

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

In the Matter of:)	
)	
1624 U Street, Inc..)	Case No.: 13-PRO-00132
t/a Chi-Cha Lounge)	License No: 026519
)	Order No: 2016-707
Application to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
1624 U Street, N.W.)	
Washington, D.C. 20009)	

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

ALSO PRESENT: 1624 U Street, Inc., t/a Chi-Cha Lounge, Applicant

Emanuel Mpras, Esq., on behalf of the Applicant

Guangsha Wang, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

In *Chi-Cha Lounge*, the Alcoholic Beverage Control Board renewed the license of the Applicant without conditions. *In re 1624 U Street, Inc., t/a Chi-Cha Lounge*, Case No. 13-PRO-00132, Board Order No. 2014-262, 1 (D.C.A.B.C.B. Aug. 6, 2014).

Subsequently, in *Wang*, the District of Columbia Court of Appeals sustained the Board's holding with one exception. *Guangsha Wang v. District of Columbia Alcoholic Beverage Control Board*, No. 14-AA-1290, 1 (D.C. 2016). Specifically, according to the court, "the Board ha[s] not come to grips with evidence that the applicant, through its audio engineer Michael Reed, had installed soundproofing in only the rear section of the Lounge, not in the front of the establishment, which is the area beneath the apartment owned (and leased to successive

renters) by” the Protestant. *Id.* at 1. In light of this ruling, the court indicated that the Board should reconsider or clarify its holding. *Id.* at 4.

On September 14, 2016, the Board instructed the parties that they could submit new Proposed Findings of Fact and Conclusions of law by October 26, 2016. *In re 1624 U Street, Inc., t/a Chi-Cha Lounge*, Case No. 13-PRO-00132, Board Order No. 2016-507 (D.C.A.B.C. Sept. 14, 2016). The Board received new Proposed Findings of Fact and Conclusions of Law from the parties in response to this instruction.

After considering the submission of the parties and the court’s decision in *Wang*, the Board will affirm its prior holding, but will vacate the portion of its prior Orders that addresses the issue of whether the lack of soundproofing in the front of the establishment will have a negative impact on peace, order, and quiet. Upon reconsideration, the Board finds that the placement of speakers in the portion of the establishment that lacks soundproofing is causing noise issues in Apartment 101. Therefore, the Board conditions renewal on the Applicant keeping the speakers away from any walls shared by the business and Apartment 101.

SUPPLEMENTAL 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. Facts Related to the Establishment and the Premises.

1. Chi-Cha Lounge is located at 1624 U Street N.W., Washington D.C. *ABRA License No. 026519*. The establishment holds a Retailer’s Class CT License. *Id.* At the time of the hearing, the Applicant’s building was zoned C-2-A, which is a commercial zone. *Id.* at 82-83. *Transcript (Tr.)*, March 28, 2014 at 82-83.
2. The building in which Chi-Cha Lounge resides houses residential units inside the building. *Id.* at 151. Apartment 101 is located in the same building as Chi-Cha Lounge. *Id.* at 151. Apartment 101 is located over the front portion of Chi-Cha Lounge. *Id.* Apartment 201 is also located in the same building, but located over the rear portion of the establishment. *Id.*
3. The common wall shared by the establishment and Apartment 101 has not had any additional soundproofing installed. *Id.* at 127. This common wall connects to the establishment’s main room and lounge. *Id.* at 128. Apartment 101 also connects to the small roof that hangs over the Applicant’s entrance. *Id.* at 127-28.

II. Facts Related to the Soundproofing at the Establishment.

4. Chi-Cha Lounge has speakers installed by the bar area near the entrance. *Id.* at 120. The bar area speakers rest against the wall. *Id.* at 121. Farees Salim, the managing partner of the business, indicated that he believes the noise from these speakers vibrates through the common walls shared by the establishment and into Apartment 101. *Id.* at 102-03, 123.

5. Chi-Cha Lounge installed soundproofing in the main lounge area around 2010. *Id.* at 106, 149. The establishment also currently uses a locked sound limiter to maintain the sound level at 79 decibels. *Id.* at 113. Mr. Salim indicated that Chi-Cha Lounge is willing to modify the arrangement of its speakers. *Id.* at 147.

6. Michael Reed works as an audio engineer and was hired by Chi-Cha Lounge to install soundproofing in the rear of the establishment. *Id.* at 153-54, 164. He installed thick vinyl, insulation, and caulking in the walls to help prevent sound transmission. *Id.* at 155. He also mounted the speakers on the walls. *Id.* No sound proofing has been installed in the front of the establishment. *Id.* at 164. The soundproofing installed by Mr. Reed appeared to address sound issues raised by another tenant of the building. *Id.* at 171.

III. Facts Related to Noise Coming from the Premises.

7. Metropolitan Police Department (MPD) Lieutenant Erik Gaull has visited the establishment during business hours. *Id.* at 17, 29. In his experience, the lounge played music at a volume level that allowed individuals to conduct a conversation at a normal level. *Id.* at 30, 36-37.

8. ABRA Investigators monitoring the premise did not notice excessive noise emanating from the premises while observing the establishment on thirteen occasions between February 11, 2014, and March 9, 2014. *Id.* at 74, 85. There is no indication in the record that any investigator visited the residential units inside the building. *Id.* at 75.

9. During a visit to the establishment, ABRA Investigator Kofi Apraku saw speakers attached to the ceiling. *Id.* at 95. Investigator Apraku theorized that the speakers attached to the ceiling could cause noise to reverberate into the residential units located above the establishment. *Id.* at 96-97.

10. Mr. Salim has entered Apartment 201, which is located over Chi-Cha Lounge's main room while the business is in operation. *Id.* at 148. He has not heard any music from Chi-Cha Lounge entering Apartment 201. *Id.*

11. Jeffrey Weinrich lived in Apartment 101 in 2013. *Id.* at 174-75. During his residency, he heard amplified music inside the unit. *Id.* at 176-77. He moved out after two months due to the noise. *Id.* at 178.

12. Andrew Payne indicated that he took sound meter readings around the establishment. *Id.* at 183, 210-12. The record does not indicate that Mr. Payne has any particular expertise in audio engineering or whether the equipment he used was appropriately calibrated; therefore, the Board does not credit the sound readings recorded by Mr. Payne. *Id.* at 210. The record further does not indicate whether Mr. Payne personally heard noise around Chi-Cha Lounge or whether Chi-Cha Lounge was the source of the noise.

13. Guangsha Wang purchased Apartment 101 in 2010. *Id.* at 214. Ms. Wang has had multiple tenants leave the apartment citing noise complaints. *Id.* at 218. She stayed at the apartment one night and heard noise inside the premises during her stay. *Id.*

14. George Eulo entered Apartment 101 in 2013 and heard noise emanating from Chi-Cha Lounge into the unit. *Id.* at 260. He described the noise as very loud. *Id.*

SUPPLEMENTAL CONCLUSIONS OF LAW

15. The Board may approve an Application to Renew a Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016). Based on the ruling of the court, the question in this matter is whether the failure of the Applicant to install soundproofing in the front of the establishment has impact on the appropriateness of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2016); *Guangsha Wang v. District of Columbia Alcoholic Beverage Control Board*, No. 14-AA-1290, at 1, 4.

16. 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. Official Code § 25-311(a). The Board is further required to rely on the probative and substantial evidence contained in the record. 23 DCMR § 1718.3 (West Supp. 2016).

17. 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).

18. “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. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). In relation to noise. . . the Board . . . may “. . . consider whether an establishment is generating little or no sound.” *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶ 32 (D.C.A.B.C.B. Nov. 15, 2014) *citing In re 19th and K, Inc., t/a Ozio Martini & Cigar Lounge*, Case No. 13-PRO-00151, Board Order No. 2014-366, ¶ 37 (D.C.A.B.C.B. Oct. 1, 2014); *see also Panutat, LLC, v. District of Columbia Alcoholic Beverage Control Bd.*, 75 A.3d 269, 276-77 n. 12 (D.C. 2013). The Board may also consider whether the sounds generated by the establishment are appropriate in light of the “reasonable expectations of residents.” *Id.*; *see also* 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). The Board will also consider an applicant’s efforts to mitigate noise concerns through the use of soundproofing and practices that reduce noise generated from amplified and human sources. *In re Inner Circle 1223, LLC t/a Dirty Martini Inn Bar/Dirty Bar*, Case No. 13-PRO-00172, Board Order No. 2014-507, ¶ 34 (D.C.A.B.C.B. Dec. 10, 2014).

19. In determining the reasonable expectations of residents, the Board has looked to the court’s decision in *T.L.* as a source of guidance. *Climax Restaurant & Lounge*, Board Order No. 2014-366 at ¶ 33; *see also Ozio Martini & Cigar Lounge*, Board Order No. 2014-366 at ¶ 6. In that case, the court indicated that the government has the authority to prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep.” *In re T.L.*, 996 A.2d 805, 813 (D.C. 2010).

20. In this case, the Protestant has demonstrated that multiple tenants living above Chi-Cha Lounge in Apartment 101 have had amplified music from Chi-Cha Lounge leak into the premises, which forced them to move out. *Supra*, at ¶¶ 11, 13-14. Chi-Cha Lounge has installed soundproofing in the rear of the establishment, which has apparently addressed the noise issues in the unit located above the rear of the establishment, Apartment 201. *Supra*, at ¶¶ 3, 6, 10. Nevertheless, there is no evidence of soundproofing in the front of the establishment below Apartment 101 even though there are speakers located in that area of the establishment. *Supra*, at ¶ 6. In light of repeated disturbances to prior residents and the lack of commercially appropriate soundproofing in the front, the Board finds the noise generated by Chi-Cha Lounge inappropriate.

21. Based on this conclusion regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license in order to justify the renewal of the 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. Official Code § 25-104(e).

22. In this case, there is no substantial evidence that the noise disturbance extends to other residences in the building or outside the premises; therefore, whatever noise issues exist are limited to Apartment 101. *Supra*, at ¶¶ 7-8. Based on the record, the Board can only conclude that the source of the noise disturbances are the speakers located in the front of the establishment that touch the common wall of Chi-Cha Lounge and Apartment 101. *Supra*, at ¶¶ 4, 6. Consequently, the Board requires that Chi-Cha Lounge refrain from having speakers installed, mounted, or otherwise touching any common wall or ceiling shared by Chi-Cha Lounge and Apartment 101.

23. Because this condition addresses the source of the noise in Apartment 101 and any potential negative impact on the real property value of Apartment 101, the Board finds that Chi-Cha Lounge’s license merits renewal.

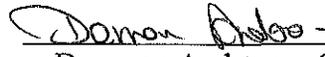
ORDER

Accordingly, on this 14th day of December 2016, the Board **VACATES** paragraphs 1 through 13 of Board Order No. 2014-436. On reconsideration, the Board **RENEWS** the Applicant’s license on the **CONDITION** that

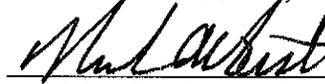
1. The license holder refrains from having any speakers or other sound generating device attached, installed, mounted, or otherwise touching any common wall shared by the licensee and Apartment 101.

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

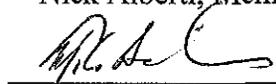
District of Columbia
Alcoholic Beverage Control Board



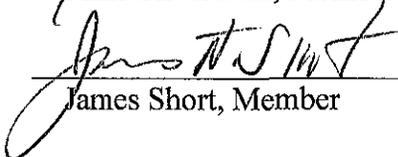
Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



James Short, Member

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. 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, 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).