

Alcoholic Beverage Licensing Committee

ANC 6A

August 20, 2013

Pursuant to notice duly given, a meeting of the Alcoholic Beverage Licensing Committee (“Committee”) of ANC6A was held commencing at 7pm EST on August 20, 2013 at the Sherwood Recreation Center, 640 10th Street, NE Washington, DC 20002.

Committee Members Present: Jay Williams (Chair), Adam Healy, Mary Cary Bradley, Christopher Seagle, and Ann Marie Koshuta

Committee Members Absent: Michael Herman, Roger Caruth, Katy Thomas, and David Oberting

Commissioners Present: None

Community Members Present: Margaret Holwill, Joe Englert (Vendetta, H Street Country Club, Rock and Roll Hotel), Kevin Bombardier (Chupacabra), Jason Martin (Chupacabra, Rock and Roll Hotel, and Dangerously Delicious Pies), Sarosh Hussain (Cusbah), Phil Peters (Smith Commons), Larry Janezich (Capitol Hill Corner), Margaret Bereano, Chris Taylor, and other members of the 6A community

I. Call to Order

Jay Williams called the meeting to order at 7pm. The meeting having been duly convened, was ready to proceed with business with a quorum. Mr. Williams reviewed the agenda and asked if there were any additions or edits. There were none.

II. Community Comment

None.

III. Old Business

A. Update on status of Cusbah protest hearing.

Mr. Williams provided an update on the status of the ANC’s protest of Cusbah.

- The ANC was moving forward with its protest of Cusbah’s license renewal because the establishment refused to limit its public space patio hours to 11pm on weeknights and 12am on weekends.
- Cusbah is the only establishment in 6A with later public space patio hours.
- The ANC and Cusbah participated in a mediation session on July 24th that was unsuccessful.
- On August 14th, the parties were required to attend a status conference before the ABC Board. Mr. Williams reported that he attended on behalf of the ANC, but that nobody from Cusbah attended.
- Due to Cusbah’s failure to attend the status hearing, the Board voted to dismiss Cusbah’s license renewal application.
- Cusbah has 10 days to request reinstatement. Mr. Williams reported that he was not aware of any such request to date.

B. Additional request by ANC 6A establishment (Dangerously Delicious Pies) for limited exemption for provision of its Settlement Agreement during H Street Festival (allowing more individuals on patio).

Mr. Williams stated that Dangerously Delicious Pies had requested an exemption from the section of its Settlement Agreement that limits the number of patrons on its patio to 20.

- Mr. Healy asked if there was enough time to have an exemption approved by the ANC and submitted to the Board before the Festival. Mr. Williams responded that he had been in contact with individuals at ABRA who assured him he would be able to get the requests on the Board's agenda the Wednesday before H Street Festival. Mr. Williams acknowledged there was a risk that the Board could have issues/follow-up questions regarding the request, but that he was working with Martha Jenkins, ABRA counsel, to get language pre-approved by the Board.
- Mr. Englert expressed frustration that there was a lack of organization with ABRA for the H Street Festival.
- Mr. Martin noted that Dangerously Delicious doesn't normally have a patio, but that the Settlement Agreement contained language regarding a patio anyway.
- Ms. Holwill asked if there was a special license through ABRA for the H Street Festival. Mr. Martin said he thought there was, and Ms. Holwill said she had never heard of a limitation at H Street Festival for number of people on an establishment's patio. Mr. Martin said he was fined last year for such a violation. Mr. Williams said that even with a one-day special license, the ANC Settlement Agreements were still in force and would be enforced by ABRA investigators.
- Mr. Peters said that ABRA and the Board were enforcing even minor issues or issues with a "grey area," and that there was a need to shore up the "grey area" issues. With the expansion of the H Street Festival, ABRA was likely to increase its presence. Mr. Williams noted that last month's meeting was an effort by the ANC to work with establishments to avoid such issues with ABRA when sensible.

Mr. Williams moved/seconded by Ms. Koshuta that the Committee recommend the ANC grant a limited exemption to Section 3(c)(6) of the Dangerously Delicious Pies Settlement Agreement, and that such exemption apply only from 12:00pm to 7:00pm on Saturday, September 21, 2013, provided that Dangerously Delicious Pies agrees to comply with the rules and regulations set by the H Street Festival. Motion carried 5-0.

IV. New Business

A. Discussion of request by Sahra at 1200 H Street NE (License Number ABRA-087557) to add entertainment endorsement/dancing and cover charge to license.

Mr. Williams provided some background on the request, noting that it appeared to have arisen because Sahra had been cited by ABRA for charging a cover charge and/or providing live entertainment without an entertainment endorsement. He noted that representatives for Sahra were invited to attend the meeting, but none were in attendance.

- Mr. Healy stated that he is opposed to this request, because the establishment was operating improperly. He also noted that he was not sure if they ever obtained a public space permit from DDOT for their public space patio.
- Ms. Koshuta agreed with Mr. Healy, noting that she was troubled by the fact that they were not properly operating to begin with.

- Mr. Seagle stated there were many houses close to Sahra, and that noise could be a major concern.
- Mr. Williams noted that he had received multiple noise complaints from neighbors regarding noise from Sahra's patio and from inside, and that it appeared Sahra's patio was in operation well after the hours stipulated in its Settlement Agreement.
- Ms. Koshuta stated that there appears to be an issue with lack of enforcement on the part of ABRA.
- Mr. Hussain said that there was also an issue with lines of people going into Horace and Dickie's next door, and that any discussion about noise from Sahra should include Horace and Dickie's as well, and that the ANC needed to deal with them too. Mr. Healy and Mr. Williams stated that the ANC has little power to deal with that establishment because it does not have a public space permit or an alcohol license.
- Mr. Peters stated that Sahra's patio has become a gathering place for people when it's closed, because they do not move or lock up their tables and chairs.

Mr. Healy moved/seconded by Mr. Seagle that the Committee recommend the ANC formally protest the request for an entertainment endorsement by Sahra. Motion carried 5-0.

B. Consider new license for Chupacabra at 822 H Street NE (License Number ABRA-092662), and request by Chupacabra for a stipulated license.

Mr. Williams introduced Mr. Bombardier and Mr. Martin, representatives of Chupacabra.

- Mr. Bombardier stated that Chupacabra has been open since May 2013, and was now seeking a liquor license. The establishment is a Latin kitchen and taqueria. He noted that the information on the placard generated by ABRA is incorrect and was submitted prior to negotiations with the ANC's Public Space Committee. The food hours currently are 11am to 11pm Sunday through Thursday, and 11am to 2am Friday and Saturday.
- Mr. Bombardier said that DDOT approved their public space patio hours until 11pm on weeknights and 12am on weekends.
- Mr. Healy asked if they had amended their application to ABRA to reflect the updated hours. Mr. Martin said they had not. When Mr. Healy stated they could easily amend to reflect the actual hours, Mr. Bombardier said they would do so.
- Ms. Koshuta asked for clarification on whether Chupacabra had already agreed to a Settlement Agreement. Mr. Bombardier and Mr. Williams explained that Chupacabra had gone through the public space approval process first and reached an agreement with the ANC, and now was before the Committee to reach a Settlement Agreement.
- Mr. Williams asked why they had applied for a tavern license, rather than a restaurant license. Mr. Martin said such a license is cheaper, more valuable, and requires less paperwork.
- Ms. Bereano asked what the difference is between a restaurant and a tavern license. Mr. Williams explained that restaurant licenses are cheaper, but require 40% of revenue to be for food, and there is a quarterly reporting obligation. A tavern license is more expensive, but does not have the revenue/reporting requirements.
- Mr. Healy asked for clarification of the occupancy load on the permit. Mr. Bombardier stated it should be 16 inside, 40 in the summer garden, and 60 on the sidewalk patio. He noted that

they could have gone up to 90 on the public space patio, but instead requested 60. The calculations were based on the International Building Code, and were calculated from a patio size of 1,432 square feet. Mr. Williams asked if that size incorporated the agreement reached with the ANC and DDOT shrinking the patio space, and Mr. Bombardier said it did.

- Mr. Healy asked if the patio extends north of the establishment's front door. Mr. Bombardier said that the patio begins south of the door and extends in that direction. There is no patio to the north of the door.
- Ms. Koshuta asked where background music would be played, and Mr. Bombardier said it would only be played indoors.
- Mr. Williams asked what alcoholic beverages would be served, and Mr. Bombardier said beer and liquor, but initially just beer and frozen margaritas.
- Ms. Koshuta asked if there was an actual bar in the establishment, noting that the building is small. Mr. Bombardier stated that there would not initially be a full bar, but instead a beer cooler and margarita machine.
- During a discussion to clarify the business's hours, Mr. Martin stated that they would be allowed to serve food 24 hours, but were applying to serve food one hour beyond alcohol sale hours.
- Mr. Healy asked if the patio closes at midnight, but the inside is open until 4am, what are the plans to shut down the patio, given the proximity to homes? Mr. Bombardier stated that managers and staff had an active relationship with MPD, and have been holding monthly meetings.
- Ms. Bradley asked if the chairs and tables are removed when the patio closes. Mr. Bombardier said that they had picnic tables that could not be moved. He stated that in the last four months of operation, the area has been greatly improved by the presence of the restaurant.
- Ms. Koshuta expressed concern that the restaurant could become a destination for late-night food, and that given the small space they could end up with patrons spilling out onto the street late at night. Mr. Bombardier said that this was currently not a problem, and Mr. Martin said that if people were taking food to go, they will be asked to take it elsewhere and not stay on the block. Further, staff would be instructed to assist with crowd control and making sure people weren't staying outside after the patio was closed.
- Ms. Bereano introduced herself as a resident on the same block as Chupacabra. She stated she wants to see the alcohol hours limited to the same time as the public space patio. She raised concerns with people sitting in the summer garden area after hours, workers parking illegally in the residential parking area, and problems with enforcement from MPD. She stated that the owners had claimed they want to be a family-oriented restaurant, and that if that was the case, they should be applying for a restaurant license instead of a tavern license.
- Ms. Koshuta questioned the tavern application, noting that the ANC recently had gone through a long meeting process to hear from the community and ultimately determined it was the interest of the neighborhood to favor restaurant licenses, and the ANC agreed to that resolution. She also noted that this particular establishment wasn't directly on H Street, but rather immediately next to a residential community.

- Mr. Seagle stated that when the Elroy came before the Committee requesting a CT license, the reason it was agreed to was because they were in the middle of a commercial strip and not near residences.
- Mr. Martin noted that they had a regular restaurant license, and they were just asking for a tavern liquor license.
- Mr. Seagle said the risk is that with a CT license, the establishment could cease sales of food altogether and just sell alcohol.
- Mr. Williams asked if Mr. Martin and Mr. Bombardier were amenable to changing to a CR license. Mr. Bombardier argued that the overhead costs would be too high.
- Mr. Hussain argued that neighbors need to understand that they live in a business / entertainment district, and that these new businesses were responsible for property values going up and the neighborhood being popular.
- Ms. Bereano stated that she is supportive of H Street businesses, but that this business was located in a residential area on 9th Street.
- Mr. Peters said that there was a bigger issue, because there are going to be more establishments interested in opening in the area, and that there will be an ongoing conversation with residents. He stated there needs to be a balance struck to keep the area from getting out of hand, but not being too picky with restrictions on establishments.
- Mr. Williams responded that he believed the ANC was striking that balance, and it was completely open with what it expected out of new establishments through its standard Settlement Agreement. He noted that other ANCs don't have a "standard" agreement, and that some even start with a blank slate with every new establishment, not providing any kind of predictability in the process.
- A neighbor in 6A stated that he disagreed with the claim that H Street was a positive destination, noting that some people have left because of mistakes made by nearby businesses.
- Ms. Holwill stated that long before businesses came to H Street, it was a neighborhood, and that the ANC began working out Settlement Agreements because of the potential of conflicts with neighbors. Two years ago, the ANC held a series of meetings because there was a push for a moratorium on liquor licenses. Instead, the committee reported the sense of the community that it would favor restaurant licenses.
- Ms. Holwill said that tavern licenses provide freedom to experiment, but the license is only valuable if it is sold. She warned that the ANC should be careful in not enforcing the rule against taverns, because other ANCs had more strictly enforced the rule and not had any problems. She said she did not understand why the Committee has not stuck to its promise to discourage tavern licenses.
- Mr. Martin stated that the issue with a tavern license was the price point of the food they are selling vs. prices for beer and liquor. He believes a 60/40 split would be impossible because of the price of his food.
- Mr. Peters said that the issue is also about a price point for attracting certain clientele. If Chupacabra has to lower its alcohol prices, they would attract a different crowd, and one that the neighbors may not appreciate.

- Ms. Koshuta questioned whether the establishment needed to sell alcohol at all. Mr. Martin said it was necessary to survive. Ms. Koshuta said it was a problem that the only businesses that can survive on H Street are alcohol-related.
- Ms. Koshuta also noted that Mr. Martin had been a business operator on H Street for a while, and they knew about the ANC resolution favoring CR licenses; yet they still made the choice to proceed with a CT application.
- Ms. Holwill stated that Chupacabra was a unique situation because the majority of its space is a public space patio.
- Mr. Williams asked Mr. Bombardier and Mr. Martin if they were willing to agree to the standard 6A Settlement Agreement. Mr. Bombardier said they would be willing to sign, but wanted to extend the three-month trial period for summer gardens to the public space patio as well. Mr. Williams stated that he did not believe the Committee or the ANC would agree to that right now, but that the overall issue of patio hours would be discussed in a future meeting. Mr. Bombardier then stated that they were in agreement with the standard Settlement Agreement.
- Mr. Martin stated that they were willing to put language in the Settlement Agreement agreeing to have an operating kitchen, but he did not believe it was fair to require them to meet the CR requirements. Ms. Bereano stated that these are savvy business owners, and when they were coming into the neighborhood they talked to all the neighbors about their focus being on serving food.
- Mr. Englert stated that neighbors knew they were purchasing a house in a commercial district.
- Mr. Bombardier said that when they first opened, they collected signatures on a petition stating that people supported a sidewalk café with full business hours, and support for serving alcoholic beverages. He represented that 300 people had signed the petition. Ms. Bereano stated that only 4 people in the immediate neighborhood had signed, but Mr. Bombardier represented that they had support of at least 1/3 of the neighbors.
- Ms. Koshuta said that she likes the establishment, but is concerned with its location in a residential block. She stated that if it closed at more normal hours, it wouldn't be as big of a concern.
- Mr. Bombardier stated that they had already been through multiple community meetings and had agreed to mitigate many potential problems, including giving up patio space.
- Mr. Williams argued that they may be able to meet their CR requirements due to heavier food sales at lunch that could make up for relatively larger alcohol sales at night. Mr. Healy also noted that a limitation on the inside seating to 16 could skew the sales numbers towards food.
- Mr. Bombardier said their location did not lend itself to a lot of foot traffic. Ms. Koshuta asked if there were such problems, why choose this location? Mr. Martin said they are hoping that area will progress further and there will be more traffic nearby.
- Mr. Healy noted that with a CR license, public space seats don't count towards occupancy for calculating revenue. There is a choice between calculating per-seat revenue or a straight 60/40 split, and that while reporting is required quarterly the revenue requirement is cumulative annually.

- Ms. Holwill stated that Langston Bar and Grille had recently received approval from the ANC to switch to a CT license because it had been operating for a while and was struggling to meet the requirements.
- Mr. Williams stated that he would prefer Chupacabra to start with a CR license, and if it could demonstrate it was a good neighbor for a year or so, but was not able to meet the CR requirements, it could always request a change to a CT license, and the ANC may support it. Mr. Martin requested that it be put in the Settlement Agreement that the ANC would suggest such a change. Mr. Williams said he could not put such a promise in the Settlement Agreement, and Mr. Healy noted that the Board likely would not approve such language.
- Ms. Koshuta said that the Committee is not here to ensure businesses survive, but to represent the interests of the neighborhood.
- Mr. Martin stated that if the point is to require them to serve food, then language in the Settlement Agreement requiring a working kitchen should suffice. Mr. Williams stated that just having a kitchen did not ensure a certain volume of food that would show that the business is putting in efforts to operate as a restaurant.

Mr. Williams moved/seconded by Ms. Koshuta that the Committee recommend the ANC formally protest the license application of Chupacabra unless a signed Settlement Agreement is submitted to the ANC and the establishment change from a CT to a CR license prior to the protest date, and that if these conditions are met, the Committee recommends the ANC support a stipulated license. Motion carried 5-0.

C. Discussion of request by H Street Country Club at 1335 H Street NE (License Number ABRA-076649), Vendetta at 1220-1212 H Street NE (License Number ABRA-072734), and Rock & Roll Hotel at 1353 H Street NE (License Number ABRA-072777) to reach new Settlement Agreements with ANC 6A and that the ANC support their request to ABRA for extended rooftop deck hours.

Mr. Williams explained that Mr. Englert had approached the ANC regarding these three establishments' request for extended rooftop hours.

- Mr. Englert stated that he was requesting to extend the rooftop deck hours to 2:30am on weekends and 12am on weeknights, but he was willing to stay at 11pm on Monday through Wednesday. He believed he was at a competitive disadvantage to other establishments in 6A, such as Twelve, who did not have such limitations.
- Mr. Healy explained that the current standard Settlement Agreement did not contain limited rooftop deck hours, because these are typically dealt with in a separate addendum, but that the ANC had been requiring the same hours as public space patios. The rules are the same for all establishments, except for possibly Twelve, who reached an agreement prior to rooftop decks being common in the neighborhood.
- Mr. Hussain argued that the main issue is sound mitigation, and that the ANC should focus on that rather than limiting hours across the board.
- Mr. Martin stated that Rock and Roll Hotel had built walls around its roof deck to keep sound in, and had been a good neighbor.
- A neighbor in 6A stated that he appreciated that Rock and Roll Hotel had been a good neighbor, but that he knows that they will shut down their rooftop deck at midnight, so even

on nights when it might be getting a little loud, he's patient because he knows the sound will end by midnight. He believes the current hours strike a good balance for the businesses and the neighbors.

- Ms. Holwill stated that she had heard no complaints about noise from H Street Country Club or Rock and Roll Hotel.
- Another neighbor agreed that because he knows the decks will shut down at midnight, so he has no complaints about noise.
- Mr. Williams stated it looked like the sense of the Committee and the ANC was to continue to apply a consistent standard across the ANC.
- Mr. Healy said there appears to be interest in a larger discussion of rooftop deck hours, and that this would fit in with the planned discussion of public space patio hours next month.
- Ms. Koshuta stated that if all other establishments were on the same Settlement Agreement limiting rooftop decks to 11pm and midnight, it makes more sense to work to get Twelve on the same hours, rather than open up hours to everyone else.
- Mr. Englert expressed frustration that establishments in other neighborhoods could have later hours, but not in 6A.
- Mr. Williams asked if there were any motions to be made on these requests. There being none, he closed discussion and moved to the next agenda item.

Prior to adjourning, Mr. Hussain asked to briefly speak to the Committee (he was not present during the previous discussion of the Cusbah protest). He stated that he missed the status hearing because of a family emergency, but that he had worked with ABRA and the protest hearing was going to go forward. He stated that he was still willing to come to an agreement with the ANC, and that he did not need to keep his patio open until 3am.

V. Adjourn

Mr. Williams thanked all who attended the meeting, and the Committee for its continued service. The Committee adjourned at 9pm.