

Procedural Background

The Notice of Public Hearing advertising Amsterdam's Application was posted on December 20, 2013, and informed the public that objections to the Application could be filed on or before February 3, 2014. *ABRA Protest File No. 14-PRO-00009*, Notice of Public Hearing. On or before February 3, 2014, the Alcoholic Beverage Regulation Administration (ABRA) received a protest letter from the Shaw Dupont Citizens Alliance, Inc. (hereinafter SDCA or Protestant) in accordance with District of Columbia Official Code §§ 25-601 and 25-602. *ABRA Protest File No. 14-PRO-00009* . Letter from Joan Sterling, President, SDCA, to the ABRA (Jan. 17, 2014) (received Jan. 17, 2014).

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing conducted by the Board's Agent on February 18, 2014, where SDCA was granted standing to protest the Application. On March 26, 2014, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on April 9, 2014.

The Board also received a recommendation from Advisory Neighborhood Commission (ANC) 2B supporting Amsterdam's Application for a "new restaurant serving falafel and related foods, with no entertainment, no dancing and that will be a benefit to the community." Letter from William J. Stephens, Chairman, ANC 2B, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Jan. 13, 2014).

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). 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 addresses the recommendation of ANC 2B in its Conclusions of Law.

Based on the issues raised by the Protestant, the Board may only grant the Application if the Board finds that the request will not have a negative impact on peace, order, and quiet; real property values; residential parking, and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Or that the issuance of the license will not lead to an overconcentration of licensed establishments. D.C. Official Code § 25-314(a)(4).

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. Amsterdam has submitted an Application for a New Retailer's Class DR License serving falafel and related foods, no entertainment, no dancing, located at 1830 14th Street, N.W. *ABRA Protest File No. 14-PRO-0009*, Notice of Public Hearing.

2. The Applicant's proposed hours of operation are as follows: Sunday through Saturday, opening at 10:00 a.m. and closing Sunday and Monday at 12:00 a.m., closing Tuesday and Wednesday at 2:30 a.m., closing Thursday at 3:00 a.m. and closing Friday and Saturday at 4:00 a.m. The hours of sales, service, and consumption are as follows: Sunday through Saturday, starting at 10:00 a.m. and stopping Sunday and Monday at 12:00 a.m., stopping Tuesday through Thursday at 1:00 a.m. and stopping Friday and Saturday at 2:00 a.m.

1. ABRA Investigator Erin Mathieson

3. ABRA Investigator Erin Mathieson investigated the Application and prepared the Protest Report submitted to the Board. *Transcript (Tr.)*, April 9, 2014 at 38; *ABRA Protest File No. 14-PRO-0009*, Protest Report (April, 2014). Amsterdam seeks a Class DR license for an establishment with a total occupancy of fifty-nine (59) people. *Tr.*, 4/9/14 at 39. The Application does not include any endorsements and the establishment was open for business two weeks prior to the Protest Hearing. *Tr.*, 4/9/14 at 39, 51.

4. The Application is being protested by the Shaw-Dupont Citizens Association (SDCA) whose designated representative is Elwyn Ferris. *Tr.*, 4/9/14 at 39. SDCA protests the Application on the basis that the issuance of an alcoholic beverage license would adversely impact peace, order and quiet; residential parking and vehicular and pedestrian safety; and over-concentration of ABC-licensed establishments. *Tr.*, 4/9/14 at 39.

5. The ANC 2B submitted a letter of support for the Application, noting that the new establishment would benefit the local community. *Tr.*, 4/9/14 at 40.

6. Amsterdam is located in an ARTS/C-3-A Zone. *Tr.*, 4/9/14 at 50. There are fifty-seven (57) ABC- licensed establishments operating within 1,200 feet of Amsterdam's proposed location. *Tr.*, 4/9/14 at 51. No schools, recreation centers, public libraries, or day care centers are located within 400 feet of the proposed establishment. *Tr.*, 4/9/14 at 51.

7. Investigator Mathieson monitored the establishment on two occasions; Tuesday, April 2, 2014, and Thursday, April 4, 2014. *Tr.*, 4/9/14 at 52. The business was open at the time and had a few dine-in customers. *Tr.*, 4/9/14 at 52. She did not monitor the establishment at night. *Tr.*, 4/9/14 at 63. She did not observe trash or litter during her observation periods, and there were no issues with regard to peace, order and quiet. Investigator Mathieson observed that the rear alley trash cans and receptacles were clean. *Tr.*, 4/9/14 at 52-53, 58. She also observed that there was limited parking in the area, but noted that there is a parking garage at 14th and U Streets NW, and several public bus stops are located along 14th Street. *Tr.*, 4/9/14 at 53.

8. Investigator Mathieson interviewed Dane Cherry, owner of Amsterdam, and Joan Sterling, SDCA, as part of her investigation. *Tr.*, 4/9/14 at 41. She was unsuccessful

contacting SDCA's Designated Representative, Elwyn Ferris for an interview. *Tr.*, 4/9/14 at 44. Additionally, Investigator Mathieson contacted Pamela Washington, Chief of the Solid Waste Education and Enforcement Program with the Department of Public Works. *Tr.*, 4/9/14 at 54. Chief Washington informed Investigator Mathieson that she had visited Amsterdam on two occasions, at the request of Elwyn Ferris, to inspect the trash containers located in the rear alley. *Tr.*, 4/9/14 at 55. Chief Washington did not find any violations, and described the trash receptacle area as neat and not overflowing. *Tr.*, 4/9/14 at 55.

2. ANC 2B Single Member District Commissioner Noah Smith

9. Noah Smith, Commissioner of the Single Member District, ANC 2B09, where the Applicant is located, testified on behalf of Amsterdam. *Tr.*, 4/9/14 at 72. ANC 2B voted to support the Application. *Tr.*, 4/9/14 at 72; Applicant's Exhibit 6. The ANC did not seek a Settlement Agreement with the Applicant because the ANC did not think it was necessary. *Tr.*, 4/9/14 at 75-76. The ANC believed that the Applicant would be a benefit to the community and as such, the ANC sought to support the Application, rather than oppose it or take no action. *Tr.*, 4/9/14 at 76. The ANC believes that one of those benefits is to have a restaurant in the neighborhood that is open late in order to serve customers who might not otherwise get food at that hour. *Tr.*, 4/9/14 at 76.

10. Commissioner Smith has frequented the restaurant and scrutinized the surroundings in front and behind the building. *Tr.*, 4/9/14 at 77. He found no concerns with regard to the operations of the establishment. *Tr.*, 4/9/14 at 77. He heard from several supportive constituents who indicated that they were excited that the business was opening in the neighborhood. *Tr.*, 4/9/14 at 78.

11. Commissioner Smith is familiar with Settlement Agreements that are entered into with other Licensees to address issues such as trash, delivery and bottle dumping. *Tr.*, 4/9/14 at 79. Commissioner Smith agrees that Settlement Agreements are one of several tools the ANC can implement to address issues such as peace, order and quiet. *Tr.*, 4/9/14 at 93-97. He also believes that if the ANC has any concerns with the Applicant, the issues can be discussed directly with the owners rather than the ANC having to seek an enforcement action through ABRA. *Tr.*, 4/9/14 at 98.

3. Dane Cherry

12. Dane Jeffrey Cherry is the franchisee and managing member of the Applicant, Amsterdam. *Tr.*, 4/9/14 at 99. The Applicant is a small, casual restaurant that sells falafel sandwiches, salads and Dutch fries. *Tr.*, 4/9/14 at 99. The establishment is approximately 1,800 square feet and the occupancy is fifty-nine (59) people. *Tr.*, 4/9/14 at 100.

13. Mr. Cherry identified several photographs; the first of which was a view of the restaurant from the front. *Tr.*, 4/9/14 at 100; Applicant's Exhibit 1. The restaurant is 12 feet wide for the first 20 feet, and then the space widens to 15 feet toward the back of the restaurant. *Tr.*, 4/9/14 at 100. Mr. Cherry chose the building because it is typical of a building in Amsterdam, which is narrow and long. *Tr.*, 4/9/14 at 101.

14. Mr. Cherry identified the food and sales area where customers get in line and order their food. *Tr.*, 4/9/14 at 101; Applicant's Exhibit 2. There are no stoves or ovens used to

prepare the food. *Tr.*, 4/9/14 at 101. He also identified the self-serve salad bar where customers can add toppings to their falafels. *Tr.*, 4/9/14 at 102; Applicant's Exhibit 3. Lastly, he identified the back of the store where the recycling, the trash bin and the grease and oil collection containers are located. *Tr.*, 4/9/14 at 102; Applicant's Exhibit No. 4.

15. Mr. Cherry described the menu listing falafels, fries, and brownies. *Tr.*, 4/9/14 at 104; Applicant's Exhibit 7. He also described the layout and build-out of the store as a small business with a small footprint; a simple sandwich shop. *Tr.*, 4/9/14 at 105, 110; Applicant's Exhibit 8. Mr. Cherry leases the space and he invested over a \$100,000.00 to improve the space to accommodate the restaurant. *Tr.*, 4/9/14 at 124. His building occupies 100% of the lot. *Tr.*, 4/9/14 at 128.

16. He applied for a DR license (beer and wine) though he only intends to sell beer; specifically Dutch beer. *Tr.*, 4/9/14 at 107, 157. His objective is to replicate a falafel shop in Amsterdam. *Tr.*, 4/9/14 at 107. He decided to sell beer because all of his competitors along 14th Street NW sell beer. *Tr.*, 4/9/14 at 107. He does not expect that beer sales will represent more than three (3%) to four (4%) percent of his total sales. *Tr.*, 4/9/14 at 107.

17. Mr. Cherry described his average customer base as a family of four who may want to go out for dinner and get a quick bite of food, or young people who may be on their way to a club or movie. *Tr.*, 4/9/14 at 107-108.

18. Mr. Cherry had been open for business for two weeks prior to the Protest Hearing. *Tr.*, 4/9/14 at 109. Though business is doing very well, he expects it to improve with the beer sales. *Tr.*, 4/9/14 at 109. He will be serving two to three different kinds of Dutch beer and the beer will be sold in cans, not bottles. *Tr.*, 4/9/14 at 109, 155. He is well aware that bottles make noise when they're being disposed of, and he intends to ensure that noise is kept at reasonable levels. *Tr.*, 4/9/14 at 109. He also does not want to run the risk of having broken glass inside the establishment. *Tr.*, 4/9/14 at 110.

19. Given the size of the store and the volume of business, Mr. Cherry does not anticipate generating a lot of trash. *Tr.*, 4/9/14 at 110. He intends to dispose of the trash in the back alley on a as-needed basis, and he intends to clean throughout the day. *Tr.*, 4/9/14 at 110-111. Additionally, he has posted a sign in the back encouraging his employees to keep quiet when in the alley, and to not slam the back door or the trash cans and containers. *Tr.*, 4/9/14 at 111, 155. He will also not allow employees to congregate and smoke in the back alley. *Tr.*, 4/9/14 at 111.

20. In the two weeks that Mr. Cherry has been open for business, he has observed that a lot of his customers originate from the neighboring residences. *Tr.*, 4/9/14 at 112. The neighborhood is a much stronger residential area than he initially realized. *Tr.*, 4/9/14 at 112. He has seen a large number of families and people with small children. *Tr.*, 4/9/14 at 113. Customers are frequenting the establishment upwards of 8:00 to 9:00 p.m., at night, and then again, into the morning hours when they're on their way home from an evening out. *Tr.*, 4/9/14 at 114. Additionally, customers are stopping in around 1:00 a.m. or 2:00 a.m. when they get off from work in the early morning. *Tr.*, 4/9/14 at 114.

21. Mr. Cherry has been in the restaurant business since 1979. *Tr.*, 4/9/14 at 114. He does not intend to operate a bar, nor does he want customers arriving late and staying late

to drink. *Tr.*, 4/9/14 at 114-115. He wants to be a good neighbor, sell food and offer customers a beer with their falafel. *Tr.*, 4/9/14 at 115.

22. He intends to employ 20 to 22 persons, with three to four working at any one time, and upwards of six during the busiest shifts. *Tr.*, 4/9/14 at 115-116. Ninety percent of his employees are District residents, and most of them bike or take public transportation to get to work. *Tr.*, 4/9/14 at 116.

23. Mr. Cherry testified that Pamela Washington from the Department of Public Works inspected the trash and grease recycle area in the alley, and stated that he is in compliance with District regulations. *Tr.*, 4/9/14 at 118, 130. He has never been cited by the Government for the conditions or management of his trash facilities. *Tr.*, 4/9/14 at 118-119. His trash is removed from the area six days a week, and he ensures that the lids remain closed and all trash is placed in the bins. *Tr.*, 4/9/14 at 119. The grease receptacle does not have a lock, but he has cameras in the alley that record illegal dumping. *Tr.*, 4/9/14 at 143. He also has posted a sign warning people not to dump trash or oil in his receptacles. *Tr.*, 4/9/14 at 143. The sidewalks outside the restaurant are hosed down regularly and the front and back areas of the establishment are swept daily. *Tr.*, 4/9/14 at 119.

24. He attended a DCCA meeting in January 2014 to meet the neighbors and to address any concerns the Association may have regarding his Application. *Tr.*, 4/9/14 at 120. There were fewer than ten people in attendance as opposed to the 70 people in attendance at the ANC meeting. *Tr.*, 4/9/14 at 120-122, 153. Mr. Cherry received a lot of support from the community at the ANC meeting. *Tr.*, 4/9/14 at 153-154.

25. He is aware that some District businesses have private trash areas, but his leased space cannot accommodate a defined trash area. *Tr.*, 4/9/14 at 125-127. He is also aware that grease containers must be stored not less than four feet from any other vertical object next to the wall. *Tr.*, 4/9/14 at 130. He is willing to replace the smaller trash receptacles with a second dumpster. *Tr.*, 4/9/14 at 130. Mr. Cherry has a vermin and rodent control contract with Cropp-Metcalf that services the establishment on a monthly basis. *Tr.*, 4/9/14 at 149. Additionally, he collects the grease and it is recycled for bio-fuel. *Tr.*, 4/9/14 at 150. The grease pours into the container through a filter and cannot be accessed by rodents. *Tr.*, 4/9/14 at 151.

26. Mr. Cherry chose not to enter into a Settlement Agreement with the SDCA because he did not want to be bound by restrictions other than those required by the law or regulations. *Tr.*, 4/9/14 at 133, 154. He intends to fully comply with what is required of licensees, and to do everything he can to make his restaurant successful. *Tr.*, 4/9/14 at 134, 154-155.

4. Soochon Radee

27. Soochon Radee testified on behalf of the Protestant, SDCA. *Tr.*, 4/9/14 at 159. He has lived at 1406 S Street NW since 2006. *Tr.*, 4/9/14 at 159. He testified that in the last ten years there has been an increase in the disorderly behavior of people at night, especially between Thursday and Sunday from 2:00 a.m. and later. *Tr.*, 4/9/14 at 160. When he attempts to go to bed on the weekends, he is awakened by drunk people returning to their

cars and homes. *Tr.*, 4/9/14 at 160. There are also a lot of rats behind his home due to the construction. *Tr.*, 4/9/14 at 160. He has not noticed other trash bins in the alley that runs between S and T Streets N.W. *Tr.*, 4/9/14 at 16.

5. Elwyn Ferris

28. Elywn Ferris testified on behalf of the Shaw-Dupont Circle Citizens Alliance (SDCA). *Tr.*, 4/9/14 at 165. Mr. Ferris has lived 1417 T Street, N.W., for the past thirty-seven years. *Tr.*, 4/9/14 at 180. He is familiar with other restaurants in the area who effectively manage their trash and who work cooperatively with the community. *Tr.*, 4/9/14 at 180. He is concerned about the rodent infestation problems and the location of trash and grease receptacles on public space. *Tr.*, 4/9/14 at 180-181.

29. Mr. Ferris received about 20 letters of concern from neighboring residents. *Tr.*, 4/9/14 at 182-189, 195; Protestants Exhibits 6, 7 and 8. The letters resulted from Mr. Ferris' sending a template letter to his neighbors who could then print and sign if they had objections regarding the restaurant. *Tr.*, 4/9/14 at 196-197.

CONCLUSIONS OF LAW

30. The Board may approve a request for a New Retailer's Class DR License when the proposed establishment will not have an adverse impact on the area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

31. Specifically, based on the SDCA's Protest, the issues in this case are whether the Application will have a negative impact on the peace, order, and quiet; residential parking, and vehicular and pedestrian safety of the area, or create an overconcentration of licensed establishments.

I. Appropriateness

32. The Board finds that the Application is appropriate and places no conditions on the license.

33. The Board notes that the only issue contested at the Protest Hearing was whether the issuance of the license would have a negative impact on peace, order, and quiet. The Protestants did not present any significant evidence that the issuance of the license would lead to an overconcentration of licensed establishment or have a negative impact on residential parking, or vehicular and pedestrian safety.

34. Consequently, the Applicant is entitled to rely on the Board's recent holding that the issuance of additional licenses in the U Street neighborhood will not lead to the overconcentration of licensed establishments, or negatively impact the neighborhood's residential parking, or vehicular and pedestrian safety. See Alcoholic Beverage Control Board, Notice Denying Petition for Rulemaking and Order, 21, 23-24 (Oct. 2, 2013); see also supra, at ¶ 8. Therefore, consistent with the Board's previous holding, the Board finds

that the Application is appropriate under D.C. Official Code §§ 25-313(b)(1), (b)(3), 25-314(a)(4).

a. *Peace, Order, and Quiet.*

35. By law, the Board must consider all evidence of record, including, but not limited to, “The 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) (West Supp. 2014).

36. The Board finds that in general, the issuance of the license will not result in an adverse impact on the neighborhood’s peace, order, and quiet because the establishment is a legitimate restaurant.

37. The record clearly shows that the establishment is a legitimate restaurant that focuses on the sale of food, and there is no evidence that Amsterdam intends to depart from its current business model as a fast casual restaurant. The establishment’s limited premises are largely occupied by food preparation and the self-serve salad bar to support its operations as a restaurant, as well as table and chairs for dine-in customers. The establishment has not applied for an entertainment endorsement, and the establishment will limit its alcohol sales to beer. Based on the character of the establishment as a legitimate restaurant, the Protestants’ concerns regarding peace, order and quiet are unsupported by the record.

b. *Trash and Litter*

38. Likewise, the Board finds that issuing the license will not result in an increase in trash and litter in the neighborhood. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and “. . . take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.” D.C. Official Code § 25-726.

39. The record contains ample testimony from the Applicant of his intentions and current practice to maintain a clean and trash-free establishment. Here, the Applicant demonstrated that it will have access to large receptacles in the alley, and he has ordered trash pickup six days a week. In addition, the rodent control contract secured by Amsterdam shows that the Applicant is taking reasonable steps to prevent infestations by vermin on a monthly basis.

40. Based on this evidence, the Board is convinced that the Applicant has adequate facilities and means to deal with any trash or litter generated by the establishment or its patrons, as well as the ability to deal with any potential infestations by vermin. By licensing the establishment, the Applicant will have to comply § 25-726, which offers more legal protection to the abutting neighbors than they currently have by neighboring an unlicensed establishment. Consequently, the Board cannot reasonably conclude that the issuance of a license to Amsterdam would result in an increase of trash and litter in the neighborhood, or contribute to the infestation of rodents.

II. Great Weight

41. The Board has reviewed the recommendation of ANC 2B and notes that the ANC is entitled to great weight pursuant to D.C. Official Code § 25-609. The Board agrees with the ANC that Amsterdam would be a benefit to the neighborhood and as such, the Applicant merits a Retailer's Class DR License for the reasons stated in this Order.

III. Conclusion

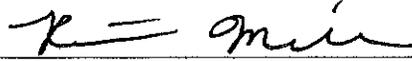
42. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in their initial protest. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2014). 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 4th day of June 2014, hereby **GRANTS** the Application for a New Retailer's Class DR License filed by District Falafel I, LLC, t/a Amsterdam Falafelshop.

The ABRA shall distribute copies of this Order to the Applicant and the Protestant.

District of Columbia
Alcoholic Beverage Control Board



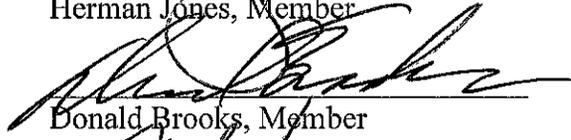
Ruthanne Miller, Chairperson



Nick Alberti, Member



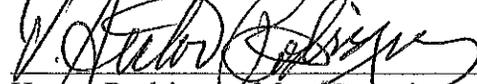
Herman Jones, Member



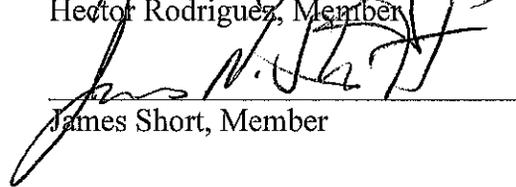
Donald Brooks, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Under 23 DCMR § 1719.1 (2008), 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, under section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) 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).