

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

_____)	
In the Matter of:)	
)	
Tonic at Quigley's, LLC)	
t/a Tonic)	
Application for a New Retailer's)	Case No. 61119-07/107P
License Class CR at premises)	License No. 75297
2036 G Street, N.W.)	Order No. 2008-052
Washington, D.C. 20036)	
)	
Applicant)	
_____)	

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

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

Andrew J. Kline, Esquire, on behalf of the Applicant

Michael Kimmel, Esquire, on behalf of a group of five or more individuals

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

The Application, filed by Tonic at Quigleys, LLC (Applicant), t/a Tonic, for a new Retailer's Class "CR" License at premises 2036 G Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on September 19, 2007. It was determined that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2006 Supp.) by a group of five (5) or more residents represented by Michael Kimmel, Esquire (collectively, the Protestants). The filed protest issue, pursuant to D.C. Official Code § 25-602(a) (2001), is whether the issuance of the license would adversely affect the peace, order, and quiet of the neighborhood. Specifically, the Protestants are concerned about the Applicant's proposed hours of operation and are asking that the Applicant's establishment close at 11:00 p.m. on weekdays and at midnight on weekends.

The case came before the Board for a public protest hearing on December 5, 2007. At the conclusion of the protest hearing, the Board took the matter under advisement. The Board did receive proposed findings of fact and conclusions of law from the Protestants on January 4, 2008. 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 has three floors and will be located in an R-5-D residential zone at 2036 G Street, N.W., on the campus of George Washington University. (License File No. 75297; Tr. 12/5/07 at 72, 245.) The Applicant's establishment will have 199 seats inside and a sidewalk café with 32 seats outside. (License File No. 75297; Tr. 12/5/07 at 246.) The Applicant has applied for a new Class "CR" license as well as an entertainment endorsement to have entertainment, such as an occasional live band or disc jockey and poetry readings, open microphone night, and comedians. (License File No. 75297.)

2. The Applicant initially requested that its hours of operation be Sunday, 10:00 a.m. to 2:00 a.m.; Monday through Thursday, 7:00 a.m. to 2:00 a.m.; Friday, 7:00 a.m. to 3:00 a.m.; and Saturday 10:00 a.m. to 3:00 a.m. (License File No. 75297.) The Applicant's signed voluntary agreement with ANC 2A Chairperson Asher Corson, dated October 2, 2007, requires the establishment to close at 1 a.m. on weekdays and 2 a.m. on weekends. (Applicant's Exhibit No. 4.) The Applicant indicated that it was willing to have the Board adopt the conditions of this agreement as part of the issuance of its license. (Tr. 12/5/07 at 112.) The Protestants main objection with the license application is the Applicant's proposed hours of operation. (Tr. 12/5/07 at 14, 36-37.) The Protestants are asking that the establishment's hours of operation cease at 11:00 p.m. during the week and at midnight on weekends. (Tr. 12/5/07 at 17, 36-37.)

3. ABRA Investigator Jeff Jackson has been an ABRA investigator for approximately nine (9) years. (Tr. 12/5/07 at 21.) Investigator Jackson indicated that the Letterman House, where many of the Protestants reside, is located approximately a block from the Applicant's establishment at 2030 F Street, N.W. (Tr. 12/5/07 at 23, 30, 32.) Investigator Jackson stated that it was the Protestants' belief that if the establishment was granted a liquor license and an entertainment endorsement that it would have an adverse impact on peace, order, and quiet. (Tr. 12/5/07 at 23.) Specifically, that when patrons exit the establishment they would do so in a boisterous manner and the establishment would morph into a nightclub if allowed to have entertainment. (Tr. 12/5/07 at 23; ABRA Exhibit No. 1. at 1.)

4. Investigator Jackson noted that the establishment was visited by ABRA Investigators on 21 separate occasions between October 17, 2007 and November 24, 2007 and during all of these visits no problems with noise, loitering, trash, criminal activity or boisterous behavior were observed. (Tr. 12/5/07 at 25; ABRA Exhibit No. 1 at 4.) This included Investigator Jackson visiting the establishment three times after midnight. (Tr. 12/5/07 at

35.) Investigator Jackson indicated that the establishment had multiple televisions that were on but the volume was kept low by the Applicant and it was not loud inside. (Tr. 12/5/07 at 30, 34-35.) Investigator Jackson observed that the establishment had a professional clientele as well as some students. (Tr. 12/5/07 at 29.)

5. With regard to parking, Investigator Jackson stated that there was two-hour metered parking available for residents and patrons between the hours of 7:00 a.m. and 6:30 p.m. (Tr. 12/5/07 at 25; ABRA Exhibit No. 1.) Investigator Jackson noted that there are several parking garages available and that he observed that the majority of the patrons entering the establishment were individuals that walked to the establishment from the surrounding area. (ABRA Exhibit No. 1 at 4-5.)

6. Investigator Jeff Jackson spoke with Kenneth Bush, a Tonic manager, who indicated that the establishment would not have a cover charge and would have live entertainment only for private parties and that any live bands would cease playing by 11:00 p.m. (Tr. 12/5/07 at 24, 26; ABRA Exhibit No. 1.) Investigator Jackson also spoke with James Isom, Assistant Police Chief, George Washington University Campus Police (Campus Police), who has a clear view of the establishment as the Campus Police office is located directly across the street from the establishment. (Tr. 12/5/07 at 24-25, 76, 130.) Assistant Police Chief Isom indicated to Investigator Jackson that he had not received any complaints regarding the operations of Tonic and that the establishment was well received by the community. (Tr. 12/5/07 at 24.) Investigator Jackson also had the Metropolitan Police Department (MPD) Crime Analysis Division pull all requested police runs for Tonic for the last year and only two police runs showed up. (Tr. 12/5/07 at 25-26.) One was for a disorderly on April 5, 2007 and the other was for a reported theft on September 11, 2007. (Tr. 12/5/07 at 26.)

7. There are no other Class "CR" licensed restaurants located within 400 feet of the establishment. (Tr. 12/5/07 at 28, 38.) The Lisner Auditorium, which holds a Class CX license held by JJB & DHW, Inc., t/a Best Vending II, at 730 21st Street, N.W., is located within 400 feet of the Applicant's establishment as a portion of its building is within 400 feet of Tonic. (Tr. 12/5/07 at 43-44.) There are also classroom buildings and administration buildings located directly across the street from the establishment. (Tr. 12/5/07 at 76-77.) The Letterman House and the Statesman are two residential buildings located on the south side of F Street, N.W. (Tr. 12/5/07 at 79.)

8. Laurie Collins currently resides on Connecticut Avenue, N.W., but has resided in the Mount Pleasant neighborhood until recently for a period of almost twenty years. (Tr. 12/5/07 at 48.) She is currently the President of the Mount Pleasant Neighborhood Alliance (MPNA) and has also served as an ANC Commissioner for two terms. (Tr. 12/5/07 at 49.) Ms. Collins is familiar with Jeremy Pollok and Gregory Nicklas, who also operate and own a Tonic in Mount Pleasant, and thought highly of them. (Tr. 12/5/07 at 48, 62.) She indicated that they are responsive and do a good job of delivering on what they promise the community and have followed their business plan. (Tr. 12/5/07 at 62-63.) Initially, she got to know Mr. Nicklas as a neighbor in Mount Pleasant as well

as through his involvement in the MPNA and as a former ANC Commissioner. (Tr. 12/5/07 at 49.)

9. Ms. Collins indicated that there is a mutual respect between the community and the Tonic that is currently operating in Mount Pleasant. (Tr. 12/5/07 at 50.) She stated that the establishment in Mount Pleasant is an open place similar to a neighbor's living room where people dine and relax. (Tr. 12/5/07 at 50.) Ms. Collins noted that while the establishment does sell alcohol it is not a partying atmosphere and the establishment is not loud. (Tr. 12/5/07 at 50.) She stated that while noise is a concern in Mount Pleasant, there have not been problems or complaints related to noise on the street from patrons leaving Tonic, and that both herself and MPNA have not received any late-night noise complaints regarding either Tonic or Radius, which is also owned by Mr. Pollok and Mr. Nicklas. (Tr. 12/5/07 at 51, 54-56.) She indicated that both of these establishments have the full hours allowed by D.C. law. (Tr. 12/5/07 at 50.) Ms. Collins pointed out that the establishment's kitchen is always open and that they serve great food and that the establishment possibly morphing into a nightclub was not a concern. (Tr. 12/5/07 at 61-62.) She stated that the establishment has a voluntary agreement that allows for live entertainment but that the establishment has chosen not to use it. (Tr. 12/5/07 at 60.) Ms. Collins indicated that the Mount Pleasant neighborhood was proud to see Tonic be successful enough to open a second restaurant and that she was in full support of Tonic at Quigley's application. (Tr. 12/5/07 at 59, 63.)

10. With regard to Tonic at Quigley's being located in a residentially zoned area, Ms. Collins pointed out that while Tonic and Radius in Mount Pleasant are zoned commercial they are both located inside of a residential condominium building that is approximately 90 percent residential. (Tr. 12/5/07 at 52-55.) She has been to the Tonic at Quigley's location and believes that the Mount Pleasant location is more densely populated with residents as there are also other apartment buildings and other residences in close proximity to the Mount Pleasant Tonic. (Tr. 12/5/07 at 52-53.)

11. Jeremy Pollok is currently employed at both Tonic restaurants as well as the Radius restaurant in Mount Pleasant. (Tr. 12/5/07 at 65.) He is also a managing owner of these three establishments. (Tr. 12/5/07 at 66.) Mr. Pollok indicated that the Tonic in Mount Pleasant was his first venture and opened as a neighborhood restaurant approximately four (4) years ago. (Tr. 12/5/07 at 67.) He noted that the establishment is more of a neighborhood restaurant than a neighborhood bar and is a great place to get out and have something to eat. (Tr. 12/5/07 at 68.) The Tonic in Mount Pleasant serves food all of the time that it is open and does not sell pitchers of beer. (Tr. 12/5/07 at 68-69.) The Mount Pleasant Tonic has a juke box, I-pods, satellite radio, and several television sets. (Tr. 12/5/07 at 69.)

12. Mr. Pollok pointed out that there are approximately 12 to 14 condominium units located in the same building as the Tonic in Mount Pleasant. (Tr. 12/5/07 at 70.) He indicated that the establishment in Mount Pleasant is open until 1:30 a.m. or 2:00 a.m. during the week and until 2:30 a.m. or 3:00 a.m. on weekends. (Tr. 12/5/07 at 70.) Mr. Pollok makes himself accessible to community members, has worked at the Mount

Pleasant location during later hours, and has not had any complaints regarding noise during hours after 11:00 p.m. (Tr. 12/5/07 at 71, 103.) The Tonic at Quigleys location will operate with a similar business plan to the Mount Pleasant location. (Tr. 12/5/07 at 72.) Mr. Pollok indicated that the establishment will be a neighborhood restaurant and offer food during all of the hours that it is open and that a very low percentage of its patrons will not order any food. (Tr. 12/5/07 at 72.) He indicated that the establishment will not be marketed as a student hangout and that a majority of the establishment's lunch and dinner business is not students. (Tr. 12/5/07 at 73.)

13. The establishment's main entrance is on the corner of 21st and G Street, N.W., facing G Street. (Tr. 12/5/07 at 79, 114.) The establishment also has a to-go entrance in the back of the establishment but after 11:00 p.m., patrons will only be exiting the rear of the building during an emergency. (Tr. 12/5/07 at 80.) The establishment has two bars with one on the first floor and one on the third floor and also has a server station on the second floor. (Tr. 12/5/07 at 85.) The third floor will be primarily used for private events and overflow. (Tr. 12/5/07 at 88-89.) The third floor has a raised platform area that could be used as a stage for entertainment. (Tr. 12/5/07 at 89.) The establishment will not have regularly scheduled entertainment and only intends to have live entertainment on the third floor. (Tr. 12/5/07 at 108-109, 140.) Under the Applicant's voluntary agreement with ANC 2A, live entertainment is required to end by midnight, excluding six special events a year. (Tr. 12/5/07 at 109, 121, 135.) The Applicant's voluntary agreement with ANC 2A does not allow for a permanent dance floor, only a temporary one for private events. (Tr. 12/5/07 at 109.)

14. The establishment will have an outdoor seating area for dining. (Tr. 12/5/07 at 83.) Mr. Pollok indicated that the Applicant agreed to reduce the indoor operating hours originally applied for as the result of an agreement reached with ANC 2A. (Tr. 12/5/07 at 84, 123.) The hours in the voluntary agreement are until 2:00 a.m. on weekends and until 1:00 a.m. during the week. (Tr. 12/5/07 at 84.) The hours in the voluntary agreement for the outdoor patio are until 11:00 p.m. during the week and midnight on weekends. (Tr. 12/5/07 at 84, 121-122.) Mr. Pollok believed that these hours would work well in Foggy Bottom as the establishment is on a college campus and that there are events and activities going on late at night, including events at the Smith Center and Lisner Auditorium. (Tr. 12/5/07 at 99, 101.) He stated that the establishment puts a focus on creating an atmosphere that is not conducive to patrons making noise in the neighborhood or disturbing neighbors. (Tr. 12/5/07 at 101-102, 114, 139.) The establishment would only have drink specials during happy hour between 4 p.m. and 7 p.m. and would not be using promoters. (Tr. 12/5/07 at 136.)

15. The establishment currently has between 30 and 40 employees with each server and manager being required to go through alcohol awareness training. (Tr. 12/5/07 at 92, 96.) The establishment will also have security on Friday and Saturday nights after certain hours. (Tr. 12/5/07 at 94.) The establishment has a number of security measures in place to prevent underage drinking, including security scanners and carding patrons repeatedly, including at the front door. (Tr. 12/5/07 at 94-96, 125.) The establishment keeps an incident log on-line and also has a security camera system with approximately 27

cameras both inside and outside of the building with video kept for two weeks. (Tr. 12/5/07 at 97-98.) The Applicant is also working closely with the Campus Police in enforcing university policies and with regard to employee training. (Tr. 12/5/07 at 106.)

16. With regard to parking, Mr. Pollok indicated that both Tonic locations are local neighborhood places and that the majority of its patrons do not come by car. (Tr. 12/5/07 at 116.)

17. The Applicant has a voluntary agreement with ANC 2A, which represents the area that the establishment is located. (Applicant's Exhibit No. 4; Tr. 12/5/07 at 107.) ANC 2A is not a party in the case. (Tr. 12/5/07 at 108.) At ANC 2A's October 17, 2007 meeting, ANC 2A discussed the voluntary agreement but did not officially vote to support the voluntary agreement. (Tr. 12/5/07 at 124.) Mr. Pollok indicated that he was willing to have the Board adopt the conditions in his agreement with ANC 2A as part of the issuance of the license. (Tr. 12/5/07 at 112.)

18. Gregory Nicklas is a partner with Mr. Pollok in both Tonic restaurants and the Radius restaurant. (Tr. 12/5/07 at 146.) He has been heavily involved in the Mount Pleasant community and was a member of ANC 1D and the MPNA Board of Directors. (Tr. 12/5/07 at 147, 152.) Mr. Nicklas was not aware of any complaints about late night noise involving either Tonic or Radius in Mount Pleasant. (Tr. 12/5/07 at 150.) He believed that the Tonic in Mount Pleasant had closer residential buildings to it than the Foggy Bottom location as the building it is located shares a wall and floor space with residential apartments. (Tr. 12/5/07 at 157.) Mr. Nicklas indicated that Mr. Pollok would be responsible for managing the Foggy Bottom location. (Tr. 12/5/07 at 162.)

19. Mr. Nicklas attended an ANC 2A meeting in July or August 2007 where with a quorum present, Mr. Corson was authorized to negotiate and enter into a voluntary agreement with ANC 2A. (Tr. 12/5/07 at 259-264.)

20. Philip Spalding resides at 1929 13th Street, N.W., and is an ANC Commissioner for ANC 1B. (Tr. 12/5/07 at 168.) He indicated that as an ANC 1B Commissioner he has had constituents who have been affected by late night noise that can be attributed to the spill out of patrons from hospitality venues. (Tr. 12/5/07 at 175, 181.) Mr. Spalding acknowledged that some establishments get more complaints than others and that frequently it is the quality of the operators that dictates whether there are problems associated with noise. (Tr. 12/5/07 at 182.) Mr. Spalding indicated that establishments with policies in place to deal with rowdy behavior are less likely to have problems with late night noise. (Tr. 12/5/07 at 183.) He stated that he has restaurants open until 2:00 a.m. during the week and 3:00 a.m. on weekends that do not receive any complaints about late night noise. (Tr. 12/5/07 at 184.)

21. Sue Schumacher is a real estate agent who resides at 5101 River Road in Bethesda, Maryland. (Tr. 12/5/07 at 210, 221.) However, she owns a condominium at the Letterman House which she currently rents and is one of the Protestants. (Tr. 12/5/07 at 210-211.) She indicated that her prospective tenants primary question of concern when

looking at the condominium is generally regarding the safety of the neighborhood. (Tr. 12/5/07 at 211-212.) Additionally, prospective tenants have questions about noise. (Tr. 12/5/07 at 212.) She indicated that the neighborhood is fairly quiet late at night unless there is a party going on at the Pike House, a fraternity located at the corner of 21st Street and F Street, N.W. (Tr. 12/5/07 at 213, 217.) Ms. Schumacher did not believe the Applicant's establishment would be operated like a fraternity house. (Tr. 12/5/07 at 218.) She indicated that late at night there is more pedestrian traffic than car traffic. (Tr. 12/5/07 at 213.) She has not lived in her Letterman House condominium since 1995. (Tr. 12/5/07 at 220, 224.)

22. Beverly Swanson has resided at the Letterman House located at 2030 F Street, N.W., for approximately seventeen years. (Tr. 12/5/07 at 226-227.) Her bedroom faces 21st Street, N.W. (Tr. 12/5/07 at 227.) She is one of the Protestants and is a member of the Letterman House Condominium Board. (Tr. 12/5/07 at 227.) Ms. Swanson indicated that she likes living in a residential zone because of the peace and quiet and not having to deal with late night noise. (Tr. 12/5/07 at 228.) However, she indicated that there are existing issues with people on the street causing noise problems, mainly Thursday, Friday, and Saturday nights that awaken her for two to three hours, which has resulted in her calling the Campus Police on some occasions. (Tr. 12/5/07 at 228, 234, 238-240.) This noise consists primarily of yelling, shouting, and loud talking that she usually starts hearing around 1:00 a.m. (Tr. 12/5/07 at 230.) She is awakened at least once a week and attributes this noise to people moving from one place toward somewhere else. (Tr. 12/5/07 at 230-231, 240, 243.) Ms. Swanson indicated that she did not have anything against the Applicant's establishment but that as a resident one of her only recourses in preventing further noise problems is to limit the establishment's hours. (Tr. 12/5/07 at 231-232, 234, 242.) She believed that reasonable closing hours would be 11:00 p.m. during the week and midnight on the weekends. (Tr. 12/5/07 at 232, 234.) Ms. Swanson has had some problems with noise coming from the fraternity house during her seventeen years living at the Letterman House but indicated that they have been straightened out. (Tr. 12/5/07 at 237-238.)

23. Michael Kimmel has resided at the Letterman House since the early 1970's and is personally aware of periodic noise and rowdiness on adjacent streets by young people when they drink alcohol into the early morning hours. (Tr. 12/5/07 at 245.) He indicated that the noise problems he experienced were much worse in the 1970's and 1980's than they are currently. (Tr. 12/5/07 at 248, 254-255.) Mr. Kimmel believed that in recent years the street noise in the neighborhood has diminished partly due to fewer parties at the nearby fraternity house. (Tr. 12/5/07 at 245.) His concern is that the establishment's having both entertainment and late night alcohol service will result in patrons exiting the establishment and entering the streets under the influence of alcohol in a noisy and boisterous manner causing a loss of sleep to nearby residents on occasion. (Tr. 12/5/07 at 246, 256.) He indicated that residents need a reasonable level of quiet on the streets, which he considered to be 11:00 p.m. on weekdays and midnight on weekends. (Tr. 12/5/07 at 247.) He was concerned with the proximity of the establishment to the Letterman House and with patrons bar-hopping from establishment to establishment. (Tr. 12/5/07 at 252-253, 256.)

24. The Board, by order dated February 28, 2007 dismissed a previous application filed by the Applicant, based upon the general prohibition contained in D.C. Official Code § 25-336(a) that prohibits the issuance of a retailer's license in a residential use district. (License File No. 75297.) The Council of the District of Columbia subsequently passed several emergency and temporary laws, including Bill 17-260, the "Retail Class Exemption Clarification Temporary Act of 2007", that allowed the Applicant to qualify for an exception under D.C. Official Code 25-336(c) and re-file its application with the Board.

CONCLUSIONS OF LAW

25. 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 upon which this determination must be made and facts and testimony adduced at the protest hearing, the Board concludes that the Applicant has demonstrated that the issuance of a new Retailer's Class "CR" License, with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

26. 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, the Board has received a voluntary agreement dated October 2, 2007, between ANC 2A Chairperson Asher Corson and the Applicant. The testimony of Mr. Nicklas revealed that Mr. Corson was authorized by the Commission to negotiate a voluntary agreement, on behalf of ANC 2A. However, the testimony of Mr. Pollok reflected that the voluntary agreement was never actually taken back to the Commission and approved by ANC 2A by majority vote with a quorum present. The Board cannot grant ANC 2A great weight in this instance. To receive great weight, D.C. Official Code § 1-309.10(d) requires an official action, such as approving a voluntary agreement, to occur by the full Commission with a quorum present at a properly noticed public meeting. This did not occur in this instance and the Board will not be giving great weight to the voluntary agreement. However, the testimony of Mr. Pollok indicated that he was willing to have the Board adopt the conditions contained in the October 2, 2007 voluntary agreement as part of the issuance of the license. The Board has reviewed the conditions contained in the voluntary agreement and finds them to be reasonable, including the agreement's proposed hours, as discussed below. As such, the Board is adopting the terms of the October 2, 2007 voluntary agreement as conditions on the Applicant's license.

27. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and 23 DCMR § 400.1(a) (2004), the Board must determine whether the issuance of a new Retailer's Class "CR" License will have an adverse effect on the peace, order, and quiet of the neighborhood. In considering this issue, the Board took into account the fact that the Applicant's

establishment is located in a residentially zoned area. However, the testimony of Investigator Jackson, Ms. Collins, Mr. Pollok, and Mr. Nicklas revealed that the Applicant's establishment will not adversely affect the peace, order, and quiet of the neighborhood in this instance. Specifically, the testimony of Investigator Jackson revealed that ABRA Investigators, including Investigator Jackson, did not find any problems with noise, loitering, trash, or criminal activity, or boisterous behavior during any of their 21 visits to the establishment. Additionally, the testimony of Ms. Collins, Mr. Pollok, and Mr. Nicklas indicated that the similarly run Tonic in Mount Pleasant, which operated with later hours, had not generated any late night noise complaints during the four years that it had been open. Mr. Pollok did indicate that the establishment would not sell pitchers of beer and would not have drink specials after 7:00 p.m. The Board believes that these steps are appropriate to prevent late-night noise in the neighborhood and the Board will accordingly adopt these measures as conditions on the Applicant's license. Additionally, the Board is also requiring the Applicant to post signage encouraging its employees and patrons to be considerate of neighboring residents and to keep conversations and noise down to a minimum when exiting the establishment to help reduce late-night noise in the neighborhood.

28. The Board finds that the Applicant's request to be open until 1:00 a.m. on weekdays and 2:00 a.m. on weekends to be reasonable. The Board took into account the Protestants' concerns that these hours could contribute to late night noise but the Board did not find this likely to occur in this instance. Specifically, the testimony of Ms. Collins, Mr. Pollok, and Mr. Nicklas revealed that the Applicant has an excellent track record of operating well-run establishments that have not had noise complaints. Just as important, Ms. Collins noted that while Tonic does sell alcohol it is not a partying atmosphere and the establishment is not loud. The Board agreed with Mr. Pollok that these later hours are reasonable for a college campus where activities are going on late at night. The fact that the George Washington University Campus Police headquarters are located across the street from the establishment is also likely to restrain rowdy late-night behavior at this location.

29. 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 a new Retailer's Class CR License will have an adverse effect on residential parking needs and vehicular and pedestrian safety. The testimony of Investigator Jackson and Mr. Pollok revealed that the establishment will not have an adverse effect on residential parking needs and vehicular and pedestrian safety. Specifically, the testimony of Investigator Jackson and Mr. Pollok revealed that the majority of the establishment's patrons walk to the establishment from the surrounding area. Additionally, the testimony of Investigator Jackson indicated that there are several parking garages and two-hour metered parking available in the area for patrons to use.

30. 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. This was not a protest issue raised by the Protestants.

31. Pursuant to D.C. Official Code § 25-314, the Board finds based upon the record as a whole that the Applicant's establishment will not have an adverse effect on George Washington University. This was not a protest issue raised by the Protestants.

32. The Board recognizes that D.C. Official Code § 25-336(a) generally prohibits the issuance of a Class "CR" retailer's license in a residentially zoned area. However, emergency and temporary legislation currently in effect, including Bill 17-260, the Retail Class Exemption Clarification Temporary Act of 2007, amended D.C. Official Code § 25-336(c), to create an exception in those cases where a license of the same Class is operating an establishment within 400 feet of the Applicant. In this case, the exception applies as there is another Class "C" licensee located within 400 feet of the Applicant who is also applying for a Class "C" license. Specifically, the Lisner Auditorium holds a Class "C" license and is located within 400 feet of the Applicant. This interpretation is consistent with Board policy adopted on April 13, 2005 when the Board issued its order involving The Fab Lounge (Order no. 2005-59) (copy attached). In this case, the Board clarified that the term "Class" applied to all establishments holding a Class "C" license, regardless of the subcategories that exist within each license class (i.e., "CT", "CR", "CN", or CX). As such, the exception currently contained in D.C. Official Code 25-336(c) allows the Board to grant the Applicant's request to be issued a license in a residentially zoned area.

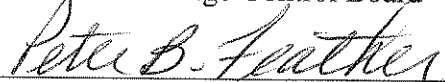
ORDER

Therefore, it is hereby **ORDERED** on this 9th day of January 2008 that the Application for a new Retailer's Class CR License filed by Tonic at Quigleys, LLC t/a Tonic, at 2036 G Street, N.W., Washington, D.C., be and the same is hereby **GRANTED**.

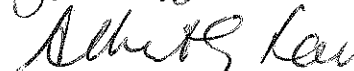
It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become a term and condition of the license:

1. The Board approves the conditions and hours of operation contained in the Applicant's October 2, 2007 voluntary agreement with ANC 2A Chairperson Asher Corson (copy attached);
2. The Applicant shall not offer pitchers of beer;
3. The Applicant shall not offer drink specials after 7 p.m.; and
4. The Applicant shall post signage encouraging its employees and patrons to be considerate of neighboring residents and to keep conversations and noise levels down to a minimum when exiting the establishment.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Judy A. Moy, Member


Albert G. Lauber, Member


Mital M. Gandhi, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

VOLUNTARY AGREEMENT

 **ORIGINAL**

THIS VOLUNTARY AGREEMENT made and entered into this 2nd day of October, 2007 (the "Agreement") by and between Tonic at Quigley's, LLC ("Tonic") and Advisory Neighborhood Commission 2A ("ANC 2A").

WITNESSETH

WHEREAS, Tonic has applied for an Alcoholic Beverage Retailer's License Class "CR" (the "License") for premises located at 2036 G Street, NW, Washington DC (the "Premises") for the operation of a restaurant business;

WHEREAS, ANC 2A has raised concerns about the operation of Tonic's business with a License;

WHEREAS, the parties have discussed the concerns of ANC 2A and have reached an understanding related to the operation of the establishment;

WHEREAS, the parties have entered into this Agreement and request that the Alcoholic Beverage Control Board approve issuance of the License conditioned upon Tonic's compliance with the terms and conditions of this Agreement; and

WHEREAS, the parties jointly respectfully request that the Alcoholic Beverage Control Board give "great weight" to the concerns of the ANC and the resolution of those concerns by this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.
2. **Entertainment and Dancing.** Tonic may offer entertainment in the form of recorded music during all hours of operation. Live music shall only be offered on the third floor of the Premises. Live music shall end at Midnight, except for no more than six (6) special events per year. Tonic shall not feature regularly scheduled live music in the establishment. Under no circumstance shall live music be audible in any residence. Tonic shall not offer, create facilities for, or otherwise encourage, advertise, or promote dancing by patrons or employees or otherwise create or maintain a "nightclub" or "disco" atmosphere in the Premises, although dancing in connection with special events on the Premises is permissible. No permanent dance floor will be constructed.

3. **Hours.** Tonic's permissible hours of operation shall be as follows:

Sunday:	10:00 A.M.-1:00 A.M.
Monday-Thursday:	7:00 A.M.-1:00 A.M.
Friday-Saturday:	7:00 A.M.-2:00 A.M.

After one (1) year of operations with the License, upon a request to Tonic by ANC 2A, the parties shall review the permissible operating hours and negotiate possible earlier closing hours, if it is determined that the closing hours provided in this Agreement have an adverse effect on peace, order and quiet.

4. **Outdoor Patio.** Tonic may have outside seating in an outdoor seating area in front of its Premises upon receipt of a public space permit, and may serve alcoholic beverages in such area. Tonic shall cease service on the outdoor patio at 11:00 P.M. Sunday through Thursday and Midnight on Friday and Saturday. There shall be no music, recorded or otherwise on the outdoor patio. Tonic shall direct that its employees to inspect the outdoor patio at least once each hour to ensure its cleanliness. Tonic shall provide exterior containers for cigarette and other tobacco refuse and shall keep the area in the vicinity of its premises free of cigarette butts. To the extent there are problems resulting from Tonic's outdoor seating, the parties hereto agree to in good-faith meet to discuss solutions to such problems.

5. **Training.** All managers and servers shall undergo alcohol awareness training. Tonic shall arrange and pay the costs of alcohol awareness training semi-annually and employees who have not been trained, or whose training certification has expired, shall be trained at the next semi annual alcohol awareness training session.

6. **Identification Checking Procedures.** Tonic shall purchase and use in the establishment on a regular basis hand held identification scanners to verify that patrons attempting to order alcoholic beverages are of legal drinking age. Tonic's policy shall be that identification cards shall be checked for anyone who appears to be under the age of 30.

7. **Security.** Tonic shall employ one (1) or more security staff as needed from 9:00 p.m. until closing on Thursday and Friday and 10:00 p.m. till closing on Saturday. In the event Tonic shall determine that prudent management practices require additional security, such security shall be provided by Tonic.

8. **Publication of Alcohol Policy.** Tonic shall work with The George Washington University ("G.W.") police department to insure that Tonic's customers abide by District of Columbia laws and regulations and G.W. policies concerning alcohol consumption. G.W.'s Alcoholic Beverage Consumption and Distribution Policy shall be posted prominently in the Premises. Any student violating G.W.'s alcohol policies shall be reported by Tonic to the G.W. At least once per semester, Tonic shall place an advertisement in The George Washington University Hatchet, G.W.'s student newspaper, welcoming students and stating clearly that Tonic does not allow under-aged drinking in

its establishment and that it is the policy of Tonic to enforce G.W.'s Alcohol Consumption and Distribution Policy.

9. **Participation in ANC 2A.** In order to maintain an open dialogue with ANC 2A, Tonic is encouraged to regularly send a representative to meetings, which occur on the third Wednesday of each month. Tonic, upon notice from the ANC, shall send a representative of the establishment to a meeting(s) of the respective organization to discuss neighborhood concerns and explore solutions to any problems associated with Tonic's operations.

10. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Tonic.

11. **Informal Dispute Resolution.** In the case that the ANC Commissioner or an individual resident has a concern regarding the operation of the business, they are urged to contact Tonic's President, Jeremy Pollok at 301-254-3977 or jeremy_tonic@hotmail.com e-mail prior to involving the full ANC, other District of Columbia agencies or officials, or law enforcement agencies.

12. **Notices.** In the event of a violation of the provisions of this Voluntary Agreement, Tonic shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Tonic on the basis of such violation may be undertaken (except that as to third violation relating to disturbances of noise, music and vibration, no cure period shall be required). A material violation of this Agreement or its ABC license by Tonic, which has not been corrected within the period for cure, shall constitute cause for seeking a Show Cause Order from the ABC Board. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, sent by facsimile using a device which indicates receipt on sender's copy, or hand-delivered, to the other party to this Agreement. Notice is deemed to be received upon mailing.

Notice is to be given as follows:

If to Tonic, to:

At Establishment

With a copy to:

Andrew J. Kline, Esq.
1225 19th Street, NW, Suit 320
Washington, DC 20036

If to ANC 2A

Advisory Neighborhood Commission 2A
1101 24th Street, N.W.
Washington, DC 20037

Tonic may change the notice address listed above by written notice to the other signatories at the addresses listed above. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

13. **Modification.** This Agreement may only be modified by the Board, or by mutual agreement of all the parties hereto with the approval of the Board.

14. **Support of Application.** Upon execution of this Agreement by all parties, ANC 2A shall actively support Tonic's application, subject to this Agreement being incorporated into the Board's Order approving the license application.

15. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which when taken together, constitute one and the same document. That signature to any counterpart shall be deemed a signature to, and may be appended to, any counterpart.

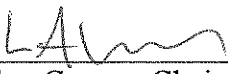
16. **Severability.** In the event that any part of this Agreement is found to be invalid, unenforceable or not binding, the remaining portions shall remain in full force and effect and be fully binding on the parties.

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed as of the date set forth hereinabove.

TONIC AT QUIGLEYS, LLC:

By: 
Jeremy Pollok
Date Signed: 10/2/07

**ADVISORY NEIGHBORHOOD
COMMISSION 2A**

By: 
Asher Corson, Chairman
Date Signed: 10/2/07