

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

In the Matter of:)	
)	
Shoreditch Cooperative, LLC)	Case No.: 18-PRO-00024
t/a Duke's Groceries)	License No: 092298
)	Order No: 2018-510
Application for a Substantial Change to a)	
Retailer's Class CR License)	
)	
at premises)	
1513 17 th Street, N.W.)	
Washington, D.C. 20036)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
James Short, Member
Donald Isaac, Sr., Member
Rema Wahabzadah, Member

ALSO PRESENT: Shoreditch Cooperative, LLC, t/a Duke's Grocery, Applicant

Daniel Kramer, Managing Partner, on behalf of the Applicant

Robin Diener, President, and Abigail Nichols, on behalf of the Dupont Circle Citizens Association (DCCA), 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 for a Substantial Change to a Retailer's Class CR License filed by Shoreditch Cooperative, LLC, t/a Duke's Grocery, (hereinafter "Applicant" or "DG"), which requests later operating hours for its sidewalk café.

Procedural Background

The Notice of Public Hearing advertising DG's Application was posted on March 2, 2018, and informed the public that objections to the Application could be filed on or before April 17, 2018. *ABRA Protest File No. 18-PRO-00024*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that the Dupont Circle Citizens Association (DCCA) has filed a protest against the Application. *ABRA Protest File No. 18-PRO-00024*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on May 7, 2018, where the above-mentioned objector was granted standing to protest the Application. On June 6, 2018, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on July 11, 2018. The Board also received Proposed Findings of Fact and Conclusions of Law from the DCCA, which the Board considered as part of its final decision.

Based on the issues raised by the DCCA, the Board may only grant the Application if the Board finds that 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. 2018).

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. DG has submitted an Application for a Substantial Change to a Retailer's Class CR License at 1513 17th Street, N.W., Washington, D.C. *Notice of Public Hearing*. DG has requested that its sidewalk café's hours of operation be extended so that it can operate from 8:00 a.m. to midnight, Sunday through Thursday, and 8:00 a.m. to 1:00 a.m. on Friday and Saturday. *Id.* DG further requests that its sidewalk café's hours of alcohol sale, service, and consumption be extended to midnight from Sunday to Thursday, and 1:00 a.m. on Friday and Saturday. *Id.*
2. ABRA Investigator DaVon Todd investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 18-PRO-00024, Protest Report*. The front of the establishment faces 17th Street, N.W. *Id.* at 8. The establishment has bar space and patron seating on the first and second floor, while DG uses the third floor as an office. *Id.* at 8.
3. DG's sidewalk café currently begins operations at 10:00 a.m. seven days per week. *Id.* at 2. On Friday and Saturday, the sidewalk café currently closes at midnight, while on all other days the sidewalk café ends operations at 11:00 p.m. *Id.*

4. DG is located in a Mixed Use (MU) 18 zone. *Id.* at 4. There are no schools or public libraries within 400 feet of DG. *Id.* at 7. Stead Recreation Center and a day care affiliated with Foundry United Methodist are located within 400 feet of DG. *Id.* at 7-8. The Protest Report indicates that 31 licensed establishments operate within 1,200 feet of DG. *Id.* at 5. Seven of the establishments have outdoor seating in private summer gardens, while eleven have outdoor seating in public space in sidewalk cafés. *Id.* at 7. Several establishments near DG have outdoor seating hours that end later than DG’s current hours, including the Hotel Tabard Inn, The Darcy Hotel, Dupont Italian Kitchen, Cobalt, Floriana, and Annie’s Paramount Steak House. *Id.* at 7. The report further indicates that DG has hired Good Friends to provide trash services two times per week. *Id.* at 9.

5. ABRA’s records show no noise complaints between June 2017 and July 2018. *Id.* at 11. The Metropolitan Police Department (MPD) reported no calls for service related to DG were made between June 2017 and June 2018. *Id.* Finally, DG’s violation history shows a single \$250 fine for failing to have a licensed manager present in 2016 and a warning related to the posting of signs in 2017. *Id.*

I. ABRA Investigator DaVon Todd.

6. Investigator Todd and other investigators observed DG on eight occasions between June 14, 2018, and July 2, 2018. *Id.* at 9-10. During this observation period, the investigators noticed no issues regarding noise, trash, or other issues despite the sidewalk café being in use. *Id.*

7. During his visit to the establishment, Investigator Todd observed a trash compactor located in the rear. *Transcript (Tr.)*, July 11, 2018 at 43. He also did not observe any noise violations or other disruptive conduct during his visits to the establishment. *Id.* at 52.

II. Randy Downs

8. Randy Downs lives approximately half a block away from DG. *Id.* at 68. He also serves as an elected Commissioner on Advisory Neighborhood Commission 2B. *Id.* In his experience, the 17th Street, N.W., area is known as a “lively” mixed-use neighborhood with many dining establishments that have outdoor seating. *Id.* at 71-72. In his experience, DG has been a “valued member of the community.” *Id.* at 72.

9. He noted that on April 11, 2018, the ANC voted to support DG’s application. *Id.* at 73. He indicated that this support was based on many factors, including DG’s history, participation in a trash compactor program, and the support of its neighbors. *Id.* at 74-75, 78.

III. Daniel Kramer

10. The owner, Daniel Kramer, noted DG is not a rowdy establishment. *Id.* at 97. Over a five year period, DG has not received any noise complaints regarding its activities and only plays ambient music inside the premises. *Id.* at 96-97. The establishment can mount a television outside, which it previously used to show World Cup games during the daytime. *Id.* at 113. He further noted that DG does not require security guards or conduct identification checks outside

the premises, as nightclubs tend to do. *Id.* at 97. There has never been a fight inside the premises and DG does not encourage overservice of alcoholic beverages. *Id.* at 98.

11. Mr. Kramer further noted that DG's neighborhood is a "busy commercial corridor" that is active during the day and at night. *Id.*

IV. ANC Commissioner Nick Delledonne

12. ANC 2B Commissioner Nick Delledonne has lived in the community since 1992. *Id.* at 115. He voted against the ANC's resolution in support of DG. *Id.* at 116. Based on his experience as a resident, both residents and businesses are satisfied with the current noise situation in the neighborhood. *Id.* at 117. He is concerned that approving a request for later hours will encourage more businesses to request later hours. *Id.* at 118, 125-126, 130.

13. Commissioner Delledonne noted that the sidewalk café possessed by Annie's Paramount Steak House is completely enclosed. *Id.* at 135. The sidewalk café possessed by Dupont Italian Kitchen is not enclosed. *Id.* at 136.

V. Phil Carney

14. Phil Carney lives on 17th Street, N.W., and has lived in the neighborhood for approximately 40 years. *Id.* at 143.

15. Mr. Carney indicated that ambient noise from the street forces him to keep his windows closed in the evening. *Id.* at 144. He further indicated that he has to use a white noise machine to sleep due to the noise of people on the street and in sidewalk cafés. *Id.* Nevertheless, Mr. Carney could not confirm that any noise from the sidewalk café maintained by DG was entering his home. *Id.* at 149. He also noted that his home faces Church Street, N.W., and does not face DG. *Id.* at 149-50.

VI. Caroline Mindel

16. Caroline Mindel lives in the neighborhood. *Id.* at 152. She indicated that she regularly hears people yelling in the street and playing music loudly in their vehicles while in her home. *Id.* at 154. Ms. Mindel indicated that she is concerned that if the request is granted, other establishments will ask for extended outdoor hours. *Id.* at 158.

VII. Allen Greenberg

17. Allen Greenberg lives approximately across the street from DG. *Id.* at 161. He indicated that he has trouble sleeping until after licensed establishments close. *Id.* at 163. He further believes that the noise level of the neighborhood gets louder as it gets later. *Id.* at 164.

VIII. Robin Diener

18. Robin Diener is the President of the Dupont Circle Citizens Association (DCCA). *Id.* at 172. The DCCA believes that ending outdoor seating hours at 11:00 p.m. and midnight is reasonable for the neighborhood. *Id.* at 176.

IX. Abigail Nichols

19. Abigail Nichols participates in the DCCA. *Id.* at 197. She indicated that there are many residents in the neighborhood. *Id.* at 198. She indicated that the neighborhood has a high level of ambient noise. *Id.* at 199. Nevertheless, she is not aware of any noise complaints involving DG. *Id.* at 210-11.

CONCLUSIONS OF LAW

20. 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. 2018). Specifically, the question in this matter is whether granting 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. 2018)

I. DG's Request is Appropriate For The Neighborhood.

21. 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. 2018). 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).

22. 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. DG will not have a negative impact on peace, order, and quiet.

23. “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. 2018).

24. DG’s record of operation merits finding that its proposed expansion of hours will not have a negative impact on the peace, order, and quiet of the neighborhood. There is no evidence that MPD has received a call for service related to DG in the past year and no noise complaints have been filed against the establishment. *Supra*, at ¶ 5. Investigators visiting DG observed no issues regarding peace, order, and quiet, despite being located in a busy commercial corridor. *Supra*, at ¶¶ 6-7, 11. DG also has the support of ANC 2B. *Supra*, at ¶ 8. Finally, there is no evidence that any resident is currently disturbed by DG’s operations or its customers.¹ Consequently, there is no reasonable basis for denying the request or making a finding that the change will have a negative impact on the neighborhood.

25. The Board notes that it considered the DCCA’s arguments against DG’s request, but did not find these arguments persuasive. First, DG’s violation record shows no major violations or a pattern of illegality; therefore, there is no basis for denying the present request based on DG’s violation history. *Supra*, at ¶ 5. Second, the mere fact that other licensees may want to apply for later hours or be encouraged to do so by granting DG’s request, is not relevant to a decision regarding appropriateness. *Supra*, at ¶¶ 12, 16. Third, there is no evidence that DG’s current

¹ The Board does not find the *Panutat* case analogous to the present matter because there is no evidence that DG’s patrons are involved in any alleged disturbances; as a result, it is “speculative” to presume that any added patrons attracted to DG because of its extended hours will “bring more noise to the neighborhood.” *Panutat, LLC v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 (D.C. 2013). The Board also notes that there is no compelling evidence that nearby neighbors will be disturbed by DG’s expanded hours, which was the rationale for limiting outdoor seating hours in other cases. *See e.g., In re Big Bear Café, Big Bear Café*, 17-PRO-00036, Board Order No. 2018-034, ¶ 43 (D.C.A.B.C.B. Jan. 31, 2018) (saying conditions warranted because the café was located in a “highly residential neighborhood.”); *In re 3313 11th Hospitality, LLC, t/a To Be Determined*, Case No. 10-PRO-00139, Board Order No. 2011-170, ¶ 61 (D.C.A.B.C.B. Apr. 20, 2011) (saying conditions warranted where “multiple bedroom windows” would be located only a few feet from the proposed outdoor seating area).

operations contribute or cause any issue with noise experienced in the neighborhood; as a result, there is no reasonable basis for presuming that if DG is permitted to operate later that it will create a noise problem or contribute to any existing noise problem. *Supra*, at ¶ 17.

26. Finally, the DCCA alleged that the television set up violated District regulations; nevertheless, no cite to the specific provision at issue was given. *Protestant's Proposed Findings of Fact and Conclusions of Law*, ¶ G. Furthermore, there is no evidence that DG has been cited for this alleged infraction or that the use of the television annoyed any of DG's neighbors or otherwise caused a disturbance. As a result, the Board has no reasonable basis for holding the matter of the television against DG in this case.

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

27. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the DCCA in its 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. 2018). 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.

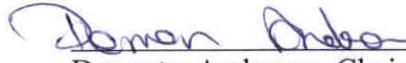
ORDER

Therefore, the Board, on this 12th day of September 2018, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class CR License at premises 1513 17th Street, N.W., filed by the Applicant.

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.

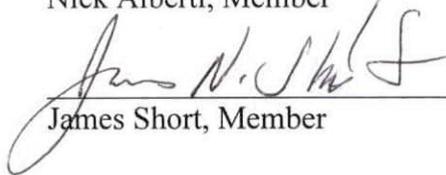
District of Columbia
Alcoholic Beverage Control Board



Donoyan Anderson, Chairperson



Nick Alberti, Member



James Short, Member

Donald Isaac, Sr., Member

Rema Wahabzadah, 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).