

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Stemless DC, LLC)	Case No.: 21-PRO-00070
t/a Barkada Wine Bar)	License No.: ABRA-115719
)	Order No.: 2021-181
Application for a Substantial Change to a)	
Retailer’s Class CR License)	
)	
at premises)	
1939 12th Street, N.W.)	
Washington, D.C. 20009)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Stemless DC, LLC, t/a Barkada Wine Bar, Applicant

Dan Orlaskey, Commissioner, Advisory Neighborhood Commission
(ANC) 1B, Protestants

Allen Cannon, Designated Representative, on behalf of a Group of Five or
More Residents or Property Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves in part and denies in part the Application for a Substantial Change to a Retailer's Class CR License filed by Stemless DC, LLC, t/a Barkada Wine Bar (hereinafter “Applicant” or “Barkada Wine Bar”). Specifically, the Board grants the request for an entertainment endorsement for the interior of the premises but

denies the request for live entertainment outside because Barkada cannot demonstrate that it can adequately control the transmission of disturbing noise in the sidewalk café area, which is critical when the sidewalk café is located near many residents.

Procedural Background

The Notice of Public Hearing advertising Barkada Wine Bar's Application was posted on July 2, 2021, and informed the public that objections to the Application could be filed on or before September 7, 2021. *ABRA Protest File No. 21-PRO-*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 1B and Group of Five or More Residents and Property Owners (collectively, the "Protestants") have filed protests against the Application. *ABRA Protest File No. 21-PRO-*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on September 28, 2021, where all of the above-mentioned objectors were granted standing to protest the Application. On October 27, 2021, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on March 16, 2022.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC[s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 1B, which indicated that its protest is based on concerns regarding Barkada Wine Bar's impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

At the outset of the hearing, the parties agreed that there were no objections to providing entertainment inside the premises; therefore, the hearing focused solely on the impact of providing entertainment in Barkada's sidewalk cafe. *Transcript (Tr.)*, March 16, 2022 at 15-17, 24.

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Barkada Wine Bar has submitted an Application for a Substantial Change to a Retailer's Class CR License at 1939 12th Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Donnell Butler investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 21-PRO-00070, Protest Report* (Feb. 2022) [*Protest Report*]. The proposed establishment is located in an ARTS-1 zone. *Protest Report*, at 4. Fifty licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 5. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 9. The establishment generally begins operations at 11:00 a.m. and ends operations at midnight during the week and 1:00 a.m. on Friday and Saturday. *Id.* at 10.
3. ABRA investigators visited the establishment on seven separate occasions between January 7, 2022, and February 18, 2022. *Id.* at 11. There were no observations of noise, violations, or other disturbances. *Id.* at 11-12. Barkada's investigative history shows that it received one warning related to failing to file a quarterly report. *Id.* at 12.
4. Barkada is in the bottom of a multistory building. *Transcript (Tr.)*, March 16, 2022 at 39. On one side of the establishment's building is an apartment building. *Id.* A liquor store is located on the other side of the building. *Id.* at 39, 46-47. The street outside Barkada is two lanes wide. *Id.* at 66.

II. Nathan Fisher

5. Nathan Fisher is affiliated with Barkada. *Id.* at 9. He indicated that the establishment is approximately 131 feet from the corner of 1920 12th Street, N.W., which is a residence. *Id.* at 83; *see also Applicant's Exhibit No. 7*. A map further shows that a parking lot is located across the street from the establishment. *Id.* at 83-84; *see also Applicant's Exhibit No. 7*. Currently, the establishment's sidewalk café allows for 15 seats. *Tr.*, 3/16/22 at 103-04. He is not aware of receiving any noise complaints related to the establishment's sidewalk café. *Id.* at 104.

III. Allen Cannon

6. Allen Cannon lives in a condominium near the establishment and has lived in the neighborhood for over a decade. *Id.* at 106. Based on his observations, the area around the establishment is highly residential and features approximately 50 residential units. *Id.* at 107. Some residents are located only 100 feet away from Barkada. *Id.* at 112.
7. Mr. Cannon indicated that Barkada usually does not create disturbances. *Id.* Nevertheless, on one occasion, on June 29, 2021, while in his home, he heard a commotion related to an event held at Barkada at around 8:30 p.m. *Id.* at 108. Specifically, the establishment appeared to be hosting a bingo game and had a device amplifying someone's voice. *Id.* at 110. There was also a large crowd gathered around the establishment's sidewalk

café that obstructed traffic. *Id.* at 110-11. Inside his unit, he could hear shouting coming from Barkada’s sidewalk café. *Id.* at 111.

8. Mr. Cannon is not aware of any other establishment in the neighborhood that hosts live outdoor entertainment. *Id.* at 113, 120.

IV. Ryan Heiling

9. Ryan Heiling lives in the same building as Barkada. *Id.* at 129. He indicated that there are approximately 15 residential units in his condominium building. *Id.* at 135. On June 29, 2021, Mr. Heiling was in his home. *Id.* at 129. Inside his home, he could hear the event operating out of Barkada’s sidewalk café. *Id.* In particular, he could hear people using microphones, cheering, and other noises related to the event in his home at a very loud level. *Id.* at 130. When he looked at the event, he observed performers and other people on the sidewalk near the establishment. *Id.* at 131. He further noted that there appeared to be no noise mitigation features in the sidewalk café area. *Id.* at 137.

V. Alan Cohan

10. Alan Cohan lives in a residence near Mr. Cannon. *Id.* at 141. He had similar concerns regarding noise as expressed by Mr. Cannon and Mr. Heiling. *Id.* at 142-43. He is concerned that the addition of entertainment in the sidewalk café will obstruct pedestrian traffic on the sidewalk. *Id.* at 144-45.

VI. ANC Commissioner Dan Orlaskey

11. ANC Commissioner Dan Orlaskey does not believe outdoor entertainment in the neighborhood is appropriate at Barkada or any other establishment in the area. *Id.* at 159. Commissioner Orlaskey is not aware of any other establishment that has live entertainment outside. *Id.* at 160. He is further concerned because there are no buildings or other architectural features that would prevent the transmission of noise throughout the neighborhood. *Id.* at 161.

CONCLUSIONS OF LAW

12. The Board may approve an Application for a Substantial Change to a Retailer's Class CR License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

I. The Substantial Change Requesting Outdoor Entertainment is Inappropriate for the Neighborhood.

13. The Board denies the request to permit outdoor entertainment because it will likely create disturbing noise that will bother residents in their homes. Under the appropriateness test, “the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located” D.C. Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2022). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep’t of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children’s Defense Fund v. District of Columbia Dep’t of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

14. In determining appropriateness, the Board must consider whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); see *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in 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.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant’s efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder’s future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee’s “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant’s efforts to “alleviate” operational concerns); *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia’s Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

a. The request for outdoor entertainment will have a negative impact on peace, order, and quiet.

15. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); see also D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider

“noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2022).

16. In this case, the request for outdoor entertainment is inappropriate for several reasons. First, outdoor entertainment is generally not appropriate for a highly residential area because the probability of disturbing residents is high. *Supra*, at ¶ 6. Second, in this case, there are no architectural features such as walls or buildings that will naturally prevent the transmission of sound in and around the sidewalk café. *Supra*, at ¶ 11. Finally, based on the conduct of a prior event at the establishment, the Board has no basis to believe that Barkada can adequately or reasonably prevent the creation of disturbing noise. Therefore, while the Board grants the request for indoor entertainment on the condition that it not produce disturbing noise, the request for outdoor entertainment is deemed inappropriate and shall be denied. D.C. Code § 25-104(e).

ORDER

Therefore, the Board, on this 27th day of April 2022, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class CR License at premises 1939 12th Street, N.W., filed by Stemless DC, LLC, t/a Barkada Wine Bar, on the **CONDITION** that:

1. No amplified sound or music shall be heard outside the premises except for the normal use of the establishment's doors for ingress and egress.
2. The request for live outdoor entertainment is **DENIED** and no live entertainment shall be permitted in the sidewalk café.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
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Donovan Anderson, Chairperson

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Jeni Hansen, Member

Edward S. Grandis, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).