

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

In the Matter of:)	
)	
Town 2.0)	Case No.: 19-PRO-00101
t/a TBD)	License No.: ABRA-114559
)	Order No.: 2020-028
Application for a New)	
Retailer's Class CN License)	
)	
at premises)	
1001 North Capitol Street, N.E.)	
Washington, D.C. 20002)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rafi Aliya Crockett, Member

ALSO PRESENT: Town 2.0, t/a TBD, Applicant

Stephen O'Brien, on behalf of the Applicant

Lyle M. Blanchard, Counsel, on behalf of a Group of Five or More Residents and Property Owners and North Capitol Commons Limited Partnership, Protestants

Drew Courtney, Commissioner, Advisory Neighborhood Commission (ANC) 6C, Protestant

Richard McKinnon, Designated Representative, on behalf of a Second Group of Five or More Residents and Property Owner, 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 New Retailer's Class CN License filed by Town 2.0, t/a TBD, (hereinafter "Applicant" or "Town") to operate a nightclub at 1001 North Capitol Street, N.E., Washington, D.C. The Board's approval is subject to the condition that it hire at least two officers with the Metropolitan Police Department Reimbursable Detail program on Fridays and Saturdays from at least midnight to closing; ensure that its admittance line into the establishment runs south towards K Street, N.E.; ensure that no recorded or amplified sounds may be heard in a residence with its windows and doors closed or heard from public space; and operate the sidewalk café no later than 2:00 a.m. The Board's decision is based on compelling evidence that Town has an adequate plan to maintain order and prevent noise disturbances. In that vein, the majority of the conditions placed on the license merely enforce the promises made by Town during the protest hearing. The Board further notes that Town requested later operational hours for the sidewalk café; however, the Board did not grant the full request because operating an outdoor seating area past 2:00 a.m. encourages too much potentially disturbing early morning activity in the vicinity of residents and not conducive with Town's proposal for a soft close. The Board's decision and reasoning are further explained below.

Procedural Background

The Notice of Public Hearing advertising Town's Application was posted on August 9, 2019, and informed the public that objections to the Application could be filed on or before September 23, 2019. *ABRA Protest File No. 19-PRO-00101*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that two groups of residents and property owners, North Capitol Commons Limited Partnership, and Advisory Neighborhood Commission (ANC) 6C have filed protests against the Application. *ABRA Protest File No. 19-PRO-00101*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on October 7, 2019, where all of the above-mentioned objectors were granted standing to protest the Application. On November 6, 2019, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 4, 2019.

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 6C, which indicated that its protest is based on concerns regarding Town's impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. 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, 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. 2020).

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. Town has submitted an Application for a New Retailer's Class CN License at 1001 North Capitol Street, N.E., Washington, D.C. *Notice of Public Hearing*. Town indicates that it seeks to operate a nightclub with entertainment, disc jockeys, and dancing. *Id.* The interior will have a capacity of 524 persons and the sidewalk café will have a capacity of 125 seats. *Id.*
2. ABRA Investigator Mikea Nelson investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00101, Protest Report* (Nov. 2019) [*Protest Report*].
3. According to the report, Town is not currently operating and will undergo construction before opening for business. *Id.* at 7. The proposed establishment is located in a Downtown (D-5) zone, which encourages "high-density development of commercial and mixed uses" *Protest Report*, at 4. Three licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 5. There are no recreation centers, public libraries, or day care centers located within 400 feet of the establishment; however, Gonzaga College High School is located within 400 feet of the proposed location. *Id.* at 6.
4. According to the public notice, the establishment's proposed hours of operation are as follows: 12:00 p.m. to 4:00 a.m., Sunday through Thursday, and 12:00 p.m. to 5:00 a.m. on Friday and Saturday. *Id.* at 7. The establishment's proposed hours of alcoholic beverage sales, service, and consumption end at 2:00 a.m. on Sunday through Thursday, and end at 3:00 a.m. on Friday and Saturday. *Id.* The establishment's proposed sidewalk café hours will match its hours of operation. *Id.*
5. The proposed location has various public transportation and parking options. *Id.* First, the establishment is located near Union Station, which offers access to Metrorail's Red Line and various commuter trains. *Id.* Second, there are various Metro bus stops in the vicinity of the establishment. *Id.* Finally, two private parking lots are available and there is some street parking. *Id.* at 9.
6. At present, the records of the Metropolitan Police Department (MPD) show that between November 7, 2018, and November 7, 2019, there were only 10 calls for service related to the

proposed location. *Id.* at 10.¹ Additional police records show under 100 calls for service at 1005 North Capitol Street, N.E., and the unit block of K Street, N.E., from November 1, 2018, to October 31, 2019. *Protestant's Exhibit No. P-9*. The provided calls relate to theft, simple assault, damage to property, prostitution, fraud and financial crimes, traffic violations, one open container violation, and weapons violations. *Id.*

7. Investigator Nelson monitored the proposed location on several occasions between November 13, 2019, and November 21, 2019. *Transcript (Tr.)*, December 4, 2019 at 38. During her visits, she observed that Club Elevate, a nightclub, operated across the street from Town's proposed location. *Id.* at 33, 38-40. She did not observe any disturbances related to peace, order, and quiet during her visits. *Id.* at 38-39. In addition, during the monitoring period, no ABRA investigators monitoring the location reported disturbances or dangerous traffic conditions. *Id.* at 43-44, 46.

II. John Guggenmos

8. John Guggenmos serves as the managing member of Town. *Id.* at 52. He has owned and operated various nightclubs in the District of Columbia since 1990. *Id.* at 52-53. Some of the establishments he owns are Number Nine and Trade. *Id.* at 53. He also presently serves as the Vice Chair of ANC 2F. *Id.* He is seeking a new location because he was unable to lease the prior location of Town. *Id.* at 59-60. He estimates that the repair and construction work on the proposed location will cost the landlord approximately \$1 million dollars. *Id.* at 67.

9. The front entrance of the property will face North Capitol Street, N.E., and a large parking lot. *Applicant's Exhibit No. 10*. The outdoor seating area will face K Street, N.E. *Id.* The rear of the property will face a large parking lot. *Id.* Finally, the part of the building farthest from K Street, N.E., will neighbor the John and Jill Ker Conway Residence. *Id.*

10. The proposed layout of the business will have crowds enter through the first floor and line up on North Capitol Street, N.E. *Applicant's Exhibit No. A-7*. The middle of the first floor will feature a dance floor, while the side facing K Street, N.E., will feature seating. *Id.* The opposite side of the first floor will feature a bar. *Id.* The side opposite the main entrance will feature a stage, while behind the stage will be restrooms and storage. *Id.* The establishment's trash area will be located outside behind the restroom. *Id.* Finally, on the K Street, N.E., side of the property, a large outdoor seating area, including a smoking area, will be surrounded by tall planters. *Id.* The second level will generally have the same layout as the interior of the first level. *Applicant's Exhibit No. A-8*. The basement level will feature offices and storage areas. *Applicant's Exhibit No. A-9*.

11. As part of Town's construction plans, the ownership included soundproofing in the design. *Tr.*, 12/4/19 at 72. Specifically, Town intends to build a room within a room with fake windows to encase the interior and to avoid sound leakage through the establishment's stain glass windows. *Id.* at 72-73; *Applicant's Exhibit No. A-6*. The new floor will also have

¹ The Board relies on the crime statistics provided in the Protest Report rather than the numbers provided in *Protestant's Exhibit P-9* for 1001 North Capitol Street, N.E., because the figures provided for that address appear to miss 6 calls recorded in the exhibit attached to the Protest Report.

soundproofing capability. *Id.* at 73. Finally, the outdoor seating area does not face the abutting residence, is separated from the abutting residence by the building itself, and will have large planters as a divider. *Id.* at 74, 76. The outdoor seating area will also not have any sound system. *Id.* at 87.

12. Town's business model will focus on operating the nightclub Friday through Sunday. *Id.* On other days, the establishment may be rented for private events. *Id.*

13. Mr. Guggenmos discussed the club's crowd management plans. *Id.* at 77. Town will have a rideshare pickup location on K Street, N.E. *Id.* at 76. The club will also ensure that the line runs south down K Street, N.E., and not the abutting residence. *Id.* at 76; *see also id.* at 283. The club's patrons will also likely have access to the parking lot behind Elevate. *Id.* at 78.

14. Town intends to hire at least two reimbursable detail officers to staff the establishment on Friday and Saturday nights. *Id.* at 76. Town also intends to engage in a soft close where it would stop admittance at 3:00 a.m. and alcohol service at 2:45 a.m. with the goal of having patrons leave gradually rather than leave all at once. *Id.* at 57-58.

III. Rob Hudson

15. Robert Hudson serves as a Commissioner on ANC 1B. *Id.* at 103. Town's prior location was located within ANC 1B. *Id.* He further noted that Town previously had outdoor seating. *Id.* at 104. In his experience, Town previously operated responsibly, provided sufficient security, did not cause any noise issues, and did not have a negative impact on its surrounding community. *Id.* at 103-05.

IV. Trung Vu

16. Trung Vu lives across the street from Town's prior location and lived there while Town was in operation. *Id.* at 107-08. He never experienced any issues regarding noise. *Id.* at 108.

V. John Fanning

17. John Fanning serves as the Chairperson of ANC 2F. *Id.* at 111. He is aware that Mr. Guggenmos has operated establishments in his ANC for many years. *Id.* at 111-12. In his experience, Mr. Guggenmos is very engaged in his local community and is a great business owner. *Id.* at 111-13.

VI. Eric Johnson

18. Eric Johnson is a program analyst with the D.C. Fire and Emergency Medical Services (FEMS) Department. *Id.* at 114. FEMS reports that between November 1, 2018, and October 31, 2019, the address of 1001 and 1005 North Capitol Street, N.E., and the unit block of K Street, N.E., received 304 calls for service. *Id.* at 117; *Protestant's Exhibit No. P-6.* Nevertheless, the specific nature of each individual call was not provided. *Id.*

VII. Chapman Todd

19. Chapman Todd operates a business that develops and operates supportive housing. *Tr.*, 12/4/19 at 123. Currently, his business, Jaydot, has a contract with Community Solutions. *Id.* at 124. Community Solutions is a nonprofit organization that owns the John and Jill Ker Conway Residence building. *Id.* The Conway Residence serves homeless veterans and abuts Town's proposed location. *Id.* at 125-27, 130. Indeed, parts of the Conway Residence and Town's proposed building may only be inches apart. *Id.* at 133. The Conway Residence is 14 stories total. *Id.* at 135. The first and second floor of the Conway Residence are nonresidential while six units are located on the third floor. *Id.* at 136. The third floor residences do not face the church, but higher levels do. *Id.* at 138. The exterior part of the building is made of "a solid masonry wall." *Id.* at 138. Community Solutions is concerned that noise from Town will disturb residents at the Conway Residence. *Id.* at 129.

VIII. Michael Dehart

20. Michael Dehart previously worked as a rehab specialist and managed a homeless veteran housing project. *Id.* at 146. He currently works as psychotherapist and social worker. *Id.* at 146, 150. His work focuses on substance abuse, trauma, and trauma counseling. *Id.* at 146, 148. He indicated that many homeless veterans, such as those living at the Conway Residence, suffer from post-traumatic stress disorder. *Id.* at 147.

IX. Abram Thompson

21. Abram Thompson lives at the Conway Residence on one of the highest floors. *Id.* at 162. He indicated that his current apartment vibrates when Elevate hosts outside events. *Id.* at 163.

X. Calvin Johnson

22. Calvin Johnson lives at the Conway Residence. *Id.* at 174. He is concerned that members of the Conway Residence community will be encouraged to consume alcohol and engage in substance abuse by the presence of Town. *Id.* at 175.

XI. Michelle Smith

23. Michelle Smith lives at the Conway Residence. *Id.* at 179. She indicated that she hears noise from Elevate in her apartment at night. *Id.* at 180. She further indicated that she can hear music from the building's third floor outdoor patio. *Id.* She is also concerned about security and crime outside her residence. *Id.* at 182-83.

XII. Reverend Larry West

24. Reverend Larry West currently serves as a minister at the Mount Airy Baptist Church, which is located on North Capitol Street, N.W. *Id.* at 186-87. The church frequently offers ministerial services at the Conway Residence. *Id.* at 189. He is concerned that the presence of the club will encourage alcohol abuse in the community. *Id.* at 192.

XIII. Denise Blackson

25. Denise Blackson serves as the resident counsel president of the Sibley Plaza Townhouse Association and lives in the community. *Id.* at 206-07. She indicated that previously open nightclubs in the neighborhood had caused problems in the past. *Id.* at 213.

XIV. Roger Whitfield

26. Roger Whitfield noted that the community previously hosted frequent drug and alcohol activity. *Id.* at 217. He believes that the presence of a nightclub will negatively impact the people living in the veteran's facility next door. *Id.* at 219.

XV. Richard McKinnon

27. Richard McKinnon is a member of the Mount Airy Baptist Church. *Id.* at 221. He is concerned that the presence of the club will cause an increase in crime. *Id.* at 222. He noted that there is a large population of homeless persons in the area. *Id.* at 225. Nevertheless, he admitted that a thriving business may make the immediate area safer. *Id.* at 224.

XVI. William Maida

28. William Maida works as an architect and has completed many projects rehabilitating historic properties. *Id.* at 231, 236. He also completed projects with the goal of limiting sound emissions. *Id.* at 242-44. As part of his work, he examined the proposed location for Town. *Id.* at 237. Based on his examination of the property, the building is approximately 100 years old and "in fairly good condition," despite needing some maintenance. *Id.* at 239. In order to mitigate noise, he recommended that Town use "sound block" covered in another soundproofing material to create a "nice looking finish" on the interior portion of the property facing the Conway Residence. *Id.* at 244-45. Additionally, on the west side of the property where "a big window" is located, he recommended the use of "another type" of soundproofing material. *Id.* at 245. He also indicated that the soundproofing will be effective because it will be close to the source of the sound. *Id.* at 249. Finally, he is 100 percent confident that the soundproofing installed by Town will prevent noise and vibrations from disturbing the residents of the Conway Residence. *Id.* at 254.

XVII. Martin Beam

29. Martin Beam works as an acoustical consultant and has over 30 years of experience addressing noise issues at various types of properties. *Id.* at 260-61. He has been hired by Town to consult on noise mitigation and preventing noise from leaving the property. *Id.* at 265. In order to achieve this goal, his firm recommended building a structure within the building, separated from the exterior building to prevent noise from hitting the building's walls directly. *Id.* at 267-68. This type of structure allows fitness studios that generate high decibel sounds to operate in residential buildings. *Id.* at 267. In the case of Town, the interior structure will be composed of drywalls and "fiberglass batt insulation." *Id.* at 268. The window on the west side

will have a noise barrier wall “above and below” the window, tempered glass, dry wall, and air space to prevent noise leakage. *Id.* at 269. Based on his examination of the designs and the building, he is “100 percent” confident that Town will successfully prevent the leakage of noise. *Id.* at 273.

CONCLUSIONS OF LAW

30. The Board may approve an Application for a New Retailer's Class CN 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. 2020). Specifically, the question in this matter is whether the Application will have a negative impact on 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. 2020).

31. Furthermore, in the case of a new application for licensure or transfer to a new location, “the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Code § 25-314(c).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions.

32. 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. 2020). 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).

33. 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. Town will not have a negative impact on peace, order, and quiet by taking steps to mitigate noise and crime and abiding by other operational limits.

34. The Board is satisfied that Town will not generally have a negative impact on peace, order, and quiet by taking steps to mitigate noise and crime. "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. 2020).

35. In this case, Town is proposing to operate a nightclub in a building that is located inches away from the Conway Residence, an apartment residence serving homeless veterans and other similarly situated persons. *Supra*, at ¶¶ 1, 19. Under these circumstances, noise is an obvious concern. *Supra*, ¶ 19. Nevertheless, the Board credits Town's assurances that it can prevent the leakage of noise from the property, and that Town will incorporate appropriate soundproofing into the design of the premises. *Supra*, at ¶¶ 11, 28-29. If included in the construction and properly built, the Board is confident that Town can prevent the leakage of amplified sound onto public space and any nearby residences. *Supra*, at ¶¶ 28-29. In addition, some late night outdoor activity is appropriate for a Downtown zoned premise where the outdoor seating area is situated away from the nearest residents. *Supra*, at ¶¶ 3, 10-11. The Board also recognizes that crime is a concern, but the presence of reimbursable detail officers is a reasonable and sufficient means of addressing that concern. *Supra*, at ¶ 14.

36. Nevertheless, the Board does not approve of the operation of an outdoor seating area in close proximity to residents past 2:00 a.m. Past 2:00 a.m. the legitimate expectation of residents to sleep strongly outweighs the interest of the business in having outdoor activities. *See In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶¶ 32-33 (D.C.A.B.C.B. Nov. 19, 2014) *citing In re T.L.*, 996 A.2d 805, 812 (D.C. 2010). In this case, having the outdoor area open past 2:00 a.m. creates too great a risk of patron voices and other behavior disturbing residents, whether they are sitting in the outdoor seating area, coming and going from the establishment, or merely loitering outside. *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (saying in considering the impact of patrons outside the establishment, the Board may consider loud talking, playing music, revving car engines, and yelling). Moreover, Town indicated that it requested later operational hours to engage in a soft close, but did not sufficiently explain how it

would actively encourage patrons to leave or avoid a huge exit of patrons at an even later time in the early morning that may disturb nearby residents. *Supra*, at ¶ 14. In light of these concerns, if Town intends to engage in a soft close and encourage patrons to leave gradually, then the closure of the outdoor seating area first is conducive to this goal, as it would move all operations indoors and reduce the occupancy of the premises by 125 seats. *Supra*, at ¶¶ 1, 14. Therefore, the Board finds Town’s Application appropriate on the grounds of peace, order, and quiet subject to these caveats.

b. Town will not have a negative impact on residential parking needs and vehicular and pedestrian safety.

37. The record shows that Town will not have a negative impact on residential parking needs or vehicular and pedestrian safety. “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. 2020). The proposed location is near the Union Station metro station, various bus stops, private parking, and street spots. *Supra*, ¶ 5. There is no indication that the plan will have a negative impact on vehicular and pedestrian safety or that Town’s patrons will compete with residential parkers. Consequently, the Board finds in favor of Town on this factor.

c. Town will not have a negative impact on real property values.

38. 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). In this case, Town will be renovating a building in disuse. *Supra*, at ¶ 8. As such, there is no evidence that Town’s presence will create blight or otherwise encourage a decrease in property values.

d. D.C. Official Code § 25-313 does not authorize consideration of the impact of Town on persons suffering from substance abuse issues.

39. The Protestants claim Town would have a negative impact on persons suffering from substance abuse issues by encouraging relapses and harming the treatment of these conditions. *Tr.*, 12/4/19 at 153. Nevertheless, the Board is not convinced that a licensed establishment’s impact on the treatment of person’s suffering from alcoholism and substance abuse or encouraging relapses is a legally appropriate consideration when determining appropriateness

under D.C. Official Code § 25-313.² See *Palace Restaurant, Inc., v. Alcoholic Beverage Control Bd.*, 271 A.2d 561, 561-2 (D.C. 1970). Indeed, there is no language in § 25-313 instructing the Board to consider this type of harm. As result, the Board will not consider this specific factor in this case.

40. Nevertheless, even if it were a factor, the Board is not persuaded that the existence of Town would have a negative impact on the treatment of alcoholism and substance abuse at the Conway Residence. In *All Souls*, the Board determined that the “mere presence of a licensed establishment is not sufficient to demonstrate harm to children and the facilities that serve them.” *In re Rome, LLC, t/a Romeo & Juliet*, Case No. 13-PRO-00136, Board Order No. 2014-045, ¶ 35 (D.C.A.B.C.B. Jan. 29, 2014) citing *In re All Souls, LLC, t/a All Souls*, Case Number 11-PRO-00090, Board Order No. 2012-278, ¶¶ 33-37 (D.C.A.B.C.B. Jun. 20, 2012). Similar to the Board’s conclusion in *All Souls*, the Board is not persuaded that the mere presence of Town would significantly encourage relapses of alcoholism and substance abuse problems. Indeed, alcohol is widely available in stores, restaurants, and other retail locations all over the District of Columbia. It is also easily ordered over the internet, and may be delivered by courier in record time. As a result, in light of the wide availability of alcohol, the Board is not convinced that the mere presence of Town will have a significant impact on alcoholism and substance abuse in the local community. Moreover, the Board is not persuaded that Town would encourage public drinking and related antisocial behavior, or even drinking in the Conway Residence, when it will not be authorized to sell closed containers of alcohol for off-premise consumption. As a result, there is insufficient evidence that Town will have a negative impact on the treatment of alcoholism and substance abuse in the community.

II. The Board Imposes Conditions on the License.

41. 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). The Board has also previously held that it is appropriate to impose conditions on a license in order to enforce any promises or pledges made by the applicant when they are relied upon to approve the application. *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-280, ¶ 98 (D.C.A.B.C.B. May 18, 2016).

42. In this case, as part of its case in chief, Town pledged to use reimbursable detail officers, which satisfies any reasonable concern regarding crime. *Supra*, at ¶ 14. Moreover, Town further

² Note that this determination does not prevent the Board from considering the occurrence of behaviors linked to alcoholism and substance abuse problems such as public drinking, public defecation, and violence. *In re Pax Liquor, Inc., t/a Pax Spirits*, Case No. 18-PRO-00071, Board Order No. 2019-127, ¶ 25 (D.C.A.B.C.B. Mar. 20, 2019) (saying Board denied license based on concerns that the presence of the establishment would encourage disorderly conduct, drug dealing, fighting, littering, public drinking, and public urination.”).

promised to have its admittance line not run past the Conway Residence, which will help prevent patron voices from disturbing residents on a regular basis. *Supra*, at ¶ 13. Town also assured the Board that the soundproofing features incorporated into the design will prevent the leakage of noise from the property; as a result, the Board expects that no amplified sounds will leak from the premises. *Supra*, at ¶¶ 11, 28-29. The Board notes that in its conditions the Board is not requiring Town to follow the plans provided to the Board, which may require changes and approvals by other government agencies as the project moves forward, but simply requiring that Town meet the standard it proved and said it could meet—no noise leakage at all. Finally, ending the operation of the establishment’s outdoor seating at 2:00 a.m. will reduce early morning disturbances by patrons outside the premises. Therefore, the Board will impose conditions necessary to enforce the promises of the Applicant and to ensure the peace, order, and quiet of the community.

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

43. 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. 2020). 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

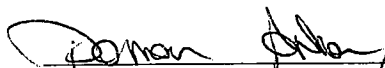
Therefore, the Board, on this 29th day of January 2020, hereby **APPROVES** the Application for a New Retailer's Class CN License at premises 1001 North Capitol Street, N.E., filed by Town 2.0, t/a TBD, subject to following **CONDITIONS**:

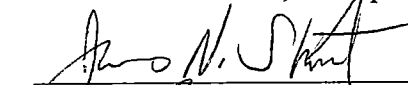
1. Town shall hire at least two officers with the Metropolitan Police Department Reimbursable Detail program on Fridays and Saturdays from at least midnight to closing;
2. Town shall ensure that the admittance line into the establishment runs south towards K Street, N.E.;
3. Town shall ensure that no recorded or amplified sounds may be heard in a residence with its windows and doors closed or heard from public space; and
4. All exterior seating areas shall cease operation at 2:00 a.m.


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.

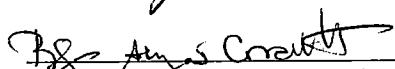
The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


James Short, Member


Bobby Cato, Member


Rafi Aliya Crockett, 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).