

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

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In the Matter of:)
)
Don Juan Restaurant, Inc)
t/a Don Juan Restaurant & Carryout)
Application for Renewal, Voluntary)
Agreement Termination, and an) Case No. 21278-07/042P
Entertainment Endorsement at) License No. 15934
1660 Lamont Street, N.W.) Order No. 2008-233
Washington, D.C.)
_____)

BEFORE: Peter B. Feather, Chairperson
Judy A. Moy, Member
Mital M. Gandhi, Member

ALSO PRESENT: Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

Rick Massumi, Esquire, and Robert Waldeck, Esquire, on behalf of
the Applicant

Laurie Collins and Marika Torok, on behalf of MPNA and other
Protestants

Claudia Schlosberg, on behalf of Mount Pleasant Main Street, and
a Group of Five or More Protestants

Jack McKay, on behalf of Advisory Neighborhood Commission
1D

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

The Board had before it three Applications filed by Don Juan Restaurant, t/a Don Juan Restaurant and Carryout (Applicant), which included requests to: (1) terminate its Voluntary Agreement with the Mount Pleasant Neighborhood Alliance (MPNA), (2) have an Entertainment Endorsement, and (3) renew its class "CR" retailer's license for another three-year period. The Board combined these three Applications to bring efficiency to the protest process and to allow similarly related issues such as entertainment and the establishment's Voluntary Agreement with MPNA to be addressed concurrently.

A timely protest to the Applicant's request for termination of the Voluntary Agreement was filed by MPNA. Timely protests against the Renewal Application were filed by: (1) Advisory Neighborhood Commission (ANC) 1D, (2) a group of five or more represented by Claudia Schlosberg, and (3) Mount Pleasant Main Street. MPNA also protested the Entertainment Endorsement Application. A timely protest to the renewal Application was also filed by a Group of Five or More Individuals represented by Steve Mudd but they did not appear at the January 30, 2008 status hearing and they were dismissed as Protestants.

The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the granting of the three Applications would adversely impact: (1) the peace, order, and quiet of the neighborhood and (2) residential parking needs and vehicular and pedestrian safety.

The case came before the Board for a public protest hearing on April 30, 2008. At the conclusion of the protest hearing, the Board took the matter under advisement. The Applicant subsequently submitted proposed findings of fact and conclusions of law. The Board, having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment operates on the first floor of 1660 Lamont Street, N.W. (Tr. 4/30/08 at 39, 262.) There are two entrances to the establishment with one for the carryout section and the other entrance for dining. (Tr. 4/30/08 at 39, 41.) The establishment has a certificate of occupancy for 100 patrons. (Tr. 4/30/08 at 39; Board Exhibit No. 1.) The Applicant's establishment is located in a C-2-A zone which is defined as a commercial area that allows for office, retail and various residential uses. (Board Exhibit No. 1.) There are approximately 17 Alcoholic Beverage Control (ABC) licensed establishments located within four blocks of Don Juan Restaurant and Carryout (Don Juan Restaurant). (Board Exhibit No. 1.) Don Juan Restaurant is located in close proximity to the ABC licensed establishments Marleny's and Marx Café. (Tr. 4/30/08 at 45.)
2. Don Juan is a medium sized restaurant that also has a carry-out section owned and operated by Alberto Ferrufino. (Tr. 4/30/08 at 39; Board Exhibit No. 1.) The carry-out section does have three or four tables where patrons can sit down and eat. (Tr. 4/30/08 at 41.) The carry-out and dining sections of the establishment are connected. (Tr. 4/30/08 at 41-42.)
3. Alcoholic Beverage Regulation Administration (ABRA) Investigator Richard Coward and other ABRA investigators visited Don Juan Restaurant on 22 different occasions between January 31, 2008 and April 4, 2008. (Tr. 4/30/08 at 37, 40-41, 48.) During these visits, which included evening visits on Friday and Saturday nights, no ABRA violations were found. (Tr. 4/30/08 at 37, 43-44.) Specifically, there were no problems

with peace, order, and quiet found, including no problems with trash or noise other than when patrons entered or exited the establishment. (Tr. 4/30/08 at 37, 46.) Investigator Coward did not find the Applicant's establishment to be operating any differently than other Mount Pleasant establishments. (Tr. 4/30/08 at 44.) He did note that it had received more complaints than the other establishments. (Tr. 4/30/08 at 44-45.)

4. With regard to parking, Investigator Coward did observe some cars illegally parked near the intersection of Mount Pleasant Street and Lamont Street, N.W. (Tr. 4/30/08 at 37.) However, he did not see any patrons drive-up and enter Don Juan Restaurant. (Tr. 4/30/08 at 38.) This led Investigator Coward to conclude that these individuals could have been visiting another establishment or a residence. (Tr. 4/30/08 at 38.) The majority of the establishment's patrons either walked to the establishment or came from public transportation. (Tr. 4/30/08 at 39, 61.) Investigator Coward also observed some patrons park legally and enter the establishment. (Tr. 4/30/08 at 40.)

5. The establishment has limited parking as there is no parking available directly in front of the establishment on the side of Lamont Street, N.W., which is closest to the establishment, as there is a sign that says "No Parking Metro Bus Zone". (Tr. 4/30/08 at 38, 61.) Two hour parking meters are available on the other side of Lamont Street. (Tr. 4/30/08 at 38.) In front of the establishment on Mount Pleasant Street is a no parking loading zone. (Tr. 4/30/08 at 38.) The establishment does not provide off-street parking. (Tr. 4/30/08 at 38-39.) The owner of the establishment did not mention any plans to provide parking for patrons to Investigator Coward. (Tr. 4/30/08 at 67.)

6. With regard to noise, Investigator Coward stated that Mr. Ferrufino told him that to address concerns about noise he had contacted a sound engineer and immediately rectified the problem. (Tr. 4/30/08 at 43.) Investigator Coward has not seen a security plan from the establishment. (Tr. 4/30/08 at 68.)

7. Investigator Coward stated that the specific protest issues were adverse impact on peace, order, and quiet, and parking. (Tr. 4/30/08 at 36.) Investigator Coward indicated that Ms. Laurie Collins' complaints, on behalf of MPNA, were primarily about: (1) patrons loitering in front of and around the establishment, (2) noise emanating from the establishment's sound system, and (3) noise from patrons talking loud and yelling and also urinating as they exit the establishment. (Tr. 4/30/08 at 36, 53.) Additionally, Ms. Collins informed Investigator Coward that the establishment sometimes puts their trash outside between the hours of 10:00 p.m. and 8:00 a.m. in violation of their voluntary agreement with MPNA. (Tr. 4/30/08 at 36.) Ms. Collins informed Investigator Coward that she had observed patrons fighting outside of the establishment. (Tr. 4/30/08 at 41.)

8. Investigator Coward identified Investigative Report No. 8343, which reflected a prior investigation of the establishment, separate from the protest investigation, which he had conducted in response to a noise complaint forwarded by Laurie Collins to ABRA, on behalf of a Mount Pleasant resident. (Tr. 4/30/08 at 49, 52, 65; Applicant's Exhibit No. 1.) As part of this investigation, Investigator Coward monitored the establishment on 19 separate visits. (Tr. 4/30/08 at 49-50.) During these 19 visits, Investigator Coward did

not identify any noise coming from the establishment or observe any ABC violations. (Tr. 4/30/08 at 51.) Investigator Coward confirmed that 41 monitoring visits by ABRA Investigators did not find any ABC violations. (Tr. 4/30/08 at 52.)

9. Geoff Turner is a broadcast audio technician who mixes news and audio for ABC news, Fox News Channel, and the Retirement Living Network. (Tr. 4/30/08 at 82, 107.) His expertise is in sound engineering and audio, which he has been doing for over twenty years. (Tr. 4/30/08 at 83, 95, 107.) Mr. Turner has previously testified before the Board as a sound expert. (Tr. 4/30/08 at 83, 95.) His sound experience is in television recording, designing recording studios to prevent sound from leaving the building, and doing work for political and public interest events. (Tr. 4/30/08 at 96, 107.) Mr. Turner was enrolled in a physics program at American University that covered sound and light. (Tr. 4/30/08 at 96, 107.)

10. Mr. Turner was asked by the Applicant to serve as a sound expert to assess whether the establishment had a problem with noise leaking out of the establishment and to make suggestions for noise abatement. (Tr. 4/30/08 at 83.) Mr. Turner had been informed that the establishment had generalized sound complaints and that booming base frequencies were being attributed to the restaurant that were alleged to be rattling residents' second floor bedroom windows. (Tr. 4/30/08 at 84, 92.)

11. Mr. Turner first visited the establishment on August 16, 2007. (Tr. 4/30/08 at 84-85.) During his initial visit, Mr. Turner met the owner who indicated that he was interested in listening to Mr. Turner's assessment and making improvements to the property. (Tr. 4/30/08 at 85-86.) Some suggestions that came out of this meeting were installing a more substantial fire-proof door and changing the jukebox from a large commercial model to a smaller one with speakers placed around the establishment. (Tr. 4/30/08 at 86, 98.) Prior to Mr. Turner's first visit, noise abatement measures had already been taken. (Tr. 4/30/08 at 86-87.) Specifically, the Applicant had installed very well insulated professionally thick windows, and an effective double door system that assisted in preventing sound from going out an open door. (Tr. 4/30/08 at 87, 114.) Mr. Turner returned a week later to work on the Applicant's sound system. (Tr. 4/30/08 at 88.) He put a device called a compressor limiter into the sound system for karaoke to prevent sound from the system going past a set sound level in an effort to not disturb the neighborhood. (Tr. 4/30/08 at 88, 97-98, 100, 110-111, 117-118.) The establishment also made the improvement of changing its jukebox to a smaller model with more focused speakers that have less base frequencies compared to the original jukebox. (Tr. 4/30/08 at 98-99, 112.)

12. Mr. Turner took sound measurements in October 2007. (Tr. 4/30/08 at 89.) He walked around the neighborhood to establish a baseline ambient sound pressure level to understand what sound the neighborhood was making on its own. (Tr. 4/30/08 at 89.) Mr. Turner found the measurements to be 55 to 65 dB with metro buses in the 70 to 80 dB range. (Tr. 4/30/08 at 89.)

13. Mr. Turner returned in February 2008 to take actual sound pressure meter readings around the property itself on an actual Friday karaoke night. (Tr. 4/30/08 at 89-90, 112; Applicant's Exhibit 2(a)). Mr. Turner started at 11:45 p.m. with a crowd inside of the establishment. (Tr. 4/30/08 at 90.) He took a meter reading of 90 dB inside the establishment with peaks to about 95 dB, which is a loud level of music for the inside. (Tr. 4/30/08 at 90.) Mr. Turner noted that 90dB would make it difficult to have an audible conversation. (Tr. 4/30/08 at 90.) He then went to various points in the neighborhood at street level to determine how the sound was spilling out in the neighborhood. (Tr. 4/30/08 at 90, 101.) Mr. Turner indicated that right outside the front door of the establishment at the corner of Mount Pleasant and Lamont Streets he could not get a meter reading that went above the normal baseline ambient sound level that the neighborhood was creating. (Tr. 4/30/08 at 91, 112.) He could hear and perceive that there was music playing inside of the establishment, but the music was not at a level where it was measurable. (Tr. 4/30/08 at 91.) At other outside areas near the establishment, including the closest residential neighborhoods, Mr. Turner could not even tell that music was playing and could not get a meter reading. (Tr. 4/30/08 at 91, 93.) He did not take measurements from the second or third floors from neighborhood houses. (Tr. 4/30/08 at 101.) He did not believe it was likely that noise was rising up from the establishment as there needed to be a strong enough noise source outside of the establishment for this to occur. (Tr. 4/30/08 at 102-103.)

14. Mr. Turner concluded that the booming base complaint alleged to have resulted in rattling windows could not be attributed to the establishment. (Tr. 4/30/08 at 92, 113.) He noted that the establishment's sound system is not a large system and that two of its three speakers have been permanently disconnected. (Tr. 4/30/08 at 92.) Mr. Turner came to this conclusion taking into account: (1) the structural integrity of the building, (2) the thickness of the glass, (3) the meter readings he had taken, and (4) that the establishment had a small system with only one working speaker. (Tr. 4/30/08 at 92, 119-120.) He attributed the rattling windows to someone's car stereo. (Tr. 4/30/08 at 94.) Mr. Turner lives somewhat nearby 16th Street, N.W., and his windows rattle every other day from people driving by in their cars blasting stereos with big subwoofers. (Tr. 4/30/08 at 94-95.)

15. ANC 1D Commissioner Jack McKay has been a member of ANC 1D for six years. (Tr. 4/30/08 at 325). His single member district is ANC 1D-03. (Tr. 4/30/08 at 325.) ANC 1D passed a resolution on April 4, 2006 in support of an entertainment endorsement for Don Juan Restaurant. (Tr. 4/30/08 at 325-327; Applicant's Exhibit No. 11.) The ANC 1D resolution supports an entertainment endorsement for karaoke at the establishment. (Tr. 4/30/08 at 327, 349.) ANC 1D also adopted on April 11, 2007 another resolution supporting an entertainment endorsement for Don Juan Restaurant. (Tr. 4/30/08 at 328; Applicant's Exhibit No. 12.) All of the ANC 1D resolutions supporting an entertainment endorsement for Don Juan Restaurant deal specifically with karaoke. (Tr. 4/30/08 at 371-372.)

16. ANC 1D Commissioner McKay indicated that ANC 1D has no official position on Lamont Park issues but is aware of problems that occur there. (Tr. 4/30/08 at 332.) This includes homeless people hanging out in the park causing problems. (Tr. 4/30/08 at 333.) ANC 1D supports (1) terminating the Applicant's Agreement with MPNA, (2) allowing the Applicant to have an entertainment endorsement for karaoke, which they believe would benefit the neighborhood. (Tr. 4/30/08 at 333, 337.) Commissioner McKay indicated that ANC 1D recently passed a general resolution in favor of live music and live entertainment at all of the Mount Pleasant restaurants and it calls for the termination of any Voluntary Agreement that fails to provide for live music and live entertainment in a Mount Pleasant restaurant. (Tr. 4/30/08 at 333-334, 336, 370.)

17. ANC 1D is currently willing to go along with the time limitations in the Hear Mount Pleasant voluntary agreement for live music but not other entertainment, including karaoke. (Tr. 4/30/08 at 334.) ANC 1D also supports having the hour restrictions on live music expire after a trial period, unless it can be shown that problems on the street are attributable to live music. (Tr. 4/30/08 at 334-335.)

18. Commissioner McKay is aware of peace, order, and quiet concerns from residents pertaining to Don Juan Restaurant and has served as an intermediary between residents and Alberto Ferruffino in an attempt to resolve noise problems. (Tr. 4/30/08 at 335, 350.) He indicated that Mr. Ferruffino has always been cooperative with him in resolving these problems. (Tr. 4/30/08 at 335.) Commissioner McKay is aware of residents' concerns regarding public drunkenness and urination and the perception that this conduct is related to Don Juan Restaurant. (Tr. 4/30/08 at 351-352.) ANC 1D, however, believes that the Applicant runs a good shop and has turned away intoxicated patrons who have tried to enter. (Tr. 4/30/08 at 352.) He believed that a lot of these problems were related to the adjacent Lamont Park because homeless people living in the park like to drink in public. (Tr. 4/30/08 at 352-353.) The issue of urination behind Don Juan Restaurant has been raised by ANC 1D as it relates to Best Way liquors. (Tr. 4/30/08 at 353.)

19. Commissioner McKay stated that the ANC supports Don Juan Restaurant maintaining its current operations regarding last call and keeping its current hours of operation. (Tr. 4/30/08 at 339-340, 349.) On August 7, 2007, ANC 1D passed a resolution endorsing the Hear Mount Pleasant voluntary agreement. (Tr. 4/30/08 at 345.)

20. With regard to the establishment's hours for entertainment, Commissioner McKay made a distinction between karaoke and live music. (Tr. 4/30/08 at 359-360.) Specifically, he indicated that unlike live music, karaoke would not bring large numbers of people or potential peace, order, and quiet problems to Mount Pleasant. (Tr. 4/30/08 at 360-361.) As such, he believed time restrictions were needed for live music but not Karaoke. (Tr. 4/30/08 at 360-361.) With regard to ANC 1D's support of Don Juan Restaurant, Commissioner McKay indicated that they have really only been thinking in terms of preserving karaoke at whatever hour, and not live music, which is new. (Tr. 4/30/08 at 361, 368.) ANC 1D was not aware that Don Juan Restaurant was applying for anything other than karaoke and that ANC 1D thought of it as a karaoke establishment and had not considered other entertainment at the establishment. (Tr. 4/30/08 at 362.)

21. Mr. Kenneth Goldstein resides and owns a home at 3172 17th Street, N.W., in Mount Pleasant where he has lived since 1980. (Tr. 4/30/08 at 122, 124-125, 134.) His home is across the street from the establishment about 60 feet away. (Tr. 4/30/08 at 123.) His front door is directly behind the rear of the establishment. (Tr. 4/30/08 at 124.)

22. Mr. Goldstein is currently enrolled in a Master's program studying biblical studies at Baltimore Hebrew University. (Tr. 4/30/08 at 124.) He is frequently at home. (Tr. 4/30/08 at 124.) Mr. Goldstein bought his home close to the commercial strip as he likes the convenience of living in a residential area adjacent to a commercial district with shopping and restaurants. (Tr. 4/30/08 at 125.) He indicated that the downside of living in a commercial area is noise, deliveries, and trash pick-ups. Mr. Goldstein hears loud noise such as people coming out of establishments talking loudly, couples having arguments, kids playing, music blaring from stereos in parked cars, buses idling, and garbage and delivery trucks. (Tr. 4/30/08 at 126, 128.)

23. Mr. Goldstein is a patron and has eaten at the Applicant's establishment. (Tr. 4/30/08 at 126.) He is familiar with the owner, Mr. Ferrufino and described him as very friendly. (Tr. 4/30/08 at 126.) He did complain to the establishment approximately two years ago about trash being picked up before 7 a.m. on a Saturday morning. (Tr. 4/30/08 at 127.) Mr. Goldstein noted that Mr. Ferrufino's wife called the trash company and resolved the issue. (Tr. 4/30/08 at 127, 135.) He has only had an issue with the trash company coming too early once since then. (Tr. 4/30/08 at 136.) Mr. Goldstein does infrequently hear the sounds of bottles breaking that are being recycled. (Tr. 4/30/08 at 136.)

24. Mr. Goldstein does not hear music specifically from the establishment. (Tr. 4/30/08 at 127-128.) When he hears music, it is from Marx Café, which faces him directly across the street. (Tr. 4/30/08 at 127.) The noise level in Mount Pleasant has gone down considerably in the past several years. (Tr. 4/30/08 at 128.) Mr. Goldstein did not consider Don Juan Restaurant to be a problem establishment. (Tr. 4/30/08 at 128.) He stated that the establishment has been much better since Mr. Ferrufino took over the establishment. (Tr. 4/30/08 at 134.) The establishment has made numerous improvements, including landscaping, painting the exterior, installing double pane windows and a double door foyer in the front. (Tr. 4/30/08 at 128, 147.) The place looks much better now than it has in the 28 years Mr. Goldstein has lived there. (Tr. 4/30/08 at 128.)

25. Ms. Laurie Collins is Mr. Goldstein's long-time neighbor. (Tr. 4/30/08 at 129.) He gets along with Ms. Collins but is not a member of MPNA. (Tr. 4/30/08 at 130.) Mr. Goldstein is familiar with Ms. Collins' complaints lodged against the establishment. (Tr. 4/30/08 at 130.) He has had conversations with Ms. Collins about the establishment and stated that she does like the way Don Juan Restaurant is operated. (Tr. 4/30/08 at 131.) Mr. Goldstein indicated that neighbors to the left of him have submitted a letter in support of the Hear Mount Pleasant voluntary agreement. (Tr. 4/30/08 at 144.)

26. Mr. Goldstein is familiar with the establishment's voluntary agreement with MPNA. (Tr. 4/30/08 at 132.) He is primarily concerned about the agreement's prohibition against live music. (Tr. 4/30/08 at 132, 142.) Mr. Goldstein noted that when the agreement was negotiated there were more problems with alcohol consumption than there are now. (Tr. 4/30/08 at 132.) Mr. Goldstein did not have concerns with other provisions of the MPNA agreement to the extent that he objected to the live music prohibition. (Tr. 4/30/08 at 143.) He did not believe terminating the MPNA agreement would have an adverse impact on peace, order, and quiet in the neighborhood. (Tr. 4/30/08 at 133.) Mr. Goldstein did not know prior to the protest hearing that the establishment had karaoke because he had never heard it. (Tr. 4/30/08 at 133.)

27. Mr. Goldstein indicated that patrons walk to the establishment and arrive by car. (Tr. 4/30/08 at 137.) He acknowledged that patrons will try and find a parking spot on his street or in front of his house given his proximity to the establishment. (Tr. 4/30/08 at 138.) He has off-street parking but did note that parking in the neighborhood has gotten worse as there are more people in the neighborhood who can afford cars. (Tr. 4/30/08 at 140.)

28. Mr. Goldstein supported the Applicant's renewal application. (Tr. 4/30/08 at 144.) He had no objection to the establishment having karaoke and other types of live music. (Tr. 4/30/08 at 145.) Mr. Goldstein noted that the establishment is small and that noise from inside the establishment would not be an issue. (Tr. 4/30/08 at 146, 148.) He stated that there could be problems with noise from patrons coming to and from the establishment. (Tr. 4/30/08 at 146.)

29. Yasmin Romero-Castillo was living in an apartment for eleven years at 3145 Mount Pleasant Street, N.W., however, a fire in her building on March 12, 2008 caused her to relocate to 2424 Pennsylvania Avenue. (Tr. 4/30/08 at 154-156.) She is the president of the 3145 Mount Pleasant Building Association that has 203 residents. (Tr. 4/30/08 at 156.) Ms. Romero-Castillo stated that the Latin community is in support of live music at Mount Pleasant establishments because it is part of their tradition and way of life. (Tr. 4/30/08 at 157.) Additionally, she wanted to testify in support of the establishment as she has known Mr. Ferrufino for at least 12 years and is a frequent patron of the establishment and likes to eat there. (Tr. 4/30/08 at 158-159.) Ms. Romero-Castillo feels safe in the Applicant's establishment. (Tr. 4/30/08 at 159.) Mr. Ferrufino provided assistance to the tenants in her building when the fire took place by admitting them into his restaurant and giving them food, clothing, and shelter from the rain. (Tr. 4/30/08 at 161-162.)

30. Ms. Romero-Castillo stated that the individuals causing problems with public intoxication are not patrons of Don Juan Restaurant. (Tr. 4/30/08 at 159.) She indicated that intoxicated individuals drink in the park making it difficult for her to visit the park with her children. (Tr. 4/30/08 at 159.) Ms. Romero-Castillo noted that homeless people are just wandering the street, going through garbage, and causing problems. (Tr. 4/30/08 at 159-160.) She has not experienced any harassment from patrons of Don Juan Restaurant. (Tr. 4/30/08 at 160.)

31. Ms. Romero-Castillo supported the termination of the Applicant's voluntary agreement with MPNA because of its current restrictions. (Tr. 4/30/08 at 162, 165-166; MPNA Exhibit No. 1.) Specifically, the Latin community would like a place to eat late at night with entertainment, such as karaoke. (Tr. 4/30/08 at 162-163.) Ms. Romero-Castillo supported the establishment having live music and maintaining full hours for karaoke or other entertainment. (Tr. 4/30/08 at 169-171.) She did not believe that MPNA represented the community and believed that Hear Mount Pleasant was more representative of the community. (Tr. 4/30/08 at 173, 176.)

32. Ms. Romero-Castillo was not in disagreement with points 1-3 of the 1998 voluntary agreement. (Tr. 4/30/08 at 168-169.) She did object to the provision indicating that people are restricted to only go to the establishment to have a meal. (Tr. 4/30/08 at 169.)

33. Ms. Caroline Lucas has resided at 1616 Kilbourne Place, N.W., since April 2002. (Tr. 4/30/08 at 182.) She lives there with her husband, two children, and one of her brothers. (Tr. 4/30/08 at 182.) Ms. Lucas lives about thirty feet from Mount Pleasant Street and her home is between 75 and 100 feet from the establishment. (Tr. 4/30/08 at 182, 185.) Her house is on the corner of 17th Street, N.W., and Kilbourne Place. (Tr. 4/30/08 at 185.) She is also located near the ABC establishments Marx Café and Raven Grill. (Tr. 4/30/08 at 194.) Ms. Lucas cannot see Don Juan Restaurant from her home. (Tr. 4/30/08 at 195.)

34. Ms. Lucas stated that she has observed patrons coming out of Don Juan Restaurant intoxicated. (Tr. 4/30/08 at 185, 197, 200.) She has also observed patrons entering the establishment who have had a drink in their cars prior to entering the establishment and throwing their litter on the ground. (Tr. 4/30/08 at 186.) She stated that it is frequent on a weekly basis for patrons to either exit the establishment intoxicated or be drinking in their cars and then litter on the ground. (Tr. 4/30/08 at 186.)

35. Ms. Lucas noted that there is a decent amount of noise on her street at night, including some fights and loud language. (Tr. 4/30/08 at 186.) She testified that a good percentage of these patrons are from the Applicant's establishment. (Tr. 4/30/08 at 186.) Ms. Lucas indicated that fighting generally occurs about once a month. (Tr. 4/30/08 at 187.)

36. Ms. Lucas has called MPD and also 311 when there is a disturbance such as someone passed out in front of her doorstep. (Tr. 4/30/08 at 187, 202.) She indicated that they usually send an ambulance to get the intoxicated individual. (Tr. 4/30/08 at 188.) She has also observed individuals urinating. (Tr. 4/30/08 at 187, 202, 206, 211.) Ms. Lucas stated that the issue with individuals urinating in public or passing out from being intoxicated is more than a Don Juan Restaurant issue. (Tr. 4/30/08 at 202, 206, 211.) She is worried how these quality of life crimes will be handled in light of limited resources. (Tr. 4/30/08 at 203.) She generally observes patrons coming to and from Don Juan Restaurant when walking home from the bus or hearing noise from her windows

from individuals who have parked on the street, including some Don Juan Restaurant patrons. (Tr. 4/30/08 at 188-189, 195-196.)

37. Ms. Lucas indicated that parking in the neighborhood is fairly limited as she does not have a parking space. (Tr. 4/30/08 at 189.) Her alley is difficult to get into so her family often parks down on the other end of Kilbourne Place, N.W. (Tr. 4/30/08 at 189.) Ms. Lucas believed that bringing more patrons to the neighborhood for entertainment will make it harder for residents to find parking. (Tr. 4/30/08 at 190.) She believed that it will adversely impact vehicular and pedestrian safety. (Tr. 4/30/08 at 190.)

38. Ms. Lucas does not support the establishment having karaoke seven days a week until closing. (Tr. 4/30/08 at 191.) She stated that MPD has been unable to discourage public drunkenness and that this will likely increase these problems. (Tr. 4/30/08 at 191.) Ms. Lucas noted that anything that causes more people to come to the neighborhood and drink more and stay out late is bad. (Tr. 4/30/08 at 204, 209.) Ms. Lucas had never been a patron of the establishment. (Tr. 4/30/08 at 213.) She was not aware if individuals she had seen leaving the establishment intoxicated had been served by the establishment or turned away by the establishment. (Tr. 4/30/08 at 213.) However, she has seen a number of patrons going in and exiting the establishment drunk. (Tr. 4/30/08 at 214.)

39. Eugene Stevanus has resided at 3138 17th Street, N.W., for the last 11 years with his wife and two sons. (Tr. 4/30/08 at 217-218.) He has lived in Mount Pleasant for a total of 17 years and has previously lived in the 1700 block of Lamont Street, N.W. (Tr. 4/30/08 at 218-219.) During this time, Mr. Stevanus has lived within a block and a half or less of the commercial block. (Tr. 4/30/08 at 219.)

40. Mr. Stevanus stated that Lamont Park has live music and a farmer's market. (Tr. 4/30/08 at 220.) He has also observed public drinking in the park once a week he has also seen alcohol bottles, including half-pints and pints of vodka. (Tr. 4/30/08 at 220.)

41. Mr. Stevanus and his family eat at Don Juan Restaurant every other week. (Tr. 4/30/08 at 221.) He enjoys the restaurant's food and his kids love the quesadillas. (Tr. 4/30/08 at 221.) Mr. Ferrufino is a friend of Mr. Stevanus. (Tr. 4/30/08 at 221.)

42. Mr. Stevanus has been a member of Hear Mount Pleasant since March 2007. (Tr. 4/30/08 at 222.) He decided to join this organization based upon his concerns with the MPNA voluntary agreements. (Tr. 4/30/08 at 222.) His concerns were: (1) that they create an uncompetitive environment between Mount Pleasant businesses and (2) that restrictive agreements make it difficult for Mount Pleasant to compete with other neighborhoods for new restaurants. (Tr. 4/30/08 at 222-223, 250.) Mr. Stevanus discussed his concerns with the MPNA restrictions at an October 2007 MPNA meeting. (Tr. 4/30/08 at 223.) Specifically, he likes to play scrabble with his wife at Marx Café but the Marx Café agreement prohibits him from sitting down unless he orders food. (Tr. 4/30/08 at 223.) Mr. Stevanus and his wife just want to order alcohol and not food. (Tr. 4/30/08 at 223.) He indicated that MPNA was not willing to change this provision. (Tr. 4/30/08 at 224, 255.) MPNA discussed the matter with Marx Café who did not want to

change this provision. (Tr. 4/30/08 at 255.) Mr. Stevanus objects to this provision and indicated that the Don Juan Restaurant agreement contains a similar provision where the establishment cannot seat patrons at tables who do not order food unless one member of the group has ordered or consumed food. (Tr. 4/30/08 at 224-225, 252-253.) MPNA informed him that this provision was in the voluntary agreement to ensure that restaurants would encourage serving food to meet the statutory food requirements. (Tr. 4/30/08 at 254.)

43. Mr. Stevanus is a patron of Don Juan Restaurant and indicated that he has never seen patrons over-served alcoholic beverages. (Tr. 4/30/08 at 225.) He stated that Mr. Ferrufino is a very generous man who is proud of his business. (Tr. 4/30/08 at 225.) He did become aware of negative comments about the Applicant's establishment from residents on the Mount Pleasant Forum. (Tr. 4/30/08 at 225, 247.) These comments included statements that the establishment was not a family restaurant, that the food was filthy and not fit for humans to eat, and that the establishment's patrons were involved in really belligerent behavior. (Tr. 4/30/08 at 226.) As a result, he started taking walks around the neighborhood, particularly on weekends late at night, between 11:00 p.m. and 2:30 a.m. from late July 2007 to early September 2007. (Tr. 4/30/08 at 227.) Mr. Stevanus kept a record of the thirteen dates he did these walk-arounds for approximately 15 minutes around the area of the establishment. (Tr. 4/30/08 at 227, 248; Applicant's Exhibit No. 5.) He indicated that what he observed was a whole lot of nothing. (Tr. 4/30/08 at 228.) Mr. Stevanus observed individuals smoking outside of Haydee's and Raven's Grill and people hanging out at 7-Eleven. (Tr. 4/30/08 at 228.) He never heard music coming out of Don Juan Restaurant. (Tr. 4/30/08 at 228.) Mr. Stevanus never observed patrons stumbling into or out of Don Juan Restaurant. (Tr. 4/30/08 at 229.) He observed most patrons walk to the establishment. (Tr. 4/30/08 at 248.) Mr. Stevanus has off-street parking. (Tr. 4/30/08 at 250.)

44. Mr. Stevanus knows Monica Rubio and her husband Jason Bates. (Tr. 4/30/08 at 229.) Hear Mount Pleasant sent them a "lets get together and talk" postcard that resulted in a subsequent meeting with both Monica Rubio and Jason Bates. (Tr. 4/30/08 at 229.) Mr. Stevanus indicated that their concerns dealt with drunken behavior on the streets and Ms. Rubio stating that she had been sexually harassed by men outside of Don Juan Restaurant on the Lamont Street side. (Tr. 4/30/08 at 230.) Additionally, they were concerned about drunks defecating and urinating in their front lawn and passing out near their property. (Tr. 4/30/08 at 230.) Ms. Rubio attributed these problems to Don Juan restaurant. (Tr. 4/30/08 at 230.) She informed him that in the last year she had observed patrons come out of Don Juan Restaurant late at night and engage in fights or stagger to their cars and drive-off. (Tr. 4/30/08 at 231.) Mr. Stevanus observed individuals two years ago harassing people walking by outside of Don Juan Restaurant but has not observed any harassment within the last four months. (Tr. 4/30/08 at 234.)

45. Mr. Stevanus was aware of three changes made by the Applicant at the establishment. (Tr. 4/30/08 at 235.) These were: (1) working with a local architect, chef, and business consultant to make the restaurant more family friendly, (2) providing English language training to all wait staff and (3) upgrading the type of alcohol serving

and security training provided to wait staff. (Tr. 4/30/08 at 235; Applicant's Exhibit No. 6.) The alcohol training focused on not over serving patrons and heading off any problems should patrons get rowdy or arrive to the establishment intoxicated. (Tr. 4/30/08 at 236.)

46. Mr. Stevanus supports terminating the Applicant's voluntary agreement with MPNA. (Tr. 4/30/08 at 237.) Some of the provisions he found to be restrictive were: (1) not being allowed to have a happy hour with discounted drinks like other restaurants, (2) not being allowed to have dancing, live music, or charge a cover; and (3) not being seated at a table to play scrabble unless food is ordered. (Tr. 4/30/08 at 237-238.)

47. Mr. Stevanus indicated that Hear Mount Pleasant obtained 78 letters of support for terminating the MPNA voluntary agreement, including some from along 17th Street and four residents located directly behind the establishment. (Tr. 4/30/08 at 238.) They also obtained another 168 signatures of support on a petition specific to Don Juan Restaurant. (Tr. 4/30/08 at 238.) He did not believe that terminating the voluntary agreement would adversely impact the peace, order, and quiet of the neighborhood. (Tr. 4/30/08 at 243.) Specifically, he noted that the neighborhood has changed and is now stable and has a lower homeless population and fewer drunks sleeping in the park. (Tr. 4/30/08 at 244.)

48. With regard to security, Mr. Stevanus stated that one of the best practices from the Resource Hospitality Panel (RHP) was the need to do a safety and security walk-through with MPD and local businesses and that Mr. Farafino was participating in this. (Tr. 4/30/08 at 243.) Part of this is to identify dead zones, where individuals are loitering and engaging in threatening behavior, or find out where the drunks are sleeping. (Tr. 4/30/08 at 243.)

49. Mr. Stevanus can see the back of Don Juan Restaurant from his house and used to have problems with individuals urinating in his front yard. (Tr. 4/30/08 at 245-246.) These problems rarely now happen. (Tr. 4/30/08 at 246.)

50. Alberto Ferrufino has been the owner and operator of Don Juan Restaurant since 1993. (Tr. 4/30/08 at 261-262, 284.) He currently lives at 4917 13th Street, NW. (Tr. 4/30/08 at 262.) Mr. Ferrufino stated that when he first bought the establishment he had live music, including mariachis. (Tr. 4/30/08 at 263.) He signed a voluntary agreement in 1998 with MPNA, who had protested his liquor license, because of concerns that his license would not be renewed. (Tr. 4/30/08 at 263, 285.) MPNA again protested his license in 2001. (Tr. 4/30/08 at 285.) Mr. Ferrufino's attorney during the voluntary agreement negotiations was Ely Hurowitz. (Tr. 4/30/08 at 288; MPNA Exhibit No. 3.)

51. Mr. Ferrufino was in favor of removing restrictions regarding drink pricing and drink specials. (Tr. 4/30/08 at 264-265.) He was in favor of removing the restrictions in the 2001 addendum prohibiting a cover charge, live music, and dancing. (Tr. 4/30/08 at 265.) Mr. Ferrufino also wanted to remove the sections of the voluntary agreement requiring that MPNA be notified of any attempt to transfer the license. (Tr. 4/30/08 at 265.) He believed the provision regarding power washing should be changed from every

month to as needed. (Tr. 4/30/08 at 266, 322.) Mr. Ferrufino also did not like the provision requiring that only patrons who are ordering food can be seated. (Tr. 4/30/08 at 267.) He also did not like the section limiting his advertising abilities. (Tr. 4/30/08 at 267.)

52. Mr. Ferrufino wants to replace his MPNA voluntary agreement with the Hear Mount Pleasant voluntary agreement. (Tr. 4/30/08 at 268.) His current stipulated entertainment endorsement for karaoke is until closing time. (Tr. 4/30/08 at 268.) Mr. Ferrufino currently stops entertainment at last call. (Tr. 4/30/08 at 269.)

53. Mr. Ferrufino has heard complaints about sound issues from Ms. Collins and Garret Fletcher but not from other residents. (Tr. 4/30/08 at 269-270.) He took steps to reduce the level of noise, including making improvements to the roof and façade to address noise concerns. (Tr. 4/30/08 at 270.) He spent thousands of dollars to make improvements to the roof due to Mr. Fletcher indicating that he heard the establishment's music from the second and third floors of his residence. (Tr. 4/30/08 at 270-273.) After completing the roofing, he offered to fix Mr. Fletcher's windows to address his noise concerns but Mr. Fletcher declined. (Tr. 4/30/08 at 271.) He added new windows and frames, and did caulking work. (Tr. 4/30/08 at 271.) Mr. Ferrufino also placed sound limitations on his sound system. (Tr. 4/30/08 at 272.)

54. With regard to training, he indicated that alcohol awareness training was provided to 13 staff members who serve alcohol last month in both English and Spanish. (Tr. 4/30/08 at 275-276, 316-317; Applicant's Exhibit No. 8.) He stated that the establishment has not served individuals who have had too much to drink. (Tr. 4/30/08 at 317.) Mr. Ferrufino believed he has a nice multi-cultural clientele. (Tr. 4/30/08 at 278, 280.) He identified various age groups of clientele at his establishment. (Tr. 4/30/08 at 280.) The establishment has a security guard on duty during the weekends. (Tr. 4/30/08 at 283, 320.) The security guard is responsible for turning away individuals who are intoxicated and getting rid of panhandlers. (Tr. 4/30/08 at 320.)

55. Mr. Ferrufino has had problems with Lamont Park, including intoxicated persons in Lamont Park drinking six packs, which the establishment does not sell. (Tr. 4/30/08 at 282.)

56. Mr. Ferrufino has karaoke on Friday, Saturday, and Sunday nights and sometimes on Tuesdays. (Tr. 4/30/08 at 319.) karaoke at the establishment consists of hiring someone to use his karaoke machine and having customers or whoever singing with a microphone. (Tr. 4/30/08 at 304-305.) The karaoke machine has words in Spanish and English. (Tr. 4/30/08 at 305.) The person who runs the karaoke machine also sings and when he gets tired of doing karaoke, he puts on the jukebox, which he controls. (Tr. 4/30/08 at 306.) Papi Reyes has also sung karaoke at the establishment. (Tr. 4/30/08 at 308.) He has not been in regular contact with MPNA to discuss changes to his agreement regarding karaoke. (Tr. 4/30/08 at 309-310.) He did have a couple meetings with MPNA to discuss karaoke but was only offered live entertainment 12 times a year. (Tr. 4/30/08 at 310.) Mr. Ferrufino had not shared his written noise management plan with MPNA. (Tr.

4/30/08 at 311-312.) He is currently working on a security plan for the establishment. (Tr. 4/30/08 at 312-313.)

57. Marika Torok has lived in Mount Pleasant at the corner of 18th Street and Irving Street, N.W., for the last ten years. (Tr. 4/30/08 at 469.) She lives there with her husband and three children. Ms. Torok is the MPNA Vice President and is on the MPNA Board. (Tr. 4/30/08 at 469.) Ms. Torok indicated that MPNA signed a voluntary agreement with Don Juan Restaurant in January 1998 and again in 2001. (Tr. 4/30/08 at 469.) She participated in negotiating the 2001 addendum but not the original 1998 agreement. (Tr. 4/30/08 at 469.) Ms. Torok stated that the 2001 addendum was added due to resident concerns about the dumping of trash and trash pick-up, recycling, and mariachis. (Tr. 4/30/08 at 470.) Additionally, they discussed Mr. Ferrufino charging a cover to sporting events, including boxing and soccer. (Tr. 4/30/08 at 470.)

58. Before protesting Mr. Ferrufino's license in 2001, MPNA sent him a letter months before his roll call hearing asking him to engage in discussion regarding their concerns. (Tr. 4/30/08 at 476, 478.) Mr. Ferrufino did not respond prior to the roll call hearing. (Tr. 4/30/08 at 476-477.) With regard to the addendum's prohibition of live music, Ms. Torok stated that MPNA informed Mr. Ferrufino that they were not concerned about the roaming mariachis playing at the establishment. (Tr. 4/30/08 at 478-479, 483.) MPNA sent a letter to the Applicant indicating that it verbally promised not to complain about roaming mariachis. (Tr. 4/30/08 at 482.)

59. Ms. Torok discussed Provision D that required a licensee to notify MPNA no fewer than three days prior to filing a transfer of ownership application. (Tr. 4/30/08 at 484.) This provision was added in 2001 so that MPNA would be aware of a transfer so MPNA could contact the new owner. (Tr. 4/30/08 at 484-485.) MPNA did not intend to approve the ownership transfer. (Tr. 4/30/08 at 485-486.) Provision L which says that the licensee will not place alcohol signage advertising in any windows was added to address concerns raised by MPD to make sure during their patrol that they can see inside of the establishment and that after hour activities are not occurring. (Tr. 4/30/08 at 486-487, 489.) This was previously a problem at Don Juan Restaurant as windows were obstructed. (Tr. 4/30/08 at 487.) Ms. Torok indicated that the happy hour provision is necessary in an establishment where patrons are coming out drunk or intoxicated. (Tr. 4/30/08 at 500.) MPNA has recently entered into voluntary agreements with other Mount Pleasant establishments allowing them to have a happy hour until 7 p.m. (Tr. 4/30/08 at 504.) No one had discussed the power washing provision with MPNA. (Tr. 4/30/08 at 505.)

60. Ms. Torok believed that granting the establishment an entertainment endorsement for karaoke will adversely affect the peace, order and quiet of the neighborhood and parking and pedestrian safety. (Tr. 4/30/08 at 490, 492.) She did not believe it was appropriate to discuss entertainment other than karaoke because only karaoke was placarded and discussed with the community. (Tr. 4/30/08 at 491.) MPNA's position is that karaoke should be limited to weekends until midnight on a trial basis. (Tr. 4/30/08 at 492-493, 498.) MPNA is not against the establishment having mariachis. (Tr. 4/30/08 at 498.)

She believed that a security plan for the establishment would be a good step. (Tr. 4/30/08 at 494.)

61. Monica Rubio has resided in Mount Pleasant at 1705 Lamont Street, N.W., with her husband, three children, and a nanny since 2005. (Tr. 4/30/08 at 419-420, 439.) She lives next door to Garret Fletcher. (Tr. 4/30/08 at 420.) Her house is between 50 and 100 feet away from Don Juan Restaurant. (Tr. 4/30/08 at 420.) She can see the establishment from virtually every window in her house. (Tr. 4/30/08 at 420, 433.)

62. Ms. Rubio is concerned about noise and stated that many nights her house is filled with very loud, heavy bass music coming from inside of Don Juan Restaurant. (Tr. 4/30/08 at 421.) She stated that noise also comes from patrons exiting the establishment. (Tr. 4/30/08 at 421.) Ms. Rubio indicated that there are also late night brawls and men fighting outside and the sounds of broken bottles. (Tr. 4/30/08 at 421.) Finally, her primary concern is public safety, including for both herself and her family. (Tr. 4/30/08 at 421.) Ms. Rubio has been routinely sexually harassed by drunken individuals, including on Friday and Saturday nights and early evenings, walking around outside of the establishment. (Tr. 4/30/08 at 422.) Noise was an issue until approximately five months ago at which time the sound problems improved. (Tr. 4/30/08 at 422-423, 438.) At the time that sound was a problem, the sound was coming in the second and third floor bedrooms. (Tr. 4/30/08 at 426.)

63. Ms. Rubio has called MPD an uncountable number of times. (Tr. 4/30/08 at 426.) On one occasion she called MPD when she observed a fight that involved bottles being broken. (Tr. 4/30/08 at 426.) She indicated that the incident involved patrons of the establishment as she saw the males coming in and out of the establishment. (Tr. 4/30/08 at 427.)

64. Ms. Rubio stated that parking in her neighborhood is bad and it is almost impossible to park. (Tr. 4/30/08 at 428-430, 440.) She pays \$150 every month to get a parking space so she would not have to rely on off-street parking. (Tr. 4/30/08 at 429.) Ms. Rubio indicated that many patrons of the establishment come from Maryland and Virginia and commit parking violations and double-park. (Tr. 4/30/08 at 430-431.) She was worried about pedestrian safety in the neighborhood due to drunken men harassing her. (Tr. 4/30/08 at 432.) She believes that a number of her problems with safety and drunken males can be attributed to Don Juan Restaurant. (Tr. 4/30/08 at 441.)

65. Ms. Rubio believed that the current MPNA voluntary agreement provides protection to her quality of life and she requested that the Don Juan Restaurant agreement not be terminated. (Tr. 4/30/08 at 432-433.) She did not believe that Hear Mount Pleasant represents the community as it is a diverse community. (Tr. 4/30/08 at 435.)

66. Garret Wesley Fletcher has resided in Mount Pleasant at 3200 17th Street, N.W., for about four and a half years with his wife and two children. (Tr. 4/30/08 at 375.) His home is approximately 50 feet from Don Juan Restaurant and he can see the establishment from almost every window of his house. (Tr. 4/30/08 at 376.) He is aware

that the establishment has applied for karaoke seven days a week until closing. (Tr. 4/30/08 at 376.)

67. Mr. Fletcher has several issues with the operations of the establishment with regard to peace, order, and quiet. (Tr. 4/30/08 at 377.) First, is the establishment's definition of karaoke. (Tr. 4/30/08 at 377.) His understanding is that karaoke is an event for the audience to participate and sing and he did not believe that this was what the establishment was doing on some occasions. (Tr. 4/30/08 at 377-378, 411.) He has seen on a number of occasions, prior to the placards going up, singers with tip cups out implying that they have been singing for a long period of time or are professional in nature. (Tr. 4/30/08 at 30/08 at 377, 383-384.) Mr. Fletcher has also seen karaoke take place with audience participation. (Tr. 4/30/08 at 384.) Second, he has had issues with noise from karaoke for several years that resulted in numerous interactions with MPD and Mr. Ferrufino. (Tr. 4/30/08 at 378-379.) He has had very few problems since the establishment's placards were put up. (Tr. 4/30/08 at 378.)

68. Mr. Fletcher indicated that the establishment's patrons sit outside and drink in their cars before entering the establishment and then throw trash on the street. (Tr. 4/30/08 at 379, 390-391, 407.) He noted that patrons also engage in low levels of violence outside. (Tr. 4/30/08 at 379.) Mr. Fletcher stated that patrons leave the establishment loud, intoxicated, and urinate in his yard and in the park across the street. (Tr. 4/30/08 at 379.) He has had to rouse individuals from a drunken stupor who are sleeping in his yard or on his front porch steps. (Tr. 4/30/08 at 380.)

69. Mr. Fletcher believed that there are also a host of issues with Lamont Park that are separate and distinct from what occurs at Don Juan Restaurant. (Tr. 4/30/08 at 380.) He indicated that there is a pretty consistent group of individuals who drink discreetly but consistently in the park and also urinate there. (Tr. 4/30/08 at 380-381.) He stated that with Don Juan Restaurant, he can see patrons pouring out of the establishment, urinating in his yard and on cars, and acting boisterous. (Tr. 4/30/08 at 381.) Mr. Fletcher testified that these individuals are not drinking in the park. (Tr. 4/30/08 at 381.) He stated things have gotten better since the establishment was placarded. (Tr. 4/30/08 at 381.) Prior to the establishment being placarded, he was calling Mr. Ferrufino twice a month to turn down the music and deal with quality of life issues. (Tr. 4/30/08 at 382, 397.) He stated that he walked by the establishment to check where the noise was coming from prior to calling Mr. Ferrufino. (Tr. 4/30/08 at 382.) On one occasion, he went inside the establishment and spoke with Mr. Ferrufino who addressed his problem. (Tr. 4/30/08 at 383.)

70. Mr. Fletcher has called MPD dozens of times in the past regarding Don Juan Restaurant. (Tr. 4/30/08 at 385, 398.) MPD would ask the establishment to turn down the music and leave and then 15 minutes later the noise would increase. (Tr. 4/30/08 at 385.) Currently, Mr. Fletcher calls Mr. Ferrufino on his cell phone directly and indicated that Mr. Ferrufino is very responsive. (Tr. 4/30/08 at 385, 397.) This has been more effective than calling MPD. (Tr. 4/30/08 at 385-386.)

71. Mr. Fletcher indicated that the noise was abated around the time that the establishment's placards went up. (Tr. 4/30/08 at 389, 398, 401.) He is aware that Mr. Ferrufino has put money into the restaurant to address noise issues, including putting in double pane glass, which Mr. Fletcher appreciated. (Tr. 4/30/08 at 399-401.) Mr. Fletcher has not had an issue with noise for about five months. (Tr. 4/30/08 at 401-402, 413-414.)

72. Mr. Fletcher indicated that parking in the neighborhood is difficult and that he is fortunate to have a driveway. (Tr. 4/30/08 at 391-393.) He and his wife are often having to park well down Lamont Street or farther, resulting sometimes in a several block walk to their home. (Tr. 4/30/08 at 392.) Mr. Fletcher believed that pedestrian safety is an issue as patrons are exiting restaurants and urinating and driving intoxicated. (Tr. 4/30/08 at 393.)

73. Mr. Fletcher believed it would be disastrous for him if the MPNA voluntary agreement was terminated. (Tr. 4/30/08 at 394.) He is not an MPNA member and acknowledged that Hear Mount Pleasant represents a certain part of the community. (Tr. 4/30/08 at 394, 396.) Mr. Fletcher wanted to see entertainment limited to karaoke with restricted hours. (Tr. 4/30/08 at 396.)

74. Jason Bates resides at 1705 Lamont Street, N.W., with Monica Rubio and his three children. (Tr. 4/30/08 at 454.) He has met with both MPNA and Hear Mount Pleasant regarding live entertainment. (Tr. 4/30/08 at 454-455.) The most recent meeting with Hear Mount Pleasant occurred in January 2008. (Tr. 4/30/08 at 455, 459.) Both he and his wife met with Mr. Stevanus and Jean Lujan, the President of the Business Association. (Tr. 4/30/08 at 455-457.) At the meeting they discussed their concerns about the community, their reasons for protesting the entertainment endorsement applications of two other Mount Pleasant restaurants, and concerns about public safety resulting from finding intoxicated, passed out males near their house, and other issues dealing with fights, harassment, and broken bottles. (Tr. 4/30/08 at 455-456.) Additionally, they expressed concern about restaurants morphing into nightclubs. (Tr. 2/13/08 at 455-456.) Mr. Bates stated that nothing was ever done as a result of the meeting. (Tr. 4/30/08 at 456-457.) He felt that MPNA is the only one of the civic organizations that is looking out for his interests. (Tr. 4/30/08 at 464.)

CONCLUSIONS OF LAW

75. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence and testimony upon which this determination must be made, the Board concludes that (1) the Applicant's Voluntary Agreement with MPNA should be amended and incorporated into this order in addition to the Hear Mount Pleasant Voluntary Agreement, (2) the Applicant's entertainment endorsement Application should be approved subject to the

restrictions set forth below, and (3) the Applicant's request to renew its class "CR" retailer's license should be granted.

76. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an ANC's 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). In this case, ANC 1D Commissioner Jack McKay indicated that ANC 1D officially voted to object to the MPNA Voluntary Agreement provision prohibiting live music, dancing, and a cover charge. ANC 1D also voted to support an entertainment endorsement for karaoke at the establishment for the hours that the Applicant is currently having karaoke under its stipulated license. ANC 1D also voted to support the Hear Mount Pleasant Voluntary Agreement. In this case, however, Commissioner McKay made a distinction from other Mount Pleasant restaurant Applications noting that ANC 1D voted in support of the establishment having and preserving karaoke and had not considered or voted on the Applicant's establishment having live music, which would be new. The position of ANC 1D is entitled to great weight in this case. The Board took into account the position of ANC 1D in granting the Applicant's request to have live entertainment, dancing, and a cover charge.

Request to Terminate MPNA Voluntary Agreement

77. The Board has before it a request from the Applicant to terminate its Voluntary Agreement with MPNA and replace it with a new voluntary agreement with the Hear Mount Pleasant organization. In considering the Applicant's request the Board must consider under D.C. Official Code § 25-446(d) whether: (1) the Applicant has made a good faith attempt to negotiate a mutually acceptable amendment to the voluntary agreement; (2) a change has occurred in the neighborhood to warrant granting the Applicant's request; and (3) the request to terminate or amend the voluntary agreement will or will not have an adverse impact on the neighborhood.

78. The Board found that the first two criteria were met and warrant either amending or terminating the Applicant's Voluntary Agreement. First, a settlement conference was held in this case, pursuant to D.C. Official Code § 25-445, where the parties in good faith attempted to reach a compromise on their issues. Second, MPNA stipulated that the neighborhood has significantly changed for the better and that they are now in favor of live entertainment subject to specific days and hours restrictions. The Applicant's testimony also reflected that the neighborhood has significantly changed for the better.

79. The most important of the three factors for the Board to consider is the impact of the request on the neighborhood. The testimony put forth by MPNA revealed the importance of keeping the existing MPNA voluntary agreement to the peace, order, and quiet of some Mount Pleasant residents living near the establishment. While the establishment has made significant improvements that have clearly helped the last five months in limiting the amount of noise coming from the establishment, the testimony revealed that there have been problems in the past. These problems include, but are not limited to, loud noise traveling from inside the establishment to residential homes, and patrons

being rowdy and noisy when entering and exiting the establishment. Along these lines, the Board found the testimony presented by MPNA to establish that simply terminating the MPNA Agreement without restrictions in place would adversely impact the peace, order, and quiet of the neighborhood. Specifically, the testimony put forward by MPNA revealed that allowing all forms of live entertainment seven days a week without hour restrictions would make problems residents have experienced worse and would increase the level of noise and criminal activity in the area, and decrease the establishment's emphasis on food. The testimony established that entertainment with some restrictions would be appropriate and would be a welcome addition to the neighborhood. As such, the Board finds that some restrictions are necessary in order to ensure that the Applicant will not have an adverse impact on the neighborhood.

80. Recognizing this point, the Applicant has put forth a new voluntary agreement with Hear Mount Pleasant in an effort to address noise and other neighborhood concerns. The Board appreciates the dedicated efforts made by Hear Mount Pleasant and the Applicant and the collaborative approach that they have taken to find solutions to existing problems in the neighborhood. Their efforts have brought to focus the need to allow entertainment at this establishment beyond what is being proposed by MPNA. However, the testimony of MPNA did establish that they are also an important part of the Mount Pleasant community and that the Hear Mount Pleasant voluntary agreement alone does not address their concerns regarding existing peace, order, and quiet issues or give them the necessary enforcement tools should problems arise.

81. The Board believes that a better solution is to amend the existing MPNA voluntary agreement as set forth below and incorporate the terms of both of these Agreements into this Order. The Board recognizes that the Applicant has taken the position that the Board only has two choices, which are to either terminate or maintain the entire MPNA Agreement. The Board disagrees. D.C. Official Code § 25-104(e) clearly provides the Board with the authority to place conditions on the Applicant's license.

Entertainment Endorsement Application

82. The testimony from the majority of the witnesses indicated that they were in favor of the establishment continuing to have karaoke at the establishment. MPNA has asked the Board to limit the Applicant to karaoke on weekends only until Midnight. The Applicant indicated that he currently stops karaoke at the establishment at last call. Under the Hear Mount Pleasant voluntary agreement, this would be no later than 1:40 a.m. on Sunday through Thursday and 2:40 a.m. on Friday and Saturday. Specifically, the Hear Mount Pleasant Agreement requires last call at least twenty minutes prior to closing. The Board finds that allowing the Applicant to continue to have karaoke until these hours is reasonable in light of the improvements made by the Applicant to reduce the level of noise emanating from the establishment, which have been effective. Additionally, this determination by the Board is fairly consistent with the position of ANC 1D, which is entitled to great weight, and Hear Mount Pleasant, who have asked that the Applicant preserve its current hours of entertainment until closing time on a daily basis. ANC 1D

and Hear Mount Pleasant also supported the establishment being able to have dancing and charge a cover.

83. The Applicant is asking for additional entertainment, including having a disc jockey and live bands. MPNA is not objecting to the establishment having roaming mariachis play live music. However, MPNA stated that they had notice of Don Juan Restaurant seeking an entertainment endorsement application only for karaoke and not other forms of live entertainment, including disc jockeys and live music. The Board found this position to be consistent with ANC 1D. Specifically, Commissioner McKay indicated that ANC 1D's support for an entertainment endorsement was for karaoke, and any discussion of Don Juan Restaurant having live bands would be new.

84. In this instance, the Board finds (1) based upon the testimony of MPNA and Commissioner McKay, and (2) testimony regarding peace, order, and quiet concerns with this location, that it is appropriate for the Board, in approving the Applicant's entertainment endorsement application, to not allow the Applicant to have disk jockeys or live bands, with the exception of roaming mariachis. The Applicant's entertainment endorsement would permit the Applicant, if it chose to do so, to have poetry readings or entertainment other than live music and disc jockeys, which are less likely to result in the establishment operating as a nightclub and adversely impact the peace, order, and quiet in the neighborhood. The Board is approving the hours of live entertainment for mariachis and other forms of permitted entertainment, excluding karaoke, to the hours of 11:00 p.m. on Sunday through Thursday, until Midnight on Thursday, and until 1:00 a.m. on Friday and Saturday. This is consistent with hours approved for other Mount Pleasant restaurants. The Board does not believe that granting the Application for an Entertainment Endorsement with these restrictions will adversely impact the peace, order, and quiet of the neighborhood. The Board also decided to grant the Applicant's request for dancing and charging a cover as it determined that the Applicant would not be able to morph into a nightclub with these restrictions, including prohibiting the establishment from having disc jockeys or live music. The Board is also requiring the Applicant to submit a security plan with thirty (30) days.

85. Pursuant to D.C. Official Code § 25-313(b)(3) (2001) and 23 DCMR § 400.1(b) (2004), the Board must determine whether the issuance of an Entertainment Endorsement will have an adverse effect on residential parking needs and vehicular and pedestrian safety. The Board found the testimony to indicate that most patrons walk or take public transportation to the Applicant's establishment. The Board finds that prohibiting the establishment from having live music will help to limit the establishment from becoming a destination point. As such, the Board finds that the Applicant's establishment will not have an adverse impact on parking.

86. The Board finds no evidence based upon the record as a whole, that the Applicant's Entertainment Endorsement Application will have an adverse impact on real property values. This was not a protest issue raised by the Protestants.

Renewal Application and Voluntary Agreement Terms

87. The parties stipulated to the renewal of the Applicant's license. The Board did not receive any testimony opposing the Applicant's renewal.

88. The MPNA 1998 voluntary agreement shall remain in effect with one change. The Board is allowing the Applicant to engage in happy hour activities until 7:00 p.m. Specifically, the testimony of MPNA reflected that several other Mount Pleasant restaurants were being permitted by the terms of their voluntary agreements to have happy hours until 7:00 p.m. The MPNA Voluntary Agreement Addendum from 2001 shall remain in effect with three changes. First, based upon the Board's decision above, the Board is amending the MPNA Voluntary Agreement by striking Paragraph A of the 2001 Addendum in its entirety which prohibits the licensee from having live music, dancing, or a charge for admission to the establishment. Second, the Board found Paragraph D of the 2001 Addendum, which places notification requirements on the Applicant's intention to place the establishment on the market, to no longer be necessary and is deleting this provision in its entirety. Third, the Board is replacing the phrase "at least once a month" in Paragraph F of the 2001 Addendum with the phrase "as needed." Specifically, the testimony of Mr. Ferrufino indicated that the "at least once a month" power washing requirement was excessive and not necessary as the sidewalk was generally kept clean.

89. The proposed conditions set forth in the Hear Mount Pleasant voluntary agreement (copy attached) shall be approved by the Board with three changes. Specifically, based upon the Board's decision to adopt different ending times for live entertainment and to amend the MPNA voluntary agreement, the Board is not approving paragraph 6 and paragraph 23, which shall be deleted in their entirety. Additionally, the Board is deleting the first sentence of paragraph 5 of the Hear Mount Pleasant Agreement that would allow the establishment to have live music and disc jockeys.

ORDER


Therefore, it is hereby **ORDERED** on this 30th day of July 2008 that the Application filed by Don Juan Restaurant Inc., t/a Don Juan Restaurant and Carryout to terminate its voluntary agreement with MPNA in its entirety is **DENIED**;

It is further **ORDERED** that the Applications for both an Entertainment Endorsement and the Renewal of its Class "CR" license filed by Don Juan Restaurant Inc., t/a Don Juan Restaurant and Carryout at premises 1660 Lamont Street, N.W., Washington, D.C., be and the same is hereby **APPROVED**.

It is further **ORDERED** that the Board is imposing the following conditions on the Applicant's license:

1. The Applicant's voluntary agreement with MPNA is amended by deleting Paragraphs A and D of the 2001 Addendum in their entirety;
2. Paragraph F of the 2001 Addendum is amended by replacing the phrase "at least once a month" with the phrase "as needed";
3. Provision 7 of the 1998 voluntary agreement is amended by inserting the phrase "after 7 p.m.: after the word "by";
4. The Applicant shall be permitted to have karaoke and dancing until 1:40 a.m. on Sunday through Thursday and until 2:40 a.m. on Friday and Saturdays;
5. The Applicant shall be permitted to have roaming mariachi bands until 11:00 p.m. on Sunday through Wednesday; until 12:00 midnight on Thursday; and until 1:00 a.m. on Friday and Saturday;
6. The Applicant shall be permitted to charge a cover;
7. The Applicant's Voluntary Agreement with Hear Mount Pleasant is approved and amended by (1) deleting paragraphs 6 and 23 in their entirety and (2) deleting the first sentence of paragraph 5; and
8. The Applicant shall submit a security plan to the Board within thirty (30) days of the date of this order.

District of Columbia,
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Judy A. Moy, Member


Mital M. Gandhi, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

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 (April 2004) 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).

Addendum 1

Hear Mount Pleasant VA, executed

COOPERATIVE AGREEMENT between Don Juan's Restaurant and Carry Out, Inc., 1660 Lamont Street, N.W., Washington, D.C. and various Protestants listed below.

Don Juan's Restaurant and Carry Out has applied for renewal of and substantial change to an ABC Class CR license for the premises located at 1660 Lamont Street, N.W., Washington, D.C. 20010 (License No.15934); and

Protestants have filed protests against the renewal of and substantial change to the license; and

The parties have discussed the Licensee's and neighborhood issues and concerns; and

The parties seek to enter into an agreement that creates a balance between neighborhood concerns and the long-term commercial viability of Mount Pleasant Street including enhancing opportunities for live music, entertainment and cultural expression;

THUS, in consideration of the understandings set forth herein, Protestants agree to withdraw their protest and Licensee agrees to comply with the terms of this Cooperative Agreement as set forth herein.

The parties agree as follows:

1. Licensee will comply with all laws and regulations governing the operation of the establishment, including all laws and regulations governing the Class CR License to which this agreement applies.
2. Licensee, its officers and employees, will cooperate with Protestants and government personnel to address alleged violations of the laws and regulations referred to in Paragraph 1 above and in any lawful request by an appropriate enforcement agency investigating an alleged violation.
3. Licensee is encouraged to make unused interior wall space available to interested local artists for use in displaying their art works. Licensee will have full discretion to refuse, on any grounds, any works offered for display.
4. Licensee is encouraged to make the premises available for community meetings, meetings of charitable organizations, art openings, readings, seminars and other arts, musical, cultural or community events. Licensee will have full discretion to decline, on any grounds, any such proposed events.

5. Licensee will be permitted to offer live music and other live entertainment (including karaoke, DJs, performances, readings and any other lawful form of live entertainment) and to charge an admission or cover charge therefore, and may permit dancing. To the extent such live music and other live entertainment requires Entertainment Endorsements, Licensee shall be responsible for obtaining such endorsements as may be necessary in respect of such activities and Protestants agree to support the immediate issuance of such endorsements as a corollary to and simultaneous with the approval of this Agreement.

6. Hours for live music or other live entertainment (other than those activities previously offered, see subsection 6(d) below);

(a) On Sunday through Thursday nights, if Licensee offers live music or other live entertainment, such entertainment will conclude no later than midnight (12:00 a.m.).

(b) On Friday and Saturday nights, if Licensee offers live music or other live entertainment, such entertainment will conclude no later than 1:30 a.m.

(c) For up to 6 holidays or special occasions per year, as determined in Licensee's discretion, Licensee may offer live music or other live entertainment until 2:00 a.m., provided that such holidays or special occasions are on Friday or Saturday nights, or on nights preceding school holidays.

(d) Nothing in this Agreement shall be construed to restrict or limit the Licensee's ability to offer live entertainment in accordance with any entertainment endorsement stipulated or issued prior to the effective date of this Agreement. Accordingly, Licensee may continue to offer karaoke (which includes hosted karaoke with DJ, as per prior practice) from 7:00 p.m. to 2:00 a.m. Sundays through Thursdays, and from 7:00 p.m. to 3:00 a.m. Fridays and Saturdays.

7. Hours of service and operation shall be in accordance with 23 DCMR § 705.9 unless otherwise specified in the licensee's license.

8. Last call for alcoholic beverages will be at least 20 minutes prior to closing time and the limit on service of alcoholic beverages at last call shall be one drink per person. Licensee agrees that employees on duty at the end of the evening will assist persons requesting cab service by calling taxis for them or making a phone available to them.

9. There shall be a night manager on the premises from at least 9 p.m. until closing every night during business operations. The night manager, who

may be the Licensee or a designated employee, shall be responsible for ensuring compliance with all ABC laws and regulations and this Agreement. The Licensee shall maintain a daily log to record the name of each night manager on duty during the designated hours.

10. The Licensee or the night manager shall be contactable via a telephone number that is posted prominently on the premises next to the Licensee's posted hours of operation. The Licensee agrees to make the point of contact telephone number available to the ANC, to community organizations and to residents. The Licensee is responsible for ensuring that the posted contact telephone number(s) are current.

11. Licensee is responsible for ensuring that the operation of his or her business does not disturb the peace and good order of the neighborhood and for promptly responding to complaints.

12. A Licensee offering live entertainment or recorded music shall work with Protestants to conduct a noise impact study and to develop and implement a noise management plan. Such plan will identify reasonable and appropriate steps to prevent excessive noise emanating from the establishment including but not limited to monitoring and reducing amplification levels of music (including live and recorded music), increasing sound proofing as necessary, installing "limiting devices" on juke boxes and other audio devices, etc.

13. Licensee shall maintain a log of telephone, written and oral complaints regarding sound levels and other issues affecting the neighborhood using the form that is attached as Exhibit A. The complaint log shall be available for inspection by representative(s) of Protestants and the ANC.

14. Licensee shall post signs in English and in Spanish, in not less than 1-inch type, in the public restrooms and in a position prominently visible to patrons exiting, with the following text: "Please be considerate of our neighbors. Keep noise to a minimum when you exit. And please help keep our neighborhood clean and safe."

15. Licensee will not sell or deliver alcoholic beverages to any person under the age of 21, and will prominently display a sign indicating that such sales will not be made and that patrons may be asked to produce valid proof of age.

16. Licensee will not sell or deliver alcoholic beverages to anyone who is intoxicated and shall not sell or deliver alcoholic beverages to any accompanying a person who has been denied service if there is an apparent attempt to deliver alcoholic beverages to the person who has been denied service.

17. Licensee will assure that any persons serving in capacity as "night manager" and all alcoholic beverage serving staff receive appropriate training regarding the terms of this Agreement and in the sale, service and handling of alcoholic beverages as required by law and regulation.

18. Licensee will keep the sidewalk in front of the establishment free of debris, trash and litter and shall provide appropriate receptacles for the deposit of cigarette butts.

19. Licensee will keep the alley behind the establishment free of debris, trash and litter. Licensee will store garbage and recyclable materials in containers with secure lids. Licensee will arrange to have garbage and recyclables picked up at least three times per week during the hours between 8:00 a.m. and 8 p.m. Licensee agrees to adjust the pick-up schedule, or to arrange for unscheduled pick-ups, as circumstances dictate in order to prevent over-accumulation.

20. Licensee agrees to meet with representative(s) of the Protestants to review the complaint log and to discuss neighborhood issues or problems, if any, relating to operation of the establishment, and appropriate means of addressing them. For the first year of this agreement, such meetings shall be held at least once every second month. Thereafter, meetings shall be held at least semi-annually. Meetings may be held on the Licensee's premises, or combined with meetings of other licensees. A notice of the date, time and location of the meeting in English and in Spanish shall be posted prominently on the Licensee's premises to allow patrons and residents of the neighborhood to attend. It is agreed that representatives of the Protestants shall undertake arranging and coordinating such meetings.


21. Notwithstanding the provisions in Paragraph 19, the Licensee is expected to respond in a timely manner to all complaints and be amenable to meeting with community representatives and residents upon request.

22. The Licensee and/or counsel for the Licensee, and Protestants agree to explore in good faith, the establishment of a voluntary Responsible Hospitality Partnership (RHP). The RHP is intended to provide a collaborative framework for creating, enhancing and managing Mount Pleasant Street as a place for the enjoyment of commercial, cultural, artistic and community amenities and a safe and vibrant place for people to socialize, while recognizing and balancing the interests of the community in maintaining peace and good order. Upon establishment of the RHP, the Protestants and Licensee agree to discuss, in good faith, amendments to this Agreement, provided the Licensee has agreed to operate within the framework of the RHP.

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23. This Agreement is intended to supersede and replace any and all prior voluntary or cooperative agreements that previously applied to the license or the Licensee. The termination of the prior voluntary agreement between the Licensee and the Mount Pleasant Neighborhood Alliance, Inc., is a condition precedent to the effectiveness of this Agreement.

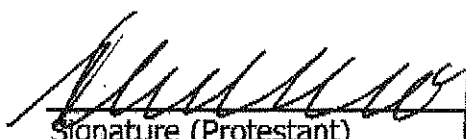
IN WITNESS WHEREOF, the parties have executed this Cooperative Agreement as of July 1, 2008.



Signature (Licensee)

Luis Alberto Ferrufino


Print Name



Signature (Protestant)

Claudio Schusterberg

Print Name



Signature (Protestant)

Adam C. Hasy

Print Name

Signature (Protestant)

Print Name

LAJ