

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

In the Matter of:)		
)		
Express Convenience Store, LLC)	Case No.:	19-PRO-00085
t/a Express Convenience Store)	License No:	ABRA-113544
)	Order No:	2019-700
Application for a New)		
Retailer's Class B License)		
)		
at premises)		
2031 Benning Road, N.E.)		
Washington, D.C. 20002)		

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member

ALSO PRESENT: Express Convenience Store, LLC, t/a Express Convenience Store,
Applicant

Tadele Bayeta, on behalf of the Applicant

Helina Mohammad, Certified Amharic Interpreter

Melissa Yeakley and William Knudsen, Designated Representatives, on behalf of Friends of Kingman Park, Protestant

A. Sydelle Moore, Commissioner, Advisory Neighborhood Commission (ANC) 5D, on behalf of the Langston Civic Association (LCA) and Advisory Neighborhood Commission 5D, Protestants

Tamara Blair, Lora Nunn, Adrienne Wright, and Rick Tillery, Designated Representatives, on behalf of a Group of Five or More Residents and Property Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) denies the Application for a New Retailer's Class B License (Application) filed by Express Convenience Store, LLC, t/a Express Convenience Store, (hereinafter "Applicant" or "Express") for 2031 Benning Road, N.E., Washington, D.C. The Board denies the Application based on evidence that this part of Benning Road, N.E., currently suffers from ongoing activity related to crime, substance abuse, drug dealing, and alcohol related litter, which has required the Metropolitan Police Department (MPD) to provide additional police resources to the community. Under these circumstances, the Board is persuaded that approving the Application would add fuel to the fire and exacerbate these ongoing issues. Therefore, the Application must be deemed inappropriate and denied.

Procedural Background

The Notice of Public Hearing advertising the Application was posted on May 17, 2019, and informed the public that objections to the Application could be filed on or before July 1, 2019. *ABRA Protest File No. 19-PRO-00085*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 5D, Friends of Kingman Park (FOKP), the Langston Civic Association (LCA), and a Group of Five or More Residents and Property Owners (collectively, the "Protestants") have filed protests against the Application. *ABRA Protest File No. 19-PRO-00085*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 15, 2019, where all of the above-mentioned objectors were granted standing to protest the Application. On August 14, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on September 25, 2019.

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 5D. 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 Board finds that 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. 2019).

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. Express has submitted an Application for a New Retailer's Class B License at 2031 Benning Road, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Earl R. Jones, Jr., investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00085, Protest Report* (Sept. 2019) [*Protest Report*]. The proposed establishment is located in a MU-4 zone. *Protest Report*, at 5. Four licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 6. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* According to the public notice, the store's proposed hours of operation are from 8:00 a.m. to 10:00 p.m. *Id.* at 8.
3. MPD reports that Express's proposed location had 26 calls for service in the past year. *Transcript (Tr.)*, September 25, 2019 at 30. Pertinent to this matter, eight calls related to disorderly conduct, nine calls related to reported thefts, and two calls related to the destruction of property. *Id.* at 31.
4. ABRA Investigator Jones entered the premises during a visit to the area. *Id.* at 36. Inside, he observed that the business is located in a three story building that is attached to other buildings. *Id.* The store is located on the first level. *Id.* The store has a plexiglass booth for the person superintending the store. *Id.* Currently, the store's shelves are stocked with candy, drinks, snack products, and other convenience items. *Id.* at 36-37, 67. The investigator noted that it was difficult to locate because no trade name was posted on the premises. *Id.* at 39. He also observed that Silverman's Liquor, a Retailer's Class A license, was located next door on the corner. *Id.* at 42.

II. Tadele Bayeta

5. Tadele Bayeta is the owner of Express. *Id.* at 61. He plans to operate the store by himself. *Id.* at 69. He stated that he would operate in accordance with the law. *Id.* at 61. He intends to call the police when he witnesses crimes and will encourage loiterers to leave. *Id.* at 64-65. He also indicated that the store will use security cameras. *Id.* at 66.

III. William Knudsen

6. William Knudsen lives approximately three blocks away from Express' proposed location. *Id.* at 73. He believes that crime and substance abuse are problems in the area. *Id.* at 73, 77. Based on his experience as a resident, he regularly observes loitering, drug dealing, and

unconscious persons in the neighborhood and by the store. *Id.* at 73, 77, 86. He also regularly finds discarded alcohol containers on the streets. *Id.*

IV. Lisa White

7. Lisa White is the current president of the Friends of Kingman Park Civic Association. *Id.* at 87. Her organization has concerns about violence, loitering, and the oversaturation of alcohol retail outlets in the community. *Id.* at 89. She also has observed that the store is located in an area that MPD targeted for illegal activity, including drug use, and where MPD has provided extra police resources. *Id.* at 89-91. She further noted that MPD began monthly “safety walks” as a crime deterrent during the summer. *Id.* at 90, 91.

V. Kathryn Walsh

8. Kathryn Walsh lives in ANC 5D. *Id.* at 109. As a resident, she has observed a lot of broken glass and litter on the streets. *Id.* at 111, 113.

VI. Juanita Diggs

9. Juanita Diggs serves as the President of the Langston Civic Association. *Id.* at 134. The owner attended a meeting at the association but did not present any plan to address potential security issues. *Id.* at 136.

CONCLUSIONS OF LAW

10. The Board may approve an Application for a New Retailer's Class B 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. 2019). 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. 2019).

I. The Establishment is Inappropriate for the Neighborhood.

11. 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. 2019). 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).

12. 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 presence of Express would likely have a detrimental impact on peace, order, and quiet.

13. “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. 2019).

14. The Board denies the Application because the presence of an additional alcohol retail outlet on Benning Road, N.E., will likely exacerbate negative conditions in the community. Currently, residents endure crime, drug dealing, and unconscious persons in the streets on a regular basis. *Supra*, at ¶ 6. There is also a constant presence of alcohol related litter on the ground. *Id.* Crime in the community is so bad that MPD is providing extra police resources and engaging in safety walks. *Supra*, at ¶¶ 7-8. The Applicant further made no compelling case that refuted this state of affairs or otherwise demonstrated that the store would not exacerbate these existing issues. Under these circumstances, the Board is left to conclude that the presence of Express would simply create a gathering spot for loiterers and encourage more of the same negative activities currently plaguing the community.

ORDER

Therefore, the Board, on this 23rd day of October 2019, hereby **DENIES** the Application for a New Retailer's Class B License.

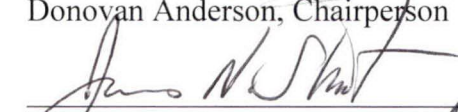
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

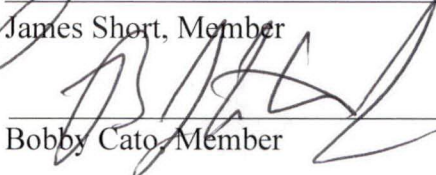
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



James Short, Member



Bobby Cato, Member

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).