

INTRODUCTION

This matter arises from the Application for a New Retailer's Class CN License (Application) filed by 2101 Venture, LLC, t/a Club Illusions, (Applicant) at premises 2101 New York Avenue, N.E., Washington, D.C. Advisory Neighborhood Commission (ANC) 5B, the Arboretum Neighborhood Association, the Schaeffer Group, and A Group of Seventy-Nine Individuals (collectively the "Protestants") filed timely protests and were granted standing to protest the Application. *Transcript (Tr.)*, October 10, 2012, at 21, 47, 57-58. Based on our review of the facts and arguments submitted by the parties, we deem the Application inappropriate under District of Columbia (D.C) Official Code § 25-313. Specifically, we deny the Application because the Applicant's operations will have a severely negative impact on pedestrian and vehicular safety in the neighborhood that is not adequately addressed by the Applicant's parking and traffic plan.

Procedural Background

The Alcoholic Beverage Regulation Administration (ABRA) gave notice on April 13, 2012, that the Applicant had filed its Application for New Retailer's Class CN License. The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 11, 2012, a Protest Status Hearing on August 15, 2012, and a Protest Hearing on October 10, 2012.

The Board notes that ANC 5B 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 5B, in a letter, dated May 3, 2012, informed the Board that it objected to the license sought by the Applicant. Letter from Jacqueline Manning, Chair, and Vaughn Bennett, Vice-Chair, ANC 5B, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (May 3, 2012). Specifically, ANC 5B argued that the Application will have a negative impact on the Washington Mathematics Science Technology Public Charter High School located at 1920 Bladensburg Road, N.E.; "parking, traffic, and pedestrian safety"; "peace, order, and quiet"; and "real property values." *Id.* at 1-2. In addition, ANC 5B argued that the Application would create an overconcentration of licensed establishments in the neighborhood and does not conform to the neighborhood's development plans. *Id.* The Board will give these issues and concerns great weight in its Conclusions of Law.

We also acknowledge receiving a letter of opposition to the Application from Councilmember Kenyan R. McDuffie (Ward 5), dated October 5, 2012. Letter from Councilmember Kenyan R. McDuffie to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Oct. 5, 2012). In the letter, Councilmember McDuffie expressed his support of the protest filed by the Arboretum Neighborhood Association and Advisory Neighborhood Commission 5B, because he believes the Application will have a negative impact on the surrounding community's "peace, order, and quiet"; "residential and commercial parking"; and "real property values," as well as lead to an overconcentration of

licensed establishments and negatively impact the Washington Math Science Technology Public Charter High School. *Id.* at 1.

Based on the various protest letters submitted by the Protestants, the issues in this matter are whether approving the Application will have an adverse impact on the peace, order, and quiet; real property values; residential parking needs; and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (West Supp. 2012); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2012). We also consider whether the Application will have a negative impact on nearby schools, or whether it will create an overconcentration of licensed establishments in the neighborhood. D.C. Code § 25-314(a)(1), (4) (West Supp. 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. Illeana Corrales

1. Alcoholic Beverage Regulation Administration (ABRA) Investigator Illeana Corrales conducted the investigation of the Application on behalf of ABRA and authored the Protest Report submitted into the record. *Tr.*, 10/10/12 at 85; *see generally Protest Report of 2101 Venture, LLC, Trading as Club Illusions* (Oct. 2012) [*Protest Report*]. According to her report, the Applicant seeks a new Retailer's Class CN License to operate a nightclub at 2101 New York Avenue, N.E. *Protest Report*, 2. The establishment does not operate at this time. *Id.* at 6. The proposed establishment will occupy a lot in a C-M-1 commercial zone. *Id.* at 3. The report indicates that four active licenses rest within 1,200 feet of the proposed establishment. *Id.* The Washington Math Science & Technology Public Charter School is located at 1920 Bladensburg Rd., N.E., and is 57 feet from the proposed establishment. *Id.* at 4.

2. The establishment's proposed hours of operation are 11:00 a.m. to 2:00 a.m., Monday through Thursday; 11:00 a.m. to 4:00 a.m. on Friday and Saturday; and 11:00 a.m. to 3:00 a.m., on Sunday. *Id.* The establishment seeks to permit the sale, service, and consumption of alcoholic beverages on its premises from 11:00 a.m. to 2:00 a.m., Sunday through Thursday; and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* In addition, the establishment seeks to operate a summer garden from 11:00 a.m. to 1:00 a.m., Sunday through Thursday; and 11:00 a.m. to 2:00 a.m. on Friday and Saturday. *Id.*

3. ABRA investigators monitored the establishment's proposed address on fifteen separate occasions. *Tr.*, 10/10/12 at 89. The establishment's proposed address is currently a vacant building. *Id.* at 89-90.

4. Investigator Corrales noted that the proposed establishment is bounded by the 2100 block of New York Avenue, N.E., the 1900 block of Montana Avenue, N.E., and the 1800 block of Bladensburg Road, N.E. *Id.* at 90; *Protest Report*, Exhibit 5. Investigator Corrales observed that the corner of New York Avenue, N.E., and Bladensburg Road, N.E., has six traffic lanes in total. *Tr.*, 10/10/12 at 93. Investigator Corrales also observed

that traffic near the establishment's proposed address regularly becomes jammed. Id. at 102-03.

A. Taweke Alemayehu

5. Taweke Alemayehu intends to own and operate the proposed establishment. Id. at 126. He presently owns and operates Bar 7, Tag-B Valet Parking, and Maine Cab Company. Id. at 127. Mr. Alemayehu has worked in the valet business for twelve years. Id. at 142-43.

6. Mr. Alemayehu presented his establishment's parking plan to the Board. Id. at 130. According to the plan, the Applicant will provide 110 parking spaces at 2001 New York Avenue, N.E.,¹ 110 parking spaces at 1975 New York Avenue, N.E., 88 parking spaces at the McDonald's located at 2228 New York Avenue, N.E., and 65 parking spaces at the Day's Inn located at 2700 New York Avenue, N.E. Id. at 134, 152; *Protest Report*, Exhibit No. 13; Applicant's Exhibit Nos. 2-3. The Applicant's plan also involves using 1500 parking spaces at 1400 New York Avenue, N.W., which is an "old Hecht's warehouse." Id. at 133. The parking lot at 1400 New York Avenue, N.E., is located half a mile away from the establishment. Id. at 133. The establishment will have 110 parking spots located on the establishment's proposed property, as well as the neighboring building to the west of the proposed establishment. Id. at 152-53.

7. Mr. Alemayehu intends to collaborate with a shuttle bus service to transport people from the various parking lots identified in his plan to the establishment. Id. at 129, 162. The establishment will make shuttle buses available at the parking lot located at the Hecht's warehouse. Id. at 147. The shuttle bus, which carries 46 passengers, intends to drop customers off in the establishment's driveway on the property. Id. at 156, 163. The shuttle bus will regularly travel eastbound on New York Avenue, N.E., to the parking lot at 1400 New York Avenue, N.E. Id. at 157. The establishment intends to run three shuttle buses, which will operate continuously while the establishment is open. Id. at 157-58. The Applicant will offer free parking at the lot located by the Hecht's warehouse. Id. at 149.

8. The Applicant intends to only offer valet parking at the McDonald's and the Day's Inn parking lots. Id. at 148. The Applicant intends to charge for parking that occurs at both of these lots. Id. at 149. The letter from McDonald's submitted by the Applicant indicates that the Applicant has "permission to use" the parking lot owned by McDonald's and is signed by Area Supervisor Gisselle Blandino. Applicant's Exhibit No. 2. The letter does not contain information regarding the number of spaces the Applicant may use or contain provisions concerning the termination of the agreement. Id. at 181-82.

9. The establishment intends to have four valet attendants with reflective vests posted at major crosswalks to act as crossing guards. Id. at 184-85, 218.

¹ Mr. Marx, a representative of the landlord, noted that the 2021 New York Avenue, N.E., address listed in the parking plan submitted by the Applicant is incorrect. *Tr.*, 10/10/12 at 246. Because we credit this testimony, we deem all references to parking at 2021 New York Avenue, N.E., to actually refer to 2001 New York Avenue, N.E.

10. Mr. Alemayehu indicated that the agreement to use the parking lot at the Hecht's warehouse may be canceled with 60 days notice. Id. at 179. He also noted that the agreement to use the parking lot at 2001 New York Avenue, N.E., is verbal, and has not been memorialized as of the date of the Protest Hearing. Id. at 203. Mr. Alemayehu also noted that his valet company is parking vehicles in the lots indicated in his parking plan for other nightclubs in the neighborhood, but he may end this activity at any time, because he has no "long-term" contracts with those entities. Id. at 223.

11. The establishment will have an occupancy of 1,200 people. Id. at 166. Mr. Alemayehu intends to hire between 80 to 100 employees. Id. at 217. The Applicant also intends to hire officers under the Metropolitan Police Department (MPD) Reimbursable Detail program. Id. at 159.

B. Peter Marx

12. Peter Marx represents the landlord for 2101 New York Avenue, N.E. Id. at 225. The landlord has owned the building since 1999. Id. at 226. The landlord intends to lease the Applicant the property located at 2001 New York Avenue, N.E., for the purposes of parking. Id. at 245. 2001 New York Avenue, N.E., is adjacent to the proposed establishment. Id. at 245.

C. Mary Lynn Logsdon

13. Mary Lynn Logsdon serves as the Executive Director of the Salvation Army Harbor Lights Center, located at 2100 New York Avenue, N.E. Id. at 65. The Harbor Lights Center operates as a licensed substance abuse treatment center. Id. at 69. The program has 136 beds and it has provided treatment to over 8,000 residents of the District of Columbia since 1997. Id. at 69-70. The center also offers outpatient treatment for approximately 20 to 25 additional persons three times per week. Id. at 78. The Salvation Army opposes the Application, because it believes it will undermine its substance abuse program at the Harbor Lights Center. Id. at 70. Specifically, Mr. Logsdon believes the Applicant will create an "unwanted and unnecessary temptation to the residents who are learning to live their lives drug free." Id.

D. Rick Walker

14. Rick Walker serves as the developer of the property "in the same square as the proposed club." Id. at 281. According to Mr. Walker, a Walmart and Burlington Coat Factory intend to move into property in 2013. Id. at 282-83, 302, 312. Mr. Walker is concerned that the customers of the proposed establishment will regularly use the free parking provided by the development. Id. at 286-87. He is also concerned that the Applicant's customers will regularly loiter in the free parking lot. Id. at 294.

E. Jami Milanovich

15. Jami Milanovich has practiced as a professional traffic engineer for the past 17 years. Id. at 325-326. She has been qualified as an expert witness in proceedings in the District of Columbia on over 40 separate occasions. Id. at 326.

16. According to Ms. Milanovich, the property sought by the licensee for its establishment leaves only approximately 8,000 square feet for parking. Id. at 329. If the parking lot has parking spaces that are at least 19 feet long and 9 feet wide, with 20 feet wide driving lanes, this means the establishment will only have a maximum of 31 parking spaces. Id. at 329-30; see also 11 DCMR § 2115 (West Supp. 2012) (size of parking spaces).

17. Ms. Milanovich also discussed the availability of public transportation at the establishment's proposed location. Id. at 330. The Rhode Island Avenue Metro Station, the nearest metro stop, requires users to walk more than a mile to reach the establishment's proposed location. Id. In addition, the New York Avenue Metro Station is located almost two miles away from the establishment's proposed address. Id. at 331. Finally, the Metrobus routes that operate on Bladensburg Road, N.E., only operate while school is open. Id. at 331.

18. Ms. Milanovich also criticized the Applicant's parking plan. Id. at 332-34, 344. She noted that customers parked at the Day's Inn will have to cross Bladensburg Road, N.E., and New York Avenue, N.E., in order to enter the establishment. Id. at 332. Mr. Milanovich also noted that the corner of New York Avenue, N.E., and Bladensburg Road, N.E., is the one of the most dangerous intersections in the city and had the highest frequency of crashes in 2005. Id. at 333. In addition, based on the average size of vehicles and the space leased by the Applicant, the Applicant's estimates of the number of vehicles that its plan may accommodate are exaggerated. Id. at 344-45. Finally, she noted that an email from John Eidberger, McDonald's Area Construction Manager, stated that McDonald's does not sublease the property identified by the Applicant in its parking plan. Protestant's Exhibit No. 4; id. at 334.

19. Ms. Milanovich also questioned the feasibility and safety of the Applicant's shuttle bus plan. Id. at 346. First, the Applicant did not adequately evaluate the use of the alley at the proposed location by shuttle buses instead of the circular driveway on the property. Id. at 346. Second, the median on New York Avenue, N.E., in front of the establishment, permits left turns, which means patron vehicles and the Applicant's shuttle buses will constantly make left turns into the establishment, which will cause traffic and congestion on New York Avenue, N.E., which carries anywhere from 57,000 to 60,000 cars per day. Id. at 347. Third, the establishment has not presented a plan on how the establishment will receive deliveries and manage large trucks driving to and parking at the establishment. Id. at 348.

F. Maisie Elizabeth Hughes

20. Maisie Elizabeth Hughes lives near the establishment's proposed location. Id. at 376. She has found that noise from the operation of nightclubs in the neighborhood has disturbed her sleep on repeated occasions. Id. at 377-378, 382.

G. Cynthia Anne Green

21. Cynthia Anne Green lives in the Garden Apartments of Parkway, which is near the establishment's proposed location. Id. at 391. She believes that the operation of other

nightclubs in the area have disturbed the neighborhood's peace, order, and quiet. Id. at 392.

CONCLUSIONS OF LAW

22. The Board has the authority to issue a Retailer's Class CN 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).

23. We deny the Application because we agree with ANC 5B and the Protestants that the large nightclub proposed by the Applicant has an inadequate parking plan and poses a danger to vehicular and pedestrian safety. Specifically, we reject the Application for the following separate and independent reasons: (1) the Applicant does not have sufficient parking spots at its proposed location to handle an occupancy of 1,200 persons; (2) the Applicant's off-site parking arrangements are neither reliable nor permanent; (3) the location of the proposed establishment—far from public transportation—will encourage drinking and driving by the Applicant's customers; (4) the Applicant's customers will have to regularly cross a dangerous intersection; and (5) the Applicant's shuttle buses and the vehicles of its customers will regularly interfere with traffic on Bladensburg Road, N.E., and New York Avenue, N.E., as they attempt to enter the Applicant's property.

24. Under the law, the Applicant has the burden of proving its proposed operations are appropriate by proving, among other things, that its operations will not have adverse impact on "vehicular and pedestrian" safety in the neighborhood in which it seeks to be located. D.C. Code §§ 25-311, 25-313(b)(3).

25. First, the record shows that the Applicant's property has an inadequate number of parking spots and the Applicant's off-site parking arrangements are neither reliable nor permanent. Even if we credit the Applicant's claim that over 200 parking spaces are available in the vicinity of the establishment, this is insufficient to meet the parking demands of a club that intends to hold up to 1,200 occupants. Supra, at ¶ 11; *Tr.*, 10/10/12 at 133-34. While Mr. Alemayehu has attempted to make alternative parking arrangements at off-site parking lots, there is simply no guarantee that the parking lots included in the Applicant's parking plan will be available at all times during the life of the license. Supra, at ¶¶ 6-8, 10.

26. Second, we cannot credit the portion of the Applicant's off-site parking plan premised on the use of the McDonald's parking lot. Supra, at ¶¶ 6, 18. We note that the letter submitted by the Applicant from McDonald's Area Supervisor does not contain any specific terms related to the cost or the number of spots that the Applicant may use. Supra, at ¶ 18. Furthermore, the terms of the agreement contained in the letter are contradicted by the letter from McDonald's Area Construction Manager, which states that McDonald's does not sublease its property. Id. As a result, we cannot sustain the Applicant's claim that it has access to this lot.

27. Third, the establishment's proposed location encourages the Applicant's patrons to drink and drive. The proposed location is more than a mile walking distance from the nearest Metrorail station and Metrobus is not available at night. Supra, at ¶¶ 2, 17. As a

result, the majority of its patrons will have to drive or be driven to the establishment; yet the Applicant has not presented any credible plan to deal with this threat to public safety.

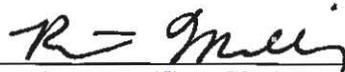
28. Fourth, we credit Ms. Milanovich's testimony that the establishment's operations will expose the Applicant's customers to dangerous traffic conditions and regularly interfere with traffic on Bladensburg Road, N.E., and New York Avenue, N.E. Supra, at ¶ 18. Under the Applicant's plan, customers at the off-site parking lots across New York Avenue, N.E., will have to cross six lanes of traffic to get to the establishment at one of the most dangerous intersections in the city. Supra, ¶¶ 18-19. Furthermore, customers and shuttle buses that drop off customers at the establishment will constantly interfere with traffic as the vehicles make left turns into the establishment's parking lot from New York Avenue, N.E. Supra, at ¶ 19. We rely on Ms. Milanovich's testimony regarding traffic on New York Avenue, N.E., because she has conducted a number of studies in the neighborhood and the Applicant has not presented any evidence contradicting her claims regarding dangerous traffic conditions. Supra, at ¶ 18; *Tr.*, 10/10/12 at 352. Furthermore, we are not convinced that the Applicant's provision of crossing guards at major crosswalks will prevent the Applicant's crowds from interfering with vehicle traffic on New York Avenue, N.E., and Bladensburg Road, N.E. Supra, at ¶ 9.

29. We, therefore, find that the Application is inadequate and poses a threat to vehicular and pedestrian safety. Because we find the Application inappropriate under this ground alone, there is no need to address the other protest issues raised by ANC 5B and the Protestants on their merits, as our decision renders these other issues moot.

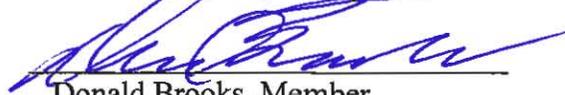
ORDER

Therefore, the Board, on this 16th day of January 2012, hereby **ORDERS** that the Application for a New Retailer's Class CN License submitted by 2101 Venture, LLC, t/a Club Illusions, is **DENIED**. 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



Donald Brooks, Member

I concur.

Traffic and pedestrian safety concerns alone provide reason enough to deny this application. But the protestants also raise the issue of overconcentration, specifically the overconcentration of very large licensed establishments within close proximity to each other.

The applicant pointed out that the proposed location is along an industrial stretch of New York Avenue, in what is and has historically been a section of D.C. used for warehouses and light industry. It has been served for more than a century by railroad lines, bringing goods of all kinds into the city. The New York Avenue industrial corridor now stretches far beyond the D.C. border, with many new facilities having moved closer to the Capital Beltway near Landover.

Warehouse and industrial districts are vital to any city. Zoning regulations, real estate values, and lack of population density in such areas give rise to their being used for a variety of purposes. One such use is for nighttime entertainment venues, including large clubs that might be inappropriate in residential neighborhoods.

The question here is not whether such clubs are appropriate in warehouse districts. They are. The question here is whether another very large club—in proximity to other very large clubs—would create an overconcentration of such establishments. The larger the proposed establishment, the greater the area it would impact on issues of peace, order, and quiet, residential parking, and pedestrian safety. The impact of existing large clubs is already being felt in nearby residential areas. Residents of those neighboring areas do not forfeit all rights to a good night's sleep simply because they live in a neighborhood near a warehouse district.

While the applicant correctly points out that the proposed location is a vacant lot, there have been many promising developments along this industrial corridor. From the new Costco near the Maryland line to the Union Market, positive changes are rapidly occurring. The city is growing in population, and people and businesses are bringing new life to this area.

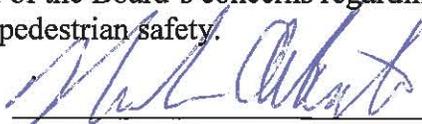
We are required by statute to determine whether this application is appropriate for this location, and whether its approval would lead to an overconcentration of such establishments in this area. Land use, zoning, and residential density make the general area acceptable under the appropriateness standard for such a large establishment. But even warehouse districts have their limits, and we must strike a balance between large clubs and other uses. Based on the testimony of nearby residents and evidence presented, I believe

the protestants have shown that this application would be one large club too many for the affected area. Therefore, I believe the application should also be denied on the standard of overconcentration.



Mike Silverstein, Member

I dissent from the decision reached by the majority of the Board. I share the Board's concerns that the operation of this establishment without an adequate parking plan would pose a danger to vehicular and pedestrian safety. I agree that the Applicant did not present an adequate parking plan to the Board at the time of the hearing. However, I am not persuaded that it is infeasible for the Applicant to devise and implement an adequate parking plan. I believe the Board should grant the license contingent upon the submission of an adequate parking plan that resolves all of the Board's concerns regarding the effect this operation would have on vehicular and pedestrian safety.



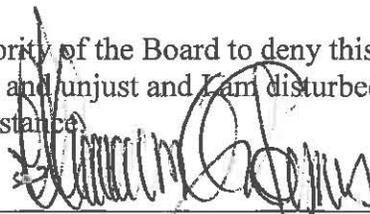
Nick Alberti, Member

I dissent from the decision reached by the majority of the Board.

In my opinion, the only compelling concern raised regarding the operation of this establishment as proposed was related to vehicular and pedestrian safety. Although I share the Board's concerns that the Applicant did not present an adequate parking plan and thus did not affectively address the dangers to vehicular and pedestrian safety, I am not persuaded that an adequate plan could not be devised. For this reason, I am disturbed with the Board's reasoning for why this Applicant did not warrant the same opportunities we saw fit to give other Applicants facing what I would deem to be similar challenges.

Granting a license contingent upon certain conditions is far from unprecedented. The Board has granted licenses in the past contingent on any number of conditions being met. In instances where noise was a community or Board concern, a contingency requiring the submission for Board approval of a noise mitigation plan has often been required. In instances where security was a community or Board concern, a contingency requiring the submission for Board approval of a security plan has often been required. In other instances where parking was a community or Board concern, a contingency requiring the submission for Board approval of a parking management plan has often been required. I see no reason why this Applicant should not be afforded the same opportunity afforded to past Applicants in similar situations given all proposed plans would remain subject to Board approval prior to the issuance of a license.

For this reason, I feel the decision of the majority of the Board to deny this Application given the factual evidence presented is unfair and unjust and I am disturbed by the apparent lack of equitable treatment in this instance.



Herman Jones, 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).