

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

In the Matter of:)

Watson Delicatessen, Inc.)

t/a S & J Liquors)

Renewal Application for a Retailer's)

License Class "A" at premises)

1500 Massachusetts Ave., S.E.)

Washington, D.C.)

Applicant)

Case No.: 181-01/036P

Order No.: 2004-63

BEFORE:

Charles A. Burger, Chairperson¹

Vera M. Abbott, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Peter B. Feather, Member²

ALSO PRESENT:

Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

Simon Osnos, Esquire, on behalf of the Applicant

Leslie Miles, Esquire, on behalf of the Protestants

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

The application, filed by Watson Delicatessen, Inc., ("Applicant"), t/a S & J Liquors, for a renewal of its Retailer's License Class "A" at premises 1500 Massachusetts Avenue, S.E., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on May 16, 2001. It was determined that timely protests were filed pursuant to D.C. Official Code § 25-601 (2001) by Kenan Jarboe, Chairperson, Advisory Neighborhood

¹ Former ABC Board member Ellen Opper-Weiner, Esq., served as Acting Chairperson -- in the place of then ABC Board Chairman Roderic L. Woodson, Esq. -- for the majority of the June 26, 2002 proceeding. Both Mr. Woodson and Ms. Opperweiner are no longer members of the ABC Board. Current Chairperson Charles A. Burger participated as a member of the ABC Board during the June 26, 2002 proceeding, and served as Interim Chairperson during the May 14, 2003 proceeding.

² ABC Board member Peter B. Feather was not a member when these proceedings were initiated and did not participate or vote on this matter.

Commission ("ANC") 6B, on behalf of ANC 6B; and various nearby District of Columbia residents who were represented by Lisa Schwartz with the 15th Street Citizens Association. The filed protest issue, pursuant to D.C. Official Code § 25-602(a) (2001), is whether the establishment adversely affects the peace, order, and quiet of the neighborhood.

The case came before the Board for public protest hearings on June 26, 2002 and May 14, 2003. At the conclusion of the May 14, 2003 protest hearing, the Board took its decision in this matter under advisement. The Board gave the parties until July 15, 2003 to file proposed findings of fact and conclusions of law pursuant to D.C. Official Code § 25-433(b) (2001). The Protestants timely filed proposed findings of fact and conclusions of law. The Applicant's request to extend the deadline to file proposed findings of fact and conclusions of law until August 15, 2003 was denied on July 30, 2003. The Board having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located at 1500 Massachusetts Avenue, S.E., on the Northeast corner of 15th Street, S.E., and Massachusetts Avenue, S.E. (Tr. 6/26/02 at 3; ABRA Exhibit No. 1 at 1³; Alcoholic Beverage Regulation Administration ("ABRA") Application File #000181.) The premises is zoned C-2-A, which is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core areas. (ABRA Application File #000181; ABRA Exhibit No. 1 at 1.) The establishment is located in the same block as a dry cleaners which is located at the corner of 15th Street, S.E., and Independence Avenue, S.E. (Tr. 6/26/02 at 14, 18, 38; ABRA Exhibit No. 1 at 1.) Another Alcoholic Beverage Control ("ABC") establishment, Southeast Market, holder of a Retailer's License Class "B", is located on the Northeast corner of 15th Street, S.E., and Independence Avenue, S.E. (Tr. 6/26/02 at 14, 18-19, 48; ABRA Exhibit No. 1 at 1.) There are also residential homes and two (2) bus stops located in the area of the establishment. (Tr. 6/26/02 at 12, 18.)
2. The establishment is currently open and operating on the first floor of a one-story building. (ABRA Application File #000181; ABRA Exhibit No. 1 at 1.) The establishment's approved hours of operation are 9:00 a.m. to 9:00 p.m., Monday through Thursday; 9:00 a.m. to 10:00 p.m., Friday and Saturday; and, is closed on Sunday. (ABRA Exhibit No. 1 at 1.) The establishment has a voluntary agreement, dated February 12, 1998 with ANC 6B, which contains conditions on the Applicant's license that have been approved by the Board. (ABRA Application File #000181.)
3. Kenan P. Jarboe, ANC 6B Chairperson, on behalf of ANC 6B, filed a timely written protest letter, dated April 24, 2001, opposing the renewal of the Applicant's Class "A" Retailer's License on the grounds that the establishment has a negative impact on the peace, order, and quiet of the neighborhood. The April 24, 2001 letter from ANC 6B authorizes ANC 6B Commissioner Neil Glick to represent ANC 6B and also indicates that the establishment is not in

³ A copy of ABRA Investigator Samuel Carpenter's April 1, 2002 Investigative Report was provided to both parties at the June 26, 2002 hearing and is being designated as ABRA Exhibit No. 1. (Tr. 6/26/02 at 6-7.)

compliance with its February 12, 1998 voluntary agreement with ANC 6B. (ABRA Protest File #181-01/036P.) The Protestants subsequently represented to the Board that they were seeking creative solutions to address problems they believed to be related to the establishment and were not asking the Board to deny the Applicant's renewal application. (Tr. 6/26/02 at 66.)

4. ABRA Investigator Samuel Carpenter visited the establishment a total of five (5) times for two (2) hours during each visit. (Tr. 6/26/02 at 8, 35; ABRA Exhibit No. 1 at 2.) Specifically, Investigator Carpenter visited the establishment on Monday, March 18, 2002 from 5:00 p.m. to 7:00 p.m.; Tuesday, March 19, 2002 from 6:00 p.m. to 8:00 p.m.; Wednesday, March 20, 2002 from 4:00 p.m. to 6:00 p.m.; Saturday, March 23, 2002 from 8:00 p.m. to 10:00 p.m.; and Wednesday, March 27, 2002 from 12:00 p.m. to 2:00 p.m. (Tr. 6/26/02 at 8-9, 15; ABRA Exhibit No. 1 at 2.) Investigator Carpenter stated that in speaking with the Protestants, the main peace, order, and quiet issues they were concerned with were trash and loitering. (Tr. 6/26/02 at 8-9.)

5. With respect to loitering, Investigator Carpenter observed separate groups of individuals loitering around the establishment, throughout the 1500 block of 15th Street, S.E., at all times of the day. (Tr. 6/26/02 at 9-10, 12, 35-36.) Investigator Carpenter also witnessed panhandlers approaching customers exiting in and out of the establishment. (Tr. 6/26/02 at 10.) Investigator Carpenter observed loiterers standing in the small park located across the street from the establishment as well as in front of the dry cleaners adjacent to the establishment. (Tr. 6/26/02 at 37-39.) Investigator Carpenter observed small groups of two (2) and three (3) individuals loitering in the public alley behind the establishment. (Tr. 6/26/02 at 45.) Investigator Carpenter stated that he could identify some of the loiterers as customers of the establishment. (Tr. 6/26/02 at 39-40.) Investigator Carpenter indicated that he spoke with Dol Ko, the owner the establishment, about the loitering issue. (Tr. 6/26/02 at 10.) Mr. Ko explained to Investigator Carpenter that he calls the Metropolitan Police Department ("MPD") when he observes the loitering problem and that MPD will then respond and disperse the crowd; however, the loiterers still come back. (Tr. 6/26/02 at 10.) Investigator Carpenter testified that Mr. Ko showed him a log book in which Mr. Ko recorded all calls made to MPD. (Tr. 6/26/02 at 20.) Investigator Carpenter spoke with an MPD officer in the First District substation who confirmed that he had received calls for loitering in the area of the establishment. (Tr. 6/26/02 at 20.) Investigator Carpenter noted that the establishment did have a "No Loitering" sign posted outside of the establishment. (Tr. 6/26/02 at 14.) Investigator Carpenter observed Mr. Ko come outside to view the front of the establishment on more than one occasion. (Tr. 6/26/02 at 25-26.) Investigator Carpenter observed the loiterers making loud noises that could be heard throughout the block and he occasionally observed some of the loiterers carrying and consuming beverages, including in front of the establishment, contained in brown paper bags. (Tr. 6/26/02 at 11, 13, 27, 41-42.) The establishment sells beverages in brown bags. (Tr. 6/26/02 at 26-27.) Investigator Carpenter testified that the loiterers tended to be twenty-five (25) years of age and older, and that he did not know where the loiterers resided. (Tr. 6/26/02 at 16-17, 58.) Investigator Carpenter stated that some of the loiterers were overly loud but that he did not witness any fights or any rowdy behavior occur between any of the loiterers. (Tr. 6/26/02 at 41-42.)

6. With respect to litter, Investigator Carpenter stated that he did not see a lot of trash in front of the establishment, but that he did see small amounts of trash in the alley behind the establishment. (Tr. 6/26/02 at 10, 43-44.) Investigator Carpenter noted that there is a trash can on the corner in the front of the establishment and that there is a dumpster in the rear of the establishment which did not appear to be overflowing. (Tr. 6/26/02 at 21.) Investigator Carpenter explained that there were small amounts of trash scattered throughout the public alley behind the establishment, including cigarette packages, candy wrappings, brown paper bags, and spirit bottles. (Tr. 6/26/02 at 22-23, 44.) Investigator Carpenter could not discern whether the trash in the public alley came from the neighboring houses that border on the alley or the establishment. (Tr. 6/26/02 at 45, 47.)

7. With regards to criminal activity, Investigator Carpenter did not observe any criminal activity in the surrounding areas of the Applicant's establishment. (Tr. 6/26/02 at 11, 47.) Investigator Carpenter did not observe intoxicated patrons entering the establishment, nor did he observe any incidents of public intoxication. (Tr. 6/26/02 at 28, 42, 46-47.)

8. With regard to residential parking and vehicular and pedestrian safety, Investigator Carpenter observed customers driving up to the establishment, but he never observed illegal parking, such as double parking or cars parked on the sidewalk next to the establishment. (Tr. 6/26/02 at 27-28, 60.) Investigator Carpenter observed that the Applicant does not provide parking facilities; however, parking is available on the 200 block of 15th Street, S.E., which has one-hour restriction parking from 7:00 a.m. to 6:30 p.m., with Zone 6 permit holders excepted. (Tr. 6/26/02 at 28; ABRA Exhibit No. 1.)

9. Investigator Carpenter found all of the establishment's licenses to be current. (Tr. 6/26/02 at 24-25.) Investigator Carpenter indicated that he did not verify whether or not Mr. Ko was in compliance with the terms of the existing Voluntary Agreement. (Tr. 6/26/02 at 57.)

10. Fred Rosario is a Master Patrol Officer with MPD and is assigned to the Fifth District, Patrol Service Area ("PSA") 512. (Tr. 5/14/03 at 12-13.) Officer Rosario has worked in MPD's Fifth District since 1988. (Tr. 5/14/03 at 12.) Officer Rosario's tour of duty is from 3:00 p.m. to 11:00 p.m. (Tr. 5/14/03 at 32.) Officer Rosario noted that the establishment is located within his PSA and that he patrols the establishment about twice a day, on a daily basis. (Tr. 5/14/03 at 13-14.) Officer Rosario has known Mr. Ko for approximately two (2) years. (Tr. 5/14/03 at 12.) Officer Rosario stated that Mr. Ko is very cooperative with him. (Tr. 5/14/03 at 15.) Officer Rosario is present at the establishment everyday during closing to ensure that the establishment does not get robbed. (Tr. 5/14/03 at 13.) Officer Rosario indicated that he also makes his presence known at several other ABC establishments within his PSA during their closing times for similar safety-related reasons. (Tr. 5/14/03 at 26-27.) Officer Rosario noted that the establishment is bordering two (2) PSAs. (Tr. 5/14/03 at 29.)

11. Officer Rosario indicated that there are two (2) alleyways within the establishment's immediate vicinity and noted that: 1) the first alleyway runs perpendicular to Massachusetts Avenue, S.E., and Independence Avenue, S.E.; and, 2) the second alleyway is perpendicular to the first alleyway, and runs parallel to Massachusetts Avenue, S.E., and Independence Avenue, S.E. (Tr. 5/14/03 at 25; Applicant's Exhibit No. 1.)

12. With regard to loitering, Officer Rosario noted that the loiterers standing on the corner in the front of the establishment will generally disperse when they see his patrol car approaching. (Tr. 5/14/03 at 15-16, 19, 32-33.) Officer Rosario stated that the regular groups of loiterers consist of between five (5) and seven (7) individuals congregating together and talking in conversational tones. (Tr. 5/14/03 at 33-34.) Officer Rosario has observed Mr. Ko and his employees go outside to ask loiterers to move on. (Tr. 5/14/03 at 16.) Officer Rosario has not observed individual littering by the loiterers. (Tr. 5/14/03 at 34-35.) Officer Rosario did not remember ever responding directly to a call from Mr. Ko, but he did recall responding to radio runs usually during the summer months. (Tr. 5/14/03 at 19-20.) Officer Rosario indicated that he has never seen the establishment's logbook of calls made to MPD. (Tr. 5/14/03 at 28.) Officer Rosario stated that the establishment does have a "No Loitering" sign posted. (Tr. 5/14/03 at 45-46.) Officer Rosario considers Mr. Ko to be one of the more responsible owners, specifically with regards to controlling loitering and public drinking, including in front of the establishment. (Tr. 5/14/03 at 18.)

13. With respect to criminal activity, Officer Rosario has never observed criminal activity take place inside of the establishment. (Tr. 5/14/03 at 16.) Officer Rosario did not recall seeing any narcotics activity occur in front of the establishment. (Tr. 5/14/03 at 29.) Officer Rosario testified that narcotics sales and other criminal activity routinely take place in the alley which separates the establishment from the row houses along Massachusetts Avenue, S.E., and Independence Avenue, S.E.; however, Officer Rosario noted that the criminal activity is not connected to the establishment, but rather to a private residence located on Independence Avenue, S.E. (Tr. 5/14/03 at 20-21, 26; Applicant's Exhibit No. 1.) Officer Rosario stated that the establishment does not sell drug paraphernalia. (Tr. 5/14/03 at 30-31.) Officer Rosario has observed Mr. Ko refuse to sell alcoholic beverages to intoxicated individuals. (Tr. 5/14/03 at 16.) Officer Rosario testified that the establishment did not present community problems of the same magnitude as many other ABC establishments in the District of Columbia. (Tr. 5/14/03 at 15-17.) With regard to public intoxication, Officer Rosario has never arrested individuals for publicly drinking alcoholic beverages in front of the establishment; however, he has arrested individuals for public drinking in the park across the street from the establishment. (Tr. 5/14/03 at 31; Applicant's Exhibit No. 2.) Officer Rosario recalled making one (1) or two (2) arrests in the last year for public drinking within the establishment's vicinity. (Tr. 5/14/03 at 37.) Officer Rosario testified that throughout PSA 512 there are many instances of public drinking. (Tr. 5/14/03 at 37-38.) Officer Rosario has witnessed Mr. Ko ask his customers for identification and refuse to sell alcoholic beverages to intoxicated individuals. (Tr. 5/14/03 at 16.) Officer Rosario has never observed instances of public urination. (Tr. 5/14/03 at 35.)

14. With regard to litter, Officer Rosario testified that the garbage containers in the general vicinity of the establishment overflow with garbage that ends up on the ground. (Tr. 5/14/03 at 35, 38.) Officer Rosario testified that the garbage containers are filled with single empty beer containers and that empty beer containers also line the ground surrounding the garbage cans and the park area across the street from the establishment. (Tr. 5/14/03 at 38.) Officer Rosario has observed both Mr. Ko and his employees cleaning the outside of the establishment. (Tr. 5/14/03 at 16, 34, 44.) Officer Rosario indicated that the dumpster located in the alley behind the establishment had been removed. (Tr. 5/14/03 at 21.)

15. Joshua Strassman is a Police Officer with MPD, Fifth District, PSA 512. (Tr. 5/14/03 at 48.) Officer Strassman has worked in PSA 512 for a little over five (5) years. (Tr. 5/14/03 at 48.) Officer Strassman's normal tour of duty is from 3:00 p.m. to 11:00 p.m.; however, when Officer Strassman is on mountain bike patrol, his tour of duty is from 12:00 p.m. to 8:00 p.m. or 8:30 p.m. (Tr. 5/14/03 at 63.) Officer Strassman patrols the establishment approximately once during his tour of duty. (Tr. 5/14/03 at 62, 77.) Officer Strassman has known Mr. Ko for a little over five (5) years. (Tr. 5/14/03 at 51.) Officer Strassman explained that the Applicant's establishment is located within PSA 512, but that the establishment also borders on PSA 109. (Tr. 5/14/03 at 61.) Officer Strassman testified that the closest ABC establishment with a Retailer's License Class "A" is located approximately five (5) to six (6) blocks away from the Applicant's establishment, around the 400 block of 15th Street, N.E. (Tr. 5/14/03 at 80-81.)

16. With respect to criminal activity, Officer Strassman stated that the corner of 15th Street, S.E., and Massachusetts Avenue, S.E., is ridden with criminal activity, including public drinking, narcotics use, and narcotics sales. (Tr. 5/14/03 at 52-53.) Officer Strassman indicated that he has never observed any direct connection between the outside narcotics activity and the establishment. (Tr. 5/14/03 at 52-53.) Instead, Officer Strassman attributed much of the narcotics activity to a specific house located within the immediate vicinity of the establishment. (Tr. 5/14/03 at 53.) Officer Strassman did not recall observing any criminal activity inside of the establishment, nor did he recall ever making any arrests regarding narcotics activity in front of the establishment. (Tr. 5/14/03 at 56-57, 67.) Officer Strassman has made several arrests and observed criminal activity in the alleyway that runs parallel to both Massachusetts Avenue, S.E., and Independence Avenue, S.E. (Tr. 5/14/03 at 66-67.)

17. Officer Strassman has received neighborhood complaints and radio runs to respond to the establishment for problems such as loitering and public drinking, but did not know if any of the calls were made by Mr. Ko himself. (Tr. 5/14/03 at 52, 76-77.) Officer Strassman did not observe any public drinking immediately in front of the establishment but did observe public drinking in the park across the street from the establishment, as well as in the abandoned building on the Southwest corner of the intersection of 15th Street, S.E., and Massachusetts Avenue, S.E., located diagonally across from the establishment. (Tr. 5/14/03 at 54; Applicant's Exhibit No. 6.) Officer Strassman stated that the individuals he observes drinking in public across the street in the park or at the bus stop, drink out of brown paper bags, black plastic bags, or cups, and that he has arrested these same individuals. (Tr. 5/14/03 at 57-58, 68.) Officer Strassman could not ascertain whether the disorderly individuals he has arrested purchased liquor products from the Applicant's establishment. (Tr. 5/14/03 at 53.) Officer Strassman has never observed Mr. Ko sell to intoxicated customers. (Tr. 5/14/03 at 56.) Officer Strassman noted that the Applicant has a "No Drinking" sign posted on the building of the establishment. (Tr. 5/14/03 at 55.)

18. With regard to litter, Officer Strassman has observed empty liquor and beer bottles in the vicinity of the park across the street from the establishment, and in the vicinity of the abandoned building on the Southeast corner of the intersection of 15th Street, S.E., and Massachusetts Avenue, S.E. (Tr. 5/14/03 at 79-80.) Officer Strassman has observed Mr. Ko, as well as his

employees, sweeping both the inside and outside of the establishment, picking up trash, and disposing of it. (Tr. 5/14/03 at 59.)

19. With respect to loitering, Officer Strassman has observed loitering in front of Southeast Market, holder of a Retailer's License Class "B", which is located on the Northeast corner of 15th Street, S.E., and Independence Avenue, S.E. (Tr. 5/14/03 at 65-66, 73; ABRA Exhibit No. 1 at 1.) Officer Strassman has also observed loitering on the south side of Independence Avenue, S.E. by the sidewall of the dry cleaners adjacent to the establishment. (Tr. 5/14/03 at 66.) Officer Strassman indicated that in the past couple of years loitering has decreased in the area. (Tr. 5/14/03 at 69-71.) Officer Strassman noted that Mr. Ko does have a "No Loitering" sign posted. (Tr. 5/14/03 at 55.) Officer Strassman has in the past advised Mr. Ko to call MPD if he has problems with loitering, and he believes that the Applicant has placed calls to MPD regarding loiterers. (Tr. 5/14/03 at 70-71.)

20. Officer Strassman could not make a determination as to whether a restriction on the sale of singles at the establishment would improve the quality of life in the neighborhood by reducing the instances of littering and loitering. (Tr. 5/14/03 at 77-78.)

21. Ronald Harvey resides at 1826 Massachusetts Avenue, S.E., where his family moved to in 1954. (Tr. 5/14/03 at 89.) Mr. Harvey's residence is approximately three (3) blocks away from the establishment. (Tr. 5/14/03 at 93.) Mr. Harvey moved out of this residence in 1978 and then returned in 1985. (Tr. 5/14/03 at 89.) Mr. Harvey has been familiar with the area of the establishment since approximately 1955. (Tr. 5/14/03 at 89.) Mr. Harvey indicated that he patronizes the establishment on a daily basis so he observes Mr. Ko's actions regularly. (Tr. 5/14/03 at 90, 96-97.)

22. With respect to litter, Mr. Harvey never witnessed any of the previous owners of the establishment clean up the outside of the establishment. (Tr. 5/14/03 at 89-90.) Mr. Harvey stated that since becoming the owner of the establishment, Mr. Ko has regularly cleaned the inside and outside of the establishment, as well as picked up trash in the park across the street. (Tr. 5/14/03 at 90, 92.)

23. With regard to loitering, Mr. Harvey has seen loiterers in front of the establishment, but has never seen anyone drinking out of brown paper bags in front of the establishment. (Tr. 5/14/03 at 94-95.) Mr. Harvey has witnessed individuals drinking in the park. (Tr. 5/14/03 at 96.) Mr. Harvey indicated that there is a blind spot, in between the Applicant's establishment and the adjacent dry cleaners, where individuals can stand and not be seen from either the establishment or the dry cleaners. (Tr. 5/14/03 at 96.) Mr. Harvey noted that Mr. Ko will routinely ask customers who make too much noise inside of the establishment to leave and that Mr. Ko will also ask loiterers outside of the establishment to move on from the premises. (Tr. 5/14/03 at 90.) Mr. Harvey emphasized that Mr. Ko is the only owner he has ever witnessed perform such actions with loiterers. (Tr. 5/14/03 at 90.) Mr. Harvey testified that he has seen Mr. Ko get cursed out after Mr. Ko has asked groups of loiterers in the park across the street to move on. (Tr. 5/14/03 at 91.) Mr. Harvey has also witnessed Mr. Ko get cursed out for refusing to sell alcoholic beverages to customers that appeared to be high. (Tr. 5/14/03 at 92.)

24. Mr. Harvey did not believe that restricting the sale of singles at the establishment would have a long term effect in deterring loiterers. (Tr. 5/14/03 at 97.)

25. Eleanor Cox has resided at 1421 A Street, S.E., for twenty-four (24) years. (Tr. 5/14/03 at 105, 108.) Ms. Cox has been a patron of the establishment for approximately twenty (20) years. (Tr. 5/14/03 at 105.) Ms. Cox patronizes the establishment twice per day. (Tr. 5/14/03 at 106.) Ms. Cox testified that Mr. Ko is very well respected in the neighborhood. (Tr. 5/14/03 at 105.)

26. Ms. Cox has seen Mr. Ko ask loiterers to move away from the establishment. (Tr. 5/14/03 at 105.) Ms. Cox noted that Mr. Ko refuses to sell alcoholic beverages to intoxicated individuals and that Mr. Ko will ask intoxicated individuals to leave the establishment. (Tr. 5/14/03 at 106.) Ms. Cox stated that she has never observed patrons of the establishment drinking in public or acting in a disorderly manner. (Tr. 5/14/03 at 108.)

27. Michael Glynn Lyles has resided at 1812 Burke Street, S.E., for forty (40) years. (Tr. 5/14/03 at 111, 114.) Mr. Lyles has been a customer of the establishment for approximately twenty-six (26) years. (Tr. 5/14/03 at 111.) Mr. Lyles noted that Mr. Ko refuses to sell to intoxicated individuals and that Mr. Ko will ask loiterers outside in front of the establishment to move on. (Tr. 5/14/03 at 112.) Mr. Lyles testified that loiterers who have been asked to leave the premises by Mr. Ko, will usually move across the street or down the street, and within fifteen (15) minutes they return to the establishment and Mr. Ko once again must ask them to leave. (Tr. 5/14/03 at 112.)

28. With regard to litter, Mr. Lyles has observed Mr. Ko sweep the front of the establishment on a daily basis and has also observed Mr. Ko sweep the sidewalk and the curbs along the park across the street from the establishment. (Tr. 5/14/03 at 114.) Mr. Lyles buys alcoholic beverages at the establishment, including single beers on occasion, but takes his alcoholic beverages home. (Tr. 5/14/03 at 119.)

29. Dol Ko is President of Watson Delicatessen, Inc., which owns and operates the establishment. (Tr. 5/14/03 at 121; ABRA Application File #000181.) Mr. Ko has served as President of Watson Delicatessen, Inc., since 1993. (Tr. 5/14/03 at 137; ABRA Application File #000181.) Mr. Ko has worked at the establishment for almost twenty (20) years. (Tr. 5/14/03 at 121.) Mr. Ko works in the establishment Monday through Thursday, from 9:00 a.m. to 9:00 p.m., and on Friday and Saturday, from 9:00 a.m. to 10:00 p.m. (Tr. 5/14/03 at 126-127.)

30. With respect to litter, Mr. Ko spends about twenty (20) to thirty (30) minutes, two (2) to three (3) times per day, picking up trash outside of the establishment. (Tr. 5/14/03 at 121-123.) Mr. Ko stated that he cleans up trash along Massachusetts Avenue, S.E., between 14th Street, S.E., and 16th Street, S.E. (Tr. 5/14/03 at 123.)

31. With regard to drinking in public, Mr. Ko testified that he does not know whether his customers are the same individuals who drink in the park across the street from the establishment. (Tr. 5/14/03 at 124.) Mr. Ko testified that he does not see individuals drinking alcoholic beverages outside in front of the establishment or in the park across the street from the establishment. (Tr. 5/14/03 at 126-127, 134.) Mr. Ko indicated that he tries to ensure that his

customers don't drink alcoholic beverages or loiter on the street outside of the establishment by asking his customers to move on and then by calling MPD. (Tr. 5/14/03 at 124.) Mr. Ko stated that about seventy (70) to eighty (80) percent of his customers are regular customers who do not cause problems outside of the establishment. (Tr. 5/14/03 at 124.)

32. With respect to loitering, Mr. Ko stated that throughout the day he will go outside to the front of the establishment whenever he senses that people are loitering to ask them to move. (Tr. 5/14/03 at 124, 127, 132.) Mr. Ko typically goes outside of the establishment an average of six (6) to seven (7) times per day to disperse loiterers. (Tr. 5/14/03 at 127.) Mr. Ko refuses to sell alcoholic beverages to the people that loiter in front of the establishment and he also does not allow those same individuals inside of the establishment. (Tr. 5/14/03 at 129.) Mr. Ko noted that the loitering problem on the corner of 15th Street, S.E., and Massachusetts Avenue, S.E., has improved greatly in the last twenty (20) years. (Tr. 5/14/03 at 129.) Mr. Ko has kept a log book of calls made to MPD as required by his voluntary agreement. (Tr. 5/14/03 at 131-132; Protestants' Exhibit No. 1.) Mr. Ko acknowledged that there have been no entries made in the log book since June 14, 2002, and that he has been going outside and asking the loiterers directly to leave. (Tr. 5/14/03 at 132.)

33. Mr. Ko acknowledged that his signature is on the bottom of the February 12, 1998 voluntary agreement entered into between the Applicant and ANC 6B, but that he does not understand what the voluntary agreement actually is. (Tr. 5/14/03 at 138-139, 141; ABRA Application File #000181.) Mr. Ko testified that he does not speak and understand the English language well and that he does not remember signing the voluntary agreement. (Tr. 5/14/03 at 141.) Mr. Ko stated that he was not aware that the signed voluntary agreement would become part of his ABC license. (Tr. 5/14/03 at 143.) Mr. Ko was represented by counsel, Leonard Birdsong, Esq., at the time he signed the voluntary agreement. (Tr. 5/14/03 at 143.) Mr. Ko does not remember if he had ever attended a Board-approved alcohol server training program, but he did remember taking some kind of course. (Tr. 5/14/03 at 142.)

34. Mr. Ko noted that he did not make a verbal agreement with the community over one (1) year ago to either: 1) use clear plastic bags, or 2) clean the alley behind the establishment with bleach, which are not part of his voluntary agreement. (Tr. 5/14/03 at 135-136, 147.) Mr. Ko stated that he cleans the premises because he wants to clean up around the neighborhood, not because he signed any agreement stating that he would clean. (Tr. 5/14/03 at 137.) Mr. Ko informed the community at an ANC meeting on May 13, 2004 that he began using clear plastic bags. (Tr. 5/14/03 at 134-135.) Mr. Ko began using clear plastic bags three days prior to the May 14, 2003 protest hearing. (Tr. 5/14/03 at 135.) Mr. Ko could not remember the exact date he last cleaned the alley behind the establishment with bleach. (Tr. 5/14/03 at 135.)

35. Mr. Ko stated that single cans of beer and malt liquor make up between thirty (30) and forty (40) percent of the establishment's gross sales. (Tr. 5/14/03 at 129-130, 146.) Mr. Ko testified that he sells ten (10) cases of Miller 24 ounce beer per week. (Tr. 5/14/03 at 146.) Mr. Ko stated that he would have to close the establishment if he could no longer sell single containers of alcoholic beverages. (Tr. 5/14/03 at 130-131.)

36. Barbara Jean Jackson has resided at 1816 Potomac Avenue, S.E., for thirty-four (34) years. (Tr. 5/14/03 at 154.) Ms. Jackson has been a customer of the Applicant's establishment for at least twenty (20) years and patronizes the establishment daily. (Tr. 5/14/03 at 155-156.) Ms. Jackson testified that Mr. Ko has made a difference at the establishment because he tries to get rid of the loiterers in front of the premises, so that his customers can go in and out of the establishment without being harassed. (Tr. 5/14/03 at 156.) Ms. Jackson indicated that the amount of people loitering in front of the establishment has decreased. (Tr. 5/14/03 at 156.)

37. Neil Glick has resided at 1515 Massachusetts Avenue, S.E., for three and a half (3½) years. (Tr. 5/14/03 at 162.) Mr. Glick lives approximately seventy (70) feet away from the establishment. (Tr. 5/14/03 at 225.) Mr. Glick is the Chairperson of ANC 6B's Alcoholic Beverage Committee. (Tr. 5/14/03 at 162.) Mr. Glick stated that he purchased his house with the understanding that the surrounding neighborhood was changing and with the false belief that the Applicant's establishment would be closing at any time. (Tr. 5/14/03 at 165.) Mr. Glick's frustration with the state of his neighborhood was what led him to run for the ANC. (Tr. 5/14/03 at 166.) Mr. Glick testified that when he first moved into the neighborhood he patronized the establishment, including to buy alcoholic beverages; however, he has patronized the establishment only once -- to buy a bottle of tequila -- since ANC 6B filed a protest against the Applicant. (Tr. 5/14/03 at 163, 227-228.)

38. With respect to criminal activity, Mr. Glick testified that his neighborhood has a serious problem with heroin sales. (Tr. 5/14/03 at 163.) Mr. Glick testified that there is a needle exchange van that parks at the 1500 block of Independence Avenue, S.E., every Thursday outside of the dry cleaners from 10:45 a.m. to 11:30 a.m. (Tr. 5/14/03 at 163-164.) Mr. Glick testified that the neighborhood is victim to a prescription drug ring that harbors in the front of the Applicant's establishment and attracts individuals coming from the methadone clinic and the women's treatment and rehab clinic at D.C. General Hospital. (Tr. 5/14/03 at 164, 212-213, 223-24.) Mr. Glick did not believe that the establishment encouraged the prescription drug ring. (Tr. 5/14/03 at 213.) Mr. Glick testified that the neighborhood also has a problem with public defecation. (Tr. 5/14/03 at 164.)

39. Mr. Glick stated that since 1998 or 1999, ANC 6B has been in opposition to the sale of singles in ANC 6B; furthermore, ANC 6B believes that if singles are sold in ANC 6B, customers should be provided with clear or translucent bags to assist MPD in identifying individuals who are consuming alcoholic beverages in public. (Tr. 5/14/03 at 166-167.) Mr. Glick stated that ANC 6B's position on the sale of singles and the use of clear or translucent bags has been incorporated into many voluntary agreements. (Tr. 5/14/03 at 167.) Mr. Glick testified that in 2001, ANC 6B voted unanimously to again support its position on the sale of singles and the use of clear or translucent bags. (Tr. 5/14/03 at 167.) Mr. Glick stated that ANC 6B has a voluntary agreement with Southeast Market, holder of a Retailer's License Class "B", and that as part of the voluntary agreement, Southeast Market has agreed to not sell singles if the ABC establishments within five (5) blocks of them do not sell singles. (Tr. 5/14/03 at 167-168, 175, 208; ABRA Exhibit No. 1 at 1.) Mr. Glick stated that at the urging of ANC 6B, Southeast Market also uses clear and translucent plastic bags. (Tr. 5/14/03 at 215.) Mr. Glick testified that within the vicinity there are two (2) other establishments with Retailer's License Class "A". (Tr. 5/14/03 at 168.) Mr. Glick testified that Albert's Liquors, holder of a Retailer's License Class

“A”, sells singles but uses clear and translucent bags. (Tr. 5/14/03 at 168.) Mr. Glick testified that Safeway is also a holder of a Retailer’s License Class “A”, however, Safeway, as part of their voluntary agreement, does not sell singles. (Tr. 5/14/03 at 168, 229.)

40. With regard to drinking in public, Mr. Glick stated that he constantly observes individuals in the neighborhood near the establishment who: 1) sit in public, drinking and passing bottles around; 2) stagger drunk down the street; 3) urinate in public; and, 4) pass out on the street because they are intoxicated. (Tr. 5/14/03 at 168-171.) Mr. Glick noted that recently while leaving his house around 6:15 p.m. to attend an ANC 6B meeting, he observed two (2) individuals sitting at a bus stop along Massachusetts Avenue, S.E., who were completely inebriated, and then after walking further along, he witnessed three (3) more individuals sitting outside drinking from a bottle in a paper bag. (Tr. 5/14/03 at 168-169.) Mr. Glick recalled an instance where an intoxicated individual, who had passed out at a bus stop and bloodied his head because he was drunk, told Mr. Glick that he had purchased his liquor from the Applicant’s establishment. (Tr. 5/14/03 at 170-171, 196; Applicant’s Exhibit No. 8.) Mr. Glick believed that individuals in his neighborhood who drink out of brown paper bags likely purchase their alcoholic beverages from the Applicant’s establishment, which uses brown paper bags. (Tr. 5/14/03 at 171-172.) Mr. Glick testified that he believes Mr. Ko sells alcoholic beverages to chronic alcoholics in the neighborhood. (Tr. 5/14/03 at 225.) Mr. Glick testified that the establishment sells single rolls of toilet paper. (Tr. 5/14/03 at 232.) Mr. Glick stated that he sees people drinking bottles of beer and flasks of Mad Dog outside the area of the establishment in brown paper bags and that he also sees these bottles broken all over the neighborhood. (Tr. 5/14/03 at 171-172.) Mr. Glick stated that he has seen individuals enter the Applicant’s establishment and then drink their alcoholic beverages on the street, and that he has also observed intoxicated individuals drinking on the street as well. (Tr. 5/14/03 at 173.)

41. Mr. Glick indicated that two (2) years ago Mr. Ko attended an ANC 6B meeting with a translator and that at the meeting, ANC 6B requested that the Applicant’s establishment and other establishments use clear or translucent bags. (Tr. 5/14/03 at 174.) Mr. Glick noted that ANC 6B’s protest issues are loitering, litter, and the public consumption of alcohol. (Tr. 5/14/ at 203.)

42. With regard to loitering, Mr. Glick has found individuals passed out in front of his house on numerous occasions. (Tr. 5/14/03 at 164.) Mr. Glick indicated that the neighborhood is noisy on Saturdays when the Applicant’s establishment is open and pretty quiet on Sundays when the Applicant’s establishment is closed. (Tr. 5/14/03 at 176.) Mr. Glick testified that loitering is not a serious problem in the winter months, but once it gets warmer people begin to loiter and drink in public. (Tr. 5/14/03 at 164.) Mr. Glick indicated that when his front windows are open on Saturdays he hears yelling and screaming coming from the intersection of 15th Street, S.E., and Massachusetts Avenue, S.E., which he attributes to the public drinking and the selling of singles. (Tr. 5/14/03 at 176-177, 204-205.) Mr. Glick noted that Mr. Ko posted a “No Loitering” sign outside on the front of the establishment. (Tr. 5/14/03 at 192.) Mr. Glick stated that he has never seen Mr. Ko ask loiterers to move on when they stand in front of the establishment. (Tr. 5/14/03 at 192.) Mr. Glick testified that he believes Mr. Ko is capable of controlling the loitering problem in front of the establishment. (Tr. 5/14/03 at 226.) Mr. Glick stated that he has seen the written record of the dates and times Mr. Ko has called MPD for assistance. (Tr. 5/14/03 at 193.)

Mr. Glick indicated that there is no pay phone outside of the establishment. (Tr. 5/14/03 at 193.) Mr. Glick did not believe that the Applicant had taken the course required by the voluntary agreement. (Tr. 5/14/03 at 194.)

43. With regard to litter, Mr. Glick noted that at least ninety (90) percent of the time the front of the establishment is kept very clean. (Tr. 5/14/03 at 177.) Mr. Glick has observed Mr. Ko sweep the outside of the establishment regularly, as well as pick up trash in front of the establishment on a few occasions, but he has never seen Mr. Ko clean the alley. (Tr. 5/14/03 at 193-194.) Mr. Glick testified that he has never seen Mr. Ko clean along the south side of Massachusetts Avenue, S.E., or in the park across the street from the establishment. (Tr. 5/14/03 at 219.) Mr. Glick testified has picked up loads of bottles and beer cans in paper sacks littered throughout the neighborhood. (Tr. 5/14/03 at 164.) Mr. Glick testified that the alley behind the establishment smells of urine and is littered with lottery tickets and other garbage. (Tr. 5/14/03 at 177, 200.) Mr. Glick stated that ANC 6B asked for the dumpster in the alley behind the establishment that runs perpendicular to Independence Avenue, S.E., and Massachusetts Avenue, S.E., to be removed so that emergency vehicles could pass through. (Tr. 5/14/03 at 198-99.) Mr. Glick stated that the dumpster was removed. (Tr. 5/14/03 at 200.) Mr. Glick testified that his front lawn and the front lawn of other homes on Massachusetts Avenue, S.E., are littered with empty bottles, brown paper bags, and lottery tickets. (Tr. 5/14/03 at 178.) Mr. Glick testified that for two (2) years he has worked on the trash and litter issue with Leo Pinson, the Ward 6 Area Coordinator from the Mayor's Office and had a giant trash can placed on the corner of 15th Street, S.E., and Massachusetts, Avenue, S.E., outside of the establishment. (Tr. 5/14/03 at 210.)

44. Mr. Glick believed Mr. Ko understood the voluntary agreement he signed with ANC 6B. (Tr. 5/14/03 at 206-207.) Mr. Glick confirmed there is no language in the existing voluntary agreement between the Applicant and ANC 6B that requires Mr. Ko to clean the alley behind the establishment with bleach, to use clear or translucent plastic bags, or to refrain from selling singles. (Tr. 5/14/03 at 216-218.) Mr. Glick stated that Mr. Ko was abstinent about not wanting to sign a new voluntary agreement or an amended voluntary agreement. (Tr. 5/14/03 at 222.) Mr. Glick indicated that Mr. Ko planted flowers in the front area of the establishment. (Tr. 5/14/03 at 219.) Mr. Glick stated that Mr. Ko has never attended any of the meetings of PSA 512 or PSA 109, and that Mr. Ko only attends the ANC meetings when the establishment's license is up for renewal. (Tr. 5/14/03 at 228.)

45. Mr. Glick stated that he wants the establishment to stop selling single containers of beer and fortified wines, and flask bottles of hard spirits. (Tr. 5/14/03 at 214, 228.) Mr. Glick wants the establishment to use clear or translucent bags to inhibit the public consumption of alcohol. (Tr. 5/14/03 at 228.)

46. Gracie P. Glymph has resided at 1534 Massachusetts Avenue, S.E., for fifty (50) years. (Tr. 5/14/03 at 237, 247.) Ms. Glymph's house is half (1/2) a block away from the Applicant's establishment. (Tr. 5/14/03 at 238, 247.) Gracie Glymph stated that she has not patronized the Applicant's establishment recently because she is fearful of the loiterers and panhandlers that linger outside of the establishment. (Tr. 5/14/03 at 240-241, 244.)

47. Gracie Glymph testified that customers of the Applicant's establishment often purchase beer, liquor, and snacks from the establishment, and that these same customers loiter on the block and in front of her house, then dispose of empty bottles, brown bags, and other trash in her front yard and at the bus stop that is within ten (10) feet of her house. (Tr. 5/14/03 at 238-242, 245-246, 248-249.) Ms. Glymph testified that she has been cleaning up the litter left by these same customers of the establishment for the last fifteen (15) to twenty (20) years and that she has never seen anyone else clean her block. (Tr. 5/14/03 at 239-240, 242-243.) Ms. Glymph has recently had litter, including beer bottles and cans, as well as brown bags left in her yard. (Tr. 5/14/03 at 241-242.) Ms. Glymph indicated that customers of the establishment loiter on the steps of her house where they eat and drink what they have bought from the establishment. (Tr. 5/14/03 at 245-246.) Ms. Glymph testified that the problems with littering and loitering will persist as long as the Applicant's establishment is there and customers can buy single cans of beer and wine, sodas, and other items. (Tr. 5/14/03 at 240.) Ms. Glymph believed that the establishment should be in a shopping mall and not in a residential neighborhood because the neighborhood problems will continue to exist. (Tr. 5/14/03 at 240-241.)

48. Queen Glymph has resided at 1534 Massachusetts Avenue, S.E., which is half (1/2) a block away from the Applicant's establishment, for approximately thirty (30) to forty (40) years, on and off. (Tr. 5/14/03 at 254-255.) She lives at this address with her mother, Gracie Glymph. (Tr. 5/14/03 at 261.)

49. Queen Glymph does not patronize the Applicant's establishment because her family has always been opposed to the establishment and she finds the establishment to be a nuisance. (Tr. 5/14/03 at 255.) She wants the establishment closed. (Tr. 5/14/03 at 258.) Queen Glymph testified that by selling singles, the establishment is actively contributing to the drug addiction of the addicts in the neighborhood. (Tr. 5/14/03 at 256.)

50. With regard to loitering, Queen Glymph testified that she cannot walk in the direction of the establishment because the loiterers on the corner block her way. (Tr. 5/14/03 at 256-257, 261.) Ms. Glymph noted that in the past she has been unable to sit on the bench by the bus stop because of the loiterers sitting on the bench and the brown bags littered on the bench. (Tr. 5/14/03 at 257.)

51. With respect to littering, Queen Glymph testified that she has observed individuals littering bottles and brown bags throughout the day, from the time the establishment opens to the time the establishment closes. (Tr. 5/14/03 at 260-261.)

52. With regard to public drinking, Queen Glymph stated that she has witnessed customers come out of the establishment and open their drinks on the street. (Tr. 5/14/03 at 262.) She has never witnessed MPD arrest individuals for having an open container or drinking alcoholic beverages in public. (Tr. 5/14/03 at 266.) She has never observed customers of Southeast Market purchase singles and open their drinks on the street. (Tr. 5/14/03 at 263.) Ms. Glymph has observed individuals urinating in the alley behind the establishment and in the space between the establishment and the dry cleaners. (Tr. 5/14/03 at 263-264.)

53. Lisa Schwartz has resided at 1522 Massachusetts Avenue, S.E., for seventeen (17) years. (Tr. 5/14/03 at 268.) She lives within half (1/2) a block away from the establishment. (Tr. 5/14/03 at 268.) Ms. Schwartz is: (1) on the board of the Capitol Hill Community Garden Land Trust; (2) founder of the King's Court Community Garden; (3) one of the original founders of Capitol Hill Cat Rescue; and (4) a tutor at Payne Elementary School. (Tr. 5/14/03 at 270-271.)

54. Ms. Schwartz has kept a diary since mid-April 2003 that she believed has documented a pattern of problems associated with the establishment. (Tr. 5/14/03 at 269.) Ms. Schwartz stated that the community's relationship with Mr. Ko has been contentious and that Mr. Ko has demonstrated an unwillingness to work with the community. (Tr. 5/14/03 at 272-273.) Ms. Schwartz testified that the owners of Southeast Market have always demonstrated a sense of community-mindedness, which Mr. Ko and his staff have never demonstrated. (Tr. 5/14/03 at 275-76.) Ms. Schwartz stated that Mr. Ko has not offered, as a gesture of good faith, to clean the alley behind the establishment with bleach. (Tr. 5/14/03 at 272-273.) Ms. Schwartz testified that it took Mr. Ko two (2) years to switch to using clear bags. (Tr. 5/14/03 at 273.) Ms. Schwartz personally planted the tree box in front of the Applicant's establishment after asking Mr. Ko for money for the tree box. (Tr. 5/14/03 at 271.)

55. Ms. Schwartz indicated that Mr. Ko sells alcoholic beverages to intoxicated individuals and that she has witnessed visibly intoxicated individuals go into the establishment and exit with brown paper bags that appear to contain alcoholic beverages, such as hard liquor bottles or forty (40) ounce containers of beer. (Tr. 5/14/03 at 274, 279, 282.) Ms. Schwartz testified that she personally accompanied a frequently intoxicated individual to ABRA and witnessed him file a complaint charging the Applicant with feeding his addiction by knowingly serving him alcohol over a period of ten (10) years. (Tr. 5/14/03 at 279-280.) Ms. Schwartz believed that the establishment's sale of singles has a detrimental impact on the neighborhood. (Tr. 5/14/03 at 268-269.)

56. With regard to litter, Ms. Schwartz has observed patrons of the establishment disposing of alcoholic beverage bottles in the yards of her neighbors and has also observed patrons of the establishment publicly defecate and urinate throughout the neighborhood. (Tr. 5/14/03 at 280-281.) Ms. Schwartz indicated that the Department of Public Works has been called several times to clear the trash littered in the alley behind the establishment. (Tr. 5/14/03 at 275.)

57. With respect to loitering, Ms. Schwartz stated that she is approached at least twice a week by panhandlers loitering in front of the Applicant's establishment. (Tr. 5/14/03 at 276.) Ms. Schwartz testified that on April 24, 2003 and May 12, 2003, after giving panhandlers money, she witnessed both panhandlers go into the establishment and purchase and exit with beverages contained in brown bags. (Tr. 5/14/03 at 277.) Ms. Schwartz testified that on April 24, 2003, the individual's bag appeared to contain a 40-ounce beer. (Tr. 5/14/03 at 277.) Ms. Schwartz was physically assaulted by a panhandler in her driveway after refusing to give the individual money. (Tr. 5/14/03 at 278.)

58. Ms. Schwartz would like the establishment to be prohibited from selling singles of forty (40) ounces or less, as well as small bottles of Mad Dog, Wild Irish Rose, and any other alcoholic beverage that is sold in a single consumption size. (Tr. 5/14/03 at 281-282.)

59. Taylor Brown resides at 106 15th Street, S.E. (Tr. 5/14/03 at 291.) His house is about half (1/2) a block away from and within direct view of the establishment. (Tr. 5/14/03 at 291.) Mr. Brown testified that throughout the day, he observes loitering and public drinking by the customers of the establishment. (Tr. 5/14/03 at 292-293, 297.) He has observed customers of the establishment loitering in front of the boarded-up building on the corner, in the park across the street from the establishment, and in front of the establishment itself. (Tr. 5/14/03 at 295-296.) Mr. Brown has also observed individuals drinking alcoholic beverages in the park. (Tr. 5/14/03 at 296.) He has called MPD when he encounters individuals leaning against his car vomiting, or when he observes individuals breaking glass in the street in front of his house, or when he observes loiterers sitting on his wall who don't move when asked. (Tr. 5/14/03 at 294.) Mr. Brown stated that as soon as MPD patrol cars approach the block, the loiterers will disperse, but once MPD is gone the loiterers return. (Tr. 5/14/03 at 294-295.)

CONCLUSIONS OF LAW

60. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the protest hearings, the Board concludes that the Applicant has demonstrated that the renewal of its Retailer's License Class "A" -- with the conditions imposed by the Board as listed below -- would be appropriate for the delineated area in which the establishment is located.

61. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (2001) 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, 646 (D.C. 1982). In this instance, Kenan P. Jarboe, ANC 6B Chairperson, on behalf of ANC 6B, filed a timely written protest letter, dated April 24, 2001, opposing the renewal of the Applicant's Class "A" Retailer's License on the grounds that the establishment has a negative impact on the peace, order, and quiet of the neighborhood. The April 24, 2001 letter from ANC 6B also indicates that the establishment is not in compliance with its February 12, 1998 voluntary agreement with ANC 6B. The ANC 6B letter mentions that ANC 6B opposes the renewal of the Applicant's liquor license due to its purported adverse impact on the peace, order, and quiet of the neighborhood without any specific examples. However, there was oral testimony provided by ANC 6B Commissioner Neil Glick, who was designated in the April 24, 2001 letter to represent ANC 6B that its peace, order, and quiet concerns include: loitering, litter, and criminal activity -- specifically the public consumption of alcoholic beverages -- in the area. The Board also notes that the Protestants, including ANC 6B, represented to the Board at the June 26, 2002 hearing that they were seeking creative solutions to address problems they believed to be related to the establishment and were not asking the Board to deny the Applicant's renewal application. The recommendation of ANC 6B is entitled to great weight.

62. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 400.1(a) (2004), the Board must determine

whether renewing the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood.

63. With regard to loitering, the Board finds based upon the testimony of Investigator Carpenter, Officer Rosario, Officer Strassman, Mr. Harvey, Queen Glymph, Gracie Glymph, Mr. Glick, Ms. Schwartz, and Mr. Brown that loitering, including by customers of the establishment, does occur in the area of the establishment, including: (1) in front of the establishment at the corner of 15th Street, S.E., and Massachusetts Avenue, S.E.; (2) in the alley adjacent to the establishment; and (3) in the park across the street from the establishment. However, the testimony of Officer Rosario, Mr. Harvey, Ms. Cox, Mr. Ko, Mr. Lyles, and Ms. Jackson also revealed that the Applicant has been proactive in attempting to disperse and discourage loiterers and panhandlers from lingering outside of the premises. Specifically, the testimony of Officer Rosario, Mr. Harvey, Ms. Jackson, and Mr. Ko revealed that on a daily basis, Mr. Ko and his employees confront loiterers and ask that they move away from the establishment. The testimony of Mr. Ko also revealed that he further discourages loitering by refusing to sell to loiterers and by not allowing loiterers inside of the establishment. Additionally, the testimony of Investigator Carpenter, Officer Rosario, Officer Strassman, Mr. Ko, and Mr. Glick all confirmed that a "No Loitering" sign remains posted on the outside of the establishment as required by the Applicant's voluntary agreement. The testimony of Investigator Carpenter, Officer Rosario, Officer Strassman, Mr. Henry, and Mr. Brown also revealed that the loitering problem is not specifically attributed to the operations of the establishment as loitering exists beyond the immediate vicinity of the Applicant's establishment. The testimony revealed that loitering is prominent throughout the area, including, in front of the dry cleaners adjacent to the establishment, and in front of Southeast Market on the Northeast corner of 15th Street, S.E., and Independence Avenue, S.E.

64. Additionally, the Board finds that the amount of loitering that occurs in the area of the establishment, including in front of the establishment and in the alley in back of the establishment, can be reduced by requiring the establishment to install outdoor lighting to illuminate the perimeter of the establishment's premises from sundown to sunup, which should discourage individuals from desiring to loiter or engage in criminal activity in the area of the establishment. The Board notes that it has authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001). Additionally, the Board is continuing the following license conditions contained in the Applicant's February 12, 1998 voluntary agreement: (1) prohibiting the Applicant from installing an outdoor payphone on or adjacent to the establishment; (2) requiring the Applicant to keep posted a "No Loitering/No Panhandling sign; (3) calling MPD when necessary regarding disturbances of loitering; and (4) maintain a logbook detailing the time and date of calls made to MPD. The Board is also requiring the Applicant to call MPD when necessary to report other criminal activity and maintain a logbook with the time and date of calls made to MPD regarding such criminal activity.

65. With respect to litter, the Board finds based upon the testimony of Investigator Carpenter, Officer Strassman, Officer Rosario, Mr. Glick, Gracie Glymph, and Ms. Schwartz, that litter is a problem in the neighborhood where the Applicant's establishment is located. Specifically, the testimony of Officer Strassman, Mr. Glick, Gracie Glymph, and Ms. Schwartz indicated that liquor and beer bottles and other trash are littered in the park across the street from the

establishment, in the alley behind the Applicant's establishment, around the public bus stop, and in the yards of the surrounding residences. However, the testimony of Investigator Carpenter, Officer Rosario, Officer Strassman, Mr. Lyles, and Mr. Glick, also revealed that the Applicant has made an effort to reduce the amount of litter in the immediate area of the establishment. Specifically, the testimony revealed that the area inside and in front of the Applicant's establishment generally remains free of litter because Mr. Ko and his employees sweep and pick-up trash. For example, Mr. Ko's testimony revealed that he spends between twenty (20) to thirty (30) minutes, two (2) to three (3) times per day picking up trash outside of the establishment along Massachusetts Avenue, S.E. The Board finds that requiring the Applicant to pick-up trash on a daily basis in the immediate environs of the establishment, including the adjacent alley and sidewalks, pursuant to D.C. Official Code § 25-726 (2001), will continue to help curtail the amount of litter found around the Applicant's establishment. The Board notes that it has authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

66. With regard to criminal activity, the testimony of Officer Rosario, Officer Strassman, Mr. Glick, Ms. Glymph, Ms. Schwartz, and Mr. Brown revealed that criminal activity, including drug activity, drinking in public, and urinating and defecating in public, does occur in the area of the Applicant's establishment. However, the Board finds based upon the testimony of Officer Rosario, Officer Strassman, and Mr. Glick that the criminal activity, particularly the narcotics sales and usage that takes place in the alleyways behind the establishment, is not connected to the operations of the Applicant's establishment, but rather to a private residence and a known prescription drug ring in the neighborhood. The installation of outdoor lighting, as described above, should also help to discourage individuals from engaging in criminal activity around the premises of the establishment. Additionally, as suggested by ANC 6B, the Board finds that requiring the Applicant to place purchases of single containers of beer or malt liquor in sizes of forty (40) or fewer ounces ("singles") only in clear or translucent plastic bags rather than brown paper bags will deter patrons of the establishment from drinking in public and assist MPD in identifying individuals who are consuming alcoholic beverages in public. Additionally, not permitting the applicant to sell or give away: (1) disposable cups in quantities of three or less --in light of testimony that two or three individuals were sometimes observed outside sharing an alcoholic beverage -- or (2) loose or unbagged ice can only help to reduce public drinking in the neighborhood. The Board also finds that requiring the Applicant and all employees who sell alcoholic beverages to complete a Board-approved alcohol training and education certification program should help to assist the establishment in identifying intoxicated patrons who alcoholic beverages should not be sold. Furthermore, the Board finds that requiring the Applicant to call MPD -- in addition to loitering -- to report other criminal activity when necessary and maintain a logbook with the time and date of calls made to MPD can help to decrease crime and public drinking in the neighborhood. Finally, the Board finds that requiring the Applicant to post and maintain a "No Public Drinking/Please Respect Our Community" sign -- in addition to the No Loitering/No Panhandling sign should also help to deter criminal activity, as well as loitering and loud noise, in front of the Applicant's establishment. The Board notes that it has authority to place these conditions on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001).

67. With regard to noise, the Board finds based upon the testimony of Investigator Carpenter and Mr. Glick that some problems exist with regard to noise emanating from groups of individuals standing outside of the establishment on the corner of 15th Street, S.E., and Massachusetts Avenue, S.E. The Board finds that the conditions set forth above will also help to reduce the amount of noise emanating from this area by making the area of the establishment less inviting for loitering and criminal activity.

68. With respect to rowdiness, the Board found based upon the testimony of Investigator Carpenter and Ms. Cox that while patrons of the establishment are sometimes noisy they are not acting in a rowdy manner.

69. Based upon the above factors, and the conditions imposed by the Board above, the Board finds that the concerns of ANC 6B have been addressed and that renewing the Applicant's Class "A" license renewal application will not adversely affect the peace, order, and quiet of the neighborhood. The Board notes that it is requiring the Applicant or his or her designee to attend two or more meetings of the ANC where the establishment is located each calendar year to assist the Applicant in working with the ANC regarding future peace, order, and quiet issues.

70. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds based upon the testimony of Investigator Carpenter and the record as a whole that there is sufficient parking for the patrons of the establishment. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board finds based upon the testimony of Investigator Carpenter and the record as a whole that the establishment will not have an adverse affect on vehicular or pedestrian safety. The Board notes that the Protestants did not raise this as a protest issue.

71. Pursuant to D.C. Official Code § 25-313(b)(1) (2001), the Board finds no evidence from the record as a whole that the establishment will have an adverse affect on real property values. The Board notes that the Protestants did not raise this as a protest issue.

72. With regard to the Applicant's compliance with the ABC laws and regulations, as set forth in D.C. Official Code § 25-315(b)(1) (2001), the testimony of Investigator Carpenter revealed that the establishment is currently in compliance with existing ABC laws and regulations. Additionally, the testimony of Mr. Ko and Mr. Glick and the testimony as a whole indicated that the Applicant is in substantial compliance with its February 12, 1998 voluntary agreement with ANC 6B. Specifically, the testimony revealed that the Applicant: (1) has made an effort to ask loiterers to move on; (2) has posted signage at the establishment required by the voluntary agreement; (3) has not installed a payphone on or adjacent to the establishment; (4) has picked up trash and swept outside on a daily basis; and (5) did keep a written record of the times he had called MPD for assistance. However, the Board notes that the testimony of Mr. Ko and Mr. Glick did raise concerns regarding whether Mr. Ko had ever attended a Board-approved alcohol server training program as required by the voluntary agreement. As a result, the Board is requiring Mr. Ko and all employees of the establishment to: (1) complete an alcohol training and education certification program conducted by a Board-approved provider pursuant to D.C. Official Code § 25-120 (2001); and, (2) submit certification of such training to the Board within ninety (90) days. This was a factor the Board considered in making its decision.

ORDER

Therefore, it is hereby **ORDERED** on this 22nd day of September 2004, that the renewal application for a Retailer's Class "A" license filed by Watson Delicatessen, Inc., t/a S & J Liquors, 1500 Massachusetts Avenue, S.E., be and the same is hereby, **GRANTED**.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become a term of the license:

1. The Applicant shall post and maintain a "No Loitering/No Panhandling" sign on the front of the establishment. The Applicant shall also post a "No Public Drinking of Alcoholic Beverages Permitted/Please Respect our Community" sign on both the interior and exterior of the premises;
2. The Applicant shall call MPD when necessary to report disturbances, including loitering and criminal activity, and maintain a logbook detailing the time and date of calls made to MPD;
3. The Applicant or his or her designee shall attend two or more meetings of the ANC where it is located each calendar year;
4. The Applicant shall on a daily basis or more frequently if needed pick-up trash, including beverage bottles and cans, in the immediate environs of the establishment, including the adjacent alley and sidewalks, pursuant to D.C. Official Code § 25-726 (2001). The Applicant shall also sweep the outside of the establishment on a daily basis, or more frequently if needed;
5. The Applicant shall place purchases of single containers of beer or malt liquor in sizes of forty (40) or fewer ounces ("singles") only in clear or translucent plastic bags;
6. The Applicant and all employees who sell alcoholic beverages shall complete a Board-approved alcohol training and education certification program and submit certification of such training to the Board within ninety (90) days;
7. The Applicant shall install outdoor lighting to illuminate the perimeter of the establishment's premises, including the back alley, from sundown to sunup;
8. The Applicant shall not give away disposable cups in quantities of three (3) or less or sell or give away loose bags of ice; and

9. The Applicant shall not install an outdoor payphone on or adjacent to the establishment.

Watson Delicatessen, Inc.
t/a S & J Liquors
September 22, 2004

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Chair
Charles A. Burger, Chairperson

Vera M. Abbott
Vera M. Abbott, Member

Audrey E. Thompson
Audrey E. Thompson, Member

Judy A. Moy
Judy A. Moy, Member

Not voting
Peter B. Feather, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002. Also, pursuant to section 11 of this decision within ten (10) days 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 (April 2004) 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).