

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

In the Matter of:)	
)	
M Street Entertainment, LLC)	Case No.: 22-PRO-00024
t/a To Be Determined)	License No.: ABRA-119608
)	Order No.: 2021-619
Application for a Substantial Change to a)	
Retailer's Class CR License)	
)	
at premises)	
3123-3125 M Street, N.W.)	
Washington, D.C. 20007)	

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

ALSO PRESENT: M Street Entertainment, LLC, t/a To Be Determined, Applicant

Stephen O'Brien, Counsel, on behalf of the Applicant

Lisa Palmer, Vice-Chair, Advisory Neighborhood Commission 2E,
Protestants

Tara Parker, President, Citizens Association of Georgetown, 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 for a Substantial Change to a Retailer's Class CR License filed by M Street Entertainment, LLC, t/a To Be Determined (hereinafter "Applicant" or "M Street"). The Board agrees with the Applicant

that the addition of sports wagering to the license will not have a negative impact on the neighborhood. The Board notes that it considered Advisory Neighborhood Commission (ANC) 2E's and the Citizens Association of Georgetown's (CAG) (hereinafter, the "Protestants") concerns regarding crime and the potential for robberies but found such arguments too speculative and lacking in evidentiary support at this time. The Board's reasoning is explained further below.

Procedural Background

The Notice of Public Hearing advertising M Street's Application was posted on January 28, 2022, and informed the public that objections to the Application could be filed on or before April 25, 2022. *ABRA Protest File No. 22-PRO-00024*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 2E and the Citizens Association of Georgetown (CAG) have filed protests against the Application. *ABRA Protest File No. 22-PRO-00024*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on April 25, 2022, where all of the above-mentioned objectors were granted standing to protest the Application. On May 25, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on July 13, 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 2E, which indicated that its protest is based on concerns regarding M Street'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).

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. M Street has submitted an Application for a Substantial Change to a Retailer's Class CR License at 3123-3125 M Street, N.W., Washington, D.C. *Notice of Public Hearing*. The purpose of the substantial change is to add a sports wagering endorsement to the license.
2. ABRA Investigator Tavrill Prout investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00024, Protest Report* (Jul. 2022) [*Protest Report*]. The establishment was not in operation at the time the Protest Report was drafted. *Id.* at 9.
3. The establishment is in a Mixed Use (MU) 4 zone. *Id.* at 4. Thirty-seven licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 5. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 4.
4. The establishment's hours of operation are as follows: 7:00 a.m. to 2:00 a.m., Sunday through Thursday, 7:00 a.m. to 3:00 a.m. on Friday, and 8:00 a.m. to 3:00 a.m. on Saturday. *Id.* at 8.
5. The establishment's hours of alcoholic beverage sales, service, and consumption start at 8:00 a.m. and end at the same time as the establishment's hours of operation each day of the week. *Id.*
6. The neighborhood is a mixture of commercial and residential premises. *Transcript (Tr.)*, July 13, 2022, at 28. M Street borders an Urban Outfitters and an alley. *Id.* at 34. There is also retail, a bank, and a Haagen-Dazs ice cream shop in the immediate vicinity. *Id.* The business will be located near the middle of the Georgetown commercial district. *Id.* at 44.

II. William Dean

7. William Dean currently lives in Georgetown and has lived there for approximately 16 years. *Id.* at 57-58. He currently owns the building where the license is located. *Id.* at 58. Previously, the building was occupied by an Irish pub. *Id.* Based on his experience as a resident, he believes that Georgetown has a lot of vacant and underutilized commercial properties. *Id.* at 60.
8. He intends to obtain the sports wagering endorsement so that the Cordish Companies, a Maryland based company, can open a sports bar and restaurant with sports wagering. *Id.* at 63. He is aware that Cordish Companies may be one of the largest restaurant owners in the United States and the third largest gaming owner in the country. *Id.* at 66, 69. Cordish Companies will be the tenant and operate the business. *Id.* at 76.

III. Jack Thomas Elmore

9. J. Thomas Elmore lives in the Georgetown neighborhood and has lived there since 1975. *Id.* at 83-84. Mr. Elmore supports the Application because it will bring business to Georgetown. *Id.* at 84, 86. He is concerned that the neighborhood suffers from a lack of businesses and that too many businesses have closed or will close. *Id.* at 85-87.

IV. David Dunning

10. David Dunning lives in Georgetown and supports the Application. *Id.* at 99. He believes the future establishment will attract business to the area. *Id.* at 100.

V. Keith Hudolin

11. Keith Hudolin is the general counsel of Entertainment Consulting International (ECI), which is affiliated with the Cordish Companies. *Id.* at 106. ECI oversees various bars and restaurants around the country, including sports bars. *Id.* He noted that his company focuses on operating high-end sports bars. *Id.* at 107. In total, ECI operates nine sports bars across the country and three of those businesses offer sports wagering. *Id.* at 115.

12. Currently, ECI operates a similar model in North Bethesda. *Id.* at 108. He noted that the North Bethesda location has a kid's menu and that children regularly frequent the establishment. *Id.* at 112. He also noted that the North Bethesda location is in a mixed-use area with both commercial and residential buildings. *Id.* at 113. He emphasized that the North Bethesda location is an appropriate venue for families. *Id.* Finally, he noted that sports wagering only accounts for approximately 10 to 15 percent of that location's revenue. *Id.* at 114.

13. M Street's business will have sports betting kiosks inside the premises. *Id.* at 109. Sports betting kiosks will be located on both the first and second floors. *Id.*, at 110. On the first floor, there will be one sports wagering window. *Id.* He noted that sports wagering is "additive" because it attracts guests and encourages additional food and beverage sales. *Id.* at 116.

14. M Street will not likely have an admission queue outside the premises when in operation. *Id.* at 117. He noted that on high volume days, such as the Superbowl, the business generally requires reservations, which limits the crowd. *Id.* M Street also intends to hire additional security for high volume days and will have interior and exterior security cameras. *Id.* at 118.

VI. Cathy Beeding

15. Cathy Beeding is the Executive Vice President and General Counsel for Cordish Gaming Shared Services. *Id.* at 132-33. She provides oversight and guidance on all aspects of the Gaming Division of the Cordish Companies. *Id.* at 133.

16. The Cordish Companies intends to adhere to D.C. law regarding sports wagering. *Id.* As part of its operations, the business will have sufficient money to pay all winning bets when presented to the business. *Id.* at 134. She indicated that winning bets will generally be paid in

cash, but other forms of payment are acceptable under the law. *Id.* at 135, 143. If the endorsement is approved, M Street will likely set the maximum wager at a sports wagering kiosk to be \$3,000. *Id.* at 141. Ms. Beeding noted that OLG can approve a higher betting limit. *Id.* at 143.

17. The business will also comply with a security plan in accordance with the rules proffered by the Office of Lottery and Gaming (OLG). *Id.* at 135. In order to comply with OLG's rules various security measures must be taken. *Id.* at 136. These include having sufficient staff available to monitor sports wagering areas and maintaining OLG approved security systems, such as closed-circuit television systems. *Id.* The plan also requires plans to respond to various security situations and plans regarding fixed and roving security. *Id.* at 145. She further noted that the sports betting window staffed by a person is required under OLG's rules. *Id.* at 138.

CONCLUSIONS OF LAW

18. The Board may approve an Application for a Substantial Change to 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. 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. M Street's Application is Appropriate for the Neighborhood.

19. The Board finds the Application to add a sports wagering endorsement appropriate. 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).

20. 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. The Application will not have a negative impact on peace, order, and quiet.

21. “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).

22. If granted, M Street proposes that the business will be transferred to the Cordish Companies for the purpose of operating a sports bar and restaurant that offers sports betting. *Supra*, at ¶¶ 8, 11-13. The Cordish Companies intends to operate a high-end sports bar that is appropriate for families. *Supra*, at ¶ 12. The Board notes that there is no indication that the business will engage in nightclub activities, such as disc jockey entertainment and offering a dance floor, that may generate large, rowdy, and intoxicated crowds. Indeed, on expected high volume days, such as the Superbowl, patrons will likely require a reservation and the business does not expect to have an admission line. *Supra*, at ¶ 14. Finally, the business will be subject to various security requirements under the administration of OLG. *Supra*, at ¶ 17.

23. The Protestants’ case-in-chief argues that late night sports wagering in the facility will encourage crime because patrons with sports wagering winnings will be robbery victims outside the establishment. *Tr.*, 7/13/22 at 165, 168. The Protestants are also concerned that additional late-night activity in Georgetown will lead to patron disturbances. *Id.* at 166. These arguments are not persuasive.

24. The Board finds the argument that patrons leaving the establishment will be targets for robberies to be too speculative at this time. First, any person leaving the establishment with a substantial amount of sports wagering winnings, is in the same position as any person leaving a store with expensive electronics or jewelry or going to or coming from a bank; yet, it is doubtful the District would deny such businesses the ability to operate because of that type of risk. Second, if it were true that sports wagering attracts crime, evidence should be available to prove such a relationship. For example, the Protestants could present crime data around similar facilities in other jurisdictions (e.g., off-track betting locations in New York, betting shops in London, etc.). Yet, there is no such evidence in the record. Therefore, it would be unfair and

unreasonable to deny M Street a sports wagering endorsement for the reasons provided by the Protestants.

25. The Board further finds arguments that the proposed operations will cause a nuisance to be speculative and unsupported. As noted above, the proposed business will not host nightclub activities; therefore, even if patrons remain at the establishment until close, it is unlikely to generate a high concentration of crowds. Moreover, the proposed operations will be managed by a large business that operates many hospitality establishments across the United States. *Supra*, at ¶ 11. There is no evidence in the record that the proposed operator has a record of violence, disorder, crime, and neighborhood disturbances associated with its businesses. *Supra*, at ¶¶ 8, 11. Consequently, under these circumstances, it is reasonable to presume that the business will be operated in an orderly manner and not be associated with neighborhood disturbances. Therefore, the Board is satisfied that the business will not have a negative impact on peace, order, and quiet if its sports wagering endorsement request is granted.

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

26. 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 31st day of August 2022, hereby **APPROVES** the Application for a Substantial Change to a Retailer’s Class CR License at premises 3123-3125 M Street, N.W., filed by M Street Entertainment, LLC, t/a To Be Determined.

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
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Donovan Anderson, Chairperson

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Edward S. Grandis, 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).