

Alcoholic Beverage Licensing Committee
ANC 6A
September 17, 2013

Pursuant to notice duly given, a meeting of the Alcoholic Beverage Licensing Committee (“Committee”) of ANC6A was held commencing at 7:00 pm EST on September 17, 2013 at the Sherwood Recreation Center, 640 10th Street, NE Washington, DC 20002.

Committee Members Present: Adam Healy (Acting Chair), Mary Cary Bradley, Christopher Seagle, Michael Herman, Roger Caruth, Katy Thomas, David Oberting, and Ann Marie Koshuta

Committee Members Absent: Jay Williams

Commissioners Present: David Holmes

Community Members Present: Joe Englert (Vendetta, H Street Country Club, Rock & Roll Hotel), Phil Peters (Smith Commons), Ryan Gordon (Queen Vic), Mr. Whitaker (XII), Frank White and Andrew Kline (Ben’s Chili Bowl/Ben’s Upstairs), Sarosh Hussain (Cusbah), Scott Magnuson (Argonaut), and other members of the 6A community

I. Call to Order

Adam Healy called the meeting to order at 7:03 pm. The meeting having been duly convened, was ready to proceed with business with a quorum. Mr. Healy reviewed the agenda and noted that Sections IV 3 and 4 would be switched. Mr. Healy asked if there were any additions or edits. There were none.

II. Community Comment

Mr. Peters noted that a substantial number of H Street Establishments were required to be at an ABRA meeting on Thursday ahead of the H Street Festival. He said that this should have been scheduled earlier, and that they have been addressing concerns from the neighborhood, Homeland Security, etc. as early as possible. He stated that there needs to be more proactive organization as a group. Mr. Peters and Mr. Magnuson discussed various issues with the organization of the Festival, and Mr. Caruth stated that the Festival organizers were attempting to streamline the process and take the burden off the city, and ABRA’s involvement came as a surprise. Mr. Healy responded that there was not much that could be done at this meeting, but thanked everyone for raising these issues. He noted that there were additional difficulties due to the ABC Board’s recess at the time.

III. Old Business

1. Update on status of Cusbah protest hearing.

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

- Cusbah formally requested reinstatement of its renewal, and the ANC did not oppose.
- Assuming the Board accepts the request, the protest hearing is scheduled for October 2nd.

IV. New Business

1. Discussion of license renewal for The Queen Vic at 1206 H Street NE (Class “C” Tavern) (License Number ABRA-083930).

- Mr. Healy stated that he is unaware of any complaints regarding this establishment.
- There were no additional comments.

2. Discussion of license renewal for Atlas Arcade/Church and State at 1236 H Street NE (Class “C” Tavern) (License Number ABRA-083822).

- Mr. Healy stated that he is unaware of any complaints regarding this establishment.
- There were no additional comments.

3. Consider new license for Ben’s Chili Bowl/Ben’s Upstairs at 1001 H Street NE (Class “C” Restaurant) (License Number ABRA-093103).

- Mr. Kline, the attorney representing Ben’s Chili Bowl/Ben’s Upstairs, explained that the establishment was applying for a CR license with no entertainment endorsement. The space would have a sidewalk café and a rooftop deck.
- According to Mr. Kline, Ben’s Upstairs would mirror the concept of Ben’s Next Door, with the goal of at least 60% of receipts from food, as part of a full-service dining establishment.
- Mr. Kline stated that there had been no problems at Ben’s Next Door for the past five years - it was operated as a restaurant/bar, lights were not kept low, and music was not loud. He said the establishment used “common sense” in dealing with neighbors.
- The rooftop deck will be extended, with higher ceilings, and a tall wall on the street. Initially, the owners met directly with the new owners of the home directly behind the establishment. When the initial owners listed the house for sale, Ben’s Chili Bowl/Ben’s Upstairs purchased the house.
- The establishment will have design features that will attempt to respect the neighbors, such as internal trash, queues on H Street, not 10th Street.
- Mr. Kline expressed concern with the Settlement Agreement provided by ANC 6A, stating that the requirements were daunting, noting sections that he believed were a recitation of the law, meaning that if there was a violation of the law there could be two separate violations cited.
- Mr. Healy suggested that Mr. Kline have a dialogue with the ABL Chair Jay Williams to discuss the specific issues he had with the SA.
- Mr. Kline stated he was happy to discuss specific issues for the establishment.
- Mr. Healy asked about the restriction on the rooftop and sidewalk café for 11pm weeknights, and 12am on weekends. Mr. Kline said that he was interested in discussing this further and working out ways to mitigate noise. He noted that the sidewalk café on the 10th Street side would not be part of alcohol service, and that there would be a buffer of trees between the establishment and residences. He said they may be interested in keeping the patio open beyond the SA hours, depending on what makes business sense.
- A neighbor raised concerns with the establishment’s reluctance to sign the Settlement Agreement, because this is the only way to address concerns by the neighbors. Ms. Koshuta echoed this concern, noting that without an SA, the ANC would not be legally represented.
- Raphael Marshall, a former ANC Commissioner, noted that there had been issues with noise coming from establishments on H Street through open doors, which he believed was a violation of the SA, and lack of enforcement by ABRA. This was raised as a particular concern

for Ben's given proximity to a residential area. The representatives from Ben's said they would put up signs to remind patrons to keep noise at a minimum.

Mr. Seagle moved/seconded by Ms. Koshuta that the Committee recommend the ANC formally protest the CR license unless a signed Settlement Agreement is submitted to the ANC prior to the protest date. Motion carried 8-0.

- After the vote, there was a discussion about what the conversation would be about regarding the ANC's standard Settlement Agreement.
- Mr. Caruth believed that people should take a holistic view of the process, and that there should be a forum to work out the standards that the community is interested in but not over-penalize establishments.
- Mr. Herman stated that the Settlement Agreement has evolved over time and stays with the license, not the specific business. The Committee is trying to have verbiage that would apply to everyone and be supported by the ANC, even as H Street grows. He believed this helps halt "group of five" agreements.
- Ms. Koshuta argued that things are getting simpler over time, and is leading to less individuality and "nit picking." She believes it is difficult to determine who the good actors will be when setting up a new agreement.
- Mr. Kline stated it is unfair to have a one size fits all approach. For example, Ben's has been around for years, and Mr. Englert has as well. He argued for more of a case-by-case approach, and if no track record, look at the owners' body of work.
- Mr. Seagle suggested that SAs have initial restrictions that can be relaxed later.
- Mr. Healy stated that ABRA restricts what can be done by the ANC.
- Mr. Kline stated that the Board is more sophisticated about noise abatement issues. The statute sets a regulation that applies to everyone.
- Mr. Oberting asked Mr. Kline if he would sign an agreement he thinks is reasonable. Mr. Kline said he would sign something that specifically addressed concerns about the specific location and application and put into agreement issues that are enforceable.
- Mr. Oberting said there are broader issues that need to be discussed.
- Mr. Holmes stated that the decision to include the law in the Settlement Agreement was because not all owners knew the law, so the ANC wanted to put them all in one place. Barracks Row (referenced by others) is a very different situation with variation in the contexts in which the establishments are located. There is a remarkably consistent context across H Street, so the concerns are generally the same from establishment to establishment.

4. Discussion of license renewal for Twelve (XII) Restaurant and Lounge at 1123-1125 H Street NE (Class "C" Tavern) (License Number ABRA-076366).

- Mr. Whitaker raised concerns about the mandatory reimbursable detail in the Settlement Agreement for any time they want to do live entertainment; he said that they were willing to do so when they expect large crowds, but having a police presence for other events, such as a wedding reception, caused problems.
- Mr. Healy stated that about three years ago, the ANC protested XII because of noise and safety complaints related to the establishment, such as fights and criminal activity. In

November 2012, there were reoccurring noise complaints. Mr. Healy asked if there were new windows installed at the establishment.

- Mr. Whitaker said they were having problems with a contractor getting the correct sized windows, and they had not been installed to date.
- Mr. Holmes asked if they could put insulation back in the windows since they were damaged, and Mr. Whitaker said he would make the suggestion.
- Mr. Healy noted that XII was ordered to not flyer in the NE corridor, but he regularly found flyers on his block. Mr. Whitaker stated that the contract for promotions had a restriction on flyering in the Atlas District.
- Mr. Healy noted that the current SA did not have restrictions on rooftop deck hours, and that he regularly heard complaints about noise from the roof. He asked if XII would be willing to amend its Settlement Agreement to include restrictions. Mr. Whitaker said he would need to discuss, but that they invested in a sound system that is more controllable including offering the ability to lock the volume at a set decibel level.
- Mr. Herman noted that he has heard loud music from as much as a block away, and that people were commenting on how bad it was. Mr. Herman noted that he believed he could see at least one speaker on the deck from the street. Mr. Whitaker said they periodically make adjustments to the sound.
- A neighbor stated that she called the police at 2am the previous night because people couldn't find their cars without getting into a fight, and asked whether a night club is an appropriate business for the neighborhood.
- Mr. Whitaker responded that the noise did not come from XII that night, because they had closed at 11pm.
- A neighbor said she has to sleep with ear plugs because the noise is so bad around 2 or 3am.
- Another neighbor asked what the purpose of the previous protest was if noting was done to resolve the noise. She asked what the ABL Committee can do about noise issues.
- Mr. Peters stated that if ABRA says noise issues are not enforceable then the neighborhood can't really complain - it's as much the responsibility of ABRA as it is the establishment to control noise.
- Mr. Holmes noted that XII's Settlement Agreement says that it cannot have amplified music or other sounds on the rooftop. He said that he hears repeated complaints; 90% of establishments on H Street have no complaints, but he gets at least one complaint a week about XII.
- Ms. Koshuta suggested that the Committee work to get XII's rooftop hours into alignment, and Mr. Seagle suggested a letter to ABRA requesting enforcement.
- Mr. Holmes noted that Khan's, an establishment located under XII, has had problems due to the noise coming from XII. Mr. Whitaker said that when XII opened, Khan's was not in place. When Khan's was in the process of opening, XII explained how live entertainment would be on the second floor and how it would be set up. During construction, the sound proofing was removed, but they still turn down music when asked. He noted that the equipment is designed to be on the ground.
- Ms. Koshuta commented that it appears ABRA steps up enforcement at H Street Festival but it's very difficult to get them to enforce daily issues raised by neighbors.

Mr. Seagle moved/seconded by Ms. Thomas that the Committee recommend the ANC formally protest the CT license renewal of XII. Motion carried 7-0-1.

V. Adjourn

The Committee adjourned at 8:50 pm.