

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

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In the Matter of:)
)
NHV Corporation, Inc.)
t/a Haydee's Restaurant)
Application for Renewal, Voluntary)
Agreement Termination, and an) Case No. 10515-07/065P
Entertainment Endorsement at) License No. 24663
3102 Mount Pleasant Street, N.W.) Order No. 2008-189
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

Douglas Fierberg, Esquire, 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 NHV Corporation, Inc., t/a Haydee's Restaurant, (Applicant) that 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 on September 12, 2007 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. The Protestants to the entertainment endorsement Application are: (1) MPNA, (2) a Group of Five or More Individuals represented by Claudia Schlosberg, (3) a Group of Five or More Individuals represented by Sam Broeksmit, (4) a Group of Five or More Individuals represented by Steve Millar, and (5) a Group of Five or More Individuals represented by Rob Sides. A timely protest to the renewal and entertainment endorsement Applications 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 protest 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 vehicular parking.

The case came before the Board for a public protest hearing on February 13, 2008. At the conclusion of the protest hearing, the Board took the matter under advisement. The parties 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 is located in a medium-sized building at 3102 Mount Pleasant Street, N.W., which is the beginning of the Mount Pleasant corridor. (Tr. 2/13/08 at 44.) 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. (Tr. 2/13/08 at 43.) There are approximately 17 Alcoholic Beverage Control (ABC) licensed establishments located within four blocks of Haydee's Restaurant. (Tr. 2/13/08 at 43.) The majority of the businesses located in the Mount Pleasant corridor cater to the Latino and Hispanic community. (Tr. 2/13/08 at 44.)

2. Haydee's Restaurant is an authentic Spanish restaurant co-owned by Haydee Vanegas and Mario Allis. (Tr. 2/13/08 at 44.) Haydee's hours of operation are Sunday through Thursday, 11 a.m. to 2 a.m., and Friday and Saturday 11 a.m. to 3 a.m. (Tr. 2/13/08 at 45.) Haydee's Restaurant has applied for entertainment, dancing, and a cover charge between the hours of 6 p.m. until 2 a.m., on Sunday through Thursday, and 6:00 p.m. until 3 a.m. on Friday and Saturday. (Tr. 2/13/08 at 45-46.) Haydee's current hours of operation are Sunday through Thursday, 11 a.m. to 2 a.m., Friday and Saturday 11 a.m. to 3 a.m. (Tr. 2/13/08 at 45.)

3. Christopher Scurlock has been an investigator with the Alcoholic Beverage Regulation Administration (ABRA) since February 5, 2007. (Tr. 2/13/08 at 40-41.) Investigator Scurlock and other ABRA investigators visited the establishment on 18 different occasions between December 18, 2007 and January 31, 2008. (Tr. 2/13/08 at

43, 46.) During these visits, the establishment was observed to be clean and orderly. (Tr. 2/13/08 at 46.) During a majority of the times monitored, there was limited or no parking available. (Tr. 2/13/08 at 46.) There are metered spaces located throughout the Mount Pleasant corridor. (Tr. 2/13/08 at 46.) There are two hour parking signs to the left of Haydee's and parking restrictions are in effect Monday through Friday between 9:30 a.m. and 6:30 p.m. (Tr. 2/13/08 at 46.) There are also approximately 16 bus stops located in the Mount Pleasant corridor. (Tr. 2/13/08 at 46.) Investigator Scurlock indicated that there are no parking lots located in the immediate area of the establishment for patrons. (Tr. 2/13/08 at 61-62.)

4. Investigator Scurlock indicated that the concerns he received from several of the Protestant groups regarding peace, order, and quiet dealt with the Applicant's establishment possibly: (1) morphing into a nightclub, (2) being able to charge a cover, and (3) having late hours of entertainment. (Tr. 2/13/08 at 43.)

5. Section A of the Applicant's Voluntary Agreement with MPNA prohibits the establishment from having live entertainment, dancing, or a cover or entry charge. (Tr. 2/13/08 at 45.) Investigator Scurlock was informed by Mr. Allis that he was concerned about the decline in business and that allowing entertainment would generate revenue and strengthen the community and that a nominal charge would cushion some of his expenses. (Tr. 2/13/08 at 45.)

6. During Investigator Scurlock's visits in the evening hours, he observed little to no activity at Haydee's or the surrounding establishments. (Tr. 2/13/08 at 47-48.) He indicated that they tended to close down around midnight or 1 a.m. with the exception of a couple of establishments. (Tr. 2/13/08 at 47.) He stated that around 10 p.m. or 11 p.m., Haydee's is less than half full. (Tr. 2/13/08 at 48.) During the afternoon lunch period, he observed approximately 10 to 15 patrons at the establishment. (Tr. 2/13/08 at 49.)

7. With regard to parking, Investigator Scurlock noted that the majority of patrons either walk to Haydee's from a residential dwelling or use public transportation traveling by bus. (Tr. 2/13/08 at 48-49, 71.) During his visits, Investigator Scurlock did not find any violations of the Voluntary Agreement. (Tr. 2/13/08 at 50.) He indicated that he never heard loud music at the establishment. (Tr. 2/13/08 at 50.) He indicated that Ms. Laurie Collins' complaints were primarily about the problems that might occur by the establishment if it were ever permitted to have entertainment. (Tr. 2/13/08 at 51-52.) Investigator Scurlock stated that neither Ms. Collins nor Mr. Rob Sides currently had any specific problems with Haydee's or Don Jaime's. (Tr. 2/13/08 at 52, 72, 74.) Ms. Collins informed him that MPNA supports entertainment and is seeking a balance between the needs of the establishment and the needs of the community. (Tr. 2/13/08 at 58, 77.) This includes those who live close to Haydee's as there are a number of residents in this area including those who reside on Mount Pleasant Street, N.W. (Tr. 2/13/08 at 58, 77.) Ms. Schlosberg informed him that the current MPNA Voluntary Agreements for Haydee's and Don Jaime's need to be rewritten. (Tr. 2/13/08 at 59-60, 79.) ANC 1D Commissioner Jack McKay told Investigator Scurlock that the issues were peace, order, and quiet; primarily that late-night crowds would possibly cause

disturbances after leaving Haydee's and Don Jaime's after a night of entertainment. (Tr. 2/13/08 at 61, 78.) Mr. Alworth resides on Park Road, N.W., which is much closer to Don Jaime's than Haydee's Restaurant. (Tr. 2/13/08 at 56-57, 75.) He is concerned about these two establishments morphing into nightclubs. (Tr. 2/13/08 at 56-57, 75.)

8. Haydee's told Investigator Scurlock that the establishment planned on implementing a security plan for entertainment if its entertainment endorsement is approved. (Tr. 2/13/08 at 63.) They may also possibly have outside security when the entertainment ended. (Tr. 2/13/08 at 63.)

9. ANC 1D Commissioner Jack McKay indicated that ANC 1D supports (1) terminating the Applicant's Agreement with MPNA, (2) allowing the Applicant to have an entertainment endorsement with live music and live entertainment, which they believe would benefit the neighborhood. (Tr. 2/13/08 at 96-97, 109-110.) Commissioner McKay indicated that ANC 1D recently passed a resolution in favor of live music and live entertainment and it calls for the termination of any Voluntary Agreement that fails to provide for live music and live entertainment in Mount Pleasant restaurants. (Tr. 2/13/08 at 100.) Commissioner McKay indicated that this has been the position of ANC 1D for the past four and a half years. (Tr. 2/13/08 at 100.)

10. Commissioner McKay acknowledged that ANC 1D worries about becoming like Adams Morgan and that this is why they are strongly in favor of new Voluntary Agreements and not merely eliminating the Agreement with MPNA. (Tr. 2/13/08 at 103.) ANC 1D supports the Applicant's signature to the Hear Mount Pleasant Voluntary Agreement. (Tr. 2/13/08 at 103.) ANC 1D expects the new Agreement to have a responsible hospitality group to allow issues to be dealt with on a neighborhood basis. (Tr. 2/13/08 at 101.) Commissioner McKay believes that the restaurant owners are responsible citizens who will work with the neighborhood. (Tr. 2/13/08 at 101.) He indicated that granting entertainment is not likely to cause big crowds on the street like Adams Morgan because the total capacity of the restaurants on Mount Pleasant is quite modest. (Tr. 2/13/08 at 102.)

11. Commissioner McKay stated that music can be loud whether it is live or recorded and thus the ban of live music is not pertinent to the issue of noise at restaurants. (Tr. 2/13/08 at 102.) He indicated that the Hear Mount Pleasant organization has worked hard to incorporate noise reduction measures to make sure that music, whether recorded or live, is not a problem. (Tr. 2/13/08 at 102.)

12. With regard to parking, approximately 50 percent of the households in the Mount Pleasant area have no car and are dependent on local businesses where they can walk to get what they want. (Tr. 2/13/08 at 104-108.) Commissioner McKay indicated that it is important for Mount Pleasant businesses to remain economically viable to fulfill these needs for the benefit of nearby residents. (Tr. 2/13/08 at 104.) He acknowledged that there is a worry about noise on the street due to late night entertainment at the establishment. (Tr. 2/13/08 at 105.) ANC 1D has a concern about security and safety on the street. (Tr. 2/13/08 at 106.) The position of ANC 1D is that bringing live

entertainment to Mount Pleasant restaurants will bring more people to Mount Pleasant and enhance the safety and security of residents on Mount Pleasant Street. (Tr. 2/13/08 at 107.) A lot of Mount Pleasant residents walk home past midnight and do not want to be walking home on a deserted street at that hour. (Tr. 2/13/08 at 107.)

13. With regard to the MPNA Voluntary Agreement, Commissioner McKay does not object to the portion of provision A requiring the Applicant to comply with all laws or Provision B requiring the Applicant to cooperate with the ANC and MPNA in dealing with violations of the law. (Tr. 2/13/08 at 111-112.) ANC 1D has not considered every provision of the MPNA Agreement. (Tr. 2/13/08 at 113.) Rather, ANC 1D objects to the MPNA provision banning live music, dancing, and a cover charge. (Tr. 2/13/08 at 113.) ANC 1D does not have an official position on other specific terms of the Voluntary Agreement. (Tr. 2/13/08 at 113.)

14. ANC 1D is in favor of live music, entertainment, cover charges, and dancing consistent with the restrictions of the Hear Mount Pleasant Voluntary Agreement, which is until Midnight on weekdays and 1:30 a.m. on weekends. (Tr. 2/13/08 at 116, 129; Joint Exhibit No. 29.) ANC 1D also supports the hour restrictions expiring after a trial period unless it can be shown that problems on the street are attributable to live music and entertainment. (Tr. 2/13/08 at 116, 124-125, 129.) He indicated that an establishment's hours should be reduced if the establishment's operations are related to public disturbances. (Tr. 2/13/08 at 117.)

15. Commissioner McKay stated that MPNA only represents a specific viewpoint within a highly varied neighborhood and is not representative of the neighborhood. (Tr. 2/13/08 at 125-126.) There is neighborhood support to end MPNA's Voluntary Agreement restrictions on entertainment. (Tr. 2/13/08 at 126.) ANC 1D's position is that the entertainment endorsement would not adversely affect peace, order, and quiet or traffic within the neighborhood. (Tr. 2/13/08 at 126.)

16. Alexander Omar Iraheta has resided at 3220 17th Street, N.W., in Mount Pleasant for about twenty years. (Tr. 2/13/08 at 131, 145.) He is a singer, songwriter, guitar player and actor who performs in community events and festivals. (Tr. 2/13/08 at 132.) Mr. Iraheta also performs at the Gala Theatre, a Spanish theater, located at the Tivoli building on 14th and Park Road, N.W. (Tr. 2/13/08 at 132.) Additionally, he works for a Latin-American center as a mentor and teaches skills to kids from the foster care system. (Tr. 2/13/08 at 133.)

17. Mr. Iraheta recalled a time approximately 10 years ago when mariachis played in Mount Pleasant. (Tr. 2/13/08 at 133) He stated that it was amazing to see different cultures coming together and enjoying different music. (Tr. 2/13/08 at 133.) Mr. Iraheta noted that there was not really any other place in the District of Columbia where you could hear the mariachis play. (Tr. 2/13/08 at 134.) There came a point when the mariachis stopped playing and he did not know why. (Tr. 2/13/08 at 134-135.) The loss of the mariachis negatively affected the community and the sharing of other cultures.

(Tr. 2/13/08 at 135.) Mr. Iraheta indicated that his culture felt disrespected because they were not allowed to share their music, arts, and culture. (Tr. 2/13/08 at 136.)

18. Mr. Iraheta wrote a song regarding a Mariachi player's frustration about no longer playing in the Mount Pleasant park and restaurants because some individuals do not want him around or want him singing about his culture. (Tr. 2/13/08 at 136-138; Joint Exhibit No. 16.) He indicated that he had not really been allowed to perform his song in Mount Pleasant. (Tr. 2/13/08 at 138.) Mr. Iraheta stated that there is a live music ban in Mount Pleasant that prevents him from playing in restaurants in Mount Pleasant. (Tr. 2/13/08 at 138-139.) The live music ban has been bad for musicians who want to share their culture and play their music for friends and neighbors. (Tr. 2/13/08 at 139.)

19. Mr. Iraheta is familiar with Haydee's Restaurant and one of its owners, Haydee Vanegas. (Tr. 2/13/08 at 140.) He has known her for almost ten years. (Tr. 2/13/08 at 140.) Mr. Iraheta indicated that if Haydee's were allowed to have live entertainment that it would provide the type of environment where he would be willing to perform. (Tr. 2/13/08 at 140.) He is not interested in bringing nightclubs to the neighborhood but rather he is interested in having a location to allow artists to share their music with friends and relatives. (Tr. 2/13/08 at 141.)

20. Mr. Iraheta has never talked to MPNA about whether he could perform his music and had never attempted to play music at Marx Café, Tonic, or Radius, in Mount Pleasant. (Tr. 2/13/08 at 142-143.) He has tried playing in the Mount Pleasant park but has been stopped by Metropolitan Police Department (MPD) from doing so. (Tr. 2/13/08 at 144-146.) Mr. Iraheta stated that the neighborhood has changed a lot. (Tr. 2/13/08 at 146.)

21. Najiya Shana has been a Mount Pleasant resident since 1991 and a homeowner since 1997. (Tr. 2/13/08 at 152.) She currently resides at 1737 Kilbourne Street, N.W., about one block from Don Jaime's and two or three blocks from Haydee's Restaurant. (Tr. 2/13/08 at 152-153.) She is a licensed independent clinical social worker and was the Executive Director of Neighbors' Consejo for eight years from early 1998 to the end of 2005. (Tr. 2/13/08 at 153.) This organization was founded by a group of residents to address neighborhood problems of vagrancy, public intoxication, addictions, and homelessness and the impact of these problems on the Mount Pleasant community as a whole. (Tr. 2/13/08 at 153.) There has been a change in the neighborhood with dramatic improvement in these areas over the past 10 years. (Tr. 2/13/08 at 153-154.) Ms. Shana stated that these problems are not linked to the issue of music and social dancing in their neighborhood restaurants. (Tr. 2/13/08 at 154, 157.)

22. Ms. Shana indicated that the individuals causing problems with vagrancy, public intoxication, and homelessness are not patrons of Haydee's and Don Jaime's. (Tr. 2/13/08 at 155-156.) The Mount Pleasant businesses also struggle to deal with the same issues. (Tr. 2/13/08 at 156.) For example, an early project of Neighbors' Consejo involved working with Haydee's and Don Jaime's to help discourage panhandlers and refer persons to the organization. (Tr. 2/13/08 at 156, 163.)

23. Ms. Shana believed that Voluntary Agreements that prohibit live music are not the solution to the complicated economic, social, and cultural problems that exist in Mount Pleasant. (Tr. 2/13/08 at 157.) She was not in favor of a ban on live music in Mount Pleasant Restaurants and did not believe there was a connection to addressing problems that exist in the neighborhood. (Tr. 2/13/08 at 157-158.)

24. Ms. Shana believes that the provision of the MPNA Agreement that prohibits live music infringes on the rights of the businesses, their patrons, and residents. (Tr. 2/13/08 at 157-158.) She was aware of some MPNA Agreements but had not read them carefully. (Tr. 2/13/08 at 158-159.) Ms. Shana could not remember whether she had read the Haydee's Agreement. (Tr. 2/13/08 at 165.) She had no objection to paragraph D of the Haydee's Agreement that requires the establishment to work in cooperation with MPNA, to support community organizations which seek to alleviate alcohol abuse problems by participation in meetings and programs. (Tr. 2/13/08 at 158-160.) Ms. Shana had no objection to Paragraph E of the Agreement stating that the Applicant will undertake a leadership role in the Mount Pleasant business community in an effort to enlist wider business support for clean up, responsible alcohol service, and support of alcohol abuse assistance organizations. (Tr. 2/13/08 at 161-162.)

25. Ms. Shana did not believe that MPNA represents the community in which she lives. (Tr. 2/13/08 at 171.) She stated that approving an entertainment endorsement for Haydee's and Don Jaime's would not affect peace, order, and quiet or vehicular traffic and parking in the neighborhood. (Tr. 2/13/08 at 171.) Ms. Shana indicated that there is plenty of parking for smaller establishments the size of the Applicant's. (Tr. 2/13/08 at 171.) She would be comfortable with the Applicant having entertainment until closing time. (Tr. 2/13/08 at 172.)

26. Trisha Clauson works for the Latino Economic Development Corporation (LEDC), a community based economic development non-profit based in Adams Morgan. (Tr. 2/13/08 at 178-179; Joint Exhibit No. 13.) LEDC was established in 1991 and is involved in working with small business owners in the Mount Pleasant community. (Tr. 2/13/08 at 179.) Ms. Clauson indicated that Hear Mount Pleasant, Mount Pleasant Main Street, the Mount Pleasant Business Association, LEDC, and the business owners have been working on a collaborative approach to solving problems in the Mount Pleasant community. (Tr. 2/13/08 at 179.) LEDC is also working with the Mount Pleasant businesses to help them adapt to the changing marketplace but has found that the restrictive MPNA Agreements makes that difficult to do. (Tr. 2/13/08 at 180.) Specifically, the MPNA Agreements do not give them the flexibility to make decisions as business owners in order to serve the community. (Tr. 2/13/08 at 180.)

27. Ms. Clauson noted that Mount Pleasant is historically the heart and soul of the Latino community in Washington, D.C. (Tr. 2/13/08 at 181.) Music is important to any culture, including the Latino community. (Tr. 2/13/08 at 182.) Ms. Clauson has a problem with the restrictive MPNA Agreements. (Tr. 2/13/08 at 183-184.) Her main concern is the provision prohibiting live music, dancing, and charging a cover. (Tr. 2/13/08 at 184-185.)

28. Ms. Clauson believed that business owners should be given the flexibility to decide when to stop having live music rather than to have it imposed on them. (Tr. 2/13/08 at 185-186.) She did acknowledge that the community, including residents, should have input regarding the hours that the music stops. (Tr. 2/13/08 at 186.) Ms. Clauson stated that having an open dialogue is important including finding middle ground where businesses and residents can agree. (Tr. 2/13/08 at 186-187.) She did not believe that having live entertainment at Haydee's and Don Jaime's would adversely impact peace, order, and quiet or parking given the limited capacity of these two establishments. (Tr. 2/13/08 at 188.)

29. Olivia Cadaval resides at 1739 Irving Street, N.W., and is a scholar at the Smithsonian Institution. (Tr. 2/13/08 at 197.) From a historical perspective, groups of mariachis were part of the make-up of Mount Pleasant from the days that music was allowed and they were also often seen outside the park. (Tr. 2/13/08 at 195.) Ms. Cadaval is also a member of Hear Mount Pleasant whose goal is to coordinate the community and businesses by having conversations and work on cultural, economic, and neighborhood issues. (Tr. 2/13/08 at 198.) This is a new and important approach for community members to allow Mount Pleasant to make a sustainable neighborhood by working together. (Tr. 2/13/08 at 199.) A large number of people and groups have come together in an effort to create something new for the neighborhood. (Tr. 2/13/08 at 200.)

30. Ms. Cadaval did not believe that there was ever community input into the MPNA Agreements and that they had no notice of them. (Tr. 2/13/08 at 200.) It was a shock to her when she learned that there was no live music in Mount Pleasant. (Tr. 2/13/08 at 200.) She does not believe that MPNA represents the neighborhood. (Tr. 2/13/08 at 202.) Ms. Cadaval believes that the revival of the music culture in Mount Pleasant would be a boon to the neighborhood. (Tr. 2/13/00 at 202.) She indicated that a restaurant with music is an ideal neutral place for people to share ideas and cultures and get to know each other. (Tr. 2/13/08 at 203.)

32. Ms. Cadaval has read the MPNA Voluntary Agreements and has concerns that the Voluntary Agreements were entered into by only one portion of the community. (Tr. 2/13/08 at 207-208.) She supports the Hear Mount Pleasant Voluntary Agreement and believes that the balance it strikes between businesses and residents is appropriate. (Tr. 2/13/08 at 208, 214-215.) Ms. Cadaval believed that the peace, order, and quiet of the neighborhood would be improved with the addition of live music at Mount Pleasant Restaurants. (Tr. 2/13/08 at 215-216; Joint Exhibit No. 3.) There has been a change in the neighborhood over the past ten years to warrant approving live entertainment. (Tr. 2/13/08 at 216.) Ms. Cadaval was in support of the establishment being given entertainment to the maximum hours. (Tr. 2/13/08 at 217.)

33. Dana Keane has resided at 1726 Park Road, N.W., on the first block adjacent to the commercial area, for over twenty years. (Tr. 2/13/08 at 219-220, 229.) He has been a member of the MPNA for about ten years and is also involved with historic Mount Pleasant and he attends ANC meetings. (Tr. 2/13/08 at 219, 229.) Mr. Keane is

interested in having his neighborhood continue to be a nice place to live and he does not support the termination of the Voluntary Agreement. (Tr. 2/13/08 at 220, 223.) He indicated that approximately 20 years ago it was a common occurrence to come home and find people drunk, or urinating or fighting near his house, including his front lawn, front porch, and the parks located on Park Road and Mount Pleasant Street N.W. (Tr. 2/13/08 at 220.)

34. Mr. Keane indicated that through the good work of MPNA, MPD, and others, including putting the Voluntary Agreement in place, the problems he encountered started to decrease. (Tr. 2/13/08 at 220-221.) This included the ban on single containers of beer. (Tr. 2/13/08 at 221.) Over the years the quality of life in Mount Pleasant has gotten dramatically better. (Tr. 2/13/08 at 221-223, 229.) Mr. Keane supports the MPNA Voluntary Agreements as they protect his quality of life and peace, order, and quiet. (Tr. 2/13/08 at 221-222.) Terminating the MPNA Voluntary Agreements would be a big step back for the neighborhood. (Tr. 2/13/08 at 221.) He was concerned with restaurants turning into nightclubs and Mount Pleasant turning into Adams Morgan. (Tr. 2/13/08 at 222, 232.) Mr. Keane was concerned about limited parking in the neighborhood and believed that problems already exist with cars double parking in Mount Pleasant. (Tr. 2/13/08 at 233-234.)

35. Mr. Keane did not believe there should be a cover charge or dancing and that the hours of entertainment should be limited to Friday and Saturday between 6 p.m. and 10 p.m. (Tr. 2/13/08 at 222-225, 227, 232.) However, Mr. Keane acknowledged that he enjoys dancing. (Tr. 2/13/08 at 232.) He loves the mariachis and live music but believed that parameters on the days and hours of entertainment are needed. (Tr. 2/13/08 at 223-225, 230.) Mr. Keane was concerned about patrons coming out of these establishments at 2 a.m. or 3 a.m. and being intoxicated and making noise and causing problems in the neighborhood. (Tr. 2/13/08 at 227-228, 232.) He believed that MPNA truly represents the community and that it has several hundred members. (Tr. 2/13/08 at 230.)

36. Haydee Vanegas has been an owner of Haydee's Restaurant since 1997. (Tr. 2/13/08 at 278.) She has lived in the neighborhood since 1998 with her family who reside about a block and a half from her restaurant. (Tr. 2/13/08 at 278.) Ms. Vanegas stated that she did not understand the Voluntary Agreement that she signed in 1997 and she did not intend nor realize that she had given up her right to have live music, including mariachis. (Tr. 2/13/08 at 279-281.) She had intended to have mariachis play at Haydee's Restaurant. (Tr. 2/13/08 at 280.) Ms. Vanegas indicated that her previous lawyer, Ely Hurwitz, who represented her in negotiating the Agreement had just told her to sign the Agreement. (Tr. 2/13/08 at 280, 300.) She stated that she was forced to sign it as she ran out of money to pay her attorney. (Tr. 2/13/08 at 292.) She tried to get live music back when she found out it was prohibited by her Agreement but believed that it was impossible. (Tr. 2/13/08 at 282.) Ms. Venegas noted that her MPNA Agreement has other restrictions such as prohibiting her from selling her business. (Tr. 2/13/08 at 281.)

37. Ms. Vanegas wants to terminate her MPNA Agreement. (Tr. 2/13/08 at 281, 297.) Her customers have expressed dissatisfaction to her about not being able to have live

music for birthday parties and wedding parties. (Tr. 2/13/08 at 283.) She talked to MPNA about getting music back but they only offered to let her have live music for Sunday brunch and once a month. (Tr. 2/13/08 at 284.) Ms. Vanegas currently has another restaurant on Georgia Avenue that has music with no restrictions, which has a capacity of 250 patrons. (Tr. 2/13/08 at 292.) She believed that she could manage entertainment at Haydee's in Mount Pleasant without any problems. (Tr. 2/13/08 at 293.) Ms. Vanegas has committed to a noise management plan and her establishment has double doors that prevents music from being heard outside of the establishment. (Tr. 2/13/08 at 293.) She does not intend to play very loud music and that if music could be heard outside she would reinforce her windows. (Tr. 2/13/08 at 294.) Ms. Vanegas indicated that for the past 18 years she has hired off-duty police, that they have security cameras, and she always has employees checking the crowd. (Tr. 2/13/08 at 303.)

38. Ms. Vanegas would have different types of music if approved for an entertainment endorsement, including country, jazz music and mariachis. (Tr. 2/13/08 at 294.) She would like to be able to work with musicians, artists, and poets in the neighborhood. (Tr. 2/13/08 at 294-295.)

39. Ms. Vanegas does not believe that MPNA represents the neighborhood. (Tr. 2/13/08 at 295.) She believed that the various groups and individuals who have been working to bring back live music represent the neighborhood. (Tr. 2/13/08 at 295-296.) Her Hear Mount Pleasant Voluntary Agreement that she was willing to sign would require her to conclude entertainment no later than midnight on Sunday through Thursday and 1:30 a.m. on weekends. (Tr. 2/13/08 at 301; Joint Exhibit No. 10.)

40. With regard to parking, most of her patrons take the bus or metro or walk to get to the establishment. (Tr. 2/13/08 at 305.)

41. Phil Lepanto lives at 1715 Lamont Street, N.W., and has lived in Mount Pleasant since 1998. (Tr. 2/13/08 at 314, 337.) His residence is approximately 250 feet from the commercial strip. (Tr. 2/13/08 at 314.) Mr. Lepanto is neighbors with individual Protestants Monica Rubio, Jason Bates, and Garret Fletcher. (Tr. 2/13/08 at 315.) Mr. Lepanto enjoys living in the first block off the commercial strip and having restaurants and convenience stores located within a few blocks. (Tr. 2/13/08 at 315.) There has been a tremendous amount of improvement in the neighborhood since the MPNA Agreement was signed. (Tr. 2/13/08 at 338.)

42. Mr. Lepanto is a technology consultant and is on the Steering Committee for Hear Mount Pleasant. (Tr. 2/13/08 at 316, 338.) He got involved with the organization when he heard that a bunch of neighbors were organizing a campaign to bring live music back to Mount Pleasant. (Tr. 2/13/08 at 316.) As he learned more about the issue and how MPNA dominated the process, Mr. Lepanto became resolved to make his voice heard. (Tr. 2/13/08 at 317.) He is not a neighborhood activist but was worried that Mount Pleasant businesses would suffer without more compelling and dynamic cultural and recreational opportunities. (Tr. 2/13/08 at 317.) Mount Pleasant restaurants are at a disadvantage compared to the development in other District neighborhoods. (Tr. 2/13/08

at 317.) Mount Pleasant is an attractive place to live due to the proximity of the commercial corridor to the residential neighborhood. (Tr. 2/13/08 at 318.) He indicated that the viability of these businesses is vital to protecting his property values and quality of life. (Tr. 2/13/08 at 318.)

43. Mr. Lepanto developed a website and a petition database for Hear Mount Pleasant. (Tr. 2/13/08 at 318.) Specifically, in February 2007, their Steering Committee undertook a petition drive to gather signatures within Mount Pleasant in support of bringing live music back to the neighborhood. (Tr. 2/13/08 at 318-319.) He indicated that they went door to door in some cases, positioned themselves at high-traffic areas, and posted versions of the petition for download on their website. (Tr. 2/13/08 at 319, 325.) The Steering Committee then entered collected petitions in the petition database which was cross-referenced against Google Map, the Tele Atlas data base as well as the DC GIS database. (Tr. 2/13/08 at 319.)

44. The Hear Mount Pleasant Steering Committee's circulated petition indicates that it seeks to promote the cultural life of Mount Pleasant by supporting live entertainment, including live music, karaoke, poetry readings, dancing and other forms of artistic expression. (Tr. 2/13/08 at 320-321.) The petition indicates that the undersigned oppose Voluntary Agreements that are unduly restrictive and prohibit licensed Mount Pleasant restaurants serving alcohol from having live entertainment. (Tr. 2/13/08 at 321, 329.) The petition supports the Hear Mount Pleasant Agreement. (Tr. 2/13/08 at 321.) Nothing in the petition indicates that it supports terminating the MPNA Agreements. (Tr. 2/13/08 at 329-330.) Mr. Lepanto indicated that 1,671 persons signed the petition with 1,488 of these individuals living in Ward 1 and 1,182 of these individuals living within the borders of Mount Pleasant and ANC 1D. (Tr. 2/13/08 at 322.) They accounted for duplicate addresses in their database and tried to identify and delete those instances where the same individual signed the petition several times. (Tr. 2/13/08 at 322.) The MPNA Voluntary Agreement was not attached to the signed petition. (Tr. 2/13/08 at 326.) Individuals were informed that the MPNA Agreement was available on the Hear Mount Pleasant website. (Tr. 2/13/08 at 326-327.) The Steering Committee did not track whether individuals actually looked at either the MPNA and Hear Mount Pleasant Agreements. (Tr. 2/13/08 at 327.)

45. In addition to showing generalized support for bringing entertainment back to Mount Pleasant Restaurants, Mr. Lepanto believed the signatures show support for the way Hear Mount Pleasant has gone about soliciting its support from the neighborhood in bringing back live music. (Tr. 2/13/08 at 336-337.) Mr. Lepanto indicated that the Hear Mount Pleasant proposed hours of entertainment represented a common ground between different individuals participating in the group. (Tr. 2/13/08 at 339-340.)

46. Natalie Avery resides at 1518 Monroe Street, N.W., about a half a block outside the formal boundaries of Mount Pleasant. (Tr. 2/13/08 at 343.) She lives about three blocks away from Don Jaime's Restaurant and has lived within three blocks of Mount Pleasant Street since 1991. (Tr. 2/13/08 at 343.) Ms. Avery is about five blocks away from

Haydee's Restaurant. (Tr. 2/13/08 at 343.) She is on Mount Pleasant Street almost every day and considers herself a part of the Mount Pleasant Community. (Tr. 2/13/08 at 344.)

47. Ms. Avery is a member of the Hear Mount Pleasant Steering Committee. (Tr. 2/13/08 at 344.) She stated that the purpose of the organization was to bring more voices into the neighborhood decision-making process and overturn the MPNA Agreements and bring more music back to restaurants on Mount Pleasant Street N.W. (Tr. 2/13/08 at 344-345.) She decided to become involved after learning of the MPNA Voluntary Agreements approximately ten years ago. (Tr. 2/13/08 at 345.) Ms. Avery approached Haydee Vanegas about hosting an event at her establishment with live music but was told no because the establishment's Agreement with MPNA prohibited Ms. Vanegas from having live music. (Tr. 2/13/08 at 346.) The event, called Cabaret Del Barrios, was ultimately moved to Don Juan's restaurant. (Tr. 2/13/08 at 346.) However, on November 27, 1997 they had an event scheduled when they got a call that morning from an MPNA member who informed them that if they continued with the event they would threaten Don Juan's license. (Tr. 2/13/08 at 346-347.) As a result, the event was moved down the street to a community space and they were no longer able to hold events at Don Juan's restaurant due to its Voluntary Agreement with MPNA. (Tr. 2/13/08 at 347.)

48. Hear Mount Pleasant held open meetings to discuss the live music issue. (Tr. 2/13/08 at 348.) Over the last year, they organized a petition drive with street outreach, going door to door, holding house meetings and holding events at local restaurants and Lamont Park. (Tr. 2/13/08 at 349.) The response Hear Mount Pleasant received was overwhelmingly positive with many people signing their petition and volunteering to help. (Tr. 2/13/08 at 350.) A lot of people talked about missing the mariachis, expressed concern that the MPNA Agreements are too restrictive and hampering economic development, and the fact that they were never consulted regarding the MPNA Agreements. (Tr. 2/13/08 at 350.) Some individuals also indicated that they did not want their neighborhood to become like Adams Morgan. (Tr. 2/13/08 at 351.) Ms. Avery did run into people opposed to terminating the MPNA Agreements and they made an effort to reach out to these individuals and invite them to their meetings. (Tr. 2/13/08 at 351, 393; Joint Exhibit No. 20.)

49. Ms. Avery indicated that people were concerned about these restaurants attracting nighttime disorder, crowds, loud noise, and public drunkenness. (Tr. 2/13/08 at 352.) To address the issue of noise, Hear Mount Pleasant engaged Jeff Turner, a sound engineer, and had him do a noise assessment inside each restaurant regarding how noise could be contained. (Tr. 2/13/08 at 353.) To address the issue of having community friendly crowds, they obtained the assistance of LEDC to provide technical assistance to help them realize community friendly business plans. (Tr. 2/13/08 at 356.) With regard to Don Jaime's, LEDC is helping him revise his business plan into a Bolivian style café. (Tr. 2/13/08 at 357, 389.) With regard to public drunkenness, Najiya Shana is going to provide training to the business owners and their staff to discuss responsible alcohol service and specific issues in Mount Pleasant. (Tr. 2/13/08 at 358.)

50. With regard to the days and hours of entertainment, the Hear Mount Pleasant Agreement allows businesses to have music seven days a week with an ending time of midnight on Sunday through Thursday and 1:30 a.m. on Friday and Saturday nights. (Tr. 2/13/08 at 365.) The Agreement also allows the businesses to have six nights a year that they could have music to 2 a.m. (Tr. 2/13/08 at 365.) They met with a number of people and did street outreach to develop this compromise with the business owners. (Tr. 2/13/08 at 366.) A lot of people they talked to wanted stop times for the music and there was a variation between the stop times that people wanted. (Tr. 2/13/08 at 384.) Some people did not want the restaurants to turn into nightclubs. (Tr. 2/13/08 at 384.) None of the Hear Mount Pleasant members wanted earlier weekday hours than midnight. (Tr. 2/13/08 at 396.) Drafts of the Hear Mount Pleasant Agreement were made available at their meetings, through street outreach, and they were posted on their website. (Tr. 2/13/08 at 366.)

51. Hear Mount Pleasant supports terminating the MPNA Agreements for Haydee's and Don Jaime's and replacing them with the Hear Mount Pleasant Agreements because they believe that the MPNA Agreements are out of date, micromanage these two businesses, they are out-of-sync with the neighborhood, and they have nothing to do with peace, order and quiet in the neighborhood. (Tr. 2/13/08 at 366-367.) Ms. Avery indicated that it is time for a change to take a collaborative approach to solving problems in Mount Pleasant. (Tr. 2/13/08 at 367.) People are excited and organized and have invested a lot of time into having a different approach for the neighborhood. (Tr. 2/13/08 at 367.) Hear Mount Pleasant has about 100 to 150 very involved members with about 200 persons coming to their rally for live music. (Tr. 2/13/08 at 394-395.)

52. The Hear Mount Pleasant Agreement requires each establishment to have a noise management plan for recorded and live music, which they currently have. (Tr. 2/13/08 at 368, 380.) Ms. Avery identified 87 personal letters of support for Don Jaime's and 97 letters of support for Haydee's. (Tr. 2/13/08 at 369-370.)

53. Todd Pfeiffer resides at 1708 Lamont Street, N.W., with his wife and two children and has lived in Mount Pleasant since 2002. (Tr. 2/13/08 at 400.) He is about five houses down from the commercial corridor. (Tr. 2/13/08 at 400.) Mr. Pfeiffer indicated that he has heard the occasional bottle break but that the late night noise is not a major problem for him. (Tr. 2/13/08 at 402.)

54. His hardware store, Pfeiffer's Hardware, is located at 3219 Mount Pleasant Street, N.W., about 100 steps away from Don Jaime's Restaurant. (Tr. 2/13/08 at 400-401.) He works at his store approximately 60 hours a week. (Tr. 2/13/08 at 403.) His hardware store has also become a bit of a meeting place where people try and find out what is going on in the neighborhood. (Tr. 2/13/08 at 401.)

55. Todd Pfeiffer is also the Vice President of the Mount Pleasant Business Association and is very familiar with Haydee Vanegas and Jaime Carillo who are members of the Business Association. (Tr. 2/13/08 at 403.) The Business Association is focused on

finding a way to survive with the recently opened Target, Best Buy and other big stores located at 14th Street and Irving Street, N.W. (Tr. 2/13/08 at 404, 415.)

56. Mr. Pfeiffer is familiar with Hear Mount Pleasant but is not a member. (Tr. 2/13/08 at 404-405.) He is very aware of Hear Mount Pleasant's efforts to terminate the MPNA Voluntary Agreements and replace it with a new Agreement. (Tr. 2/13/08 at 405.) He had the Hear Mount Pleasant petitions in his store and has witnessed a number of individuals sign the petition. (Tr. 2/13/08 at 405.) The Mount Pleasant Business Association supports the termination of the MPNA Agreements because they believe that they are too restrictive for the establishments. (Tr. 2/13/08 at 405-407, 415.) His association does support the Hear Mount Pleasant Agreement. (Tr. 2/13/08 at 406-407.) Mr. Pfeiffer noted that his store contributed approximately 1,000 signatures and that he personally witnessed about 500 of them. (Tr. 2/13/08 at 412.)

57. Mr. Pfeiffer has been impressed with the way that Hear Mount Pleasant has met with a number of people, built bridges, and attempted to find solutions to problems rather than to legislate against activity. (Tr. 2/13/08 at 408-410.) MPNA is also working with the Business Association on a program called Operation Lively to allow them to get a quicker response from MPD. (Tr. 2/13/08 at 410.) However, he noted that the overwhelming support on this issue is with the Hear Mount Pleasant Voluntary Agreement and bringing more live music to Mount Pleasant. (Tr. 2/13/08 at 411.)

58. Mr. Pfeiffer noted that the MPNA Agreement may not have been necessary years ago but that times have changed in the neighborhood and that the Agreement is too restrictive and needs to be changed. (Tr. 2/13/08 at 412, 417.) Specifically, since he came to Mount Pleasant five years ago, crime has decreased on the street and in the neighborhood, and is now much safer. (Tr. 2/13/08 at 413, 423.) Additionally, Mount Pleasant now has better mechanisms and organizations in place to solve problems. (Tr. 2/13/08 at 413-414.)

59. Mr. Pfeiffer has read MPNA's Voluntary Agreements. (Tr. 2/13/08 at 419.) In addition to the entertainment restriction, he was against the restrictions on alcohol promotions and selling the business to a business that won't sell liquor. (Tr. 2/13/08 at 420.) He stated that MPNA does not represent the majority of the community but rather is representative of a smaller group of people with a particular point of view. (Tr. 2/13/08 at 422.)

60. Marika Torok has lived in Mount Pleasant at the corner of 18th Street and Irving Street, N.W., for the last ten years. (Tr. 2/13/08 at 424, 453.) She lives there with her husband and three children. (Tr. 2/13/08 at 424.) Ms. Torok is the MPNA Vice President and is on the MPNA Board. (Tr. 2/13/08 at 424-425.) She has been involved with MPNA for about ten (10) years and has been on the MPNA Board since around 2000. (Tr. 2/13/08 at 425, 457.) Ms. Torok decided to get involved as she bought a home in Mount Pleasant and wanted to make it a great place to raise a family. (Tr. 2/13/08 at 425-426.)

61. Ms. Torok became involved in alcohol issues in 1998 as she realized that Mount Pleasant had its share of alcohol issues. (Tr. 2/13/08 at 426.) Specifically, the neighborhood had an overabundance of alcohol establishments, alcohol abuse problems, and alcohol related crimes, including drinking in public. (Tr. 2/13/08 at 427.) She indicated that no other civic groups were doing work with the alcohol establishments at that time. (Tr. 2/13/08 at 428, 454.) MPNA worked to address their concerns through the Voluntary Agreement process. (Tr. 2/13/08 at 463.)

62. MPNA membership has over 800 households and well over 1,000 members. (Tr. 2/13/08 at 429.) Ms. Torok indicated that MPNA does not act in secret and that they contact their membership through e-mails and newsletters and they also contact establishments by phone or visit them in person. (Tr. 2/13/08 at 430.)

63. Ms. Torok was not involved in the Voluntary Agreement negotiations for either Don Jaime's or Haydee's. (Tr. 2/13/08 at 431, 457, 485.) With regard to the establishments' termination requests she made at least three attempts to contact Haydee's but after talking to Haydee Vanegas never heard back from her with regard to what she wanted. (Tr. 2/13/08 at 431.) The Applicant's attorney subsequently indicated that they were to cease any contact with Haydee's, so MPNA stopped making contact. (Tr. 2/13/08 at 433.)

64. Ms. Torok believed that MPNA should be involved with these establishments because their mission is to improve the quality of life of the residents and that alcohol in the community affects peace, order, and quiet, parking and traffic, and their quality of life. (Tr. 2/13/08 at 434.) She noted that over the years there generally has not been any serious involvement by the ANC in these alcohol issues, with some exceptions. (Tr. 2/13/08 at 435-437.)

65. Ms. Torok opposes the Applicant's request to terminate its Voluntary Agreement with MPNA. (Tr. 2/13/08 at 437.) She noted that MPNA was there when the going was tough and no one else was around fighting to make a difference. (Tr. 2/13/08 at 437-438.) MPNA has a track record and is committed to the community and will continue to be there. (Tr. 2/13/08 at 439, 451.)

66. Ms. Torok indicated that MPNA is not opposed to live entertainment. (Tr. 2/13/08 at 439.) She noted that things in the neighborhood have changed for the better. (Tr. 2/13/08 at 439-440, 462-463.) Specifically, problems with alcoholism on the street have decreased. (Tr. 2/13/08 at 465.) Ms. Torok stated that while MPNA supports live entertainment, they believe that it must have reasonable restrictions because the community is probably 90 percent residential. (Tr. 2/13/08 at 440.) The position of MPNA is that five days a week for entertainment is reasonable as Sunday and Monday are probably dead days anyway and the community, especially those who live close, need some rest. (Tr. 2/13/08 at 441.) MPNA's proposed hours restrictions are Tuesday through Thursday 6 p.m. to 10 p.m., and Friday and Saturday 6 p.m. to midnight with no dancing and no cover charges. (Tr. 2/13/08 at 441, 460-461, 471-472.) MPNA believes that it is important for live music to stop at 10 p.m. during the week as many people have jobs, there are noise and disturbance issues, and they do not want to become like Adams

Morgan. (Tr. 2/13/08 at 442.) MPNA wants restaurants in the community and not nightclubs or bars. (Tr. 2/13/08 at 442-443, 447, 459.) MPNA believes midnight is reasonable on weekends because if they truly are restaurants, that is a reasonable hour to be closing on a weekend. (Tr. 2/13/08 at 443.)

67. Ms. Torok indicated that finding parking is a problem in the neighborhood and that cars already come to Mount Pleasant from Maryland and Virginia. (Tr. 2/13/08 at 444.) She indicated that traffic is congested and that cars are double parked. (Tr. 2/13/08 at 444.) From a safety perspective, MPNA is also concerned with people coming out of establishments late at night. (Tr. 2/13/08 at 444-445.) MPNA is against dancing and cover charges as they want restaurants that people eat in and do not want the tables pushed aside for dancing. (Tr. 2/13/08 at 445-446, 479.) MPNA is concerned that dancing will lead to morphing into the nightclub scene where patrons are not at the establishment for purposes of eating. (Tr. 2/13/08 at 446-447, 479.)

68. Ms. Torok noted that the Haydee's Agreement has a restriction on transferring the license. (Tr. 2/13/08 at 447.) She stated that this provision was put in place because they were dealing with an overabundance of alcohol at the time. (Tr. 2/13/08 at 448, 466.) She is not saying that the provision makes sense or is appropriate now. (Tr. 2/13/08 at 448, 466-467.) Ms. Torok indicated that MPNA is not against any amendments to their Agreements but that they should be amended appropriately. (Tr. 2/13/08 at 452.) The Protestants, including MPNA, stipulated to, and did not object to the renewal of the Applicant's license. (Tr. 2/13/08 at 22.) MPNA did not contest that the neighborhood has changed for the better. (Tr. 2/13/08 at 34.)

69. Lieutenant Moses Vines is in charge of Patrol Service Area (PSA) 301, which is Mount Pleasant. (Tr. 2/13/08 at 487.) He has been a PSA Lieutenant for this area for the last two and one half years and was testifying on behalf of the Third District. (Tr. 2/13/08 at 488, 502.) With regard to criminal activity, he indicated that they have seen a rise in burglaries, robberies and auto thefts in the last several months. (Tr. 2/13/08 at 488.) However, the maintenance problems have been on the decline for the last several years and they do not have a lot of assaults. (Tr. 2/13/08 at 488-489.)

70. Lieutenant Vines is familiar with the restaurants serving alcohol in Mount Pleasant. (Tr. 2/13/08 at 490.) He indicated that depending upon the times and days of live entertainment and how much people have been drinking his manpower might have to be increased. (Tr. 2/13/08 at 490-494.) He noted that Adams Morgan gets more manpower on Friday and Saturday nights. (Tr. 2/13/08 at 491.)

71. Lieutenant Vines has been by Haydee's and Don Jaime's but he has not been inside of these establishments. (Tr. 2/13/08 at 496.) He was not aware of the capacity of these two establishments. (Tr. 2/13/08 at 497.) Lieutenant Vines did not take into account the capacity of these places in indicating that live entertainment would likely cause more manpower issues. (Tr. 2/13/08 at 498.) Lieutenant Vines did note that MPD also has to consider how many patrons are standing outside the area of the establishment. (Tr. 2/13/08 at 500-501.) He indicated that Haydee's and Don Jaime's could meet the

manpower needs by using the reimbursable detail for live entertainment events. (Tr. 2/13/08 at 506.) Lieutenant Vines noted that MPD does not have a position regarding live music in Mount Pleasant. (Tr. 2/13/08 at 507.)

72. Monica Rubio has resided in Mount Pleasant at 1705 Lamont Street, N.W., with her husband and three children for about two years. (Tr. 2/13/08 at 511, 538.) Her house is about 100 feet away from several of the ABC establishments being discussed. (Tr. 2/13/08 at 514.) She is concerned about having live entertainment at Mount Pleasant restaurants as there is already a high concentration of alcohol serving establishments. (Tr. 2/13/08 at 512.) Ms. Rubio stated that her main concern is public safety. (Tr. 2/13/08 at 512-514.) She indicated that she has also had problems with noise in the neighborhood and invested \$10,000 in soundproofing her house because of noise. (Tr. 2/13/08 at 512.) Ms. Rubio indicated that she is routinely sexually harassed by drunk patrons in front of her children and that she is routinely awakened by drunk patrons fighting outside her doors. (Tr. 2/13/08 at 513.) Ms. Rubio acknowledged that she has a public park, Lamont Park, located very close to both her home and to Don Jaime's. (Tr. 2/13/08 at 519.) She is not protesting Haydee's entertainment endorsement and cannot see Haydee's, which is more than two blocks away from her home. (Tr. 2/13/08 at 521-523, 531-532.) Ms. Rubio has never witnessed anyone stumbling out of Don Jaime's Restaurant. (Tr. 2/13/08 at 523.) There are two bus lines at Lamont Park where people are either traveling from all over the District back to Mount Pleasant or waiting for the bus very close to her home. (Tr. 2/13/08 at 524.)

73. Ms. Rubio stated that she routinely witnesses public urination and public defecation in her yard. (Tr. 2/13/08 at 514.) She did not believe the MPNA days and hours proposal was good. (Tr. 2/13/08 at 515.) She indicated that the current MPNA Voluntary Agreements provide protection for her and she requested that they not be terminated. (Tr. 2/13/08 at 534-536.) She acknowledged that some groups in the neighborhood do not like MPNA. (Tr. 2/13/08 at 537.) Ms. Rubio stated that music and dancing are central to her and that she is a salsa dancer but that a good compromise would be to have live entertainment on weekends only from 6 p.m. to 10 p.m., without dancing. (Tr. 2/13/08 at 516, 526-529.) She does not believe that the Hear Mount Pleasant days and hours proposal for live entertainment is balanced. (Tr. 2/13/08 at 516.) Ms. Rubio indicated that the Hear Mount Pleasant Agreement does not address her concerns. (Tr. 2/13/08 at 517.) Ms. Rubio pays \$150 a month for parking as she has to drive with three young children. (Tr. 2/13/08 at 517.) She indicated that she routinely observes illegal parking around Lamont Plaza where the establishments are located. (Tr. 2/13/08 at 518.)

74. Garret Wesley Fletcher has resided in Mount Pleasant at 3200 17th Street, N.W., for approximately five years with his wife and two children. (Tr. 2/13/08 at 541.) He indicated that he loves his neighborhood but believes that the terms the licensees are asking for live music would turn them into nightclubs which raise a host of quality of life issues for him and his family. (Tr. 2/13/08 at 542.) He believes that the playing of live music until either 1:30 a.m. or 3:00 a.m. every night with dancing and authorizing a cover charge would result in a nightclub. (Tr. 2/13/08 at 545, 549.) Mr. Fletcher did meet with Hear Mount Pleasant in his home but he does not believe their Agreement is reasonable

enough to restrict live entertainment. (Tr. 2/13/08 at 545.) He is not a member of MPNA but he is a member of a group of five Protestants regarding the Don Jaime's entertainment endorsement Application. (Tr. 2/13/08 at 551.)

75. Mr. Fletcher is fine with live music but believes that they should not be permitted to have dancing or to collect a cover charge. (Tr. 2/13/08 at 547-548.) He indicated that nobody eats dinner after 10 p.m. and that live entertainment should not be permitted after 10 p.m. (Tr. 2/13/08 at 547-548.) Mr. Fletcher acknowledged that he goes to bed fairly early. (Tr. 2/13/08 at 548.) Mr. Fletcher had no specific problems with either Haydee's Restaurant or Don Jaime's Restaurant. (Tr. 2/13/08 at 549-550.)

76. Rob Sides resides at 1645 Harvard Street, N.W., and is part of a protest group of five. (Tr. 2/13/08 at 557, 570.) His group would like to have the days and hours of live entertainment limited to Friday and Saturday until 10 p.m., with no cover charge or dancing. (Tr. 2/13/08 at 558.) Mr. Sides indicated that their concern is that once something is permitted, it is hard to put the genie back in the bottle. (Tr. 2/13/08 at 559.) As such, Mr. Sides wanted to experiment with the live music and test the waters before opening it up further. (Tr. 2/13/08 at 559.) He indicated that the MPNA Voluntary Agreement should perhaps be amended but not terminated. (Tr. 2/13/08 at 559.) Mr. Sides had no specific concerns related to Don Jaime's or Haydee's but is concerned about the possibility that they might become nightclubs. (Tr. 2/13/08 at 565-566.)

77. Steve Millar resides at 1725 Park Road, N.W., and is part of a protest group of five or more individuals. (Tr. 2/13/08 at 557, 570.) He has lived in Mount Pleasant for over 20 years. (Tr. 2/13/08 at 559.) His ten-year old daughter has had to dodge beer bottles that are thrown at people who are having disagreements along Mount Pleasant Street N.W. (Tr. 2/13/08 at 559.) His wife has also been harassed by people coming down the street. (Tr. 2/13/08 at 559.) He indicated that the MPNA Voluntary Agreement should not be terminated and that he supports weekend entertainment hours, but only between 6 p.m. and 10 p.m. (Tr. 2/13/08 at 561.) Mr. Millar indicated that Haydee's operates a pretty good business but he is concerned about the precedent that the Board's decision will set. (Tr. 2/13/08 at 566.)

78. Jason Bates resides at 1705 Lamont Street, N.W., and is the lead Protestant of a group of eight Protestants. (Tr. 2/13/08 at 557.) He is also a member of MPNA and believes that it represents a segment of the neighborhood. (Tr. 2/13/08 at 570-571.) Mr. Bates indicated that for him it is a quality of life issue and he has concerns about the restaurants becoming nightclubs. (Tr. 2/13/08 at 562.) He does not support termination of the MPNA Agreement. (Tr. 2/13/08 at 562.) His group supports live music on Friday and Saturday nights between 6 p.m. and 10 p.m. and Sunday brunch. (Tr. 2/13/08 at 562.)

79. Sam Broeksmit resides at 1713 Irving Street, N.W., and is the lead Protestant of a group of ten Protestants. (Tr. 2/13/08 at 557, 570.) He indicated that his group does not want to become Adams Morgan North and he is concerned about these establishments morphing into nightclubs. (Tr. 2/13/08 at 563-564.) Mr. Broeksmit stated that the

Board's decision will set a precedent for the rest of the neighborhood. (Tr. 2/13/08 at 563.) Mr. Broeksmit was in favor of trying a crawl approach for a year and then potentially expand upon it. His definition of crawl was 6 p.m. to 10 p.m. on weekends. (Tr. 2/13/08 at 565.) Mr. Broeksmit does not have a problem with either Haydee's or Don Jaime's Restaurant. (Tr. 2/13/08 at 568-569.)

CONCLUSIONS OF LAW

80. 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.

81. 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 the Hear Mount Pleasant Voluntary Agreement. 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

82. 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. This is the first contested protest hearing that the Board has held to consider whether an existing Voluntary Agreement should be terminated. 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) why the request to terminate or amend the Voluntary Agreement will not have an adverse impact on the neighborhood.

83. The Board found 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.

84. The most important of the three factors for the Board to consider is the impact of the request on the neighborhood. The Applicant's testimony revealed that the current operations of the establishment has not had an adverse impact on the neighborhood. However, the Board found the testimony presented by MPNA and other Protestants with similar views 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 live entertainment and dancing until 2 a.m. on weekdays and 3 a.m. on weekends will likely allow these establishments to morph into nightclubs, increase the level of noise and criminal activity in the area, and decrease their 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.

85. 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 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 for live entertainment at these two establishments beyond what is being proposed by MPNA and other protest groups with similar views. 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.

86. The Board believes that a better solution is to amend the existing MPNA 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

87. The testimony from all of the witnesses indicated that they were in favor of live entertainment in Mount Pleasant. The question that the Board is required to consider is (1) the appropriate days and hours restrictions for live entertainment and (2) whether dancing and a cover charge should be permitted taking into account D.C. Official Code § 25-313(b). The Board heard three different compromise proposals from the parties and witnesses regarding live entertainment in Mount Pleasant. The first proposal from Hear

Mount Pleasant, ANC 1D, and the Applicant, as set forth in their new Agreement, was for live entertainment until midnight on Sunday through Thursday and 1:30 a.m. on weekends. This proposal also included allowing the establishment to have dancing and a cover charge. The second proposal from MPNA was for live entertainment on Tuesday through Thursday from 6 p.m. to 10 p.m. and Friday and Saturday from 6 p.m. to midnight. The MPNA proposal did not allow for dancing, a cover charge, or entertainment on Sunday and Monday. The third proposal from several individual Protestant groups was for live entertainment on Friday and Saturday only from 6 p.m. to 10 p.m., with one of these groups in favor of live entertainment for Sunday brunch. The Board did not find any of the three proposed compromises to be a viable solution based upon the testimony heard by the Board.

88. The Board found the ending hours for live entertainment contained in the Hear Mount Pleasant Agreement to be too late and it did not take into account the concerns of MPNA and other residents concerned about these two establishments possibly operating as nightclubs and not restaurants. The Board found the MPNA proposal and the proposal of several individual protest groups to be too restrictive. As such, the Board found that the appropriate ending hours of the Applicant should be 11:00 p.m. on Sunday through Wednesday, midnight on Thursday, and 1:00 a.m. on Friday and Saturday. 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 restricted hours. Along these lines, the Board is restricting dancing at the establishment to the hours that it is permitted to have live entertainment. In deciding to allow entertainment seven days a week, the Board took into account the testimony of Mr. Pfeiffer who indicated that the Mount Pleasant businesses need more flexibility and should not be overly restrictive. The Board does not believe that granting the Application an entertainment endorsement with these hours restrictions will adversely impact the neighborhood.

89. 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 the hours restrictions placed on the establishment's live entertainment 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.

90. 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

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

92. The MPNA Voluntary Agreement shall remain in effect with two changes. First, based upon the Board's decision above, the Board is amending the MPNA Voluntary Agreement by striking the last sentence of paragraph A which reads "It is understood and agreed that said license permits no live music, dancing, cover charges or charges for admission to the establishment". Second, the Board found Paragraph F, which places restrictions on the sale of the business, to no longer be necessary and is deleting this provision in its entirety.

93. The proposed conditions set forth in the Hear Mount Pleasant Agreement (copy attached) shall be approved by the Board with three exceptions. 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 decided to maintain the thirty (30) minute last call provision in the MPNA Agreement and is adopting a last call requirement of thirty (30) minutes rather than twenty (20) minutes prior to closing language contained in the Hear Mount Pleasant Agreement.

ORDER

Therefore, it is hereby **ORDERED** on this 23rd day of April 2008 that the Application filed by NHV Corporation, Inc, t/a Haydee's Restaurant to terminate its Voluntary Agreement with MPNA in its entirety is **DENIED**;

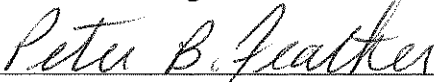
It is further **ORDERED** that the Applications for both an Entertainment Endorsement and the Renewal of its Class "CR" license filed by NHV Corporation, Inc., t/a Haydee's Restaurant at premises 3209 Mount Pleasant Street, N.W., Washington, D.C., be and the same is hereby **APPROVED**.

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 (1) deleting the last sentence in Paragraph A and (2) deleting Paragraph F in its entirety;
2. The Applicant shall be permitted to have live entertainment and dancing until 11:00 p.m. on Sunday through Wednesday; until midnight on Thursday; and until 1:00 a.m. on Friday and Saturday;
3. The Applicant shall be permitted to charge a cover;

4. The Applicant's Voluntary Agreement with Hear Mount Pleasant is approved and amended by (1) deleting paragraphs 6 and 23 in their entirety; and
5. The Applicant's last call for alcoholic beverages shall be thirty (30) minutes prior to closing time.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Judy A. Moy, Member


Mital 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).