|  |
| --- |
|  C:\Users\The Koch's\Desktop\MRA Letterhead.png |
| OBJECTION TO GRANTING OF RESTAURANT LIQUOR LICENCE FOR Karaoke Kong IN RESPECT OF PREMISES SITUATED AT SHOP 3, 1 – 7th STREET MELVILLE  |
| **Application Reference number: GLB 7000013720** |

LODGED BY: -

Full name of objector: MELVILLE RESIDENTS’ ASSOCIATION

Full address of objector: 22, 4th AVENUE, MELVILLE 2092

Contact telephone number of objector: 0763143506

Email address of objector: mra-liquor@ilovemelville.co.za

TO: Liquor Licensing – Johannesburg Regional Office

 Gauteng Liquor Board

 Matlotlo House

 124 Main Street

 Johannesburg

Receipt of Objection Acknowledged:

 Signed:

 Date:

AND TO: The Liquor Buzniz Consultants

Attention: Mariana Bester

 Applicant’s Representative

 202 Keuning Street

 Meyerspark

 0184

Email: liquorbuzniz@mweb.co.za

Sent via email on: XX March 2021

1. The present application is for a restaurant liquor licence in respect of Shop 3, 1 – 7th Street, Melville, Melville, under application reference number GLB7000013720.
2. The Melville Residents Association (“MRA”) has had sight of the application papers made available by the Johannesburg Regional Office of the Gauteng Liquor Board on 26 February 2021 as filed on behalf of the applicant for the above premises in terms of section 23 of the Gauteng Liquor Act 2 of 2003. Certain aspects relating to this application are of concern to the MRA and have led to it filing this objection.
3. Due to a COVID-related exposure the offices of the Gauteng Liquor Board were closed for more than 10 days and also working on 75% capacity leading to a delay to obtain a copy of the application. **Condonation** for the “late” filing of an objection is requested as the GLB indicated they would communicate this aspect to the applicants – see attached email.
4. Though application is made for a restaurant liquor licence all indications are that a karaoke bar will be operated – see for example the plans, the lease agreement, the name, etc. There are no rights of amusement for the premises, it is only zoned for business 1 with no special consent use as far as the MRA could establish. Also see point 14 below.
5. The **venue** location as indicated in the application is situated in one the business strips of Melville in a small ‘development’ of four shops at 1 – 7th Street. It is not a centre with retail businesses as is stated in the application. The board has already issued licences to the three other shops in the development.
6. There is also not sufficient parking to accommodate patrons at the premises as stated in the application – “the centre” has no parking. Parking in 7th Street is very limited. The honourable board will know that Melville is an old neighbourhood with narrow streets.
7. It is unsure how the applicant will attend to the day to day business as stated in item 4 being a legal person.
8. In conclusion a statement is made that “*no place or places of worship, school or residents of the surrounding residential area will suffer prejudice should the application be granted*” – but no case is made on which this is based – see point 13 below.
9. The MRA wishes to make the following averments in response to certain statements made in the applicant’s written representations:

 There is an **oversaturation** of restaurants and liquor outlets in Melville, serving liquor with meals and in some instances separately at the bar, both during the week and over weekends. At last count there are more than 40 liquor-licensed premises in a 1 km radius from the centre of Melville. In addition, there appears to be certain highly disruptive business operations with issued restaurant liquor licenses, which operate as clubs or pubs, regularly hosting live entertainment, despite there being no consents issued by CoJ for places of amusement or live entertainment in Melville.

 This has contributed to a culture of non-compliance in regard to the laws and by laws among some business owners.

 This application cannot and should not be considered in a vacuum – the fact that the Local Committee and the Board have largely ignored the above facts in many applications before it, is alarming, and it contradicts the stated intention of the Gauteng MEC for Economic Development’s statement that, *“…the Board must endeavor to limit the negative impact of liquor outlets in residential areas…”*. It is our respectful submission that the granting of even more liquor licenses in an already oversaturated area, is completely inappropriate.

 One may be tempted to justify the granting of yet more licenses by mentioning that the GLB has an inspectorate with **enforcement** authority, however the MRA has seen no evidence suggesting that the inspectorate has performed any useful function in monitoring and where appropriate, censuring any liquor license holders in Melville. We are not aware of a single license being suspended or withdrawn, despite clear evidence having been available to show that there have been many establishments that have not complied with the conditions of their licenses.

The MRA is of the respectful view that the applicant has neither proven the **need**, nor the **desirability** or appropriateness of establishing yet another liquor serving establishment in Melville.

A further concern is that the oversaturation combined with the economic impact of the pandemic may well lead to the vacating of many outlets, with a large number of new tenants arriving in the area in a short space of time, who have inherited liquor licenses and who are not subject to the same scrutiny afforded by a new license application.

10. **Regulation 3(2) d)** of the Gauteng Liquor Act provides, inter alia, that:

 *“(2) An application for a licence as contemplated in section 19 of the Act must be –*

*d) accompanied by a comprehensive written motivation in support of the application which must include public interest requirements–*

*(i) the need for a liquor outlet in the area,*

*(ii) the impact of a liquor outlet in the area*

*…*

*(vi) the proximity of other liquor outlets, educational institutions, places of worship and public transport facilities”*

 The MRA believes that the present application does not address the need for a liquor outlet in the area, nor the impact of a liquor outlet in the area.

Furthermore, incorrect information is presented regarding:

other liquor outlets – almost 20 are missing from the list;

educational institutions, not all are listed;

places of worship, quite a number are outstanding.

Argument will be advanced at the hearing on this point in the event that the application proceeds.

11. As far as the provisions of **section 30 (3)** of the Gauteng Liquor Act, 2003 are concerned, as has been pointed out in the application, there are places of worship, educational institutions, similar licensed premises. The applicant fails to put this information as prescribed in the Act before the Board. In Bulk Deals Six CC and another v Chairman of the Liquor Board of the Western Cape and others (2002) the judge stated: “*After all, while the onus in a liquor licence application is not to be equated with the onus which a litigant bears to establish his or her claim in a civil action, the information which must be place before a Board to enable it to make a decision must come from* ***the applicant****.*” (My underlining and emphasis) On this alone, the application should be refused.

Argument on this aspect will be made at a hearing.

12. Section 30(3) furthermore affords the Liquor Board the discretion to refuse or grant a licence by reason of the close proximity of educational institutions, places of worship and similarly licenced premises. In Swema Pub and Restaurant cc vs Gauteng Liquor Board (2010) the application was refused considering the public interest – the existence of another licensed premises in close proximity rendered a further licence not in the public interest. The legislature has entrusted the relevant discretion to (the respondent) Board. Public Interest was also discussed in the Bulk Deals Six CC and another v Chairman of the Liquor Board of the Western Cape and others case (2002). Though the judge proceeded to direct a licence be issued, it was made subject to restrictions to trading hours and selling and serving liquor in the open veranda area as the premises were in a shopping centre in a residential area. Here it is not even 50m from the closest residential home.

13. The MRA believes that such details as provided in the application are incomplete and inaccurate and no distances are provided. Swema Pub and Restaurant CC vs Gauteng Liquor Board (2010) the court ruled that “ … *According to the reasons, the respondent [the Gauteng Provincial Liquor Board] exercised its discretion against the applicant because it deemed the grant of the licence in close proximity to the schools not to be in the public interest*.” The court further found that “*The respondent reasoned that the existence of the tavern licence, another liquor outlet in close proximity to the educational institutions, rendered a further licence not in the public interest*.” and further that “*The latter is a valid consideration*.”

In Mobylink Trading CC v The Gauteng Provincial Liquor Board and The Chairperson of the Gauteng Provincial Liquor Board (2010), the North Gauteng High Court referring to the Caroline Street Liquor Store case (2010), considered the “*residual discretion which Du Plessis J correctly, with respect, concluded that the Board retains, is this: where there are places mentioned in section 30(3) within the 500 meters radius of the proposed premises, an assumption readily exists that such institutions would be negatively impacted by the granting of a liquor licence, and a fortiori, that it would not be in the public interest to grant such an application. Put differently, if the proposed premises are situated within the 500 meters radius of one or more of those institutions, the Board would be more readily inclined to refuse the application for a liquor licence than to grant it, unless it is established that despite the proximity of the proposed premises to such institutions, the granting of a liquor licence would not impact negatively on those institutions. The duty to establish that, in my view, rests upon the applicant, which obviously, is a factual enquiry*.”

The MRA is not convinced that the applicant discharged this duty.

Mobylink Trading CC v The Gauteng Provincial Liquor Board and The Chairperson of the Gauteng Provincial Liquor Board (2010), the North Gauteng High Court found “… *That the decision of the Board has not been articulated in so many words is, in my view, not a basis to infer that the Board did not exercise its discretion properly. It is clear that the very close proximity of the proposed premises to these institutions, especially the church within 50 meters radius, must have weighed heavily on the Board to refuse the application*.”

In Caroline Street Liquor Store CC v The Gauteng Provincial Liquor Board (2010) the court dealt with Section 30 in detail regarding the consideration of applications under the Act. In terms of section 30(2) the respondent "shall grant an application" if certain requirements are met. It is not in issue that the applicant met those requirements. Section 30(3) stipulates: "The Board shall grant an application in the case of premises not situated within a radius of five hundred (500) metres in the vicinity of a place of worship, educational institution, similar licensed premises, public transport facility, or such further distance as the Board may determine or as may be prescribed from time to time." Read together, the two subsections provide that, if the requirements of section 30(2) are met, the Board shall grant an application provided that it may refuse an application if the proposed premises are within a radius of 500 metres from any of the places mentioned in subsection (3). Put differently, even if the requirements of section 30(2) have been met, the Board still has a discretion to refuse an application if the proposed premises are within 500 metres from a place mentioned in section 30(3).

Argument on this aspect will be made at the hearing.

14. If the information regarding the zoning of the Erf on which the premises is situated is correct, a place of amusement which includes live music entertainment cannot be operated from the premises. Furthermore a lessor may not grant rights to a lessee which are greater than those which the lessor itself has.

**FURTHER COMMENTS**

15. Liquor trading and consumption in Melville have had a considerable impact on our suburb. While Melville has two strip business / commercial areas on 7th Street leading into 4th Avenue and Main Road, Melville, it is primarily a **residential area**. The business / commercial strips were created to allow for the establishment of retail outlets and facilities to serve the Melville residential area. As a consequence of this residentially-based layout, the business / commercial strips are very narrow, typically consisting of a depth of only one erf from Main Road, 7th Street and all the avenues from 1st to 5th Street. There is a concern that the type of activity which is likely to take place in and around the applicant’s premises should it obtain a liquor licence, will raise noise levels with a potentially negative impact on the quality of life enjoyed by residents who live within earshot of the premises. The premises furthermore can be open to the street and for ventilation in the era of COVID, this will be required. Thus the sound of any event hosted will carry into the neighbourhood – mainly towards the eastern side (1st and 2nd Avenue) but also to the west from the open court yard.

16. Melville has experienced many incidents of lawlessness and serious **crime**, including shooting, car thefts, hijacking, drug peddling, muggings, fights, intimidation and harassment of residents, and at least five violent deaths at or near premises trading in liquor, being the drive-by shooting New Year 2020 (diagonally across from the premises) , a murder at the (now closed) Dollar Table and the beating to death of an armed response officer outside Ratz, and one unnatural death in 7th Street close to Liquid Blue. The unfortunate drive-by shooting in the early hours of New Year’s morning 2020 is still foremost in the minds of residents – no progress has been made in solving this crime. The MRA with the Melville Security Initiative work proactively for a safe, peaceful suburb, and is gravely concerned about this trend, especially its negative impact on the rights of individual residents and the far reaching reputational and security compromises it has caused our community.

**CONCLUSION**

 Should the Board have any inclination to consider the present application favorably, then the MRA hereby requests that a hearing be held in respect of this application, as there are many highly relevant considerations which need to be put to the Board in the form of oral argument. All parties will benefit from the opportunity to fully ventilate the issues set out above, and this will assist the Local Committee in making informed and well considered recommendations to the Board.

The MRA reserves all of its rights herein.

 Signed:

 Date: XX March 2021

 Full names of Objector: Melville Residents Association Address of Objector: 22, 4th Avenue, MELVILLE 2092

Contact telephone number of objector: 076 314 3506

Email address of objector: mra-liquor@ilovemelville.co.za