THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Watson Deli, Inc.	)	
t/a S & J Liquors	)	Case Number: 12-PRO-00044
	)	License Number: 09122
	)	Order Number: 2012-521
Application to Renew a	)	
Retailer's Class A License	)	
	)	
at premises	)	
1500 Massachusetts Ave., S.E.	)	
Washington, D.C. 20003	)	
	)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Boak S. No, President, on behalf of the Applicant

Bobby Coleman, on behalf of the Applicant

Commissioner Carol Green, Advisory Neighborhood Commission (ANC) 6B, on behalf of Protestant

Commissioner Neil Glick, Advisory Neighborhood Commission (ANC) 6B, on behalf of Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

INTRODUCTION

This matter arises from the Application to Renew a Retailer's Class A License (Application) filed by Watson Deli, Inc., t/a S & J Liquors, (Applicant) at premises 1500

Massachusetts Ave., S.E., Washington, D.C. 20003. Advisory Neighborhood Commission 6B (ANC) filed a protest against the Application, stating that the Applicant's establishment has a negative impact on the neighborhood's peace, order, and quiet. The ANC requests that the Alcoholic Beverage Control Board (Board) eliminate the sale of two and three-packs of beer, ale and malt liquor at the establishment. The Board finds in favor of the Applicant, and renews the Applicant's license without conditions, because the Applicant's operations do not have a negative impact on the neighborhood's peace, order, and quiet. Moreover, the Alcoholic Beverage Regulation Administration's (ABRA) investigation of the Applicant's operations, including repeated observations of the establishment, found that no violations of ABRA law and regulations by the establishment had occurred since an incident occurring in February, 2012 which resulted in the establishment being cited for the sale of alcoholic beverages to an minor and its failure to conduct a proper check of identification.[1]

Procedural Background

ABRA gave notice on March 30, 2012 that the Applicant had filed to renew its Retailer's Class A License. The ANC, represented by Chairman Andrew Critchfield and Commissioner Carol Green, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602.

The parties came before the Board for a Roll Call Hearing on May 29, 2012 and a Protest Status Hearing on July 18, 2012. The Protest Hearing occurred on October 3, 2012.

The Board notes that the ANC properly submitted a recommendation under D.C. Official Code § 25-609 by filing with the Board a letter dated May 9, 2012 stating that the ANC had voted unanimously at a duly noticed meeting of the Commission to protest the license renewal application of S & J Liquors. The protest ground was the adverse impact of the establishment on peace, order and quiet pursuant to D.C. Official Code § 25-313.

The Board recognizes that an ANC's properly adopted written recommendations must receive great weight from the Board. See *Foggy Bottom Ass'n v. District of Columbia ABC Bd.*, 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609. 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. We acknowledge the issues and concerns raised by ANC 6B, and accord them great weight in our Conclusions of Law.

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:

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1. This incident resulted from an ABRA compliance check in which ABRA utilized an undercover minor to solicit the sale of alcoholic beverages. The matter was discussed by the Board at a Show Cause Hearing on Case No. 12-CC-00041 in May, 2012 and resulted in a warning letter being sent to the Applicant.

A. Investigator Kofi Apraku

1. ABRA Investigator Kofi Apraku conducted an investigation of the Application, and authored the Protest Report submitted to the Board. *Transcript*, October 3, 2012 at 15; see generally *ABRA Protest File No. 12-PRO-00044, Protest Report, September 2012.* According to the Protest Report, the Applicant seeks to renew its Retailer's Class A License. *Protest Report*, at 1. The Applicant's establishment sits in a R-4 residential zone, which permits single-family residential uses, but no commercial uses unless grandfathered or through a special exception. *Id.* at 1. ABRA's records show that there are four other ABRA licensed establishments located within 1,200 feet of the establishment. *Id.* at 2. Moreover, there are no recreation centers, public libraries, schools, or day care centers operating within 400 feet of the establishment. *Id.* A review of Metropolitan Police Department (MPD) records indicates that twelve calls were made concerning the establishment for the year from September 19, 2011 through September 18, 2012. None resulted in reports being transmitted to ABRA. *Id.* at 8.

2. The establishment's hours of operation are from 9:00 a.m. through 10:00 p.m. Monday through Saturday, with alcohol sales permitted during all hours. *Protest Report* at 3. The establishment also sells non-alcoholic beverages and snack foods. *Id.*

3. The establishment does not have any off-street parking, but there are on-street parking spaces in front of the establishment. *Protest Report* at 3 Additionally, there is a bicycle stand operated by Capital Bikeshare. *Id.* As for public transportation, there are two bus lines that operate adjacent to the establishment and the Stadium/Armory Metro stop is located approximately four blocks to the east. *Id.*

4. The ABRA investigator visited the establishment on September 26, 2012. *Id.* at 4-7. None of the visits showed any issues with regard to adequate parking, noise, or disturbance of the peace issues. *Id.* Moreover, the establishment was clean and well-kept, with no trash observed around the establishment or in the alley behind the establishment. *Id.* Inside the establishment, Investigator Apraku observed that the establishment sold small quantities of two-packs of beer but that the majority of beers were high-end beers sold in six-packs. *Id.* at 7. Mr. Apraku did not notice any plastic wrappers from the two-packs of beer either in the establishment or in the area surrounding the establishment. *Transcript, October 3, 2012* at 31, 39-41.

B. Bobby Coleman

5. Mr. Coleman testified that he had been employed at the establishment for well over 25 years, functioning in a utility capacity. *Tr.* at 43. Among his functions were to keep the area around the establishment, including in the back alley, clean. He testified that his duties were to clean the areas around the establishment approximately three times per day, remove loiterers from the front of the establishment, stock the shelves, act as a sales clerk and check IDs in order to prevent sales to minors. *Tr.* at 44-45, 59, 63. Further, Mr. Coleman stated that he was not present at the store when an alleged sale of alcohol to a minor occurred.[2] As regards the prohibition on sales of two-packs of beer, Mr. Coleman stated that a request was made by Commissioner Green at a meeting of the ANC's

[2] Id.

Alcoholic Beverage Committee and was rejected by the Applicant, whom he recalled stating that if they [the establishment] could no longer sell the two packs of beer the establishment might as well go out of business. Mr. Coleman further stated that if there was no sale of two-and three-packs of beer at the establishment, sales would drop dramatically and he would probably lose his job. *Tr.* at 69. In response to questions from the Chairperson, Mr. Coleman stated that the sale of two-packs was not restricted as to type of customer and that persons in suits purchased the two-packs just as much as others who were clearly homeless. *Tr.*, at 85-87. In response to Board questions, Mr. Coleman stated that customers did not generally loiter in front of the establishment and that if they did, he would call MPD if a loiterer refused to move. *Tr.* at 65-66.

C. Karen Sayre

6. Ms. Sayre, who operates a photography studio diagonally across from the establishment, testified that it was her belief that customers of the establishment and another liquor store located directly across the street purchased their two-packs of beer and then proceeded across the street to loiter in front of her business while consuming the beer. Her belief was that the customers purchased Styrofoam cups from a restaurant adjacent to her, poured beer from the containers purchased either from the establishment or from another liquor store across the street into the cups, discarded the containers and plastic rings in the area fronting her business and then loitered while consuming the alcohol. *Tr.* at 123-124. Ms. Sayre did state that she had noticed Mr. Coleman keeping the area around the establishment clean. *Tr.* at 123. She stated that the sale of two-packs by the establishment and the other liquor store had contributed to the problem. *Tr.* at 125. She also testified that the white bags used by the establishment had been found discarded in front of her establishment. *Tr.* at 131. In response to questions, Ms. Sayre stated that she would not have a problem with the establishment remaining if it stopped selling two-packs. *Tr.* at 137.

D. **Neil Glick**

7. Commissioner Glick testified as to the evolution of the neighborhood into one of families with children. *Tr.* at 146. He further testified that his view was that the establishment has not been supportive of the neighborhood, citing the example of opposing the prohibition on the sale of singles. *Tr.* at 147. Commissioner Glick stated that he had seen customers walking from DC General Hospital toward the establishment and then returning from the general direction of the establishment with their two-packs, consuming the beverages on their way back to DC General Hospital and leaving their cans, plastic rings and plastic bags behind on his and his neighbors' front lawns. *Tr.* at 151-152. Moreover, he stated that he has talked with persons who were clearly intoxicated and been told that they had obtained their liquor from the establishment. *Tr.* at 154. It was his belief that the sale of two-packs had contributed to the negative issues arising in his neighborhood. *Tr.* at 154.

E. Carol Green

8. Commissioner Green testified that she did not believe that the establishment was a good neighbor to the community and that the Applicant had not appeared at ANC meetings as required by past Board orders. *Tr.* at 188. According to Commissioner Green, the MPD

had reported six calls for disorderly conduct in front of the establishment in the past year. Id. at 189. She further stated that in general she had good relations with most other licensees in the area but that the Applicant did not appear to want to establish good community relations. *Tr.* at 189.

CONCLUSIONS OF LAW

9. The Board has the authority to renew the Applicant's Retailer's Class B License if we deem it appropriate for the neighborhood in which the license is located, and the Applicant otherwise qualifies for licensure. D.C. Code §§ 25-301, 25-313, 25-315. We may also impose conditions on the Applicant's license if we deem such conditions to "be in the best interest of the locality, section, or portion of the District where licensed establishment is . . . located." D.C. Code § 25-104(e).

I. Peace, Order, and Quiet

10. By law, the Board is required to examine "[t]he effect of the establishment on peace, order, and quiet . . . ." D.C. Code § 25-313(b) (2). The ANC does not argue that renewing the Applicant's license will have a negative impact on the neighborhood's peace, order, and quiet. Rather, the ANC argues that Applicant's sale of two-packs of beer has had a negative impact on the neighborhood's peace, order and quiet and that, therefore, the Board should, as a condition of approving the license renewal, prohibit the sale of such two-packs at the establishment. While the Board is sympathetic to the ANC's concerns about the sale of such two-packs and its impact on the surrounding community, the prohibition of such sales is a legislative, not an adjudicatory function. All existing moratoria on the sale of single containers of alcohol have been accomplished by Act of the D.C. City Council. See, e.g., the *Consolidated Mt. Pleasant, Ward 2 and Ward 6 Single Sales Moratorium Act of 2008*, effective December 24, 2008 (D.C. Law 17-287; D. C. Official Code § 25-344 et seq.). While the ANC is correct that the sale and abusive consumption of alcoholic beverages can have and in many instances has had a negative impact on the peace, order and quiet of a neighborhood, the ANC failed to demonstrate that the Applicant's operations, in and of themselves, had a negative impact on the neighborhood's peace, order, and quiet. Moreover, the Applicant demonstrated to the satisfaction of the Board that it understood its responsibility to maintain a clean and orderly establishment by keeping the premises and the surrounding streets and alleyways clean and free of litter. The Applicant cannot be held responsible for conduct that occurs in other areas of the neighborhood, so long as the establishment is operating within the parameters of District laws and regulations. Moreover, according to Inspector Apraku, there do not appear to be any such impacts on the community by this establishment. *Protest Report* at 4-7.

11. By law, the Board must also consider whether the establishment will create noise in violation of D.C. Official Code § 25-725. § 25-313(b)(2). Inspector Abraku noted in his report that, from her numerous observations of the establishment in connection with this application, there was no activity that would indicate an issue with noise. *Protest Report* at 4-7. The ANC did not provide any testimony or documentary evidence of a noise problem.

12. In addition, the Board must further consider whether the establishment will create litter in violation of D.C. Official Code § 25-726. § 25-313(b)(2). Under §25-726, "The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter." D.C. Code § 25-726(a). The Protest Report did not find any evidence of a litter problem at or surrounding the establishment. *Protest Report* at 4-7.

13. Therefore, we conclude that renewing the Application does not threaten the neighborhood's peace, order, and quiet.

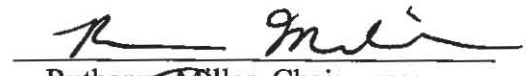
II. Conclusion

14. We are only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its initial protest. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2. Accordingly, based on our review of the Application and the record, we find the Applicant has generally demonstrated its good character and fitness for licensure, and has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

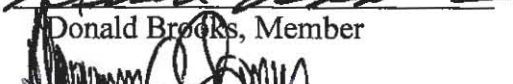
Therefore, the Board, on this 12th day of December, 2012, hereby **ORDERS** that the Application to Renew a Retailer's Class A License filed by Watson Deli, Inc., t/a S & J Liquors, is **GRANTED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board

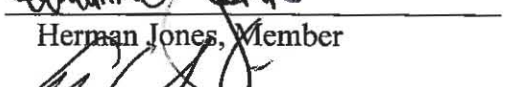


Ruthanne Miller, Chairperson

Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member

I dissent from the position taken by a majority of the Board.

Nick Alberti, Member

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

Also, under 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 under 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).