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Reconsider the ABC Board's decision denying Haydee's Restaurant a night club license

Resolved, ANC 1D seeks reconsideration of the decision by the DC Alcoholic Beverage Control Board to deny the application of NHV Corporation, Inc. (t/a Haydee's Restaurant) for a Class CN License.

Once again, as it did in the Don Juan's case – in which the DC Court of Appeals remanded the case to the ABC Board because it had failed to follow the ANC law, 09AA-2930,31 – ANC1D advises the ABC Board to follow settled law, and address with the deference (see Kopff) required by law, all the relevant ANC resolutions and points.

The Whys and Appendices are equal components of this resolution.

Why:

Yesterday, at the DC Council hearing, representatives of the ABC Board admitted that they have not followed the law in the Don Juan's case, and that the Board appears to have made a similar mistake in its recent denial of the Haydee's CN application. Here is a chance for the ABC Board to fulfill the promise made to the DC Council to do better.

The terms used by the ABC Board, "residential", and "nightclub", are subject to many different interpretations. There are many residential neighborhoods in DC and the world that are quite urbane. The Wonderland nightclub operates on a residential street with good harmony with its neighbors. The two concepts are evidently not logically exclusive.

Thus, it appears that the ABC Board fails to articulate its reasoning without large leaps of interpretation, and thus fails the requirement for drawing conclusions in a discernable manner, and certainly, "from [the ANC's] vantage point". Beside the ANC1D resolution advising acceptance of Haydee's application, there was another submitted at the same time to the ABC Board. This resolution documented an agreement between Haydee's and ANC1D on the nature of operation of the venue and thus placing on the record for the ABC Board the vantage point of ANC1D.

In particular, the ABC Board ruling on Haydee's application failed to fulfill Kopff's requirement that:

"the agency must articulate why the particular ANC itself, given its vantage point, does -- or does not -- offer persuasive advice under the circumstances. In summary, government agencies are charged to pay specific attention to the source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others."

Appendix A: DC Code § 1-309.10 (2009)

(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

(3)(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

Appendix B: Case Law

Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 765-66 (2003).

Specifically, the BZA must:

"elaborate, with precision, its response to the ANC issues and concerns," and . . .
"articulate why the particular ANC itself, given its vantage point, does -- or does not -- offer persuasive advice under the circumstances." . . . While the agency is not required to defer to the ANC's views . . . failure to address ANC concerns with particularity is grounds for a remand . . .

Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1174, 1180 (D.C. 2004).

In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission.

Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372

It is a statutory method of forcing an agency to come to grips with the ANC view -
- to deal with it in detail, without slippage. In doing so an agency must focus particular attention not only on the issues and concerns as pressed by an ANC, but also on the fact that the ANC, as a representative body, is the group making the recommendation. That is, the agency must articulate why the particular ANC itself, given its vantage point, does -- or does not -- offer persuasive advice under the circumstances. In summary, government agencies are charged to pay specific attention to the source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others.

Although the statutory language literally does not require such acknowledgment of the ANC source, we have concluded -- and hold -- that such acknowledgment is implicit in the very purpose of § 1-171i(d) of the ANC Act. It is necessary not only to assure compliance with the "great weight" mandate but also to facilitate judicial review. Without such attribution, there is a danger that an agency, [*1385] while dealing with ANC issues and concerns, would not analyze the matter in a way that evidences serious attention to the ANC source itself.

Passed by 6 to 0 vote at the legally noticed, public meeting of ANCID on September 21, 2010, with a quorum present. Voting "yes": Commissioners Scott, Bosserman, Tunda, McKay, Edwards, Lepanto.