

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

In the Matter of:)	
)	
GF, LLC)	Case No.: 19-PRO-00033
t/a Il Canale)	License No: ABRA-083707
)	Order No: 2020-081
Application to Renew a)	
Retailer's Class CR License)	
)	
at premises)	
1063-1065 31st Street, N.W.)	
Washington, D.C. 20007)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Aliya Crockett, Member

PARTIES: GF, LLC, t/a Il Canale, Applicant

Risa Hirao, Counsel, on behalf of the Applicant

Jackie T. Meier, Counsel, on behalf of John Uhar, Abutting Property
Owner, Protestant¹

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 CR License filed by GF, LLC, t/a Il Canale (hereinafter "Applicant" or "Il Canale") and finds the Applicant fit for the responsibilities of licensure pursuant to D.C. Official Code § 25-301(a)(1).

¹ Counsel for the Protestant did not participate in the Protest Hearing and began her representation on January 24, 2020. *Designation of Attorney or Agent* (John G. Uhar).

Procedural Background

The Notice of Public Hearing advertising Il Canale's Application was posted on March 29, 2019, and informed the public that objections to the Application could be filed on or before March 13, 2019. *ABRA Protest File No. 19-PRO-00033*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that John Uhar has filed a protest against the Application. *ABRA Protest File No. 19-PRO-00033*, Roll Call Hearing Results.²

The parties came before the Board's Agent for a Roll Call Hearing on March 28, 2019, where the above-mentioned objector was granted standing to protest the Application. On August 7, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on November 20, 2019. Subsequently, the Board received and considered Proposed Findings of Fact and Conclusions of Law submitted by both parties.

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. 2020). In addition, the Protestant challenged the Applicant's qualifications for licensure under D.C. Official Code § 25-301(a)(1).

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. Il Canale has submitted an Application for a New Retailer's Class CR License at 1063-1065 31st Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Shanell Murray investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00033, Protest Report* (Nov. 2019) [*Protest Report*]. The proposed establishment is located in a MU-12 zone. *Protest Report*, at 3. Forty licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 6. A daycare center is located within 308 feet of the establishment. *Id.*
3. The Applicant closes at 2:00 a.m., Sunday through Thursday, and 3:00 a.m. on Friday and Saturday. *Id.* at 6-7. The establishment's entertainment hours end at 10:00 p.m. *Id.* The establishment's sidewalk café hours end at 2:00 a.m. *Id.* at 8. The establishment's summer

² Roger Uhar withdrew from the case during the Protest Hearing and is no longer a party. *Transcript (Tr.)*, November 20, 2019 at 42.

garden hours end at 2:00 a.m., Sunday through Thursday, and 3:00 a.m. on Friday and Saturday. *Id.*

4. ABRA investigators monitored the Applicant's establishment on 21 separate occasions between August 19, 2019, and November 10, 2019. *Id.* at 8. They observed no noise, loitering, or other ABRA violations. *Id.* at 8-10. ABRA's records indicate that no noise complaints have ever been filed against the establishment. *Id.* at 10. The Applicant's investigative history discloses several minor secondary tier violations for failing to file required quarterly reports and two instances of failing to have a licensed manager present between 2013 and 2019. *Id.* at 11.

5. ABRA Investigator Murray observed the establishment's trash storage facilities. *Transcript (Tr.)*, November 20, 2019 at 63. The Applicant has two garbage cans outside that have the name of the Applicant on the bins. *Id.* He observed that the bins could be locked. *Id.* During his visit, he did not observe any overflowing trash. *Id.*

6. ABRA Investigator Murray also monitored traffic and parking near the establishment. *Id.* He did not observe excessive traffic or pedestrians. *Id.* He noted that there are at least six public parking garages near the establishment. *Id.*

II. Abderrahman Mouhssine

7. Abderrahman Mouhssine serves as one of the Applicant's managers. *Id.* at 71-72. He has worked at the establishment for approximately ten years in various capacities. *Id.* at 72. The establishment operates as a family friendly Italian restaurant. *Id.* at 73. In general, the establishment closes at 11:30 p.m. during the week, 11:00 p.m. on Friday and Saturday, and 10:00 p.m. on Sunday. *Id.* at 75.

8. The establishment has adopted various procedures to prevent issues. *Id.* at 77-78. The Applicant's employees regularly receive training, and employees are instructed to check patron identifications. *Id.* at 77. The Applicant's staff also takes daily pictures of the establishment's trash area and sends them to the owner in order to ensure that the bins are closed. *Id.* at 78. Trash is removed and the trash area is power washed on a daily basis. *Id.* at 92, 94.

9. Photos of the interior and exterior portions of the establishment show that the premises are well maintained and clean. *Applicant's Exhibit Nos. 1-38.*

III. Giuseppe Farruggio

10. Giuseppe Farruggio has owned Il Canale for the past ten years. *Id.* at 125. He noted that he has never been convicted of a felony or had a liquor license revoked. *Id.* at 132.

IV. Dagoperto Rodriguez

11. Dagoperto Rodriguez owns the boutique hotel next to the Applicant's premise. *Id.* at 161-62. He noted that the neighborhood is "high-end" and not blighted. *Id.* at 162-63. He has never had any issues with noise from the establishment disturbing his hotel guests. *Id.* at 165.

V. William Verno

12. William Verno works across the street from the Applicant's establishment. *Id.* at 174. He described the neighborhood as a "pleasant place" and not blighted. *Id.* at 175. Furthermore, he has no complaints about noise or parking related to the Applicant's operations. *Id.* at 176.

VI. John Uhar

13. John Uhar is the abutting property owner. *Id.* at 236. He accused the Applicant of failing to have appropriate permits. *Id.* at 238. He claimed the establishment's sidewalk café did not match the dimensions in the sidewalk café application filed with DDOT. *Id.* at 243-44; *Protestant's Exhibit No. 7*. He also claimed that the Applicant, at one time, had too many umbrellas in the sidewalk café area. *Tr.*, 11/20/19 at 247.

CONCLUSIONS OF LAW

14. The Board may approve an Application to Renew a Retailer's Class CR License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2020). 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. 2020). In addition, the Protestant challenged the Applicant's qualifications for licensure under D.C. Official Code § 25-301(a)(1).

I. The Applicant is of Good Character and Fit for the Responsibilities of Licensure Under D.C. Official Code § 25-301(a)(1).

15. The Board finds that the Applicant is fit for licensure pursuant to D.C. Official Code § 25-301(a)(1). "Before the Board may issue a license, it must determine that . . . [t]he applicant is of good character and generally fit for the responsibilities of licensure." D.C. Code § 25-301(a)(1). The Board "must . . . evaluate each applicant individually, on a case-by-case basis" because "the character of the applicant . . . will necessarily differ from one application to the next . . ." *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1195 (D.C. 1985). At the very least, in order to satisfy the requirements of § 25-301(a)(1), the Board must examine "records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant." D.C. Code § 25-301(a-1).

16. The term "Applicant" as it appears in Title 25 of the D.C. Official Code "means, as the context requires, the individual applicant, each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an individual, the applicant entity." D.C. Code § 25-101(6). In this case, because the Applicant is a limited liability company, the term "applicant" in § 25-301(a) refers to "each member of an applicant partnership or limited liability company . . ." *Id.*

17. The Applicant bears the burden of showing it qualifies for licensure under § 25-301(a)(1) through substantial evidence. *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 666-69, 671 (D.C. 1972); 23 DCMR § 1718.3 (West Supp. 2014). Furthermore, the District's alcohol laws permit individual protestants to rebut the applicant's showing and challenge the character and fitness of applicants. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998); *Donnelly v. D.C. Alcoholic Beverage Control Bd.*, 452 A.2d 364, 370 (D.C. 1982).

18. Various court decisions describe relevant facts in determining character and fitness. For example, in *Citizens Association of Georgetown*, Chief Judge Hood, in concurrence, indicated that the Board must satisfy itself that the individual will not abuse or misuse, the privileges of the license if granted, and that a man's past record, as disclosed by his application, and his appearance before the Board, may furnish a sufficient basis for the Board's conclusion." *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 288 A.2d 666, 672 (D.C. 1972) (Chief J., Hood concurring). In *Haight*, the court suggested that when a licensee "... operates in a lawful manner" the Board cannot deem this evidence of bad moral character or unfitness for licensure, because the licensee would not have "... fair notice as to what conduct is proscribed by the statute for purposes of eligibility for a liquor license." *Haight v. D.C. Alcoholic Beverage Control Bd.*, 439 A.2d 487, 493 n. 10 (D.C. 1981). Therefore, among other factors, the Board may consider illegal conduct in determining whether an Applicant satisfies § 25-301(a)(1).

19. The Protestant's case-in-chief attempted to show that the permit for the Applicant's sidewalk café was issued by District of Columbia Department of Transportation through some criminal fraud committed by the Applicant and other alleged illegality. *Tr.*, 11/20/19 at 30, 200-02. Yet, the Protestant's position contradicts the court's ruling in *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584 (D.C. 1998). In *Craig*, the District of Columbia Court of Appeals stated that "while the ABC Board's regulations require applicants to hold licenses from other departments as a precondition to obtaining a liquor license, it had no authority to review the validity of the coordinate agency's action." *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) citing *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980); *Dupont Circle Citizens Ass'n v. D.C. Alcoholic Beverage Control Bd.*, 766 A.2d 59, 62 (D.C. 2001) (saying the Board lacks the "jurisdiction or expertise" to review [a licensee's] compliance with its nonprofit status"). In light of *Haight*, the Board agrees that obtaining a permit or license from the government using fraud or other illicit means may support a finding that a person lacks sufficient character and fitness to hold a liquor license; nevertheless, in accordance with *Craig*, until the agency responsible for issuing the permit makes a final determination of illegality, or the person is convicted of a crime related to the issuance of the permit, the Board cannot review or override the coordinate agency's action. Instead, the correct action is for the Protestant to file a complaint with the agency with jurisdiction and seek a remedy with that agency. *Kopff v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d at 154.

20. The Board further notes that the mere fact that a person has been convicted of a crime or committed administrative violations does not render them unfit to hold a liquor license under §

25-301(a)(1). During the hearing, the Protestant alleged various prior violations of the District's fire, construction, health and public space rules. *Tr.*, 11/20/19 at 144-45, 220, 235, 240, 244, 247, 249; *see also Protestant's Proposed Findings of Fact and Conclusions of Law*, ¶¶ 4-6. Nevertheless, even if true, the Board is not persuaded that any of the violations, whether considered independently or together, are so sufficiently egregious, serious, or repetitive that they undermine the Board's confidence in the Applicant to properly superintend the establishment. Likewise, the Board does not find the Applicant's history of minor violations of the District's alcohol laws so egregious, serious, or repetitive that it merits revocation of the license. *Supra*, at ¶ 4. Finally, the Protestant's argument in favor of considering offenses not leading to a conviction when making a character determination runs contrary to the Applicant's right to a "presumption of innocence." *Coffin v. United States*, 156 U.S. 432, 453 (1895).³ Consequently, the Board is satisfied that the Applicant is of sufficient character and fit for licensure pursuant to § 25-301(a)(1).

II. The Establishment is Appropriate for the Neighborhood.

21. Under the appropriateness test, "the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located" D.C. Code § 25-311(a). The Board shall only rely on "reliable" and "probative evidence" and base its decision on the "substantial evidence" contained in the record. 23 DCMR § 1718.3 (West Supp. 2020). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) *citing Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

22. In determining appropriateness, the Board must consider whether the applicant's future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the "District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986," Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); *see Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) ("However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725."). As part of its analysis, the Board should evaluate each "unique" location "according to the particular circumstances involved" and attempt to determine the "prospective" effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant's efforts to mitigate or alleviate operational concerns, the "character of the neighborhood," the character of the establishment, and the license holder's future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could

³ This analysis does not apply to considerations made under the appropriateness standard where the Board may consider both legal and illegal behaviors and conditions, and whether it can be reasonably inferred that, if continued over time, such behaviors or conditions would cause some form of nuisance. *LCP, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 897, 904 n.8 (D.C. 1985) (finding compliance with the law insufficient to prove appropriateness in some cases).

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 Applicant is not having a negative impact on peace, order, and quiet.

23. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2020). In this case, there is no evidence of excessive criminal activity detrimental to the quality of life of residents, loitering, litter, noise, or rowdiness; therefore, the Applicant satisfies the peace, order, and quiet prong of the appropriateness test. *Supra*, at ¶¶ 4-5, 8, 11.

b. The Applicant is not having a negative impact residential parking needs and vehicular and pedestrian safety.

24. “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. 2020). In this case, there is no indication that the Applicant’s operations threaten the safety of vehicles or pedestrians or strain local parking resources on a repeated basis. *Supra*, at ¶ 6. Therefore, the Applicant satisfies the residential parking and vehicular and pedestrian safety prong of the appropriateness test.

c. The Applicant is not having 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; therefore, the Applicant satisfies the real property values prong of the appropriateness test. *Supra*, at ¶¶ 11-12.

26. Therefore, based on the above, the Board finds the Application appropriate in accordance with D.C. Official Code § 25-313.

III. The Establishment's Record of Compliance Merits Renewal.

27. 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). In this case, while the Applicant's record contains a few violations of the District's alcohol laws, they are not of sufficient seriousness to merit denial. Therefore, the Applicant satisfies § 25-315.

IV. 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. 2020). 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.

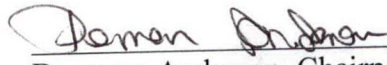
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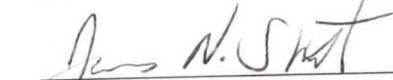
Therefore, the Board, on this 5th day of February 2020, hereby **APPROVES** the Application to Renew a Retailer's Class CR License at premises 1063-1065 31st Street, N.W., filed by GF, LLC, t/a Il Canale.

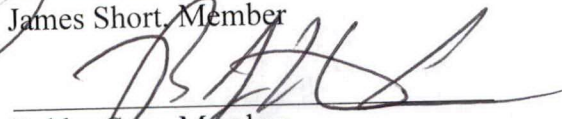
IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

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

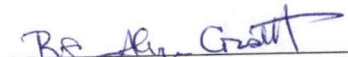
District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


James Short, Member


Bobby Cato, Member

Rema Wahabzadah, Member


Rafi Aliya 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).