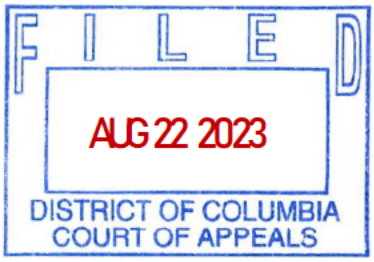
DISTRICT OF COLUMBIA COURT OF APPEALS



No. 21-AA-02653

ABERASH, LLC T/A SIGNATURE LOUNGE, PETITIONER,

v.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD, RESPONDENT.

Petition for Review of an Order of the
District of Columbia Alcoholic Beverage Control Board
(No. 21-PRO-000017)

(Argued January 19, 2023 Decided August 22, 2023)

Before BECKWITH, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner Aberash, LLC, doing business as Signature Lounge, appeals a decision of the District of Columbia Alcoholic Beverage Control Board imposing certain conditions on its new Class C Tavern license. Concluding that the Board acted within its discretion in imposing these conditions on petitioner's license, we affirm.

I.

Petitioner applied for a New Retailer's Class CT license for its establishment Signature Lounge at 1727 Connecticut Avenue, NW. It also applied for an entertainment endorsement "requesting live entertainment, a dance floor, and permission to charge a cover charge." Petitioner planned for Signature Lounge to provide meal service, a dance floor, and music, and proposed opening it at 7 a.m. every day and closing it at 2 a.m. Sunday through Thursday and 3 a.m. on Fridays and Saturdays. After a Notice of Public Hearing was posted, the Advisory Neighborhood Commission (ANC) 2B and the Dupont Circle Citizens Association (DCCA) protested the application. The Board held a protest hearing and two months later, in August 2021, issued its order.

Based on the testimonies of Signature Lounge's owner, Dereje Daneale,[1] as well as the ANC, the DCCA, community members, and law enforcement at the protest hearing, the Board concluded that Signature Lounge would negatively impact the peace, order, and quiet of the neighborhood. *See* D.C. Code § 25-313(a), (b)(2). Specifically, the Board cited two main concerns: (1) Signature Lounge's ability to control noise, given the noise issues that the location's prior establishment caused, and (2) Mr. Daneale's ability to manage Signature Lounge appropriately given that an establishment he owned on U Street called Secret Lounge[2] had a history of incidents involving violence or unsafe conditions.

Accordingly, the Board granted the license subject to five conditions intended to prevent Signature Lounge from having a "negative impact on peace, order, and quiet" in the neighborhood.[3] Under these conditions, Signature Lounge (1) had to maintain limited hours of operation, (2) had to hire at least two security officers from the Metropolitan Police Department (MPD) reimbursable detail,[4] (3) could not charge a cover charge, (4) could not host live bands, and (5) could use promoters only in a limited way. The Board concluded that these conditions would ameliorate noise and security concerns and "prevent the business from focusing on nightclub activity as the main part of its business model."

II.

Petitioner makes two general challenges to the conditions: (1) the Board legally erred by admitting evidence about the operation of Secret Lounge; and (2)

---

[1] Signature Lounge's sole owner is Aberash LLC, whose sole member is Mr. Daneale.

[2] As with Signature Lounge, Mr. Daneale seems to own Secret Lounge through an LLC.

[3] Two members dissented from the order and indicated that they would have denied the license altogether.

[4] Although petitioner did not challenge this condition on a separate basis from the other conditions, it is worth noting that Mr. Daneale had already indicated that he planned to use reimbursable MPD officers before the Board imposed this condition.

the conditions the Board imposed were not supported by substantial evidence and were arbitrary and capricious.[5] Petitioner also specifically challenges the promoter condition and the live band condition.

Our review of the Board's decisions is limited, and we will affirm "unless we conclude that the decision was either unsupported by substantial evidence in the record or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Acott Ventures, LLC v. D.C. Alcoholic Beverage Control Bd.*, 135 A.3d 80, 88 (D.C. 2016). Substantial evidence requires only a "minimal amount of evidence, given our deference to the Board's informed judgment and special competence in the matters before it." *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). The Board must base its decision on "more than a mere scintilla" of evidence and its findings must bear a "rational connection" to its decision. *Kopff v. D.C. Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1387 (D.C. 1977). We review questions of law de novo but will accord some deference to the Board's interpretation of an ambiguous statute. *See 2461 Corp. v. D.C. Alcoholic Beverage Control Bd.*, 950 A.2d 50, 53 (D.C. 2008).

A.

First, petitioner challenges all conditions on the ground that the evidence about Secret Lounge, on which the Board at least partly based its conditions, should not have been considered. Specifically, petitioner argues that evidence of Secret Lounge's operation was irrelevant because Secret Lounge is located more than 1,200 feet away from Signature Lounge.[6] Because this is a legal argument about the scope of the Board's inquiry, we review the Board's decision de novo.

---

[5] Petitioner does not dispute that the conditions were in the best interest of the neighborhood, *see Acott Ventures, LLC v. D.C. Alcoholic Beverage Control Bd.*, 135 A.3d 80, 91-92 (D.C. 2016), so we do not address that issue, *see id.* at 93 n.1.

[6] Petitioner also argues that the Board improperly denied its motion to quash Officer Brian O'Shea's testimony about Secret Lounge because the Board failed to explain its decision to deny the motion in writing. Because this appeal notices only the Board's August 2021 order, not its denial of the motion to quash, we do not reach that argument. *See* D.C. App. R. 3(c)(1)(b) (requiring the notice of appeal to "designate the judgment—or the appealable order—from which the appeal is taken").

This argument is based on a misunderstanding of statutory requirements. Under D.C. Code § 25-313(a), the Board must determine if an establishment is appropriate for its geographic area before the Board grants the establishment a license. This geographic area is sometimes defined as a 1,200 foot area. *See id.* § 25-101(46). In order to determine if an establishment is appropriate for its area, the Board must consider "all relevant evidence," including the establishment's effect on "peace, order, and quiet." *Id.* § 25-313(b), (b)(2). The 1,200 foot area, therefore, is the area on which the Board assesses the establishment's potential effect, not, as petitioner assumes, the geographic area from which all evidence must be derived.

In the alternative, petitioner argues that the Secret Lounge evidence should not have been considered because evidence concerning an establishment with common ownership is relevant to the Board's appropriateness inquiry only when both establishments are based at the same location. This misreads our precedent. In *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013), we held that the Board may consider evidence of the operation of another establishment with common ownership to help the Board determine whether that owner "will operate the [new] establishment without a detrimental impact on the neighborhood." Although we recognized that the establishments in *Panutat* shared the same location, that fact was not necessary to our holding. *See id.* (explaining that the Board considered the operation of the other establishment to be relevant "for two reasons"—the overlapping ownership and the common address—and that "*both* rationales seem . . . eminently reasonable" (emphasis added)).

B.

Second, petitioner argues that we should reverse the Board's imposition of conditions because they were not supported by substantial evidence and were arbitrary and capricious. Petitioner makes two general challenges to the conditions: (1) the Secret Lounge evidence did not constitute substantial evidence and (2) the Board failed to draw a logical connection between its findings and its conclusion that conditions were necessary to deter "nightclub" activity. Petitioner also specifically challenges the imposition of the live band condition and the promoter condition on additional bases.

1. All Conditions

a. Secret Lounge Evidence

Petitioner argues that even if the Secret Lounge evidence were properly considered, it failed to constitute substantial evidence that would justify the conditions the Board imposed. The Board's findings of fact regarding Secret Lounge centered on three incidents involving violence or unsafe conditions that occurred in the five years the establishment had been in operation. First, MPD Officer Brian O'Shea testified that he was assaulted by a patron at Secret Lounge while trying to break up a fight in October 2018. Second, MPD Lieutenant John Merzig testified that in 2018, after a dispute that arose inside Secret Lounge made its way outside, Secret Lounge locked its doors, "which prevented the police from entering."[7] Third, Alcoholic Beverage Regulation Administration (ABRA) Investigator Rhoda Glasgow testified that in August 2020, she found Secret Lounge's door locked, with patrons inside, and that the staff refused to open the door until the fire marshal arrived. She also testified that the fire marshal gave Mr. Daneale a warning about not locking the doors with people inside. Moreover, she testified that once Mr. Daneale opened the door, she observed multiple COVID safety rule violations inside, including a lack of social distancing.[8]

Based on these facts, the Board concluded that it was "concerned about [Mr. Daneale's] ability to manage a nightclub based on the operation of Secret Lounge." Specifically, the Board expressed "serious concerns with Secret Lounge locking its door" because "[a]n establishment that locks its doors creates dangerous crowd control issues . . . impedes . . . first responders . . . and is indicative of efforts to

---

[7] Petitioner emphasizes that Lieutenant Merzig did not have personal knowledge of this event. To the extent petitioner argues that this testimony should not have been admitted because of the lack of personal knowledge, we disagree. The rules of evidence that apply in judicial proceedings do not apply in hearings before the Board. *See Kopff*, 381 A.2d at 1385; *Jadallah v. D.C. Dep't of Emp. Servs.*, 476 A.2d 671, 676 (D.C. 1984) ("It is well-established that the technical rules of evidence applicable to the trial of court cases do not govern agency proceedings and that hearsay evidence, if it has probative value, is admissible at administrative hearings.").

[8] Mr. Daneale admitted to receiving a warning related to the COVID safety violations.

impede and interfere with law enforcement and hide illegal behavior." The Board cited this concern, along with noise concerns, to justify imposing conditions on Signature Lounge's license.

Petitioner argues that the Secret Lounge evidence was insufficient for three main reasons. First, it argues that the evidence was too old to be relevant. Petitioner cites nothing to support the suggestion that incidents that took place within one to three years of the protest hearing were too remote to qualify as "more than a mere scintilla" of evidence supporting the Board's decision. *Kopff*, 381 A.2d at 1387.

Second, petitioner argues that the Board misinterpreted the Secret Lounge evidence because it viewed Secret Lounge locking its door in the 2018 incident as dangerous when some testimony suggested it was appropriate under the circumstances. This argument is unavailing for two reasons. First, we will not substitute our judgment for the Board's where substantial evidence supports the Board's interpretation, even if the evidence could be interpreted another way to support a different conclusion. *See Acott*, 135 A.3d at 88. Second, even if we accepted petitioner's argument, it would not undermine the Board's interpretation of the other two incidents, which would still be sufficient to support the Board's concern about the operation of Signature Lounge.

Petitioner next argues that the Board's decision to impose conditions on Signature Lounge's license was arbitrary and capricious because its leniency toward Secret Lounge suggests that the Board was not genuinely concerned with Secret Lounge's operation. Petitioner points to two main indications of the Board's alleged leniency. First, Secret Lounge did not receive citations for most of the aforementioned incidents,[9] instead facing no penalty or at most a warning. Petitioner cites no support for the proposition that the Board is limited to evidence of citations,

[9] Although the Board found that Secret Lounge was fined $1,000 in 2018 for "providing entertainment without an endorsement," the Board's reasoning focused more on incidents in which no citation was issued.

however;[10] to the contrary, the Board must consider all relevant evidence.[11] *See* D.C. Code § 25-313(b) ("[T]he Board shall consider all relevant evidence of record . . . ."). Second, the Board renewed Secret Lounge's license the same day it held Signature Lounge's protest hearing.[12] Petitioner fails to carry its burden of proving that the decision to impose conditions on Signature Lounge's license while renewing Secret Lounge's was arbitrary and capricious, however, because it fails to demonstrate that the license applications were similar enough that differential treatment was irrational. Indeed, it did not point to any evidence that Secret Lounge's application was even being protested—as Signature Lounge's was—when the Board made its decision to renew. Moreover, it was rational for the Board to treat these licenses differently because the appropriateness inquiry is location-specific and the Board might have been more concerned about the impact of such an operation on the Dupont Circle area than on the U Street area. *See* D.C. Code § 25-313(a) (setting a location-specific inquiry).

b. Nightclub Activities

Petitioner argues that the Board failed to draw a logical connection between its findings and its conclusion that the conditions were necessary to ensure Signature Lounge would not "have a negative impact on peace, order, and quiet" in the neighborhood. The Board explained that the conditions were intended to prevent Signature Lounge from providing "nightclub activities that may generate disturbing noise and security concerns."[13] Petitioner argues this reasoning was illogical

---

[10] Petitioner cites only an unrelated provision that limits the scope of violations the Board shall examine when considering the qualifications of an establishment's owner to violations that occurred within "the last 10 years." *See* D.C. Code § 25-301(a-1). The statutory provision applicable to the appropriateness inquiry does not include such a limitation. *See id.* § 25-313.

[11] Petitioner also suggests that the fact that no citations were issued is evidence that there was no reasonable cause to take enforcement action, but cites no authority and does not point to anything in the record to support that assertion.

[12] Petitioner asserts further that Secret Lounge's license was renewed without conditions. It has not pointed us to—and we have not found—any support in the record for that assertion, so we decline to consider it.

[13] The Board provided an additional justification for the live band condition.

because the Board never defined "nightclub" or "nightclub activities" and that under the statutory definition, Signature Lounge did not qualify as a nightclub and the aforementioned conditions would not prevent it from becoming one.[14]

The Board did not refer to the statutory definition of "nightclub," however. Indeed, it recognized that petitioner was applying for a tavern or CT license in its order and at the hearing. Rather, the Board appeared to be using the term "nightclub" more colloquially to refer to certain types of activities, including those Secret Lounge engaged in. It also used the term "nightclub" to refer to a "similar establishment" that previously operated at the same location as Signature Lounge and caused noise issues.[15] It thus used the term "nightclub" as a catchall term for the very types of activities it found concerning based on its findings. It appeared to be expressing concern about those activities, rather than the official status of nightclub, when it credited testimony from a community member that "the area has experienced problems with taverns operating as nightclubs." The parties shared this colloquial understanding: Mr. Daneale himself used the term "night club" to describe Signature Lounge at the hearing. When using the term "nightclub," therefore, the Board was referring to Secret Lounge's activities, the prior establishment's noise issues, and Signature Lounge's proposed uses. Under this colloquial understanding of "nightclub," there was a rational connection between the Board's findings of fact regarding Secret Lounge and Signature Lounge's facilities and its conclusion that certain conditions were necessary to prevent nightclub activities that would cause noise or security issues.

2. Promoter Condition

Petitioner argues that the portion of the Board's order restricting the use of

---

See *infra* Section II.B.3 at 12-14.

[14] The only "matter-of-right uses" nightclubs have that taverns do not is the ability to have a larger dance floor and to have live music without an entertainment endorsement. *Compare* D.C. Code § 25-101(33), *with id.* §§ 25-101(52), -113(c)(2). Accordingly, petitioner asserts, imposing conditions on its tavern license that limit other rights—such as the hours of operation—was not justified by the need to prevent certain "nightclub activities."

[15] The Board did not specify what type of license that establishment, Bistro Bistro, held, but Mr. Daneale and Mr. McGlade testified that it was a tavern license.

promoters was based on insufficient evidence and lacked a logical connection to the Board's findings. The Board credited testimony from multiple sources expressing concern with Signature Lounge using promoters. ANC Commissioner Mike Silverstein testified that he was concerned about promoters due to a prior incident at a different establishment in Dupont Circle, Heritage India, "where [the] establishment used promoters and the event led to violence both inside and outside the establishment." A Dupont Circle resident, Jeffrey Rueckgauer, testified that "[b]ased on his experience as a resident, the area has experienced problems with taverns operating as nightclubs," including an incident in 2005 when an establishment used "promoters [with] bullhorns" and "generated a long ling with noisy patrons . . . and fights after the establishment closed." He also testified that "[o]ther establishments in the neighborhood had similar issues." In addition, the Board found that "Mr. Daneale indicated that the business does not require promoters."

At the outset, it is important to clarify the scope of the promoter condition. First, contrary to what petitioner suggests, it is not an outright ban on using promoters. It simply restricts what promoters can do. Indeed, the condition specifically lays out four types of activities promoters cannot engage in: "(1) collect[ing] admission fees or money from patrons at the premises or in the sidewalk area immediately outside the premises; (2) check[ing] identifications or perform[ing] body and item searches; (3) distribut[ing] wrist bands or stamps to patrons to determine their age; or (4) provid[ing] alcoholic beverages to customers." The condition also allows promoters to engage in other types of activities, such as promoting events "through social media, text message, and other media outlets."

Second, two of the promoter restrictions—the second and fourth—merely reiterate legal restrictions that apply to all Class C licensees, as petitioner concedes. *See* D.C. Code § 25-797(a) (requiring a licensee to maintain control over "modes of ingress or egress, and . . . bar and security staff"); *id.* § 25-797(b) (prohibiting third party promoters from providing security). The remaining restrictions—prohibiting promoters from charging a fee at the door[16] and from distributing wrist bands or

[16] This restriction appears to leave open the possibility of promoters conducting advanced ticket sales. Petitioner did not challenge the distinction the Board drew between at-the-door charges and presale tickets as arbitrary and capricious, so we need not address that argument. We note, however, that the line the Board drew appears logically connected to its concern over long noisy lines

stamps[17]—were not specifically challenged by petitioner. Because petitioner did not argue that either prohibition was insufficiently supported—instead only arguing that the two remaining restrictions effectively prevented promotors entirely, and that such a broad prohibition was unsupported by the evidence—we do not address any would-be arguments against those specific restrictions. *See Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived.")

Even if the remaining restrictions constituted something close to a de facto ban on promoters,[18] they would be supported by substantial evidence. Petitioner argues that the main evidence the Board relied on in concluding that promoters would negatively affect the peace, order, and quiet of the neighborhood—ANC Commissioner Silverstein's testimony about an incident that took place at Heritage India in 2011[19] and Mr. Rueckgauer's testimony about noise and security issues at other promoted events in the area[20]—was irrelevant. In petitioner's view, that

---

forming outside the establishment.

[17] The Board asserted at oral argument that the only restriction not covered by D.C. Code § 25-797 is the prohibition on charging a fee at the door, implying that the restriction on distributing wrist bands or stamps was coextensive with § 25-797. Petitioner disagreed, arguing that neither of those restrictions would exist absent the Board's order. Neither party addresses this in their briefs. Because it does not affect our disposition, we decline to resolve this dispute.

[18] Petitioner suggested at oral argument that the promoter condition was a de facto ban on using outside promoters. It pointed us to no evidence in the record—and we could not find any—supporting that interpretation. Since this is the only version of the restriction petitioner challenges, however, we briefly address it.

[19] We decline to address petitioner's challenges to portions of Commissioner Silverstein's testimony that were not included in the Board's findings of fact. Whether they constitute substantial evidence is irrelevant when the Board did not rely on them.

[20] The Board also found that Mr. Daneale "indicated that [Signature Lounge] does not require promoters." In its opening brief, petitioner disputed the Board's interpretation of Mr. Daneale's testimony but did not clearly challenge it as erroneous until oral argument. It therefore waived this argument. *See Acott*, 135

evidence was insufficient because (1) the establishments were based outside the 1,200 foot area in which Signature Lounge is located; (2) petitioner has no connection to those establishments; and (3) the incidents involving promoters were years old.[21] We disagree. First, the Board is not limited to considering evidence of incidents that occur within a 1,200-foot radius of the applicant's establishment. See discussion *supra* Section II.A at 3-4. Second, petitioner's lack of connection to Heritage India and the other establishments does not make the evidence irrelevant. Although it is not relevant to Mr. Daneale's management capabilities, it is relevant to the effect promoters could have on the peace, order, and quiet of Signature Lounge's neighborhood. Third, petitioner does not cite any authority to support its argument that the evidence is too old to be substantial. And we are not convinced that evidence of multiple incidents spanning a period 10 to 16 years before the protest hearing are irrelevant or constitute a "mere scintilla" of evidence when that evidence concerns promoted events in the Dupont Circle area that resulted in serious violence and noise concerns. *See Kopff*, 381 A.2d at 1387. Moreover, both pieces of evidence are logically connected to the Board's promoter condition because they

---

A.3d at 93 n.1.

Had petitioner made this argument in its briefs, we would have rejected it. Petitioner is correct that Mr. Daneale's testimony is less clear than the Board's finding suggests. Mr. Daneale testified "I'm not even happy to do it to [sic] promoters" because of the cost, and that he did not plan to "give the entrance or something" to promoters, but that he believed he "need[ed] the promo a couple of times" because Signature Lounge was a new business. Even if the Board's finding were erroneous, however, it would be harmless because the Board's promoter condition is sufficiently supported by other evidence.

[21] Petitioner also suggests in its brief that the evidence was insufficient because it showed mere correlation, not causation, between promoters and violence. Petitioner cursorily asserts that "[t]he ANC 2B did not cite any record connecting the purported violence to the use of promoters." Petitioner does not cite any authority to show that correlation evidence fails to clear the low bar to constitute substantial evidence, however. Because petitioner does not provide any support for this general assertion, we decline to address it. *See Bardoff v. United States,* 628 A.2d 86, 90 n.8 (D.C. 1993) ("Appellants provide no supporting argument in their brief for this general assertion; therefore, we consider [it] to be abandoned."); *Acott*, 135 A.3d at 93 n.1.

indicate an association between promoted events and security and noise issues.

3. Live Band Condition

Finally, petitioner argues that the prohibition on live bands was not based on substantial evidence.[22] The main evidence the Board relied on to support its noise concerns was testimony from James McGlade, who owns a business in a "neighboring building that [also] has an apartment." Mr. McGlade testified that music from the prior establishment at 1727 Connecticut Avenue, Bistro Bistro, was "audible in his retail store and the apartment" on the third floor, and that he believed that was due to Bistro Bistro's insufficient insulation. In addition to crediting Mr. McGlade's testimony, the Board found that petitioner failed to present evidence that "the building is appropriately soundproofed" or that petitioner was "undertaking commercially reasonable efforts to soundproof the premises, such as hiring a noise consultant and following their recommendations."

Petitioner argues that Mr. McGlade's testimony constituted insufficient evidence for two reasons. First, it argues that the Board should have heard testimony from a current tenant of the third floor rather than relying on testimony from Mr. McGlade, who had not lived there for years. But the Board is not required to rely on the best evidence; it must simply base its decision on substantial evidence. Testimony by a neighbor about his experience with the most recent occupant of 1727 Connecticut Avenue[23]—both as a resident and more recently as a business owner—was substantial evidence. Second, it argues that the Board should not have relied on Mr. McGlade's speculation that the noise issues were caused by insufficient insulation because he had no personal knowledge or expertise on insulation. The Board did not credit that testimony, however, or cite it as a reason for its noise concerns; it merely recognized that Mr. McGlade "believe[d]" a lack of

---

[22] Petitioner also suggests that the Board lacks the legal authority to consider any noise issues that do not constitute violations of D.C. Code § 25-725. We review this argument de novo and reject it as foreclosed by precedent. *See Panutat*, 75 A.3d at 277 n.12 ("[I]n mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.").

[23] Mr. McGlade testified that the property had been vacant "for about two years" before Signature Lounge moved in.

soundproofing could be the cause of the noise issues. Moreover, the Board did not need to credit that testimony because the mere fact that the noise could be heard from the neighboring apartment gave the Board substantial evidence to support a noise restriction.

In addition, petitioner argues that the Board lacked substantial evidence to find that the premises were not appropriately soundproofed and that petitioner failed to take commercially reasonable steps to soundproof it.[24] To the contrary, petitioner argues, it took appropriate steps to ameliorate noise concerns by moving its speakers farther away from the windows and doors than Bistro Bistro had them. Petitioner's argument would be stronger if the burden were on the protestors to prove Signature Lounge would be inappropriate for the neighborhood; but the burden was on petitioner to prove it was appropriate. D.C. Code § 25-311(a) ("[T]he applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate . . . ."); *id.* § 25-313(a) ("[A]n applicant shall demonstrate to the satisfaction of the Board that the establishment is appropriate for the locality, section, or portion of the District where it is to be located."); *Acott*, 135 A.3d at 88 (holding that the burden is on the applicant, not the protestants, to prove that its establishment would not adversely impact the "peace, order, and quiet of the surrounding area"). The Board acted well within its discretion when it concluded that petitioner failed to meet that burden merely by testifying that it would relocate some speakers—particularly when petitioner did not provide any

---

[24] Petitioner also makes two related arguments. First, it argues that the Board improperly required it to hire a noise consultant without providing notice of such a requirement. Petitioner misreads the Board's order. The Board merely listed hiring a noise consultant as *one* way for petitioner to prove it was "undertaking commercially reasonable efforts to soundproof the premises."

Second, at oral argument, petitioner contended that the live band prohibition was not logically connected to the Board's findings because requiring soundproofing would have been more closely tailored to the Board's concern about the lack of soundproofing. Although we need not address this argument because petitioner does not raise it in its briefs, *see Acott*, 135 A.3d at 93 n.1, we note that the conditions the Board imposes on a license need only be rationally connected—not narrowly tailored—to its findings, *see 2461 Corp.*, 950 A.2d at 52 ("There must be a demonstration in the findings of a rational connection between facts found and the choice made." (cleaned up)).

evidence that this would make a noticeable change in the noise emanating from the establishment.[25] *See Acott*, 135 A.3d at 88 ("[A]s long as an agency's decision is properly supported by substantial evidence in the record, we will not substitute our own judgment for that of the agency even though there may also be substantial evidence to support a contrary decision." (cleaned up)).

III.

For the foregoing reasons, we affirm the Board's order granting Signature Lounge a New Retailer's Class CT License subject to five conditions.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

[25] The Board recognized that petitioner planned to move its speakers. It implied that this measure may be effective at reducing noise from recorded music and DJs, but concluded that it would be less effective at reducing noise caused by live bands. Because petitioner does not argue in its briefs that the Board drew an arbitrary and capricious distinction between live bands and DJs by prohibiting the former and allowing the latter, we do not address this issue. *See Acott*, 135 A.3d at 93 n.1.

Copies emailed to:

Presiding Administrative Law Judge

Copies e-served to:

Richard J. Bianco, Esquire

Caroline S. Van Zile, Esquire
Solicitor General for the District of Columbia