

In the Matter of:)		
)		
JS, LLC)	Case No.:	20-PRO-00034
t/a JS Mart Liquor)	License No.:	ABRA-116822
)	Order No.:	2021-143
Application for a New)		
Retailer's Class A License)		
)		
at premises)		
936 Rhode Island Avenue, N.E.)		
Washington, D.C. 20018)		
)		

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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Procedural Background

The Notice of Public Hearing advertising JS Mart's Application was posted on May 8, 2020, and informed the public that objections to the Application could be filed on or before July 13, 2020. *ABRA Protest File No. 20-PRO-00034*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that a Group of Five or More Residents and Property Owners (Group) has filed a protest against the Application. *ABRA Protest File No. 20-PRO-00034*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 27, 2020, where the above-mentioned objector was granted standing to protest the Application. The Protest Hearing in this matter occurred on February 11, 2021.

Based on the issues raised by the Group, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet 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). The Group also protests on the grounds that the establishment will lead to an overconcentration of licensed establishments pursuant to D.C. Official Code § 25-314.

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. JS Mart has submitted an Application for a New Retailer's Class A License at 936 Rhode Island Avenue, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Felicia Dantzler investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 20-PRO-00034*, *Protest Report* (Feb. 2021) [*Protest Report*].
3. The proposed establishment is located in a MU-6 zone. *Protest Report*, at 2. Eleven licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are two class B off-premise retailers and two class A off-premise retailers located in the area under review. *Id.* at 4. There are no schools located within 400 feet of the establishment. *Id.* at 3. The establishment's proposed hours of operation and alcohol sales will run from 7:00 a.m. to midnight. *Id.* at 5. The store is located near eight Metrobus lines. *Id.* at 4. The store intends to have trash pickup occur at least twice per week. *Id.* The establishment is not yet open for business and is currently undergoing renovations. *Id.* at 6.
5. Investigator Dantzler visited the establishment on several occasions between January 15, 2021, and February 3, 2021. She observed no loitering during her visits. *Id.*

6. The records of the Metropolitan Police Department revealed that there have been 16 calls for service at or near the establishment's address from September 1, 2020, to February 3, 2021. *Id.* at 7.

7. Investigator Dantzler spoke with a person working for a branch of the Superior Court that operates a facility for at-risk youth close to the JS Mart's proposed location. *Transcript (Tr.)*, February 11, 2021 at 23. The employee indicated that youth using the facility are picked up and dropped off at the facility, but not permitted to leave. *Id.* at 23. There is also another facility nearby that provides services to adult offenders. *Id.*

8. The Virginia Williams Family Resource Center is also "located within walking distance of JS Mart . . ." *Protest Report*, at 6. The resource center provides resources for families experiencing homelessness, including housing and shelter referrals, counseling, substance abuse education, and employment placement. *Id.*

9. Investigator Dantzler determined during her protest investigation that one of the Class A stores is currently in safekeeping and not operational as of the date of the Protest Hearing. *Tr.*, 2/11/21 at 32.

10. Finally, Investigator Dantzler observed that the neighborhood was quiet and had little pedestrian and vehicular traffic during her visits. *Id.* at 34-35. It should be noted that her visits occurred during the COVID-19 pandemic; as a result, the neighborhood may not have had the same activity level that it would have had during normal times.

II. Samuel Tesfaye

11. Samuel Tesfaye serves as the President of the entity that will own JS Mart. *Id.* at 48. Previously, he has operated convenience stores for several years. *Id.* at 50, 65.

12. Mr. Tesfaye indicated that he intends to install a walk-in cooler and open counters in the newly renovated store. *Id.* at 49. Mr. Tesfaye has partnered with a local family that currently operates other liquor stores in the District to operate this store until he is ready to operate the business personally. *Id.* at 49, 64, 70. He also intends to hire someone holding a ABC Manager's license to assist. *Id.* at 51.

13. Mr. Tesfaye also intends to make additional improvements. *Id.* For example, he intends to install three additional cameras, in addition to the camera installed in the front of the building. *Id.* at 52. He also intends to install additional lighting to illuminate the area immediately surrounding the store. *Id.* He also intends to sell packaged food at the store. *Id.* at 64.

14. Mr. Tesfaye indicated that he is willing to call the police and report criminal activity. *Id.* at 53.

III. Evelyn Nguyen

15. Evelyn Nguyen is the property manager for the company that owns the property where JS Mart will be located. *Id.* at 77-78. The landlord supports JS Mart's application. *Id.* at 78. The landlord has committed to maintaining the property's common areas and the area surrounding the property. *Id.* at 80. This means that the landlord will ensure that snow is removed from the exterior, install needed lights, and paint the façade. *Id.* She further noted that the building's trash facilities have been located in the same spot for the past 20 years. *Id.* There are currently three tenants occupying the property. *Id.* at 88.

IV. Megan Voorhis

16. Megan Voorhis indicated that the protest is based on a number of issues. First, the Group believes that there is an overabundance of alcohol establishments in the neighborhood and no need for additional alcohol outlets. *Id.* at 95. Second, the Group is concerned about the impact of the establishment on vulnerable populations, such as the homeless, young children, substance abuse patients, and other similarly situated populations. *Id.* at 96-7. She also noted that a drug treatment facility will be open directly across or abutting JS Mart's premises. *Id.* at 97. Third, the Group also believes that the business will have a negative impact on the community in terms of trash and noise after the COVID-19 pandemic subsides and normal business activity resumes. *Id.* at 97.

CONCLUSIONS OF LAW

17. The Board may approve an Application for a New 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 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.

18. 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).

19. 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).

20. “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). In this case, Investigator Dantzler observed that the neighborhood was quiet, had little traffic, and had no visible problems with loitering during her visits. *Supra*, at ¶¶ 5, 10. There is also no evidence in the record of regular ongoing crime, disorderly conduct, litter, or noise problems. Moreover, the Group’s concerns regarding these issues appears entirely speculative where there is no evidence that these issues have been shown to currently exist or to have otherwise existed before the onset of the COVID-19 pandemic.

21. The Board further notes that it cannot consider the Group’s arguments regarding the impact of the license on persons suffering substance abuse and substance abuse treatment facilities. In *Town 2.0*, the Board noted that the “impact” of an establishment “on the treatment of person’s suffering from alcoholism and substance abuse[,] or encouraging relapses[,] is [not] a legally appropriate consideration” under D.C. Official Code § 25-313. *In re Town 2.0, t/a TBD*, Case No. 19-PRO-00101, Board Order No. 2020-028, ¶ 39 (D.C.A.B.C.B. Jan. 29, 2020). Therefore, the Group’s argument on this ground is not relevant for consideration in this proceeding.

22. Finally, the Group argued that approving the license will lead to overconcentration when numerous alcohol outlets exist outside the 1,200 foot area under review. *Tr.*, 2/11/21 at 96. When issuing a new license the Board will consider “Whether issuance of the license would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment is located.” D.C. Code §

25-314(a)(4). A “section” is defined as the area within 1,200 feet of the establishment. D.C. Code § 25-101(46). Nevertheless, the Board cannot consider activity outside the protest area, which in this case is the “section,” pursuant to 23 DCMR § 1607.7, when the Group has not filed appropriate objections to expand the protest area before the hearing. 23 DCMR §§ 1607.3, 1607.7, (b) (West Supp. 2021). Moreover, where the area under review only has two off-premise alcohol licenses and no record of alcohol-related issues, it is not reasonable to find that the area suffers from overconcentration in accordance with D.C. Official Code § 25-314(a)(4). For these reasons, the Board finds the Application appropriate.

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

23. 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 24th day of March 2021, hereby **APPROVES** the Application for a New Retailer's Class A License filed by JS Mart.

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: a41166c9e0d8e0417c00931d02d1

Donovan Anderson, Chairperson

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[Signature]
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Bobby Cato, Member

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Rema Wahabzadah, Member

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Edward Grandis, Member
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Edward S. Grandis, Member

I abstain from the decision reached by the majority of the Board.

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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).