

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

441 4th Street, N.W.
Washington D.C. 20001

2010 OCT 22 PM 1:36

Appeal of Ward 5 Improvement Association

Appeal No. 18114

SUPPLEMENTAL EXHIBITS

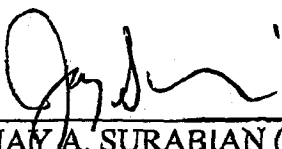
The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits the attached documents to supplement its Pre-Hearing Statement.

Respectfully Submitted,

PETER J. NICKLES
Attorney General
for the District of Columbia

MELINDA M. BOLLING
General Counsel

October 22, 2010


JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department Of Consumer And
Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18114

EXHIBIT NO. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.18114
EXHIBIT NO.23

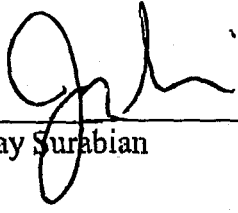
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served by first class mail or email,
this 22 day of October 2010, to the following:

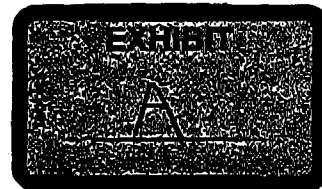
Stephen J. O'Brien, Esq.
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2600 Virginia Ave., NW, Suite 1112
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Ward 5 Improvement Association
c/o Don Padou
1335 Lawrence St., NE
Washington, DC 20017
Don.padou@yahoo.com
(by email only)

ANC 5B
2100 New York Ave., NE
Washington, DC 20002



Jay Surabian



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442-4589

Fax (202) 442-4862



CERTIFICATE OF OCCUPANCY

THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE

PERMIT NO. CO1001525

Date: 04/02/2010

Address of Use: 2127 QUEENS CHAPEL RD NE		Zone: C-M-2	Ward: 5	Square: 4258	Suffix:	Lot: 0034
Description of Occupancy: Temporary Conditional Certificate: Nightclub and Restaurant with accessory parking [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 203; Subject to the following conditions: 1. No alcohol shall be served at any time (or kept on premises). 2. The lighting levels shall be maintained at a level sufficient to maintain safe egress, not to be less than a 10 foot-candles. 3. The fire main service vault shall be inspected and approved by DCRA. 4. The sprinkler system shall be inspected and approved by DCRA. 5. An executed covenant shall be recorded or a lot consolidation subdivision encompassing the two subject lots shall be applied for. 6. A "Fire Watch Plan" that is either approved by the Fire Marshal or the Chief Building Inspector shall be implemented during all times the building is occupied. 7. Unless revised or released this Certificate shall expire on May 3, 2010.						
Permission is Hereby Granted To:		Trading As:		Floor(s) Occupied 1	PERMIT FEE: \$111.00	
Property Owner: Wq Lic		Previous Use(s): Retail or Wholesale Store - M		Occupant Load: 203	BZA Number:	
Type of Application: Use Change		Occupied Sq. Footage: 13900	Approved Use(1): Night Club - A-2			
Conditions/ Restrictions: Temporary Conditional Certificate & Nightclub and Restaurant [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 203; Subject to the following conditions: 1. No alcohol shall be served at any time (or kept on premises). 2. The lighting levels shall be maintained at a level sufficient to maintain safe egress, not to be less than a 10 foot-candles. 3. The fire main service vault shall be inspected and approved by DCRA. 4. The sprinkler system shall be inspected and approved by DCRA. 5. An executed covenant shall be recorded or a lot consolidation subdivision encompassing the two subject lots shall be applied for. 6. A "Fire Watch Plan" that is either approved by the Fire Marshal or the Chief Building Inspector shall be implemented during all times the building is occupied. 7. Unless revised or released this Certificate shall expire on May 3, 2010.						
As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.						
Director: Linda K. Argo		Permit Clerk: Erika King		Expiration Date: 5/3/2010		
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-0557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
APPLICATION FOR CERTIFICATE OF OCCUPANCY**

Date

4/2/2010

Receipt No. _____

Application Fee \$25.00 Non Refundable
Certificate Fee is Based on square footage

C01001525

Cashier's No. _____

INFORMATION
ON
PROPOSED
BUSINESS

1. Premise Address 2127 Queens Chapel Road, NE, Washington, DC 20018 Suite/Room No. _____
2. Business Telephone No. 410-242-2221 Fax No. 410-242-1333 Lot 34 and 824 Square 4258
3. Trade Name of Business Stadium Group, LLC
4. Is Business Incorporated? Y/N Y-LLC Partnership? Y/N No Sole Proprietor? Y/N No New/Existing Existing
5. Corporate Name Stadium Group, LLC
6. President James T. Redding Vice President Keith Fomey Secretary _____
7. Sole Proprietor No
8. Business Owner's Mailing Address 2127 Queens Chapel Road, NE phone # (daytime) 410-242-2221

INFORMATION
ON
OCCUPANCY

9. ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☐ Use change ☐ Load Change ☐ BZA No. _____
10. Proposed Use of Premises Convert existing 1 story warehouse into new nightclub and restaurant.
11. Prior Use of Premises Warehouse
12. Proposed Occupancy Load 399 Square Feet Occupied 13,900
13. Floors to be Occupied 1 Basement? ☐ Yes ☒ No
14. Is this Business Sexually Oriented according to the DC Zoning Regulations? ☐ Yes ☒ No

INFORMATION
ON
ENTIRE
BUILDING

15. Building Owner RF Holdings, LLC Telephone No. 410-242-2221
16. Building Owner's Address:
1500 Calton Center Drive, Baltimore, MD 21227
17. Square feet 13,900 Numbers of floors 1 Basement No

ATTESTATION
&
SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.

18. Owner of Business [Signature] Date March 23, 2010
Signature

If Authorized Agent for owner of Business (Attach Authorization)

19. Agent's Name Bello, Bello & Assoc 3/23/10 Date

20. Agent's Address 900 2nd St, NE, WDC 20002 Signature

Visit our website www.dcra.org/permits for permit applications

* Conditional CBO - expires - 5/3/10. - Let 4/2/10

NOTICE

TO REPORT WASTE, FRAUD OR ABUSE BY ANY D. C. GOVERNMENT OFFICE OR OFFICIAL,
CALL THE INSPECTOR GENERAL AT 1-800-521-1939. ALL CALLS ARE CONFIDENTIAL

OFFICE USE ONLY

ADDRESS

Premise Address

2127 Queens Chapel Rd NE

Suite/Room No

Zone

C-M-2

Overlay District

Y/ N

B.Z.A. No:

B.Z.A. approved date

ZONING

Prior Use

Warehouse/ Parking

DIVISION

Date of Last Certificate

9/18/06

Last Certificate No.

C0125685

Prior B.Z.A. No

Accepted for filing by

m22

Date

4-1-10

Use Change

☒ Yes

No

Inspections Required

Yes

☒ No

By

m22

Date

4-2-10

EXAMINERS

Building Permit Required

Yes

No

By

Date

USE

Inspection Fee \$

Issuance Fee \$

By

Date

Approved for issuance by

m22

Date

Date of scheduled Certificate of Occupancy inspection

C of O

Inspection Status

Approved

Disapproved

By

Branch

Date

INSPECTION

Inspector's Signature

Printed Name

Reason for Disapproval

☒ Approved

Denied

Canceled By

m22

Reason for Denial/Cancellation

Conditional C of O - Effort
30 days

C of O

APPROVAL

If Approved, Certificate of Occupancy No.

C01001525

Date of Issuance

4-2-10

Bldg

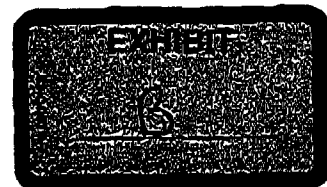
Electric

Plumbing

Fire

Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Alcoholic Beverage Regulation Administration



April 20, 2010

Mr. Don Padou

1335 Lawrence Street, N.E.

Washington, D.C. 20017

Dear Mr. Padou,

Thank you for your letter, dated April 12, 2010, regarding Black Ride III, Inc., t/a Nexus Gold Club and Stadium Club. This correspondence is in response to the concerns outlined in your letter.

1. License #75770 (Black Ride III) was illegally transferred from 900 1st Street SE to 2127 Queens Chapel Road NE in October 2007.

ABRA's application file for the new "Stadium Club" location at 2127 Queens Chapel Road reflects that the establishment possesses a certificate of occupancy from the Department of Consumer and Regulatory Affairs with a zoning designation of CM-2. This CM-2 zoning designation for the 2127 Queens Chapel Road location is consistent with the CM-2 zoning designation contained on the certificate of occupancy on file for Black Ride III, Inc., when the ABC Board initially issued this license for 900 1st Street, SE.

At the time of transfer of this license to 2127 Chapel Road NE in October 2007, the certificate of occupancy on file with ABRA for 900 1st Street, SE, reflects a zoning designation of CM-2. In researching your inquiry, ABRA has verified that the zoning for the area containing 900 1st Street, SE has changed from CM-2 to C-3-C. However, ABRA's files reflect that the 900 1st Street, SE address was zoned CM-2 at the time the ABC Board initially issued the license. Additionally, the licensee possessed a certificate of occupancy for a CM-2 zone for 900 1st Street, SE, at the time the license was transferred to another CM-2 zone in 2007.

As such, Black Ride III was eligible to transfer its liquor license from 900 1st Street SE to 2127 Queens Chapel Road NE, because it was transferred from CM-2-zoned district to another CM-2-zoned district, as required by DC Official Code §25-374. For your convenience, a copy of the initial certificate of occupancy issued for 900 1st Street, SE, is attached.

2. **The Board improperly approved the transfer of Black Ride III's license from 900 1st Street SE to 2127 Queens Chapel Road NE.**

In reviewing the transfer of ownership application of Black Ride III's license from 900 1st Street SE to 2127 Queens Chapel Road NE, the Board followed its standard practices and procedures. The Board does publish and maintain a compilation of its decisions and orders. Specifically, the Board maintains complete and accurate records of actions taken on (1) Applications for licenses; and (2) Recommendations for and against, the granting of licenses as required by DC Official Code §§25-433(c) and 25-205(a). Further, the transfer of the license was approved by the Board on October 10, 2007.

3. **The Board abused its discretion and violated the law in its handling of the Black Ride III license that has been in safekeeping for more than three years.**

The license at issue was placed into safekeeping by Black Ride III in January 2007. The Board has held several hearings regarding this license in an effort to ensure that the licensee is making reasonable progress on returning to operation. For example, the Board held hearings on July 11, 2007, August 8, 2007, October 29, 2008 and May 20, 2009.

Additionally, the statement that the license fees from 2008 and 2009 were never paid and are still outstanding is not accurate. The license fees for 2008 were paid on September 17, 2008 and the license fees for 2009 were paid on October 9, 2009.

4. **The Board must comply with the requirements of §25-791(f) which provide that: "licenses which are restored after being held in safekeeping for longer than 2 years shall be subject to the license renewal process set forth in Chapter 4."**

Consistent with the requirements of D.C. Official Code § 25-791(f) and the license renewal process set forth in Title 25, Chapter 4, this license will be subject to the public comment and placarding period once a license is issued by ABRA. The placard period will allow for a 45 day public comment period to object to the liquor license renewal and will also result in the scheduling of a public hearing. Because nightclub licenses are also required to renew by September 30, 2010, the establishment will also be placarded on October 2010 for an additional 45 day public comment period.

5. **The Board violated the DC Official Code when it approved the transfer of license ownership from Black Ride III to The Stadium Group LLC.**

Pursuant to D.C. Official Code § 25-311(a), the transfer to a new location application is presumed to be appropriate under the appropriateness standards because no valid protests were filed. As indicated above, the Board complied with 23 DCMR §405.1 because the certificate of occupancy submitted to ABRA indicated that 900 1st Street SE was in a CM-2-zoned district.

Sincerely,


Martha Jenkins

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

Don Padou
Abigail Padou
1335 Lawrence Street NE
Washington, DC 20017
Plaintiffs,

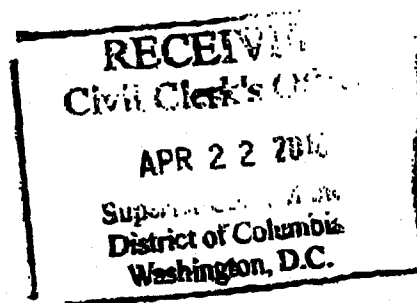
v.

DC Alcoholic Beverage Control Board

Serving Charles Brodsky as
Chairman, DC Alcoholic Beverage Control Board
1250 U Street NW, 3rd Floor
Washington DC 20009

Serving Peter Nickles as
Attorney General, District of Columbia
Office of the Attorney General
One Judiciary Square
441 4th Street NW, Suite 1060N
Washington, DC 20001

Serving Adrian Fenty as
Mayor, District of Columbia
1350 Pennsylvania Ave NW
Washington DC 20004
Defendant.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Don Padou and Abigail Padou, bring this action pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1985 alleging violation of Plaintiffs' Constitutional rights to due process and to petition the government for redress of grievances. In addition, Plaintiffs request that this Court declare that the Alcoholic Beverage Control Board and the Alcoholic Beverage Regulation Administration violated the DC Official Code and DC Municipal Regulations. Plaintiffs further request that the Court enjoin future such

violations. Plaintiffs seek reasonable attorney's fees and costs pursuant to 42 U.S.C. 1988. In support thereof, Plaintiffs allege the following:

JURISDICTION

The Court has jurisdiction over the persons and subject matter of this action pursuant to D.C. Code § 11-921.

PARTIES

Don Padou is a natural person and a resident of the District of Columbia who owns and resides at 1335 Lawrence Street NE, Washington, DC 20017. Mr. Padou served as an Advisory Neighborhood Commissioner (ANC) for ANC 5A and has been involved in his neighborhood since moving to Ward 5 in October 2003. In addition to serving as an ANC Commissioner, Mr. Padou participated in the Brookland Streetscape Study conducted by the District Department of Transportation and served on the Study Advisory Committee for the Brookland/CUA Small Area Plan.

Mr. Padou has been involved in the liquor licensing process for several establishments in Ward 5. For example, he participated in the license process for Bobby's Q, a local establishment whose license he supported. Mr. Padou was the lead protestant in the license process for the Brookland Café, an establishment whose license he opposed.

Abigail Padou is a natural person and a resident of the District of Columbia who owns and resides at 1335 Lawrence Street NE, Washington, DC 20017. Ms. Padou is editor of *Brookland Heartbeat*, the newspaper for the greater Brookland area in Northeast Washington DC. Ms. Padou participated in the Brookland Streetscape Study conducted

by the District Department of Transportation and served on the Study Advisory Committee for the Brookland/CUA Small Area Plan.

Don Padou and Abigail Padou would like to participate in the liquor licensing process for the Stadium Group LLC t/a the Stadium Club but have been prevented from doing so by the failure of the DC Alcoholic Beverage Regulation Administration ("ABRA") and the DC Alcoholic Beverage Control Board (the "Board") to follow proper licensing procedures including the holding of hearings as required by law.

The Alcoholic Beverage Control Board ("ABC Board" or "Board") is an independent board in the District of Columbia with responsibility for overseeing the regulation of the sale of alcoholic beverages in the District of Columbia. The Board is *sui juris*. The Chairman of the Board is Charles Brodsky. The Board's offices are located at 1250 U Street NW, Third Floor, Washington, DC 20009.

The Alcoholic Beverage Regulation Administration ("ABRA") is an independent agency overseen by the ABC Board. ABRA's office is located at 1250 U Street NW, Third Floor, Washington, DC 20009. The Director of ABRA is Fred Moosally.

SUMMARY

The Alcoholic Beverage Control Board failed to follow both the DC Official Code and DC Municipal Regulations regarding the transfer of a liquor license for a nightclub with nude dancing that was called the Nexus Gold Club and used to be located in SE Washington DC. The Board allowed the license for the Nexus Gold Club to be relocated and transferred to a new owner despite the fact that the license expired on September 30, 2007 and was never renewed. The Board allowed Ronald R. Hunt, owner of Black Ride III, Inc. t/a Nexus Gold Club, to relocate his license from SE Washington

DC to NE Washington DC in violation of the law and of regulation. The Board allowed the license for Black Ride III, Inc. to remain in "safekeeping" for more than three years in violation of law and regulation. The Board did not take any of the steps required under the safekeeping provisions of the DC Official Code and DC Municipal Regulations, including holding regular safekeeping hearings for the license. The Board allowed Black Ride III's license to be transferred to the Stadium Group LLC in violation of law and regulation. The Board now intends to activate the license in safekeeping in violation of law and regulation.

The Board's failure to comply with the law, including its failure to hold licensure hearings required by law and to issue written orders, violates Plaintiff's Constitutional right to petition the government for redress of grievances and to due process pursuant to 42 U.S.C. 1983 and 1985.

STATEMENT OF FACTS

1. Black Ride III t/a Nexus Gold Club ("Black Ride") held a liquor license to operate a nightclub with nude dancing ("strip club") at 900 First Street SE, Washington DC. The ABRA license number issued to Black Ride was 16212.
2. 900 First Street SE, Washington DC is zoned C3C. 900 First Street SE was zoned C3C in 2007. 900 First Street SE is not located in the Capital Gateway ("CG") overlay district created when the Nationals baseball stadium was built.
3. On or about January 10, 2007 Black Ride applied to the Alcoholic Beverage Control Board ("ABC Board" or "Board") to place its license in "safekeeping" pursuant to DC Official Code § 25-791 and 23 DCMR § 704. On its safekeeping application, Black Ride said that it was putting its license into safekeeping

because the "lease has terminated and license will be transferred to a new location within the next year."

4. The expiration date of Black Ride's license was September 30, 2007.
5. The ABC Board accepted the Black Ride license for safekeeping. The ABC Board never published or issued a written order or findings of fact regarding its decision to place the Black Ride license in safekeeping. The Compilation of Board Dispositions for 2007 does not list a decision to place the Black Ride license in safekeeping.
6. The Alcoholic Beverage Regulation Administration ("ABRA") sent a letter to Black Ride owner Ron Hunt dated May 21, 2007 stating that the safekeeping period for Black Ride's license would expire on September 30, 2007. In the letter, ABRA told Mr. Hunt that:

"To maintain the license in safekeeping (1) future extensions for the safekeeping period must be requested in writing to the ABC Board at least 10 days prior to the expiration of the safekeeping period. The request must include the reason, the length of time for the extension, name, signature and the current home address of the licensee of record.

All fees must be kept current during the safekeeping period. Failure to keep the license fees current and to request future extensions will result in a referral for the cancellation of the license to the ABC Board. Further, in the event that the license is kept in safekeeping for more than 2 years, notice will be given to the public at the time of the reopening." Emphasis in original.
7. May 21, 2007 was a Monday. The ABC Board did not hold a hearing or meeting on May 21, 2007. The ABC Board held a public meeting on Wednesday, May 16, 2007. The ABC Board did not take up, discuss or reach a decision on the safekeeping of the Black Ride license at the May 16th meeting.

8. The Black Ride license expired on September 30, 2007. Black Ride did not apply to renew its license. The ABC Board did not renew Black Ride's license. Black Ride did not keep current on its annual fees for its license. Black Ride did not apply for an extension to keep its license in safekeeping. The ABC Board did not grant any extensions to Black Ride to keep its license in safekeeping.
9. The ABC Board did not notify the relevant Advisory Neighborhood Commission (ANC) that Black Ride's license would expire on September 30, 2007 as required by DC Code § 25-205(d).
10. On or about August 30, 2006 Black Ride submitted an application to ABRA to relocate its liquor license to 2127 Queens Chapel Road NE, Washington DC. On January 10, 2007, Black Ride withdrew this application by notifying ABRA of its withdrawal in a letter. Despite the withdrawal of Black Ride's application and no resubmission of a new application, the ABC Board proceeded with the relocation approval process.
11. 2127 Queens Chapel Road NE is and was zoned CM2. 2127 Queens Chapel Road NE is not located in the Central Business District.
12. On August 8, 2007 the ABC Board held a "roll call" hearing on Black Ride's application to relocate its liquor license to the Queens Chapel location. All of the protestants were dismissed by the ABC Board *sua sponte*. Most of the protestants were dismissed by the Board for residing further than 1800 feet from the proposed location at 2127 Queens Chapel Road NE. The Board did not take up or discuss the safekeeping of the Black Ride license. Roll call hearings are not contested hearings pursuant to 23 DCMR § 1600.3.

13. There is no provision in the DC Official Code or the DC Municipal Regulations that authorizes the ABC Board to dismiss protestants for living further than 1800 feet from an establishment.
14. Sometime between the August 8, 2007 roll call hearing and approximately October 10, 2007 the ABC Board approved Black Ride's application to relocate to Queens Chapel Road. The decision approving Black Ride's relocation was not taken at a meeting open to the public. The ABC Board never published or issued a written order or findings of fact regarding its decision to approve the relocation of Black Ride's license from 900 First Street SE to 2127 Queens Chapel Rd NE. The decision and order to approve Black Ride's relocation are not listed in the 2007 Compilation of Board Dispositions. No transcript indicates that the Board took up, addressed or approved Black Ride's relocation at a public meeting.
15. The ABC Board approved the relocation of Black Ride's license to 2127 Queens Chapel Rd NE at a private meeting not open to the public.
16. On June 7, 2006 the ABC Board issued an Advisory Opinion providing the Board's interpretation of DC Official Code § 25-374. The Opinion was issued at the request of a member of the DC Council. In the Opinion the Board stated that strip club licenses could only be relocated to the Central Business District or, if the license was located in a CM or M zoned district, to a property with the same zoning. Thus, a licensee located at a property zoned CM2, for example, could only relocate to the Central Business District or to another property also zoned CM2. The same licensee could not, according to the Opinion, relocate to a

property zoned CM3 or CM1 or any other zoning outside of the Central Business District.

17. The ABC Board violated DC Official Code § 25-374 and failed to comply with its own Advisory Opinion by approving the relocation of the Black Ride license from a property zoned C3C to a property zoned CM2 where the second property is not located in the Central Business District.
18. The Black Ride license has been in safekeeping since January 10, 2007. The ABC Board has never held a safekeeping hearing for the Black Ride license.
19. A safekeeping hearing is a contested case pursuant to 23 DCMR § 1600.3.
20. On July 11, 2007 the ABC Board held a "fact finding" hearing. The hearing was not publicly noticed. The Board did not take up or discuss the safekeeping of the Black Ride license. The hearing was not a contested case pursuant to 23 DCMR § 1600.4. The only people the Board heard from were the owner or representative of Black Ride and another establishment called Club 55. The only topic discussed was whether Black Ride or Club 55's proposed relocation to the Queens Chapel Road area violated DC Code § 25-374, which prohibits strip clubs from being less than 600 feet from each other.
21. On May 20, 2009 the ABC Board held a "fact finding" hearing. The hearing was not publicly noticed. The Board did not take up or discuss the safekeeping of the Black Ride license. The hearing was not a contested case pursuant to 23 DCMR § 1600.4. The only people the Board heard from were the owner the Stadium Group LLC and his counsel. The only topic discussed was the approval of the transfer of ownership of Black Ride's license to Stadium Group LLC.

22. The Black Ride license expired on September 30, 2007. The ABC Board never held a license renewal hearing. The ABC Board never renewed Black Ride's license.
23. In late September or early October 2008, an application was submitted to ABRA to transfer the ownership of the Black Ride license to Moonlight Enterprises, Inc. ("Moonlight"). On October 29, 2008 the ABC Board held a fact finding hearing where the Board discussed the transfer of ownership of the Black Ride license to Moonlight. The hearing was not publicly noticed. The Board did not take up or discuss the safekeeping of the Black Ride license. The hearing was not a contested case pursuant to 23 DCMR § 1600.4. The only people the Board heard from were the owner or representative of Black Ride and Moonlight. According to the transcript of that hearing, the Board approved the transfer of the Black Ride License to Moonlight. No vote was taken. Instead, ABC Board Chairman Peter Feather merely said, "we are going to approve your transfer."
24. The 2008 Compilation of Board Dispositions states that on October 29, 2008 the Board "indicated that it would *oppose* the license application" of Moonlight Enterprises. Emphasis added.
25. The 2008 Compilation of Board Dispositions was altered sometime in early 2009 to retroactively make the Board's actions appear to conform with later decisions.
26. The ABC Board never published or issued a written order or findings of fact regarding its approval of the transfer of ownership of the Black Ride license to Moonlight. The ABC Board did not publish a written decision or order revoking its approval of the transfer of the Black Ride license to Moonlight. The

revocation of the transfer of Black Ride's license to Moonlight was not taken at a public meeting.

27. On March 12, 2009 James Redding formed and registered The Stadium Group LLC in the District of Columbia. The Stadium Group LLC has never held a liquor license or operated a night club or restaurant.
28. On April 30, 2009 The Stadium Group LLC ("Stadium") applied to transfer the ownership of the Black Ride license to itself. On May 13, 2009 the ABC Board approved the transfer of ownership of Black Ride's license to Stadium. Five Board Members approved the transfer and signified their approval by initialing the Stadium application and dating it "5/13/09." Although the Board held a public meeting on May 13, 2009, the transcript for that meeting is silent on any Board action regarding Black Ride's license or Stadium's application. The 2009 Compilation of Board Dispositions does not list any action regarding Black Ride or Stadium on May 13, 2009.
29. The ABC Board approved the transfer of ownership of Black Ride's license to Stadium on May 13, 2009 at a private meeting not open to the public.
30. Despite having already approved the transfer of ownership of Black Ride's license to Stadium, the ABC Board held a "fact finding" hearing on May 20, 2009 to discuss the transfer. There was no public notice of the hearing and the only person or entity heard by the Board was James Redding, the owner of Stadium, and Mr. Redding's counsel. Mr. Redding was not placed under oath at the hearing. According to the transcript of the hearing, Mr. Redding stated that he did not have a security plan for the establishment and would not create a security plan.

until after he received approval from the Board for the transfer of Black Ride's license. Mr. Redding also said that the strip club contained bedrooms. None of the Board Members asked for information about the use of bedrooms in Stadium's strip club.

31. DC Official Code § 25-761 prohibits the granting of a liquor license to an establishment with bedrooms, with a few exceptions that do not apply to the Stadium Group's application. DC Official Code §§ 25-113, 25-402, and 25-403 require that a security plan be in place before a license is granted to a nightclub.
32. According to the May 20, 2009 transcript, the ABC Board affirmed the Board's May 13, 2009 approval of the transfer of ownership of Black Ride's license to Stadium. No vote was taken. Instead, ABC Board Chairman Peter Feather merely said, "Well, we're going to approve your application for transfer." The Board did not publish or issue a written order or make any findings of fact with regard to the transfer.
33. The ABC Board conducted no investigation of Stadium or Stadium's owner before approving the transfer of ownership of Black Ride's license to Stadium.
34. The Black Ride license, now the Stadium license, is still in safekeeping more than three years after first being placed in safekeeping. During the three year period of safekeeping, the ABC Board did not hold any safekeeping hearings.
35. Black Ride and Stadium did not pay required license fees for the license. The license was not renewed when it expired on September 30, 2007.
36. Stadium has partially renovated the building at 2127 Queens Chapel Rd NE and advertises that it will open very shortly as a strip club. ABRA has informed

Plaintiffs that it will restore or issue the license currently in safekeeping as soon as Stadium asks for issuance. The Stadium file maintained by ABRA indicates that the license will be issued as soon as Stadium submits a Certificate of Occupancy and a restaurant license.

37. Plaintiffs did not learn that the Black Ride license had been transferred to 2127 Queens Chapel Road NE, and that the license had subsequently been transferred to Stadium Group, until on or shortly after March 25, 2010.
38. ABRA publishes a list of all outstanding liquor licenses on its website. ABRA omits licenses held in safekeeping from the list. Neighborhoods and residents, therefore, are unaware of and have no way of knowing about licenses held in safekeeping. ABRA does not publish or otherwise make available to the public a list of licenses held in safekeeping. Neighborhoods and residents only learn of the existence of a license held in safekeeping when that license is restored and the establishment opens for business.
39. Despite provisions of the DC Official Code and DC Municipal Regulations to the contrary, the ABC Board and ABRA customarily and as a matter of practice:
 - a. Do not investigate or otherwise determine if applicants meet legal requirements before approving the transfer of ownership of a license.
 - b. Do not issue written orders and findings of fact for every decision.
 - c. Do not require that licenses be suspended, cancelled or revoked when the license fee is more than 90 days overdue.
 - d. Do not require that licenses held in safekeeping be renewed at the time that the license expires.

- c. Do not hold safekeeping hearings every six months on those licenses that have been in safekeeping for more than 60 days.
- f. Do not hold a license renewal hearing before restoring a license that has been in safekeeping for more than two years.
- g. Do not investigate or otherwise determine the zoning designation of a property from which a licensee seeks to relocate.
- h. Make decisions or take actions at meetings other than open and public meetings.
- i. Allow licenses to be placed in safekeeping for almost any reason, including the inability or unwillingness of the licensee to pay a fine imposed by the ABC Board.
- j. Dismiss protestants for living further than 1800 feet from an establishment.

40. DC Official Code § 25-447(c) requires that the ABC Board hold a show cause hearing under the following circumstances:

“Within 30 days of receiving evidence supporting a reasonable belief that any licensee or permittee is in violation of the provision of this title or the regulations issued under it, the Board shall order the licensee or permittee, by personal service or certified mail, to appear before the Board not less than 30 days thereafter to show cause why the license or permit should not be revoked or suspended, or the licensee or permittee penalized.”

41. On April 12, 2010 Plaintiffs sent a letter to the ABC Board detailing the foregoing violations of law by the ABC Board. Plaintiffs asked the Board to hold a hearing.

On April 20, 2010 ABRA responded in writing on behalf of the Board denying

that the Board had failed to comply with the law. The ABC Board did not agree to hold a hearing pursuant to DC Official Code § 25-447(c).

COUNT ONE: 42 U.S.C. 1983

Plaintiffs reallege paragraphs 1 through 41, above.

42. The ABC Board failed to require Black Ride to renew its strip club license when the license expired on September 30, 2007 as required by DC Official Code § 25-791(d). The Board's failure to follow license renewal procedures prevented Plaintiffs from participating in the renewal process, including filing a protest and appearing at the protest hearing.

43. The Board failed to hold any of the safekeeping hearings on the Black Ride/Stadium license as required by DC Official Code § 25-791(c) and 23 DCMR § 704.2. If the ABC Board had held a safekeeping hearing every six months as required, there would have been six hearings between the time the Black Ride license was placed in safekeeping and the present. The Board's failure to hold any safekeeping hearings deprived Plaintiffs of six opportunities to protest the continued safekeeping of a license for a strip club on Queens Chapel Road.

44. The ABC Board and ABRA plan to restore or issue the strip club license to Stadium before holding a hearing as required by DC Official Code § 25-791(f), which requires a renewal hearing before the restoration of any license held in safekeeping for longer than two years. The Black Ride/Stadium license has been in safekeeping for more than three years. The refusal by the Board and ABRA to hold a hearing as required deprives the Plaintiffs of an opportunity to protest the restoration of a license for a strip club on Queens Chapel Road.

45. The ABC Board has failed to hold a hearing pursuant to DC Code § 25-447(c) despite receiving "evidence supporting a reasonable belief" that Title 25 of the DC Official Code was violated. The failure of the Board to hold a hearing deprives Plaintiffs of an opportunity to present evidence of violation of the DC Code.
46. The ABC Board's repeated failure to hold the contested hearings required by law violates the Plaintiffs' Constitutional right to petition the government for redress of grievances as provided for in the First Amendment to the Constitution.
47. The repeated failure of the ABC Board to publish or issue written orders or to make findings of fact as required by DC Code § 25-433 similarly violates Plaintiffs' Constitutional right to petition the government for redress of grievances. The Board's failure to publish or issue written orders and decisions denies Plaintiffs access to the courts because the District of Columbia Court of Appeals will only review the actions of a government agency if the petition is "filed within 30 days after notice is given . . . of the order or decision sought to be reviewed." D.C. App. R. 15. The failure of the ABC Board to publish or issue written decisions and orders effectively nails shut the court house door.
48. The ABC Board's failure to publish or issue written orders or decisions prevents Plaintiffs from seeking judicial review in the DC Court of Appeals of the following matters: (a) the relocation of Black Ride's license to 2127 Queens Chapel Road NE, (b) the renewal of Black Ride's license after the license expired on September 30, 2007, (c) the transfer of ownership of Black Ride's license to Moonlight, (d) the revocation of the transfer of ownership of Black Ride's license

to Moonlight, (c) the transfer of ownership of Black Ride's license to Stadium, (f) the continued holding of the Black Ride/Stadium license in safekeeping, (g) the restoration of Stadium's license out of safekeeping and into operation:

49. The repeated failure of the ABC Board to follow the process required by law for the renewal, relocation, transfer and safekeeping of the Black Ride/Stadium license is a violation of Plaintiffs' Constitutional due process rights because the failure prevents the Plaintiffs from participating in the liquor licensure process established by law and regulation. The ABC Board's failure in this regard is not merely technical or minor, but consists of the complete failure to follow the required process.

COUNT TWO: 42 U.S.C. 1985

Plaintiffs reallege paragraphs 1 through 49 above.

50. Members of the ABC Board have conspired with each other and with others not named in this action to deprive the Plaintiffs of their Constitutional rights to petition the government for redress of grievances and to due process by conspiring not to hold renewal and safekeeping hearings and by conspiring not to issue or publish written decisions and orders, which prevents Plaintiffs from seeking judicial review by the Court of Appeals of the District of Columbia. The conspiracy is a violation of 42 U.S.C. 1985.

COUNT THREE: 28 U.S.C. §§ 2201 and 2202

Plaintiffs reallege paragraphs 1 through 50 above.

51. The ABC Board acted unlawfully:

- a. The Board violated DC Code § 25-204.01(c)(4), which provides that "No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at an open meeting."
- b. The Board violated DC Official Code § 25-791(c) and 23 DCMR § 704.2 which require the Board to hold a safekeeping hearing every six months for liquor licenses held in safekeeping longer than 60 days.
- c. The Board violated DC Official Code § 25-501(c), which provides that "if a licensee is 90 days delinquent on payment of the renewal fee, the Board shall give notice to the licensee of its intent to revoke the license."
- d. The ABC Board violated DC Office Code §§ 25-433(a) and (c), which require that all decisions and orders be in writing and accompanied by findings of fact.
- e. The ABC Board violated DC Official Code § 25-205, which requires the Board to maintain complete and accurate records of all actions taken on license applications and all recommendations for or remonstrances against the granting of licenses.
- f. The ABC Board violated DC Official Code § 25-433(c), which requires the Board to "publish and maintain a compilation of its decisions and orders." The Board repeatedly and intentionally failed to publish its decisions and orders related to the Black Ride/Stadium license.
- g. The ABC Board violated DC Official Code § 25-433(a), which requires the Board to make affirmative findings of fact before approving an application. The Board conducted no investigation and made no findings

of fact for the applications to transfer the location and ownership of the license associated with Black Ride, Moonlight and Stadium.

- h. The Board violated DC Official Code § 25-374, which prohibits the transfer of a strip club license from a location zoned C3C to a location zoned CM2 if the second location is not located in the Central Business District.
- i. The ABC Board plans to imminently violate DC Official Code § 25-791(d) and (f) by restoring a strip club license that has been in safekeeping for more than three years to Stadium without first requiring a license renewal hearing.

52. The ABC Board acted without authority:

- a. The Board does not have the authority to dismiss protestants who live further than 1800 feet from an establishment. There is no such law, regulation or rule.
- b. The ABC Board does not have the authority to place a liquor license in safekeeping because the owner's lease has been terminated and the owner plans to relocate. DC Official Code § 25-791(b) defines the situations in which a license can be placed and maintained in safekeeping and the Board exceeded the authority under this provision.

53. The foregoing violations and unauthorized actions are illegal and violate

Plaintiffs' Constitutional right to petition the government for redress of grievances and Plaintiffs' right to due process by preventing Plaintiffs from participating in the liquor licensure process as provided by law.

RELIEF SOUGHT

Wherefore, Plaintiffs seek the following relief:

1. Plaintiffs seek a declaratory judgment that the ABC Board violated the DC Official Code and DC Municipal Regulations and ask the Court to enjoin future violations.
2. An injunction ordering the ABC Board to:
 - a. Issue written orders and findings of fact regarding (1) the relocation of Black Ride's license to 2127 Queens Chapel Road NE, (2) the renewal of Black Ride's license after the license expired on September 30, 2007, (3) the transfer of ownership of Black Ride's license to Moonlight, (4) the revocation of the transfer of ownership of Black Ride's license to Moonlight, (5) the transfer of ownership of Black Ride's license to Stadium, (6) the continued holding of the Black Ride/Stadium license in safekeeping, (7) the restoration of Stadium's license out of safekeeping and into operation.
 - b. Hold safekeeping and license renewal hearings as required by law and regulation.
3. Plaintiffs seek reasonable attorney's fees and costs pursuant to 42 U.S.C. 1988.
4. Plaintiffs seek any other relief that the Court finds just and proper.

PLAINTIFFS REQUEST A JURY.

Respectfully submitted,



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4/22/10

Date



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Date

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FOR THE DISTRICT OF COLUMBIA
OFFICE OF THE GENERAL COUNSEL FOR
THE DEPARTMENT OF CONSUMER
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