

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

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In the Matter of:	)		
	)		
Pako, LLC	)	Case No.:	18-PRO-00053
t/a Kovaks Liquors	)	License No:	ABRA-106551
	)	Order No:	2019-001
Application for a Substantial Change to a	)		
Retailer's Class A License	)		
	)		
at premises	)		
1237 Mount Olivet Road, N.E.	)		
Washington, D.C. 20002	)		

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**BEFORE:** Donovan Anderson, Chairperson  
Mike Silverstein, Member  
James Short, Member  
Bobby Cato, Member  
Rema Wahabzadah, Member

**ALSO PRESENT:** Pako, LLC, t/a Kovaks Liquors, Applicant  
  
Wayne E. Johnson, Designated Representative, on behalf of the Applicant  
  
Clarence Lee, Chair, Advisory Neighborhood Commission (ANC) 5D,  
Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) approves the Application for a Substantial Change to a Retailer's Class A License filed by Pako, LLC, t/a Kovaks Liquors, (hereinafter "Applicant" or "Kovaks Liquors") subject to the conditions described below.

## ***Procedural Background***

The Notice of Public Hearing advertising Kovaks' Application was posted on April 27, 2018, and informed the public that objections to the Application could be filed on or before June 11, 2018. *ABRA Protest File No. 18-PRO-00053*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 5D has filed a protest against the Application. *ABRA Protest File No. 18-PRO-00053*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on June 25, 2018, where the above-mentioned objector was granted standing to protest the Application. On July 25, 2018, the parties came before the Board for a Protest Status Hearing. The Protest Hearing in this matter occurred on October 31, 2018. Finally, the Board considered the proposed findings of fact and conclusions of law submitted by the Applicant.

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 5D. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law, below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the Board finds that 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. 2018).

## **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. Kovaks Liquors has submitted an Application for a Substantial Change to a Retailer's Class A License at 1237 Mount Olivet Road, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Countee Gilliam investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 18-PRO-00053, Protest Report* (Sept. 2018) [*Protest Report*].
3. The proposed establishment is located in a MU-4 zone. *Protest Report*, at 3. Two licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4. There

are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* Kovaks has trash pickup three times per week. *Id.* at 5.

4. According to the public notice, Kovaks has requested to operate on Sunday from 11:00 a.m. to 7:00 p.m. *Notice of Public Hearing*. Furthermore, the establishment has requested to operate until 11:00 p.m., Monday through Saturday. *Id.* Kovaks currently operates until 9:00 p.m., Monday through Thursday, and 10:00 p.m. on Friday and Saturday. *Id.*

5. ABRA investigators visited the establishment six times between August 26, 2018, and September 13, 2018. *Protest Report*, at 5. Investigators further visited the establishment on three occasions between October 22, 2018 and October 24, 2018. *Id.* at 7. During one visit, an ABRA investigator observed the establishment operate after hours and failed to comply with window signage requirements. *Id.* at 5. Investigators further observed the consumption of alcoholic beverages and loitering on October 23, 2018, around 4:00 p.m. *Id.* at 7; *Transcript (Tr.)*, October 31, 2018 at 33-34. The violations noted in the protest report are still pending. *Protest Report*, at 6. Kovaks has no other violations of the alcohol law in its records. *Id.*

6. The records of the Metropolitan Police Department indicate that it received 36 calls for service related to Kovaks' address from September 2017 to September 2018. *Id.* at 6. None of the calls led to a violation of the District's alcohol laws. *Id.*

7. Investigator Gilliam filed the hours violation identified in the protest report. *Id.* at 52. During one of his visits, he observed people sitting in lawn chairs, openly consuming alcoholic beverages, and playing music on radios near the premises. *Id.* at 55, 63. He further noted that multiple residences were located directly across the alley. *Id.* at 57.

## II. Wayne Johnson

8. Wayne Johnson represents Kovaks. *Id.* at 80. He indicated that the establishment has security cameras monitoring the interior and exterior of the premises. *Id.* The store's staff also regularly asks loiterers to move and staff calls the police to report loitering. *Id.* He also indicated that the parking lot and alley near Kovaks may attract people who buy alcohol at other stores in the neighborhood. *Id.* at 82, 97-98.

9. Recently, the store has taken additional measures to secure the area. *Id.* at 83. For example, Kovaks now locks the parking lot at night and installed additional security cameras both inside and outside the establishment. *Id.* Kovaks has two or three cameras inside, four cameras located on the side of the building, and three in the rear. *Id.* at 110. Kovaks also maintains an incident report log. *Id.* at 115.

10. Mr. Johnson indicated that the establishment has no objection to limiting the establishment's Sunday hours to 2:00 p.m. to 7:00 p.m. *Id.* at 167.

### III. ANC Commissioner Clarence Lee

11. ANC Commissioner Clarence Lee indicates that he has heard complaints from his constituents that the store was operating on Sundays, even though it was not approved for Sunday hours. *Id.* at 120. Indeed, Mr. Lee previously bought alcohol from the store on Sunday, August 26, 2018. *Id.* at 120-21.

12. Mr. Lee is not aware of any other off-premise establishment that opens on Sunday in the neighborhood. *Id.* at 121.

13. Mr. Lee has observed school children on their way to school walk past the store while people are drinking in the parking lot. *Id.* at 124. He has also noticed customers lining up outside the store before it opens. *Id.* at 150.

### CONCLUSIONS OF LAW

14. The Board may approve an Application for a Substantial Change to 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. 2018). 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. 2018)

#### I. The Proposed Change is Appropriate for the Neighborhood Subject to Conditions.

15. The Board approves the request subject to conditions. 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. 2018). 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).

16. 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).

17. “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. 2018). Additionally, “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. 2018). Finally, 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).

18. In considering the evidence presented during the hearing, the Board concludes that the violations observed by ABRA and various witnesses do not rise to such a level that denial of Kovaks’ request would be appropriate. *Supra*, at ¶¶ 7-8, 13. Furthermore, there is no evidence that the proposal will have a negative impact on trash, litter, noise, parking, or real property values. Nevertheless, the Board must consider that the store exists in an area experiencing a large amount of loitering and public drinking. *Id.* Moreover, Kovaks’ parking lot appears to be the center of this activity in the community. *Supra*, at ¶ 13. While ANC 5D identified issues regarding compliance with the establishment’s settlement agreement during the hearing, the Board notes that any violations may be reported to ABRA and subject to an enforcement action, which should resolve any issues regarding compliance. Consequently, in light of this showing, the Board finds that granting the request is only appropriate subject to conditions.

## **II. The Conditions Imposed by the Board Address the Concerns Raised by the Community.**

19. 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).

20. In this case, the Board limits the establishment's Sunday hours to 2:00 p.m. to 7:00 p.m. The Board approves limited Sunday hours because it is reasonable for people to be on the streets during the afternoon and the early evening. Furthermore, early closing will encourage people to disperse before people in the neighborhood generally go to bed. The Board further orders Kovaks to install and maintain its security cameras in a manner that discourages loitering and assists law enforcement in fighting criminal activity.

## **III. The Board Has Satisfied the Great Weight Requirement By Addressing ANC 5D's Issues and Concerns.**

21. ANC 5D's written recommendation submitted in accordance with D.C. Code § 25-609(a) indicated that its protest was based on concerns regarding Kovaks' impact on peace, order, and quiet; residential parking and safety; and real property values. The Board notes that it specifically addressed these concerns in the paragraphs contained above.

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

22. 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. 2018). 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 9th day of January 2019, hereby **APPROVES** the Application for a Substantial Change to a Retailer's Class A License at premises 1237 Mount Olivet Road, N.E. filed by Pako, LLC, t/a Kovaks Liquors subject to the following **CONDITIONS**:

1. The license holder's hours shall be limited to 2:00 p.m. to 7:00 p.m. on Sundays; and

2. The license holder shall maintain and operate at least three security cameras to monitor the rear of the establishment whenever the business is in operation. The security cameras shall take good quality images of anything appearing within view of the cameras. All footage shall be maintained for at least 30 days and shall be turned over to ABRA or MPD within 48 hours of the request. If the cameras break or otherwise become non-operational, the license holder shall comply with D.C. Official Code § 25-402(d)(4)(B) (10-day notification provision).

**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

  
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Donovan Anderson, Chairperson

  
\_\_\_\_\_  
Mike Silverstein, Member

  
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James Short, Member

  
\_\_\_\_\_  
Bobby Cato, Member

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Rema Wahabzadah, 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).