

Control Board (Board) for a Roll Call Hearing on January 3, 2011, and a Protest Status Hearing on February 23, 2011.

On December 14, 2010, a protest against the Petition was timely filed by ANC 1C. ANC 1C was granted standing at the Roll Call Hearing. A second protest was filed by KCA on December 17, 2010. KCA was also granted standing at the Roll Call Hearing. The KCA protest was dismissed by the Board on a five (5) to zero (0) vote at the July 13, 2011, protest hearing due to its failure to appear timely at the hearing. KCA appeared 20 minutes after the start of the hearing and requested the Board's reconsideration of their decision to dismiss the KCA as a protestant in this matter. The Board voted five (5) to zero (0) to affirm its previous decision.

The parties attended mediation on February 7, 2011, and on April 18, 2011, the parties submitted a Replacement Cooperative Agreement, dated April 14, 2011.

On April 27, 2011, the Board approved with modification the Replacement Cooperative Agreement, dated April 14, 2011. The Board requested that the parties omit the following language of Section (B)(1) of the Replacement Cooperative Agreement: "Applicant agrees not to seek a license class change to CN or DN."

The Applicant accepted the Board's modification; however, the Protestants did not. On May 18, 2011, the Board denied ANC 1C and KCA's alternative language to the Board's requested modification to the Replacement Cooperative Agreement. Thus, the Petition was heard by the Board at a Protest Hearing on June 29, 2011, and July 13, 2011. At the time of the Protest Hearing, the Applicant formally withdrew its support of the Replacement Cooperative Agreement, dated April 14, 2011.

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

FINDINGS OF FACT

1. The Petitioner seeks to terminate its Voluntary Agreement, dated January 11, 2002, with signatories Brian Harrison and Denis James; its Voluntary Agreement, dated December 13, 2005, and Amendment to Cooperative Agreement, dated July 1, 2009, with signatories Brian Harrison, Bryan Weaver, and Denis James; and its Second Amendment to Voluntary Agreement, dated July 7, 2010, with signatories Brian Harrison, Mindy Moretti, and Denis James. *See* Board Order Nos. 2005-290, 2010-351, and 2010-410.
2. The Board takes administrative notice that the Petition was submitted during the Petitioner's renewal period and more than four years after the current Voluntary Agreement was approved by the Board. *See* ABRA Licensing File No. ABRA-060475; *see* also ABRA Protest

File No. 10-PRO-00179. The Board finds that the provisions under §§ 25-421 through 25-423 were satisfied in this matter. See ABRA Protest File No. 10-PRO-00179.

3. The Petitioner's establishment is located at 2442-2446 18th Street, N.W. and is located within a C2B zone. *ABRA Licensing File No. 60475. ABRA Protest Report, Case Report No. 10-CMP-00179.* There are 61 ABC-licensed establishments within 1,200 feet of the Applicant: *ABRA Protest Report, Case Report No. 10-CMP-00179.* There are no schools, recreation centers, or public libraries within 400 feet of the establishment. *ABRA Protest Report, Case Report No. 10-CMP-00149.* The Certificate of Occupancy lists a capacity of 180 seats. See *ABRA Licensing File No. 60475.* There is also an Entertainment Endorsement on the license that permits the Petitioner to offer a DJ on the second floor. See *ABRA Licensing File No. 60475.*
4. Investigator Lawson has been an investigator with ABRA for about 17 months and he has conducted over 200 investigations. *Tr.*, 06/29/11 at 71-72. He was assigned to investigate the Protest of ANC 1C and KCA to the Petition. *Transcript, (Tr.) 06/29/11 at 46.*
5. Investigator Lawson testified that the Petitioner desires to terminate its Voluntary Agreement for three reasons: 1) the existing Voluntary Agreement restricts the establishment from increasing its occupancy load; 2) the existing Voluntary Agreement restricts the establishment's hours of operation; and 3) the existing Voluntary Agreement places an undue burden on the establishment by creating a jeopardy of being fined twice for the same offense. *Tr.*, 06/29/11 at 48-49, 60-62. The Petitioner wants to increase his occupancy to 340 and increase his operating hours to take advantage of Daylight Savings Time and other one-time events, all of which are prohibited by its existing Voluntary Agreement. *Tr.*, 06/29/11 at 48-49, 58. Additionally, the Petitioner disagreed with the requirement in its Voluntary Agreement to keep its kitchen open one hour before closing when the law only requires two. *Tr.*, 06/29/11 at 64.
6. Investigator Lawson interviewed Denis James, President of KCA, who informed him that the termination of the Voluntary Agreement would leave the citizens without protection against noise, trash, peace, and which are generally associated with ABC-licensed establishments in Adams Morgan. *Tr.*, 06/29/11 at 49, 56. Mr. James stated that the Petitioner's efforts to increase the establishment's occupancy and extend the operating hours will only serve to increase the noise and the volume of people to Adams Morgan. *Tr.*, 06/29/11 at 50, 557. Mr. James also believes that terminating the Voluntary Agreement would leave the community vulnerable. *Tr.*, 06/29/11 at 50, 57, 67.
7. Investigator Lawson also interviewed ANC Commissioner Olivier Kamanda regarding the ANC's concerns about terminating the Voluntary Agreement. *Tr.*, 06/29/11 at 51. Commissioner Kamanda is concerned that without the Voluntary Agreement, the ANC would have no way to address noise, occupancy load, and trash concerns within the Adams Morgan neighborhood. *Tr.*, 06/29/11 at 51. Commissioner Kamanda stated that the Voluntary Agreement affords protection to the Adams Morgan residents. *Tr.*, 06/29/11 at 51. He also stated that the

ANC would be willing to work with the Applicant to amend the existing Voluntary Agreement. *Tr.*, 06/29/11 at 51.

8. Investigator Lawson testified that ABRA investigators monitored the establishment on 32 separate occasions from February 11, 2011, to April 6, 2011. *Tr.*, 06/29/11 at 53, 73-74. Investigator Lawson personally monitored the establishment ten times. *Tr.*, 06/29/11 at 75. The establishment was monitored during all hours of operation to assess pedestrian traffic, trash and litter, and routine day-to-day activities near the establishment. *Tr.*, 06/29/11 at 53. During the monitoring periods, ABRA investigators did not observe any loitering, criminal activity, or excessive trash. *Tr.*, 06/29/11 at 54, 74. Additionally, ABRA investigators did not hear excessive noise or observe any ABRA violations. *Tr.*, 06/29/11 at 54. He did not hear any excessive noise from the Petitioner's rooftop garden. *Tr.*, 06/29/11 at 78. When Investigator Lawson did hear noise in the Adams Morgan neighborhood, he could not attribute it to the establishment. *Tr.*, 06/29/11 at 78. He believes that an increase in occupancy will increase the volume of voices and conversations. *Tr.*, 06/29/11 at 80.

9. Investigator Lawson interviewed Asher Connelly, the ABC Manager for the Petitioner. *Tr.*, 06/29/11 at 54. Mr. Connelly stated that during busy nights, the Petitioner uses nine security personnel, who are posted throughout the two floors and the rooftop garden. *Tr.*, 06/29/11 at 54, 65-66. The two front door security personnel check patron's identifications. *Tr.*, 06/29/11 at 54, 67. The establishment permits patrons who are 21 years of age to enter the establishment before 9:00 p.m. *Tr.*, 06/29/11 at 55. Only patrons who are 21 and over, and who can demonstrate it, are permitted to enter after 9:00 p.m. *Tr.*, 06/29/11 at 55.

10. Investigator Lawson stated that the establishment does not have Metropolitan Police Department (MPD) Reimbursable Detail but there are patrol officers throughout the Adams Morgan neighborhood, to include the corner of Columbia Road, N.W. and 18th Street, N.W. *Tr.*, 06/29/11 at 65. Investigator Lawson observed the Petitioner's security measures during the protest monitoring period. *Tr.*, 06/29/11 at 68. None of the Petitioner's security measures is required by the Voluntary Agreement. *Tr.*, 06/29/11 at 68-70.

11. Investigator Lawson testified that the establishment is located near public transportation. *Tr.*, 06/29/11 at 55. There are Metro buses, Metro trains and a constant flow of taxicabs to service patrons. *Tr.*, 06/29/11 at 51. He also stated that the District of Columbia's parking enforcement officers are constantly enforcing parking rules and regulations to deter parking violations in the 18th Street corridor. *Tr.*, 06/29/11 at 55.

12. Investigator Lawson testified that MPD provided a crime analysis for calls to service at that address. *Tr.*, 06/29/11 at 55, 82-84. There were 36 calls for service between March 2, 2010 and March 2, 2011; none of which resulted in an ABRA violation. *Tr.*, 06/29/11 at 55, 84-86. Investigator Lawson stated that the calls for service are related to the area in front of the establishment and are not necessarily related specifically to the establishment itself. *Tr.*, 06/29/11 at 55, 86-87.

13. Investigator Lawson stated that when he checked the Petitioner's investigative history there were two former violations, both breaches of the Voluntary Agreement. *Tr.*, 06/29/11 at 70. One violation was from 2009 and the other was from 2010. *Tr.*, 06/29/11 at 70. He noted that both fines associated with the violations have been paid. *Tr.*, 06/29/11 at 70. He testified that given his experience as an ABRA investigator, an enforcement history of only two violations is very good for an ABC –licensed establishment. *Tr.*, 06/29/11 at 72.

14. The Petitioner called Matthew Blakey to testify. *Tr.*, 06/29/11 at 88. Mr. Blakey resides at 1860 Clydesdale Place, N.W., which is three blocks from the establishment. *Tr.*, 06/29/11 at 89, 97. He has been a resident of the neighborhood since 1985. *Tr.*, 06/29/11 at 89. Mr. Blakey moved to Adams Morgan, because the neighborhood is alive, walkable, and has plenty of dining opportunities. *Tr.*, 06/29/11 at 89-90.

15. Mr. Blakey testified that he is familiar with the Petitioner's operations. *Tr.*, 06/29/11 at 91. He supports the Petitioner's efforts to terminate the Voluntary Agreement, because he believes the Petitioner cares enough about the neighborhood to operate a lawful establishment. *Tr.*, 06/29/11 at 92. He does not think that others need to further restrict the Petitioner's business opportunities or make it difficult for the Petitioner to stay open. *Tr.*, 06/29/11 at 92-93. Mr. Blakey stated that if the Protestants trusted the Petitioner, they would not force restrictions on the establishment through a Voluntary Agreement. *Tr.*, 06/29/11 at 94. The Applicant also creates a safe and friendly environment for all patrons. *Tr.*, 06/29/11 at 95.

16. Mr. Blakey acknowledged that he cannot hear the establishment from his residence. *Tr.*, 06/29/11 at 96. He also has not read the Voluntary Agreement. *Tr.*, 06/29/11 at 98-99.

17. The Applicant called its next witness, Jeff Becan to testify. *Tr.*, 06/29/11 at 101. Mr. Blakey resides at 1832 Biltmore Street, N.W., which is less than two blocks from the establishment. *Tr.*, 06/29/11 at 102. He has been a resident of the neighborhood since 2006. *Tr.*, 06/29/11 at 102. Mr. Becan moved to Adams Morgan because it is his favorite neighborhood in the District of Columbia. *Tr.*, 06/29/11 at 103. He thinks it is vibrant, colorful, alive, and happy. *Tr.*, 06/29/11 at 103.

18. Mr. Becan testified that he is familiar with the Petitioner's operations. *Tr.*, 06/29/11 at 103. He supports the Petitioner's efforts to terminate the Voluntary Agreement because he wants the Petitioner to thrive and survive. *Tr.*, 06/29/11 at 107. He stated that one can tell the quality of a business by the way the customers are treated. *Tr.*, 06/29/11 at 104. He also stated that the Petitioner cares about his customers, employees, and the neighborhood. *Tr.*, 06/29/11 at 104. This is demonstrated in the way the Petitioner hosts fund raisers for the community and charitable organizations. *Tr.*, 06/29/11 at 105-106. Mr. Becan stated that the Petitioner has a proven track record so the Petitioner shouldn't have to get the community's permission to make changes to his business. *Tr.*, 06/29/11 at 103.

19. Mr. Becab acknowledged that he is not familiar with the terms of the Voluntary Agreement. *Tr.*, 06/29/11 at 109. He also has not heard any noise from the establishment. *Tr.*, 06/29/11 at 111.
20. The Petitioner called its next witness, Scott Bennett to testify. *Tr.*, 06/29/11 at 112. Mr. Bennett resides at 2425 18th Street, N.W. *Tr.*, 06/29/11 at 113. He has been a resident of the neighborhood for seven years, and he can see the establishment from his apartment. *Tr.*, 06/29/11 at 113, 115. He lives right above his own business, which is the Amsterdam Falafel Shop. *Tr.*, 06/29/11 at 115, 118. He does not believe that his business or the neighborhood would be impacted by the termination of the Voluntary Agreement. *Tr.*, 06/29/11 at 117.
21. Mr. Bennett testified that he is familiar with the Petitioner's operations. *Tr.*, 06/29/11 at 113. Mr. Bennett believes that the Petitioner is a forthright individual and that he cares more about his business than just running a saloon. *Tr.*, 06/29/11 at 114. Mr. Bennett speaks from experience because he has been a bartender for 20 years in Adams Morgan. *Tr.*, 06/29/11 at 114. He has worked with the Petitioner at other ABC-licensed establishments in the District of Columbia. *Tr.*, 06/29/11 at 115.
22. Mr. Bennett views the Voluntary Agreement as just another level of regulation imposed on a small businessman. *Tr.*, 06/29/11 at 116. He states that there are enough regulations imposed by the Board and the District of Columbia. *Tr.*, 06/29/11 at 116. He acknowledged that he has not read the Voluntary Agreement. *Tr.*, 06/29/11 at 120.
23. The Petitioner called its next witness, Brian Claude Harrison. *Tr.*, 06/29/11 at 122. Mr. Harrison is the owner, General Manager, operator, and bartender at the establishment. *Tr.*, 06/29/11 at 116. He conceived of his own restaurant 20 years ago and made it happen nine years ago. *Tr.*, 06/29/11 at 122, 125.
24. Mr. Harrison testified that he has been in the hospitality business for three generations. *Tr.*, 06/29/11 at 116. His father owned a bar for 17 years, and his grandfather owned a restaurant for 47 years. *Tr.*, 06/29/11 at 123. Mr. Harrison is also a four year veteran of the United States Army. *Tr.*, 06/29/11 at 123. He has worked every level of job in the restaurant industry from dishwasher on up. *Tr.*, 06/29/11 at 124. He worked as a bartender and manager for 17 years at several licensed establishments in the D.C. area. *Tr.*, 06/29/11 at 124. He was employed as a consultant for security and efficiency training by the Bedrock Management Company. *Tr.*, 06/29/11 at 124, 134.
25. When Mr. Harrison opened his establishment, he placed 1,750 gallons worth of salt water fish tanks to create a relaxing vibe in the restaurant. *Tr.*, 06/29/11 at 126. The tanks are located on the second floor. *Tr.*, 06/29/11 at 127. The restaurant is geographically themed with the first floor as a jungle similar to the Yuchatan Peninsula of Mexico. *Tr.*, 06/29/11 at 116. The middle floor is considered the "reef" level and everything is the color blue. *Tr.*, 06/29/11 at 128. The fish tanks divide the restaurant booths. *Tr.*, 06/29/11 at 128. The middle floor has an Entertainment Endorsement and is also used for dancing late in the evenings and on the

weekends. *Tr.*, 06/29/11 at 128; *Tr.*, 07/13/11 at 10. The rooftop is desert themed with numerous plants, an adobe structure, and a large canopy over the top. *Tr.*, 06/29/11 at 129. There is no entertainment on the rooftop garden, however there are two small speakers towards the bar area that face away from the dining area. *Tr.*, 07/13/11 at 10.

26. Mr. Harrison states that 50% of his customers live in the immediate neighborhood. *Tr.*, 06/29/11 at 130.

27. Mr. Harrison testified that he has the same managers he started with nine years ago when he opened the establishment. *Tr.*, 06/29/11 at 130. He likes to maintain consistency with his staff. *Tr.*, 06/29/11 at 130. He always has a manager on duty and that person makes the decisions and interacts with ABRA personnel. *Tr.*, 06/29/11 at 130-131. Mr. Harrison bartends Thursday, Friday, and Saturday nights, and he drops in frequently during the week to stay in touch with his customer base. *Tr.*, 06/29/11 at 131.

28. Mr. Harrison stated that it is difficult for outsiders to get employment at The Reef because there is very little turnover. *Tr.*, 06/29/11 at 131. Everyone must start with the security position and then move up. *Tr.*, 06/29/11 at 131. Thus, he explained, everyone works security for some time, simply waiting to get a better job. *Tr.*, 06/29/11 at 131. He stated that people enjoy working at The Reef. *Tr.*, 06/29/11 at 131.

29. Mr. Harrison testified that on any given day, there are at least two security personnel on site. *Tr.*, 06/29/11 at 132. There are three floors with two security persons at each door, another security person on the landing in the middle floor, two more who are roaming, and one head security person. *Tr.*, 06/29/11 at 132. Mr. Harrison explained that there are several security persons, because, if patrons become unruly, the establishment has a chance to intervene before anything gets out of hand. *Tr.*, 06/29/11 at 133.

30. Mr. Harrison requires two forms of ID for anyone who appears under the age of 30 years. *Tr.*, 06/29/11 at 132. He stated that the security team participates in a very comprehensive training program to ensure that they act professionally, responsibly, and appropriately. *Tr.*, 06/29/11 at 132, 136, 142. The security staff knows how to evacuate the establishment, handle liability issues, such as broken glass or wet floors, and how to diffuse a situation if someone is a danger to himself or others. *Tr.*, 06/29/11 at 133-134. Mr. Harrison stated that he has 11 years of martial arts training. *Tr.*, 06/29/11 at 135. He also follows a military chain of command with his staff and ensures that there are written standard operating procedures in place. *Tr.*, 06/29/11 at 135.

31. Mr. Harrison converted the establishment from a Retailers Class CR restaurant to a Retailers Class CT tavern so that he would not have to worry about jeopardizing his license if he did not make the statutorily required food sales. *Tr.*, 06/29/11 at 136-137, 158, . *Tr.*, 07/13/11 at 17. He was in compliance with the food requirements at the time he converted his license class. *Tr.*, 06/29/11 at 152. However, he considers the establishment to be a restaurant and offers seasonal vegetables, bison, free-range meat, grass-fed meat, and sustainably harvested seafood.

Tr., 06/29/11 at 137. Mr. Harrison states that he has a chef, and the food is very good. *Tr.*, 06/29/11 at 137. He also stated that he spends more money on food products and service than he did before he became a tavern licensee. *Tr.*, 06/29/11 at 138.

32. Mr. Harrison testified that there would not be significant changes to the business model if the Voluntary Agreement is terminated. *Tr.*, 06/29/11 at 138. There would be smaller changes, however, such as not opening on Saturdays until 6:00 p.m., because there isn't much of a crowd earlier than that hour. *Tr.*, 06/29/11 at 139. He explained that the existing Voluntary Agreement requires him to open at 5:00 p.m. on Saturdays and it is a waste of money to have kitchen staff not working when there aren't any customers. *Tr.*, 06/29/11 at 139-140. There are requirements in the Voluntary Agreement that aren't prohibited by law, such as tying the door open, and those are the sorts of things Mr. Harrison would like to change. *Tr.*, 07/13/11 at 21.

33. Mr. Harrison testified that he has worked with the ANC and KCA in the past to make changes to the Voluntary Agreement but it is time consuming and nobody is in any hurry to get the changes made. *Tr.*, 06/29/11 at 141-142, 153, *Tr.*, 07/13/11 at 16, 19. He is seeking to terminate his Voluntary Agreement so that he has flexibility in his operations. *Tr.*, 06/29/11 at 142, *Tr.*, 07/13/11 at 16, 19. He does not foresee any substantive changes in the near future, but if he does make a change in his operations, he will seek approval from the Board. *Tr.*, 07/13/11 at 17. He stated that he is not trying to take advantage of the ANC and KCA but instead, he is trying to provide for his family, his employees and the community. *Tr.*, 07/13/11 at 19.

34. Mr. Harrison has been frustrated by representations from the Protestants who tell him that the restrictive agreement is for other establishments in the neighborhood and they can't prohibit one without prohibiting all. *Tr.*, 06/29/11 at 143. He does not want to have to amend his Voluntary Agreement every time he wants to make a change to his operations. *Tr.*, 06/29/11 at 155-156. Mr. Harrison understands that the ANC and KCA would like to keep the Voluntary Agreement intact to restrict any conversions to a Retailer's Class CN or DN (nightclub) license. *Tr.*, 06/29/11 at 157-158.

35. Mr. Harrison gave an example of his frustrations with the existing Voluntary Agreement. *Tr.*, 06/29/11 at 143. He was told by the Protestants that he can't advertise his dance floor because then other licensed establishments would want a dance floor. *Tr.*, 06/29/11 at 144; *Tr.*, 07/13/11 at 18, 21-22. Mr. Harrison resents that the Protestants associate him with other ABC-licensed establishments who do not operate as well. *Tr.*, 06/29/11 at 144. He has to work within the same Voluntary Agreements that the bad operators do. *Tr.*, 06/29/11 at 144. As a result, he loses money and the restrictive language is counterproductive to rewarding the good operators. *Tr.*, 06/29/11 at 144, 156.

36. Mr. Harrison acknowledged that he has two adjudicated violations in his investigative history report. *Tr.*, 06/29/11 at 145. One resulted from a new security person, who tied the door open with a string and the other offense was because 12 additional patrons were on the rooftop garden. *Tr.*, 06/29/11 at 145. He stated that neither of the violations were ABRA or fire code violations, but they were a breach of the terms of the Voluntary Agreement. *Tr.*, 06/29/11 at

145-146. Mr. Harrison intends to increase his occupancy to that which will be permitted by the Department of Consumer and Regulatory Affairs. *Tr.*, 06/29/11 at 147.

37. Mr. Harrison stated that he hosts happy hours for the community and for different charitable organizations. *Tr.*, 06/29/11 at 148. He also has family happy hour on Friday nights from 5:00 p.m. to 8:30 p.m., where anywhere from ten and 25 families attend. *Tr.*, 06/29/11 at 148. He stated that he does everything he can do to support worthy organizations. *Tr.*, 06/29/11 at 148.

38. Mr. Harrison testified that the license for the rooftop garden has a limited occupancy of 50 patrons. *Tr.*, 07/13/11 at 11. He further stated that if 75 patrons were on the rooftop garden, all 75 could be seated; if 100 patrons are present, some would be standing, but there would still be enough room for easy access and movement. *Tr.*, 07/13/11 at 11. He stated that he tries to keep the occupancy below the permitted levels on each floor so that patrons can move between floors. *Tr.*, 07/13/11 at 12; *Tr.*, 07/13/11 at 23-24.

39. Mr. Harrison has only received one complaint from the neighborhood regarding loud music on the rooftop. *Tr.*, 07/13/11 at 12. He explained that the incident was caused by an employee who played music after the rooftop was closed. *Tr.*, 07/13/11 at 12. The establishment has a steadfast rule against playing music after the rooftop is closed, so the employee was dismissed for failing to follow the rules. *Tr.*, 07/13/11 at 13.

40. Mr. Harrison testified that he hired an acoustic engineer and installed a sound wall on the rooftop. *Tr.*, 07/13/11 at 13. The sound wall lines the entire back half of the space and was built to minimize sound that may travel away from the rooftop. *Tr.*, 07/13/11 at 13. Mr. Harrison stated that the only real audible noise is the HVAC units. *Tr.*, 07/13/11 at 14. He stated that human conversation and music cannot be heard in the back alley. *Tr.*, 07/13/11 at 14.

41. Mr. Harrison testified that there are a number of things he will not do despite requests from his customers. *Tr.*, 07/13/11 at 14. For instance, he does not serve Jagermeister or 100 proof or over-proof liquors. *Tr.*, 07/13/11 at 15. He thinks it is irresponsible to serve those products and it defeats his efforts to maintain the type of environment he is trying to cultivate for a successful business. *Tr.*, 07/13/11 at 15.

42. The Protestants called their witness, Denis James, who is President of the KCA. *Tr.*, 07/13/11 at 37. The KCA is entirely located within the boundaries of the Adams Morgan neighborhood. *Tr.*, 07/13/11 at 37, 39. Mr. James stated that KCA's membership is most concentrated west of the Petitioner's establishment and that the establishment is located in close proximity to many residences. *Tr.*, 07/13/11 at 39, 41, 43; Protestants' Exhibit 1. He stated that the KCA is very concerned about ABC licensing issues in Adams Morgan. *Tr.*, 07/13/11 at 37.

43. Mr. James testified that the KCA filed a protest against the Petition based on the grounds of peace, order and quiet, and he believes that the complete dissolution of the Voluntary Agreement would affect all three issues. *Tr.*, 07/13/11 at 38. Mr. James stated that the KCA is a

party to both the existing and replacement Voluntary Agreements and that he assisted in negotiating the terms. *Tr.*, 07/13/11 at 49, 66. He testified that the replacement Voluntary Agreement allows for additional occupancy, specifically from 180 to 345 patrons, and it simplifies the language regarding noise provisions. *Tr.*, 07/13/11 at 50; Protestants' Exhibit No. 3. Mr. James stated that because the establishment was originally a restaurant, the KCA wants to maintain the food amenity for the neighborhood. *Tr.*, 07/13/11 at 50.

44. Mr. James testified that the absence of a Voluntary Agreement could contribute to the disturbance of peace, order and quiet. *Tr.*, 07/13/11 at 57, 67, 77. Mr. James believes that an increase in the establishment's occupancy will become a greater concern for residents who want to live in a reasonable neighborhood. *Tr.*, 07/13/11 at 57. He stated that there could also be concerns about residential parking if there was a larger occupancy, and it could frustrate residential parking needs and affect vehicular and pedestrian safety. *Tr.*, 07/13/11 at 57, 67-68.

45. Mr. James stated that he conducted research into the MPD "calls for service" statistics that were produced for the establishment's address. *Tr.*, 07/13/11 at 58. His interest was piqued by the one year analysis that was included in the report because he believes there is a connection between the "calls for service", the application to terminate the voluntary agreement, and the most recent renewal period. *Tr.*, 07/13/11 at 58. Mr. James asked MPD for three years worth of statistics as well as 251 crime reports. *Tr.*, 07/13/11 at 61. Mr. James received crime reports for an incident on May 7, 2011 and another on June 27, 2011. *Tr.*, 07/13/11 at 61; Protestants' Exhibit No. 4.

46. Mr. James explained that the incident report for May 7, 2011, involved a complainant who was struck in the head with a glass bottle inside the establishment. *Tr.*, 07/13/11 at 63. The patron was treated at a hospital and released. *Tr.*, 07/13/11 at 63. Mr. James stated that potentially violent incidents such as these are a concern to KCA. *Tr.*, 07/13/11 at 64. He argued that because the KCA doesn't have the ability to reach into licensed establishments to control the behavior of patrons or address questions of service, the community must rely on Voluntary Agreements to set up appropriate operating procedures and methodologies. *Tr.*, 07/13/11 at 64.

47. Mr. James admitted that nothing in either the existing or the replacement Voluntary Agreement would have addressed the concerns that he expressed regarding the injured patron. *Tr.*, 07/13/11 at 66-67. He also stated that the concerns he has with regard to increased patronage, parking difficulties, and excessive consumption of alcoholic beverages is attributable to all licensed establishments in Adams Morgan. *Tr.*, 07/13/11 at 69.

48. Mr. James also admitted that the sound proof wall that Mr. Harrison installed at his own expense on the rooftop garden was not mandated by the Voluntary Agreement. *Tr.*, 07/13/11 at 70. Mr. James agreed that it was a fair statement to say that Mr. Harrison is one of the better operators in the community. *Tr.*, 07/13/11 at 73. He also conceded that Mr. Harrison would probably take steps to mitigate any concerns regarding peace, order, and quiet. *Tr.*, 07/13/11 at 77. Mr. James also acknowledged that "calls for service" are simply police runs to a particular block and not every call rises to a MPD 251 report or an arrest. *Tr.*, 07/13/11 at 79-80, 82.

49. Mr. James' top three concerns are the increase in occupancy, noise and sound controls, and maintaining a meaningful food requirement. *Tr.*, 07/13/11 at 85-93. Mr. James admitted that he didn't believe that Mr. Harrison would reduce his emphasis on food service if the Voluntary Agreement were terminated. *Tr.*, 07/13/11 at 93.

50. Mr. Harrison was recalled as a witness for the Petitioner to rebut Protestants' Exhibit No. 4, the MPD incident-based event report. *Tr.*, 07/13/11 at 107. Mr. Harrison testified that he was working the night of the incident and that the injured patron admitted as he was being loaded into the ambulance, that he had snuck into the establishment and grabbed a woman. *Tr.*, 07/13/11 at 108. The woman responded by hitting him over the head with her bottle. *Tr.*, 07/13/11 at 108. Mr. Harrison testified that the establishment and management responded immediately by calling MPD for assistance and rendering aid to the injured party.

CONCLUSIONS OF LAW

51. Pursuant to D.C. Official Code § 25-446 (2004), in order to terminate a Voluntary Agreement, the Petitioner's "application to amend or terminate a Voluntary Agreement by fewer than all the parties" must occur during the licensee's "renewal period" and be at least "4 years from the date of the Board's decision initially approving the voluntary agreement." § 25-446(d)(2)(A)-(B). Further, notice of "an application to...terminate a voluntary agreement shall be given" in accordance with the notice provisions of §§ 25-421 through 25-423." § 25-446(d)(3). The Board also notes that if the request to terminate is from "fewer than all parties" the Petitioners must demonstrate "good cause" by showing that the "termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable." § 25-446(d)(4)(C). The Board finds that the Petitioner has fulfilled the requirements of § 25-446 and demonstrated that terminating the Voluntary Agreement will not have an adverse impact on the neighborhood.

52. Pursuant to D.C. Code §§ 25-602(a) and 25-446, a Petitioner must demonstrate to the Board's satisfaction that the establishment for which a Petition to Terminate a Voluntary Agreement is submitted is appropriate for the neighborhood in which it is located and does not adversely impact the peace, order, quiet, residential parking, vehicular and pedestrian safety, and property values in the neighborhood under D.C. Code §§ 25-313 and 25-314. Jaime T. Carillo, t/a Don Jaime, Board Order No. 2011-143 at para. 58-59. The Board finds in favor of the Petitioner and grants the Petition to Terminate all Voluntary or Settlement Agreements and Amendments attached to the Petitioner's license.

53. The Board recognizes that pursuant to D.C. Code §§ 1-309.10(d) and 25-609 (2001), an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. Here, ANC 1C recommended that the Board adopt the Replacement Cooperative Agreement as originally presented by the parties for the

Board's consideration. The Board disagrees with ANC 1C's recommendation and will terminate the Voluntary Agreements.

54. Contrary to the Protestant and ANC 1C's belief, the Board finds that terminating the Voluntary Agreement will not have an adverse impact on the neighborhood's peace, order, quiet, residential parking, vehicular and pedestrian safety, and property values.

55. First and foremost, terminating the Voluntary Agreement will not negatively impact the neighborhood's peace, order, and quiet. Although the Protestants stated that that termination of the Voluntary Agreement could affect the peace, order, and quiet, they submitted no evidence to support their belief. Interestingly, the Protestants' witness agreed that Mr. Harrison was a good operator and that he would most likely take steps to mitigate any concerns regarding peace, order, and quiet.

56. Additionally, the Board does not find that the existence of the Voluntary Agreement affords the Protestants any greater peace and order, or any greater security measures. The Board relies on the credible testimony of Mr. Harrison who states that he has nine security personnel in place throughout all floors of the establishment and that each security person has undergone comprehensive security training. Further, any issues regarding unruly patrons can be addressed by MPD through the new disorderly conduct law. See D.C. Code § 22-1321(d) (Supp. 2011). As such, because the Voluntary Agreement does not provide for any greater security measures already undertaken by the Petitioner, there is no reason to maintain the existing Voluntary Agreements.

57. The Board also notes that terminating the Voluntary Agreement will not adversely impact the residential parking and vehicular and pedestrian safety of the neighborhood. "In determining the appropriateness of an establishment, the Board shall consider . . . *[t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety.*" D.C. Code § 25-313(b)(3) (2001) (emphasis added). Thus, the standard the Board must use emphasizes that the establishment must be the cause of the negative impact.

58. Here, although the Protestants were concerned that a potential increase in the Petitioner's occupancy would exacerbate parking and pedestrian safety, the Protestants could offer no evidence that this was anything more than speculation. Moreover, the Petitioner testified that 50% of his customer base resides in the neighborhood. The Board also relies on the testimony of Investigator Lawson who stated that there is plenty of public transportation in the form of Metro trains, Metro buses, and taxi cabs in the Adams Morgan neighborhood. As such, based on this fact, the Board finds that terminating the Voluntary Agreement will not significantly impact the demand for parking in the neighborhood.

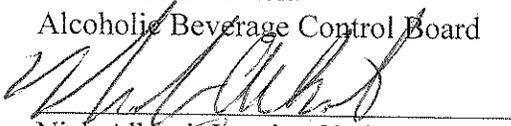
59. For these reasons, the Board finds that terminating the Voluntary Agreement will not adversely impact the peace, order, and quiet of the neighborhood.

ORDER

Therefore, it is hereby **ORDERED** on this 12th day of October, 2011, that the Petition to Terminate Voluntary Agreements requested by Perculus, Inc., t/a The Reef, at premises 2442 18th Street, N.W., Washington, D.C., is hereby **GRANTED**.

Copies of this order shall be sent to the Petitioner, the Protestant, and ANC 1C.

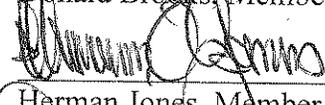
District of Columbia
Alcoholic Beverage Control Board



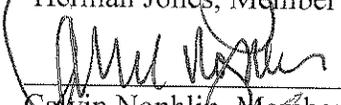
Nick Alberti, Interim Chairperson



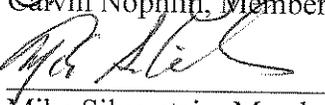
Donald Brooks, Member



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, N.W., Suite 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).