

Minutes
Alcoholic Beverage Licensing (ABL) Committee
Advisory Neighborhood Commission (ANC) 6A
March 17, 2015

Pursuant to notice duly given, a meeting of the Alcoholic Beverage Licensing Committee (“Committee”) of ANC 6A was held commencing at 7:00 pm on March 17, 2015 at Sherwood Recreation Center, 640 Tenth (10th) Street NE, Washington, DC 20002.

Committee Members Present: Jay Williams (Co-Chair), Christopher Seagle (Co-Chair), Michael Herman, and Roger Caruth.

Committee Members Absent: Adam Healy, David Oberting.

Commissioners Present: Phil Toomajian.

Community Members Present: Jayne Price (Touche), Joel Kelty, others.

I. Call to Order

Mr. Williams called the meeting to order at 7:05 pm. The meeting having been duly convened was ready to proceed with business with a quorum. There were no additions or edits to the agenda as published.

II. Community Comment

None.

III. Old Business

Co-Chair Jay Williams provided an update on the status of Halftime Sports Bar, explaining that it had been allowed to re-open by the Alcoholic Beverage Control (ABC) Board after the establishment had submitted an offer-in-compromise that was ultimately rejected. This means that the establishment can remain open while the investigation into the incident where a gun was allegedly pulled was completed.

IV. New Business

A. Discussion of license renewal for Naomi’s Ladder, LLC t/a Touche at 1123 H Street NE (Class “C” Tavern) (License Number ABRA-096779).

- Co-Chair Williams introduced Ms. Price, representing Touché.
- Ms. Price stated that it had been an interesting start for the establishment thanks to challenges with the winter weather and other delays related to licensing.
- Ms. Price explained that she and her partners had been under the impression that the liquor license was a new purchase and that the license would not be up for renewal until the normal renewal cycle, but the Alcoholic Beverage Regulation Administration (ABRA) provided notice that they were, in fact, up for renewal because the previous owners never completed the renewal process.
- Ms. Price stated that the establishment is now up and running, and recently launched lunch. They plan to launch brunch in April, around Easter Sunday.
- Mr. Williams explained that his biggest concern is that he had read an ABRA investigatory report stating that Bernard Gibson, the previous owner, had been seen at the establishment multiple times. He had also heard from other people associated with other H Street businesses that it was “common knowledge” that Mr. Gibson was still involved with the establishment. Mr. Williams said this concerned him very much because Ms. Price had told him the last time she was

before the meeting that Mr. Gibson was not involved with the establishment in any way.

- Ms. Price stated that Mr. Gibson had no ownership stake in the establishment. She explained that management brought Mr. Gibson in as a consultant because they realized they needed help with the transition and he was someone who understood the building and the business well. Mr. Gibson also consulted on entertainment.
- Mr. Williams stated that he felt misled by Ms. Price because she had explicitly stated Mr. Gibson was not involved.
- Ms. Price responded that in August 2014, when the Committee meeting occurred, Mr. Gibson was not involved; they brought him in later. She stated that she believed the business has a right to bring in whomever they want to work for them.
- Mr. Williams asked about the status of the ABRA investigation. Ms. Price said they were notified by ABRA that it was taking no further action.
- Co-Chair Christopher Seagle asked if Mr. Gibson was still involved with the establishment, and Ms. Price stated that he was still coming to the building.
- Committee Member Michael Herman asked if Mr. Gibson was the owner of the building, and Ms. Price said he was not. Committee Member Roger Caruth asked if Mr. Gibson was the leaseholder of the building, and Ms. Price said she was not sure, there might be a sublease involving Mr. Gibson.
- Mr. Seagle asked about the status of the training academy that Ms. Price had described previously. Ms. Price said they are still working on licensure, and the opening of the academy will be delayed approximately three (3) months. Mr. Williams asked for clarification on the timeline of the training academy, and Ms. Price said they were hoping to launch in May 2015.
- Mr. Williams asked Ms. Price to describe the establishment's plans for entertainment. Ms. Price said they intended to bring in many different acts, including comedy acts, and have a regular open mic night.
- Mr. Williams asked Ms. Price to describe the plans for the rooftop deck. Ms. Price said that they would open it soon. They are hoping to open it when they launch brunch service on April 5, 2015. Ms. Price stated that she understood no live music is allowed on the rooftop. She stated that they plan to have a full bar with a focus on mixology. She also said they plan to plant herbs/vegetables for the bar on the roof. She stated they ultimately want to cover the deck with a retractable roof.
- Mr. Joel Kelly, a community member, cautioned Ms. Price that many rooftop decks on H Street do not comply with zoning regulations. Ms. Price said they were going to work with a structural engineer and architect.
- Mr. Seagle asked if the establishment planned to use pre-recorded music on the rooftop deck. Ms. Price stated that the settlement agreement allows for "elevator-level" music.
- ANC 6A Chairman Phil Toomajian stated that the stories of Mr. Gibson's involvement are troubling because they directly contradict what the Committee was told in August 2014, and that nobody from Touché followed up later to explain Mr. Gibson's involvement. Mr. Toomajian also stated that he did not understand why they would choose to work with Mr. Gibson given his history of violations of the ANC Settlement Agreement (SA) and ABRA law. Mr. Toomajian said that someone at ABRA had told him the list of violations at XII was the longest list of violations they had ever seen.

- Ms. Price responded that she appreciated the opinion and will take that feedback back to management who is making decisions on who to hire as consultants. Ms. Price stated that all the partners came into the business with clean hands.
- Mr. Toomajian reiterated that it was difficult for the ANC to trust the situation, and it was clear ABRA did not want Mr. Gibson to continue to run the business. Mr. Toomajian stated that he hoped to hear more about Mr. Gibson's involvement (or lack thereof) at the next ANC meeting where this matter would be taken up in a vote. Mr. Toomajian also expressed concern about background music on the rooftop, because the ANC typically asks for no music whatsoever on roof decks.
- Mr. Williams explained that the version of the SA Touché is currently under is an old SA that does allow for background music.
- Mr. Kelty asked if smoking is allowed on rooftop decks. Mr. Williams stated that the ANC has not traditionally included any restrictions on smoking in its SAs.
- Mr. Kelty asked Ms. Price what the plans were for offering hookah, noting that there were images of hookahs on its website. Ms. Price stated that they plan to register to provide hookah at a later date.
- A neighbor nearby asked what the status was of soundproofing. Ms. Price stated that they had done some soundproofing, but had had issues with its installation. She stated that they hope to have soundproofing fully installed in the next couple of weeks.
- Mr. Seagle noted that in the very first Committee meeting he ever attended, Mr. Gibson was asked about soundproofing and made promises it would be fixed, but this never happened. Mr. Seagle suggested that if Mr. Gibson is the one advising on contracting issues, they might want to look elsewhere.
- Mr. Toomajian asked what the timeline was for full soundproofing. Ms. Price said it was underway, and was hoping to complete in no more than seven (7) days.
- Mr. Toomajian expressed concern about hearing music from approximately a block away from the establishment, and noted that there are residences nearby (and more are being built). Ms. Price stated that they will address this issue, and that they brought in a "house" sound engineer who will ensure that proper adjustments are made based on the type of music being played.
- Mr. Toomajian asked who the contact should be if there are noise issues. Ms. Price said that anyone could reach out to her directly.
- Mr. Seagle asked if the current version of the ANC SA has language restricting noise. Mr. Williams said that it typically does, and that in this instance he would want to include it.
- A nearby neighbor asked about the hours for the rooftop deck. Mr. Williams stated that the placard lists 12:00 am closing time on weeknights, and 2:00 am on weekends. The neighbor asked about capacity on the rooftop deck, and Mr. Kelty noted that the SA states a maximum of fifty (50), seated.
- Mr. Toomajian stated that he would expect the ANC to push for earlier closing hours of the rooftop deck.
- A nearby neighbor stated that she wanted to echo Mr. Toomajian's comments regarding Mr. Gibson. She stated that she had lived nearby for fifteen (15) years, and had contemplated moving multiple times because of Mr. Gibson's lack of regard for the neighborhood. She stated that she is appalled that Mr. Gibson is part of this business.
- Mr. Williams echoed the previous comments regarding Mr. Gibson, and explained that even if they did not actively mislead the neighborhood and Mr. Gibson was

merely serving as a consultant, the perception is very bad, because people who have had a history of being lied to by Mr. Gibson see him at the establishment and assume he is still involved.

- Ms. Price responded that Mr. Gibson is not the landlord, and will follow up on who is. She said she was not even sure Mr. Gibson leases the building.
- Mr. Williams asked Mr. Gibson was being paid as a consultant, and Ms. Price said she did not know.
- Mr. Toomajian asked Ms. Price who the owners of the establishment are. Ms. Price stated that the owner is Naomi's Ladder, whose owner is Wanda James. Ms. Price owns three percent (3%) of the company, and Ms. James owns ninety-seven percent (97%).
- Mr. Toomajian stated that the ANC will vote on the recommendation made by the Committee on April 9, 2015, and he hopes that an agreement can be worked out. He noted that the current agreement is inconsistent with agreements with other establishments and needs to be updated. Mr. Toomajian also stated that he would find it difficult to support any agreement if he did not know whether Mr. Gibson is still involved with the establishment.
- Ms. Price stated that she was concerned about any restrictions on who can be involved in the business. Mr. Toomajian responded that the ABC Board had already placed such a restriction on the establishment regarding Mr. Gibson, and he wants assurances he would not be involved going forward. Ms. Price stated that she was concerned with restrictions stating he could not be involved at all. Mr. Williams stated that the concern was with him as a consultant or employee.
- Mr. Caruth stated that he felt that Ms. Price did not lie at the August 2014 meeting and that the Committee should act based on the present facts.
- Mr. Williams stated that the Committee and the ANC had made clear that it was interested in whether Mr. Gibson was involved, and he felt that he or the ANC should have been contacted when Mr. Gibson later became involved with the establishment.
- Mr. Caruth stated he felt that new establishments should be considered with a clean slate, and the Committee should not be telling owners how to run their businesses. He stated he wanted the ANC to work out a new settlement agreement based on the merits of the current owners, not keep hashing over what prior owners did.
- Mr. Kelly stated that he agreed, but that there was a trust issue because of the history of the establishment. He stated he was concerned that the promised training academy had not come to fruition, and sound mitigation had still not been installed.
- Ms. Price stated that there were many unknowns and delays with the license that caused some of their plans to be pushed back. She stated that they are trying to build up trust with the neighborhood, and aside from the issues with Mr. Gibson, have had no incidents. Ms. Price stated that she was optimistic that by the next ANC meeting she can state that soundproofing will have been installed.
- Mr. Williams stated that the biggest concerns are the rooftop hours, music on the rooftop, the use of third-party promoters, and noise.
- Ms. Price stated that they have not been turning over their operations to promoters.
- Mr. Williams asked if they have an ABRA-approved security plan. Ms. Price said that they do.

- Mr. Kelty asked if the establishment planned to obtain a nightclub license, because they marketed themselves as a club. Ms. Price said they have no intention to switch from their tavern license. Mr. Toomajian stated there was not much of a distinction between the licenses.
- Mr. Caruth suggested that the ANC review the list of violations of XII and use that as a guide when negotiating a new settlement agreement.
- Mr. Williams stated that he believed a new SA should have rooftop hours that close at 11:00 pm on weeknights and 12:00 am on weekends, keep the capacity at fifty (50) people, seated, no music of any type allowed on the rooftop, include the standard noise language, and not allow the establishment's operations to be turned over to third party promoters.
- Mr. Caruth stated that he agreed with all of these points. Mr. Toomajian stated that the Committee should consider the location of the establishment and how close it is to residences.

Mr. Williams moved/Mr. Herman seconded that the ANC protest the license renewal of Touché (1123 H Street NE) unless the establishment agrees to the ANC's standard settlement agreement, to include the following provisions: (1) the rooftop deck will close at 11:00 pm on weeknights and 12:00 am on weekends; (2) the rooftop capacity will be no more than fifty (50) individuals, seated; (3) the settlement agreement include the ANC's standard language regarding noise mitigation; (4) no music of any kind allowed on the rooftop deck; (5) the establishment will not turn over its operations to third party promoters. The motion carried 5-0 (Commissioner Toomajian voting).

V. Adjourn

The Committee adjourned at 8:05 pm.