

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

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In the Matter of:	)	
	)	
	)	
Brother’s Burger Bar, LLC	)	Case No.: 20-PRO-00006
t/a Felicity Lounge	)	License No.: ABRA-112502
	)	Order No.: 2021-221
Application for a Substantial Change to a	)	
Retailer’s Class CR License	)	
	)	
at premises	)	
707 H Street, N.E.	)	
Washington, D.C. 20002	)	

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

**ALSO PRESENT:** Brother’s Burger Bar, LLC, t/a Felicity Lounge, Applicant

Joel Kelty, Commissioner, Advisory Neighborhood Commission (ANC)  
6C, Protestants

Angelle Baugh, Designated Representative, A Group of Five or More  
Residents and Property Owners, Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) approves the Application for a Substantial Change to a Retailer’s Class CR License filed by Brother’s Burger Bar, LLC, t/a Felicity Lounge (hereinafter “Applicant” or “Felicity Lounge”) and approves the conversion of the license to a Retailer’s CT License subject to conditions based on compelling evidence that noise generated by the establishment may be heard in residents’ homes, rowdiness by persons in

the vicinity of the establishment regularly cause disturbances, the establishment has not abided by the prohibition on charging a cover charge, the establishment is illegally permitting smoking, and its delivery trucks are interfering with traffic in the alley. In light of this determination, the Board will generally require the establishment to utilize the Metropolitan Police Department Reimbursable Detail, prohibit the emanation of noise from the establishment, prohibit smoking until the appropriate exemption is obtained from the Department of Health, require the filing of a security plan, and require use the neighborhood's commercial loading zone, as described below.

### ***Procedural Background***

The Notice of Public Hearing advertising Felicity Lounge's Application was posted on December 6, 2019, and informed the public that objections to the Application could be filed on or before January 21, 2020. *ABRA Protest File No. 20-PRO-00006*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 6C and a group of residents and property owners (collectively the "Protestants") have filed a protest against the Application. *ABRA Protest File No. 20-PRO-00006*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on February 3, 2020, where all of the above-mentioned objectors were granted standing to protest the Application. On November 5, 2020, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on March 11, 2021.

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 6C, which indicated that its protest is based on concerns regarding Felicity Lounge'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. 2021).

### **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. Felicity Lounge has submitted an Application for a Substantial Change to a Retailer's Class CR License at 707 H Street, N.E., Washington, D.C., for the purpose of converting the license into a Retailer's Class CT (Tavern) License. *Notice of Public Hearing*. When issuing the license in 2019, the Board imposed various conditions on the license, including limits on the establishment's hours and a prohibition on charging a cover charge. *In re Brothers Burger Bar, LLC, t/a Aroma*, Case No. 19-PRO-00017, Board Order No. 2019-527, 9 (D.C.A.B.C.B. Jul. 10, 2019). The Board previously found conditions warranted where the establishment's business plan focused on providing entertainment and operating as a lounge, and the ownership did not provide adequate evidence of sound mitigation or security. *Id.* at ¶ 17.

2. ABRA Investigator Adam Mitchell investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 20-PRO-00006, Protest Report* (Mar. 2021) [*Protest Report*].

3. The establishment is located in a NC-16 zone. *Protest Report*, at 4. Twenty-five licensed establishments are located within 1,200 feet of the licensed address. *Id.* at 5. There is an elementary school and day care center located within 400 feet of the licensed address, but no recreation centers or libraries. *Id.* at 7. Four bus stops are located near the establishment and the Union Station metro station is less than a mile away from the establishment's premises. *Id.*

4. The establishment's hours of operation are as follows: 11:00 a.m. to 1:00 a.m., Sunday through Thursday, and 11:00 a.m. to 2:00 a.m. on Friday and Saturday. *Id.* at 9. The establishment's hours of alcoholic beverage sales, service, and consumption, as well as entertainment, are the same as its hours of operation. *Id.*

5. ABRA investigators visited the establishment on 22 separate occasions between March 2020 and January 2021. *Id.* at 9. During five of those visits, investigators charged the establishment with violations of rules related to preventing the spread of coronavirus disease 2019 (COVID-19). *Id.* at 9-10.

6. The records of the Metropolitan Police Department (MPD) indicate that MPD received 19 calls for service related to the establishment's address between January 2020 and January 2021. *Id.* at 10. The records of ABRA's Noise Task Force indicate that between December 2019 and January 2021 there were 13 noise complaints related to the establishment. *Id.* at 10.

7. Felicity Lounge's investigative history indicates that several violations have occurred at the establishment since 2019. *Id.* at 11-12. First, in Case No. 20-CIT-0226, the establishment paid a \$1,000 fine for offering entertainment in violation of a mayoral order related to curbing the spread of COVID-19. *Id.* at 12. Second, in Case No. 20-CIT-00434, the establishment paid a \$1,000 fine for failing to comply with rules related to curbing the spread of COVID-19, including rules related to social distancing, mask wearing, bar staffing, and occupancy. *Id.* Third, in Case No. 20-CMP-00106, the establishment's license was summarily suspended for violations of rules related to curbing the spread of COVID-19, including rules related to playing music above a conversational level, prohibitions on entertainment, mask wearing, and social

distancing. *Id.* at 11-12. In order to resolve the summary suspension, the establishment agreed to an offer-in-compromise, which resolved the case by imposing a 25-day suspension of the establishment's alcohol license. *Id.* at 12.

8. Felicity Lounge operates in a glass and brick building that has three floors. *Transcript (Tr.)*, Mar. 11, 2021 at 44. The establishment operates on the ground floor and there are no other tenants in the building. *Id.* A public alley runs behind the establishment. *Id.* at 43. The neighborhood is "predominantly commercial" but the side streets are highly residential. *Id.* at 43-44.

9. During one of his visits to the establishment, Investigator Mitchell observed hookahs and materials related to serving hookah inside the premises. *Id.* at 57, 64. Investigator Mitchell did not observe any indication that Felicity Lounge is authorized by the District of Columbia Department of Health to permit smoking or hookah use inside the establishment. *Id.* at 57.

## **II. Darryl Jones**

10. Darryl Jones is one of the owners of Felicity Lounge. *Id.* at 13. Felicity Lounge is interested in converting the license to a tavern license because the business could not likely meet the District's minimum food sale requirements for restaurants. *Id.* at 84. Nevertheless, the business will still operate a full-service restaurant even if the license conversion is granted by the Board. *Id.* at 84-85.

11. Mr. Jones is not aware of any increase in pedestrian or vehicular traffic accidents related to the operations of Felicity Lounge. *Id.* at 86.

12. Mr. Jones noted that the establishment paid for a neighbor's gutters to be replaced when one of the trash trucks servicing the establishment knocked it down. *Id.* at 88.

## **III. Jeffeary Miskiri**

13. Jeffeary Miskiri owns Felicity Lounge and other establishments in the District of Columbia. *Id.* at 119. He is aware of the concerns raised by members of the community but believes that they are related to activities conducted at other establishments. *Id.* at 116.

## **IV. Joel Kelty**

14. ANC Commissioner Joel Kelty represents ANC 6C in this matter. He indicated that he has received the most complaints from his constituents about Felicity Lounge. *Id.* at 136. One constituent living near the establishment complained that crowds of persons on the 700 block of 7th Street, N.W., regularly loiter in front of homes during the weekend, play loud music, shout, fight, and engage in public urination. *Id.* at 137. The constituent also complained about an increase in rats and vermin in the neighborhood. *Id.* Another constituent living near the establishment complained about public urination, drug activity, and constant trash in the nearby alley. *Id.* at 138. Another constituent living near the establishment complained about loitering, shouting, fighting, and cars playing loud music. *Id.* The constituent also complained about

loitering and litter in the alley. *Id.* Finally, another constituent indicated that due to regular disturbances, he intended to move his family away from the neighborhood. *Id.* at 138-39.

15. Commissioner Kelty also described communications from constituents regarding parking. *Id.* at 139. Many constituents complained that visitors to the neighborhood are occupying unmetered parking spaces. *Id.* Nevertheless, Commissioner Kelty believed the parking situation was exacerbated by the suspension of parking enforcement during the coronavirus pandemic. *Id.* Constituents also complained that vehicles are unlawfully blocking the alley on a regular basis. *Id.* In particular, the Applicant's vehicles are reported to occupy the alley while loading and unloading, performing construction, or picking up garbage despite the existence of a commercial loading zone in the neighborhood. *Id.* at 140

16. Commissioner Kelty noted that advertisements related to the establishment demonstrate that the establishment is charging a cover charge despite the prohibition on its license. *Id.* at 142 *citing Protest Report*, at Exhibit No. 23.

17. Commissioner Kelty further noted, based on advertisements related to the establishment, that Felicity Lounge relies on promoters on a frequent basis and hosts live bands and disc jockeys. *Id.* at 145, 150. Nevertheless, the establishment does not have a security plan or any reimbursable detail. *Id.* at 145

18. He noted that the Department of Health previously issued a suspension order to Felicity Lounge for operating a hookah bar without the required exemption. *Id.* at 133. He further noted that advertisements related to the establishment indicate that offering hookah and tobacco are part of its regular business operations. *Id.*; *see also id.* at 198. Finally, Felicity Lounge is not on the Department of Health's list of establishments exempt from District law prohibiting smoking in certain areas and businesses. *Id.*

19. Based on the ANC's issues and concerns, the ANC requests that Felicity Lounge's application be denied. *Id.* at 143. The ANC further requests that establishment's operations be reduced to 11:00 p.m., Monday through Thursday, and midnight all other days, and that the Board rescind the summer garden and entertainment endorsement. *Id.* The ANC requests that the Board clarify the prohibition on charging a cover charge to include all types of entry fees, whether charged in-person or online. *Id.* at 143-44. The ANC further requests that hookah and tobacco be prohibited pending the issuance of a smoking exemption by the Department of Health. *Id.* at 144. The ANC requests that all delivery vehicles use the commercial loading zone on 7th Street, N.W., and not the alley. *Id.* at 144. Finally, the ANC requests that the Board investigate the ownership to determine the actual ownership of the establishment. *Id.* at 216.

## **V. Alex Ackemann**

20. Alex Ackemann lives in a residence that faces the alley that runs behind Felicity Lounge. *Id.* at 164. He indicated that he hears noise and bass sounds from Felicity Lounge from his residence on a regular basis. *Id.* at 164, 166. He noted that when Felicity Lounge is in operation patrons congregate near his home between 2:00 a.m. and 4:00 a.m. *Id.* at 165. Furthermore, he has witnessed persons fight and shout near his home on a regular basis. *Id.* at 165-67. He also

noted that many people that frequent establishments in the neighborhood park near his home. *Id.* at 166.

21. Mr. Ackemann also discussed trash and litter in the neighborhood. *Id.* at 168. Specifically, he finds discarded bottles, drink, and other garbage near his home on a regular basis. *Id.* at 168-69. Nevertheless, he was not able to attribute the litter to Felicity Lounge or its customers. *Id.* at 169.

#### **VI. Jordan Baugh**

22. Jordan Baugh lives on 7th Street, N.W., and has a home that faces the alley near the establishment. *Id.* at 180. He has observed advertisements showing that the establishment has charged a cover charge or admission fees on numerous occasions. *Id.* at 180-83. He also complained about people loitering outside his home during late night hours. *Id.* at 188. Specifically, on one occasion, people were climbing on top of cars, acting intoxicated, and playing loud music from cars. *Id.* He also observed vehicles park in front of the alley and in front of the fire hydrant near his house. *Id.* at 189.

#### **VII. Angelle Baugh**

23. Angelle Baugh lives in a home that faces the alley near the establishment. *Id.* at 195. She indicated that when Felicity Lounge is open, she regularly hears amplified music from the establishment's disc jockeys and live bands in her home. *Id.* at 195-96. She further noted that Felicity Lounge holds itself out in social media and other advertisements as a nightlife establishment, not a food service establishment. *Id.* at 200.

24. Ms. Baugh also described her observations of people outside her home at night and in the early morning. *Id.* at 205. Specifically, on one occasion, she saw people yelling on the corner of 7th and H Street, N.W., for approximately 30 minutes. *Id.* The crowd dispersed when a police car pulled up to the scene. *Id.* She then observed a person urinate on the sidewalk and on a neighbor's property. *Id.* at 205. She also observed another member of the crowd urinate on her neighbor's property. *Id.* at 206.

#### **VIII. Marc Knobbe**

25. Marc Knobbe lives on the other side of the alley that runs by Felicity Lounge. *Id.* at 76. He has experienced repeated noise issues related to the establishment at his home. *Id.* at 77; *see also id.* at 172-73. Specifically, patrons leaving the establishment between 2:00 p.m. and 3:00 p.m. routinely generate disturbing noise. *Id.* at 77. Moreover, he has heard numerous instances of patrons engaged in violence. *Id.* He has also heard bass sounds coming from Felicity Lounge inside his home. *Id.* at 77, 79.

### **CONCLUSIONS OF LAW**

26. The Board may approve an Application for a Substantial Change to a Retailer's Class CR License and the proposed conversion to a Retailer's Class CT License when the proposed change

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. 2021). 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. 2021).

### **I. Felicity Lounge’s Request is Appropriate for the Neighborhood Subject to Conditions.**

27. 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. 2021). 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).

28. 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 Application will have a negative impact on peace, order, and quiet without the imposition of conditions.**

29. “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. 2021).

30. In 2019, in granting the license and imposing conditions, the Board previously noted insufficient evidence of sound mitigation or security. *Supra*, at ¶ 1. The Board has not been persuaded to depart from these earlier findings where neighbors hear amplified music in their homes and there is a pattern of early morning rowdiness around the nearby residential homes. *Supra*, at ¶¶ 20, 24-25. There is also evidence that Felicity Lounge is not abiding by the prohibition on charging cover charges previously imposed by the Board. *Supra*, at ¶ 16. Moreover, the repeated violations of the COVID-19 rules demonstrate the need for additional restrictions on the operations of the establishment based on the failure to properly superintend the establishment. Therefore, the Board does not find the request appropriate unless additional conditions are imposed on the license.

**b. Except for deliveries, Felicity Lounge is not having a negative impact on residential parking needs and vehicular and pedestrian safety.**

31. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . . .” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents . . . .” 23 DCMR § 400.1(b), (c) (West Supp. 2021). In this case, there are ample public transportation resources in the neighborhood and there is no evidence of accidents. *Supra*, at ¶ 3. Furthermore, the Protestants’ evidence related to the availability of parking is too anecdotal to conclude that there is a lack of parking in the protest area. Nevertheless, delivery vehicles cannot monopolize the shared alley and interfere with the flow of traffic. Therefore, the Board finds in favor of Felicity Lounge on this issue, except in the case of delivery vehicles, which shall be addressed by the imposition of conditions.

**c. Felicity Lounge is not having a negative impact on property values.**

32. In determining whether an establishment is appropriate, the Board must examine whether the establishment is having a negative effect on real property values. D.C. Code § 25-313(b)(1). The Board has noted in the past that the presence of blight may have a negative impact on property values. *In re Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse*, Case No. 13-PRO-0031, Board Order No. 2014-107, ¶ 48 (D.C.A.B.C.B. Apr. 2, 2014) *citing In re Rail Station Lounge, LLC, t/a Rail Station Lounge*,



Case No. 10-PRO-00153, Board Order No. 2011-216, ¶ 62 (D.C.A.B.C.B. Jun. 15, 2011). In this case, there is no substantial evidence of blight. Moreover, the ANC has not presented any compelling data showing a decline in property values or any witness with sufficient expertise to credibly speculate on the future impact of the establishment on property values within the protest area. *See, e.g., Tr.*, 3/11/21 at 207. As a result, the Board deems the Protestants' presentation on this issue too speculative to credit. Therefore, the Board finds in favor of the Applicant on this issue.

## **II. The Board Imposes Conditions on the License.**

33. 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).

34. In this case, the Board imposes a number of conditions to address the appropriateness issues raised by the Protestants. First, based on evidence of regular rowdiness in the vicinity of the establishment, Felicity Lounge shall hire the Metropolitan Police Department Reimbursable Detail whenever a disc jockey or live band performs at the establishment. Second, because Felicity Lounge is operating like a nightclub, the establishment shall file a security plan with the Board. Third, in order to prevent traffic issues in the alley, Felicity Lounge shall only accept deliveries in the neighborhood's commercial loading zone so long as the community loading zone is available. Fourth, the Board prohibits the emanation of amplified sounds from the premises to address noise concerns. And fifth, the Board shall further explain and clarify the prohibition on cover charges.

35. The Board further notes that D.C. Official Code § 25-311 requires all licensees to obtain and maintain all "licenses and permits required by law or regulation for its business." D.C. Code § 25-311(c). In this case, no smoking or hookah may be permitted at the establishment unless the Department of Health provides an exemption from the District's smoking laws. *Supra*, at ¶ 18. Therefore, the Board will order the cessation of all hookah, tobacco, and smoking until the appropriate exemption from the Department of Health is obtained as a condition of licensure.

36. The Board also considered the additional conditions and concerns raised by the Protestants but did not find them required at this time. First, the Board was not persuaded that outdoor seating is inappropriate where there is no substantial evidence that outdoor seating is the source of any problems experienced by the neighborhood. Second, the Board was not persuaded that additional restrictions on hours are warranted where the presence of the MPD Reimbursable Detail will likely have a calming effect on behavior outside the establishment and the Board's noise condition will reduce late night noise issues. Third, the Board was not persuaded that any of the reported trash or litter in the alley is due to the operations of Felicity Lounge; therefore, the Board will not impose conditions related to trash and litter at this time. Fourth, the Board

was not persuaded that denial of the Application was warranted where the requested license matches the establishment's current business model; the violations alleged by the Protestants are not so serious to merit denial; and the conditions imposed by the Board adequately address the concerns raised by the Protestants. Finally, if the Protestants have an issue with the legal ownership of the establishment, the appropriate step would be to file a complaint with the agency's Enforcement Division.

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

37. 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. 2021). 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 28th day of April 2021, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class CR License at premises 707 H Street, N.E., to convert the license to a Retailer's Class CT License filed by Brother's Burger Bar, LLC, t/a Felicity Lounge subject to the following **CONDITIONS**:

1. The Applicant shall hire at least two (2) officers with the Metropolitan Police Department Reimbursable Detail whenever a disc jockey or live band performs at the establishment. The detail shall be hired for at least four hours and run until at least one hour after the end of the Applicant's operations.
2. The Applicant shall file a security plan within 30 days of receipt of this Order and comply with the terms of the establishment's security plan when in operation.
3. The Applicant shall not accept deliveries to the establishment in the nearby alley so long as a commercial loading zone in the neighborhood is available outside the alley.
4. The Applicant shall not generate any amplified sounds or music that may be heard outside the establishment except in the case where doors are opened and closed for ingress and egress.
5. The Applicant or any third party shall not be permitted to charge a cover charge. The term "cover charge" means "a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink" as described in 23 DCMR § 1002.1 (West Supp. 2021). Cover charges include admission fees collected in-person at the door or online through ticket sales if not applied to the purchase of food and drink.

6. The Applicant shall not allow or permit smoking or hookah at the establishment until it applies for, obtains, and files a smoking exemption issued by the District of Columbia Department of Health with the Board.

**IT IS FURTHER ORDERED** that anything not considered by the Board in this Order is deemed irrelevant, the province of a coordinate District agency, do not rise to the level of an appropriateness issue, or constitute insufficiently reliable hearsay to merit consideration by the Board.

**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*  
Key: ac43cb9eb9d5f09e4b730093d1dccc8

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Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com  
*James Short*  
Key: 547ae373820d6e6ac8d1b532d6d2d48ec

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James Short, Member

eSigned via SeamlessDocs.com  
*Bobby Cato*  
Key: 266d3fad7be146d7f4b75bd7917d2bd

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Bobby Cato, Member

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Rema Wahabzadah, Member

eSigned via SeamlessDocs.com  
*Rafi Aliya Crockett, Member*  
Key: b560e91845e1f9e4016155e5c12f91cc

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Rafi Crockett, Member

I dissent from the position taken by the majority of the Board to approve the application.

eSigned via SeamlessDocs.com  
*Jeni Hansen, Member*  
Key: 82172931c5509447491b56f9c2a4189f

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Jeni Hansen, Member

eSigned via SeamlessDocs.com  
*Edward Grandis, Member*  
Key: 5027bda77f9f040ec14adeb52541ce5

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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).