

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

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In the Matter of: )	
)	
2461 Corporation )	
t/a Madam's Organ Restaurant )	
Application for a Class Change )	
at premises )	Case No. 35287-07/025P
2461 18th Street, N.W. )	License No. 25273
Washington, D.C. )	Order No. 2008-202
)	
_____ )	

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

Jennifer L. Johnson, Assistant Attorney General  
Alcoholic Beverage Regulation Administration

Richard Bianco, Esquire, on behalf of the Applicant

Denis James, on behalf of the Kalorama Citizens Association

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

The Application, filed by 2461 Corporation, t/a Madam's Organ (Applicant) for a Class Change from a Retailer's Class CR license to a Retailer's Class CT license at premises 2461 18<sup>th</sup> Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on February 28, 2007 and was continued until April 11, 2007. Protests against the Application were timely filed in the case by Advisory Neighborhood Commission (ANC) 1C by letter dated February 9, 2007 and the Kalorama Citizens Association (KCA) by letter dated January 24, 2007.

The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the issuance of the license would adversely impact: (1) the peace, order, and quiet of the neighborhood, and (2) residential parking and vehicular and pedestrian safety. Subsequent to the Roll Call hearing, the ANC and the Applicant signed a voluntary

agreement and the ANC agreed to support the CT class change application. The case came before the Board for a public protest hearing on February 27, 2008. At the conclusion of the protest hearing, the Board took the matter under advisement. 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 Adams Morgan at 2461 18th Street, N.W., where it has operated for approximately 11 years. (Tr. 2/27/08 at 10; ABRA License File No. 25273.) The Applicant is requesting a Class Change from a Retailer's Class CR license to a Retailer's Class CT license. (Tr. 2/27/08 at 10, 21.) The establishment is located in a C-2-B zone which is defined as a commercial area zoned within a residential living area. (ABRA Exhibit 1.) There are approximately 62 Alcoholic Beverage Control (ABC) establishments with liquor licenses operating within 1,200 feet of the establishment. (Tr. 2/27/08 at 24; ABRA Exhibit 1.) The establishment is bounded by Champlain Street, N.W. to the east, 18<sup>th</sup> Street, N.W. to the west, Columbia Road to the north and Belmont Road to the south. (Tr. 2/27/08 at 24; ABRA Exhibit 1.) The Applicant's location also falls within the boundaries of the Adams Morgan Moratorium Zone which prohibits, in part, holders of Retailer's Class CR or DR licenses from changing to a Class CN, CT, CX, DN, DT or DX license. (See 23 DCMR § 304.4 (2005)). The Board's regulations make an exception by allowing license holders whose Class Change applications were filed prior to August 2, 2006 to proceed. (See 23 DCMR § 304.4.) The Board held a fact finding hearing on April 11, 2007 to address issues related to the filing of the application and determined that the Applicant's Class Change application was timely filed. (Tr. 4/11/07 at 63-64.)
2. The Applicant currently holds a Retailer's Class CR license and has a Certificate of Occupancy dated April 14, 2006, for operations on the first, second, and third floors. (ABRA Exhibit 1.) The mezzanine level also has a summer garden area. (Tr. 1/16/08 at 36; ABRA Exhibit 1.) The Applicant's Hours of Operation are Sunday to Thursday from 5:00 p.m. to 2:00 a.m., and Friday and Saturday from 5:00 p.m. to 3:00 a.m. (Tr. 2/27/08 at 27; ABRA Exhibit 1.) The Applicant's hours of sale and service of alcohol are Sunday to Thursday from 5:00 p.m. to 1:30 a.m., and Friday and Saturday from 5:00 p.m. to 2:30 a.m. (ABRA Exhibit 1.) There are no schools, recreation centers, day care centers, or public libraries located within 400 feet of the establishment. (ABRA Exhibit 1.)
3. By letter dated February 9, 2007, the ANC protested the Applicant's license application for a Class Change. (ABRA Protest File No. 35287-07/025P.) The ANC letter indicates that they are concerned about the impact of the application on the peace, order, and quiet, of the neighborhood. (ABRA Protest File No. 35287-07/025P.) KCA filed a letter of protest dated January 24, 2007 indicating a concern for peace, order, and quiet as well as a negative impact on residential parking and vehicular and pedestrian safety. (ABRA Protest File No. 35287-07/025P.)

4. Susan Mitchell is an investigator with the Alcoholic Beverage Regulation Administration (ABRA). At the time of the protest hearing, she had been with ABRA for six months. (Tr. 2/27/08 at 19.) Investigator Mitchell and other ABRA investigators visited the establishment on approximately 33 different occasions between October 28, 2007 and January 17, 2008 during evening hours. (Tr. 2/27/08 at 23; ABRA Exhibit 1.) Investigator Mitchell described the establishment as a large restaurant occupying a three story building that includes four interior bar areas and a fifth bar in a summer garden that is built off the back of the third floor. (Tr. 2/27/08 at 25; ABRA Exhibit 1.) The first floor of the establishment includes a slightly raised stage area which is used mostly for live band performances. (Tr. 2/27/08 at 25; ABRA Exhibit 1.) The stage backs up directly to the establishment's first floor front windows. (Tr. 2/27/08 at 25; ABRA Exhibit 1.)

5. With regard to peace, order and quiet, on November 21, 2007, Investigator Mitchell conducted a regulatory inspection of the establishment and observed a number of patrons standing outside talking and smoking while a live band was performing inside. (Tr. 2/27/08 at 26.) The front portion of the main floor was densely crowded with patrons. (Tr. 2/27/08 at 47; ABRA Exhibit 1.) There is also a summer garden on a deck in the rear of the third floor. (Tr. 2/27/08 at 47; ABRA Exhibit 1.) During the inspection Investigator Mitchell noticed that the ABC license for the establishment did not include a summer garden endorsement. (Tr. 2/27/08 at 26; ABRA Exhibit 1.) ABRA records indicate that although the original 1997 application for an ABC license does include a summer garden request, ABRA never issued a summer garden endorsement. (Tr. 2/27/08 at 26, 34; ABRA Exhibit 1.) She did not observe anyone drinking alcohol near the entryway where a bench is located. (Tr. 2/27/08 at 47.) The bench is in front of the establishment and provides seating for some of the smokers. (Tr. 2/27/08 at 48; ABRA Exhibit 1.)

6. With regard to crowd noise, Investigator Mitchell noted that the establishment is located in the Adams Morgan entertainment district and that there are dozens of ABC establishments located on both sides of the street offering alcoholic beverages and various types of entertainment. (Tr. 2/27/08 at 27; ABRA Exhibit 1.) The sidewalks are narrow and often crowded with pedestrians who are intoxicated and rowdy on Thursday, Friday, and Saturday evenings. (Tr. 2/27/08 at 27; ABRA Exhibit 1.) ABRA investigators routinely observed groups of loud, boisterous pedestrians outside of the establishment as well as outside many of the other Adams Morgan establishments. (Tr. 2/27/08 at 28; ABRA Exhibit 1.) Patrons of the establishment were also observed smoking and talking outside which adds to the elevated crowd noise. (Tr. 2/27/08 at 28; ABRA Exhibit 1.) She found the talking and smoking by patrons in front of the establishment to be no different than what would be found at the other establishments on 18<sup>th</sup> Street. (Tr. 2/27/08 at 38.) There was no more noise coming from patrons outside the establishment than there were from other patrons. (Tr. 2/27/08 at 38.) Investigator Mitchell indicated that she did not use a noise meter to measure the noise as it is not required. (Tr. 2/27/08 at 45.)

7. With regard to music-related noise, Investigator Mitchell stated that when the window and doors are open and music is being played inside it can be heard outside of the establishment. (Tr. 2/27/08 at 28; ABRA Exhibit 1.) Music can also be heard when the windows and doors are closed. (Tr. 2/27/08 at 28; ABRA Exhibit 1.) The current voluntary agreement does not forbid music from being heard outside the establishment nor does it place any restriction on open doors and windows. (Tr. 2/27/08 at 28; ABRA Exhibit 1.) The music heard emanating from the establishment was consistent with the volume heard from nearby establishments. (Tr. 2/27/08 at 29; ABRA Exhibit 1.) As to a speaker mounted outside of the premises, the Board previously ruled that the speaker was not an ABC violation. (Tr. 2/27/08 at 29; ABRA Exhibit 1.)

8. Investigator Mitchell also observed that vehicular traffic noise becomes elevated during evening hours, especially Thursday nights and weekends with the frequent sounding of horns. (Tr. 2/27/08 at 29; ABRA Exhibit 1.) She indicated that the Protestant's concern is that the conversion of the establishment to a tavern will result in a nightclub atmosphere, disturbing the peace, order, and quiet. The Applicant told her that he has no intention of changing the quality or quantity of food that is currently being offered. (Tr. 2/27/08 at 30.)

9. As to parking, patrons of the establishment have very limited street parking, which does not turn over frequently, a garage with about 300 spaces and a valet service for \$15.00 an hour. (Tr. 2/27/08 at 31; ABRA Exhibit 1.) The garage usually fills up on Fridays and Saturdays between 11:00 p.m. and 1:00 a.m. (Tr. 2/27/08 at 31; ABRA Exhibit 1.) At around 11:00 p.m. one evening, she observed a sign indicating that the garage was full. (Tr. 2/27/08 at 38; ABRA Exhibit 1.) There are also multiple bus lines that run through Adams Morgan, several of which offer service after 3:00 a.m. daily. (Tr. 2/27/08 at 31; ABRA Exhibit 1.) Investigator Mitchell did not have any concerns regarding parking that were not related to an increase in occupancy. (Tr. 2/27/08 at 39.)

10. With regard to vehicular and pedestrian safety, during evening hours traffic on 18<sup>th</sup> Street, N.W., is slow moving with vehicles sometimes at a stop, creating a potential safety hazard. (Tr. 2/27/08 at 32; ABRA Exhibit 1.) Pedestrians frequently jaywalk across 18<sup>th</sup> Street which occurs throughout the entertainment district and not just in the vicinity of the establishment. (Tr. 2/27/08 at 32; ABRA Exhibit 1.) Increasing capacity at the establishment could increase the number of patrons jaywalking, but Investigator Mitchell was not able to find any evidence that this would actually happen. (Tr. 2/27/08 at 32-33.)

11. Investigator Mitchell does not think that converting from a Class CR to a CT retailer's license would impact the overall peace, order, and quiet. (Tr. 2/27/08 at 33.) She also testified that the traffic was terrible and did not see the license conversion as having a significant impact. (Tr. 2/27/08 at 33.) There are residences next door to the establishment, but she is not sure if they would be able to distinguish the noise as coming from the establishment, as opposed to other establishments in the area. (Tr. 2/27/08 at 35.) She does not feel that there is more noise at the establishment than there is at other establishments. (Tr. 2/27/08 at 36; ABRA Exhibit 1.) Even with the speaker outside, the

level of noise, the volume is not unusual. (Tr. 2/27/08 at 37.) She noted that the neighboring establishments offer live music as well. (Tr. 2/27/08 at 40.)

12. Investigator Mitchell believes that an April 23, 2005 noise violation listed in the Investigative history was actually an occupancy violation. (Tr. 2/27/08 at 41-43.) There have been other noise complaints investigated in the past. (Tr. 2/27/08 at 49-50.)

13. Amy Vestal is a general manager at the establishment. (Tr. 2/27/08 at 53.) She has worked there for thirteen years. (Tr. 2/27/08 at 53.) As general manager she handles employee issues, maintains inventory, and schedules entertainment. (Tr. 2/27/08 at 53.) She has a regular shift which is Monday, Tuesday, Thursday, and Friday from 10:00 a.m. to 6:00 p.m., occasionally on Wednesday and one to two nights a month, usually on Saturdays. (Tr. 2/27/08 at 54.) Ms. Vestal was present during three of the ABRA investigative visits. Two of those visits were during the day when the establishment was not open. (Tr. 2/27/08 at 54.) Noise was never raised as an issue during the inspections. (Tr. 2/27/08 at 54.) During her thirteen years at the establishment the ABC Board has never taken action related to noise. (Tr. 2/27/08 at 55.) In terms of controlling noise, with the exception of people coming in and out, the Applicant keeps the front door closed. (Tr. 2/27/08 at 65.) The windows are regular, not heavy duty. (Tr. 2/27/08 at 65.) The volume for the speaker outside is controlled and not very loud. (Tr. 2/27/08 at 66.)

14. With regard to the restaurant food requirement, Ms. Vestal is in charge of tallying gross receipts for each quarter and testified that the establishment always falls short of the 45 percent, \$2,000.00 requirement. (Tr. 2/27/08 at 55.) If a conversion to a retailer's class CT license is granted, there are no plans to terminate wait staff or kitchen staff. They plan to open for brunch on Saturdays and Sundays if this is permitted. (Tr. 2/27/08 at 56.) Ms. Vestal handles advertising, and makes a point to advertise the food. (Tr. 2/27/08 at 56.) In an advertisement for the City Paper's food guide, the establishment ran an advertisement promoting the establishment's soul food. (Tr. 2/27/08 at 58; Applicant Exhibit 1.) Another advertisement, in Eats magazine promotes the establishment's food and includes quotes from reviews of the establishment which included favorable comments about the food. (Tr. 2/27/08 at 59-60; Applicant Exhibit 2.) The kitchen closes at midnight during the week and at 1:00 a.m. on weekends. (Tr. 2/27/08 at 63.)

15. Bill Duggan is the President of 2461 Corporation which has operated the establishment under a Class CR retailer's license for about 16 or 17 years. (Tr. 2/27/08 at 68.) It has been at its current location for 11 years. (Tr. 2/27/08 at 68.) Mr. Duggan testified that a Class CT license is being sought because the establishment does not make the minimum food sales requirement of 45 percent or \$2,000.00 per seat because they sell a higher percentage of alcohol even though they do serve a substantial amount of food. (Tr. 2/27/08 at 68, 70.)

16. The establishment entered into a voluntary agreement with the ANC. (Tr. 2/27/08 at 70, Applicant's Exhibit 3.) Mr. Duggan noted the differences between a CR and CT license: a 45 percent or \$2,000.00 per seat food sales requirement, there is no requirement for a kitchen for a CT license, and no food sales requirement. (Tr. 2/27/08 at 69-70.) In

addressing these issues, the voluntary agreement requires maintenance of a kitchen and wait staff, which may include bartenders who serve food, and the supplies and equipment necessary for the daily preparation and service of prepared food items. The food items do not include snack foods such as peanuts, popcorn, potato chips, and pretzels. (Tr. 2/27/08 at 74.) This is the same requirement which exists for a Class CR license, and the same one the establishment has been following, according to Ms. Vestal. (Tr. 2/27/08 at 74.)

17. The voluntary agreement with the ANC also requires that food service continue until two hours prior to closing. (Tr. 2/27/08 at 74.) This is also a requirement for a Class CR license which they have been following. (Tr. 2/27/08 at 75.) The agreement also dictates that there be food sales of at least \$1300.00 per occupant, based on 99 seats for dining, including the bar. (Tr. 2/27/08 at 75.) Mr. Duggan testified that the operational standards will not change and that there are no plans to downsize the wait or kitchen staff. (Tr. 2/27/08 at 75-76.) The menu selection will not be reduced but will instead be expanded for brunch and lunch. (Tr. 2/27/08 at 76.) As to noise, the voluntary agreement provides that windows are required to be closed at 12:30 a.m. (Tr. 2/27/08 at 79.) There is also recognition in the agreement that the speaker which is outside, but within the building line is in compliance. (Tr. 2/27/08 at 80.) Mr. Duggan stated that changing the food percentage requirement would not affect the noise emanating from the establishment. (Tr. 2/27/08 at 80.) He also noted that the closest residential unit is three doors away. (Tr. 2/27/08 at 80-81.) Several of the establishments adjacent to the Applicant offer live music. (Tr. 2/27/08 at 82.) There speaker outside is in the upper corner of the enclosed area of the front porch, which is open. (Tr. 2/27/08 at 83.) The speaker is 6 inches by 9 inches and the voluntary agreement requires that it not be increased in size. (Tr. 2/27/08 at 84.)

18. As for the summer garden, Mr. Duggan recounted requesting a summer garden when he filed his 1997 application. It was brought to his attention during the past year, however, by the former ABC Board chairman, that the summer garden endorsement still needed to be rectified. (Tr. 2/27/08 at 85-86.)

19. Mr. Duggan is unaware as to whether any of the adjacent establishments have voluntary agreements allowing them to keep their windows open while live music is playing. (Tr. 2/27/08 at 89-90.) In terms of operations Mr. Duggan has indicated that he does not wish to change the operation of the establishment. (Tr. 2/27/08 at 90.)

20. Mr. Duggan testified that noise emanating from the establishment has not been a problem over the years. (Tr. 2/27/08 at 95.) In the voluntary agreement it says that music is not to be heard in the closest residence. On occasion there will be someone outside talking loudly and the only thing that can be done is to ask them to stop talking loudly. (Tr. 2/27/08 at 95.) The later in the evening, the louder the sound of people talking carries. (Tr. 2/27/08 at 96.) There are no residences that are affected by the establishment, other than in the back of the establishment and they have never had any complaints. (Tr. 2/27/08 at 97.) He has never had a complaint from a Ms. Morgan at Idle Time Books, and he has known her for 25 years. (Tr. 2/27/08 at 98.) Her deck is on the

rear of the building and the summer garden is in the rear of the establishment. They are three doors down from one another. (Tr. 2/27/08 at 98-99.) Mr. Duggan attends ANC meetings regularly. (Tr. 2/27/08 at 98.)

21. Denis James is the President of the KCA. (Tr. 2/27/08 at 108.) KCA protested the license request on the grounds that granting the license would lead to a disturbance of the peace, order and quiet of the surrounding neighborhood and have a negative impact on residential parking needs and vehicular and pedestrian safety. (Tr. 2/27/08 at 110.) KCA would like to craft provisions in a voluntary agreement that would temper the effects of the change from a Class CR to CT retailer's license, focusing specifically on food service and noise issues. (Tr. 2/27/08 at 110.) The KCA is not opposed to a change in license class with a food receipt requirement of \$1300.00 along with the food service provisions in the proposed voluntary agreement with the ANC. The KCA does not agree that exceptions should be created for this establishment. The window, which is directly behind the bandstand, should not be allowed to remain open after 12:30 a.m., nor should the loudspeaker be allowed to broadcast into the public space what is going on inside of the establishment. (Tr. 2/27/08 at 111.)

22. Mr. James requested that the Board take judicial notice of reports prepared in 2000 and 2004 by acoustic engineering firm, Miller, Beam and Paganelli. (Tr. 2/27/08 at 112-118.) They were provided to the ABC Board as part of the moratorium hearings. (Tr. 2/27/08 at 112-118.) These reports were designated as Protestant's Exhibits 1 and 2. (Tr. 2/27/08 at 118.) Both reports show that the noise in the area of the establishment, when measured according to the D.C. Noise Control Act significantly exceeded the maximum permissible noise levels. Both of the readings show that the noise level on 18<sup>th</sup> Street, N.W., was twice as loud as what is allowed under the D.C. Noise Control Act. (Tr. 2/27/08 at 123.) The KCA is opposed to an agreement that would allow the window to remain open with live bands playing directly behind it and an exterior loudspeaker. (Tr. 2/27/08 at 123.) Mr. James testified that given Mr. Duggan's testimony that nothing has changed at the establishment, that the sound levels will be the same as they were in the past. (Tr. 2/27/08 at 124.)

23. The KCA will also not sign an agreement that contains a provision where KCA would agree in advance not to protest a license request to increase the occupancy. (Tr. 2/27/08 at 125.) The total number of patrons allowed in the establishment has a direct bearing on the effect on the surrounding community. (Tr. 2/27/08 at 125.) KCA believes that such an issue should be dealt with as a separate issue when the request is made. (Tr. 2/27/08 at 125.)

24. In the transcript from the January 23, 2008 status hearing, there is testimony that the KCA did not have a seat at the table when the agreement was constructed. (Protestant's Exhibit 3.) Mr. James testified that the KCA and ANC currently have a joint agreement with Madam's Organ. The ANC has voted to approve the new voluntary agreement. The KCA argued that the allowance for an open window and outdoor speaker be deleted from the proposed agreement as they would violate D.C. law. (Tr. 2/27/08 at 136.) KCA would also like to have the forfeiture of the right to protest a request for an increase in

occupancy eliminated. (Tr. 2/27/08 at 136.) Counsel for the Applicant objected to Mr. James' testimony regarding occupancy, as the right to protect such a request for increased occupancy remains in tact. (Tr. 2/27/08 at 138.)

25. Mr. James supports the last call provision of the voluntary agreement. (Tr. 2/27/08 at 139.) KCA would like assurance that the establishment will not become a nightclub. (Tr. 2/27/08 at 140.) KCA would also like to have the Applicant file a request for a summer garden to clarify what areas of the establishment compose the summer garden. (Tr. 2/27/08 at 140.) Mr. James would also like clarification as to the Entertainment Endorsement to find out whether it covers all of the types of entertainment offered at the establishment. (Tr. 2/27/08 at 141.) If there is noise that can be reduced in a reasonable fashion by a reasonable measure such as keeping a window closed or not having an outside speaker, Mr. James believes this would be a reasonable solution. (Tr. 2/27/08 at 142-143.)

26. Mr. James does not want the establishment to be permitted to have its windows open until 12:30 a.m. (Tr. 2/27/08 at 147.) He is concerned that it would undo reasonable measures that have come into being with the combined work of the ANC and KCA by allowing a voluntary agreement that would have an exception to keeping doors and windows closed. (Tr. 2/27/08 at 147.) Mr. James believes that the voluntary agreement is at odds with itself, when it says in one paragraph that it is going to be in compliance with the D.C. Noise Control Act, but gives an exclusion for an open window and speaker. (Tr. 2/27/08 at 149.) Mr. James is concerned primarily about the window directly behind the bandstand and the speaker. (Tr. 2/27/08 at 150.) The window at issue is a French window that swings open. (Tr. 2/27/08 at 151.)

## CONCLUSIONS OF LAW

27. 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 the Applicant has demonstrated that changing its license class from a restaurant to tavern is appropriate for the area in which the establishment is located. The Board will consider a request for a summer garden after receiving an Application from the licensee. The Board also approves the Applicant's Voluntary Agreement with the ANC.

28. 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 1C reached a voluntary agreement with the Applicant. The Board found the terms of the voluntary agreement to be appropriate and entitled to great weight in this case.

29. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and 23 DCMR § 400.1(a) (2004), the Board must determine under the appropriateness standards whether permitting the Applicant to change its license class from a restaurant to a tavern will have an adverse effect on the peace, order, and quiet of the neighborhood. Notwithstanding the prohibition on the conversion of license classes in the Adams Morgan Moratorium Zone contained in 23 DCMR § 304.4, the Board may approve a change of license class application filed prior to August 2, 2006 by the holder of a Retailer's Class CR license. In this case, the issue was addressed at a fact finding held on April 11, 2007 and the Board determined that the application was timely filed with the Board prior to August 2, 2006.

30. KCA also sent a protest letter to the Board, dated January 24, 2007, stating its concerns regarding the impact of the tavern conversion on the peace, order, and quiet of the neighborhood, and residential parking and vehicular and pedestrian safety. This is the second contested protest hearing that the Board has held to consider an application for a change of license class. In considering this application, the Board is required to determine the impact of the class change under the appropriateness standards, including the effect on peace, order, and quiet. Given the history of the Adams Morgan neighborhood and the adverse impact of the many ABC establishments already noted by the Board in prior decisions, any application for a class change in the Adams Morgan neighborhood must be given careful scrutiny. In this particular matter, the Board took into account the fact that the ANC had entered into a voluntary agreement with the establishment, resolving the protest issues raised in its protest letter as to a license class change and its affect on the peace, order, and quiet of the neighborhood.

31. The protest issues raised by the KCA, including peace, order, and quiet, relate to the window, outdoor speaker, and a concern that the noise level will be in violation of the D.C. Noise Act if the establishment's license is converted from a Class CR to a Class CT license. In addressing these issues, the Board heard testimony from Investigator Mitchell that the license conversion would have no impact on the peace, order, and quiet of the neighborhood. Her testimony did not reveal any significant problems with peace, order, and quiet during visits that were attributable solely to the establishment. Investigator Mitchell did note a bar in a summer garden that is built off the back of the third floor. However, the ABC license for the establishment does not include a summer garden endorsement. She and Mr. Duggan testified that although a summer garden was requested in the original 1997 application, a summer garden endorsement was not issued. Upon filing a summer garden endorsement Application with all of the required information, the Board will make a decision at that time.

32. The Board also took into consideration Investigator Mitchell's testimony regarding crowd noise and the sidewalks being crowded with pedestrians who are intoxicated and rowdy, but noted that her observations included groups outside of other Adams Morgan establishments. Her testimony that patrons smoking and talking outside of the establishment contributed to the noise level in the area was also considered by the Board. However, one of the primary concerns expressed by Mr. James relates to music that is heard outside when the front window and door are open. Investigator Mitchell testified

that when the windows and doors are both open and closed, music can be heard outside. However, the Board found Investigator Mitchell's testimony that the volume of music heard was consistent with the volume heard from nearby establishments to be significant. She also testified that the speaker had not been ruled in the past to constitute an ABRA violation. Her observations of traffic noise were also taken into account.

33. Ms. Vestal's testimony that the ABC Board has never taken action related to the noise and that the volume is controlled were also important factors. The Board was especially concerned about noise as it impacts surrounding residents, but found that the testimony that surrounding residences are not impacted by the noise and that they have never received any complaints which have resulted in Board action to be significant. Although the Board took judicial notice of reports prepared by acoustic engineering firm, Miller, Beam and Paganelli which were presented by Mr. James, and showed that the noise exceeded the maximum permissible noise levels under the D.C. Noise Control Act, the Board is not giving the findings of these reports much weight as they are from 2000 and 2004 and not directly related to the establishment. Although Mr. James makes a strong argument that individual establishments contribute to the noise levels in the area, his concern about windows and doors not being closed until 12:30 is not problematic given that there appears to be little connection to the Applicant converting from a Class CR to a CT license. Mr. James has raised concerns that the establishment may morph into a nightclub if a license conversion occurs. However, there does not appear to be sound justification for this concern. Mr. Duggan and Ms. Vestal have testified that there are no plans to change the establishment. Other than reducing the food sales requirement to \$1300.00, the operational standards will not change and there are no plans to downsize the wait or kitchen staff. The advertisements which were shown that highlight food at the establishment, also provide assurance that there will continue to be a focus on food sales, as there has been in the past. Instead of being reduced, the menu selection will be expanded for brunch and lunch.

34. There is no reason to believe that converting to a Class CT license would result in changes to the establishment so significant that there would be an increase in the noise levels heard outside of the establishment. The Board does not see that there is a sufficient reason to delete the portion of the voluntary agreement referencing the time of closure for doors and windows. As a Board member stated during the hearing, should there be a noise violation, the Department of Consumer and Regulatory Affairs should be contacted. There is no conflict, as Mr. James suggests between allowing windows and doors to remain open and compliance with the D.C. Noise Control Act. As to the speaker, the Board has previously found that the speaker lies within the building lines and that it is in compliance with the voluntary agreement and the applicable ABC provisions.

35. Mr. James also objects to the part of the voluntary agreement which state that the ANC will not protest or object to an increase in occupancy, as he finds that there is a connection between the total number of patrons in the establishment and the effect on the surrounding community. This provision of the voluntary agreement will not prohibit the KCA from protesting a request for an increase in occupancy, such rights under D.C. law cannot be forfeited.

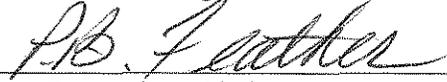
36. Pursuant to D.C. Official Code § 25-313(b)(3) (2001) and 23 DCMR § 400.1(b) (2004), the Board must determine whether converting the license class will have an adverse effect on residential parking needs and vehicular and pedestrian safety. The testimony of Investigator Mitchell and Mr. James revealed that street parking is challenging in the area of the establishment. Specifically, Investigator Mitchell testified that there is limited street parking, and a garage that is usually full by 11:00 p.m. on Fridays and Saturdays. She did not however have any concerns regarding parking that were not related to an increase in occupancy. While parking exists, street parking in the vicinity of the establishment is very limited, patrons can use public transportation. While the testimony revealed that parking on the street is significantly limited, the parking problem cannot be solely attributable to the establishment. There is also no correlation between conversion to a Class CT license and an increase in parking problems. Increased occupancy is not at issue here, and as previously stated, there is no reason to believe that converting to a CT license will result in increased occupancy. Thus, the Board does not find that the license conversion application will further impact the residential parking limitations that currently exist.

37. The Board finds no evidence based upon the record as a whole, that the Applicant's establishment would have an adverse impact on real property values.

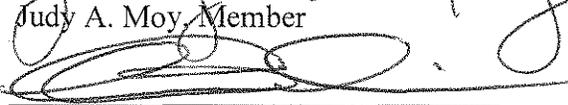
## ORDER

Therefore, it is hereby **ORDERED** on this 21st day of May 2008 that the Application for a Class Change filed by 2461 Corporation, t/a Madam's Organ at premises 2461 18<sup>th</sup> Street, N.W., Washington, D.C., for a Retailer's Class CT license be and the same is hereby **APPROVED**. The Applicant's Voluntary Agreement with ANC 1C is also **APPROVED** and **INCORPORATED** as part of this Order.

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).

**Cooperative Agreement Concerning  
Substantial Change of License for Sale of Alcoholic Beverages**

**THIS AGREEMENT**, made and entered into this 10 day of ~~February~~ 2008, by and between 2461 Corporation, trading as Madam's Organ ("Applicant"), and Advisory Neighborhood Commission 1C ("ANC 1C") "Protestant", witnesseth:

**Whereas**, Applicant has sought from the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") a substantial change of Class CR-01 License (No.25273) to a CT-01 License located at 2461 18th Street, NW, Washington, DC; and

**Whereas**, the establishment falls within the boundaries of Advisory Neighborhood Commission 1C (ANC 1C), and

**Whereas**, this is a matter of concern for ANC 1C due to the absence of a clear or statutory requirement for a "Tavern" to serve any measurable amount of food; and

**Whereas**, in recognition of the Board's policy of encouraging parties to settle their differences by reaching Cooperative Agreements, the Parties hereto desire to enter into a Cooperative Agreement whereby (1) Applicant will agree to adopt certain measures to address ANC 1C's concerns and to include this Agreement as a formal condition of its Application, and (2) ANC 1C will agree to the approval of the application provided that such Agreement is incorporated into the Board's order approving such application, which order is thereby conditioned upon compliance with such Agreement; and

**Whereas**, Applicant has recently taken or intends to take certain measures designed to ameliorate Protestants' concerns,

**Now Therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties hereby agree as follows:**

**1. Operation.**

The Applicant shall make a good faith effort to sell and serve food. For purposes of this agreement, a "good faith effort" to sell or serve food shall be met if the Applicant:

- (1) Maintains a kitchen, kitchen staff and waitstaff (which may include bartenders who serve food to patrons), and the supplies and equipment necessary for the daily preparation and service of prepared food menu items other than snack food, (for example, appetizers, soups, salads, sandwiches, entrees, desserts, etc.). For purposes of this section, "snack food" is defined as items such as: peanuts, popcorn, potato chips, pretzels, etc.; and
- (2) Be open from at least 6 p.m. to 11:30 p.m. daily for the service of prepared food menu items; Serve brunch or lunch for a minimum of four (4) hours on Saturdays and Sundays when open prior to 6 p.m. on those days; and on other days when the

establishment is open prior to 6 p.m. service of prepared food menu items shall be available to patrons; and

- (3) The Applicant has gross annual food sales of at least \$1300 per occupant based on 99 seats for dining (including the bar); and
- (4) Continues to keep and maintain, while licensed as a tavern, the same books and records required to be kept by restaurants and hotels pursuant to D.C. Official Code §25-113(J)(3)(A) (2004); and
- (5) The Applicant offers food service until at least two (2) hours prior to closing;
- (6) The Applicant promotes food sales inside of the establishment by offering menus to seated patrons, and through the use of a sandwich board or menu displays at tables featuring food items; and
- (7) The Applicant's exterior advertising to the public emphasizes food and does not primarily advertise drink specials.

## 2. Hours

The approved hours of operation are:

Sunday:	9:00 a.m. - 2:00 a.m.
Monday through Thursday:	9:00 a.m. - 2:00 a.m.
Friday & Saturday:	9:00 a.m. - 3:00 a.m.

The parties agree that the Applicant may open, at the Applicant's discretion, at any time between 9:00 a.m. and 6:00 p.m. but under no circumstances will open to the public later than 6:00 p.m. each day of operation with the exception of all federal holidays, the day after and Christmas Eve, New Year's Eve and Easter when the establishment may open at 7 p.m.

Last call will be announced ½ hour prior to closing, each night of operation.

## 3. Seating and Capacity

Seating capacity will not exceed:

Interior tables and bar: 99

Occupancy limits under the Applicant's license will remain unchanged and subject to applicable law that may apply; however ANC-1C agrees not to protest or otherwise object to a lawfully permitted increase in the occupancy limits for Applicant's existing space and layout to an amount that has been approved as safe and in compliance with applicable law by the governmental agency or agencies which may have jurisdiction, including the Department of Consumer and Regulatory Affairs and the Office of the Fire Marshall.

#### **4. Noise/Music/Dancing**

Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations including, but not limited to:

- a) Preventing emissions of sound, capable of being heard in any premises other than the licensed establishment, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with D.C. Official Code §25-725 (2001). Further, the Applicant agrees to abide by all relevant provisions of the D.C. Noise Control Act of 1977 (D.C. Law 2-53), including 20 DCMR, Chapters 27 and 28, as amended.
- b) Except when persons are in the act of using the door for ingress to or egress from the premises, the doors and windows of the establishment will remain closed from 12:30 a.m. until closing when live music is being played or a sound amplification device other than the loud speaker referenced in paragraph (d), below is being employed in the premises.
- c) Music from inside will not be audible in surrounding residential premises other than the licensed establishment in accordance with §25-725.
- d) The parties recognize and agree that there is currently a loudspeaker on the exterior of the premises located within the building line. Applicant shall be allowed to maintain or repair such loudspeaker or to replace it with a loudspeaker of equivalent amplification as may be necessary. Provided however Applicant agrees not to place outside in the public space any additional loudspeaker, tape player, CD player or other similar device, or to place any inside speaker in such a way that it projects loud sound into the public space.

#### **5. Trash/Garbage/Rodents**

Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population. Applicant will recycle the following items as per DC Law 7-226: cardboard, glass, and cans.

Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster.

## **6. Exterior including public space**

Applicant shall assist in the maintenance of the alleyway behind and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to encourage patrons to leave those areas at closing.

## **7. Bar/Pub Crawls**

Protestant acknowledges that Applicant has not previously participated in bar or pub “crawls”, “tours”, or any other similar event. In cooperation with Protestant’s efforts to discourage such events in the future, Applicant agrees to continue its policy of non-participation in such events. As used in this paragraph, the concept of bar or pub “crawls” or “tours” does not include situations in which a third party arranges for a pre-formed group of patrons to be served at the Applicant’s establishment, or in which a pre-formed group of patrons is transported as a group by a third party to and from multiple establishments including the Applicant’s.

## **8. Consideration**

Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage employees and patrons leaving the establishment to keep conversations and noise down from 11:00 PM to 7:00 AM.

## **9. Modification**

This Agreement can be modified only by the ABC Board, or by mutual agreement of the parties with the approval of the ABC Board. In the case of ANC 1C, any modification must be approved, in writing, at a regularly scheduled public meeting by a majority of Commissioners present and constituting a quorum.

## **10. Regulations**

In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.

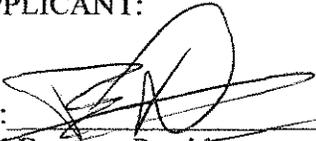
## **11. Withdrawal of Protest**

Protestant agrees to the issuance of the renewal of the license and withdrawal of their respective protests, *provided* that this Cooperative Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Cooperative Agreement.

**12. Availability of Cooperative Agreement**

Applicant agrees to keep available at all times a copy of this agreement at his establishment and to familiarize all his employees with its conditions.

APPLICANT:

By:   
Bill Duggan, President  
2461 Corporation t/a Madam's Organ

PROTESTANT:

By:   
M. Mindy Moretti  
ANCIC ABC & Public Safety Comm. Chair