be denied because the Protestants lack standing to challenge the validity of the Voluntary Agreement.

51. On a final note, even if the Protestants had standing, their interpretation of § 25-446(a) is contrary to the plain language of 25-446(a) and the practice of the Board. The statute states: “[t]he applicant and *any protestant may, at any time*, negotiate a settlement and enter into a written voluntary agreement setting forth the terms of the settlement. D.C. Code § 25-446(a) (Supp. 2010) (emphasis added). Because the statute says “at any time,” the Board has always interpreted this language broadly to include potential protestants, now and in the future, and not just protestants protesting a current application. As such, because ANC 7D has the ability to protest future applications submitted by the Applicant, the parties properly entered into a Voluntary Agreement in accordance with § 25-446(a).

52. For these reasons, the Board dismisses the Protestants’ Motion.

III. Amended Application

53. The Board will also not reject the amended Application submitted by the Applicant, as requested by the Board. The Board finds that the confusion over the ownership percentages is a harmless error on the part of the Applicant and has no bearing on the appropriateness of the Application.

54. The Protestants argue that the Board should dismiss the Application because it is incomplete and defective. The Protestants argue that §§ 25-421 and 25-423 preclude the Applicant from amending the Application. The Protestants also argue that the Board should dismiss the Application because allegedly Item 7 of the Application lists an incorrect occupancy number; Item 12 lists an incorrect distance from the nearby school; and the Applicant did not provide the required documents required by Item 16. The Protestants further argue that Item 18(b) and Item 18(c), which require brief statements regarding appropriateness, have not been adequately addressed by the Applicant.

55. The Board rejects the Protestants’ interpretation of D.C. Code §§ 25-421 and 25-423. Simply put, neither statute is applicable because there is no language in either statute that states that the Applicant cannot amend its Application. These statutes solely deal with the Board and the Applicant’s notice requirements and nothing more. See D.C. Code §§ 25-421, 25-423 (2001).

56. The Board further rejects the Protestants' arguments based on the completeness and accuracy of the Application. First, Item 7 and Item 12 have no bearing on an establishment's occupancy or distance from a school. Regardless of the figures used, the Board independently determines these figures from the Certificate of Occupancy provided by the Department of Consumer and Regulatory Affairs (DCRA) and the District of Columbia's Geographic Information System (GIS) respectively. Because the Applicant may not have its Certificate of Occupancy or access to the GIS before the Application is submitted and the Board checks these figures independently, the Board allows Applicants to provide their best estimates. Second, the Protestants' arguments regarding Item 16 are simply incorrect. Item 16 only requires a Public Hall Certificate of Occupancy and an Entertainment Endorsement when the establishment's Certificate of Occupancy is for over 400 hundred persons, which is not the case here. *ABRA Licensing File No. 08509, Amended Application, 2*. Third, Item 18 provides an opportunity for the Applicant to explain the appropriateness of the Application. There is no requirement that an Applicant must prove appropriateness in the application form. As such, whether the Applicant provided sufficient information in Item 18 is irrelevant.

57. For these reasons, the Board dismisses the Protestants' Motions and will resolve this protest on its merits.

IV. Appropriateness

58. Pursuant to §§ 25-313 and 25-314 of Title 25 of the District of Columbia Code and § 400.1 of Title 23 of the District of Columbia Municipal Regulations, an Applicant for a new Retailer's Class CT License must demonstrate to the Board's satisfaction that the establishment is appropriate for Kingman Park. The Board concludes that the Application will not adversely impact the peace, order, quiet, residential parking needs, vehicular and pedestrian safety, and real property values of the neighborhood. D.C. Code § 25-313(b)(1)-(4) (Supp. 2010). In addition, the Board finds that the Application will not adversely impact the nearby school, effect the school's "operation and clientele," attract "school-age children . . . while present at, going to or from, the school," nor "create or contribute to an overconcentration of licensed establishments" that will adversely impact the neighborhood in which the establishment is located. D.C. Code § 25-314(a)(1)-(4) (2001). The Board explains its reasoning below.

59. 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. However, in order for the Board to give great weight to the ANC it must submit its recommendation at least 7 calendar days before the protest hearing. D.C. Code § 25-609 (2001). ANC 7D presented the Board with its recommendation, dated February 27, 2011, during the protest hearing on March 2, 2010. As such, the Board cannot give ANC 7D's recommendation great weight because it did not submit its recommendation "not less than 7 calendar days before the date of the hearing." § 25-609.

60. The Board concludes that granting the Application will not adversely impact the peace, order, and quiet of the Kingman Park neighborhood. The Board finds it convincing

that ABRA's investigation did not observe any noise, loitering, or criminal activity during the protest period. Supra, at para. 5. The Board also notes that it is unlikely that the establishment will disturb the nearby residences because the premises have already been soundproofed and the establishment has no windows. Supra, at para. 6, 9. Finally, the Board finds that the Applicant's previous use of temporary licenses to hold special events demonstrates that it will follow the law and not disturb the neighborhood. Supra, at para. 13. The Board recognizes that an alleged disorderly conduct incident was reported by MPD; however, the Board notes that this did not lead to an ABRA violation and the details of the incident were not presented to the Board during the protest. Id. Therefore, the Board finds that the establishment will not have an adverse impact on peace, order, and quiet.

61. The Board further concludes that granting the Application will not adversely impact residential parking and vehicular and pedestrian safety in Kingman Park. As the record demonstrates, the area is very accessible by public transportation and the new streetcar system will further encourage the use of public transportation in order to reach the establishment. Supra, at para. 19. The Board is also persuaded by the fact that the Protestants' witness, Joan Johnson, never observed any issues with parking or traffic when the establishment held special events in the past. Id. Consequently, there is no evidence that the Applicant will negatively impact traffic or parking in the neighborhood, and the Board finds that the Protestants' arguments to the contrary are completely speculative.

62. The Board further concludes that granting the Application will not adversely impact real property values. The Applicant presented the Board with solid evidence that the neighborhood suffers from vacancies and is blighted. Supra, at para. 15, 18. As noted by the report submitted by the Applicant, vacant properties have the tendency to decrease the value of nearby properties. Supra, at para. 21. As such, it is simply hard to believe, as the Protestants argue, that the addition of the Applicant's establishment could harm property values in any way.

63. The Board also concludes that the Applicant will not adversely impact the operations of Friendship Edison Charter School or attract school-age children going to, present at, or coming from school. Although the school is a block away from the establishment, the Board notes that the establishment will open only after school hours have ended. Supra, at para. 22-23. Furthermore, the school's fence and mechanical gate will protect the school and will deter the establishment's patrons from entering the school's property. Supra, at para. 22. Additionally, the Protestants provided the Board with no evidence that the mere sight of an establishment that serves or sells alcohol is harmful to children. Lastly, the Board notes that representatives from the school have not participated in this protest and have not indicated to the Board that they oppose the Application. Based on these facts, the Board concludes that the establishment will not adversely impact Friendship Edison Charter School's operations or students.

64. Finally, the Board finds that the Applicant will not contribute to the overconcentration of liquor serving establishments in the neighborhood. There are only five other ABC establishments located within 1200 feet of the Applicant, which does not turn that portion of Benning Road, N.E., into the next Adams Morgan. Supra, at para. 1. In addition, the Applicant would be the first establishment in the neighborhood to offer entertainment to the neighborhood and only one of two establishments that can serve open

containers. Supra, at para. 1-2; compare D.C. Code § 25-312(a) with D.C. Code § 25-312(b)-(c). The Board notes that although the Protestants' reports indicated that the overconcentration of liquor serving establishments may be associated with a number of problems; no evidence, beyond speculation and conjecture, was presented to the Board that showed that the neighborhood where the Applicant intends to locate suffers from or would suffer from an overconcentration of ABC establishments if the Board granted the Application. See Supra, at para. 26-27. Therefore, there is no evidence to support the conclusion that there is an overconcentration of liquor stores or that granting the Application would create or contribute to the overconcentration of ABC-licensed establishments in Kingman Park.

65. For these reasons, the Board finds that the Application is appropriate for Kingman Park.

V. Voluntary Agreement

66. On a final note, the Board also approves the Voluntary Agreement, dated February 27, 2011, submitted by the Applicant and ANC 7D during the Protest Hearing. The Applicant and ANC 7D have agreed to modify the Voluntary Agreements so that it is accordance with the law. Genea Garcia and Randy Johnson are signatories for the Applicant and ANC 7D Chairperson Willette Seaward and Commissioner Lisa White are signatories for ANC 7D.

67. Because the Voluntary Agreement was submitted during the Protest Hearing, the Board did not consider the Voluntary Agreement as part of the Applicant's license when it decided to approve the Application. As a result, the Board's approval of the Voluntary Agreement is entirely separate and independent of the Board's decision regarding the appropriateness of the Application. The Board includes its approval of the Voluntary Agreement in this Order for the sake of administrative efficiency.

ORDER

Therefore, it is hereby **ORDERED**, on this 15th day of June 2011, that:

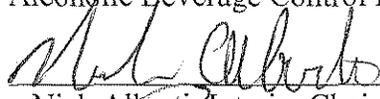
- (1) the Application for a new Retailer's Class CT License filed by Rail Station Lounge, LLC, t/a Rail Station Lounge, at premises 2001 Benning Road, N.E., Washington, D.C., is hereby **GRANTED**;
- (2) the above-referenced Agreement submitted by the Applicant and ANC 7D to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications agreed to by the parties:
 - (a) Section 5 shall be struck and amended to read as follows: "5. **Modifications:** This agreement can only be modified in accordance with the ABC laws;"
 - (b) Section 6 shall be struck;

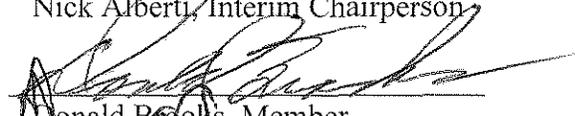
(c) Section 8(c) shall be struck;

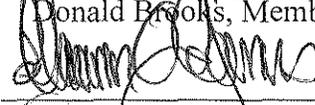
(d) Section 9 shall be struck;

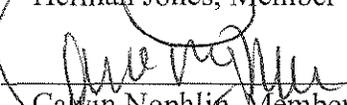
(3) Copies of this Order shall be sent to the Applicant, the Protestants, and ANC 7D.

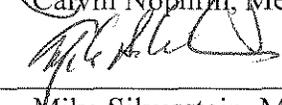
District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member


Herman Jones, Member


Calvin Nophlin, Member


Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).