

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

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In the Matter of:	)	
	)	
Lidl US Operations, LLC	)	Case No.: 22-PRO-00004
t/a Lidl	)	License No.: ABRA-119890
	)	Order No.: 2021-208
Application for a New	)	
Retailer's Class A License	)	
	)	
at premises	)	
2224 Town Center Drive, S.E.	)	
Washington, D.C. 20020	)	

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

**ALSO PRESENT:** Lidl US Operations, LLC, t/a Lidl, Applicant

Stephen O'Brien and Manalle Mahmoud, Counsels, on behalf of the Applicant

Tiffany Brown, Chair, Designated Representative, Advisory Neighborhood Commission (ANC) 7B, Protestants

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 New Retailer's Class A License filed by Lidl US Operations, LLC, t/a Lidl (hereinafter "Applicant" or "Lidl").

## ***Procedural Background***

The Notice of Public Hearing advertising Lidl's Application was posted on November 12, 2021, and informed the public that objections to the Application could be filed on or before January 18, 2022. *ABRA Protest File No. 22-PRO-*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 7B has filed a protest against the Application. *ABRA Protest File No. 22-PRO-00004*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on February 7, 2022, where the above-mentioned objector was granted standing to protest the Application. On March 9, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 6, 2022.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC[s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 7B, which indicated that its protest is based on concerns regarding Lidl's impact on peace, order, and quiet. 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 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. 2022). The Board notes that at the outset of the hearing, the parties indicated that there was no objection to the issuance of the license. *Transcript (Tr.)*, April 6, 2022 at 19.

## **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. Lidl has submitted an Application for a New Retailer's Class A License at 2224 Town Center Drive, S.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Christopher Condon investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00004, Protest Report* (Apr. 2022) [*Protest Report*]. The proposed establishment is in a MU-7B zone. *Protest Report*, at 3. Only one licensed establishment is located within 1,200 feet of the proposed location. *Id.* at 4. There are no recreation centers, public libraries, or day care centers located within 400 feet

of the establishment. *Id.* at 5. Stanton Elementary School is located within 400 feet of the proposed location. *Id.*

3. Lidl operates as part of a large grocery store chain. *Id.* at 2. The current premises of the store have not yet been constructed as of the date of the hearing. *Id.* at 3. When open, it will operate out of the Skyland Town Center Shopping Mall. *Id.* at 5. The establishment intends to open at 8:00 a.m. and close at 9:00 p.m. every day. *Id.* at 5.

4. The records of the Metropolitan Police Department show no calls for service at Lidl's proposed address from March 14, 2021, until March 14, 2022. *Id.* at 7.

## **II. Daniel Goodman**

5. Daniel Goodman serves as the Director of Real Estate with the entity that owns Lidl. *Tr.*, 4/6/22 at 38. Lidl operates approximately 170 stores in the United States. *Id.* at 39. Lidl was encouraged to put a store at the proposed location by the D.C. Economic Partnership. *Id.* at 41. Lidl requires an alcohol license to remain competitive with another grocery store chain in the area. *Id.* at 43, 45, 55.

6. Mr. Goodman estimated that when finished the store will be approximately 30,000 square feet in size. *Id.* at 47. He noted that Lidl's business strategy is to have the lowest average prices. *Id.* at 50-51.

## **III. Ashley Robinson**

7. Ashley Robinson serves as the District Manager for Lidl. *Id.* at 58. The store operates as a full-service grocery store that encourages one-stop shopping for groceries. *Id.* at 59. The store will have access to a parking lot with approximately 225 spaces. *Id.* at 87.

8. Lidl takes several steps to prevent underage drinking and intoxication. First, the store provides training to all employees regarding avoiding sales to minors and intoxicated persons. *Id.* at 64. Second, the cash register prompts employees to scan customers to determine if they are of legal age when purchasing alcohol and asks for information related to the customer's identification. *Id.* at 65. Third, Lidl's employee manual contains information related to Lidl's underage drinking policies. *Id.* at 66. Fourth, the store prominently advertises Lidl's underage alcohol sale policies to customers. *Id.* Fifth, supervisors are required to patrol the alcohol aisle on a regular basis. *Id.* at 68, 81. Sixth, Lidl will require two licensed managers to be on duty when the store is in operation. *Id.* at 69.

9. Lidl intends to engage in other practices to avoid a negative impact on the community. First, Lidl further intends to comply with the ban on the sale of single beers that is applicable to the area where the store will be located. *Id.* at 67. Indeed, to comply with the law, Lidl will only sell beer in six packs. *Id.* Second, employees will regularly collect shopping carts and pick up litter outside the store on an hourly basis. *Id.* at 69-70. Third, management is instructed to advise loiterers and panhandlers to leave the property when observed and is willing to contact the police regarding loitering issues. *Id.* at 73. Fourth, each store operated by Lidl uses security

cameras to monitor the interior and exterior parts of the premises. *Id.* at 90. Sixth, trash is stored in a closed container. *Id.* at 96.

#### **IV. ANC 7B Chair Tiffany Brown**

10. ANC 7B requested various conditions be imposed on Lidl. In particular, the ANC requested that Lidle (1) provide and comply with a security plan related to the sale of alcohol; (2) post no loitering signs; (3) always have an ABC manager present; (4) require identification checks on all sales of alcohol; (5) refrain from selling single containers of alcohol; (6) only sell alcohol during their business hours; (7) maintain an incident log; (8) maintain the cleanliness of the property; and (9) refrain from selling to minors and post related signage. *Id.* at 100-01.

11. Tiffany Brown, Chair of ANC 7B, indicated that she has witnessed loitering at the nearby gas station on occasion. *Id.* at 113-14.

### **CONCLUSIONS OF LAW**

12. 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. 2022). 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. 2022).

#### **I. Lidl is Appropriate for the Neighborhood.**

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

14. 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).

15. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2022).

16. In this case, Lidl intends to operate as a full-service grocery store in a large shopping plaza, which appears eminently appropriate. *Supra*, at ¶ 3. Lidl further demonstrated that it has adequate policies and procedures in place to address various concerns related to peace, order, and quiet that may stem from the sale of alcohol, which at this juncture are purely speculative. *Supra*, at ¶¶ 8-9. Other than speculation, nothing in the record suggests that Lidl is incapable of putting these plans into effect; that these policies and procedures are unusual for the alcohol industry; that Lidl has a bad record managing alcohol sales in other jurisdictions; or that these policies and procedures are otherwise inadequate to meet the needs of the community.

17. Likewise, the ANC has not provided sufficient evidence that conditions are warranted. While Chair Brown indicated that she has observed loitering near the proposed location, there is no indication that this loitering rises to the level of disturbing the community or that Lidl is incapable of addressing the matter if it occurs in and around Lidl. Furthermore, the Board does not find any evidentiary basis for imposing the ANC’s suggested conditions when the record does not contain a reasonable basis for believing that a negative impact will occur if the conditions are not imposed. Therefore, the Board finds the Application appropriate without conditions.

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

18. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (“The Board’s regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2 (West Supp. 2022). Accordingly, based on the Board’s review of the Application and the record, the

Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

**ORDER**

Therefore, the Board, on this 11th day of May 2022, hereby **APPROVES** the Application for a New Retailer's Class A License at premises 2224 Town Center Drive, S.E., filed by Lidl US Operations, LLC, t/a Lidl.

**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: ac43cb9eb9d45f09e4b730093d1dccc8

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Donovan Anderson, Chairperson

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*Bobby Cato*  
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Bobby Cato, Member

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Rafi Crockett, Member

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Jeni Hansen, Member

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*Edward Grandis, Member*  
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Edward S. Grandis, Member

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

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*James Short*  
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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).