

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

In the Matter of:)
)
Moonkor Corp.)
t/a Southeast Market)
)
Application to Renew a)
Retailer's Class B License)
)
at premises)
1500 Independence Avenue, S.E.)
Washington, D.C. 20003)
)

Case Number: 11-PRO-00087
License Number: 89011
Order Number: 2012-345

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

ALSO PRESENT: Moonkor Corp., t/a Southeast Market, Applicant

Tae Won Moon, Owner, on behalf of the Applicant

Sun Ho Moon, Non-Lawyer Representative and Korean Interpreter,
on behalf of the Applicant

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

Commissioner Neil Glick, Chair, ANC 6B, 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 B License (Application) filed by Moonkor Corp., t/a Southeast Market, (Applicant) at premises 1500 Independence Avenue, S.E., Washington, D.C. Advisory Neighborhood Commission (ANC) 6B filed a protest against the Application, stating that the Applicant has a negative impact on the neighborhood's peace, order, and quiet, and to request that we condition renewal of the Applicant's license on prohibiting the sale of two and three-packs of beer, ale, and malt liquor. We find in favor of the Applicant, and renew the Applicant's license without conditions, because the Applicant's operations have not had a negative impact on the neighborhood's peace, order, and quiet. Indeed, in the short amount of time in which the Applicant has operated, it is clear that the ownership has made noticeable improvements to both the management and operation of the business.

Procedural Background

The Alcoholic Beverage Regulation Administration (ABRA) gave notice on October 14, 2011, that the Applicant had filed to renew its Retailer's Class B License. Advisory Neighborhood Commission (ANC) 6B, represented by Commissioners Carol Green and Neil Glick, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602.

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on December 12, 2011, and a Protest Status Hearing on May 9, 2012. The Protest Hearing occurred on June 27, 2012.

The Board notes that ANC 6B properly submitted a recommendation under D.C. Official Code § 25-609. 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 (West Supp. 2012). 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. Here, ANC 6B, in a letter dated November 28, 2011, advises the Board that the Applicant has a negative impact on the neighborhood's peace, order, and quiet, based on complaints from nearby community members that littering, loitering, public drunkenness, and public urination occurs in the community. Letter from Neil Glick, Chair, ANC 6B, to Interim Chair Alberti, Alcoholic Beverage Control Board, 1 (Nov. 28, 2011). In addition, the ANC further argues that the Applicant's sale of two-packs of beer circumvent the prohibition on the sale of individual containers of beer, ale, and malt liquor in Ward 6, and contributes to the issues raised by its constituents. Id.; D.C. Code § 25-346 (West Supp. 2012). We acknowledge the issues and concerns raised by ANC 6B, and we will accord them great weight in our Conclusions of Law.

As noted by ANC 6B in its Protestant Information Form, the issues in this matter are whether renewing the Applicant's license will have an adverse impact on the peace, order, and quiet of the area located within 1,200 feet of the establishment, and whether the Board should prohibit the Applicant from selling two and three-packs of beer, ale, and malt liquor. D.C. Code §§ 25-104(e); 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2;

1607.7(b) (West Supp. 2012); Protest Information Form, ANC 6B (Action Being Requested: No sales of two and three packs of beer, ale, or malt liquor.”)

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:

A. Investigator Jabriel Shakoor

1. ABRA Investigator Jabriel Shakoor conducted an investigation of the Application, and he authored the Protest Report submitted to the Board. *Transcript*, June 27, 2012 at 17; see generally *ABRA Protest File No. 11-PRO-089011*, Protest Report. According to his report, the Applicant seeks to renew its Retailer’s Class B License. Protest Report, at 1. The Applicant’s establishment sits in an R-4 residential zone. *Id.* at 2. ABRA’s records show that the area within 1,200 feet of the establishment contains five off-premise retail licensed establishments. *Id.* at 3. No recreation centers, public libraries, schools, or day care centers operate within 400 feet of the Applicant’s establishment. *Id.* Finally, the establishment does not have a history of violating the District of Columbia’s alcoholic beverage control laws, and the Applicant has only received warnings for minor violations at the Applicant’s other liquor-selling establishments in Virginia. Protest Report, 8-9.
2. The establishment’s hours of operation begin at 8:00 a.m. and cease at 9:00 p.m., seven days per week. *Id.* at 4. The Applicant’s present license allows it to sell alcohol from 9:00 a.m. to 9:00 p.m., seven days per week. Protest Report, at 4.
3. The Applicant has hired Progressive Waste Solutions to remove the establishment’s trash. *Id.* at 4. The trash removal service visits the establishment three times per week. *Id.* at 4.
4. ABRA investigators visited the Respondent’s establishment on 22 separate occasions between May 10, 2012, and June 9, 2012. *Id.* at 7. Investigator Shakoor noted that none of the investigators, himself included, observed any loitering, criminal activity, or excessive litter near the establishment. *Tr.*, 6/27/12 at 20-21; *Id.* Investigator Shakoor also noted that between June 7, 2011, and June 6, 2012, the Metropolitan Police Department only received fourteen calls for service at the establishment’s address. Protest Report, Exhibit No. 50.
5. Investigator Shakoor also observed that the Applicant only offered a small selection of two and three-packs of beer. *Tr.*, 6/27/12 at 21. The Applicant only offered these products on two to three shelves and in one cooler. *Tr.*, 6/27/12 at 21. He emphasized that the Applicant did not divide or alter any manufacturers’ packages. *Tr.*, 6/27/12 at 25-26, 29-32. Investigator Shakoor also saw that four other establishments in the neighborhood offered two and three-packs of beer as well. *Tr.*, 6/27/12 at 21.
6. As of June 2012, the present Applicant has only operated the establishment for the past three months, but Investigator Shakoor believed the Applicant has made significant improvements. *Tr.*, 6/27/12 at 21, 24. Notably, while individuals frequently loitered in the

area around the store in the past, since the new owner has taken over, Investigator Shakoor has observed a significant decrease in the amount of loitering occurring near the Applicant's establishment. *Tr.*, 6/27/12 at 21, 36. The Applicant has also remodeled the store, added fresh produce offerings, and installed a security camera system. *Tr.*, 6/27/12 at 24. Finally, Investigator Shakoor observed that the new owner kept the store clean and well lit. *Tr.*, 6/27/12 at 27.

7. Investigator Shakoor also noted that the establishment offered a wide variety of products. *Tr.*, 6/27/12 at 37. The Applicant offers coffee, deli meats, dry goods, cheeses, eggs, frozen foods, juices, milk, and sodas. *Tr.*, 6/27/12 at 37; Protest Report, Exhibit Nos. 15-17, 20-26, 29. Moreover, the establishment offers a variety of alcoholic beverages at various price points. *Tr.*, 6/27/12 at 37-38; Protest Report, Exhibits Nos. 18, 28, 34-45,

B. Kenneth Isley

8. Kenneth Isley works at the Applicant's establishment. *Tr.*, 6/27/12 at 43. He worked for the previous owner for approximately three years, and he has worked for the present owner for approximately two-and-a-half months. *Tr.*, 6/27/12 at 43. As part of his present duties, Mr. Isley must ensure that the outside of the store remains free of litter and trash. *Tr.*, 6/27/12 at 47. He also cleans the outside of the store twice per day on a daily basis. *Tr.*, 6/27/12 at 46-47.

C. Commissioner Carol Green

9. Commissioner Carol Green submitted an email from Councilmember Tommy Wells' office that explained the Ward 6 moratorium on the sale of small, individual containers of alcoholic beverages. Email from Charles Allen, Chief of Staff, The Office of Councilmember Tommy Wells, to ANC 6B. The email noted that the law creates a prohibition on the sale of small, individual containers of alcoholic beverages, and provides a mechanism to seek an exception to the law. *Id.* The email emphasized that new licensees must wait twelve months before applying for an exception so that a "track record can be established." *Id.*

10. We also acknowledge ANC 6B's resolution, dated March 13, 2012, and submitted by Commissioner Green. ANC 6B Resolution on Small Quantity Alcoholic Beverage Sales (Mar. 13, 2012). The resolution states, "Class A and B liquor licenses are selling two and three packs of beer, ale, and malt liquor to circumvent the singles ban." *Id.* The resolution then attributes "littering, loitering, trash, and other quality of life issues" to sale of these products. *Id.* As such, according to the resolution, ANC 6B "will no longer approve the sale of two and three packs of beer, ale, and malt liquor unless the licensee also applies for, and the ANC supports, a single sales exemption." *Id.*

11. Commissioner Green acknowledged that she has not observed loitering or engaging in public drinking in front of the establishment. *Tr.*, 6/27/12 at 63-64. Furthermore, she acknowledged that the complaints that ANC 6B has received from its constituents apply to the old owner, and do not apply to the current owner. *Tr.*, 6/27/12 at 74-75.

D. Reverend Larry Donathan

12. Reverend Larry Donathan resides near the establishment. *Tr.*, 6/27/12 at 84. Rev. Donathan believes that the ban on the sale of small, single containers of alcoholic beverages has decreased the amount of public intoxication, loitering, littering, and public urination and defecation that occurs in the neighborhood. *Tr.*, 6/27/12 at 85.

13. As a resident, Rev. Donathan has observed customers of Southeast Market and S & J Liquors walk in front of his home. *Tr.*, 6/27/12 at 86. He regularly observes customers walking down the street with two and three-packs of beer in plastic bags while consuming beer. *Tr.*, 6/27/12 at 86. Rev. Donathan regularly finds discarded beer cans in front of his home, and he has witnessed individuals use the alley behind his home as a bathroom. *Tr.*, 6/27/12 at 86. Finally, he has witnessed individuals loiter in front of the Chinese carry-out across the street from the establishment with beer that they have purchased from Southeast Market or S & J Liquors. *Tr.*, 6/27/12 at 89.

14. Nevertheless, Rev. Donathan acknowledged that the Applicant has improved the management and quality of the goods offered by the establishment, and has upgraded the appearance of the business. *Tr.*, 6/27/12 at 89-90. In addition, Rev. Donathan acknowledged that he has never witnessed individuals consume alcoholic beverages in front of the establishment. *Tr.*, 6/27/12 at 92.

E. Commissioner Neil Glick

15. Commissioner Neil Glick has served on ANC 6B since 2001. *Tr.*, 6/27/12 at 101. According to Commissioner Glick, the neighborhood offers many social services to those in need. *Tr.*, 6/27/12 at 102. In that vein, Commissioner Glick noted that the District of Columbia General Methadone Clinic, the Harriet Tubman Center, the Court Services and Offender Supervision Agency for the District of Columbia, an off-site District of Columbia Jail Visitor Center, the Phoenix Healthcare Center, the Tuberculosis X-ray Clinic, and an emergency psychiatric clinic operate in the surrounding neighborhood. *Tr.*, 6/27/12 at 102-03.

16. Commissioner Glick further testified that construction next to the establishment temporarily discourages loitering in front of the establishment. *Tr.*, 6/27/12 at 106. We disagree with this analysis, because photographs in Investigator Shakoor's report show ample sidewalk space in front of the establishment that loiterers, if they existed, could use. Protest Report, Exhibit Nos. 11-14.¹

17. Commissioner Glick also has observed individuals engage in antisocial behavior in the neighborhood. *Tr.*, 6/27/12 at 107. He has personally observed individuals screaming, asking for money, drinking in their vehicles, and using the alley near his home as a bathroom; nevertheless, he could not specifically identify these individuals as the

¹ Commissioner Glick and other witnesses also stated that individuals assaulted the owner's spouse, because the establishment ceased selling two and three-packs of beer. *Tr.*, 6/27/12 at 59, 64-65, 106-07. Nevertheless, we lack sufficient evidence to make a finding of fact related to this incident, as all references to the incident in the record come to the Board from second-hand sources that did not witness the incident. Yet, even if this incident occurred, as described in the record, it would have no bearing on our conclusion, because it does not relate to the appropriateness standard.

Applicant's customers. *Tr.*, 6/27/12 at 107, 112-14, 125. Commissioner Glick also regularly finds discarded cans and plastic rings throughout the neighborhood, which have been discarded by liquor store customers. *Tr.*, 6/27/12 at 104-05, 126.

CONCLUSIONS OF LAW

18. 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 (West Supp. 2012). 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) (West Supp. 2012).

I. Peace, Order, and Quiet

19. ANC 6B argues that renewing the Applicant's license will have a negative impact on the neighborhood's peace, order, and quiet, and that prohibiting the Applicant from selling two and three-packs of beer is in the best interest of the neighborhood. We disagree, because the Applicant's operations have not had a negative impact on the neighborhood's peace, order, and quiet and the Applicant has made noticeable improvements to both the management and operation of the business.

20. First and foremost, we find that the Application does not threaten the neighborhood's peace, order and quiet. 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) (West Supp. 2012). We credit Investigator Shakoor's testimony that the Applicant has made significant improvements to the establishment. *Supra*, at ¶ 6. We also credit testimony that the area around the store does not suffer from criminal activity or loitering. *Supra*, at ¶ 4. Indeed, as Investigator Shakoor noted, the amount of loitering has decreased significantly since the new owners took over the establishment. *Supra*, at ¶ 6.

21. While we acknowledge ANC 6B's concerns, we do not find them sufficiently significant to dissuade us in finding in favor of the Applicant. Commissioner Green, Commissioner Glick, and Rev. Donathan could not attribute many of the negative impacts they cited directly to the Applicant's operations. *Supra*, at ¶¶ 11, 14, 17. Instead, we find that the evidence of individuals engaging in public drunkenness and public urination and defecation may be attributed to the customers of other liquor stores, or may be simply homeless people traveling to-and-from the many social service agencies in the area. *Supra*, at ¶¶ 5, 15, 17.

22. 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). We note that the establishment does not offer or seek to offer live music or other entertainment; therefore, the Applicant will not create unlawful noise.

23. 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) (West Supp. 2012). The record shows that the Applicant complies with this obligation by having its trash removed three times per week and having its employee clean the store twice per day. Supra, at ¶¶ 3, 8.

24. While we acknowledge ANC 6B’s testimony regarding litter, we are not convinced that the Applicant bears responsibility for the litter identified by ANC 6B. Supra, at ¶¶ 10, 13, 17. First, as admitted by Commissioner Green, many of the complaints reported by ANC 6B’s constituents relate to the past operator, not the present Applicant. Supra, at ¶ 11. Second, we find it unreasonable to attribute the litter issues faced by the community to the Applicant, when the Applicant has only begun operating in the last few months. Supra, at ¶ 6. Third, § 25-726 only states that the Applicant is responsible for keeping its immediate environment clean; therefore, the Applicant cannot be held responsible for the litter generated by customers outside of the area adjacent to its property. For this reason, we find that the establishment’s present trash removal and cleaning measures comply with its obligations under § 25-726.

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

II. ANC 6B’s Proposed Condition

26. In light of this determination, we lack sufficient justification to prohibit the Applicant from selling two and three-packs of alcoholic beverages at this time. See § 25-104(e). We also question the appropriateness of enacting a piecemeal, neighborhood prohibition on the sale of two and three-packs of beer, ale, and malt liquor through individual contested cases. The adjudicative process serves as a means to provide relief on an individual and case-by-case basis. Based on the fact that the ANC’s desired policy would affect multiple, separate licensees in Ward 6, it seems more appropriate that it come through legislation or a moratorium, rather than adjudication, so that the pros and cons of such a policy may be fully vetted, discussed, and understood by the public.

III. Conclusion

27. Finally, we are only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their 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 (West Supp. 2012). Accordingly, based on our review of the Application and the record, we find the Applicant has 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

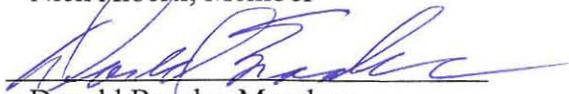
Therefore, the Board, on this 19th day of September 2012, hereby **ORDERS** that the Application to Renew a Retailer’s Class B License filed by Moonkor Corp., t/a

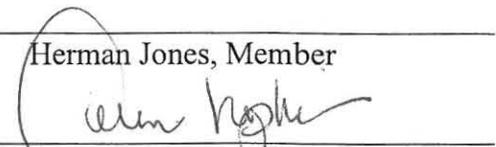
Southeast Market, is **GRANTED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestants.

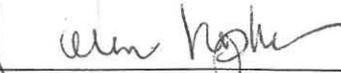
District of Columbia
Alcoholic Beverage Control Board

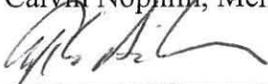

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Calvin Nophlin, Member


Mike Silverstein, 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).