

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

In the Matter of:)	
)	
)	
Holiday Family Liquor, Inc.)	Case No.: 21-PRO-00025
t/a Holiday Liquors)	License No.: ABRA-091095
)	Order No.: 2021-518
Application to Renew a)	
Retailer's Class A License)	
)	
at premises)	
3505 Wheeler Road, S.E.)	
Washington, D.C. 20032)	

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

ALSO PRESENT: Holiday Family Liquor, Inc., t/a Holiday Liquors, Applicant

Kyung-Hwan Lee, Counsel, on behalf of the Applicant

Salim Adofo, Chairperson, Advisory Neighborhood Commission (ANC)
8C, Protestants

Christopher Conrad, Designated Representative, on behalf of the
Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class A License filed by Holiday Family Liquor, Inc., t/a Holiday Liquors (hereinafter "Applicant" or "Holiday Liquors") where the Applicant has demonstrated it is making reasonable efforts to prevent potential negative impacts on peace, order, and quiet and other appropriateness issues related to its operations. While the Board considered the Protestant's counter evidence, there was insufficient evidence to establish that current issues facing the community are traceable to the operation of Holiday Liquors or that the Applicant's record merits non-renewal.

Procedural Background

The Notice of Public Hearing advertising Holiday Liquors' Application was posted on March 19, 2021, and informed the public that objections to the Application could be filed on or before May 24, 2021. *ABRA Protest File No. 21-PRO-00025*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 8C (Protestant) and Group of Five or More Residents and Property Owners have filed protests against the Application. *ABRA Protest File No. 21-PRO-00025*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on June 14, 2021, where ANC 8C was granted standing to protest the Application, but the group was dismissed. On June 30, 2021, the remaining parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on August 18, 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 8C, which indicated that its protest is based on concerns regarding Holiday Liquors' impact on peace, order, and quiet 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 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. Holiday Liquors has submitted an Application to Renew a Retailer's Class A License at 3505 Wheeler Road, S.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Lead Investigator Earl R. Jones, Jr., investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 21-PRO-00025, Protest Report (Aug. 2021) [Protest Report]*.
3. The proposed establishment is in a Mixed-Use (MU) 3A zone. *Protest Report*, at 4. No licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no public libraries or day care centers located within 400 feet of the establishment. *Id.* The Southeast Tennis & Learning Center, a recreation center, is located at 701 Mississippi Avenue, S.E., within 400 feet of the establishment. *Id.* Holiday Liquors operates from 9:00 a.m. to 11:00 p.m. on all days, except for Sunday when it closes at 10:00 p.m. *Id.* at 2.
4. ABRA investigators visited the establishment on 10 separate occasions between Friday July 9, 2021, and Friday, August 6, 2021. *Id.* at 6. ABRA investigators did not observe any violations. *Id.* Investigators noted the presence of persons “sitting in lawn chairs at the end of the mall area” on several occasions. *Id.* Investigator Jones indicated that he personally saw the people described in the report and they did not appear to be acting rowdy. *Transcript (Tr.)*, August 18, 2021 at 49. He further noted that the people sitting in chairs did not appear to be located on the strip mall property, but near the road. *Id.* at 49, 66. Investigator Jones observed that the area features moderate pedestrian traffic and did not observe any “peace, order, and quiet issues that could have been associated with Holiday Liquors.” *Id.* at 7, 54-55.
5. The records of the Metropolitan Police Department (MPD) indicate that MPD received 163 calls for service related to the establishment’s address between July 2020 and July 2021. *Id.* at 7-8. MPD’s report described the receipt of calls related to, among other issues, drugs and disorderly conduct, as well as five calls related to the sound of gunshots. *Id.* Nevertheless, the report did not indicate whether MPD substantiated the reason for the call or the details of the specific incident related to the call. *Tr.*, 8/18/21 at 41.
6. Holiday Liquors’ investigative history indicates that the Applicant received a \$3,000 fine and ten suspension days related to a sale to minor violation in 2020. *Id.* at 8. The Applicant also received a warning related to compliance with its settlement agreement in 2018. *Id.* Lead Investigator Jones is also aware that the establishment committed sale to minor violations in 2015 and 2016. *Id.* at 43; *see also Protestant’s Exhibit No. 5* (ABRA materials).
7. Lead Investigator Jones further observed the area outside Holiday Liquors. *Tr.*, 8/18/21 at 49. He noted that Holiday Liquors is in a strip mall. *Id.* The other businesses in the strip mall include a dry cleaner and a market. *Id.* The strip mall also has a parking lot. *Id.* Behind the establishment, there are apartments, other residents, and the Fellowship Bible Way Church. *Id.* at 73.

8. Lead Investigator Jones also observed that the Eagle Academy Public Charter School is located across the street from the establishment. *Id.* at 38, 61. Based on a door-to-door measurement he conducted with a measuring wheel, he determined that Holiday Liquors is located 555 feet from the school. *Id.* at 50. He noted that the school encompasses a large area and that a second entrance at the school, which includes a drop-off area and playground, is located approximately 101 feet from Holiday Liquors. *Id.* at 51-52. Lead Investigator Jones also is aware that several other schools and facilities serving children are located in the area, but not within 400 feet of the establishment, including KIPP DC, Charles Hart Middle School, and Somerset College Preparatory Public School. *Id.* at 64.

9. Lead Investigator Jones also described the litter and trash situation outside the premises. *Id.* at 73. He indicated that he saw litter near where the people were sitting

II. Jong Keon Kim

10. Jong Keon Kim became the owner of Holiday Liquors on January 1, 2013. *Id.* at 81. He operates the business with his family. *Id.* at 81. The business also has hired a cashier and a stock person. *Id.* at 82. Before opening the current business, Mr. Kim operated a dry cleaner in Maryland for ten years. *Id.* at 83.

11. The business has taken steps to prevent the sale of alcohol to minors and to provide security. *Id.* at 83. First, the store's point of sale system issues prompts to check identification. *Id.* at 82-83. Second, there are signs on the counter advising customers that the store checks identification. *Id.* at 83. Third, the business has hired two security guards, installed security cameras, and lights provide lighting for the parking lot. *Id.* at 84. Fourth, the business utilizes an identification checking machine. *Id.* at 87. Fifth, the business does not permit children inside unless accompanied by a parent and the business has signs advertising the policy. *Id.* at 88.

12. Mr. Kim observed that the market located in the strip mall operates until 7:00 a.m. on Sunday and until 9:00 a.m. on all other days. *Id.* at 82. The market is called Holiday Market and is not owned by Mr. Kim. *Id.* at 130. Holiday Market operates as a grocery store. *Id.* at 131.

13. Mr. Kim described the establishment's efforts to clean the area. *Id.* at 84. Specifically, employees are assigned to clean up the parking lot and the area around the store. *Id.* Holiday Liquors also has hired a trash removal service to remove the trash generated by the business twice per week. *Id.*

14. Mr. Kim is aware that the business previously received sale to minor violations in the past. *Id.* at 85. All three violations were committed by various employees. *Id.*

15. Mr. Kim is aware that two homicides occurred in the strip mall's parking lot. *Id.* at 89. The first homicide involved the shooting of a person on October 20, 2018, in front of the market. *Id.* The second homicide involved the shooting of a 15-year-old on Sunday, May 26, 2019. *Id.* Mr. Kim noted that his store was not open during the second homicide on May 26, 2019. *Id.*

16. Mr. Kim believes the litter is likely from the market that operates in the strip mall. *Id.* at 125. He admitted that he received a fine from DCRA related to litter and water drainage approximately five to six years ago. *Id.* at 126.

III. Sandra Seegars

17. Sandra Seegars has lived in the neighborhood since 1969 and often patronizes Holiday Liquors to buy snacks, play lotto, pay bills, get money orders, and to send money to people. *Id.* at 148. She is a member of Concerned Residents Against Violence (CRAV). *Id.* The organization consists of six members of the community that support agencies and organizations combating violence in the community. *Id.* at 148-49. She is concerned that revoking the license will remove a business from the community and will not discourage illegal activity in the street. *Id.* at 155.

18. Ms. Seegars initially met Mr. Kim after the prior owner died. *Id.* at 149. She has never observed any fights or crime when present at the establishment. *Id.* She further noted that the fence installed on the property has discouraged people from loitering in a grassy area near the property. *Id.* She indicated that she has called the police when she observed inappropriate behavior in the parking lot. *Id.* at 150. She also has never seen children inside the store. *Id.* at 154. She further observed that the owner has posted a sign saying no children are permitted alone inside Holiday Liquors. *Id.* at 167.

19. She does not believe the liquor store is responsible for the problems in the area. *Id.* at 151. Based on her observations, there is no public drinking in the parking lot but some people may be dealing drugs. *Id.* She also noted that the presence of police in the parking lot encourage people to move away from the area. *Id.* at 153-54.

IV. Carmen McCall

20. Carmen McCall has lived in the neighborhood for approximately 37 years. *Id.* at 173. Ms. McCall serves as the Correspondent Secretary for the Citizens Advisory Council, which works to resolve community issues without police intervention. *Id.* at 174. She has previously visited the store to play the lottery. *Id.* at 175.

21. Based on her observations of the establishment, she has observed some litter in the past but not recently. *Id.* She has also observed people sitting in lawn chairs nearby in an area with trees outside, but that area is on public property. *Id.* at 175. She also has not observed people loitering in the parking lot recently. *Id.* at 175-76.

V. ANC Chairperson Salim Adofo

22. Salim Adofo serves as the Chairperson of ANC 8C and the Single Member Commissioner of ANC 8C07, which is the district where Holiday Liquors is located. *Id.* at 188. In his experience, the store has a reputation for selling alcohol to minors. *Id.* at 190. He also believes that in addition to the sale to minor violations found by ABRA, the store has engaged in selling alcohol to minors on other occasions. *Id.* He also has received complaints from residents

that they are afraid to frequent the area due to the potential for violence. *Id.* at 105. He also believes the business has a negative impact on property values. *Id.* at 207. Finally, he believes the establishment is in violation of the settlement agreement attached to its license but did not cite a specific provision of the agreement during his testimony. *Id.* at 211.

VI. Sun Pak

23. Sun Pak previously worked at Holiday Liquors. *Id.* at 234. He noted that his employer never told him to do anything illegal and told him to check identifications before making alcohol sales. *Id.* at 241-42. Mr. Pak admitted that while working for Holiday Liquors he mistakenly sold alcohol to a minor without asking for identification on one occasion. *Id.* at 235-36. He also recalls on one occasion a shooting occurring near the strip mall, but he did not call the police regarding the shooting. *Id.* at 238. He further admitted that as an employee he never called the police or asked people to leave related to loitering. *Id.* at 238.

VII. Lauren Catalano

24. Lauren Catalano serves as the Principal of KIPP DC Legacy College Prep. *Id.* at 136. KIPP DC is located on the same street as Holiday Liquors, approximately 1,000 feet away from the store. *Id.* The school acquired its current property on July 1, 2019. *Id.* at 138. The school serves grades 6 through 11. *Id.* She indicated that the shooting on May 26, 2019, deeply impacted KIPP DC's school community. *Id.* at 139.

25. Principal Catalano indicated that the school has received several complaints regarding student activity at Holiday Liquors. *Id.* at 140. She indicated that she believes students have purchased alcohol and cigarettes at the establishment. *Id.* Specifically, searches of students by truancy or school resource officers found alcohol and cigarettes that she believes was obtained from Holiday Liquors. *Id.* at 141. She also received complaints from parents about loitering near the liquor store and how people loitering near the store solicit students to participate in inappropriate activities. *Id.* at 140. She believes the loitering is a safety threat to students. *Id.* She also personally observed children inside the store during the evening of a vigil held near Holiday Liquors. *Id.* at 141.

VIII. Settlement Agreement

26. ABRA's records indicate that Holiday Liquors is subject to a settlement agreement that was entered into by the prior ownership and the Anacostia Coordinating Council. *In re Business Associates, Inc., t/a Holiday Liquors*, Case No. 479-06/100P, Board Order No. 2006-242 (D.C.A.B.C.B. Oct. 4, 2006) (ABRA License No. 60558). Among other provisions, the agreement requires Holiday Liquors to refrain from selling "drug paraphernalia"; follow District alcohol laws related to hours and litter; keep the interior of the establishment clean; post parking limit signs, tobacco age limit signs, and loitering signs; follow District law regarding the sale of alcohol and tobacco to minors; follow District law regarding the sale of alcohol to intoxicated persons; install at least one security camera; and contact the police department when illegal activity is observed. *Settlement Agreement*, at ¶¶ 2-10. The agreement further required that the store will "prohibit loitering in front of the business" and "use reasonable efforts to enforce such

a prohibition.” *Id.* at ¶ 9 (emphasis added). The agreement further states that any complaints regarding the licensee will be forwarded to the “Korean American Business Association.” *Id.* at ¶ 17. Finally, the agreement states that Holiday Liquors is entitled to written notice of any violation. *Id.* at 6-7.

IX. Additional MPD Records

27. The Protestant provided various MPD records regarding crime in area.

28. First, the “DC Crime Cards Statistics” indicated that between 2019 and 2021, on the 3500-3703 block of Wheeler Road, S.E., there were 10 violent offenses and four property offenses in the area. *Protestant’s Exhibit No. 1*. Nevertheless, the card does not indicate where on the block the offense occurred or how the crime relates to Holiday Liquors.

29. Second, the Protestant provided a list of offenses documented by MPD associated with 3505 Wheeler Road, S.E. *Protestant’s Exhibit No. 2*. The documented offenses, beginning in 2015, include possession of open containers of alcohol, drug dealing, assaults, illegal firearm and weapon charges, and sounds of gunshots. *Id.* The Board notes that the document does not show the specific details of each observed offense or the ultimate result of any charges filed by MPD or the District, such as a warning, dropped charge, settlement, guilty plea, or conviction.

30. Third, the Protestant provided police reports filed by various MPD officers, which constitute hearsay. *LCP, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 897, 904 n. 10 (D.C. 1985) (Saying “statements regarding the removal of alcoholic beverages were not based on [a police officer’s] direct observation, but on a police report that constituted hearsay.”); *Grimes v. United States*, 252 A.3d 901, 915 (D.C. 2021) (“documents like police reports detailing crimes fall outside of the business records exception despite the fact that they are quite routine.”). It is well-established that the technical rules of evidence applicable to the trial of court cases do not govern agency proceedings and that hearsay evidence, if it has probative value, is admissible at administrative hearings. *Jadallah v. Dist. of Columbia Dept. of Employment Services*, 476 A.2d 671, 676 (D.C. 1984). Nevertheless, “administrative findings and conclusions based exclusively on hearsay [are subject] to exacting scrutiny.” *James v. Dist. of Columbia Dept. of Employment Services*, 632 A.2d 395, 398 (D.C. 1993). In this case, none of the reporting officers were called to testify or subject to cross-examination during the hearing rendering the statements contained in the documents as uncorroborated hearsay. *Compton v. Dist. of Columbia Bd. of Psychology*, 858 A.2d 470, 479 (D.C. 2004) (“Where . . . the declarant is available to testify and be cross-examined, the practice of relying exclusively on hearsay is strongly discouraged and should be heavily weighted against the sponsoring party. In the ordinary administrative case, hearsay is generally disfavored because “[i]n all adjudicative proceedings, ‘cross-examination and confrontation are the handmaidens of trustworthiness in the face of factual dispute.’”). Consequently, the police reports in this case do not meet the exacting scrutiny standard required to rely on the statements as anything more than evidence of police activity.¹

¹ During the hearing, the Protestant claimed that there was an ongoing duty to disclose documents that were not in the agency’s possession at the time of the request under D.C. Official Code § 25-804, which is not supported by the

31. Additionally, even if the narrative content of the reports were credited, they fail to provide sufficient evidence to hold Holiday Liquors accountable for the activity they describe. For example, many of the reports fail to indicate how Holiday Liquors contributed to the incident either directly or indirectly (e.g., failure to report to MPD despite witnessing crime, failure to turn over video footage, hiding evidence, providing false statements, participation in illegal activity by ownership or staff).² *Protestant's Exhibit No. 3* at CCN Nos. 15051555, 16027827; 16063794, 16175529, 16195407, 16206722, 17007214, 17052617, 17087249, 17091155, 17175792, 18055485, 18096745, 18103655, 18108034, 18108642, 18137093, 19066087, 19083273, 19172247, 20111639, 20142528, 21056239. The open container violations described in the reports are also inadequate for similar reasons, and because they do not indicate that the alleged alcohol came from Holiday Liquors or was a product offered by the store at the time of the incident. *Id.* at CCN Nos. 15060996, 1506448, 15065647, 16027827, 17082592, 17083918, 18108034, 18096745, 19065114, 19066434, 19078929, 19084013, 19084014, 19084916, 19078927, 19084942, 19125165, 18096745. Finally, some of the reports even fail to substantiate that a crime occurred. *Id.* at CCN Nos. 16028942, 19226644, 20075637.

X. Additional Exhibits

32. The Board also considered other exhibits submitted by the Protestant. Exhibit 4 contains community comments collected by ANC 8C; nevertheless, while the Board has no issue with hearing or reviewing the public opinions expressed within, any factual statements contained within are uncorroborated hearsay that cannot be relied upon as part of the Board's factual findings for the same reasons noted above. *Protestant's Exhibit No. 4.*

33. Exhibit No. 13 are pictures of the rear of the establishment that show trash containers, some litter, and a wet area. *Protestant's Exhibit No. 13.*

language of the law. D.C. Code § 25-804; *Transcript (Tr.)*, 8/18/21 at 70. Instead, § 25-804(b) creates a right to inspect documents that are in the possession of ABRA at the time of the request. It is incumbent upon the requester to renew their request if they wish to see new documents that may be received by the agency after that time. Furthermore, the Board does not agree that any prejudice to the Protestant occurred because the MPD documents in the Protestant's possession provided a sufficient catalogue of all possible offenses that could generate government documents; therefore, the Protestant had the opportunity to determine if the information in its possession was complete and track those additional documents down through additional FOIA requests, a FOIA appeal, or a subpoena. *Tr.*, 8/18/21 at 248-49. The Board further notes that § 25-804 and FOIA are informational tools and are not litigation tools; therefore, any failure to provide information or delays in compliance do not create a legal claim that may impact a contested case before the Board. Finally, even if there were prejudice, no remedy is warranted where the Protestant failed to object or request a remedy from the Board, such as requesting a continuance or requesting an additional hearing related to any alleged failure to disclose information so that the Protestant could review and make changes to its case in response to any new information. Therefore, any claim related to § 25-804 or FOIA is waived in this forum.

² In contrast, in *LCP*, where the Board denied the renewal of a Retailer's Class C License, it was clear that the "patrons" of the licensee were causing the issues, and that such issues were "traceable" to the establishment. *LCP, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 897, 899-900, 904 n. 10 (D.C. 1985) (The Board specifically found that Patton's patrons were the source of noise, litter, vandalism, public urination and defecation, illegal parking, and other issues).

34. Exhibit No. 14 is a complaint filed by Kelsey Metcalfe with the D.C. Department of Consumer and Regulatory Affairs (DCRA); however, the statements contained within the document constitute hearsay and were not sufficiently corroborated to merit granting the complaint any probative weight. *Protestant's Exhibit No. 14*.

CONCLUSIONS OF LAW

35. The Board may approve an Application to Renew a Retailer's Class A 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. 2021). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet 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. The Establishment is Appropriate for the Neighborhood.

36. 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).

37. 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. Holiday Liquors is not having a negative impact on peace, order, and quiet.

38. The Board is not persuaded that Holiday Liquors is having a negative impact on peace, order, and quiet where it has not been established that crime and other issues in the area are traceable to the establishment.

39. “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).

40. Holiday Liquors demonstrated that it is taking to steps to alleviate any potential burden on the community. This includes obtaining a point-of-sale system that asks employees to conduct identification checks, using an identification checking machine, hiring security guards, having security cameras installed within and outside the premises, having lights in the parking lot, and posting appropriate signage. *Supra*, at ¶ 11. Employees are also assigned to clean the area and the store has regular trash pickup. *Supra*, at ¶ 13.

41. The Board further considered the evidence and argument presented by the Protestant but was not persuaded that it undermined Holiday Liquors’ position.

42. First, the Board agrees with the Protestant that the area suffers from a high rate of crime and related activity and requires frequent police action. *Supra*, at ¶¶ 27-31. Nevertheless, 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.³ Instead, 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. *LCP, Inc.*, 499 A.2d at 903.⁴

43. Nevertheless, the Board has not been presented with compelling or persuasive evidence that crime, loitering, littering, rowdiness and similar issues are persuasively traceable to Holiday Liquors. First, it is not fair to trace crime, loitering, littering, rowdiness, and other issues to

³ For example, under D.C. Official Code § 25-823(a)(2), it is not sufficient that the establishment is “used for unlawful or disorderly” activity to sustain a violation, but rather it must also be shown that the licensee “allows” such conduct to occur. D.C. Code § 25-823. Furthermore, when summarily suspending or revoking the license pursuant to D.C. Official Code § 25-827, the Chief of Police may consider “incident reports, arrests, and reported crime within . . . 1,000 feet of the establishment” but these must be used to show “a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment.” D.C. Code § 25-827. As a result, in attributing the conduct of third parties to an establishment, Title 25 of the D.C. Official Code consistently requires a nexus, a connection, or something traceable to the licensee’s operation.

⁴ *Supra*, at ¶ 31 n. 2.

Holiday Liquors, when such activity may be equally attributable to the grocery store that operates in the same strip mall because it also sells items that attract people to the area and is a reasonable alternative source for the anti-social behavior and litter highlighted by the Protestant. *Supra*, at ¶¶ 7, 12, 15-16. As a result, even if Holiday Liquors were to cease operations, it is unclear whether there would be any noticeable impact or change. Therefore, the record leaves the Board with too much uncertainty to attribute any negative impact in the community to Holiday Liquors. Second, neither homicide referenced in this case may be said to emanate from Holiday Liquors without additional evidence showing something more than Holiday Liquors being the mere location of the event.⁵ Indeed, the 2019 homicide cannot be attributed or traced to Holiday Liquors when the uncontroverted evidence in the record is that Holiday Liquors was not open at the time of the shooting, which makes it unlikely that anyone was present in the area to patronize Holiday Liquors at the time of the incident. *Supra*, at ¶ 15. Third, the Board has not been presented with persuasive evidence that Holiday Liquors repeatedly engages in behavior that encourages crime, such as failing to report observed offenses, refusing to provide evidence requested by MPD, providing false statements to MPD, or otherwise participating in criminal behavior. *Supra*, at ¶¶ 23, 31.⁶ Fourth, to the extent anyone has engaged in the illegal consumption of alcohol in the parking lot or other public areas, the Protestant has failed to provide sufficient evidence that the products come from Holiday Liquors. *Id.* Fifth, to the extent any alleged tobacco sales to minors are suspected, the record does not contain sufficient information to substantiate these violations. *Supra*, at ¶ 25. Finally, the mere witnessing of a minors in Holiday Liquors is not sufficient to attribute a presumption of additional sale to minor violations or wrongdoing. *Supra*, at ¶¶ 25.

i. The Board is not persuaded that Holiday Liquors has breached its obligation under § 25-726.

44. During the hearing, the Protestant attempted to enter evidence related to litter in adjacent properties or lots, which the Board excluded. *Tr.*, 8/18/21 at 74. Under D.C. Code § 25-726(a), “The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter. D.C. Code § 25-726(a). Based on the language, the law requires that Holiday Liquors take reasonable measures to keep clean the “immediate” area outside the establishment, any property used by the business, and adjacent public areas such as alleys and sidewalks—not private property. *Id.* Excluding private property from § 25-726 reflects the plain language of the statute because private property owned by another in a separate lot does not constitute the “immediate environs of the establishment” when such property is owned by another; especially, when the included examples of property outside the establishment’s property only refer to adjacent public property. *Nat'l Ass'n of Postmasters of*

⁵ The Board notes that situations where a fight inside the premises escalates into a serious violent incident outside the premises or a failure of the establishment to cooperate with MPD are examples of situations that may suffice.

⁶ The Board considered Mr. Pak’s testimony that he never called the police when he heard a gunshot on one occasion and at other times. *Supra*, at ¶ 23. But for the purposes of the record, the failure to report the shooting appears to be an isolated incident where the shooting only occurred on one occasion, it was not clear whether Mr. Pak actually observed offenses on other occasions, and no police report filed by the Protestant shows that Holiday Liquors has failed to report crime or otherwise failed to cooperate with investigations.

U.S. v. Hyatt Regency Washington, 894 A.2d 471, 476 (D.C. 2006) (Saying that under the principle of “*ejusdem generis*: ‘Where general words follow specific words in a[n] ... enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.’”).

45. In this case, Holiday Liquors is not licensed for the entire strip mall, but one part of the strip mall, and the store uses the parking lot for customer parking. *Supra*, at ¶ 7. As a result, for the purposes of § 25-726, Holiday Liquors is only responsible for the area in the strip mall immediately outside the premises, its trash area, and the parking lot that it uses. It is not responsible for any alleys, sidewalks, or other public areas that are only adjacent to the strip mall, but not the store. To hold otherwise, would subject Holiday Liquors to an unfair reading of the statute, which would violate its right to due process and lead to challenges of § 25-726 for vagueness. As a result, the Board’s exclusion of evidence related to litter in neighboring lots is appropriate for the purpose of evaluating appropriateness under § 25-726.

46. Finally, even if the area covered by § 25-726 in this case were expanded, and it were shown that Holiday Liquors was in breach of its obligations, this is insufficient to merit the non-renewal of the license. The Board notes that litter violations are merely minor secondary tier offenses and there is no pattern of repeated convictions for littering. 23 DCMR § 800 (West Supp. 2021) (see § 25-726 in the civil penalty schedule); *supra*, at ¶ 16. Consequently, at this time, the appropriate remedy is for members of the community to report violations of § 25-726 as they are observed, and ABRA can address them as an enforcement matter.

47. Therefore, the Board finds that Holiday Liquors is not having a negative impact on peace, order, and quiet.

b. Holiday Liquors is not having a negative impact on real property values.

48. 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 that the property is substantially blighted and the Protestant’s claim of negative impact was purely speculative. *Supra*, at ¶ 22. Therefore, the Board finds in favor of Holiday Liquors on this issue.

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

49. Under § 25-315, “[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Code § 25-315(b)(1). Pursuant to § 25-315, the Board considered the establishment’s history of sale to minor violations and compliance with its settlement agreement. *Supra*, at ¶¶ 6, 26.

50. The District's sale to minor statutes found at D.C. Official Code §§ 25-781 and 25-783 create a graduated penalty system with increased penalties if the license holder commits a certain number of violations within a specified time frame. D.C. Code §§ 25-781(f). These laws then give the Board the discretion to revoke the license upon the fourth sale to minor offense within four years or require the mandatory revocation of the license in the case of five sale to minor violations within four years. §§ 25-781(f)(4)-(5). As a result, the Board is hard pressed to justify departing from the statutory penalty scheme by not renewing Holiday Liquors' license when the establishment has not reached the level of violations required to consider revocation and the record does not support the inference that Holiday Liquors is unwilling to comply or take reasonable steps to prevent underage drinking. Finally, to the extent that members of the community believe or witness underage sales by Holiday Liquors, those concerns and complaints should be forwarded to ABRA's Enforcement Division so that such complaints may be investigated or the establishment monitored for compliance. As a result, based on the present record, the Board can only reasonably conclude that Holiday Liquors' record of violations has not reached the point where revocation or non-renewal of the license is the appropriate remedy.

51. The Board further considered testimony that Holiday Liquors is not in compliance with the establishment's settlement agreement. *Supra*, at ¶¶ 22, 26. Nevertheless, the establishment's violation history does not show a pattern of settlement agreement violations. Moreover, even if true, it is not clear that any witnessed alleged violations constitute violations of the agreement for multiple reasons. First, where the agreement only requires "reasonable efforts" to enforce the prohibition on loitering, the mere presence of loitering alone is not sufficient to demonstrate a failure to engage in reasonable efforts to prevent loitering. Second, it has not been shown that complainants have followed the requirements in the agreement to inform the Korean American Business Association of any alleged violations or initiated the required notice and cure provisions. *Supra*, at ¶ 26. Therefore, the record does not contain sufficient information to conclude that Holiday Liquors has failed to comply with its settlement agreement when there is no record that the relevant notice and cure provisions have been triggered.

52. For these reasons, the Board is satisfied that Holiday Liquors merits the renewal of its liquor license pursuant to § 25-315.

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

53. 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 29th day of September 2021, hereby **APPROVES** the Application to Renew a Retailer's Class A License at premises 3505 Wheeler Road, S.E., filed by Holiday Family Liquor, Inc., t/a Holiday Liquors.

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: ac430b6b69d5f09e4b730093d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
Bobby Cato
Key: 258d3fca1f8e148d7f4b75bd7917d26d

Bobby Cato, Member

eSigned via SeamlessDocs.com
Rafi Aliya Crockett, Member
Key: b560e81845e1f8e4016155e5c12f81cc

Rafi Crockett, Member

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda7ff9f0040ec14adeb52541ce5

Edward S. Grandis, Member

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

eSigned via SeamlessDocs.com
James Short
Key: 547ae373f820d66ac8d1b332d2049ec

James Short, 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).