

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

IN THE MATTER OF

A RENEWAL APPLICATION REGARDING

SKYBOX, LLC

T/A ONYX ROOFTOP LOUNGE

Case No. 25-PRO-00090

ABRA License No. 130390

Retailer's Class CT License

Board Order No. 2026-689

BEFORE: DONOVAN ANDERSON, *Chairperson*
TERI JANINE QUINN, *Board Member*
DAVID MEADOWS, *Board Member*

PARTIES: Skybox, LLC, t/a Onyx Rooftop Lounge, at premises 1813-1815 M
Street NW, Washington, DC 20036, *Respondent*

Cameron Mixon, Counsel, *on behalf of the Respondent*

Alex Marshall, Commissioner, and Zachary Adams, Chairperson,
Advisory Neighborhood Commission 2B, *Protestant*

Michael D. Shankle, Chairperson, and Nancy Groth, Commissioner,
Advisory Neighborhood Commission 2C, *Intervenor*

Kevin Ardebili and Olivia Rosenzweig, Designated Representatives,
Group of Residents and Property Owners, *Protestant*

Mike Silverstein, Counsel, *on behalf of the Protestants*

ORDER GRANTING REHEARING AND SCHEDULING ORDER

On August 12, 2026, the Alcoholic Beverage and Cannabis Board (Board) issued a decision renewing the alcohol license held by Skybox, LLC, t/a Onyx Rooftop Lounge's

(hereinafter “Applicant” or “Onyx”) subject to Onyx (1) prohibiting amplified devices or amplified sound on the rooftop; (2) prohibiting live entertainment on the rooftop; and (3) restricting Onyx from receiving various extended hours privileges. *In re Skybox, LLC, t/a Onyx Rooftop Lounge*, Case No. 25-PRO-00090, Board Order No. 2026-664, 1-2 (D.C.A.B.C.B. Aug. 12, 2026).

Subsequently, the Applicant filed a separate motion for reconsideration and motion for stay on August 18, 2026. *Mot. for Stay Pending Recon. and Appeal*, at 1; *Mot. for Recon. of Order No. 2026-664*, at 1 (*Reconsideration*). In response, the Group filed an opposition to both motions filed by the Applicant. *Protestant’s Opposition to Applicant’s Motion for Stay Pending Reconsideration and Appeal*, at 1; *Protestant’s Opposition to Applicant’s Motion for Reconsideration of Board Order No. 2026-664*, at 1 (*Opposition*). The Board granted the stay on August 27, 2026. *In re Skybox, LLC, t/a Onyx Rooftop Lounge*, Case No. 25-PRO-00090, Board Order No. 2026-685, 1-2 (D.C.A.B.C.B. Aug. 27, 2026). In its order staying its final decision, the Board announced that it would take up the merits of the Applicant’s reconsideration motion, which it does so here. *Id.* at 1.

Consequently, upon due consideration of the motion for reconsideration, the Board grants a limited rehearing on the conditions selected by the Board in Board Order No. 2026-664, subject to the instructions to the parties provided in its Order. The hearing in this matter shall be scheduled for Wednesday, October 7, 2026 at 1:30 p.m.

ARGUMENTS OF THE PARTIES

The Applicant’s reconsideration, in pertinent part, is limited to reconsideration of the conditions imposed in Board Order No. 2026-664. *Reconsideration*, at 1. In arguing for reconsideration, the Applicant argues that (1) protestant testimony was limited to the operation of the business while the roof was open; (2) the Applicant’s proposed replacement condition would adequately address the peace, order, and quiet concerns found by the Board; namely, by requiring the establishment to close its roof after midnight; (3) the current conditions are overbroad and not the least restrictive means; (4) the Board should consider that the roof is the majority of the Applicant’s entire space and that the condition practically eliminates entertainment at the establishment; and (5) the roof would be an effective means of preventing sound transmission. *Id.* at 1-5

In opposition, the Protestants, in pertinent part, argue that (1) the motion fails to identify the matter of record in error and that the Applicant failed to request the newly proposed condition during the hearing; (2) the applicant already had a sufficient opportunity to argue against the current conditions because the condition was proposed by the ANCs and the Applicant fails to explain why this is a new matter

under the reconsideration regulation; (3) the Board’s final order considered and rejected the closure of the roof, and testimony at the hearing addressed it; and (4) the Board addressed the roof in Board Order No. 2014-366 (*Ozio*), related to a prior establishment at that location; (5) the record establishes that the Applicant is the source of the noise issue; (6) expert testimony failed to establish the effectiveness of the roof enclosure as a sound barrier; and (7) there is no least restrictive means consideration in Title 25 of the D.C. Official Code and the Board may impose restrictions more strict than required by D.C. Official Code § 25-725. *Id.* at 1-7.

In reply, the Applicant, in pertinent part, argues that (1) prior precedent supports the Applicant’s contention that the Board should only impose the least burdensome condition (Board Order Nos. 2023-71, 2022-442); (2) the roof closure condition was not given due consideration; (3) the roof closure condition proposed by the ANCs was not sufficiently discussed or rejected in the Board’s Order; and (4) stricter conditions may not “promote the public interest” and go beyond the goal of resolving appropriateness issues; (5) the ban goes beyond the Board’s interest in protecting residential sleeping hours; and (6) the Applicant may be willing to accept additional conditions to prevent noise disturbances. *Reply to Opposition to Motion for Reconsideration*, at 1-5.

Finally, the Protestants filed a sur-reply, which addresses some factual matters outside the record; reargues prior points; and raises other matters not pertinent to the Board’s resolution of the motion. *Protestant’s Motion for Leave to File Limited Surreply and Limited Surreply to Applicant’s Reply Regarding Motion for Reconsideration*, at 1-10. The Protestants further request an additional hearing to address any modifications to the conditions. *Id.* at 2.

ANALYSIS

A motion for reconsideration or rehearing is permitted by D.C. Official Code § 25-433(d). The standard for permitting a rehearing is not articulated in the statute or regulations. As discussed in *Yaw*, the decision to grant rehearing is subject to the Board’s “sound discretion.” *Yaw v. Dist. of Columbia Taxicab Comm’n*, 591 A.2d 227, 228 (D.C. 1991). Under 1719.2, “A motion for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. 23 DCMR § 1719.2 (West Supp. 2026). Furthermore, per § 1719.3, “If a motion is based in whole or in party on a new matter, that new matter shall be set forth in the motion stating that the petition could not by due diligence have known or

discovered the new matter prior to the date the case was presented to the Board for a decision.” 23 DCMR § 1719.3 (West Supp. 2026).

As the Board noted in granting the stay,

The Board, in determining appropriate conditions, is not bound by the requests of the parties and may make its own determination regarding appropriate conditions after reviewing the relevant evidence in accordance with D.C. Official Code § 25-104(e).^[”] See *Citizens Ass’n of Georgetown, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 288 A.2d 666, 669 (D.C. 1972) (“The Board has a public interest function to perform unlike that of a court in private civil litigation between two contesting parties . . .”). Nevertheless, when doing so, the parties could not have anticipated or known of the Board’s determination regarding the conditions, nor the specific terms of those conditions until the Board made its factual and legal conclusions and issued its Order. Fundamental fairness demands that the Applicant should have an opportunity to object or suggest alternatives before the establishment is subject to new requirements or suffer significant material consequences. *Rones v. Dist. of Columbia Dept. of Hous. & Cmty. Dev.*, 500 A.2d 998, 1001 (D.C. 1985) (saying an agency should provide an “opportunity to be heard in a meaningful manner”) (quotation marks removed)

In re Skybox, LLC, t/a Onyx Rooftop Lounge, Case No. 25-PRO-00090, Board Order No. 2026-685, 2-3 (D.C.A.B.C.B. Aug. 27, 2026). The District of Columbia Administrative Procedure Act, further requires in D.C. Official § 25-609(a) that “if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto . . .” D.C. Code § 25-509(a).

Based on the Board’s review of the record, while various witnesses and the ANC’s may have discussed the closure roof, the Applicant did not have sufficient notice to prepare and present a case addressing this specific possibility where the Board significantly departed from the recommendations of the Protestants provided before and during the hearing. Under these circumstances, the Applicant merits a full opportunity to argue for alternative conditions, per its request, or it may be at risk of being prejudiced by the Board’s action. *Friends of McMillan Park v. Dist. of Columbia Zoning Comm’n*, 211 A.3d 139, 145 (D.C. 2019) (saying a showing of concrete prejudice may warrant additional notice and opportunity to be heard). In light of the Board’s concern regarding the Applicant’s due process rights, this concern outweighs the Protestants’ objections. Therefore, the Board will order a rehearing on the conditions to provide the Applicant an opportunity to propose alternative or modified conditions,

and the Protestants with an opportunity to object to the Applicant's proposal and provide their own proposal for alternative conditions, if they so choose.

ORDER

The Alcoholic Beverage and Cannabis Board, on this 16th day of September 2026, hereby **GRANTS** the limited rehearing of Board Order No. 2026-664, which shall, be held on **Wednesday, October 7, 2026 at 1:30 p.m.**, and solely address:

1. Whether the alternative condition of requiring the roof to be closed at midnight is sufficient to address the appropriateness concerns found by the Board in Board Order No. 2026-664, whether any other condition proposed by the parties or the Board may be appropriate, or whether the Board should maintain the conditions imposed by Board Order No. 2026-664.
2. The Board may keep, modify, or remove the proposed conditions based on the record. Such modifications may include conditions generally requiring (1) the closure of the roof at certain times; (2) less or more hours for the roof; (3) speaker placement and speaker vibration isolation requirements and other sound mitigation requirements; (4) the use of a sound limiter; (5) the placement of walls, plants, or other barriers on the roof; (6) the use of a highly distributed network of small speakers focused downward or in other directions; (7) the use of cardoid subwoofers; (8) the use of real-time digital sound monitoring; (9) limits on where noise may be heard; or (10) or any other conditions proposed at the hearing.
3. The parties are advised that the Board does not intend to revisit its appropriateness findings and does not require more evidence of noise disturbances, which would be repetitive based on the record. Instead, the new evidence should focus on the effectiveness or non-effectiveness of the conditions to address the previously identified noise issues. Testimony and evidence that departs from this inquiry may be subject to exclusion.
4. The parties are further advised that they may submit a joint request for the Board to issue a consent order, in whole or in part, imposing conditions if the negotiation of a settlement agreement is not feasible.

IT IS FURTHER ORDERED that parties **SHALL SUBMIT** an amended protest information form at least 7 days before the hearing, which shall list and provide

witnesses and exhibits in accordance with 23 DCMR § 1722 for the rehearing. The parties are also instructed to provide a list of proposed conditions. Provided conditions should be in the form of conditions the Board may insert into a future order. Parties may provide new witnesses and evidence not included in the initial protest information in this matter.

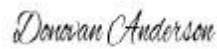
IT IS FURTHER ORDERED that the Applicant's request to add specific Board members to the panel is **DENIED**, as the participation of specific members is subject to the Board's and each individual members' sole discretion, and the need to achieve a quorum of the Board. Any party may file a motion for en banc review by the entire Board once a final decision is issued in this matter, if they so choose.

IT IS FURTHER ORDERED that the Applicant's motion for reconsideration is deemed **MOOT** based on the Board's order for rehearing.

IT IS FURTHER ORDERED that the previously ordered stay in Board Order No. 2026-685 shall remain in effect pending the issuance of a final order related to the rehearing.

IT IS FURTHER ORDERED that the Protestants request to file a sur-reply is **GRANTED** and was duly considered by the Board.

The ABCA shall deliver copies of this Order to the parties.

OFFICIAL VOTE ON THE ORDER OF THE DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE AND CANNABIS BOARD		
Board Members	Decision	Signature
DONOVAN ANDERSON, <i>Chairperson</i>	Approve	
SILAS GRANT, JR.	Approve	
TERI JANINE QUINNE	Approve	
RYAN JONES	Approve	
DAVID MEADOWS	Approve	
JAMES TURNER	Approve	
Concurrences or Dissents: N/A		

NOTICE

Any party adversely affected may file a Motion for Reconsideration of this decision or other motion permitted by law within 10 days of service of this Order. The opposing party may file a response within 7 days. If a response is filed, the movant may file a reply within 3 days. All filings should be served on all parties to the matter and delivered to the Alcoholic Beverage and Cannabis Administration, 899 North Capitol Street NE, Suite 4200-B, Washington, DC 20002, or by email to abca.legal@dc.gov. The failure to properly serve the other parties or to present all matters of record that have allegedly been erroneously decided in the initial motion for reconsideration may result in the waiver of those matters being considered. Further, multiple and repetitive motions may be summarily denied or not considered. In addition to filing a Motion for Reconsideration, pursuant to § 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, a party that is adversely affected may have the right to appeal this Order by filing a petition for review, within 30 days of the date of service of this Order, with the District of Columbia Court of Appeals, located at 430 E Street NW, Washington, DC 20001.

The timely filing of a Motion for Reconsideration 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) (2004). The Superior Court of the District of Columbia may have jurisdiction to hear appeals in non-contested cases or in matters where that court is specifically provided jurisdiction by law. Finally, advisory neighborhood commissions (ANCs) are advised that their right to appeal or challenge a decision of the Board may be limited by the laws governing ANCs. *See e.g.*, D.C. Code § 1-309.10(g).