

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

In the Matter of:)
)
Three Way Liquors, Inc.)
t/a Three Way Liquors)
)
Application to Renew a)
Retailer's Class A License)
)
at premises)
4823 Georgia Avenue, NW)
Washington, D.C.)
)

Case Number: 12-PRO-00058
License Number: 21972
Order Number: 2013-291

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

ALSO PRESENT: Jung Seu Yu, Owner, on behalf of the Applicant

Bernard Dietz, on behalf of the Applicant

Pastor Alfonso Way, Faith Assembly of Christ, 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 Three Way Liquors, Inc. t/a Three Way Liquors (Respondent) at premises 4823 Georgia Avenue, NW, Washington, DC 20011. Faith Assembly of Christ (Protestant) filed a protest against the Application, alleging (1) that the Respondent's establishment had a negative impact on the neighborhood's peace, order, and quiet; (2) that

it had a negative impact on litter in the neighborhood; and (3) that it had a negative effect on residential parking and vehicular and pedestrian safety. Protestant requests that the Alcoholic Beverage Control Board (Board) deny the renewal of the Applicant's license. The Board finds in favor of the Applicant, and renews the Applicant's license without conditions, because, the Applicant's operations, in and of themselves, do not have a significantly demonstrated negative impact on the neighborhood's peace, order, and quiet, nor do they appear to have a significant impact on litter in the neighborhood. Moreover, the Alcoholic Beverage Regulation Administration's (ABRA) investigation of the Applicant's operations, including repeated observations of the establishment, found that there were no significant impacts on residential parking or vehicular and pedestrian safety.

PROCEDURAL BACKGROUND

ABRA gave notice on April 6, 2012 that the Applicant had filed to renew its Retailer's Class A License. The Protestant, represented by Pastor Alfonso Way, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602. The protest grounds were: (1) the adverse impact on the establishment of peace, order and quiet pursuant to D.C. Official Code § 25-313; (ii) the applicant's impact on litter; and (iii) the applicant's impacts on residential parking or vehicular and pedestrian safety.

The parties came before the Board for a Roll Call Hearing on June 4, 2012 and a Protest Status Hearing on July 25, 2012. The Protest Hearing occurred on November 7, 2012 and continued on February 13, 2012.

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 Earl Jones

1. ABRA Investigator Earl Jones conducted an investigation of the Application, and authored the Protest Report submitted to the Board. *Transcript, February 13, 2013* at 6; see generally *ABRA Protest File No. 12-PRO-00058, Protest Report*. 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 C-2-A commercial zone, which permits matter-of-right low density commercial development and housing. *Id.* at 4. ABRA's records show that there are five ABRA licensed establishments located within 1,200 feet of the establishment, three restaurants, one delicatessen and one Class A liquor store. *Id.* at 5, *Tr.* at 7. 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 fifteen calls for service were made to the establishment for the period from August 3, 2011 through August 2, 2012. *Id.* at 13. Of the calls made, eleven were for a triggered alarm, two for property destruction, one for a disabled vehicle and one for a person being disorderly. *Id.*

2. The establishment's hours of operation are from 10:00 a.m. through 9:00 p.m. Monday through Thursday and from 10:00 a.m. through 10:00 p.m. on Friday and Saturday, with alcohol sales permitted during all hours of operation. *Id.* at 7.

3. The establishment does not provide off-street parking, but there is significant on-street parking along Georgia and Arkansas Avenues, Emerson Street and Delafield Place. *Id.* at 11-12. There are Metrobus Route 70 stops within walking distance of the establishment. *Id.* at 12. There is a large amount of pedestrian traffic, although there are sidewalks on either side of the street with marked crosswalks adjacent to the establishment. *Id.* at 13. The streets are regularly monitored by officers from the Metropolitan Police Department because of the number of establishments either serving or selling alcoholic beverages along Georgia Avenue. *Id.*

4. Investigator Jones visited the Applicant's establishment on 25 separate occasions between August 2, 2012, and October 16, 2012. *Report* at 10. None of the visits showed significant issues with regard to adequate parking, noise, disturbance of the peace issues, litter or vehicular and pedestrian safety. *Id. Transcript, February 13, 2013* at 9. On several occasions, groups of individuals who appeared to Investigator Jones to be regulars were found sitting on a retaining wall that surrounds a parking lot next to the establishment that is used as parking for the bank that sits across the street from the establishment and for the members of Protestant's congregation. *Id.* at 7-10. However, Investigator Jones observed that those individuals, in addition to coming from Respondent's establishment, also came and went from another liquor store that is sited on a corner directly across the street from the parking lot and to and from several food establishments in the vicinity of Respondent's establishment. *Id.* at 73-74. Moreover, while Investigator Jones did see certain of the individuals go in and out of the establishment, at no time did he witness any of the individuals consuming alcoholic beverages. *Id.* at 29-30. On one occasion, an empty container of an alcoholic beverage was found in under a tree in front of the Faith Assembly, but Mr. Jones was unable to ascertain the source of the container. *Id.* at 11.

B. Jung Seu Yu

7. Jung Seu Yu testified that he has been the owner of the establishment since 1994, when he purchased the business, and the owner of the building housing the establishment since 2000. *Transcript, November 7, 2012* at 17-18. Mr. Yu further testified that, in the time that he has owned the establishment, no complaints have been filed against the establishment by neighbors, the ANC, the MPD or other businesses. *Id.* At 22-23.

C. Tawanna Way

8. Ms. Way, the wife of Protestant's Pastor, testified concerning the operations of the establishment. *Transcript, November 7, 2012* at 59. She testified that panhandlers had been hanging out in front of the establishment, except that, in the renewal year, they have been dealt with by the establishment. *Id.* at 60. She further testified that the Department of Public Works stops by regularly to clean up debris next to Protestant's church. *Id.* At 61. Ms. Way stated that Protestant constantly had to clean out bottles and cups from the fenced-in air conditioning unit behind the church. *Id.* at 62. Upon questioning from Board member Jones, Ms. Way admitted that she did not know whether the cups or bottles came from the establishment. *Id.* at 95. Ms. Way also admitted that there was another

liquor store within close proximity to the church. *Id.* at 99. Moreover, she testified that loiterers on the wall of the parking lot that is used by the church and adjacent to the establishment had taunted or otherwise verbally abused congregants. *Id.* at 67. Ms. Way stated that hypodermic needles and other debris had been found in the church's flower beds and that persons frequenting Respondent's establishment had been seen urinating on the flowers. *Id.* at 68.

D. Charles Bond

11. Mr. Bond stated that he objected to having a liquor store next to the church. *Transcript, November 7, 2012* at 115. Mr. Bond acknowledged that there was another liquor store in close proximity to Respondent's establishment and that he did not know for certain the source of the empty liquor bottles and other trash strewn about the church property. *Id.* at 126.

E. Shante Clark

12. Ms. Clark testified that she had lived in a residence near the establishment for 29 years and has been a member of the church for 4 years. *Transcript, February 13, 2013* at 137-139. She testified that she had over the years seen persons regularly congregating in the parking lot adjacent to Respondent's establishment and another liquor store located across the street from the parking lot, carrying paper bags containing alcoholic beverages or holding paper or plastic cups and consuming alcoholic beverages in the area of the parking lot adjacent to the establishment. *Id.* at 139-141. She estimated that there were around six loiterers who regularly congregated on the wall surrounding the parking lot. *Id.* at 161. Ms. Clark added that she had the same complaints regarding Respondent's establishment as she had with the other liquor store located near Respondent's establishment. *Id.* at 146. She stated that she had on occasion seen persons enter the establishment, exit with a container of alcohol and consume the alcohol in the parking lot adjacent to the establishment. *Id.* at 151. She further testified that she had witnessed persons who patronized both Respondent's establishment and the other nearby liquor store engage in public urination in the parking lot. *Id.* at 152. Furthermore, she testified that she knew persons who spent all day in the area purchasing alcoholic beverages from the two establishments and consuming the beverages along the wall surrounding the parking lot. *Id.* at 153.

F. Sunghee Yu

13. Ms Yu testified that she, with her husband, purchased the establishment in 1994 and the building in 2000. *Transcript, February 13, 2013* at 197. She testified that during that time there had not been any complaints against the establishment, including from either the ANC or MPD. *Id.* at 198.

CONCLUSIONS OF LAW

The Board has the authority to renew the Applicant's Retailer's Class A 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

Protestant argues that renewing the Applicant's license will have a negative impact on the neighborhood's peace, order, and quiet. While it appears from Protestant's testimony that there have been incidents of people congregating in the parking lot adjacent to the establishment, these incidents appear to be regularly addressed by the Metropolitan Police Department. Moreover, it appears that these incidents do not solely involve patrons of the establishment, as there are other establishments that are licensed by ABRA in the vicinity of the establishment. Accordingly, we do not see the Applicant's operations *per se* having a negative impact on 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). While we acknowledge the Protestant's concerns about a pattern of loitering in the parking lot adjacent to the establishment, we do not find that this issue, in and of itself, is sufficiently significant for us to find that the establishment negatively impacts on the peace, order and quiet of the surrounding community. ABRA's investigation concluded that there were no such impacts on the community by this establishment. *Protest Report* at 11. Moreover, to the extent that there has been regular loitering by one particular person in front of the establishment, testimony supports the conclusion that this activity has subsided. *Tr.* at 130-131.

By law, as part of its determination on the establishment's effect on peace, order and quiet 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 Jones noted in his report that, from his numerous observations of the establishment in connection with this application, there was no activity that would indicate an issue with noise. *Protest Report* at 11. Furthermore, the noise noticed by Inspector Jones appeared to be regular traffic noise rather than noise generated by patrons of the establishment.

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 excessive litter at or surrounding the establishment. *Protest Report* at 13. Moreover, to the extent that there is a litter issue in the area around the establishment, Protestant was unable to establish a causal relationship between the litter and the establishment.

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

II. Residential Parking and Vehicular and Pedestrian Safety

Protestant stated in its Protest that the establishment has had a negative effect on residential parking in the vicinity of the establishment and on vehicular and pedestrian safety. Therefore, the Board must also consider this factor in determining whether to renew Respondent's license, pursuant to D.C. Official Code § 25-313(b) (3). The Protest Report did not find any evidence of excessive traffic or parking issues at or surrounding the establishment. *Protest Report* at 13. Investigator Jones noted that Georgia Avenue is a high volume traffic street and therefore a large number of vehicles travel on the avenue at any one time during a day. *Id.* Moreover, Investigator Jones noted that there is a varying level of pedestrian traffic on the avenue in the vicinity of the establishment but that the level is dictated not just by the establishment but also by other commercial establishments in this area. *Id.* Finally, Investigator Jones found that there was sufficient parking in the area and that, although parking could be an issue at times in front of or near the establishment, it did not impact on residential parking. Report at 7-12. Tr. at 20-21. Protestant did not provide any evidence with regard to whether the establishment had a negative impact on residential parking or vehicular and pedestrian safety. Accordingly, we find that the establishment's effect on vehicular and pedestrian safety, as well as residential parking, is not significant and is no different from other commercial establishments located in the area.

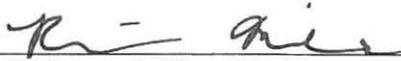
III. Conclusion

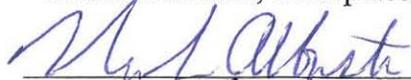
We are only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its initial protest. See *Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested 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. While we find that the Respondent meets the legal requirements for renewal, we suggest that, in order to improve conditions surrounding the establishment, Respondent be more vigilant in taking action to remove loiterers both from in front of the store and in the parking lot adjacent to Respondent's establishment and property. Finally, we urge Respondent to work collaboratively with Protestant's church to establish a better working relationship and to improve the physical atmosphere around Protestant's church

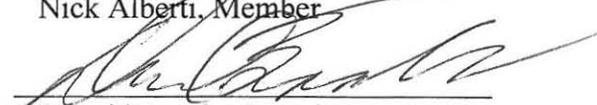
ORDER

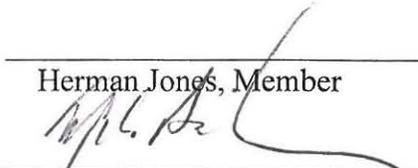
Therefore, the Board, on this 10th day of July, 2013, hereby **ORDERS** that the Application to Renew a Retailer's Class A License filed by Three Way Liquors, Inc. T/A Three Way Liquors is **GRANTED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

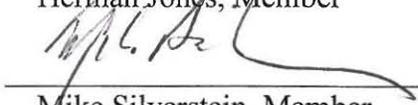
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, 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).