

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

In the Matter of:)	
)	
Matthias, Inc.)	Case No.: 18-PRO-00042
t/a Sylvia Liquors)	License No: 104606
)	Order No: 2018-694
Application to Renew a)	
Retailer's Class A License)	
)	
at premises)	
1818 Benning Road, N.E.)	
Washington, D.C. 20002)	

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Rema Wahabzadah, Member

ALSO PRESENT: Matthias, Inc., t/a Sylvia Liquors, Applicant

Sidon Yohannes and Andrew Kline, Counsels, on behalf of the Applicant

Sydelle Moore, President, Langston Civic Association, Protestants

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 A License filed by Matthias, Inc., t/a Sylvia Liquors, (hereinafter "Applicant" or "Sylvia Liquors") subject to the conditions required below.

Procedural Background

The Notice of Public Hearing advertising Sylvia Liquors' Application was posted on April 6, 2018, and informed the public that objections to the Application could be filed on or before May 21, 2018. *ABRA Protest File No. 18-PRO-00042*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that the Langston Civic Association has filed a protest against the Application. *ABRA Protest File No. 18-PRO-00042*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on June 4, 2018, where the above-mentioned objector was granted standing to protest the Application. On July 11, 2018, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on October 17, 2018.

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 did not receive a properly adopted written recommendation from an ANC in this matter.

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 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. ABRA Investigator Vernon Leftwich

1. Sylvia Liquors has submitted an Application to Renew a Retailer's Class A License at 1818 Benning Road, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Vernon Leftwich investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 18-PRO-00042, Protest Report* (Sept. 2018) [*Protest Report*]. The establishment is located in a MU-4 zone. *Protest Report*, at 3. Five licensed establishments are located within 1,200 feet of the proposed location; specifically, there are four off-premise retailers and one on-premise retailer. *Id.* at 3-4. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 4. Sylvia Liquors' hours of operation and sale are from 9:00 a.m. to midnight. *Id.* at 5.

3. Investigators monitored the store at various times on ten separate occasions between July 12, 2018, and August 30, 2018. *Id.* at 5-6. During these visits, no investigator observed a violation of the District's alcohol laws. *Id.* at 6. Nevertheless, it was reported that people regularly gathered outside the store in front of the properties abutting Sylvia Liquors and on Sylvia Liquors' block. *Id.* at 6. Investigators observed that these people regularly sat on chairs and crates. *Id.* Investigators also observed police officers asking people to leave the area. *Id.*

4. Investigator Leftwich also examined Sylvia Liquors' violation history and the area's crime statistics. *Id.* The establishment's investigative history shows that it paid a \$250 fine in 2017 for failing to have a licensed manager on duty, and received a warning letter related to a sale to minor violation in 2016. *Id.* The records of the Metropolitan Police Department show that between August 1, 2017, and August 20, 2018, there were 92 calls for service at or near the establishment's address. *Id.* at Exhibit 11.

5. During his visit to the establishment, Investigator Leftwich observed that the establishment was small. *Transcript (Tr.)*, October 17, 2018 at 47. The interior contained beer refrigerators. *Id.* at 48. The establishment appears to mostly sell alcohol and has a few rows dedicated to snack items. *Id.*

6. While in the neighborhood, Investigator Leftwich spoke with a police officer assigned to the area. *Id.* at 49. The officer indicated that the police are not always able to respond to all the calls for service in the area. *Id.* Even when the police respond to loitering complaints, many people often return within the hour. *Id.* Nevertheless, the investigator generally found that the people loitering in the area were not rowdy or violent. *Id.* at 54. He also did not observe anyone enter the store, purchase alcohol, and drink outside. *Id.* at 55.

II. Namyoung Joung

7. Namyoung Joung owns Sylvia Liquors. *Id.* at 74. He has operated the store with the other owners for approximately two years. *Id.* at 74-75. The store's customers generally come from the local community. *Id.* at 75.

8. The store is located near Benning Road, N.E., which has had issues with crime. *Id.* at 77. Recently, individuals began discharging firearms in the neighborhood, and he assisted the police investigation into the incident by providing video footage. *Id.* at 78.

9. Sylvia Liquors is aware of the issue regarding loitering near the store. *Id.* at 79, 88. The establishment regularly asks individuals to not loiter in front of the store either in person or through a speakerphone that can be heard outside the store. *Id.* at 79, 90. If necessary, the establishment will call the police if people do not move. *Id.* at 79, 90-91, 98-99. Mr. Joung indicated that he calls the police daily to report loitering issues. *Id.* at 91.

III. Hye Jung Na

10. Hye Jung Na also serves as an owner of the establishment and described the establishment's efforts to improve the security of the neighborhood. *Id.* at 101. Specifically,

Sylvia Liquors posted signs indicating that the area is monitored by security cameras and that persons under the age of 21 may not make purchases within the store. *Id.* at 101-102. The establishment installed security cameras that provide views of the interior and exterior of the premises. *Id.* at 102, 105. The store also uses the cameras to monitor for loitering, but while the camera faces the nearby nail salon, no camera faces the nearby day care center. *Id.* at 106, 113, 118-19. The establishment also regularly cleans the area around the store and the block to keep the area clean. *Id.* at 132-33. Finally, the establishment entered into a settlement agreement that addresses community issues. *Id.* at 109.

IV. William Chambers

11. William Chambers lives approximately a block away from Sylvia Liquors. *Id.* at 152. He has noticed a significant amount of loitering in the area near abandoned properties. *Id.* at 152-53. He has also observed some people smoke cannabis and drink alcoholic beverages in public. *Id.* at 156-57. He has no issues related to Sylvia Liquors' operations. *Id.* at 155.

V. Kenneth Randolph Artis

12. Kenneth Artis lives approximately a block away from Sylvia Liquors. *Id.* at 159. He is a frequent customer. *Id.* As a resident, Mr. Artis admitted that loitering, public drinking, and public drug use are problems in the neighborhood, but has not observed regular loitering in front of Sylvia Liquors. *Id.* at 160-61. He has no issues with the operations of Sylvia Liquors. *Id.* at 161.

VI. ANC Commissioner Kathy Henderson

13. ANC Commissioner Kathy Henderson represents ANC 5D05. *Id.* at 164. Commissioner Henderson finds that the ownership of Sylvia Liquors is very "responsive" to community concerns. *Id.* at 166. Commissioner Henderson indicated that some loiterers are engaging in illegal activity and impeding the sidewalk. *Id.* at 170, 176, 208.

VII. Ian Moss

14. Ian Moss has lived in the neighborhood since 2015. *Id.* at 217. Since he moved into the neighborhood, he has observed that the loitering problem has gotten worse. *Id.* He has regularly observed individuals go into Sylvia Liquors, purchase alcohol, and loiter in the neighborhood. *Id.* at 221, 223-24.

VIII. Juanita L. Diggs

15. Juanita Diggs has lived in the neighborhood since 1959. *Id.* at 238. As a resident, she has witnessed illegal drug dealing and people drinking in the streets. *Id.* at 248, 262. She also believes that the police lack sufficient manpower to address the loitering issue. *Id.* at 257.

CONCLUSIONS OF LAW

16. The Board may approve an Application to Renew 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 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 Establishment is Appropriate for the Neighborhood Subject to Conditions.

17. 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).

18. 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).

19. “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).

20. In general, the record in this case shows that Sylvia Liquors is a well-run establishment. *Supra*, at ¶¶ 7-9. Nevertheless, in renewing Sylvia Liquors’ license, the Board must consider that the store exists in an area experiencing a large amount of loitering and criminal activity. *Supra*, at ¶¶ 4, 6, 9, 11-15. While the store is not the direct or only cause of these issues, its existence in the area has the potential to exacerbate this state of affairs by allowing loiterers to buy alcohol to drink in the streets. *Supra*, at ¶ 14. In light of this showing by the Protestant, the Board finds that renewal is only appropriate if the license undertakes additional steps to address the loitering issue.

21. 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).

22. In order to prevent the operations of Sylvia Liquors from exacerbating the loitering issue, the Board requires the following: (1) the store shall ensure adequate camera footage coverage of the exterior of the establishment to deter loitering and assist the police in tackling crime issues in the neighborhood; (2) post no loitering and no public drinking signs visible to people located outside the establishment; and (3) ensure that the establishment’s incident book is kept on the premises, made available for inspection, and provides sufficient detail about any incident triggering a report to the police. The Board notes that Sylvia Liquors agreed that it would add another camera to add coverage in the direction that is currently not covered by the establishment’s security cameras. *Tr.*, 10/17/18 at 266.

II. The Establishment’s Record of Compliance Merits Renewal.

23. 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 light of Sylvia Liquors record of only a few minor violations, the Board finds that the license merits renewal.

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

24. 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 28th day of November 2018, hereby **APPROVES** the Application to Renew a Retailer's Class A License at premises 1818 Benning Road, N.E., filed by Matthias, Inc., t/a Sylvia Liquors, subject to the following **CONDITIONS**:

1. The license holder shall install security cameras on the exterior of the establishment. There shall be sufficient cameras to ensure that the exterior security cameras provide views of all public streets and sidewalks visible from the exterior of the establishment whenever the establishment is in operation. The footage shall be able to show good quality images of anything appearing within the view of the cameras.
2. The license holder shall post a sign or signs informing the public that loitering and public drinking are prohibited. The signs shall be posted in a manner that is clearly visible to people located on the sidewalk outside the store.
3. The license holder shall ensure that any incident book maintained by the establishment briefly describes the reason for calling MPD, if and when the business contacts the police. Any incident book maintained by the establishment shall be maintained on the premises, provide all incident reports for at least the prior three years, and be made available for inspection upon the request of any ABRA investigator or the Board.

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



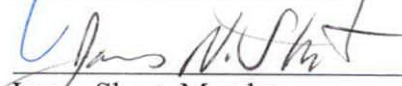
Donovan Anderson, Chairperson



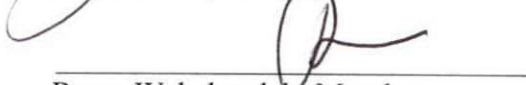
Nick Alberti, Member



Mike Silverstein, Member



James Short, Member



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).