

ANC 6A submitted a recommendation in accordance with D.C. Code § 25-609 on October 19, 2010. The Board will give great weight to ANC 6A's recommendation.

The Applicant and the Protestants were unsuccessful in negotiating a Voluntary Agreement before the Protest Hearing. The Protest Hearing was held on March 16, 2011.

Pursuant to D.C. Code § 25-602(a) (2001), the protest issues are whether the Application adversely impacts the neighborhood's peace, order, and quiet. The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant requests that the Board renew its Retailer's Class CT License. See ABRA Protest File No. 10-PRO-00138.
2. The Applicant's establishment is located at 1123-1125 H Street, N.E. *ABRA Protest File No. 10-PRO-00138, Protest Report, 2.* The establishment is located in a HS/C-2-A zone. *Protest Report, 5.* The New Horizon Child Development Center is located 352 feet from the establishment. *Protest Report, 8.* There are 15 ABC-licensed establishments located within 1200 feet of the establishment. *Protest Report, 6.* Seven of the establishments within 1200 feet of the Applicant have entertainment endorsements. *Transcript (Tr.), March 16, 2011 at 20.* The nearest residence to the establishment is approximately 25 feet from the back of the establishment. *Tr., 3/16/11 at 24.* Residential buildings are also located on Linden Place, N.E., across the street from the establishment. *Tr., 3/16/11 at 26.*
3. Alcoholic Beverage Regulation Administration (ABRA) Investigator Tyrone Lawson led ABRA's investigation of the Application. *Tr., 3/16/11 at 16.* ABRA monitored the establishment from January 5, 2011, to January 26, 2011. *Tr., 3/16/11 at 20.* ABRA investigators did not observe loitering, excessive noise, criminal activity, excessive trash, or any violations of the alcoholic beverage control (ABC) laws while monitoring the establishment. *Tr., 3/16/11 at 20, 21, 24.*
4. The Metropolitan Police Department (MPD) has received 15 calls for service at the establishment's address, three being directly related to activities at the establishment. *Tr., 3/16/11 at 35, 46.* One call involved an aggravated assault against a female in the establishment's bathroom. *Tr., 3/16/11 at 46.* Another call involved an assault against the establishment's owner. *Tr., 3/16/11 at 46.* Additionally, as described by MPD Lieutenant Vendette Parker, an officer was punched by a female patron after the officer told the patron to cease kicking the establishment's door. *Tr., 3/16/11 at 38.* Finally, the Board notes that MPD has increased patrols near the establishment because many of the people that leave the area are "intoxicated and . . . become the targets of crime." *Tr., 3/16/11 at 47.*
5. Bernard Gibson is the managing member of the Applicant. *Tr., 3/16/11 at 50.* According to Mr. Gibson, the Applicant regularly has DJs perform at the establishment. *Tr., 3/16/11 at 60.* Occasionally, the establishment also has jazz groups perform on Sundays. *Tr., 3/16/11 at 60.* Finally, the establishment's entertainment usually lasts until 3:00 a.m. *Tr., 3/16/11 at 60-61.*

6. The establishment has four security personnel *Tr.*, 3/16/11 at 66. During events, the establishment has a security company provide three additional security personnel. *Tr.*, 3/16/11 at 66-67. The contract specifically calls for an armed security guard with a squad car to be posted outside the establishment. *Tr.*, 3/16/11 at 95. The establishment has utilized the security service at least 50 times between August 2010 and February 2011. *Tr.*, 3/16/11 at 96. Based on the testimony of Mr. Gibson, the establishment's security encourages people not to loiter near the establishment. *Tr.*, 3/16/11 at 53.

7. In conjunction with Skip Coburn, the D.C. Nightlife Association, Joe Englert, Sticky Rice, and a number of other establishments, the establishment secured MPD Reimbursable Detail services for the area between the 1100 block and 1600 block of H Street, N.E. *Tr.*, 3/16/11 at 89. The group paid for the MPD Reimbursable Detail for four months in 2010. *Tr.*, 3/16/11 at 56-57, 89. The Applicant paid \$287.00 per week to fund the detail during this time and the service provided four MPD officers for the neighborhood from 11:00 p.m. until 4:00 a.m. *Tr.*, 3/16/11 at 90-91. However, the MPD Reimbursable Detail for the neighborhood was terminated after other establishments found the program too costly. *Tr.*, 3/16/11 at 57.

8. On August 15, 2010, a female patron was assaulted by another female in the establishment. *Tr.*, 3/16/11 at 63. As indicated by the testimony of Mr. Gibson, the establishment's security escorted the aggressor out and allowed the female patron to remain. *Tr.*, 3/16/11 at 64. The female patron was then attacked in the bathroom by other people who followed the female patron into the bathroom and then assaulted her. *Tr.*, 3/16/11 at 64. Security responded to the assault and asked the female patron if she needed assistance but the female patron declined. *Tr.*, 3/16/11 at 64. The establishment did not call MPD in response to the assault. *Tr.*, 3/16/11 at 64-65.

9. As testified by Mr. Gibson, the establishment has spent over \$40,000.00 to soundproof the establishment. *Tr.*, 3/16/11 at 51. Mr. Gibson also hired a sound expert in 2008 to study noise issues at the establishment. *Tr.*, 3/16/11 at 71, 77. Specifically, based on the sound expert's recommendation, the establishment installed thirteen triple-pane glass windows filled with argon gas, placed soundproof sheetrock on the walls, and built a soundproof door in the back of the establishment. *Tr.*, 3/16/11 at 62-63, 71, 73-74. The establishment also covered some windows with insulation to provide more soundproofing. *Tr.*, 3/16/11 at 107. Finally, the establishment's staff uses decibel meters to measure the sound produced by the establishment and a sound limiter was installed in the establishment's sound system. *Tr.*, 3/16/11 at 53, 86.

10. As indicated by Mr. Gibson, Steven Johnson, one of the establishment's neighbors, experienced vibrations in his home from the establishment after the establishment installed soundproofing. *Tr.*, 3/16/11 at 79-80. However, the establishment has not received any noise complaints since Steven Johnson moved. *Tr.*, 3/16/11 at 82.

11. Amy Dunn lives five houses away from the establishment and has been disturbed by the establishment's operations. *Tr.*, 3/16/11 at 112-24. As indicated by Amy Dunn, almost every weekend, flyers produced by the establishment's promoters are found on the windshields of all the cars in the neighborhood, in the neighborhood's tree boxes, and on

the ground. *Tr.*, 3/16/11 at 115, 124, 126 136. Additionally, Ms. Dunn feels the vibrations from the establishment in her home. *Tr.*, 3/16/11 at 118, 122-24.

12. Denise Courte lives six houses away from the establishment on the opposite side of the street from the Applicant. *Tr.*, 3/16/11 at 130, 132. Patrons emerging from the establishment around 3:00 a.m. have disturbed Ms. Courte in her home. *Tr.*, 3/16/11 at 132. Specifically, the establishment's patrons are leaving the establishment intoxicated and have loud conversations outside Ms. Courte's home. *Tr.*, 3/16/11 at 130, 132.

13. Commissioner Drew Ronneburg represents single-member district ANC 6A-02.¹ He stated that he has received many noise complaints since the establishment opened in 2007, including the noise complaints of Steven Johnson. *Tr.*, 3/16/11 at 82, 145-46. Commissioner Ronneburg admitted that Mr. Gibson installed fiberglass insulation that "mitigate[s] some of the noise." *Tr.*, 3/16/11 at 149.

CONCLUSIONS OF LAW

14. Pursuant to D.C. Code § 25-313(a) (2001) and 23 DCMR § 400.1(a) (2008), an Applicant must demonstrate to the Board's satisfaction that the establishment for which an Application to renew a Retailer's Class CT License is sought is appropriate for the neighborhood in which it is located. The Protestants challenged the Application on the grounds that it would adversely impact the peace, order, and quiet of the neighborhood. The Board finds that the Application is appropriate so long as certain conditions are met. The Board explains its reasoning below.

15. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2011) and D.C. Official Code § 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. ANC 6A specifically complains that the Applicant is creating noise in violation of its Voluntary Agreement and that the establishment is not safe due to crime and loitering occurring near the establishment's premises.

16. The Board shares ANC 6A's concerns regarding the establishment's effect on peace, order, and quiet. First, as indicated by Amy Dunn's testimony, the establishment's promotional flyers are creating large amounts of litter. Supra, at para. 11. Second, the evidence also demonstrates that a number of violent incidents have occurred at the establishment and the establishment's patrons are disturbing nearby residents. Supra, at para. 4, para. 8, para. 12. As such, the Applicant must address these concerns before the Board will renew its Retailer's Class CT License.

17. Based on the Applicant's efforts to soundproof the establishment and provide security, it would be inappropriate not to renew the Applicant's license at this time. Supra, at para. 6, para. 7, para. 9. In spite of the Protestants' testimony that the Applicant is in

¹ The transcript incorrectly listed Commissioner Ronneburg's single-member district as ANC 6C-02. See District of Columbia, Advisory Neighborhood Commission 6A (last visited June 13, 2011), <http://app.anc.dc.gov/wards.asp?ward=6&office=A>.

violation of its Voluntary Agreement and creating noise, such violations can easily be addressed through ABRA's enforcement process. Consequently, because ABRA's enforcement process can alleviate a number of the Protestants complaints, we find that if the Applicant stops distributing flyers and hires the MPD Reimbursable Detail whenever the establishment provides entertainment, this will alleviate any negative impacts on the neighborhood.

ORDER

Therefore, it is hereby **ORDERED**, on this 22nd day of June 2011 that the Application for Renewal of its Retailer's Class CT License filed by BEG Investments, LLC, t/a Twelve Restaurant & Lounge at premises 1123-1125 H Street, N.E., is hereby **GRANTED** subject to the following:

- (1) the Applicant and its third-party promoters shall not use flyers to promote events at the establishment;
- (2) the Applicant shall hire the MPD Reimbursable Detail whenever the establishment provides any entertainment permitted by the establishment's entertainment endorsement; and
- (3) copies of this Order shall be delivered to the Applicant and the Protestants.

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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

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