



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 150 – MOTION / REQUEST

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 18568

Motion/Request of: ☐ Applicant ☐ Petitioner ☒ Appellant ☐ Party ☐ Intervenor ☐ Other _____

Motion/Request to:

- | | |
|---|---|
| ☐ Amend the Relief Sought | ☐ Reopen a Hearing (before decision) |
| ☐ Waive Posting / Affidavit of Posting Requirement | ☐ Dismiss on the Merits |
| ☐ Waive Notice Requirement to Shorten Period of Time Case is
Advertised in the <i>DC Register</i> | ☐ Postpone |
| ☐ Accept a Proffered Expert Witness | ☐ Continue |
| ☐ Allow Non-Authorized Representative to Perform Cross-
Examination | ☐ Correct a Transcript |
| ☐ Reopen the Record | ☐ Waive the following Time Deadline (i.e. 14-day filing deadline):
_____ |
| | ☒ Other: <u>Amended Motion to Deny Intervenor's Motion to Dismiss</u> |

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion or request, including relevant references to the Zoning Regulations or Map.

CERTIFICATE OF SERVICE

I hereby certify that on this 09 day of June, 2013

I served a copy of the foregoing Motion or Request to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of

Planning in the above-referenced ZC or BZA case via: ☐ Mailed letter ☐ Hand delivery ☐ E-Mail ☒ Other IZIS

Signature:

Print Name: German Xavier Jimenez, Esq.

Firm/Organization:

Address: 1800 Tysons Blvd, Mclean Va 22102

Phone No.: 202-412-1995 E-Mail: german.xavier.jimenez@gmail.com

To be notified of hearing and decision: (Maker of Motion/Request or Authorized Agent)

In the event an authorized agent files a Motion or Request on behalf of the Maker of the Motion or Request, a letter signed by the Maker of the Motion or Request authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name: Shaw Dupont Citizens Alliance, Inc.

Address: PO Box 73153, Washington, DC 20056

Phone No.: 202-683-7322 E-Mail: joan.sterling@comcast.net

Board of Zoning Adjustment
District of Columbia
CASE NO. 18568
EXHIBIT NO. 35

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
Shaw Dupont Citizens Alliance for the)
Administrative Decision of DCRA in its)
Interpretation of 11 DCMR Sections 1901.6 and 1900.1)
for 1346 T Street, NW, Washington DC 20009)
Lot 0088, Square 238)
Appeal No. 18568)

MOTION TO DENY INTERVENOR'S MOTION TO DISMISS

Shaw-Dupont Citizens Alliance, Inc. (hereinafter the "Appellant" or "SDCA") requests that the Board of Zoning Adjustment (hereinafter "BZA") **deny** A1's Market, LLC's (hereinafter "Intervenor's") motion to dismiss dated May 8, 2013.

BACKGROUND

Intervenor's seeks a dismissal of the appeal for lack of timeliness and standing, both of which are without merit, as discussed further herein.

TIMELINESS

As stated in its appeal, SDCA is appealing two interpretive decisions of the Department of Consumer and Regulatory Affairs ("DCRA") related to Sections 1901.6 and 1900.1 of Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations") (with Sections 1900 thru 1999 of the Zoning Regulations hereinafter referred to as the "ARTS Overlay District").

Intervenor, in its motion to dismiss, acknowledges that the two decisions related to interpretations of the ARTS Overlay District, which are subject of the appeal, were made on February 6, 2012 and March 8, 2013. In the instant case, SDCA's appeal was filed on March 28, 2013, which is well within the sixty (60) day period requirement of Section 3112.2(a) of the Zoning Regulations. Accordingly, Intervenor's request for dismissal for lack of timeliness must be denied since the time period requirement of Section 3112.2(a) of the Zoning Regulations has been satisfied.

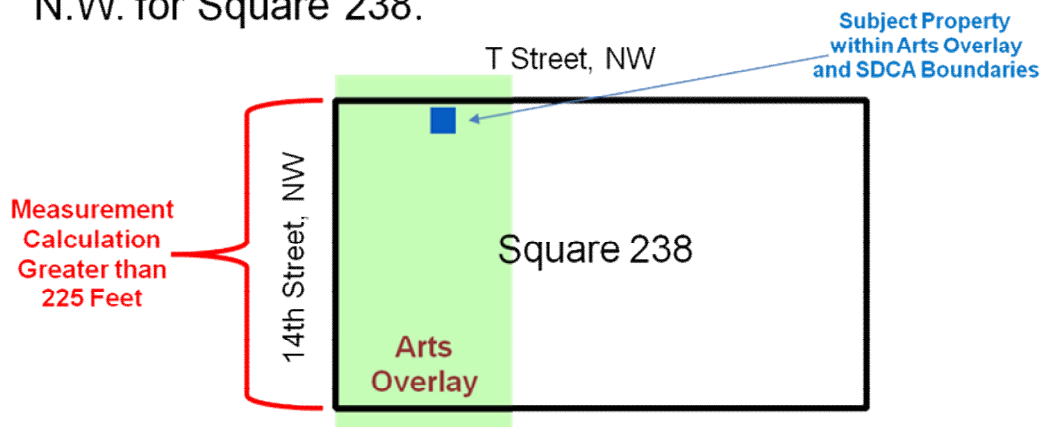
It should be noted that Intervenor erroneously alleges in its motion to dismiss that the administrative decision that Appellant "actually now complains of ...was made over nine years ago, when the use for the property was established by issuance of a certificate of occupancy to Kalechristos N. Jima and Fetawork B. Reta on January 7, 2004." Again, Intervenor erroneously alleges that the administrative decision complained of is related to a certificate of occupancy

issued on January 26, 2009, to Talley R. Holmes, Jr., the property owner of 1346 T Street, NW (the "Subject Property") for purposes of operating an establishment know as Café Collage, a coffee shop with a Class DT License¹, which was cancelled on the December 5, 2012.² Also, it is important to note that Café Collage operated without a kitchen as Subject Property does not currently have a kitchen³. Furthermore, as stated in Intervenor's Request to Intervene, it is Intervenor intention is build out the premises to open a restaurant and bar at Subject Property⁴.

To be clear, Appellant is appealing DCRA's interpretations of the ARTS Overlay District, which came into force on August 20, 2010 when the ARTS District Overlay was amended by the Zoning Commission in its Notice of Final Rule making and Z.C. Order No. 10-17.⁵ In relevant part for this appeal, DCRA's erroneous interpretations of Sections 1901.6 and 1900.1 of the ARTS Overly District for the Subject Property arose in connection with Intervenor's application ABRA-91140 with the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for a new class CT license⁶ for premises located at the Subject Property. See Diagram 1 below that depicts the interpretation issue.

Diagram 1 Title 11 DCMR 1901.6

With respect to Square 238, the **Measurement Calculation** is equal to 225 feet, which is 50 percent of the linear foot frontage as measured by 14th Street, N.W. for Square 238.



¹ License "Class" generally refers to the type of alcoholic beverage that may be sold/served at a particular establishment. Licensees are assigned to classes ranging from A to G. License Classes C and D apply to on-premises retailers such as restaurants, taverns, and hotels. Class C may sell/serve beer, wine, and spirits while Class D may sell/serve beer and wine only.

² See Exhibit 1.

³ See Exhibit 2 - ABRA Investigator Report, Page 3, where the Intervenor's member/owner states there is no kitchen at Subject Property. Also see Page 10 where Intervenor's member/owner states that she and her husband live at Subject Property.

⁴ See Exhibit 2A.

⁵ See Exhibit 3.

⁶ See Exhibit 3A.

Section 199.1 of the Zoning Regulations provides for the following definitions:

Prepared food - food that is assembled, but not heated by means other than microwave or toaster, on the premises of a prepared food shop. (54 DCR 9393)

Prepared food shop - a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor. (54 DCR 9393)

Fast food establishment - a place of business, other than a "prepared food shop," where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:

- (a) The premises include a drive-through;
- (b) Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or
- (c) Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.

A proposed or existing establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carryout service that is clearly subordinate to its principal use shall not be deemed a fast-food establishment. (54 DCR 9393)

Restaurant - a place of business that does not meet the definition of a "fast food establishment" or "prepared food shop," where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. Any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises. (32 DCR 4374 and 54 DCR 9393)

Accordingly, based on the fact that Café Collage did not have a kitchen and operated as a coffee shop, its use was that of a "Prepared Food Shop" pursuant to Section 199.1 of the Zoning Regulations.

In contrast, Section 25-101(52) of Title 25 of the District of Columbia Official Code ("ABC Code") defines "Tavern" as "a space in a building which: (A) Is regularly used and kept open as

a place where food and alcoholic beverages are served; (B) May offer entertainment, except nude performances, and offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement; and (C) Does not provide facilities for dancing for its employees or entertainers."

Section 25-101(43) of the ABC Code defines a Restaurant as follows:

"Restaurant" means a space in a building which shall:

(A) (i) Be regularly ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food; (ii) Be held out to and known by the public as primarily a food-service establishment; (iii) Have all advertising and signs emphasize food rather than alcoholic beverages or entertainment; (iv) Be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements); (v) Have its kitchen facilities open until at least 2 hours before closing; (vi) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or offering facilities for dancing; (vii) If possessing an entertainment endorsement, be permitted to charge a cover and advertise entertainment, but shall not primarily advertise drink specials; (viii) Be permitted to have recorded and background music without obtaining an entertainment endorsement; (ix) Not have nude performances; and (x) Have annual gross food sales of \$ 1500 or \$ 2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy), depending on license class; or

(B) (i) Have adequate kitchen and dining facilities; (ii) Keep its kitchen facilities open until 2 hours before closing; (iii) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or having facilities for dancing; (iv) Be permitted to have recorded and background music without obtaining an entertainment endorsement; (v) Not have nude performances; and (vi) Have the sale of food account for at least 45% of the establishment's gross annual receipts.

Therefore, Café Collage, a Prepared Food Shop within the meaning of the Zoning Regulations, could only have been entitled to a "Tavern" ABC license pursuant to the ABC Code. The matrix in Diagram 2 below shows Use under the Zoning Regulations versus ABC License establishment under the ABC Code for Café Collage versus that proposed by Intervenor.

Diagram 2

Zoning Use:	ABC License Establishment:	
	Tavern	Restaurant
Restaurant	Proposed by Intervenor	
Prepared Food Shop	Café Collage	

Prior to the issuance of a license to serve alcoholic beverages, Section 404.1 of Title 23 of the District of Columbia Municipal Regulations ("ABC Regulations") provides, in relevant part, that no license shall be issued to any person unless that person is the holder of a valid certificate of occupancy for the premises in which the business for which the license is sought is located, and is also the holder of all other licenses and permits required by law or regulation for that business.

Accordingly, because the ARTS Overlay District use limitation or cap had been satisfied for Square 238, SDCA requested that DCRA enforce the ARTS District Overlay in anticipation of a new certificate of occupancy to be issued to Intervenor. However, DCRA erroneously concluded in its decisions, subject of this appeal, that the ARTS Overlay District was not applicable for Subject Property, and on February 20, 2013, DCRA issued to the Intervenor a new certificate of occupancy, Permit Number C01301182, as an ownership change.

Section 3203.8 of the Zoning Regulations provides as follows:

Any use that is authorized by a certificate of occupancy may be established and continued pursuant to the terms of the certificate and the provisions of this title in effect on the date that the certificate is issued, subject to the following conditions:

- (a) The use shall be designated on the certificate of occupancy in terms of a use classification that is established by this title;
- (b) The use shall be established within six (6) months of the date on which the certificate is issued; and
- (c) Any amendment of the use authorized by the certificate shall comply with the provisions of this title in effect on the date that the certificate is amended.

In the instant case, the use authorized by a certificate of occupancy (i.e., CO0901011 dated January 1, 26, 2009 and formerly CO 68314 dated January 7, 2004) may be established and continued pursuant to the terms of the certificate (i.e., CO01301182 dated February 20, 2013) and the provisions of this title (i.e., Title 11) in effect on the date the certificate is issued (i.e., February 20, 2013 for CO01301182). Since Sections 1901.6 and 1900.1 of the ARTS Overlay District (i.e., provisions of Title 11 in force as of August 20, 2010) were in effect on February 20, 2013, Intervenor's certificate of occupancy could only be issued pursuant to the provisions of the ARTS Overlay District.

If DCRA had properly interpreted the provisions of the ARTS Overlay District in question, then Intervenor's proposed tavern use as set forth in CO01301182 pursuant to an "ownership change" could not be established and continued since the cap for drinking establishments for Square 238 had been met. Specifically, this is because Section 1900.3 of the ARTS Overlay District provides that "the ARTS Overlay District and the underlying zoning shall constitute the Zoning Regulations for the geographic area identified in § 1900.1" and that "where there are conflicts between this chapter and the underlying zoning, the more restrictive regulations shall govern." Furthermore, Section 1906.1 of the ARTS Overlay District provides, in relevant part, that the

BZA "may grant exceptions under Section 3104 from any of the requirements or limits of the ARTS Overlay District other than § 1901.6." Thus, in the case at hand, the more restrictive regulation for Square 238 and portions thereof and properties in that Square (including, but not limited to, Subject Property) is that of Section 1901.6 of the ARTS Overlay District. Therefore, no tavern use may be established and continued pursuant to an "ownership change" for Subject Property because of application of the drinking establishment use limitation of the ARTS Overlay District.

STANDING

In its motion to dismiss, Intervenor erroneously alleges that SDCA has not properly alleged that it has standing to bring the appeal.

Section 3112.2 of the Zoning Regulations provides, in relevant part, that "any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely appeal with the Board."

In its appeal, SDCA specifically outlines its grievance as follows:

By not applying the use limitation as interpreted herein, there is effectively no eating/drinking use limitation for portions of squares (i.e., streets other than 14th Street, NW and U Street, NW) within the Arts District area in contradiction of the purpose and policy of the Arts District, which is intended, inter alia, to encourage a mix of uses (e.g., 100 percent of T Street, NW frontage within the Arts District area may be drinking establishments despite over concentration of drinking establishments for Square 238 and portions thereof within the Arts District area).

To add more clarity, Section 101.1 of the Zoning Regulations states the following:

In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- (a) Provide adequate light and air;
- (b) Prevent undue concentration of population and the overcrowding of land; and
- (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

As set forth in Article III of the SDCA bylaws⁷, the boundaries of SDCA is defined as the area bounded to the: East to 12th Street, NW; South to S Street, NW; West to 15th Street, NW; and North to U Street, NW. SDCA has many members that reside or own property within the ARTS Overlay District and Square 238. In fact, SDCA has a member that owns property abutting Subject Property.⁸ Since Square 238 and portions thereof (including the Subject Property) are within the boundaries of SDCA, SDCA⁹ and its membership should enjoy the benefits of the Zoning Regulations outlined in Section 101.1 and, more specifically, the benefits of the ARTS Overlay District.

Specifically, Section 1900.2 of the ARTS Overlay District states its purpose is to:

- (a) Encourage a scale of development, a mixture of building uses, and other attributes such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the Comprehensive Plan;
- (b) Require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses;
- (c) Provide for an increased presence and integration of the arts and related cultural and arts-related support uses;
- (d) Expand the area's housing supply in a variety of rent and price ranges;
- (e) Expand business and job opportunities, and encourage development of residential and commercial buildings;
- (f) Strengthen the design character and identity of the area by means of physical design standards;
- (g) Encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings; and
- (h) Foster eighteen (18) hour activity and increased public safety.

Without proper enforcement of Section 1901.6 of the ARTS Overlay District with respect to drinking establishments, SDCA and its membership are denied the benefits granted by the ARTS

⁷ See Exhibit 4.

⁸ Ron Renchard , a SDCA member, is an abutting a property owner at 1348 T Street, NW. See Exhibit 5.

⁹ See [Goto v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d 917 \(D.C.1980\)](#). There the court ruled that the owner of property adjacent to the rear yard of the subject property, on which the owner of that property had built a kiln, was an aggrieved person within the meaning of the zoning regulation because the neighbor resided “immediately behind the subject site.” Also, see [Citizens Ass'n of Georgetown v. Simonson, 131 U.S.App.D.C. 152, 153, 403 F.2d 175, 176 \(1968\)](#) (per curiam), cert. denied, 394 U.S. 975, 89 S.Ct. 1454, 22 L.Ed.2d 755 (1969) (Congressional direction to Alcoholic Beverage Control Board to consider “the wishes of the persons residing or owning property in the neighborhood” in issuing licenses and CAG’s allegation that many members reside or own property within neighborhood establishes nexus between plaintiff’s interests and adverse action of defendants required to support judicial review of relicensing of saloon).

Overlay District. Furthermore, because DCRA failed to properly interpret and enforce the ARTS Overlay District, SDCA and its membership were required to spend scarce time, resources, and cost to protest Intervenor's application ABRA-91140 with the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for a new class CT.¹⁰ According, SDCA, an aggrieved person, has satisfied its requirements under Section 3112.2 of the Zoning Regulations.

CONCLUSION

For the reasons stated in this motion, the Appellant requests that the BZA **deny** Intervenor's motion to dismiss dated May 8, 2013 because the Appellant filed its appeal within the time period requirement of Section 3112.2(a) of the Zoning Regulations and because Appellant has standing in the appeal.

¹⁰ See Exhibit 5

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

In the Matter of:

Glory, LLC
t/a Cafe Collage

Holder of a Retailer's
Class DT License

at premises
1346 T Street, N.W.
Washington, D.C. 20009

License No: ABRA-081462

Order No: 2012-517

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

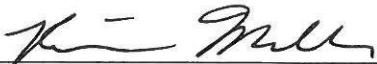
ORDER CANCELLING LICENSE

On November 12, 2012, Glory, LLC, t/a Cafe Collage, located at 1346 T Street, N.W., filed a request to cancel its Retailer's Class DT License No. ABRA-081462.

It is hereby **ORDERED** on this 5th day of December, 2012, that Glory, LLC's License No. ABRA-081462 is **CANCELLED**. A copy of this Order shall be sent to the Licensee.

Glory, LLC
t/a Cafe Collage
License No. ABRA-081462
Page 2

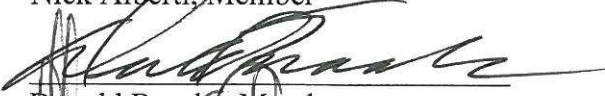
District of Columbia
Alcoholic Beverage Control Board



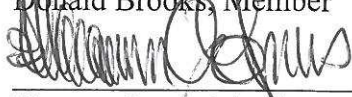
Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

Mike Silverstein, Member

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

Hicks, Tiwana (ABRA)

From: Risa Hirao [rhirao@pascalweiss.com]
Sent: Monday, November 12, 2012 4:42 PM
To: Jenkins, Martha (ABRA); Hicks, Tiwana (ABRA)
Cc: Jenkins, Martha (ABRA); 'Paul Pascal'; 'Jennifer Kim'
Subject: Glory, LLC t/a Cafe Collage (ABRA 081462, Class DT)

Our office represents the licensee, Glory, LLC t/a Café Collage. On behalf of the licensee, please accept this email as a formal request to cancel its alcoholic beverage license, Class DT, ABRA 081462.

If you have any questions, please feel free to contact me.

Sincerely,

Risa Hirao, Esq.
Attorney at Law
Pascal & Weiss, PC
1008 Pennsylvania Avenue, SE
Washington, D.C. 20003
(202)544-2200
(202)544-5839 (fax)
rhirao@pascalweiss.com
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Government of the District of Columbia
Alcoholic Beverage Regulation Administration

Protest Report
Of
Al's Market, LLC
Trading as
COMPASS ROSE
(Formerly called STREET)
1346 T Street N.W.
License Class "C" Tavern License
License # ABRA- 091140 (New)
Case# 13-Pro-0006

Report prepared by:
FELICIA MARTIN
ABRA Investigator

April 2013

I. INTRODUCTION

Alcoholic Beverage Regulation Administration (ABRA) Investigator Felicia Martin was assigned the protest investigation of a New Class "C" Tavern application for the ABC License for Al's Market, LLC, trading as STREET.

On Wednesday, December 12, 2012, the ABRA records reflect that STREET applied for a New License, Class "C" Tavern (Exhibit #1)

Sometime in January 2013, Rose M. Previte co-owner of STREET requested a trade name change and on Wednesday, March 13, 2013, the ABRA Board approved the trade name change request. The new trade name will be "Compass Rose" (Exhibit #2).

The ABC License application is being protested by:

- Shaw Dupont Citizens Alliance, Inc.- Represented by Joan Sterling- President and Elwyn Ferris, designated representative protesting on the grounds of peace order and quiet (Exhibit #3),
- G. Ronald Renchard- Abutting resident protesting on the grounds of over-concentration (Exhibit #3A),
- Group of 14- Represented by Erling Bailey and German Jimenez protesting on the grounds of residential parking and vehicular and pedestrian safety (Exhibit #3B).

II. PROTEST ISSUES

A. Formal Protest Issues

Compass Rose will adversely affect the peace, order and quiet of the neighborhood, adversely impact the residential parking and over-concentration of taverns/restaurants.

Protestant Interviews

On Friday, March 30, 2013, Investigator Martin telephonically interviewed Mr. Jimenez who stated that his major concern is the hours of service for Compass Rose. Mr. Jimenez stated that with the proposed closing hours of 2 a.m., and/or 3 a.m., Compass Rose's patrons will add to the already noisy area that currently exists when the surrounding ABC establishments deposit its patrons into their neighborhood at the end of the night. Mr. Jimenez stated that currently the establishment has a pending matter with the District of Columbia's Department of Zoning (DCOZ) addressing the over concentration of taverns and restaurants in their neighborhood.

On Monday, April 1, 2013, Investigator Martin telephonically interviewed Mr. Bailey who stated that during a community meeting Mrs. Previte was not fully disclosing the intentions

of the establishment. For example, Mrs. Previte provided conflicting statements regarding whether the establishment will operate as a restaurant or a tavern and she changed her responses to appease whomever she was talking to. Mr. Bailey stated that the establishment does not have a kitchen. Mr. Bailey stated that another concern is that of Michael (Mike Shuster), co-owner of Compass Rose (who also owns four other ABC establishments– Pour House, 18th Amendment, Trusty's Bar and Star & the Shamrock). Mr. Bailey stated that according to ABRA records Michael has operated three of the four establishments irresponsibly. Mr. Bailey stated that Compass Rose falsified information on their zoning application indicating to DCOZ that each floor of the establishment will be used for the purpose of a tavern or restaurant, when in fact the establishment will be utilizing the first floor and basement level while the other two floors are being used as residential space. Mr. Bailey stated that Mrs. Previte advised the community that although the establishment lacks a kitchen she intends to install a kitchen on the rear porch. Mr. Bailey stated that he has since learned DCOZ's zoning regulations will not allow Mrs. Previte to build a kitchen in the rear of the establishment.

Mr. Bailey stated (by way of an e-mail dated March 30, 2013 Exhibit #4), that Michael and Mrs. Previte were not truthful when they answered "No" to question #7, on their ABRA application whereas it asks if the applicant previously held a license for the sale of alcoholic beverages when in fact they had/have (See Exhibit #1)

On Thursday, March 28, 2013, Investigator Martin telephonically attempted to contact Mr. Renchard regarding this protest and discovered that the contact number provided by Mr. Renchard belongs to a doctor's office located in Hickory, North Carolina. The voice recorder queued callers to a waiting area or asked the caller to input the desired extension. ABRA's record reflected that Mr. Renchard did not provide an extension.

On Friday, April 19, 2013, Investigator Martin made another attempt to contact Mr. Renchard, by way of the same number and during traditional business hours and received the same message. However, the recording asked of callers to remain on the line to speak with an operator. After holding for approximately five minutes to speak with an operator no one answered the call, so Investigator Martin terminated the call.

Licensee Interview

On Thursday, April 4, 2013, Investigator Martin met with Ms. Previte regarding this protest. Mrs. Previte stated that since 2002, she and her husband have been DC residents. Mrs. Previte stated that the business plan for Compass Rose is to be a location where families can gather. The concept is to specialize in tapas style dinning – also known as small plates, and serve beer/wine and cocktails. The establishment will serve lots of meat pies, grilled kabobs and soups. Mrs. Previte believes Compass Rose will be the ideal neighborhood spot and will not be a burden to the community. Mrs. Previte stated that although the building is a fixer upper she plans to open the business by the end of summer. Mrs. Previte stated that the establishment does not have a kitchen; however, she will be submitting applications to the appropriate agencies for construction and approval to install a kitchen. Mrs. Previte stated that she has never held an ABC License and Compass Rose will be her first business.

III. CHARACTERISTICS OF THE NEIGHBORHOOD

A. Zoning

Compass Rose is located in a C-3-A Zone in an area of the District of Columbia known as the Shaw Dupont area. According to the zoning regulations, a C-3-A Zone permits matter-of-right medium density development, with a density incentive for residential development within a general pattern of mixed-use development to a maximum lot occupancy of 75% for residential use and 100% for all other uses, a maximum FAR of 4.0 for residential and 2.5 FAR for other permitted uses and a maximum height of sixty-five (65) feet. Rear yard requirements are twelve (12) feet; one family detached dwellings and one family semi-detached dwellings side yard requirements are eight (8) feet.

B. Nearby Establishments

According to a map produced by the District of Columbia Geographic Information System there are no schools, located within 400 feet of Compass Rose (Exhibit #5).

According to the District of Columbia Geographic Information System, there are 50 Board approved ABC establishments located within 1200 feet of Compass Rose (Exhibit #6); however, since the last entry to the District of Columbia Geographic Information System three additional ABC establishments have opened or are scheduled to open since the last system update.

ABRA's records reflect that Compass Rose will open its business in an area which consists of 23 restaurants, 16 taverns, 2 nightclubs, 5 multipurpose venues, 2 grocers, 4 (B) establishments (an establishment which sells beer/wine), and 1 (A) establishment (an establishment which sells beer/wine & spirits). These establishments are listed below:

ESTABLISHMENT	ADDRESS	SIDEWALK CAFÉ	SUMMER GARDEN	RETAIL CLASS
1. Yes Organic Market	2125 14 th Street N.W.	N/A	N/A	B
2. Marvin	2007 14 th Street N.W.	No	No	Tavern
3. La Fonda	2100 14 th Street N.W.	No	No	Restaurant
4. U Street Wine and Beer	1351 U Street N.W.	N/A	N/A	B
5. Blackbyrd *	2005 14 th Street N.W.	No	No	Restaurant
6. Busboys and Poet	1390 V Street N.W.	No	No	Restaurant
7. Jim *	2017 14 th Street N.W.	No	No	Tavern
8. Music & Arts Tropicalia	2001 14 th Street N.W.	No	No	Nightclub

9. Red Lounge	2013 14 th Street N.W.	No	Yes	Restaurant
10. Lost Society	2001 14 th Street N., W.	No	Yes	Tavern
11. DC Noodles (License in Safe Keeping)	1410 U Street N.W.	No	No	Restaurant
12. Tabq	1336 U Street N.W.	No	Yes	Tavern
13. Twin Jazz	1344 T Street N.W.	No	Yes	Tavern
14. Codmother (Lower Level)	1334 U Street N.W.	No	No	Tavern
15. Touchdown (Upper Level)	1334 U Street N.W.	Yes	No	Tavern
16. Merlot's Masterpiece	1512 U street N.W.	No	No	Multipurpose
17. El Paraiso	1918 14 th Street N.W.	No	No	Restaurant
18. Policy	1904 14 th Street N.W.	Yes (2)	Yes	Restaurant
19. Source	1835 14 th Street N.W.	No	No	Multipurpose
20. Bar Pilar	1833 14 th Street N.W.	Yes	No	Tavern
21. Masa 14	1825 14 th Street N.W.	Yes	Yes	Restaurant
22. Black Cat	1811 14 th Street N.W.	Yes	No	Multipurpose
23. El Centro	1819 14 th Street N.W.	Yes	Yes	Restaurant
24. Standard	1801 14 th Street N.W.	Yes	Yes	Restaurant
25. Cork Market and Tasting	1805 14 th Street N.W.	No	No	Grocery
26. Fainting Goat	1330 U Street N.W.	No	No	Tavern
27. Next Door	1211 U Street N.W.	No	No	Tavern
28. The Saloon	1205 U Street N.W.	No	No	Tavern
29. U Street Music Hall	1115 U Street N.W.	No	No	Multipurpose
30. Lincoln Theatre	1215 U Street N.W.	N/A	N/A	Multipurpose
31. Indulj	1208 U Street N.W.	No	Yes	Tavern

32. Crème Café & Lounger	1322 U Street N.W.	No	Yes	Restaurant
33. Whitelaw	1846 13 th Street N.W.	N/A	N/A	Grocery
34. Black Orange	1931 14 th Street N.W.	Yes	No	Restaurant
35. Lalibela Ethiopian	1415 14 th Street N.W.	Yes	No	Restaurant
36. Coppis Pizza	1414 U Street N.W.	Yes	No	Restaurant
37. Cork	1720 14 th Street N.W.	Yes	No	Restaurant
38. Alero	1301 U Street N.W.	Yes	Yes	Restaurant
39. Pure Nightclub & Lounge	1326 U Street N.W.	No	Yes	Nightclub
40. Islander Caribbean Restaurant & Lounge	1201 U Street N.W.	Yes	No	Restaurant
41. Sav-on-Liquors	1414 14 th Street N.W.	N/A	N/A	A
42. Café Saint Ex	1847 14 th Street N.W.	Yes	No	Tavern
43. Matchbox	1901 14 th Street N.W.	Yes	No	Restaurant
44. Bistro La Bonne	1340 U Street N.W.	No	Yes	Restaurant
45. Desperados Pizza	1342 U Street N.W.	No	Yes	Tavern
46. Next Door	1211 U Street N.W.	No	No	Tavern
47. Ulah Bistro	1214 U Street N.W.	No	No	Restaurant
48. U Street Wine & Bar	1351 U Street N.W.	N/A	N/A	B
49. Bestway Liquors	2011 U Street N.W.	N/A	N/A	B
50. Patty Boom Boom	1359 U Street N.W.	No	No	Tavern
51. Taqueria Nacional	1409 T Street N.W. (Coming Soon)	Yes	No	Restaurant
52. Stub's Kitchen and Wine (Coming Soon)	1401 T Street N.W.	Yes	No	Restaurant
53. Jo Jo Restaurant & Bar	1518 U Street N.W.	No	No	Restaurant

C. Parking

Compass Rose is located, at 1346 T Street N.W., and has no on-site parking. The establishment is bounded by 14th & T Street to the North, South and West, and T Street & 13th Street to the East. Parking signs in the area are as follows:

T Street spanning from the 1300 block thru the 1000 block, offers a combination of parking areas:

- Metered parking
- 2 Hour parking 9a.m.- 6:30 p.m. Monday thru Friday
- Two hour parking from 7:00 a.m. to Midnight Monday thru Sunday
- No Standing or Parking Zone
- Loading Zone from 7:00 a.m. - 6:30 p.m.
- Zone 1 & 2 permit parking

D. Bus Stops / Subway

The U Street African-American Civil War Memorial Cardozo Subway Station is located in the 1200 block of U Street N.W. (Exhibit #7), and is within walking distance of Compass Rose. Approximately three different Metrobus lines operate along the 14th Street corridor, 52, 53 and 54, and the bus stop is located at the corner of 14th & T Street N.W. (Exhibit #8), which is within walking distance of Compass Rose.

A. Exterior and Interior

Compass Rose is situated in Ward 1, and located at 1346 T Street N.W., in a four story, brick building and the business will operate from the basement and first floor level (Exhibit #9). The third and fourth floors are used as residential living space. To the left of the establishment is a residential home (Exhibit #10) and to the right of the establishment is Café Saint Ex, an ABC establishment (See Exhibit #10). The side doors depicted in the photograph are not used by patrons of Café Saint Ex. A portion of Compass Rose is slated to be used as a Sidewalk Café (Exhibit #11), and a portion of the rear is slated to be used as a Summer Garden (Exhibit #12).

The interior of Compass Rose is small. The first floor level will have a bar and dining area (Exhibit 13 & 13A). The basement level runs the same length as the building and will also be used as a customer area for dining (Exhibit #14 & 14A), and restrooms are located on the basement level.

B. Hours

The proposed hours of operation, alcohol sales, Sidewalk Café/Summer Garden and entertainment are listed below:

Establishment Hours (62 seats approved)

DAY OF THE WEEK	HOURS OF OPERATION	HOURS OF ALCOHOL SALES
Sunday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Monday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Tuesday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Wednesday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Thursday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Friday	7:00 a.m.- 3:00 a.m.	8:00 a.m.- 3:00 a.m.
Saturday	7:00 a.m.- 3:00 a.m.	8:00 a.m.- 3:00 a.m.

Sidewalk Café (15 seats suggested per licensee)

DAY OF THE WEEK	HOURS OF OPERATION	HOURS OF ALCOHOL SALES
Sunday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Monday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Tuesday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Wednesday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Thursday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Friday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Saturday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.

Summer Garden (14 seats suggested per licensee)

DAY OF THE WEEK	HOURS OF OPERATION	HOURS OF ALCOHOL SALES
Sunday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Monday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Tuesday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Wednesday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Thursday	7:00 a.m.- 1:00 a.m.	8:00 a.m.- 1:00 a.m.
Friday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.
Saturday	7:00 a.m.- 2:00 a.m.	8:00 a.m.- 2:00 a.m.

Hours of Entertainment (inside the establishment)

The proposed inside entertainment hours will be Sunday thru Thursday 6 p.m.-2 a.m., and Friday/Saturday 6 p.m.-3a.m.

Hours of Entertainment (outside the establishment)

The proposed Summer Garden and Sidewalk Cafe entertainment hours will be Sunday thru Thursday 6 p.m.-1 a.m., and Friday/Saturday 6 p.m.-2 a.m.

C. Waste Disposal

Compass Rose will dispose of its waste in a dumpster shared by Café Saint Ex and collection will be five days a week.

IX. VISITS TO THE PREMISES

Investigator Martin monitored Compass Rose on 11 separate occasions from 3-29-2013 to 4-15-2013.

NO.	DAY	DATE	TIME	WEATHER
1	Friday	3-29-2013	3:25 a.m. to 3:30 a.m.	Clear/Chilly
2	Saturday	3-30-2013	3:15 a.m. to 3:25 a.m.	Clear/Chilly
3	Monday	4-1-2013	1:00 p.m. to 1:45 am.	Sunny/Pleasant
4	Tuesday	4-2-2013	12:45 p.m. to 1:00 p.m.	Sunny/Cold
5	Thursday	4-4-2013	10:55 a.m. to 11:00 a.m.	Partly Sunny/Chilly
6	Friday	4-5-2013	9:35 a.m. to 9:35 a.m.	Sunny/Pleasant
7	Tuesday	4-9-2013	12:30 a.m. to 12:40 a.m.	Sunny/Warm
8	Thursday	4-11-2013	12:15 a.m. to 12:25 a.m.	Clear/Chilly
9	Friday	4-12-2013	11:45 p.m. to 1:55 p.m.	Clear/Chilly
10	Saturday	4-13-2013	1:45 a.m. to 1:50 a.m.	Clear/Chilly
11	Monday	4-15-2013	3:15 p.m. to 3:20 p.m.	Partly Cloudy/Chilly

V. OBSERVATIONS REGARDING PROTEST ISSUES

This section will describe observations by ABRA investigators monitoring the establishment regarding the protest issues.

A. Noise heard in residential areas

During the monitoring of Compass Rose, no noise was heard emanating from the establishment as the establishment has not begun operation.

B. Operations

On each visit to Compass Rose, the establishment was closed and no trash concerns were attributed to Compass Rose.

C. Loitering

No loitering was observed.

D. Investigator's Observations

During the April 4, 2013, visit Investigator Martin discussed with Mrs. Previte the lack of a kitchen and the ability to provide the meals described and Ms Previte stated that she will have an operable kitchen in place, before the establishment opens for business.

Also during the visit Investigator Martin took notice of a door which appeared to lead to another level (Exhibit #15), and Mrs. Previte stated that she and her husband live above the establishment. Mrs. Previte escorted Investigator Martin to the third and fourth floor. Ms. Previte stated that the third floor will be used as an office, although the space was being used as a sleeping area with a bed, bathroom, full kitchen and things associated with home living. The fourth floor consisted of several large plastic bags, a blow-up mattress, and clothing. Mrs. Previte stated that the plastic bags consisted of papers. The stairway which leads to and from the third and fourth floor leads directly to the first floor business area (See Exhibit #15). There is no separate entrance to the residential areas Mrs. Previte stated that before the opening of Compass Rose a residential entrance separate from the business will be constructed.

Mrs. Previte has not secured a Certificate of Use (C of U) for the Sidewalk Café or the Summer Garden. The Certificate of Occupancy does not have language that permits outdoor seating (Exhibit #16). Investigator Martin advised Mrs. Previte that she would need to obtain the appropriate certificates for outdoor seating and Mrs. Previte stated that she was not aware that she would need to obtain outdoor seating approval, and besides she understood the previous licensee had approved outdoor seating.

ABRA's record reflected that as of Tuesday, April 23, 2013, the below listed information was found regarding Mr. Schuster's ownership in four other ABC establishments and their Histories (Exhibit #17, #17A & 17B):

ESTABLISHMENT NAME / ADDRESS	OWNERSHIP	HISTORY	RETAIL CLASS
18 th Amendment 613 Pennsylvania Avenue S.E.	Mike Schuster- Managing Member, James Spore- LLC Member, Marl Menard- LLC Member	2/12/11: Case #11-CMP-00046 , Retailer's books and records; Importation and qualifications. 2/23/11: The Board referred to the staff for settlement.	Tavern

		7/20/11: The Board accepted an OIC of a \$2,000 fine payable within 30 days. 8/19/11: Fine paid.	
Trusty's Bar 613 Pennsylvania Avenue S.E.	Joe Englert- President, Mike Schuster- Vice President, Colin Laverty- Treasurer, Mark Menard- Secretary	1/22/11: Case #11-251-00029 , Execution of search warrant. 2/2/11: The Board requested that enforcement continue to monitor the establishment.	Tavern
Pour House 319 Pennsylvania Avenue S.E.	Joe Englert- President, Mike Schuster- Vice President, Colin Laverty- Treasurer, Mark Menard- Secretary	9/1/12: Case #12-251-00332 , Sexual abuse. 11/7/12: NFA 2/13/11: Case #11-CMP-00045 , Retailer's books and records; Importation permit requirements and qualifications. 2/23/11: The Board referred to the staff for settlement. 8/4/11: The OAG declined prosecution. 1/22/11: Case #11-251-00030 , Execution of search warrant. 2/2/11: The Board requested that enforcement continue to monitor the establishment. 5/16/09: Case #09-251-00126 , Injured person to the hospital. 7/1/09: NFA	Tavern
The Star and The Shamrock 1341 H Street N.E.	Mike Schuster- Managing Member, Mark Menard- Managing Member, Jason Feldman- Managing Member	No ABRA violations found	Tavern

*Regarding the matter of the licensee providing false information on their ABC License application the ABRA application reveals that Mrs. Previte signed the application and Mr. Schuster has not (See Exhibit #1). ABRA records do not reflect that Mrs. Previte has ever held an ABRA License.

Prior to meeting with Mrs. Previte on April 4, 2013, Investigator Martin met with Mr. Bailey regarding the protest and Mr. Bailey provided Investigator Martin with copies of documents filed with DCOZ relating to the 1346 T Street N.W., property (Exhibit #18).

VI. EFFECT OF ESTABLISHMENT ON REAL PROPERTY VALUES

ABRA personnel are not qualified to address the issue of real property values.

VII. RECORD SEARCH

On 4-22-2013, the Metropolitan Police Department (MPD) Crime Analysis Division (CAD) (Exhibit #19) data available for 1346 T Street N.W., between the dates of April 23, 2012 – April 22, 2013, no calls for service were reported for this address.

VIII. ABRA INVESTIGATIVE HISTORY

No violations found in ABRA records.

IX. EXHIBITS

EXHIBIT NO.	DESCRIPTION
1	Copy of ABRA Application
2	Board Approved Trade Name Change
3	Protest Letter Received from The Shaw-Dupont Citizens Alliance, Inc.
3A	Protest letter received from G. Ronald Renchard
3B	Protest Letter Received from Group of 14
4	E-mail from Elwyn Ferris Dated March 30, 2013
5	District of Columbia Geographic Information System
6	District of Columbia Geographic Information System

7	Photograph of U Street African-American Civil War Memorial Cardozo Subway Station
8	Photograph of Metrobus Line
9	Exterior Photograph of Compass Rose
10	Photograph of Abutting Resident
11	Photograph of Proposed Sidewalk Cafe
12	Photograph of Proposed Summer Garden
13	Photograph of Interior Bar Area
13A	Photograph of Interior Dining Area
14	Photograph of Basement
14A	Photograph of Basement Dining Area
15	Photograph of Stairway Leading to Residential Area
16	Photograph of Certificate of Occupancy
17	Copy of Investigative History for 18 th Amendment
17A	Copy of Investigative History for Trusty's Bar
17B	Copy of Investigative History for Pour House
18	Copies of Documents Filed with DCOZ Relating to the 1346 T Street Property
19	E-mail of Metropolitan Police Department (MPD) Crime Analysis Division (CAD)

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

FORM 141 - INTERVENOR REQUEST

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated. All information must be completely filled out.

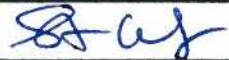
PLEASE NOTE: THIS FORM IS FOR APPEALS ONLY.
(Please see reverse side for more information about this distinction.)

Name: **Al's Market, LLC**

Address: **1345 T Street, N.W., Washington, D.C. 20009**

Phone No.(s): **202-744-9307** E Mail: **roseprevite@gmail.com**

I hereby request to appear and participate as an intervenor in Appeal No.: **18568**

Signature:  Date: **5/2/13**

Will you appear as a(n) ☐ Proponent ☒ Opponent Will you appear through legal counsel? ☒ Yes ☐ No

If yes, please enter the name and address of such legal counsel.

Name: **Scott H. Rome and Stephen J. Whelan**

Address: **Veritas Law: 1225 19th Street N.W., Washington, DC 20036**

Phone No.(s): **202-686-7600** E Mail: **srome@theveritaslawfirm.com**

INTERVENOR CRITERIA:

On a separate piece of paper, please answer all of the following questions referencing why the above person should be granted intervenor status, pursuant to 11 DCMR § 3112.15:

1. What legal interest does the person (i.e., owner, tenant, trustee, or mortgagee) have in the property?
2. How will the property owned or occupied by such person, or in which such person has an interest, be affected if the Appeal before the Board is approved or denied?
3. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the Appeal before the Board is approved or denied.
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Board is approved or denied?
5. What is the distance between the person's property and the property that is the subject of the Appeal before the Board? (Preferably no farther than 200 ft.)

Before the
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 18568

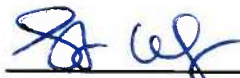
REQUEST TO INTERVENE

The following represents Al's Market, LLC's ("Al's Market") supplement to answer questions 1-5 referencing why it should be granted intervenor status, pursuant to 11 DCMR §3112.15:

1. Al's Market is the lessee of the property located at 1346 T Street, N.W., Washington, DC 20009, which is the subject of the instant Appeal.
2. If the Appeal is approved, Al's Market will be prohibited from using the space it has leased as an eating and drinking establishment, as was originally anticipated. Al's Market had planned on, and had already begun taking action towards opening a restaurant and bar at the location currently subject to this Appeal.
3. As the lessee, Al's Market would be directly aggrieved by an approval of the appeal.
4. An approval of this Appeal would have a considerable economic effect on Al's Market. If Al's Market is unable to open a restaurant and bar, as originally anticipated, it may be forced to breach its lease, or attempt to work with the Landlord to sublet the premises. In addition, the very existence of this Appeal has created negative economic consequences for Al's Market, as it has been forced to delay its plans to build out the premises in order to open the restaurant. Furthermore, there are potentially detrimental social impact associated with approval of the Appeal. Specifically, if the Appeal is approved, Al's Market will be prevented from operating a restaurant and originally planned, depriving the community of its enjoyment and preventing jobs from being created.
5. As stated herein, Al's Market is the lessee of the property which is the subject of the Appeal.

Respectfully submitted,

AL'S MARKET, LLC
BY COUNSEL



Scott H. Rome, Esq. [476677]
Stephen J. Whelan, Esq. [1010351]
1225 19th Street, NW, Suite 320
Washington, DC 20036
(202) 686-7600

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Exhibit 3

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 10-07

Z.C. Case No. 10-07

**Text Amendment - Additional Flexibility for Eating and Drinking Establishments
within the ARTS Overlay District
July 29, 2010**

The Zoning Commission for the District of Columbia (the “Commission”) pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01) hereby gives notice that it took final rulemaking action to adopt amendments to sections 1901, 1906, and 2522 of the Zoning Regulations (Title 11 DCMR). A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 7, 2010, at 57 DCR 4005. Minor revisions were made to the proposed text in response to comments received, as will be explained below. The amendments will become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The rules amend §1901.6, which had prohibited eating and drinking establishments from occupying more than 25% of the linear foot frontage within the ARTS Overlay District. Special exception relief could be sought to permit the establishment or expansion of a use that would exceed the cap.

The amendment changes the 25% overlay-wide cap to a 50% cap that is applied to each individual Overlay square fronting 14th or U Street, N.W. and clarifies that this limit applies only to ground floor frontage. The street frontages to be used in this calculation are listed in a chart. The area of any public right-of-way within a square was excluded.

Because the term “eating and drinking establishments” could be interpreted as only encompassing establishments that sell both food and alcoholic beverages, the introductory text of § 1901.6 was amended to separately refer to eating establishments, drinking establishments, and eating and drinking establishments, which thereafter are referred to collectively as “eating/drinking establishments.”

In response to a comment received, the Commission added a new § 1906.7 to specify that occupancy rights vest at the time that a building permit is issued. This is similar to the occupancy vesting provided for in § 3203.11, but whereas that provision protects against post-building permit revisions to Title 11, new § 1906.7 protects against post-building permit

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Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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increases in street frontage occupied by eating and drinking establishments authorized by subsequently issued building permits or certificates of occupancy. The Commission also agreed with the suggestion to amend § 2522.1 to allow the Zoning Administrator (“ZA”) to permit up to a two percent deviation from the linear frontage limitation.

The Commission also amended § 1906.1. That provision authorizes the Board of Zoning Adjustment (“BZA”) to grant relief from any Overlay provision. The amendment expressly disallows relief from the 50% cap, leaving only the grant of a variance available. The subsection was also amended to specify that the BZA, when considering whether to grant a special exception from the remaining Overlay provisions, should apply the criteria stated in paragraphs (c) or (d) -- concerning architectural concept and vehicular access -- only if the criteria are relevant to the relief sought.

Background

In 2009, Advisory Neighborhood Commission (“ANC”) 2F formed an Uptown ARTS Overlay Review Committee, which included representatives from ANCs 1B and 2B, each of which encompass a portion of the ARTS Overlay, and various local citizen and business groups and organizations. In September of 2009, the Committee released its Uptown ARTS Overlay Report and Recommendations (the “ANC Report”).

Among the recommendations of the report is “a text amendment to enable enforcement of the new limit (40-50%) on the frontage (per square) of eating and drinking uses to begin in early 2010 in the Uptown Arts District.” (p. 2.) This recommendation results from the Committee’s finding that “it is now overkill to reserve 75% of the frontage on 14th and U streets for non-restaurant and bar uses.” (p. 15.) The report goes on to indicate that if the cap were increased to the extent recommended “it would be inappropriate for a special exception procedure to be able to take this level above 50%.” The Committee therefore expressed its “strong view that the level of 50% should be viewed as an absolute maximum, above which increases in restaurant/bar frontage should not be permitted.” (p. 15.)

In response to this recommendation, the ZA undertook his own detailed measurements and study of 14th and U Streets, and the amount of frontage devoted to eating and drinking establishments. The ZA released general findings on April 5, 2010, noting that the Overlay was at or very near the 25% limit. Like the ANC Report, it noted that some individual blocks were well in excess of the limit (permitted, since the limit is not measured on a block-by-block basis), while others had no eating or drinking establishments at all.

During this same period of time, there were a number of existing restaurant proposals in the building permit review process that had entered into binding lease commitments and invested in the preparatory work to open a restaurant in anticipation of being within the 25% limit and therefore able to open without any zoning relief. The Office of Planning (“OP”) became concerned that enforcement of the existing and unduly restrictive cap could jeopardize economic

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development both within and outside the Overlay and decided to petition the Commission for a short-term and a long-term solution.

Procedures Leading to Adoption of Amendments

In a report dated April 15, 2010, OP petitioned the Commission to take emergency action to raise the existing cap to 30% and also to set down the text that became the subject of this proceeding. At its regular public meeting held April 26, 2010, the Commission set down this case for a public hearing and adopted the five percent increase to the cap on an emergency basis. The emergency amendment expires upon the publication of this notice.

By report dated May 28, 2010, OP provided a revision to the advertised text that clarified its intent without changing its substance.

Pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10) (“ANC Act”), notice of the petition was given to ANCs 1B, 2B, and 2F. No report was submitted by ANC 1B. In a letter dated June 9, 2010, ANC 2B’s Chairman Will Stevens advised the Commission that at a properly noticed meeting with a quorum present, the ANC voted 8-0 to request that the Commission modify the proposed text to remove “drinking places” and “restaurants” from the list of preferred arts uses and arts-related uses set forth at 11 DCMR § 1908.1.

The Overlay’s provisions include bonus density incentives and ground floor occupancy requirements for preferred uses. ANC 2B was concerned that increasing the cap for eating and drinking establishments without also eliminating their preferred status would squeeze out other art and art-related uses. The ANC further recommended that if this new proposal could not be heard until after it was advertised, the Commission should delay this proceeding for 120 days to allow OP to submit a proposal.

As to ANC 2F, its letter of June 8, 2010 indicated that at a properly noticed meeting with a quorum present, it voted unanimously to advise the Commission to adopt OP’s May 28th report. The ANC also noted that its ARTS Overlay Review Committee Report, discussed earlier, had indicated that the increase in the potential number of eating and drinking establishments was only acceptable to the community if the uses were eliminated as preferred uses. The ANC however noted that this issue was not within the scope of the hearing and that OP had represented that the preferred use issue would be reviewed as part of the ongoing Zoning Regulation Review (“ZRR”) process.

A public hearing was scheduled for and held on June 10, 2010. After OP’s formal presentation had ended, the Chair asked the OP representative, Joel Lawson, to respond to the ANC’s concerns. Mr. Lawson indicated that the preferred use issue was a complex one that could affect other sections of the Overlay. He also noted that the issue would be reviewed as part of ZRR and therefore recommended that this case not be delayed in order to consider the same question.

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At its regularly scheduled meeting held June 28, 2010, the Commission voted to refer the petition, as revised in OP's May 28th report, to the National Capital Planning Commission ("NCPC") for the 30-day period of review mandated by § 492 of the District's Charter.

NCPC, through a delegated action dated June 29, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 18.)

In response to the Notice of Proposed Rulemaking, Allison C. Prince, Esquire, submitted a written comment¹ requesting that the Commission add provisions that would protect occupancy rights against increases in the linear street frontage of eating/drinking establishments that occur after a building permit is issued and to allow the ZA to permit a deviation of up to two percent from the cap. As noted in the earlier description of the rule, the Commission accepted these additions, which due to their minor nature did not require the publication of a second notice of proposed rulemaking.

At its properly noticed public meeting held July 26, 2010, the Commission took final action to adopt the text amendments.

Great Weight

The Commission is required under § 13(d) of the ANC Act, D.C. Official Code § 1-309.10(d), to give great weight to the issues and concerns raised in the written report of affected ANCs. The Commission is also required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04), to give great weight to OP's recommendations.

In both instances, great weight means identifying the affected ANCs and OP as the sources of the recommendations and stating why the Commission does or does not find their respective advice to be persuasive. In this docket, there is a disagreement between OP and ANC 2B as to whether these proceedings should have gone forward without also addressing the status of drinking places and restaurants as preferred uses. The Commission also notes that ANC 2F shares ANC 2B's concern, but accepted OP's assurance that the issue will be addressed as part of the ZRR.

The Commission agrees with OP that understanding the potential impact of eliminating eating/drinking establishments as preferred uses will require careful analysis. However, undertaking this analysis would have resulted in the expiration of the emergency amendment on August 24th and reinstatement of the 25% cap. The Commission took emergency action to raise the cap because its enforcement was inconsistent with the public interest. Allowing a reversion back to this control is similarly undesirable and unnecessary given the fact that the preferred use

¹ Although the comment was received after the end of the public comment period, the Commission exercised its discretion and allowed the comment into the record. (See 11 DCMR § 3024.5.)

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issue will be reviewed under the ZRR. For these reasons, the Commission found OP's advice to proceed with a decision on the advertised text to be persuasive and adopted the following amendments to the Zoning Regulations, Title 11 DCMR:

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows: Subsection 1901.6 is amended to change the overlay-wide method of measurement to a square-by-square method (excluding any area of right-of-way), establish at 50% the maximum amount of linear foot frontage within each square fronting on 14th Street or U Street, N.W. that can be occupied by eating and drinking establishments, and clarify that this limit applies only to ground floor frontage; and add a new §1901.7, so that the provision will read as follows:

- 1901.6 Eating establishments, drinking establishments, or eating and drinking establishments ("eating/drinking establishments") shall be subject to the following limitations:
- (a) No portion of an eating/drinking establishment located on the ground floor is permitted to occupy more than fifty percent (50%) of the linear frontage of each individual square, as set forth below:

14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
202	222.5	204	305.3
203	310.0	205	618.0
204	320.0	236	523.4
205	430.6	237	538.5
206	399.8	273	225.3
207	450.1	274	340.9
208	400.0	304	192.2
209	380.0	305	186.0
210	203.5	332	189.7
211	304.2	333	187.7
234	253.1	359	96.8
235	310.0	360	230.4
236	320.0	361	251.7
237	380.0		
238	450.0		

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14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
239	200.0		
240	391.0		
241	450.0		
242	363.1		
242N	154.5		

- (b) An eating/drinking establishment not located on the ground (street) level of a building shall not count towards the fifty percent (50%) limit; and
- (c) An entrance to an eating/drinking establishment that is not located on the ground (street) level shall not count towards the fifty percent (50%) limit.

1901.7 A building permit granted for a use as an eating/drinking establishment issued in accordance with § 3202 authorizes the subsequent issuance of a certificate of occupancy for the specified eating/drinking establishment; provided that the Zoning Administrator has determined that the use complies with § 1901.6 at the time the building permit is issued and that construction has been completed in accordance with the subject building permit.

Section 1906, SPECIAL EXCEPTIONS, § 1906.1, is amended by striking the phrase “based upon the following criteria” and inserting in its place the phrase “based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought”, so that the provision will read as follows:

1906.1 The Board of Zoning Adjustment may grant exceptions under § 3104 from any of the requirements or limits of the ARTS District other than § 1901.6 based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought:

Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, § 2522, MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING, § 2522.1 is amended by adding a new paragraph (d), so that the entire provision will read as follows:

2522.1 The Zoning Administrator is authorized to permit the following deviations, if the Zoning Administrator determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations:

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- (a) Deviations not to exceed two percent (2%) of the area requirements governing minimum lot area, percentage of lot occupancy, and areas of courts and roof structures;
- (b) Deviations not to exceed the greater of two percent (2%) or twelve (12) inches of the linear requirements governing minimum lot width;
- (c) Deviations not to exceed the greater of ten percent (10%) or twelve (12) inches of the linear requirements governing rear yard, side yard, and minimum dimensions of the court and court niche and roof structure setback requirements, provided that all deviations of roof structure setback requirements comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & Supp. 1999))); and
- (d) Deviations not to exceed two percent (2%) of the linear frontage limitation for eating/drinking establishments in § 1901.6.

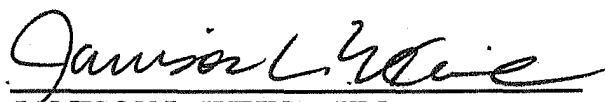
On June 28, 2010, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; third Mayoral appointee position vacant).

On July 26, 2010, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater to approve by absentee ballot; Greg M. Selfridge not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on August 20, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 10-07

Z.C. Case No. 10-07

**Text Amendment - Additional Flexibility for Eating and Drinking Establishments
within the ARTS Overlay District.)**

July 29, 2010

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 10-07

AUG 20 2010

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Notice of Final Rulemaking and Z.C. Order No. 10-07 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | | |
|--|---|--|
| 1. <i>D.C. Register</i> | 7. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004 | 12. Councilmember Jack Evans |
| 2. ANC 1B
2000 14 th Street, NW #100B
Washington, DC 20009 | 8. Commissioner Bhavna Patel
ANC/SMD 2B02
2141 P Street NW #203
Washington, DC 20037 | 13. Councilmember Vincent Gray |
| 3. ANC 2B
9 Dupont Circle, NW
Washington, DC 20036 | 9. Commissioner Ramon Estrada
ANC/SMD 2B09
1417 T Street NW
Washington, DC 20009 | 14. Councilmember David Catania |
| 4. ANC 2F
5 Thomas Circle, NW
Washington, DC 20005 | 10. Commissioner Charles Reed
ANC/SMD 2F01
1310 Q Street NW
Washington, DC 20036 | 15. Councilmember Michael Brown |
| 5. Commissioner Peter John Raia Sr.
ANC/SMD 1B02
1348 Wallach Place NW
Washington, DC 20009 | 11. Commissioner Andy Warth
ANC/SMD 2F02
1435 N Street NW #308
Washington, DC 20005 | 16. Councilmember Phil Mendelson |
| 6. Commissioner Deborah R. Thomas
ANC/SMD 1B04
1440 W Street NW, #B1
Washington, DC 20009 | | 17. Councilmember Kwame Brown |
| | | 18. Councilmember Jim Graham |
| | | 19. DDOT (Karina Ricks) |
| | | 20. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024 |
| | | 21. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

Alcoholic Beverage Regulation Administration (ABRA)

Street
1346 T Street NW

ABC licensees located within 1200 feet of the establishment are shown on the map.

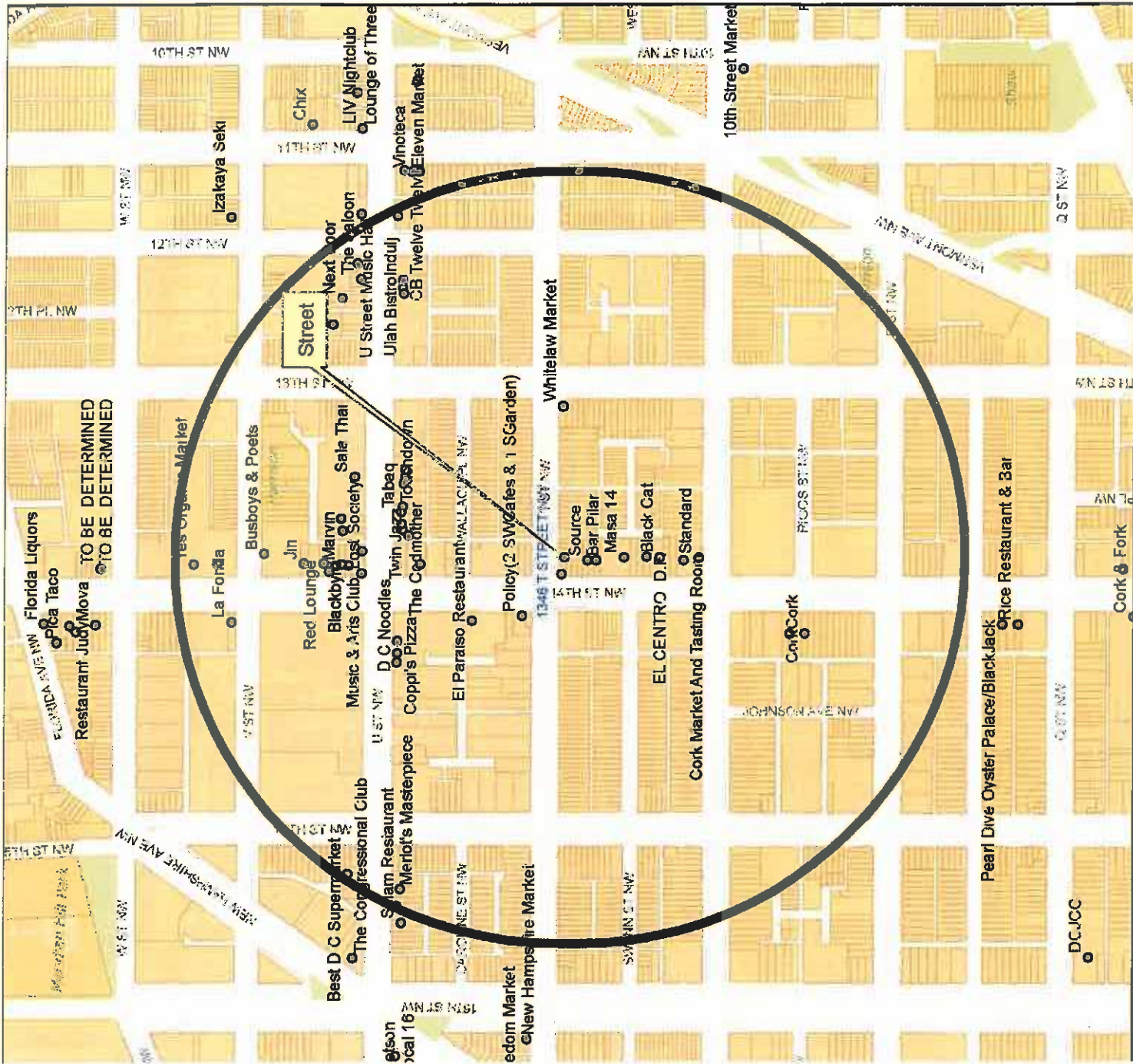
Legend

- Street (1200 ft Buffer)
ABC Licensee Locations
Record Lots

April 9, 2013

**Government of the
District of Columbia
Vincent C. Gray, Mayor**

This map was created by ABRA using the District of Columbia Geographic Information System (GIS). This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.



**Government of the District of Columbia
Department of Consumer and Regulatory Affairs**

1100 4th Street SW
Washington DC 20024
(202) 442 - 4400
dcra.dc.gov



C_{OF}O

CERTIFICATE OF OCCUPANCY

PERMIT NO. CO1301182

Issued Date: 02/20/2013

Address: 1346 T ST NW		Zone: C-3-A	Ward: 1	Square: 0238	Suffix:	Lot: 0088
Description of Occupancy: TAVERN WITH TOTAL LOAD OF SIXTY-TWO (62) SEATS						
Permission is Hereby Granted To: AI's Market, Llc	Trading As: COMPASS ROSE	Floor(s) Occupied: BSMT & 1ST	Occupant Load: 62 No. of Seats			
Property Owner: TALLEY R HOLMES JR	Address: 1345 T ST NW WASHINGTON, DC 20009-4438	BZA/PUD Number:	Occupied Sq. Footage: 4000			
		PERMIT FEE: \$82.50				
Building Permit Number (if applicable)	Type of Application: Ownership Change	Approved Building Code Use: Taverns - A-2 Approved Zoning Code Use: Other				
Conditions/ Restrictions: THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction). 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 (Code Official): Nicholas A. Majett		Permit Clerk: Justin Bellow		Expiration Date:		
2/20/2013 TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-821-1838						





Square/Suffix/Lot	0238 / n/a / 0856
Premises Address	1847 14TH ST NW
Zoning District (s)	C-3-A
Overlay District (s)	ARTS
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	1
Council Member	Jim Graham
ANC	1B
ANC Chairperson	Tony Norman
SMD	1B12
Commissioner	Zahra Jilani

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.

- Zoning Layers**
- Latitude: 38.915421, Longitude: -77.031671
- Zone Districts
Pending Zones
Overlays
- Pending Overlays
Baist Index
Historic Districts
- Active PUDs
Pending
TDRs
- Campus Plans
CEA

While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.



Permits matter-of-right development for major retail and office uses

	Minimum Lot Width (ft)	Minimum Lot Area (sqft)	Maximum Occupancy (percentage)	Maximum Residential FAR	Maximum FAR Other Uses	Maximum FAR Permitted	Maximum Stories	Maximum Height (ft)	Side Yard Setback (ft)	Rear Yard Setback (ft)	Remarks
All Other Structures			100	4	2.5	4		65			Pursuant to §§ 774.2, the rear year requirements may be waived with approval by the BZA, Pursuant to § 775.5, if a side yard is provided, it must be 2 inches per foot of height of the building, but not less than 6 feet.
Hotel			100	4	2.5	4		65			Pursuant to §§ 774.2, the rear year requirements may be waived with approval by the BZA, Pursuant to § 775.4, if a side yard is provided, it must be 3 inches per foot of height of the building, but not less than 8 feet.
One-Family Detached Dwelling			75	4	2.5	4		65	8		Pursuant to §§ 774.2, the rear year requirements may be waived with approval by the BZA,
One-Family Semi-Detached Dwelling			75	4	2.5	4		65	8		Pursuant to §§ 774.2, the rear year requirements may be waived with approval by the BZA,



Cases / Orders

Listed below are the Zoning Commission Orders associated with the Square, Parcel or Lot (s) related to this Zoning Report. The Orders are available online at http://dcoz.dc.gov/search/search_orders.asp.

Case Number	Order No(s)	Case Number	Order No(s)
11426	11426		
11541	11541		
11852	11852		
11852A	11852A		
13531	13531		
14456	14456		
14927	14927 14927_W		
15099	15099		
16081	16081		
16366	16366		
17952	17952		
17994	17994		

Political Jurisdiction Representatives

Ward	1
Council Member	Jim Graham
Phone Number	
E-Mail Address	jgraham@dccouncil.us
Office Location	1350 Pennsylvania Ave, Suite 105, NW 20004
Website	http://dccouncil.us/council/jim-graham
ANC	1B
ANC Chairperson	Tony Norman
Phone Number	
E-Mail Address	1B10@anc.dc.gov
Office Location	533 Gresham Place NW
Website	http://app.anc.dc.gov/wards.asp?ward=1&office=B
SMD	1B12
Commissioner	Zahra Jilani
Phone Number	
E-Mail Address	1B12@anc.dc.gov
Office Location	2013 New Hampshire Avenue NW
Website	http://app.anc.dc.gov/wards.asp?ward=1&office=B