

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

In the Matter of:)	
)	
District Soul Food Restaurant & Lounge)	Case No.: 19-PRO-00078
LLC, t/a District Soul Food & Lounge)	License No.: ABRA-112072
)	Order No.: 2020-140
Application to Renew a)	
Retailer's Class CR License)	
)	
at premises)	
500 8th Street, S.E.)	
Washington, D.C. 20003)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: District Soul Food Restaurant & Lounge, t/a District Soul Food & Lounge,
Applicant

James Loots, Counsel, on behalf of Advisory Neighborhood Commission
(ANC) 6B, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class CR License filed by District Soul Food Restaurant & Lounge, t/a District Soul Food & Lounge (hereinafter "Applicant" or "DSF"). Nevertheless, Advisory Neighborhood Commission (ANC) 6B has presented sufficient evidence that DSF has regularly generated noise that disturbs nearby residents, violates the terms of its settlement agreement, and threatens the peace, order, and quiet of the community. Moreover, it was further shown that DSF has failed to provide commercially reasonable soundproofing for the premises. In light of this showing, the

Board prohibits the emission of amplified sounds that may be heard inside a residence and outside the establishment in accordance with the conditions listed in the Board's order below. The Board further rescinds the cover charge endorsement and will permit DSF to reapply for an endorsement after one year from the date of this Order. The Board reminds the DSF that it has an obligation to follow the terms of its license and its settlement agreement, and that the failure to do so in the future may lead to additional consequences.

Procedural Background

The Notice of Public Hearing advertising District Soul Food & Lounge's Application was posted on March 29, 2019, and informed the public that objections to the Application could be filed on or before June 17, 2019. *ABRA Protest File No. 19-PRO-00078*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 6B has filed a protest against the Application. *ABRA Protest File No. 19-PRO-00078*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 1, 2019, where the above-mentioned objector was granted standing to protest the Application. On September 18, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on January 8, 2020.

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 6B. 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 Protestant, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet 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. 2020).

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. District Soul Food & Lounge (DSF) has submitted an Application to Renew a Retailer's Class CR License at 500 8th Street, S.E., Washington, D.C. *Notice of Public Hearing*.

2. ABRA Investigator Andy De Los Santos investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00078, Protest Report* (Dec. 2019) [*Protest Report*].

3. The proposed establishment is located in a Downtown MU-25 zone. *Protest Report*, at 3. Thirty-four licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.*

4. The establishment's hours of operation are as follows: 10:00 a.m. to 11:00 p.m., Sunday through Wednesday, and 10:00 a.m. to 2:00 a.m., Thursday through Saturday. *Id.* at 7. The establishment's sidewalk café hours end at 11:00 p.m., Sunday through Wednesday, and at midnight, Thursday through Saturday. *Id.* The establishment's entertainment hours end at 11:00 p.m., Sunday through Wednesday, and 1:00 a.m., Thursday through Saturday.

5. ABRA investigators visited the establishment on six separate occasions between October 9, 2019, and December 19, 2019. *Id.* The report indicates that investigators "did not observe any criminal activity, hear any noise," or otherwise observe violations. *Id.* Nevertheless, during Investigator De Los Santos' visit he could hear music emanating from the establishment's window even though the establishment's door was closed. *Transcript (Tr.)*, January 8, 2020 at 25, 30, 32, 41. He indicated that the music emanating from the property was not very loud. *Id.* at 32.

6. The records of the Metropolitan Police Department (MPD) indicate that MPD received seven calls for service between December 2018 and December 2019. *Protest Report*, at 8. The records of ABRA's Noise Task Force indicate that it received 27 noise complaints related to the area around the establishment. *Id.* at 8-9; *Tr.*, 1/8/20 at 26. DSF's investigative history indicates no convictions related to violations of Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations. *Protest Report*, at 9.

7. DSF occupies two floors. *Tr.*, 1/8/20 at 21. The restaurant has a sidewalk café with a maximum capacity of 40 persons. *Id.* The interior has a dining room, kitchen, and bar area. *Id.* at 22. The second floor has a dance floor and a stage. *Id.*

II. David Rountree

8. David Rountree, one of the owners of DSF, indicated that Plexiglas windows have been installed to help mitigate sound emanating from the establishment and to fix the establishment's broken windows. *Id.* at 3, 54, 61. He also has hired a full time sound person and limited entertainment to two nights per week to help keep sound levels down. *Id.* He admitted that music had been emanating from the establishment in the past and that it had been "loud at certain times." *Id.* at 55. He indicated that replacing the broken windows has been difficult because DSF is subject to historical preservation requirements. *Id.* at 53, 55, 61, 97-98. He also admitted that he violated the hours of entertainment provided in his settlement agreement on one occasion by having live music before 4:00 p.m. and on another occasion by staying open later than permitted on New Year's Eve. *Id.* at 80, 90.

III. Edward Reynolds

9. Edward Reynolds, one of the owners of DSF, indicated that noise often comes from the establishment's door because it is a revolving door. *Id.* at 3, 56. He noted that the revolving door is connected to a vestibule with a separate door, which means both doors are likely open or being used when noise exits through the doors. *Id.* at 58. He further admitted that the interior of the establishment is exposed and contains no drywall or insulation. *Id.* at 59.

IV. Chairperson Chander Jayaraman

10. Chander Jayaraman serves as the Chairperson of Advisory Neighborhood Commission (ANC) 6B. *Id.* at 113. In prior interactions with the ownership, they indicated that the establishment would focus on serving soul food and seafood dishes. *Id.* at 113. They further indicated that the establishment would offer jazz performances on the second floor. *Id.*

11. The Chair discussed the establishment's settlement agreement. *Id.* at 116-17. The establishment has a settlement agreement in effect. *Protest Report*, at Exhibit No. 14. According to the settlement agreement, live entertainment is restricted to the second floor. *Id.* at § 2(a). *Protest Report*, at Exhibit No. 14, § 2(a). In § 2(b), the settlement agreement states that the

Applicant shall sound proof the windows on the E Street side of the Premises by hanging two panels of sound deadening drapes per window and installing high back booths covering the lower portion of each window so that the music and patrons' voices heard outside the premises will strictly comply with D.C. Official Code § 25-725.

Id. at § 2(b). Chairperson Jayaraman indicated that § 2(b) serves an important purpose because the E Street side of the establishment is closest to residences. *Tr.*, 1/8/20 at 117.

12. The settlement agreement further requires in § 6 that "No objectionable noises, sounds . . . or other conditions that are publicly observable or emitted beyond the immediate proximity of the Premises will be created by Applicant." *Protest Report*, at Exhibit No. 14, § 6. The section further states that DSF will "make architectural improvements to the property and take all necessary actions to ensure that music, noise and vibration from the Establishment are not audible outside the establishment at any time." *Id.* The same section applies § 25-725 to all residential dwellings regardless of zoning. *Id.* The agreement further requires in pertinent part that the Applicant will keep its windows and doors closed when playing music. *Id.*

13. In response to noise complaints related to the establishment, the ANC has provided DSF with a notice to cure the noise issues caused by the establishment as required by the settlement agreement. *Id.* at 123. The notice was delivered on May 13, 2019. *Id.*

V. Katherine Szafran, Amber Jones, and Other Neighbors

14. Katherine Szafran lives on E Street, S.E., and lives across the street, "catty-corner" from DSF. *Id.* at 137, 139-40, 152. She has experienced numerous noise issues from DSF during

2019. *Id.* at 141. Specifically, she regularly hears “heavy bass” sounds; “drum” sounds; and full bands inside her home coming from the establishment. *Id.* at 141, 144. Music from the establishment can also be heard in her backyard. *Id.* at 143. She noted that the music becomes disturbing around 9:00 p.m. or 10:00 p.m. *Id.* at 148. She also indicated that she has heard music at around 1:00 a.m. or 2:00 a.m. on the weekends. *Id.* at 148-49. She indicated that she has complained to the ownership of DSF approximately 30 times. *Id.* at 141. She further noted that when walking in the neighborhood she has heard music emanating from the establishment, which can be heard in other parts of the neighborhood. *Id.* at 144. She indicated that the music coming from the establishment interrupts her sleep. *Id.* at 145. Nevertheless, there is no indication that she has filed any noise complaints with ABRA. *Id.* at 147-48.

15. Amber Jones lives on E Street S.E., approximately 125 feet away from DSF. *Id.* at 156. She has regularly heard amplified noise emanating from the establishment over the past year. *Id.* at 156, 159. Specifically, she hears music from the establishment in the street, in front of the establishment, in her front yard, and in her home. *Id.* at 156-58, 163-64. She also hears noise from patrons leaving the establishment. *Id.* at 165. She has complained about the noise to ABRA and her ANC. *Id.* at 158.

16. Other witnesses that live near the establishment expressed similar concerns and experiences regarding amplified noises emanating from the establishment. *Id.* at 169, 172, 175, 185.

CONCLUSIONS OF LAW

17. The Board may approve an Application to Renew 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. 2020). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet 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. 2020).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions that Address the Disturbing Noise Generated by DSF on a Regular Basis.

18. 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. 2020). 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).

19. 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. Noise emanating from DSF is having a negative impact on peace, order, and quiet.

20. “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. 2020). The peace, order, and quiet factor permits the Board to consider whether an establishment is generating little or no sound. *In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 37 (D.C.A.B.C.B. Oct. 1, 2014); see also *Panutat, LLC*, 75 A.3d at 276-77 n. 12. In determining the appropriate level of sound, the drafters of Title 25 intended that the Board determine the appropriate amount of sound in light of the reasonable expectations of residents. See 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).¹

21. In *T.L.*, the court determined that “[t]he government has a substantial interest in protecting its citizens from unwelcome noise” *In re T.L.*, 996 A.2d 805, 812 (D.C. 2010) (quotation marks removed). This interest is “. . . greatest when [the] government seeks to protect the well-being, tranquility, and privacy of the home. *Id.* As a result, the government has a right to

¹ In another part of the report, the Committee advised that the District’s noise laws were based on a “reasonable man standard.” 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, 27 n. 5 (Nov. 12, 1986).

prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep. *Id.* at 813 (quotation marks removed). In *Ozio*, the Board determined that it was unreasonable for the licensee to have its amplified music emanate into a residence approximately 100 feet away from the establishment. *Ozio*, Board Order No. 2014-366 at 2.

22. It is uncontested that DSF has regularly failed to prevent disturbing amplified music and bass sounds from being heard outside in the vicinity of the establishment, and around and within nearby residents’ homes. *Supra*, at ¶¶ 5, 8-9, 14-16. This violates the peace, order, and quiet of the neighborhood and DSF’s settlement agreement, which prohibits “objectionable noises” from being emitted from the establishment. *Supra*, at ¶¶ 12. While DSF indicates that it has installed new windows, DSF has not provided sufficient evidence that these new windows are effective or cure the noise at issue. *Supra*, at ¶ 5. Indeed, in light of the failure provide interior soundproofing despite offering entertainment on a regular basis, the Board is further persuaded that DSF has not taken commercially reasonable steps to soundproof the premises. *Supra*, at ¶ 5. This constitutes an inappropriate impact on the community.

23. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying “[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license”). Under § 25-104(e), the Board is granted the authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood]” D.C. Code § 25-104(e).

24. In order to address the noise issues, the Board imposes a number of conditions on the license. First, in order to protect the peace and quiet of nearby residents, the Applicant is prohibited from generating any amplified music, amplified bass, or other amplified sounds that may be heard in a residence with its windows and doors closed. Second, in order to enforce the settlement agreement, no amplified music, amplified bass, or other amplified sounds shall be heard outside the premises except when the establishment’s door is being immediately used for ingress and egress. Third, in light of the failure to control noise when entertainment is provided and the failure to provide commercially reasonable soundproofing, the cover charge endorsement is rescinded. Based on DSF’s record, which shows a lack of serious prior violations, DSF will be permitted to reapply to add a cover charge to its entertainment endorsement in one year. Under these conditions—where future noise violations may be charged as primary tier violations of Board conditions rather than secondary tier violations of the establishment’s settlement agreement—the Board is satisfied that the Application may be deemed appropriate. D.C. Code § 25-823(a)(6); 23 DCMR § 800 (West Supp. 2020).

II. The Establishment’s Record of Compliance Merits Renewal.

25. Under § 25-315, “[t]he Board shall consider the licensee’s record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license

during the period of licensure, including the terms of a settlement agreement.” D.C. Code § 25-315(b)(1). In this case, the Applicant’s failures to strictly follow its settlement agreement and other admitted violations are not so severe that they merit the denial of Application.

III. The Application Satisfies All Remaining Requirements Imposed by Title 25.

26. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board's regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2020). Accordingly, based on the Board’s review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 11th day of March 2020, hereby **APPROVES** the Application to Renew a Retailer's Class CR License at premises 500 8th Street, S.E., filed by District Soul Food Restaurant & Lounge, t/a District Soul Food & Lounge, subject to the following **CONDITIONS**:

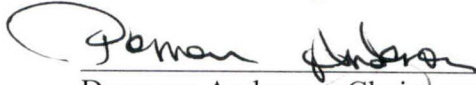
1. The Applicant shall refrain from generating any amplified music, amplified bass, or other amplified sounds on the premises that may be heard in a residence with its windows and doors closed;
2. The Applicant shall refrain from generating any amplified music, amplified bass, or other amplified sounds on the premises that may be heard outside the premises except when the establishment’s door is being immediately used for ingress and egress; and
3. The Applicant’s authorization to charge a cover charge is **RESCINDED** and shall be removed from the Applicant’s current license. The Applicant shall refrain from charging a cover charge while it lacks a cover charge endorsement. A cover charge is defined in the District’s alcohol laws as “fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.” 23 DCMR § 1002.1 (West Supp. 2020). The Applicant shall be permitted to reapply in one year. The parties are advised that the Applicant’s compliance with the District’s alcohol laws and its settlement agreement, the frequency of noise disturbances in the surrounding community, and the Applicant’s future efforts to soundproof the establishment may be factors in granting the application when filed by the Applicant.

The Applicant is **ADVISED** that ABRA makes free training available to licensees regarding compliance with Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations. The next scheduled training is April 30, 2020, from 2:00 p.m. to 4:00 p.m. The Applicant and its staff are encouraged to attend these free trainings.

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




Donovan Anderson, Chairperson



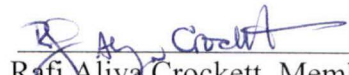
James Short, Member



Bobby Cato, Member



Rema Wahabzadah, Member



Rafi Aliya Crockett, 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).