

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

In the Matter of:)	
)	
GFM South Capitol, LLC)	Case No.: 22-PRO-00009
t/a Good Food Markets)	License No.: ABRA-119985
)	Order No.: 2021-290
Application for a New)	
Retailer's Class B License)	
)	
at premises)	
400 South Capitol Street, S.W.)	
Washington, D.C. 20003)	

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

ALSO PRESENT: GFM South Capitol, LLC, t/a Good Food Markets, Applicant

Patricia Janifer, Commissioner, Advisory Neighborhood Commission
(ANC) 8D, 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 New Retailer's Class B License filed by GFM South Capitol, LLC, t/a Good Food Markets (hereinafter "Applicant"; "Good Food Markets"; and "GFM") with conditions to address the illegal parking issues raised by the Protestants, which are described below.

Procedural Background

The Notice of Public Hearing advertising GFM's Application was posted on December 3, 2021, and informed the public that objections to the Application could be filed on or before February 7, 2022. *ABRA Protest File No. 22-PRO-00009*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 8D has filed a protest against the Application. *ABRA Protest File No. 22-PRO-PRO-00009*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on February 28, 2022, where the above-mentioned objector was granted standing to protest the Application. On April 6, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on May 4, 2022.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC[']s issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 8D, which indicated that its protest is based on concerns regarding GFM'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 Protestant, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

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. GFM has submitted an Application for a New Retailer's Class B License at 400 South Capitol Street, S.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Lead Investigator (LI) Felicia Dantzler investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00009, Protest Report* (Apr. 2022) [*Protest Report*]. The proposed establishment is in a MU-5A zone. *Protest Report*, at 3. Two licensed establishments are located within 1,200 feet of the proposed location.

Id. at 4.¹ There are no schools, recreation centers, or day care centers located within 400 feet of the establishment. *Id.* at 4. The establishment’s proposed hours of operation are from 8:00 a.m. to 10:00 p.m. seven days per week. *Id.* at 5. The A-8 Metrobus line operates near the premises. *Id.* at 4. The establishment will have trash collection occur twice per week. *Id.* at 5. GFM has also applied for a tasting endorsement which will allow the provision of samples to customers. *Protest Report*, at Exhibit No. 19.

3. ABRA investigators visited the proposed location on four separate occasions between April 20, 2022, and April 26, 2022. *Id.* While visiting the area, the investigators reported that they observed no noise or loitering. *Id.* LI Dantzler further observed that the location operated as a grocery store. *Id.* at 6. When she visited the establishment, she entered through a vestibule and saw that the business sold grocery items and fresh foods. *Transcript (Tr.)*, May 4, 2022 at 26. She observed that the business was “one of the nicest establishments” she had been in and was “well organized”; “clean”; “well-ventilated”; “well-lit”; and “well-kept.” *Id.* at 35.

4. LI Dantzler further observed that a parking lot associated with the District of Columbia Department of Health shared a driveway with the proposed location. *Id.* at 36.

5. LI Dantzler noted that Mead Liquors and Spar Liquors were located in the protest area. *Id.* at 30. She indicated that both stores had heavy loitering activity nearby. *Id.* at 36, 38.

6. The records of the Metropolitan Police Department (MPD) indicate that MPD received 339 calls for service related to the establishment’s address between January 1, 2021, and April 20, 2022. *Id.* Nevertheless, only four calls related to the grocery store operating at the proposed location and the incidents were limited to shoplifting and unwanted persons. *Id.* at 32.

II. Philip Sambol

7. Philip Sambol testified on behalf of the Applicant. *Id.* at 49. The Applicant’s business model is to operate as a “nonprofit social enterprise” that offers food products in areas that do not have easy access to a full-service grocery store. *Id.* at 62. The business operates similar stores in Ward 5 and Prince George’s County, Maryland. *Id.* at 64. He noted that the store in Ward 5 qualifies as a supermarket under ABRA’s regulations. *Id.* at 70. He indicated that while the business intends to host sampling events, it does not intend to permit regular on-site consumption of alcohol. *Id.* at 50, 54. If granted, only a small part of the store will be dedicated to alcohol sales. *Id.* at 66, 81.

8. He further indicated that the area has parking garages available to the public. *Id.* He is aware that the DHS parking lot is for the use of DHS and Community of Hope parking only. *Id.* at 51. He does not anticipate attracting customers from outside the community. *Id.*

9. Mr. Sambol further indicated that he is prepared to address loitering if it occurs. *Id.* at 52. First, the store will only sell room temperature products, which will discourage the immediate consumption of alcohol outside the store. *Id.* at 56. Second, the management of the

¹ The Board notes that the parties referred to other alcohol outlets during the hearing, but they did not appear in the protest area under review and are not subject to consideration in this proceeding. *Protest Report*, at Exhibit No. 13.

store is willing to advise people not to loiter. *Id.* at 57. Third, the establishment maintains the presence of a security guard from 3:00 p.m. until close. *Id.* at 57, 61. Fourth, GFM is willing to call the police when necessary and when people are consuming on GFM's private property. *Id.* at 58. Fifth, the business will not sell go-cups or cups of ice. *Id.* at 76. He also noted that the grocery store has never had an issue with loitering. *Id.* at 52.

10. Mr. Sambol also described various other security measures taken by the store. First, the store has security cameras. *Id.* at 66. Second, the point-of-sale system will require an employee to enter in the birthdate of the customer before completing the sale. *Id.* at 75. Third, GFM is willing to execute and enforce barring notices against problem persons. *Id.* at 83.

III. Dionne Brown

11. Dionne Brown lives approximately one block from the proposed location. *Id.* at 96. She has lived in the community for approximately 20 years. *Id.* at 96. She also previously served as an Advisory Neighborhood Commissioner for 8D07. *Id.*

12. Ms. Brown testified that the developer of the property agreed that no retail alcohol sales would occur at the proposed location. *Id.* at 96-99. Nevertheless, this statement is purely hearsay and does not prove that such a contract prohibiting alcohol sales exists. Furthermore, no binding contractual or other legal document has been filed into the record. The Board is further aware that the District's alcohol laws provide in § 25-446(b)(3) that "A settlement agreement not approved by the Board shall not be enforced by ABRA or the Board." D.C. Code § 25-446(b)(3). Moreover, the Board, as a legal entity, has not been assigned the jurisdiction or authority of a court of general jurisdiction that can address private agreements between a non-licensee private parties. Finally, there is no indication that GFM was involved in the conversations between Ms. Brown and the developer of the property. *Id.* at 101. Therefore, there is insufficient evidence in the record to determine that alcohol sales have been contractually prohibited at the proposed location, and to the extent such an agreement exists, it may only be enforced by a court of law, not the Board pursuant to § 25-446(b)(3) and the Board's limited jurisdiction.

IV. Thomas Ruffin

13. Thomas Ruffin previously served as a Commissioner with ANC 8D. *Id.* at 114. He also recalls that the developer of the property promised not to permit retail alcohol sales at the proposed location. *Id.* at 114-15. Nevertheless, as noted above, there is insufficient evidence in the record to determine that such an agreement exists.

14. In Mr. Ruffin's experience, the area suffers from drug dealing, violent crime, public alcohol consumption, public intoxication, and public urination. *Id.* at 116; *see also ANC Exhibit No. 1* (Crime statistics). He also has observed litter in the other parts of the community. *Tr.*, 5/4/22 at 116. He noted that on one occasion a window at the store was vandalized and the store put up a wood mural to cover it up. *Id.* at 117-18. He further noted that two mentally ill elderly men were loitering outside the store on one occasion; however, there is no indication in the record that the men were engaged in illegal activity. *Id.*

15. Mr. Ruffin further believes that property values in the neighborhood are suppressed due to the nuisance behavior that occurs in the community. *Id.* at 122.

16. Mr. Ruffin further discussed the parking situation in the neighborhood. *Id.* at 124. He indicated that GFM provides no parking to its customers. *Id.* He indicated that people currently double park in front of the market. *Id.*

V. Rodney Hollins

17. Rodney Hollins previously worked as a detective with MPD and lives near the proposed location. *Id.* at 140-41. He indicated that the area outside the other liquor stores in the neighborhood are high crime areas. *Id.* at 141; *see also ANC Exhibit No. 1* (Crime statistics). Mr. Hollins admitted that he has not observed loitering outside the proposed location. *Tr.*, 5/4/22 at 142.

VI. Absalom Jordan

18. Absalom Jordan was also a commissioner with ANC 8D in the past. *Id.* at 148-49. She indicated that she was present when the developer promised not to permit retail alcohol sales at the proposed location but admitted that the ANC only has verbal evidence. *Id.* at 150. As noted above, this type of evidence is not sufficient to prove such an agreement exists.

CONCLUSIONS OF LAW

19. 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. 2022). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2022).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions.

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

21. 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. GFM will not have a negative impact on peace, order, and quiet.

22. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2022). In *Holiday Liquors*, it was determined that “the mere existence of a store in a high crime area or the mere commission of crime within or outside the store are not sufficient to render its presence inappropriate.” *In re Holiday Family Liquor, Inc., t/a Holiday Liquors*, Case No. 21-PRO-00025, Board Order No. 2021-518, (D.C.A.B.C.B. Sept. 29, 2021). The Board further wrote that “a showing of inappropriateness should be based on evidence that neighborhood problems emanate from, are traceable to, or are otherwise exacerbated by the establishment and its patrons.” *Id. citing LCP, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 897, 903 n. 4 (D.C. 1985).

23. In this case, the Board recognizes that GFM will locate in a high crime area. *Supra*, at ¶ 14. Nevertheless, this fact is not sufficient to render the Application inappropriate as noted in *Holiday Liquors*. Furthermore, while the Protestants presented evidence of loitering and crime, the Protestants provided insufficient evidence that this activity was committed by liquor store patrons. The Board also finds it speculative to presume that the behavior witnessed at liquor stores in the area will transfer to GFM’s business when it will not operate as a liquor store, will not sell spirits, and will retain its character as a grocery store. *Supra*, at ¶ 7. Finally, the Applicant is also taking reasonable measures to discourage loitering and public drinking by not providing refrigerated beverages, posting no loitering signs, maintaining the presence of a

security guard, and refraining from selling go-cups. *Supra*, at ¶ 9. As a result, the Application satisfies the peace, order, and quiet standard.

b. GFM satisfies the residential parking needs and vehicular and pedestrian safety standard so long as it abides by the conditions set by the Board.

23. “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. 2022).

24. In this case, there is no evidence that the establishment’s customers will have a detrimental impact on residential parking where it is unlikely that the Applicant will attract people from outside the community and there is no indication that its current operations interfere with residential parking. On the other hand, the Board credits testimony that the Applicant’s customers frequently engage in double parking; however, this issue can be adequately addressed through the imposition of conditions. *Supra*, at ¶ 16.

c. GFM will not have a negative impact on real property values

25. 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 evidence of blight at the proposed location and the Protestant’s presentation regarding property values was too speculative to merit consideration. Indeed, when faced with vandalism, GFM’s action to install a wood mural over the window demonstrates efforts to combat blight. *Supra*, at ¶ 14. Therefore, GFM satisfies this factor.

II. The Board Imposes Conditions on the License to Address the Illegal Parking Issue.

26. 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).

27. In this case, the Board credited testimony that customers frequently double park and obstruct traffic outside the store. In order to address this situation, the Board will order the store to not sell alcohol to double or illegally parked patrons or to accept deliveries from illegally parked vehicles.

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

28. 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. 2022). 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 29th day of June 2022, hereby **APPROVES** the Application for a New Retailer’s Class B License at premises 400 South Capitol Street, S.W., filed by GFM South Capitol, LLC, t/a Good Food Markets, subject to the following **CONDITIONS**:

1. The Applicant shall not knowingly sell or distribute alcohol to any person illegally or double parked.
2. The Applicant shall not knowingly accept deliveries from persons with illegally parked vehicles.
3. The Applicant shall post signage informing the public that it will not sell alcohol to persons who have illegally or double parked or accept deliveries from illegally parked vehicles.

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

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

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
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Donovan Anderson, Chairperson

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Edward S. Grandis, Member

I dissent from the position taken by the majority of the Board.

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James Short, Member

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Rafi 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).