

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

In the Matter of:

MZI Trading, LLC
t/a Capitol Food Mart

Application for a New
Retailer's Class B License

at premises
1634 North Capitol Street, N.W.
Washington, D.C. 20001

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) License Number: 086246
) Case Number: 11-PRO-00013
) Order Number: 2011-448
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BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: MZI Trading, LLC, t/a Capitol Food Mart, Applicant

Andrew Kline, on behalf of the Applicant

Brendan Smith, on behalf of A Group Five or More Individuals,
Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

MZI Trading, LLC, t/a Capitol Food Mart (Applicant), at premises 1634 North Capitol Street, N.W., Washington, D.C., filed an Application for a New Retailer's Class B License (Application). A Group of Five or More Individuals (Protestants), represented by Brendan Smith, filed a timely protest and were granted standing by the Alcoholic Beverage Control Board (Board). The Board dismissed the protests of ANC 5C and Lisa Vaughn for failing to appear at the Roll Call Hearing. MZI Trading, LLC, t/a Capitol Food Mart, Board Order No. 2011-167, 1-2 (D.C.A.B.C.B. Mar. 30, 2011). We did not receive a recommendation from ANC 5C regarding the Application under D.C. Official Code § 25-609 and, as such, we will not accord ANC 5C great weight. The Board also dismissed the protest of Steve M. May, because his protest did not

meet the standing requirements of D.C. Official Code § 25-601. *Id.* at 2. The Applicant initially came before the Alcoholic Beverage Control Board for a Roll Call Hearing on May 28, 2011, and a Status Hearing on April 27, 2011. The parties attended mediation on April 19, 2011, but they did not reach an agreement before the Protest Hearing. The Protest Hearing was held on July 7, 2011.

The protest issues raised by the Protestants under D.C. Official Code § 25-602 are whether the Application will adversely impact the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b) (Supp. 2011); 23 DCMR §§ 1607.2; 1607.7(b) (2008). The Board must also determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the surrounding neighborhood. *See* D.C. Code § 25-314(4) (Supp. 2011).

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant is requesting a new Retailer's Class B License at premises located at 1634 North Capitol Street, N.W. *ABRA Licensing File No. 086246.*
2. The establishment is located in a C-2-A zone. *ABRA Protest File 11-PRO-00013, Protest Report, 2.* There are three Retailer's Class A Licenses and one Retailer's Class B License within 1,200 feet of the Applicant's proposed premises. *Protest Report, 3.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Protest Report, 3.* The Applicant has no prior violations of the ABC laws, because it does not currently hold an ABC-license. *Protest Report, 5.*
3. The establishment is co-owned by Ibrahim Hussein. *Transcript (Tr.), July 17, 2011 at 70.* Mr. Hussein and Maruye Ayalew have owned and operated the establishment for the past three years. *Tr., 7/7/11 at 71.* The establishment is currently a medium-sized convenience store that occupies 2,000 square feet. *Tr., 7/7/11 at 12, 72.* The business sells items like soft drinks, groceries, and toiletries. *Tr., 7/7/11 at 12, 33, 73.* According to Mr. Hussein, he and Mr. Ayalew have spent approximately \$100,000.00 renovating the interior of the establishment. *Tr., 7/7/11 at 72.* Specifically, they have installed new flooring, lighting, roofing, and siding to the establishment. *Tr., 7/7/11 at 72.* Mr. Hussein also operates the Dollar Plus and Food Store at 4837 Benning Road, S.E. *Tr., 7/7/11 at 96.*
4. The Applicant proposes to operate 9:00 a.m. to 8:00 p.m. on Sunday; 8:00 a.m. to 9:00 p.m., Monday through Friday; and 9:00 a.m. to 9:00 p.m. on Saturday. *Protest Report, 4.* The establishment also proposes to sell alcoholic beverages 9:00 a.m. to 8:00 p.m. on Sunday; 9:00

a.m. to 9:00 p.m., Monday through Friday; and 9:00 a.m. to 9:00 p.m. on Saturday. *Protest Report*, 4.

5. The establishment has a security camera system with 12 cameras. *Tr.*, 7/7/11 at 49, 72, 94. Eight cameras are located inside the store and four cameras are located outside store. *Tr.*, 7/7/11 at 76, 94. The cameras are linked to a television that the establishment's customers and employees can see. *Tr.*, 7/7/11 at 79.

6. The camera system records footage for a maximum of 20 days. *Tr.*, 7/7/11 at 80. The establishment's cameras show the entire street outside the establishment. *Tr.*, 7/7/11 at 102. As noted by Mr. Hussein, the establishment has shared its footage with MPD in the past and every employee knows how to operate the system. *Tr.*, 7/7/11 at 80, 103.

7. The Applicant does not tolerate loitering near the establishment. *Tr.*, 7/7/11 at 77. Mr. Hussein testified that he and his employees ask loiterers to leave the establishment's premises. *Tr.*, 7/7/11 at 78. If that fails, he and his employees are willing to call the police if a person does not leave the area. *Tr.*, 7/7/11 at 78. Indeed, as testified by Mr. Hussein, he previously sold lottery tickets, until he realized that it caused loitering outside his establishment. *Tr.*, 7/7/11 at 75, 89.

8. Mr. Hussein and his partner will only dedicate 15 percent of the establishment's floor space to sell beer and wine if the Application is approved. *Tr.*, 7/7/11 at 75. Mr. Hussein intends to continue to sell convenience items, which is different than the other ABC-licensed establishments in the area, which primarily only sell alcoholic beverages. *Tr.*, 7/7/11 at 83.

9. ABRA Investigator Ileana Corrales investigated the Application and prepared the protest report related to this matter. *Tr.*, 7/7/11 at 12. Between May 3, 2011, and May 11, 2011, ABRA monitored the establishment on six occasions. *Tr.*, 7/7/11 at 14. ABRA investigators did not observe trash or loitering near the establishment during the investigation period. *Tr.*, 7/7/11 at 14.

10. The Metropolitan Police Department (MPD) Crime Analysis Unit reported 28 calls for service at 1634 North Capitol Street, N.W. *Tr.*, 7/7/11 at 14. Many of the calls for service were related to burglar alarms. *Tr.*, 7/7/11 at 31. The store does not currently have any issues with crime or anti-social behavior. *Tr.*, 7/7/11 at 50-51, 78. However, Mr. Hussein admitted that shoplifters occasionally attempt to steal from the establishment. *Tr.*, 7/7/11 at 78.

11. The establishment keeps the area around the store orderly and clean. R&J Disposal picks up the trash produced by the establishment twice per week. *Protest Report*, 3. In addition, as testified by Mr. Hussein, he and his staff clean the area outside the establishment at least once per day. *Tr.*, 7/7/11 at 81. Indeed, James Wilson has never observed beer bottles or trash near the establishment. *Tr.*, 7/7/11 at 67.

12. Local community groups frequently clean the neighborhood. *Tr.*, 7/7/11 at 63. Nevertheless, multiple witnesses have found the remnants of liquor bottles and beer cans on their property and in the streets. *Tr.*, 7/7/11 at 136, 321.
13. The neighborhood is near a number of organizations that offer social services for the homeless. The city operates a bus that brings homeless individuals to the corner of Florida Street, N.W., and 1st Street, N.W., which is two blocks from the establishment. *Tr.*, 7/7/11 at 185. The homeless may then obtain services from a "huge homeless outreach feeding program," which offers food two to three times per day, as well as other services. *Tr.*, 7/7/11 at 198, 220-21. Patricia Mitchell has observed many homeless people loitering around the area where these services are offered. *Tr.*, 7/7/11 at 221, 242. In addition, there is a methadone treatment truck that frequents the neighborhood, and a number of halfway houses that serve ex-offenders. *Tr.*, 7/7/11 at 222, 226.
14. Multiple witnesses testified that they have observed individuals engaging in anti-social behavior in the neighborhood on a regular basis. Specifically, public intoxication is a problem in the neighborhood. *Tr.*, 7/7/11 at 159, 199. Individuals are frequently seen holding open containers of alcoholic beverages in public and engaging in public urination. *Tr.*, 7/7/11 at 160, 176-77, 293. Indeed, people used to drink and loiter outside the establishment when it was previously a liquor store under a different owner. *Tr.*, 7/7/11 at 67, 205. Ms. Vaughn attributes these problems to ABC-licensed establishments in the neighborhood selling single containers of alcoholic beverages to homeless people. *Tr.*, 7/7/11 at 178.
15. Sophie Bethune, who lives one block away from the establishment, testified that the alcohol problems experienced by the neighborhood have made the local playground unusable. *Tr.*, 7/7/11 at 250. The playground is located on the corner of Florida Avenue, N.W., and 1st Street, N.W. *Tr.*, 7/7/11 at 250. Ms. Bethune regularly observes men drinking in the playground. *Tr.*, 7/7/11 at 250. The men litter the playground with their beer cans and urinate on trees. *Tr.*, 7/7/11 at 251. In addition, at a recent neighborhood clean-up of the playground, people cleaning the playground found knives, drug paraphernalia, beer cans, and a used condom on the playground's slide. *Tr.*, 7/7/11 at 251. Ms. Bethune attributes these problems to the availability of beer in the neighborhood. *Tr.*, 7/7/11 at 283.
16. Investigator Corrales described the parking and traffic situation in the neighborhood. The neighborhood experiences vehicle and foot traffic during the morning and afternoon. *Tr.*, 7/7/11 at 21. There is a loading zone directly in front of the establishment. *Protest Report*, 4. On the 1600 block of North Capitol Street, N.W., parking is available, Monday through Friday, between 9:30 a.m. and 4:00 p.m. *Protest Report*, 4. Two-hour parking spaces are available on R Street, N.W., Monday through Friday, between 7:00 a.m. and 8:30 p.m., with exceptions for Zone 5 permit holders. *Protest Report*, 4. Investigator Corrales indicated that the residential streets near the establishment have many parking spaces available. *Tr.*, 7/7/11 at 24.

17. Patricia Mitchell, the President of the North Capitol Main Street Association, noted that development in the neighborhood has languished due to the social problems faced by the neighborhood. *Tr.*, 7/7/11 at 227.

CONCLUSIONS OF LAW

18. Pursuant to D.C. Official Code §§ 25-313, 25-314 and 23 DCMR § 400.1, an Applicant must demonstrate to the Board's satisfaction that the establishment for an Application for new Retailer's Class B License is appropriate for the neighborhood in which it is located. The Board concludes that the Applicant has demonstrated that the Application is appropriate, subject to the following limitations:

- (1) the Applicant shall not sell, give, offer, expose for sale, or deliver an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less; and
- (2) the Applicant shall not divide a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or less.

19. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an Advisory Neighborhood Commission's (ANC) properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC issues and concerns." Foggy Bottom Ass'n, 445 A.2d at 646. No ANC has submitted a recommendation regarding the Application. As such, the Board will not apply the great weight standard to this matter.

20. In determining the appropriateness of the Application, the Board considers the protest issues raised by the Protestants; specifically, whether the Application will adversely impact the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code §§ 25-313(b), 25-602; 23 DCMR §§ 1607.2; 1607.7(b). Additionally, when confronted with an Application for a new license, the Board must also determine whether the issuance of the license would create or contribute to an overconcentration of licensed establishments that will adversely impact the surrounding neighborhood. See D.C. Code § 25-314(4).

21. We find that the Application will not adversely impact the peace, order, and quiet of the neighborhood, so long as the Applicant is prohibited from selling single containers of beer, malt liquor, or ale with a capacity of 70 ounces or less. By law, we must consider "the effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726." § 25-313(b)(2). Here, there is overwhelming evidence that the area surrounding the establishment is plagued by problems related to the consumption of alcohol. The establishment's neighbors regularly find discarded beer cans on their property and in the streets. Supra, at ¶ 12, 15. In addition, public drinking, loitering, and public urination are

common occurrences in the neighborhood. Supra, at ¶ 14, 15. We are also deeply concerned that these problems are spilling over into a public playground. Supra, at ¶ 16. As a result, we find that granting the Application without restrictions will merely exacerbate these problems.

22. Our experience is that the problems reported by the Protestants are directly related to the sale of single containers of beer and other malt beverages under 70 ounces. We note that other neighborhoods that have enacted prohibitions on the sale of single containers of beer and other malt beverages and dividing manufacturers' packages have experienced dramatic reductions in anti-social and other alcohol-related problems. As such, we find that preventing the Applicant from selling such products will prevent the establishment from negatively impacting the peace, order, and quiet of the neighborhood, while still allowing the Applicant to provide alcoholic beverages to those who wish to drink in their homes.

23. We further find that the Application will not adversely impact residential parking needs or negatively impact vehicular or pedestrian safety. § 25-313(b)(3). We found no evidence that the neighborhood suffers from a lack of parking or that the establishment would endanger vehicles and pedestrians. See supra at ¶ 16.

24. We also find that the Application will not adversely impact the real property values of the neighborhood. § 25-313(b)(1). Although the evidence shows that the development of North Capitol Street, N.W., has languished, there is no evidence in the record that granting the Application will contribute to this problem. See supra, at ¶ 17. Finally, we find that Mr. Hussein's improvements to the store's premises will only improve the property values of the neighborhood. Supra, at ¶ 3.

25. Finally, we do not find that there is an overconcentration of ABC-licensed establishments in Applicant's neighborhood. We note that there is only one other Retailer's Class B License within 1,200 feet of the establishment. Supra, at ¶ 2. Furthermore, we credit Mr. Hussein's testimony that he intends to only devote 15 percent of his floor space to the sale of alcoholic beverages. Supra, at ¶ 8. Based on these facts, we cannot say that the neighborhood is suffering from an overconcentration of ABC-licensed establishments.

26. For the foregoing reasons, we find that the Application is appropriate subject to the restrictions on the sale of single containers of alcoholic beverages we outlined above.

27. On a final note, the only issues raised by the Protestants under D.C. Official Code § 25-602 are whether the Application will adversely impact the peace, order, and quiet; residential parking; vehicular and pedestrian safety; and real property values of the neighborhood or cause an overconcentration of ABC-licensed establishments. As such, the Board is not required to make findings of fact related to any other issues. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (2008). Therefore, based on our review of the Application and the record, we find that the Applicant is fit for licensure under D.C. Official Code § 25-301 and has satisfied any additional remaining requirements imposed by Title

25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations that have not been expressly discussed in this Order.

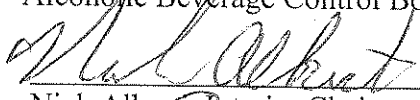
ORDER

Therefore, the Board, on this 19th day of October 2010, does hereby **ORDER** that the Application for a new Retailer's Class B License requested by MZI Trading, LLC, t/a Capitol Food Mart (Applicant), at premises 1634 North Capitol Street, N.W., Washington, D.C., is **GRANTED** with the following stipulations:

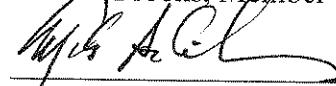
- (1) the Applicant shall not sell, give, offer, expose for sale, or deliver an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less; and
- (2) the Applicant shall not divide a manufacturer's package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or less.

Copies of this order shall be sent to the Applicant and the Protestants.

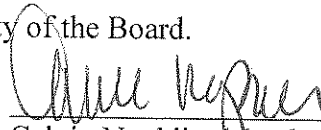
District of Columbia
Alcoholic Beverage Control Board


Nick Alberti, Interim Chairperson


Donald Brooks, Member


Mike Silverstein, Member

I dissent from the position taken by the majority of the Board.


Calvin Nophlin, Member

Pursuant to 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, 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 service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).