

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

**In the Matter of:** )  
)  
Oasis Liquor, Inc. )  
t/a Oasis Market )  
)  
Application to Renew a )  
Retailer's Class A License )  
)  
at premises )  
1179-3<sup>rd</sup> Street, N.W. )  
Washington, D.C. 20009 )  
)

Case Number: 12-PRO-00034  
License Number: 088531  
Order Number: 2013-002

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

**ALSO PRESENT:** Eun Hi Park, President, on behalf of the Applicant  
  
S.J. Shin, on behalf of the Applicant  
  
Bernard C. Dietz, Esq., on behalf of the Applicant  
  
Salim Bhabhrawala, on behalf of Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

This matter arises from the Application to Renew a Retailer's Class A License (Application) filed by Oasis Liquor, Inc., t/a Oasis Market, (Applicant) at premises 1179-3<sup>rd</sup> Street, N.W., Washington, D.C. 20009. A Group of Residents (Group) filed a protest against the Application, stating that the Applicant's establishment has a negative impact on

(1) the neighborhood's peace, order, and quiet; (2) residential property values; (3) residential parking and (4) vehicular and pedestrian safety. In addition, the Group states that the establishment is in violation of several provisions of its November 28, 2009 Voluntary Agreement with Advisory Neighborhood Commission (ANC) 6C, the Capital Hill North Neighborhood Association and a number of individual residents.<sup>1</sup> The Group requested that the license not be renewed. On April 11, 2012, ANC 6C, at its regularly scheduled meeting, voted unanimously to support the renewal of Applicant's license. The Board finds in favor of the Applicant, and renews the Applicant's license without conditions, because the Applicant's operations do not have a negative impact on the neighborhood's peace, order, and quiet. Moreover, the Alcoholic Beverage Regulation Administration's (ABRA) investigation of the Applicant's operations, including repeated observations of the establishment, found no violations of ABRA law and regulations by the establishment. Finally, the Board finds that the Applicant has for the most part complied with its Voluntary Agreement with the community.

### ***Procedural Background***

ABRA gave public notice on March 23, 2012 that the Applicant had filed to renew its Retailer's Class A License. The Group, represented by Salim Bhabhrawala, filed a timely opposition to the Application under District of Columbia (D.C.) Official Code § 25-602.

The parties came before the Board for a Roll Call Hearing on May 21, 2012 and a Protest Status Hearing on July 11, 2012. The Protest Hearing occurred on November 28, 2012.

On April 11, 2012, ANC 6C, at its regularly scheduled meeting, voted unanimously to support the renewal of Applicant's license.

### **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 Brian Owens**

1. ABRA Investigator Brian Owens conducted an investigation of the Application, and authored the Protest Report submitted to the Board. *Transcript*, October 3, 2012 at 19; see generally *ABRA Protest File No. 12-PRO-00034, Protest Report, August 2012*. According to the Protest Report, the Applicant seeks to renew its Retailer's Class A License. *Protest Report*, at 2. The Applicant's establishment sits in an R-4 residential zone, which permits single-family residential uses, but no commercial uses unless grandfathered or through a special exception. *Id.* at 4. ABRA's records show that there are eight other ABRA licensed establishments located within 1,200 feet of the establishment. *Id.* at 5. Moreover, there are no recreation centers, public libraries, schools,

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<sup>1</sup> The Applicant purchased the establishment from the previous owner, Mikung Yoon, who executed the Voluntary Agreement. The sale occurred on November 4, 2011.

or day care centers operating within 400 feet of the establishment. *Id.* at 6. A review of Metropolitan Police Department (MPD) records indicates that two calls were made concerning the establishment for the eighteen month period from January 1, 2011 through July 16, 2012. None resulted in reports being transmitted to ABRA. *Id.* at 11.

2. The establishment's hours of operation are from 9:00 a.m. through 9:00 p.m. Monday through Thursday and 9:00 a.m. through 10:00 p.m. Friday and Saturday, with alcohol sales permitted during all hours except the final hour on Friday and Saturday. *Protest Report* at 7. The establishment is closed on Sunday. The establishment also sells non-alcoholic beverages and snack foods. *Id.* at 6.

3. The establishment does not have any off-street parking, but there is on-street parking located within a four-block radius of the establishment, in addition to several large parking structures. *Protest Report* at 11. It appears that many of the patrons walk to and from the establishment from the surrounding neighborhood. *Id.* at 12. As for public transportation, there are two bus lines that operate adjacent to the establishment and the New York Avenue-Gallaudet University Metro stop is located approximately five hundred feet from the establishment. *Id.* at 6.

4. ABRA investigators monitored the establishment 17 times between July 13, 2012 and November 3, 2012. *Protest Report* at 8-10. None of the visits showed any issues with regard to adequate parking, noise, or disturbance of the peace issues. *Id.* Moreover, the establishment was clean and well-kept, with no trash observed around the establishment or in the alley behind the establishment. *Id.* at 10, 12.

5. Investigator Owen stated during the hearing and in his Protest Report that he interviewed Mr. Bhabhrawala on July 18, 2012, who stated his concern about patrons parking between the sidewalk and the establishment and in the adjacent alley in violation of the Voluntary Agreement and requested that the establishment place permanent barriers preventing parking in the public space areas around the establishment. *Protest Report* at 2, *Tr.* at 19. Mr. Bhabhrawafa also stated that trash was everywhere in the neighborhood and around the establishment but that things had recently improved. *Report* at 2-3; *Tr.* at 19. Finally, Mr. Bhabhrawala stated that the establishment sold rolling papers in violation of the Voluntary Agreement. *Report* at 2.

6. Investigator Owens stated during the hearing and in his Protest Report that he interviewed Cheryl Grant, a member of the Group, on July 30, 2012. Ms. Grant stated her concerns about the illegal parking and the loitering. *Report* at 3-4. Ms. Grant further stated that her main concerns were adherence to the Voluntary Agreement and respect for the neighborhood. *Id.*, *Tr.* at 19. Ms. Grant also stated that the owner of the establishment had refused to meet with residents who were concerned about the establishment's operations. *Report* at 4; *Id.*

7. Finally, Investigator Owens interviewed the owner of the establishment, Eun Hi Park, on July 20, 2012. Ms. Park stated that she had spoken with Mr. Bhabhrawala on a number of occasions concerning the operations of the establishment and that she is doing a better job in complying with the Voluntary Agreement. *Report* at 3; *Tr.* at 20. Ms. Park stated that she no longer sold cigarette rolling papers. *Id.* She further stated that she tried to control the public space parking problem by placing cones that blocked use of the public

space and by educating delivery drivers about the use of such space. Moreover, she stated that she had placed “no-parking” and “no loitering” on the outside wall of the establishment. *Id.* However, because it is public space, Ms. Park stated that she could not make any permanent improvements that would restrict access to the area. *Id.*

#### **B. Ein Hi Park**

8. Ms. Park testified about Protestant’s allegations that the two-packs the establishment was selling were repackaged six packs and stated that the two-packs were not re-packaged but were sold as delivered by the distributor. *Tr.* at 46; *Hearing*, Ex. 1. She also stated that she was no longer selling rolling papers. *Tr.* at 47; *Id.* In terms of parking, Ms. Park testified that she put orange cones in the public space between the building and the sidewalk to prevent its use for parking, that she educated the delivery drivers about not utilizing the space and that she had posted the “no parking” signs. *Tr.* at 48; *Id.* She also testified that seldom were there loiterers in front of the store and when they did appear she would request that they move on. Finally, as regards advertising in the front window, Ms. Park testified that she removed it as soon as the complaint was made. *Tr.* at 49; *Id.*

#### **C. Naomi Banks**

9. Ms. Banks testified that she lived 10 houses away from the establishment. *Tr.* at 100. She testified that she did not frequent the store but that it has not been a problem in the neighborhood. *Tr.* at 101. She also testified that the store served a useful purpose in that it provided the little things that senior citizens need without having to take a trip to the grocery store. *Tr.* at 102. In response to Board questions, Ms. Banks testified that Ms. Park kept the area around the establishment clean and free of weeds, with no litter problems. *Tr.* at 108. Ms. Banks also stated that she did not believe that property values were decreasing in the neighborhood. *Tr.* at 116.

#### **D. Brian Shamowitz**

10. Mr. Shamowitz testified that he lived 14 houses away from the establishment and that the establishment had not presented a problem under its current ownership. *Tr.* at 119. Moreover, under the current ownership, there had not been any litter issues. According to Mr. Shamowitz, there were issues with the previous owner but the current owner is a good neighbor. *Tr.* at 120-121.

#### **E. Charlene Belton**

11. Ms. Belton testified that she was a long-time resident of the neighborhood where the establishment is located and found the establishment to be neat, clean and orderly and a benefit to the community, particularly to senior citizens who had need for the non-alcoholic products that the store stocks. *Tr.* at 136-137. Moreover, she testified that she found the establishment to be neighborhood-friendly and the owners to be supportive of the neighborhood and its residents. *Tr.* at 137-138. Ms. Belton had not noticed a decrease in property values. *Tr.* at 139. Moreover, she stated that she had not noticed a loitering problem. *Id.*

**F. Cheryl Grant**

12. Ms. Grant testified that she was a member of the Capital Hill North Neighborhood Association (Association) and had lived in the neighborhood for about 10 years. *Tr.* at 142. She testified that on the day of the hearing she entered the establishment and purchased three two-packs which she stated were cut from a six-pack. *Tr.* at 147. Ms. Grant stated that this was in violation of the Voluntary Agreement between the establishment and the community. *Tr.* at 148. Ms. Grant stated that the establishment regularly violated the Voluntary Agreement and had declined to work with the Association. *Tr.* at 153. Upon questioning from Counsel for Applicant, Ms. Grant read from Applicant's Exhibit 1 in which Applicant stated that the two-packs that Ms. Grant referred to were delivered in that manner by the distributor to the establishment. *Tr.* at 157. Ms. Grant also stated that there continued to be violations of the Voluntary Agreement as regards patrons parking in the alley behind the establishment. *Tr.* at 175-177.

**G. Salim Bhabhrawala**

13. Mr. Bhabhrawala, in response to Board questions, stated that the current owner had been cited by ABRA for violation of the Voluntary Agreement.<sup>2</sup> *Tr.* at 203. He also testified to the continual parking of patron vehicles in the alley adjacent to the establishment which block his ingress to and egress from his parking space in the rear of his residence. *Tr.* at 205.

**CONCLUSIONS OF LAW**

14. The Board has the authority to renew the Applicant's Retailer's Class B License if we deem it appropriate for the neighborhood in which the license is located, and the Applicant otherwise qualifies for licensure. D.C. Code §§ 25-301, 25-313, 25-315. 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**

15. 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). The Group does not argue that renewing the Applicant's license will have a negative impact on the neighborhood's peace, order, and quiet and did not present testimony concerning the establishment's effect on such issues. Rather, the Group was primarily concerned with the Applicant's compliance with the Voluntary Agreement entered into between the ANC, the Association and the establishment's prior owner. In particular, the Group raised concerns with what it considered the repackaging of alcoholic beverages in violation of the Voluntary

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<sup>2</sup> Case No. 12-CMP-00351. On November 7, 2012, the Board requested that a warning letter be sent to the Licensee.

Agreement. Applicant provided evidence both to Protestants and to the Board that its current sale of two-packs of beer involved packaging that is provided to the establishment by the distributor and that no beverages were repackaged by the Applicant. The record establishes that there was a single instance of the sale of a container of alcoholic beverages in violation of the Voluntary Agreement (not District law or ABRA regulations) for which the Applicant was cited.<sup>3</sup> The Board received testimony from a number of residents expressing support for the license renewal. Moreover, the ANC, another party to the Voluntary Agreement, voted to support the Application. Finally, according to Inspector Owens, there did not appear to be any negative impacts on the community by this establishment. *Protest Report* at 8-10.

16. By law, the Board must also consider whether the establishment will create noise in violation of D.C. Official Code § 25-725. D.C. Official Code § 25-313(b) (2). Investigator Owens noted in his report that, from numerous ABRA inspector observations of the establishment in connection with this Application, there was no activity that would indicate an issue with noise. *Protest Report* at 8-10. The Group did not provide any testimony or documentary evidence of a noise problem.

17. 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 a litter problem at or surrounding the establishment. *Protest Report* at 8-10. The Group presented anecdotal testimony concerning litter but such testimony indicated that the problem was only a sporadic one. Moreover, testimony from the Applicant and the surrounding neighbors indicated that the establishment placed a great emphasis on keeping the area surrounding the establishment clean, including making sure that weeds were not a problem.

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

## **II. Vehicular and Pedestrian Safety.**

19. Another of the factors on which the Protestant challenged the license renewal was the effect on residential parking or vehicular and pedestrian safety. D.C. Code § 25-313(b) (3). In this matter, Protestant has not demonstrated to the satisfaction of the Board that the licensee has had a negative impact on such issues. Protestant admits that the issues raised in the *Protest* concerning parking in the public space between the sidewalk and the establishment and in other areas of the public space have been largely addressed by the owner of the establishment. The Board is concerned about patrons utilizing the alley as a parking lot rather than parking in on-street areas and requests that the Applicant continue to monitor use of the alley and to remind patrons that the alley is not to be utilized as parking for the establishment.

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<sup>3</sup> Id.

20. Therefore, we conclude that Applicant has demonstrated to the Board's satisfaction that the application will not have a negative impact on residential parking or on vehicular and pedestrian safety.

### III. Property Values.

21. Protestants also challenged the license renewal on the grounds that the establishment had a negative impact on real property values. D.C. Code § 25-313(b) (1). Protestants provided anecdotal evidence in the form of two letters from real estate brokers who stated that, in their opinion, the presence of a liquor store has a negative impact on neighboring residential properties. Protest, Exhibit C. On the other hand, Applicant provided testimony that the establishment had not had a negative impact on real property values. The Board would need to see more than anecdotal evidence in order to determine the establishment's impact on real property values, positive or negative. No official historical assessment data was provided either by Applicant or Protestant. Thus, the Board does not have sufficient evidence to make a determination on this issue.

### IV. Conclusion

22. 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.

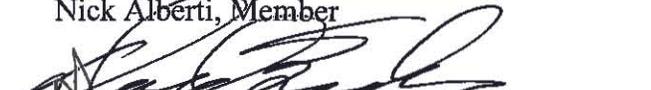
### ORDER

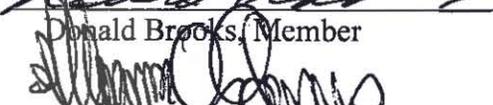
Therefore, the Board, on this 9<sup>th</sup> day of January, 2013, hereby **ORDERS** that the Application to Renew a Retailer's Class A License filed by Oasis Liquor, Inc., t/a Oasis Market, is **GRANTED**. The Alcoholic Beverage Regulation Administration shall distribute copies of this Order to the Applicant and the Protestant.

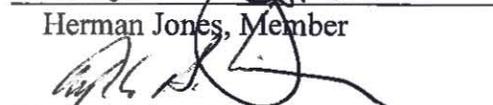
District of Columbia  
Alcoholic Beverage Control Board

  
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).