

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

In the Matter of:)	
)	
Macron, Inc.)	Case No.: 22-PRO-00053
t/a VIP Lounge)	License No.: ABRA-119913
)	Order No.: 2023-002
Application for a Substantial Change to a)	
Retailer's Class CR License)	
)	
at premises)	
1926 9th Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Rafi Aliya Crockett, Member
Jeni Hansen, Member

ALSO PRESENT: Macron, Inc., t/a VIP Lounge, Applicant

Richard Bianco, Counsel, on behalf of the Applicant

Eric Behna, Commissioner, Advisory Neighborhood Commission (ANC)
1B, Protestants

Pierson Stoecklein, Designated Representative, Westminster
Neighborhood Association, 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 filed by Macron, Inc., t/a VIP Lounge (hereinafter "Applicant" or "VIP Lounge").

Procedural Background

The Notice of Public Hearing advertising VIP Lounge's Application was posted on May 6, 2022, and informed the public that objections to the Application could be filed on or before June 20, 2022. *ABRA Protest File No. 22-PRO-00053*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 1B and the Westminster Neighborhood Association (WNA) have filed protests against the Application (hereinafter collectively the "Protestants"). *ABRA Protest File No. 22-PRO-00053*, Roll Call Hearing Results.¹

The parties came before the Board's Agent for a Roll Call Hearing on July 11, 2022, where all of the above-mentioned objectors were granted standing to protest the Application. On August 31, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on September 28, 2022. Subsequently, the Applicant filed proposed findings of fact and conclusions of law that were considered by the Board.

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 1B, which indicated that its protest is based on concerns regarding VIP Lounge's impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. In addition, the ANC described concerns with the Applicant's compliance with the law. 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. 2022).

¹ At the hearing, the WNA presented the protest on behalf of all the protestants, as directed and permitted by 23 DCMR §§ 1612.8 and 1714.2. During the hearing, the WNA objected to various restrictions placed on the ANC during the hearing based on the WNA's designation during the hearing. *Tr.*, 9/28/22 at 96. Nevertheless, the restrictions placed on the ANC's participation during the hearing were duly authorized by § 1714.2, which states:

In a protest hearing in which there is more than one (1) protest, and the Board has required the protestants to designate one (1) person to conduct the protestant's case pursuant to § 1612.8, *the designated individual shall present the protestant's case, give the opening and closing statements, and examine and cross-examine witnesses on behalf of the protestants.*

23 DCMR § 1714.2 (West Supp. 2023) (emphasis added). The Board further notes that during the hearing the ANC did not indicate or otherwise show that the WNA refused to represent their interests or was otherwise not adequately representing the ANC's interests; as a result, any potential facts that could sustain such an objection have not been established.

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. VIP Lounge has submitted an Application for a Substantial Change to a Retailer's Class CR License at 1926 9th Street, N.W., Washington, D.C. *Notice of Public Hearing*. Specifically, VIP Lounge requests to change its license class from a CR (restaurant) to a CT (tavern); extend its hours of operation, alcohol sales, and entertainment to 2:00 a.m., Sunday through Thursday; and 3:00 a.m. on Friday and Saturday; and increase its occupancy load to 185 persons. *Id.* The Board notes that an establishment licensed as a CR has a minimum food sale requirement, while a CT license holder is not subject to a minimum food sale requirement. *Compare* D.C. Code § 25-113(b)(3)(B) *to* D.C. Code § 25-113(c).
2. ABRA Investigator Jovan Miller investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00053, Protest Report* (Sept. 2022) [*Protest Report*].
3. The proposed establishment is in an ARTS-2 zone. *Id.* at 3. Fifty-five licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 5. The establishment currently begins operations and alcohol sales at 11:00 a.m. and ends the same at 1:30 a.m., Sunday through Thursday, and 2:30 a.m. on Friday and Saturday. *Notice of Public Hearing*. The establishment entertainment hours currently begin operations at 8:00 p.m. and ends at the same time as its other hours. *Id.*
4. ABRA investigators visited the establishment on five separate occasions between August 31, 2022, and September 16, 2022. *Protest Report* at 6. Investigators did not observe any appropriateness issues during their monitoring. *Id.* The report further notes that no noise complaints related to the establishment have been received. *Id.*
5. The report further discusses public transportation and parking in the neighborhood. *Id.* Specifically, the establishment is near the "U Street Metro" station and 6 metro bus lines pass near the premises. *Id.* There is also paid parking and residential parking permit areas near the premises. *Id.*
6. The establishment's investigative history reveals no prior violations of Title 25 of the D.C. Official Code or Title 23 of the D.C. Municipal Regulations, which regulate the sale, service, and consumption of alcoholic beverages in the District of Columbia. *Id.* at 7. The report notes that the establishment received its Retailer's Class CR License on March 22, 2022. *Id.*

7. Investigator Miller visited the establishment on three separate occasions while the protest was pending. *Transcript (Tr.)*, September 28, 2022 at 38. He never saw the establishment with more than 30 patrons. *Id.* at 38, 66. He also could not establish that any visible trash in the area was connected to the VIP Lounge. *Id.* at 38. Investigator Miller is aware that many establishments in the neighborhood currently have later hours than VIP Lounge. *Id.* at 65. He noted that city officials are currently engaged in traffic control measures on or about the 1900 block of 9th Street, N.W., and other nearby locations from around 10:00 p.m. to 4:00 a.m. on weekends, which may include blocking traffic, diverting traffic, or restricting the flow of traffic. *Id.* at 75-76, 80.

II. Dereje Daneale

8. Dereje Daneale is the owner of VIP Lounge. *Id.* at 99. The building has two floors and three entrances and exits. *Id.* at 100. The first floor has an entrance door facing 9th Street, N.W., and back door facing the rear alley. *Id.* The second floor also has an exit door connecting to the alley. *Id.* He purchased the business in October 2021 and the business began operations in March 2022. *Id.* at 101. During the interim period between when he bought the business and opened, he engaged in renovations and the soundproofing of the premises. *Id.* The business currently holds an entertainment endorsement. *Id.* at 102. The entertainment endorsement permits live entertainment, the use of a cover charge, and the provision of a dance floor. *Id.* The establishment will also not have a roof deck or summer garden. *Id.* at 143.

9. The primary purpose of the requested substantial change is to add thirty minutes to his operations and expand the capacity of the premises. *Id.* at 102-03. Even if granted, the first floor will continue to operate as a restaurant, and live entertainment and dancing facilities will not be offered on the first floor. *Id.* at 123-24.

10. Currently, the business generally begins operations at 4:00 p.m. during the week and noon during the weekends. *Id.* at 104. The business has a menu, serves food, and offers brunch. *Id.* at 104-05, 116-18, 125-26. The kitchen operates until closing. *Id.* at 105. The restaurant portion of the business is located on the first floor, while lounge and nightlife activities occur on the second floor. *Id.* The establishment serves typical American fare, including chicken wings and fries. *Id.* at 174.

11. Mr. Daneale discussed the establishment's security practices. *Id.* at 119. The establishment has a camera system with 16 cameras installed throughout the premises. *Id.* The system has sufficient capacity to store footage for 30 days and was newly installed after he bought the business. *Id.* at 120. He is also prepared to operate according to a security plan. *Id.* at 136. The establishment will require pat downs, use a metal detecting wand, and require patrons to be 21 years of age or older. *Id.* at 137-38. He also intends to have at least five security staff on duty when in operation. *Id.* at 139.

12. Mr. Daneale discussed his efforts to provide soundproofing for the premises. *Id.* at 127. First, the establishment installed a set of double doors at the main entrance facing 9th Street, N.W., to prevent noise from escaping the premises, which was not present when he bought the business. *Id.* at 127-28. Second, on the second floor, a second door was installed before the

bathrooms and exit to further prevent sound from escaping the premises, which was not present before the owner purchased the business. *Id.* at 130. Third, the owner also had additional soundproofing materials installed, such as foam, to improve the soundproofing of the facility. *Id.* at 131-33

13. Mr. Daneale indicated that disc jockeys have been permitted to perform on the second floor since March 2022. *Id.* at 135. He is not aware of any noise complaints against the establishment. *Id.*

14. Mr. Daneale discussed his efforts to keep the premises free from trash and litter. *Id.* at 134. In that vein, the trash is picked up four times per week. *Id.* at 135.

15. Mr. Daneale also owns Secret Lounge, located at 1928 9th Street, N.W., which has been issued a Retailer's Class CT License. *Id.* at 149. He also owns Signature Lounge, located at 1727 Connecticut Avenue, N.W. *Id.*

CONCLUSIONS OF LAW

16. The Board may approve an Application for a Substantial Change 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. 2023). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2023). In addition, the Board will also consider the Applicant's record compliance with the law as part of its determination based on the issues raised by the ANC.

I. The Board Rejects Taking Judicial Notice of Underlying Evidence Related to Two Prior Board Orders.

17. The Board notes that during the hearing, the Protestants requested that the Board take "judicial notice of the evidentiary records" in Board Order Nos. 2021-482 and 2021-448, which involved two establishments that were either owned or controlled by the Applicant, or otherwise related to the neighborhood. *ANC IB/Westminster Neighborhood Association (Joint PIF)*, at 2; *Tr.*, 9/28/22 at 12, 164. The Board rejects this proposed usage because the request goes beyond the scope of what is permitted to be entered into evidence under the evidentiary concept of judicial notice.

18. It is well established that the "a judge may take judicial notice of the contents of court records." *S.S. v. D.M.*, 597 A.2d 870, 880 (D.C. 1991) *citing Mannan v. District of Columbia Board of Medicine*, 558 A.2d 329, 338 (D.C.1989). "But, as a general rule, courts will not judicially notice records and facts in one proceeding in deciding another proceeding." *Id.* Moreover, the Board does not find that any of the exceptions to this general rule applicable where the requested cases involve separate establishments at different locations, which render the matters unrelated "prior proceeding[s]." *Id.* As a result, the Protestants could not introduce by judicial notice the underlying evidence and transcripts that led to decisions in the Board Order

Nos. 2021-482 and 2021-448. Instead, if the Protestants sought to recreate the decisions in those cases, then it was their obligation to introduce each exhibit individually, provide appropriate authentication, call the appropriate witnesses to generate the same testimony, and otherwise present evidence that would otherwise lead to the same decision. Consequently, by failing to do so, the Protestants have waived the ability to present such evidence in this forum and the Board is left with the generally uncontested evidence and testimony presented by the Applicant.

II. The Proposed Change is Appropriate for the Neighborhood.

19. Turning to the merits, 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. 2023). 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 proposed change 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. 2023).

22. The record in this case shows that the establishment has no prior violations and monitoring by investigators revealed no issues with appropriateness or violations. *Supra*, at ¶¶ 4, 6. There is no indication in the record that the ownership’s intended security practices are inappropriate or insufficient to address the proposed change. *Supra*, at ¶ 11. There is also no indication that the ownership’s soundproofing measures and trash practices are inadequate. *Supra*, at ¶¶ 12, 14. Under these circumstances, the Board is persuaded that the proposed change will not have a negative impact on peace, order, and quiet.

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

23. “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. 2023).

24. In this case, there is no evidence that the establishment’s patrons are monopolizing residential parking or that any additional patrons will foster dangerous traffic conditions. In addition, there is ample public transportation in the neighborhood, which indicates that the establishment should have a minimal impact on residential parking. *Supra*, at ¶ 5. Under these circumstances, the Board is persuaded that the proposed change will not unduly impact residential parking or traffic safety.

c. The proposed change will not have a negative impact on real property values.

25. 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, there is no evidence of blight, which indicate that the proposed change will not have a

negative impact on property values. Under these circumstances, the Board is persuaded that the proposed change will not have a negative impact on real property values.

26. Therefore, for the above-mentioned reasons, the Board finds the proposed change appropriate.

III. The ANC's objection on the grounds of overconcentration and zoning are not persuasive.

27. The Board further considered the ANC's objections specifically related to overconcentration. *Tr.*, 9/28/22 at 22-25. Nevertheless, overconcentration is not a valid ground to contest a proposed substantial change under the law. D.C. Code § 25-314(a)(4) (saying overconcentration may be raised for initial issuances of licenses and transfers to new locations). The Board further notes that no evidentiary presentation was made that the present application is not compliant with the District's zoning laws. *Tr.*, 9/28/22 at 29-30. Moreover, even if it were, the parties are advised to refer such matters to the District's Zoning Administrator for appropriate enforcement. *Craig v. D.C. Alcoholic Beverage Control Bd.*, 721 A.2d 584, 588 (D.C. 1998) *citing Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C.1980) ("Thus, while the ABC Board's regulations require applicants to hold licenses from other departments as a precondition to obtaining a liquor license, it had no authority to review the validity of the coordinate agency's action.").

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

28. 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. 2023). 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 January 2023, hereby **APPROVES** the Application for a Substantial Change at premises 1926 9th Street, N.W., filed by Macron, Inc., t/a VIP Lounge. Specifically, the Board approves the request described in the public notice, which includes a change of license class from a CR (restaurant) to a CT (tavern); an extension in hours; and an increase in the occupancy of the premises. *Id.*

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: ac43cb9eb9d5f09e4b730093d1dccc8

Donovan Anderson, Chairperson

Bobby Cato, Member

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Jeni Hansen, Member
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Jeni Hansen, Member

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).