

STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 ABC 03686

AMERICAN LEGION,)
T/A LINTON J. SUTTON POST 223-1,)
)
Petitioner,)
)
v.)
)
N.C. ALCOHOLIC BEVERAGE CONTROL)
COMMISSION,)
)
Respondent.)

DECISION

THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on August 19th, 27th and 28th, 2014 in Elizabeth City. Following receipt of the parties' proposed findings and conclusions, this Decision was prepared.

APPEARANCES

For Petitioner: Richard P. Leissner, Jr., Esq.
Howard Stallings From & Hutson, PA
New Bern, N.C.

For Respondent: K. Renee Cowick, Chief Counsel
NC ABC Commission
Raleigh, N.C.

ISSUES

Whether Respondent acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by rule or law, within the meaning of N.C. Gen. Stat. § 150B-23(a), in determining that the Petitioner's location was no longer suitable for operating under ABC Permits, and in summarily suspending Petitioner's ABC Permits.

STATUTES

N.C. Gen. Stat. §§ 18B-104(a), 18B-901(c) & (d), 18B-904(e), 18B-906, 18B-1005(a)(2), 18B-1005(b), 150B-3, 150B-23(a), and 150B-34(a).

WITNESSES

For Petitioner: Mr. Willie Fonville
Mr. Larry C. Gibson
Dep. Todd Wagner
Ms. Jean R. Chamblee
Special Agent Rodney Parker

For Respondent: Mr. Reubin B. Houston, Sr.
Ms. Jacquelyn Morris
Ms. Katherine O. Kelley
Ofc. Lawrence Phifer
Juanita Midgette Spence, Ed.D.
Capt. John Young
Ofc. Allen Peterson
Sgt. Anthony Spellman
Ofc. Donovan Stocks
Police Chief Eddie Buffaloe

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 – 22 Documents from ALE files.
23 – 26 Elizabeth City Police Dispatch Records¹

For Respondent: Exhibits 2 & 3 (Photos)

UPON DUE CONSIDERATION of the arguments of counsel; the documents and other exhibits admitted; and, the sworn testimony of each witness, considering their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests the witness might have, and whether their testimony is reasonable and consistent with other credible evidence; and, assessing the greater weight of the evidence from the record as a whole, in light of the applicable law; now based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, the Linton J. Sutton Post 223 of the American Legion (hereinafter, “the Post” or “Petitioner”) is a chapter of armed services wartime veterans’ organization, named for a Pasquotank County casualty of World War I, and founded in approximately 1940. Shortly after World War II, the Post was housed in an army surplus Quonset hut, and the Petitioner’s current conventional building is still universally referred to in the area as “the Hut.” The Post

¹ P Ex 27 not admitted. See transcript page 288.

approximately 200 members who served in conflicts from World War II to the present, but many live now outside the community, and monthly meetings draw about 25 members. Most of the members who testified at the hearing served in the Vietnam era.

2. As a part of the organization's community service mission, the Post has "cookouts" and other meals on all the major holidays, to which the public is invited, but are held "mainly for the homeless."² It makes cash gifts to the churches, the women's shelter, and other charities. It has supported the Elizabeth City Police Department, including financial gifts to the Police athletic league for youth; hosting community watch meetings; serving food on National Night Out; and, purchasing an outdoor surveillance camera, and a drug-sniffing dog for the Department. The Post's finance officer, Mr. Fonville, estimated that the organization had given \$80,000 in charitable donations during the five years preceding the hearing. During that period, all of the money made from the Post's regular Thursday night Bingo games went to charity.³ The Post charges veterans modest dues to belong, almost all of which goes to the state and national offices of the organization. The Post's costs for the "Hut" and other operating expenses are defrayed by income from operation of the night Club on Friday through Sunday evenings of most weeks. The Post has always operated the Club, even when it was housed in the Quonset hut.

3. The modern "Hut" has two distinct sides, and they hold separate sets of ABC permits. The larger one, an addition to the building added in the mid-1970s,⁴ houses the "Club" and Bingo operations and can accommodate 213 people on Club nights. It is referred to by the Alcoholic Beverage Control Commission (hereinafter, "the Commission," or "Respondent") as "Sutton Post 223-1," and holds a Malt Beverage permit (issued July 28, 1950), a Brown Bag Private Club permit (January 17, 1980), and Unfortified Wine and Fortified Wine permits (August 13, 1984). The Club side has been cited once in its history by the Commission, resulting in a "45-day suspension of permits on after hours' consumption on January 15, 1961."⁵ The "private" side, designated "Sutton Post 223-2" by the Commission, is reserved for the member veterans and their guests, and holds Malt Beverage and Special Occasion permits (June 19, 1979), and a Brown Bagging Veterans Organization permit (May 24, 1988). It, too, has had a single ABC violation in its history, resulting in a "15-day suspension with 11 days suspended upon condition of no further violations of after-hours consumption and failure to clear tables on March 19, 1989."

4. The Hut is properly zoned for commercial activity, but is located in what is now a primarily residential neighborhood. There are other commercial establishments and non-residential operations in the surrounding area, including a barbershop, a church, and an Elks Lodge that also operates a night Club that opens less frequently than the Post's. The Hut is immediately adjacent to a vacant school building that is not currently in use. The neighborhood has been predominantly commercial. When it was "the Black downtown of Elizabeth City," there had also been a grocery store, taxi stand, café, and other stores on Sheppard Street, the

² Transcript, page 51 (hereinafter, "T p 51").

³ T p 25

⁴ T p 37

⁵ Petitioner's Exhibit 17 (hereinafter, "P Ex 17")

closest crossing street.⁶ At one time, there were six bars operating in the area at one time, including the Hut and the Elks Lodge, and on weekends there would be “500 to 1,000 people in the streets.”⁷ But during the 74 years of its operation, the Hut has become surrounded predominantly by homes. Those who originally chose to live there presumably were attracted by the energy of the high-traffic commercial and entertainment area. However, the senior citizens appearing as witnesses for the Respondent complained bitterly of the noise, litter and traffic brought by the crowds attending the Club nights at the Hut on weekends. One neighbor testified that, “[T]his is a mean generation of people now. They’re different. They’ve always been noisy, but [] ... not like now.”⁸ Another felt that the music had gotten “louder with the disc jockey and the new technology.”⁹ However, it appears that the operation of the Hut has not changed as dramatically as its neighborhood. Employees of the Club have acceded to requests to turn down the volume of their music, and police have checked the noise level at the club on multiple occasions, but Petitioner has never found to be in violation of the noise ordinance.¹⁰

5. The Hut is located at 611 South Martin Luther King Drive, generally referred to as “Martin Street.” The Hut has a parking lot in the rear of the premises, accessed from Cale Street, which runs parallel to Martin Street to the west. In 1990, a fence was added that was successful in deterring drug dealers from congregating in the immediate area.¹¹ Shepard Street, a well-trafficked road, runs perpendicular to Martin Street a block north of the Hut. Herrington Road runs parallel to Martin Street a block to the east. Each of these streets in close proximity to the Hut have on-street public parking. However, Martin and Cale are narrow by modern standards, and if cars are parked on both sides, it is difficult for two moving vehicles to pass each other.¹² Some consider it an unsafe neighborhood, and is frequented by drug dealers and prostitutes.¹³ Drug dealers “hang[] around” where people congregate.¹⁴

6. To maintain security on Club nights, the Post employs at least four off-duty officers, and more as needed. They sometimes go outside the Hut, e.g., to help keep the line orderly when the Club opens, and a Sheriff’s patrol vehicle is parked in front of the building.¹⁵ But generally the officers hired by the Post are present in the Hut to keep order, and rely on the Elizabeth City Police to deal with problems arising outside the building and off the Post’s property. While the current police chief critically characterized it as “not taking any law enforcement stance,”¹⁶ there is a longstanding practice of police making arrests for violations at the Hut so that the off-duty officers can remain there on duty, rather than taking the suspect in for booking.¹⁷ Among many other locations, the city had surveillance cameras fixed on telephone poles in front of the Hut and on its parking lot in the rear of the building. The Post has

⁶ T p 29

⁷ T p 381-82

⁸ T p 334

⁹ T p 322

¹⁰ T p 89

¹¹ T p 26

¹² T p 472; Respondent’s Exhibits 2 and 3 (hereinafter, “R Ex 2 & 3”).

¹³ T p 72-73

¹⁴ T p 360

¹⁵ T p 126 & 155

¹⁶ T p 483

¹⁷ T p 154

eight cameras of its own inside its building.¹⁸ Up until the spring of 2014, the police department frequently had patrol cars parked in front of the Hut, and routinely directed foot patrols and “security checks” to the area, as it did with several similar businesses. These make up a significant proportion of the “798 calls for service dispatched to this property” alleged in the Respondent’s March 2014 citations.¹⁹

9. The club admits people 21 years of age and older, but patrons tend to be in their “mid-20s ... and up,” with “a lot of [the] older crowd” coming for “dancing and socializing.” The Post’s service officer checks IDs at the door, and hands the fakes off to an officer, who will deny the holders admittance. She also has a good view of the area in front of the Hut, and will notify an officer if someone is loitering, and an officer’s appearance outside will typically encourage them to move along.²⁰ The Post has also compiled lists of persons who will not be admitted, based on a prior incident at the club, or just a poor reputation, such as an association with the gang. Approximately 10 people were turned away in 2014.²¹ IDs are scanned and a log is kept of all guests admitted. Officers pat down patrons to enforce their exclusion of guns and contraband. If any problems begin in the club, the officers can cut off the music, and turn up the lights and deal with the people involved in line of site of surveillance cameras.

10. Alcohol Law Enforcement Special Agent Rodney L. Parker conducted the investigation of the Hut that led to the Respondent’s March 2014 citations proposing revocation of all permits issued to both “sides” of the Hut.²² Approximately 5 years prior to the hearing, the Post’s commander, Mr. Gibson, and its finance officer, Mr. Fonville, met with Agent Parker at his office at his request, to discuss their ABC permits. Agent Parker told them they were not entitled to permits they were holding, and that if the posted not voluntarily surrendered them to him by a near date, he would take action to take the permits and fine the post. The Post declined to surrender the permits, but had no adverse action taken against it. This was the only occasion Mr. Fonville met with Agent Parker.²³

11. Elizabeth City Chief of Police Eddie Buffaloe assumed his position in December 2012. He initially lived for one year in a leased apartment in the home Ms. Kathleen Kelly near the corner of Shepard and Martin Street, on the side of the building facing the Hut. He complained of being awakened on some weekend evenings at around 2 AM, when the club was closing, by loud voices, cars revving their engines and loud music coming from the cars, lasting from 10 to 45 minutes.²⁴ Chief Buffaloe testified that he had identified “over 10” law enforcement “hotspots” in the 10 square mile city of 19,000 residents, and that the Hut was among them.²⁵ It appears that Chief Buffaloe’s presence galvanized the discontent with the presence of the Hut among some of its neighbors. When asked, “how long do you think that this is been a problem, the waking up at 2 o’clock? How long do you think that’s been going on?,”

¹⁸ T p 67

¹⁹ P Ex 5

²⁰ T p 177-80

²¹ T p 69

²² P Ex 1& 2

²³ T p 33-35, 75-77

²⁴ T p 466-71

²⁵ T p 474

Ms. Kelly testified, “It got worse – probably the latter part of last year [2013] it got worse.”²⁶ However, Chief Buffaloe never spoke with anyone from the Hut regarding his concerns.²⁷

12. At hearing, the investigating ALE officer testified that, “I feel like inside they're doing everything they can to the best of their ability, but the problem what I've seen when traveling through North Carolina is an establishment neglects the property that these patrons have to park at and go to. ...The problems are outside”²⁸ The evidence shows that other clubs in the city had begun hiring additional off-duty officers to patrol their parking lots, a task that Petitioner’s management was accustomed to the police handling.²⁹ The evidence is not substantiate that ALE warned the Petitioner prior to issuance of citations seeking to take its permits that it would be considered in violation for not hiring additional security for the parking area. Petitioner was not unreasonable in relying police assistance outside its building.

13. On March 21, 2014, Agent Parker served Mr. Gibson two citations proposing to revoke all of the permits held by both Sutton Post 223-1 and Sutton Post 223-2. Except for those designations, and different file numbers, the two citations were identical in their terms and allegations. Agent Parker testified that, “The Commission took [all the Post’s permits] because it's one structure essentially. It's not two different buildings.”³⁰ However, in the evidence, all of the allegations of violations are attributed to the operation of the Club, which is housed exclusively in Sutton Post 223-1.³¹

14. The citations alleged violations of §18B-901(c), allowing revocation if the operation of the permittee is detrimental to the neighborhood; §18B-1005(a)(2), for knowingly allowed any fighting or other disorderly conduct; and, §18B-1005(b), for the failure of the Petitioner “to superintend its business.”

15. The preponderance of the evidence does not the allegation in the citations that “a stabbing victim” was “attacked leaving the Litton J (*sic*) Post 223 – 1 and 2.”³² According to the police report of the incident, the victim was found with a 1 inch stab a considerable distance from Martin Street. The victim was “uncooperative and not forthcoming with information,” and he repeatedly denied knowing his location when he was stabbed, both before and after the single mention of the Hut, i.e., that he had “left there.” It appears as likely that the Hut was mentioned for the purpose of deception. This was the most serious assault alleged to have occurred on Petitioner’s premises. The investigating officer’s written report concerning the other, March 13, 2014 assault allegation in the citations does not verify that the victim “had been beaten inside the Club.”³³

²⁶ T p 342

²⁷ T p 104, 476

²⁸ T p 211 & 257-58

²⁹ T p 450

³⁰ T p 195

³¹ T p 514

³² P Ex 6; T p 224

³³ P Ex 8

16. The evidence does not substantiate the allegation in the citations that Petitioner was “given three written warnings ... for failure to supervise the property in the last three years.” Mr. Gibson did not recall receiving them.³⁴ Respondent failed to produce the written warnings in response to a subpoena encompassing such documents. When asked, Agent Parker could recall only a verbal warning given after the citations were served.³⁵ This allegation is the factual keystone of a narrative suggesting that Petitioners were unconcerned and recalcitrant about security.

17. The allegation that, “Since 2005, there have been 798 calls for service dispatched to this property,” was based on what the Pasquotank Central Dispatch office labels “List of Events” -- a log of dispatch traffic for a given address that captures directions for routine foot patrols, traffic stops, business security checks, domestic incidents, and EMS responses to seizures and other illnesses at or near the address.³⁶ By comparison, the Elks Lodge in the same neighborhood, which is about half the size of the Hut and was open only sporadically, was associated with 429 calls during the same period.³⁷ Thumpers, which is a smaller club than the Hut, and has downtown apartments nearby, had 808 calls in the same period.³⁸ A club location the same size as the Hut, which had been open under three different names -- currently “Checkmates” -- and had a history of its permits being pulled, had 1026 calls. At the hearing, agent Parker testified that Checkmates had lost their permits, “*but they've just gotten them back.*”³⁹ Taken in this context, the number of dispatch events associated with Petitioner’s address does not tend to prove the violations Respondent’s citations alleged.

18. Similarly, the Petitioner’s categorical incident statistics in the citations compare favorably with the less active Elks Lodge’s 14 fights, 11 disturbances, 8 EMS calls, 1 gunshot, and 2 calls for assistance; and the smaller Thumper’s 41 fights, 60 disturbances, 26 calls for EMS, and 4 calls for assistance in the same three-year period.⁴⁰ These statistics are similarly suspect, e.g., the “Long Format” version of the List of Events for the Hut reveals that there were actually no fights on May 21 and September 10, 2011.⁴¹

19. Prior to issuance of its Citations and Order, the ABC Commission was not provided with documentation regarding the “798 service calls for service,” nor the police reports, etc., regarding the incidents of February 16, 2014 and March 9, 2014, which appear in the evidence as Petitioner’s Exhibits 4, 5, 6, 7, and 8.⁴²

20. All of Petitioner’s ABC Permits were summarily suspended by an Order dated April 11, 2014, based on a finding that “that the public health, safety, or welfare requires emergency action.” In addition to allegations concerning circumstances existing when the citations were issued in March 2014, the “emergency action” was justified by an incident in the

³⁴ T p 78

³⁵ T p 293

³⁶ T p 241

³⁷ T p 386; P Ex 26

³⁸ P Ex 25; 436

³⁹ P Ex 24; T p 280, 436

⁴⁰ T p 498

⁴¹ P Ex 5

⁴² T p 197-209

early morning hours April 6, 2014, about 15 minutes after the Petitioner's club closed.⁴³ The intersection of Martin and Shepard Streets became gridlocked by traffic, frustration apparently helped generated several fights, and shots were fired. One of the off-duty Deputies from the Hut, without backup, stopped a beating by spraying OC spray into the crowd.

21. The Petitioner's contribution to the situation was drawing a crowd to its Club. There is no evidence that the Petitioner's staff did or failed to do anything else that caused or contributed to the problem. However, there were unusual circumstances. First, the usual police presence had inexplicably been withdrawn a few weeks prior to the incident.⁴⁴ Secondly, road construction was blocking one of the primary exits from the area, forcing more traffic than usual to leave by way of Shepard Street.⁴⁵ Finally, another incident had drawn officers away from the area.⁴⁶

22. The first policeman on the scene, described the event as a "boxing ring" situation:

I'm not going to beat up on the Hut, because it's not just them. ...[W]e call Shepherd and Cale [streets] a boxing ring.... It's slang because that's what usually happens at that intersection unless we're out there to diffuse whatever starts prior to it starting. But it doesn't just occur there. It occurs at Thumpers. It occurred at Levels [now Checkmates]. It occurred at Club 252. It's just something that happens. It occurred at ... the Sunoco gas station at the corner of Hughes and Halstead, which is now closed. It's a right good occurrence here in Elizabeth City.⁴⁷

While such incidents are intolerable, the solution in the past has been proactive traffic control, rather than closing businesses that attract traffic.

27. In light of the 74 year history of Petitioner's property as a site for hosting activities like the current Club events, its zoning compatible with that use, and Petitioner's long-held permits for the sale and use of alcohol, Petitioner's use of the property in 2014 was not unreasonable, and did not unreasonably impose upon those who had chosen to take up residence near it.

28. Based upon the determinations of the Commission in 1950, 1979, 1980, and 1988 that the Hut was and remained a suitable place to hold the permits it issued, the evidence that the crime and disorder associated with patrons of Petitioner's Club was comparable to that of similar establishments maintaining and currently receiving ABC permits, and the showing that Petitioner's management took reasonable steps to prevent and deter such problems, the Petitioner's permitted site "Sutton Post 223-1," is found to be not "detrimental" to its neighborhood, within the meaning of the applicable statute.

⁴³ T p 100

⁴⁴ T p 130-31

⁴⁵ T p 357

⁴⁶ T p 428

⁴⁷ T p 365

29. Whereas the record does not include any evidence that any activity of the Petitioner other than the Club events housed exclusively in the “Sutton Post 223-1” portion of the Hut were responsible for the activities alleged to be in violation of the ABC statutes in Respondent’s Citations and Order, the Petitioner’s permitted site “Sutton Post 223-2” is found to be not “detrimental” to its neighborhood.

30. To the extent that portions of the following Conclusions of Law include her, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include conclusions of law, such are incorporated by reference into these Conclusions of Law.

2. The Commission’s summary suspension of Petitioner’s ABC permits substantially prejudiced Petitioner’s rights, and Petitioner timely filed the subject Petition. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 18B-906(a) and 150B-23.

3. The Alcoholic Beverage Control Commission, after affording a permittee the opportunity for hearing pursuant to Chapter 150B, and an opportunity to show compliance with all lawful requirements for retention of the license, may suspend or revoke permits issued by it if it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits, or that the operation of the business with an ABC permit at the permittee’s location is detrimental to the neighborhood. N.C. Gen. Stat. §§ 18B-104(a); 18B-906(a); 18B-904(e)(1); and, 150B-3(b).

4. If the Commission finds that the public health, safety, or welfare requires emergency action, it may order summary suspension of permits, effective during the hearing process. N.C. Gen. Stat. §150B-3(c); 18B-906(a).

5. While the law provides for local government input, the General Assembly delegated to the ABC Commission the exclusive authority to determine the suitability of applicants for permits and licenses to sell intoxicating beverages, and the “suitability of the location to which the permit may be issued.” N.C. Gen. Stat. § 18B-901(c) & (d); *Application of Melkonian*, 85 N.C. App. 351, 358, 355 S.E.2d 503, 508 (1987).

6. Issues of fact must be resolved by the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. The Petitioner bears the burden of proof. N.C. Gen. Stat. § 150B-34(a).

7. While drawing a crowd, with accompanying noise, traffic, litter and minor infractions, to any place will almost certainly be “detrimental,” by some definition, to some degree, to some nonparticipants, an owner is generally entitled to make reasonable use of its property “in light of all the circumstances,” *Pendergrast v. Aiken*, 293 N.C. 201, 214, 236 S.E.2d 787, 795 (1977), N.C. Gen. Stat. §18B-901(c)(9), and N.C. Gen. Stat. §18B-901(c)(9) is understood not to contradict that property right.

8. The preponderance of the evidence does not show that the operation of Petitioner’s permitted site “Sutton Post 223-1” at its present location is “detrimental” to its neighborhood, within the meaning of N.C. Gen. Stat. §18B-901(c)(9).

9. There is no substantial evidence that the operation of the Petitioner’s permitted site “Sutton Post 223-2” at its present location is detrimental to its neighborhood. N.C. Gen. Stat. §18B-901(c)(9).

10. The preponderance of the evidence does not show that the Petitioner, its agents, or employees knowingly allowed any fighting or other disorderly conduct. N.C. Gen. Stat. § 18B-1005(a)(2).

11. The preponderance of the evidence does not show that the Petitioner, through a managers, agents, and employees fail to superintend its business. N.C. Gen. Stat. § 18B-1005(b).

12. The Respondent erred in suspending the ABC permits under misapprehension of material facts. N.C. Gen. Stat. § 150B-23(3).

13. The trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C. App. 545, 549 (1971).

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it must be, and hereby is ORDERED that the Petitioner’s ABC permits be returned and restored.

MEMORANDUM OF DECISION **(per 26 NCAC 03 .0127(c)(8))**

The Commission made its decision under the misapprehension of allegations not borne out by the evidence. It cannot be assumed that these facts were ignored or considered inconsequential when presented to the Commission, because they are referenced in the Commission’s Citations and Order – the “documents constituting agency action” in this case. These allocations obviously colored perceptions of the Post’s impact on the neighborhood.

There was no evidence that a recent, dramatic change in character of the neighborhood triggered the investigation leading to this contested case.

Counsel for the Commission might have been correct when she argued that a new applicant today would not receive the permits Petitioner held to open an operation like the Club at the Hut. But that is not this case.

Here, one of a neighborhood's oldest businesses has, over time, begun to attract opposition from a modern-day influx of residents. There is a conflict between the Veterans and at least some of the residents because of the rights all have to enjoy their real estate. The Commission is uniquely empowered by law to resolve what otherwise might be a zoning issue when its permits are involved. It is possible that – with different and substantiated facts about the character and infrastructure of the neighborhood -- the Commission might have chosen to take action against some permits held by Petitioner based on the evidence that the neighborhood has gone from being primarily a commercial district with six bars, to a residential area with two weekend clubs. But it is also possible that, based on its the neighborhood's history, that the Commission might have refused to alter the decisions it made, granting permits between 1950 and 1988, that the Post was in a suitable neighborhood. (The French Quarter of New Orleans has some of the most expensive residences in the nation, but it is doubtful that bars in that neighborhood would be shut down if residents started complaining about the revelers that district attracts.) The Commission could also choose a more nuanced approach, and perhaps seek modifications in the hours, size, volume and/or type of programs hosted by the Veterans, to try to make their operations more acceptable to residents.

The law, and due deference to the Alcoholic Beverage Commission's authority and expertise, confines the undersigned's consideration to the evidence presented. This decision restores the parties to their prior status.

This the 23rd day of December, 2014.

J Randolph Ward
Administrative Law Judge

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.