DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Empire, LLC,

1909 9th Street, NW

Retailer CT – ANC 1B

License #110702

Case #21-CMP-00062

(Noise Violation)

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Wednesday
March 30, 2022

The Alcoholic Beverage Control Board
met via WebEx videoconference, Chairperson
Donovan W. Anderson presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
EDWARD S. GRANDIS, Member
JENI HANSEN, Member
JAMES SHORT, JR., Member

ALSO PRESENT:

RICHARD BIANCO, Licensee's Counsel
MARK BRASHEARS, DC ABRA Investigator
FELICIA DANTZLER, DC ABRA Investigator
SARAH FASHBAUGH, DC ABRA Staff
JAMES JORDAN, DC OAG
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CHAIRPERSON ANDERSON: Good afternoon, we're back on the record.

Good afternoon, everyone, and welcome to our afternoon session of the ABC Board. I do apologize to the general public.

Our afternoon schedule was supposed to start at 1:30. I know it is 3:10. However, our morning session ran much longer than we had anticipated. And, so I do apologize for the delay for our reconvening this afternoon.

Again, welcome to the afternoon session of the ABC Board. My name is Donovan Anderson, I am Chairman of the Board.

Joining us this afternoon are five of the Board members. We have Mr. James Short, Mr. Bobby Cato, Ms. Rafi Crockett, Ms. Jeni Hansen, Mr. Edward Grandis.

The Board has six members in attendance this afternoon to conduct business, and we do have a quorum to conduct business.

Before we get underway with this afternoon's calendar I need to make a few instructions very clear, so that the conduct of
these hearings is understood by everyone.

We have I believe, four cases on our

calendar this afternoon. Once your case is
called, I will take a moment for our IT

specialist to elevate the rights of each party,
to enable their camera and microphone.

Then and only then, will you have the
ability to enable your equipment.

If your case is not being heard, you
will remain mute and your camera will be
disabled.

At the conclusion of each case, the
parties will have the option to leave. If the
party chooses to stay, all cameras and
microphones for the concluded case, will be
disabled.

Should you have any questions or
require technical assistance during the hearing,
please submit them using the question and answer
feature.

Our first case this afternoon is case,
is a show cause hearing, case number 21-CMP-
00062, Empire Lounge, License No. 110702.

Ms. Fashbaugh, can you please elevate
the rights of the parties in this case, please?
MS. FASHBAUGH: Stand by.

James Jordan, your rights have been elevated.

Richard Bianco, your rights have been elevated.

Felicia Dantzler, your rights have been elevated.

That is all, Mr. Chair.

CHAIRPERSON ANDERSON: Thank you.

Mr. Bianco, do we have all the parties on your side? Are they elevated?

MR. BIANCO: Yes, it's just going to me today, Mr. Chairman.

CHAIRPERSON ANDERSON: All right, thank you.

All right, good afternoon everyone. Welcome to the, our afternoon schedule and I again I, let me apologize to the parties.

I know this hearing was scheduled for 1:30. It is clearly not 1:30, but we, our morning calendar ran much longer than we had anticipated. So, I do apologize for the delay.

All right, so let's have the parties introduce themselves for the record. Let's start with the government, please.

CHAIRPERSON ANDERSON: And, Mr. Jordan, if this matter goes to a hearing, do you have a witness today?

MR. JORDAN: Yes, Mr. Chairperson. In fact, I have two witnesses. Investigator Dantzler and Investigator Brashears, I believe should be waiting.

CHAIRPERSON ANDERSON: I don't see Investigator Brashears, so I'll ask if Investigator Brashears is, that his rights be elevated, please.

Ms. Dantzler, can you please spell and state your name for the record, please?

INVESTIGATOR DANTZLER: (No audible response.)

CHAIRPERSON ANDERSON: You're on mute, Ms. Dantzler.

INVESTIGATOR DANTZLER: Good afternoon, my name is Felicia Dantzler, ABRA investigator. My name phonetically is F like Frank, E-L-I-C-I-A, D like dance, D like David, A-N T like time, Z like zebra, L-E-R.
CHAIRPERSON ANDERSON: Good afternoon, Ms. Dantzler.

Ms. Dantzler, Mr. Brashears, can you please spell and state your name for the record, please?


CHAIRPERSON ANDERSON: Good afternoon, Mr. Brashears.

Mr. Bianco, can you please spell and state your name for the record, please?


CHAIRPERSON ANDERSON: Good afternoon, Mr. Bianco.

As I stated before, I don't see you have any witnesses so let me find out from the government.

Mr. Jordan, are there preliminary matters in this case?

MR. JORDAN: No, Mr. Chairperson, no preliminary matters.

CHAIRPERSON ANDERSON: And, I guess the government, I know that the government has the
burden to prove.

So Mr. Bianco, as an attorney we're aware that an attorney cannot testify at a hearing.

So, how do you, how do you plan to, excuse me, how do you plan to defend your client, sir?

MR. BIANCO: Our defense in this case is consisting of essentially legal argument, with respect to interpretation of the zoning code. As the Board is aware, there is a component of 25-725 that requires certain zoning, and that's where our argument goes.

CHAIRPERSON ANDERSON: All right, Mr. Bianco, you don't need to go through that. I was just trying to get some clarification so you can do that at later on.

I just wanted to get some clarification how this matter is going to proceed. As stated before, we are aware that the burden is on the government to prove, and the licensee doesn't have to do anything.

The licensee can just stand and sit back, and if the government has not met its burden, then the licensee of course, can argue
that the case should be dismissed because the

government has not met its burden.

I was just trying to ask for, for

clarification.

Okay, we're fine then.

Does the government wish to make an

opening statement?

MR. JORDAN: Yes, Mr. Chairperson.

CHAIRPERSON ANDERSON: Yes, sir.

MR. JORDAN: All right, good afternoon,

Mr. Chairperson and Board members.

We are here today in the show cause

matter of Empire D.C., LLC, trading as Empire

Lounge.

The show cause notice issued in this

matter concerns the charge that the licensee

played music at such an intensity, that it was

heard in a premises outside of the licensed

establishment, in violation of D.C. Code Section

25-725(a).

The District has the burden of proving

by substantial evidence, that the establishment

violated D.C. Code Section 25-725.

That standard is set by this Board's

regulations, specifically 23 DCMR, Section
The facts will establish that on Saturday, October 30, 2021, Alcoholic Beverage Regulation Administration Investigators Felicia Dantzler and Mark Brashears, visited the establishment, and determined that it played music with such intensity, that it could be heard outside.

At approximately 12:26 a.m., Supervisory Investigator Brashears, received a complaint through the ABRA hotline concerning noise coming from the establishment.

He forwarded that complaint to Lead Investigator Dantzler, who that morning was working on the noise task force.

The investigators verified that the noise was audible outside of the establishment. Investigator Dantzler then contacted the complainant, and asked to verify if the music was audible within the home.

Dantzler entered the home, ensured all windows were closed, and verified she could hear music. She then called Investigator Brashears located still near the establishment, to confirm the music.
Investigator Dantzler then discussed the complaint with the establishment's owner. After Investigator Dantzler discussed with the owner, Investigator Brashears confirmed that the establishment is located in an Arts 2 zoned district.

Under D.C. Code Section 725(b), establishments located in either a commercial or manufacturing district, are exempt from a noise violation enforcement.

According to the District of Columbia Municipal Regulations, Arts 2 district is a special purposes zone, created to emphasize residential development.

In this agency's interpretation of D.C. Code Section 725(b), Arts 2 is neither a commercial, nor a manufacturing district.

As the District of Columbia Court of Appeals stated, in the District of Columbia Department of the Environment vs. East Capitol Exxon, agencies are entitled to deference in the interpretation of the statutes they administer.

At the end of this hearing, the District requests that the Board apply penalty consistent with D.C. Code Section 25-830.
Thank you.

CHAIRPERSON ANDERSON: Good afternoon.

Mr. Bianco, do you wish to make an opening statement or do you defer until you present your case, sir?

MR. BIANCO: I would like to make a brief opening statement, and with sensitivity to the Board's schedule today, I will cut right to the chase.

Even if we assume that the government can make its burden on the practical elements of noise, their case fails on the zoning element.

Arts 2 is unquestionably a commercial zone, and to aid in the presentation of our case, we have two exhibits that are part of the law and public record, that we'll be asking the Board to take judicial notice of.

Specifically, the 2016 Zoning Atlas, which is referenced in the text of 25-725; and, second, the committee report on the ABC Procedural and Technical Amendment Act of 2020.

And, what that document does is it explains the most recent change to 25-725. This particular address, and this particular residence, has always been and remains in a
commercial zone.

    The change of the nomenclature in 2016
by the Zoning Board, does not impact the usage or
boundaries of this particular zone.

    The agency's interpretation of 25-725,
and the associated zoning regulations, is
inconsistent and incorrect.

    Based on that, they are not entitled
to the deference afforded by the Court of
Appeals, which is a general statement where the
agency applies its regulations consistently.

    They have not done so here, and the
evidence at the end of this hearing will show
that.

    Thank you.

CHAIRPERSON ANDERSON: So let me ask
you a question, counsel.

MR. BIANCO: Yes?

CHAIRPERSON ANDERSON: Is your client
contesting the fact that the complaint, the noise
complaint, that there was a noise complaint?

    The purpose of this case is that there
was a complaint that was filed by, by the
community. That ABRA went, did an investigation,
and confirmed that the noise was coming from,
from this licensee.

Is that being contested?

MR. BIANCO: Not at all.

CHAIRPERSON ANDERSON: So, what's being contested? It's the application of the law to these, to this application of the law because factually, so we don't need to have testimony because factually, I'm asking --

(Simultaneous speaking.)

MR. BIANCO: Yes.

CHAIRPERSON ANDERSON: -- factually, what the government asserts is correct.

That there was a legitimate noise complaint that was filed, and that it, that the agency went, it investigated, it was investigated, and that it was confirmed.

MR. BIANCO: Well, what I would say is as to those practical elements of the noise complaint, and the investigation of the noise complaint, and the substantiation of the noise complaint, we have no dispute.

I think where we have an issue that may require some testimony, is on the issue of whether an Arts 2 zone, or I'm sorry, the agency's interpretation of whether an Arts 2 zone
is commercial.

And, my, just to sort of pull back the curtain, my planned cross-examination was where does this determination come from? Is it part of a written policy? Is it common knowledge? Who makes the determination?

All of these things, I think factually bear on the interpretation of the statute.

CHAIRPERSON ANDERSON: And, Mr. Jordan, and I, with where we are I'm not sure, I'm asking you. Because as I said before, it doesn't make sense for us to have testimony on, it's the interpretation.

So, I'm not going to tell you how to. Well, you know what it is, this is what I'm going to do. Present your case because this might be a case, this might be a case that depending whatever decision the Board makes, this is a case that might be, could be appealed.

So, therefore, I want to make sure that we have a proper administrative record.

So, let's, I'll have you present your case, sir, in the way you planned to present your case. Keeping in mind the argument that's been made by, by counsel.
All right, do you have a witness, sir?

MR. JORDAN: Yes, Mr. Chairperson. The District calls Lead Investigator Felicia Dantzler.

CHAIRPERSON ANDERSON: Ms. Dantzler, can you raise your right hand, please?

Do you swear or affirm to tell the truth, and nothing but the truth?

INVESTIGATOR DANTZLER: I affirm.

CHAIRPERSON ANDERSON: Thank you. Your witness, sir.

MR. JORDAN: Thank you.

Investigator Dantzler, could you please state and spell your name?

INVESTIGATOR DANTZLER: Felicia Dantzler, F like Frank, E-L-I-C-I-A D like David, A-N T like time, Z like zebra, L-E-R.

DIRECT EXAMINATION

BY MR. JORDAN:

Q And, where are you currently employed?

A The Alcoholic Beverage Regulation Administration.

Q And, what's your position at this administration?

A Lead Investigator.
Q  And, how long have you been a lead investigator?
A  Three years.
Q  And, what are your duties and responsibilities in that position?
A  I investigate establishments that sell alcoholic beverages, and I conduct regulatory inspections of said establishments.
Q  And, where were you assigned on October 30, 2021?
A  I was assigned to work the ABRA noise task force.
Q  Could you explain what this task force is?
A  The task force, generally it runs from April through October of that particular year. The investigator is assigned, an investigator from the Department of Consumer and Regulatory Affairs, who is experienced with a noise meter. And, we have a determined list of establishments that we visit. And, we also respond to calls that come into our hot phone for noise violations.
Q  Okay, and are you familiar with Empire Lounge?
A   Yes.

Q   How are you familiar with the establishment?

A   I have conducted several investigations involving the establishment, or had to deliver some sort of legal notification. And, I also had to go to the establishment for noise matters.

Q   And, on October 30, did you have cause to visit Empire Lounge?

A   Yes.

Q   And, why did you visit Empire Lounge?

A   My supervisor Mark Brashears, telephoned me to state that a noise complaint had come in.

Q   And, how did the agency receive this complaint?

A   Through the cell phone, the hot phone that the supervisors carry.

Q   Okay, and after you were informed of the complaint, what were your actions?

A   Prior to going to the establishment, S.I. Brashears provided me with the complainant's address.

        And, so I looked up the complainant's
address, to ensure that the complainant was in a zone that gives standing for us to regulate.

Q And, why did you ensure the zoning of this establishment?

A I had to ensure that the complainant resided, or in a zone that would allow that person to have standing.

So, if the complainant resided in commercial or a manufacture zone, that would exclude them from, from me enforcing the complaint.

Q Okay. And, after verifying the zoning of this complainant, what were your next actions?

A I made my way to Empire Lounge, and arrived maybe approximately 20 or so minutes later.

Q Okay, and did you meet with anyone there?

A Yes. I met with S.I. Brashears. I was in the company of Christopher Peters, who was the DCRA investigator who was assisting me that night.

Q Okay. And, once you met with Investigator Brashears, did you do anything to determine whether noise was emanating in the
area?

A  Yes. When Investigator Peters and myself arrived, we saw S.I. Brashears was standing a few doors away from Empire.

And, then I asked him where the complainant reside, which he told me it was behind Empire Lounge.

And, so we went to the rear of the establishment and from there, we could, I could hear some bass coming from the rear of the establishment.

Q  And, how did you verify that that was the rear of the establishment?

A  The establishment's address, the numeric, so on the back door.

Q  Okay. And, so once you verified that was the establishment, what did you do next?

A  I then asked S.I. Brashears for a contact number for the complainant. And, then called the complainant and identified myself, and asked if he was still willing to have an ABRA investigator enter his home to see if music could be heard within his residence.

Q  And, did you enter the complainant's home?
A   Yes. Prior to going, I asked S.I. Brashears if he could remain in the alley, so I can communicate with him once I was inside the complainant's home.

Q   And, within the home, what were your steps to determine whether music was heard?

A   So, the complainant met us like in the downstairs area outside his home. And, he welcomed us inside. The lights were on in the front room, and I also noticed a light on in a rear room. There was a female sitting on the couch.

       But there was really no, no sound in the front area, but I was distracted because I saw something from the corner of my eye, and I noticed that was the television that was on.

       But I didn't hear any volume from the television.

Q   And, were any windows open?

A   No. The complainant asked Investigator Peters and myself to follow him to a rear room, which ended up being a bedroom.

       And, standing, as I was standing near the bed and the window, I can hear some bass, some thumping inside his home.
Q    Okay, and did you do anything to verify that that was the same noise you heard emanating from Empire Lounge?

A    Yes. Prior to calling S.I. Brashears, I asked the owner if the, the complainant, if the window was open. And, he stated that it was not.

And, I asked him to verify, and he just like automatically moved his hand and moved back the window covering. And, I can see that the window was closed.

So, at that time, I then called S.I. Brashears asking of him was he still in the rear, which he confirmed he was. And, I asked him, I asked him did he, I hear thumping, is that what he hears, kind of like some beats, you know, moving.

Q    Uh huh.

A    Some bass moving. And, he heard the same sounds that I heard inside the residence.

Q    And, would that substantiate the noise complaint?

A    (No audible response.)

Q    So, what did you do afterwards?

A    I advised the complainant that the violation was established, and that I would
create a report. And, advised the owner once I left his home.

MR. JORDAN: Okay. And, Mr. Chairperson, permission to share my screen?

CHAIRPERSON ANDERSON: Ms. Fashbaugh, can you please allow Mr. Jordan to share his screen, please?

MR. JORDAN: Investigator Dantzler, I'm going to show you what is marked as Government Exhibit A.

And, Mr. Chairperson, at this time the District would like to confirm that what has been marked as Government Exhibit A, is in evidence as under 17 DCMR Section 1713.10?

CHAIRPERSON ANDERSON: Yes, Mr. Jordan, it is not on the Board's record but it is in the, it is in evidence.

Thank you.

(Whereupon, the above-referred to document was received into evidence as Government Exhibit No. A.)

MR. JORDAN: Thank you, Mr. Chairperson.

Investigator Dantzler, can you
identify what this is, please?

INVESTIGATOR DANTZLER: Yes, that is my investigative report that I authored.

MR. JORDAN: And, are there any attachments to this report?

INVESTIGATOR DANTZLER: There's a zoning report.

BY MR. JORDAN:

Q   And, did you add this to the report?
A   I did. S.I. Brashears took the zoning report from the, took the zoning map from the zoning website and provided it to me for the report.

Q   Okay. I'll stop sharing my screen.

Investigator Dantzler, at any point while you were investigating this noise complaint, did the music ebb, or seem to stop?

A   I can't say that it did or did not.

Once I established the violation, I just returned to the front of the establishment and made my identity known.

And, asked to speak with the ABC manager and owner. The owner stepped out, and I advised him of the violation.

Q   Okay.
MR. JORDAN: No further questions, Mr. Chairperson.

CHAIRPERSON ANDERSON: Mr. Bianco?

MR. BIANCO: Yes. Good afternoon, Investigator Dantzler.

So, I understand from your testimony and your report, that on Saturday, October 30, you looked at the zoning Atlases to determine that the complainant resides in an Arts 2 zone, is that correct?

INVESTIGATOR DANTZLER: Not quite. I went to the zoning website and put in the address. And, it came, in the box it tells you on the left-hand side of the zoning page that I looked at, it advised me which zone it was in.

CROSS-EXAMINATION

BY MR. BIANCO:

Q Okay. And, that's how you determined it was in an Arts 2 zone?

A Yes, sir.

Q Okay. And, I believe I heard you testify that your understanding of the statute, is that 25-725 does not apply to a residence located in a commercial or manufacturing zone.

Is that an accurate recitation of your
testimony?

A I'm not certain if I stated residence, but my understanding of, if the complainant isn't in that commercial or manufacture area, if they were in that commercial or manufacturing area, they had no standing to complain.

Q Okay. And, on page 2 of your report, you indicate on Saturday, October 30, a review of the zoning map by S.I. Brashears, listed both Empire Lounge, and the complainant's residence in an Arts 2 zone.

And, was it your testimony that that determination was made before you went out and investigated the complaint?

A Yes. Those are two different actions, actually. So, the first action I did prior to going to the establishment, is when I looked up the information on my phone.

The second action came after, well during my crafting of my report, which was like a week or so later.

Q Okay, so here where it says on Saturday, October 30, 2021, which is the same day as the complaint, a review of the D.C. zoning map by S.I. Brashears, listed both Empire Lounge, and
the complainant's residence in an Arts 2 zone.

Was that the search that you conducted on the day of the complaint, or was that referring to the search that Investigator Brashears did a week later?

A    That's S.I. Brashears' actions. I just looked, I didn't, I never looked at the location of the establishment's zone.

Q    Okay. So, that October 30 date is actually, it should actually read that it's approximately a week later when S.I. Brashears conducted that search.

Is that correct?

A    No, sir. What S.I. Brashears did on that night, I have no knowledge of what he did prior to me getting there.

Q    Okay. But, so what I'm driving at is what you, I'm going to read this sentence and you can tell me what you mean by it.

It says, on Saturday, October 30, 2021, a review of the D.C. zoning map by S.I. Brashears, listed both Empire Lounge and the complainant's residence in an Arts 2 zone.

Could you please tell me when that search was conducted by S.I. Brashears?
A You would have to ask S.I. Brashears that question.

Q Very well. So, how did you determine on the day of the complaint, that Arts 2 is not a commercial zone?

A Because it doesn't state commercial zone, and it didn't state manufacturer's zone. It would either be a C or an M, sorry --

(Q simultaneous speaking.)

Q Okay.

A I'm sorry I'm in a room, the lights went out. My apologies.

Q Okay, so it's your testimony that because the zone is not named commercial, and then a zone number, it doesn't qualify as a commercial zone.

Is that a correct understanding?

A Yes, sir.

Q Okay. And, does the agency have a written policy on which zones qualify as commercial and manufacturing, versus other types of zones?

A I haven't seen one.

Q Okay. Is there some type of an
unwritten or verbal policy to that effect?

A No, we go by the statute that we follow, that talks about referring to the D.C. zoning map for assistance.

Q Okay, so, and who, who makes the determination whether a zone qualifies as commercial or not?

Is that a determination made by the individual investigator, or somebody else within the agency?

A The D.C. Department of Zoning does.

Q I understand that the D.C. Department of Zoning publishes the different zones, but when you receive a complaint to the agency under 25-725, who within the agency decides whether or not that particular zone qualifies as commercial?

Is the determination made by the individual investigator who fields the complaint, or by somebody else within the agency?

A I can't say what others do, but when I get complaints, I run the address. When there's a complainant, I run the address to see if they have standing.

And, if they have standing, then I take the steps that I did with Empire. And, if
they don't have standing, then I just make a notification to the establishment that hey, you got a complaint, if you can turn down the music, that would be nice.

Q   Okay.
A   But they're not, they don't have to.

Q   Okay. So, when you receive a complaint, you make a determination as to whether or not the zone qualifies as commercial.

And, after you make that determination, do you have to seek anybody else's approval of that determination, or is it within your discretion?

A   The approval comes through the D.C. zoning map.

Q   Okay. But you don't have to ask somebody within the agency, if your determination is a correct one?

A   Correct.

Q   Okay. And, do you give any consideration to how the Zoning Board -- strike that.

How do you treat mixed use zones, for the purpose of determining whether or not it's commercial?
A: I don't read the definitions of the codes, I just look to see what, what their code is.

So, I don't go into the definition.

Q: I understand. So the determination is based on how the zone is named by the Zoning Commission, correct?

A: Yes, sir.

Q: Okay, great.

MR. BIANCO: Thank you very much Investigator, I appreciate your testimony.

INVESTIGATOR DANTZLER: Yes, sir, you're welcome.

CHAIRPERSON ANDERSON: Any questions by the Board members?

MEMBER GRANDIS: Mr. Chairman?

CHAIRPERSON ANDERSON: Yes, Mr. Grandis?

MEMBER GRANDIS: Hi Investigator, thank you for being here today, and your testimony on this matter.

When the noise complaint was received by you, after you received that noise complaint, when was your first time that you went into Empire?
INVESTIGATOR DANTZLER: I got to Empire around I think it was 2:50, I believe, or 1:50. I'll have to look at my report that I authored.

But I know it took me around 20 minutes. Spoke with Investigator Brashears, so I was probably inside the establishment, I mean inside the home within two, two and a half minutes.

MEMBER GRANDIS: Okay, so just so I understand the timeline. Upon receiving the complaint, when you went to that location, you went to visit the complainant, correct?

INVESTIGATOR DANTZLER: Yes.

MEMBER GRANDIS: Okay, and then you also stood in the alley at some point?

INVESTIGATOR DANTZLER: Yes.

MEMBER GRANDIS: Okay. Did you go into Empire prior to writing up the violation, or after writing up the violation?

INVESTIGATOR DANTZLER: After.

MEMBER GRANDIS: So, is it procedures by our investigators that when there is a noise complaint, that one of the investigators would be going inside the licensee, while the other was either in an alley, or in the complainant's
apartment?

INVESTIGATOR DANTZLER: It actually varies whether the investigator who's staying at the establishment, if they go inside.

MEMBER GRANDIS: Okay, and to your knowledge and I think, I think your report had an indication of other licensees nearby.

Were you able to determine if any establishment nearby also was having music played?

INVESTIGATOR DANTZLER: That wasn't my focus. Empire was the only establishment I was focused on.

Although 9th Street is always bustling, you know, you hear music. The oddest thing is that you can go to the rear of the establishment and it's quiet.

So, it was easy to determine where the sound is coming.

MEMBER GRANDIS: Okay, so thank you very much.

Thank you for that.

CHAIRPERSON ANDERSON: Any other questions, any other Board members?

(No audible response.)
CHAIRPERSON ANDERSON: Mr. Bianco, any followup based on the questions that was asked by the Board?

MR. BIANCO: No, Mr. Chair.

CHAIRPERSON ANDERSON: Mr. Jordan, any redirect?

MR. JORDAN: Some redirect, Mr. Chair.

Investigator Dantzler, just to confirm, prior to investigating Empire Lounge, you did determine what zone they were in?

INVESTIGATOR DANTZLER: Yes, sir.

REDIRECT EXAMINATION

BY MR. JORDAN:

Q   And, after the investigation occurred, supervisory investigator Brashears also investigated the zoning of Empire Lounge?

A   I don't know when you say investigated, I don't, I'm not clear what other steps S.I. Brashears took, but I do know that he presented me with the zoning map.

Q   Exactly that.

MR. JORDAN: No further questions, Mr. Chair.

CHAIRPERSON ANDERSON: Thank you, Ms. Dantzler, for your testimony. You're free to go.
Mr. Jordan, do you have another witness?

MR. JORDAN: Yes, Mr. Chair. The District calls Supervisory Investigator Mark Brashears.

CHAIRPERSON ANDERSON: Supervisor Investigator Mr. Brashears, can you please raise your right hand, please?

Do you swear or affirm to tell the truth and nothing but the truth?

INVESTIGATOR BRASHEARS: I swear.

CHAIRPERSON ANDERSON: Okay, your witness.

MR. JORDAN: Thank you, Mr. Chair. Investigator Brashears, could you please state and spell your name for the record?

INVESTIGATOR BRASHEARS: First name is Mark, M-A-R-K, last name is Brashears, B-R-A-S-H-E-R-S.

DIRECT EXAMINATION

BY MR. JORDAN:

Q And, where are you currently employed?

A The Alcoholic Beverage Regulation Administration.

Q And, what's your position there?
A Supervisory Investigator.

Q And, how long have you been a supervisory investigator?

A Over three years.

Q And, what responsibilities do you have in that position?

A I basically supervisor a team of five investigators, whose job it is to go out and conduct inspections and investigations of ABC licensed establishments throughout the District of Columbia.

Q Okay, and are you familiar with Empire Lounge?

A I am.

Q How are you familiar with it?

A In addition to, you know, routine visits to 9th Street and being familiar with the establishment, I received a noise complaint on Saturday, October 30.

Q And, what's the normal procedure to go through once you've received a noise complaint?

A On this instance, we had the noise task force operating, so I reached out to Lead Investigator Dantzler. She was assigned to the noise task force.
But due to atmospheric conditions that evening, it had been raining off and on, the DCRA inspector assigned to the noise task force could not use his noise meter.

So at that point, I realized we would have to substantiate it by going into the residence. So, I told her that I would meet her over there.

Q Okay, and so once Investigator Dantzler arrived, what were your next steps to substantiate the noise complaint?

A We, myself, Investigator Dantzler and the DCRA inspector, basically walked the alley and pinpointed that the music and the bass that we were hearing, was coming from the back of Empire Lounge.

Q And, how did you know that that was Empire Lounge?

A The establishment's address is written on the rear door.

Q And, so once you identified the noise came from Empire Lounge, what were your next steps?

A I gave the contact information of the complainant to Investigator Dantzler. She made
contact with him, and L.I. Dantzler and the DCRA inspector visited the complainant's home.

    Q And, what did you do while the two, Investigator Dantzler and Inspector Peters, were in the complainant's home?

    A I stayed in the alley directly behind the establishment, Empire Lounge.

    Q And, while you were there, did the music seem to flow, or change volume?

    A No.

    Q And, did Investigator Dantzler contact you from the complainant's home?

    A She called me via telephone, yes, sir.

    Q And, what did you do with, on that call?

    A She asked me to describe what I was hearing, so I basically mimicked the, the beat and the lyrics that I could hear.

        And, she substantiated that she was hearing the same beat inside of the complainant's residence.

    Q And, so once the complaint had been substantiated, what were your next steps?

    A After that, Investigator Dantzler and the DCRA Inspector Peters, visited the
establishment to notify the establishment of the complaint.

Q   And, did you further investigate the establishment?

(Pause.)

A   (No audible response.)

CHAIRPERSON ANDERSON: Mr. Brashears has been, I think he's frozen.

(Pause.)

CHAIRPERSON ANDERSON: Mr. Brashears, can you hear us?

INVESTIGATOR BRASHEARS: I apologize. It seems that the connection is cutting in and out.

CHAIRPERSON ANDERSON: Yes, sir, there was a question they need to repeat. Repeat the question, please, Mr. Jordan.

MR. JORDAN: Investigator Brashears, did you investigate the establishment further after Investigator Dantzler made contact?

INVESTIGATOR BRASHEARS: I'm sorry, Mr. Jordan, it's coming through garbled.

BY MR. JORDAN:

Q   Rephrase. Investigator Brashears, did
you investigate the establishment's zoning?

A Yes, I did.

Q And, what did you determine the zone for the establishment was?

A So, I'm somewhat familiar with the area, but, you know, prior to going over I looked up the zoning.

And, later in the evening, actually you know, printed the map that I provided to L.I. Dantzler.

But what I determined, basically looking at the zoning it was listed as an Arts 2 designation.

Q Okay.

MR. JORDAN: And, Mr. Chairperson, I'll now share my screen.

CHAIRPERSON ANDERSON: Do you still have the ability?

MR. JORDAN: Yes, Mr. Chairperson.

Investigator Brashears, let me know if you can see what I'm currently displaying.

INVESTIGATOR BRASHEARS: I can see it.

BY MR. JORDAN:

Q Is this the zoning map that you looked up?
A Yes, sir, it is.
Q And, can you identify the establishment on this map?
A It is the darker shaded grayish blue square with the dot in the middle.
Q Is this a correct kind of square?
A Yes.
Q Okay. And, what, does this map display the zone that the establishment is in?
A It does.
Q And, what zone is that?
A It's Arts 2.
Q All right, thank you. I'll stop sharing.

MR. JORDAN: No further questions at this time, Mr. Chairperson.

CHAIRPERSON ANDERSON: Thank you.

Your witness, Mr. Bianco.

MR. BIANCO: Thank you.

Investigator Brashears, you were here for Investigator Dantzler's testimony, correct?

INVESTIGATOR BRASHEARS: I was.

CROSS-EXAMINATION

BY MR. BIANCO:

Q Okay, and it was her testimony that
the determination of whether a particular zone qualifies as commercial, is based on the name of the zone.

Is that your understanding of how that determination is made?

A   So, basically we go off of 25-725, where it talks about the commercial and manufacturing zones. As she said, basically individuals living in those zones would not have standing.

So, based on that, any C1, 2, 3, or 4, or M-class of zone would not have the ability to make a complaint. I mean they could, but they wouldn't have standing based on where they reside.

Q   Okay, so the agency's position, and I just want to make sure I have the testimony correct. The agency's position is any zone that is not labeled C1, C2, C3, C4, CM, or M, does not qualify for this exemption.

Is that correct?

A   Those are the exempt, yes, sir.

Q   Okay. Would it surprise you to learn that those zones that were just listed, no longer exist?
A I would not be aware of that, sir.

Q Okay. For purposes of -- strike that, never mind.

MR. BIANCO: I have no further questions. Thank you very much.

CHAIRPERSON ANDERSON: Any questions for the witness?

(No audible response.)

CHAIRPERSON ANDERSON: Any redirect, Mr. Jordan?

MR. JORDAN: No redirect, Chairperson.

CHAIRPERSON ANDERSON: Thank you, Mr. Brashears for your testimony.

All right, Mr. Jordan, do you have another witness?

MR. JORDAN: No further witnesses, Mr. Chairperson.

CHAIRPERSON ANDERSON: Do you rest, sir?

MR. JORDAN: Yes.

CHAIRPERSON ANDERSON: Mr. Bianco?

MR. BIANCO: Mr. Chair, I don't have any witnesses. We did submit two exhibits that are public record, and I think actually part of the law.
CHAIRPERSON ANDERSON: What are the documents that you --

MR. BIANCO: Sure. Exhibit No. 1 is the 2016 zoning Atlas map of this particular location.

And, if it helps the Board, I intend to submit written findings of fact and conclusions of law, which will refer to the documents, and give the Board the opportunity to consider them more fully.

So, Exhibit No. 1 is just a print out of the zoning map from 2016, which is prior to the zoning change.

And, Exhibit No. 2 is just the committee report from the 2020 amendment to the ABC Act, which is called the Technical and Clarifying Amendment of 2019.

And, it is as published by the council. The Committee on Economic Development. Which again, we intend to simply refer to in our proposed findings of fact and conclusions of law.

I don't think either of those two things are terribly controversial.

CHAIRPERSON ANDERSON: Mr. Jordan?

MR. JORDAN: No objections to the
exhibits, Mr. Chairperson.

CHAIRPERSON ANDERSON: So moved.

I guess you've further, you stated that you're going to do findings of fact and conclusion of law, so I assume you would, you are going to explain to the Board why is the, what the relevancy of the committee report to what we have to, to determine today.

All right, anything else you want to say, sir?

MR. BIANCO: Nothing else from the respondent in this case.

I know the last time we did one of these, the Board wanted to hear a brief oral closing. I'm glad to do that if the Board prefers, but don't really feel terribly moved to.

CHAIRPERSON ANDERSON: Do you rest then, I guess on, you're going to do some of the other submissions and so do you rest?

MR. BIANCO: Yes.

CHAIRPERSON ANDERSON: Mr. Jordan, do you wish to make a closing statement?

MR. JORDAN: Yes, Mr. Chairperson.

CHAIRPERSON ANDERSON: Go ahead.

Go ahead, sir.
MR. JORDAN: Mr. Chairperson and members of the Board, the District has met its burden under 23 DCMR, Section 1711.6, and has proven by substantial evidence, that the licensee played music heard within a neighboring home, in violation of D.C. Code Section 25-725(a).

You heard from both Lead Investigator Dantzler, and Supervisory Investigator Brashears, who verified the complaint on October 30, 2021.

The investigators identified Empire Lounge as the source of music within the neighborhood.

Investigator Dantzler then visited the complainant's home, while Investigator Brashears remained outside. Once Investigator Dantzler confirmed that no windows were open, she contacted Investigator Brashears to verify the noise heard.

Both Investigator Dantzler and Brashears confirmed that they heard the same bass, the same lyrics, and the same music emanating from Empire Lounge in the complainant's home.

Testimony also demonstrated that the investigators informed the establishment their
music was audible outside of the establishment.

Investigator Brashears then confirmed
the establishment's zoning. Empire Lounge is
located in a special use zone designated Arts 2.

According to zoning regulations
specifically 11-K DCMR Section 800.3, the purpose
of Arts 2 zone is to permit medium density mixed-
use development, with an emphasis on residential
development.

This area is an intended residential
zone. Not commercial or manufacturing.

An agency's interpretation of the
statute it enforces, is entitled to deference as
the D.C. Court of Appeals held in The District of
Columbia Department of the Environment vs. East
Capitol Exxon.

Here, the agency has enforced the
statute to prevent noise emanations in
residential districts.

Unless that interpretation is
unreasonable or inconsistent, it is entitled to
deference.

The District has therefore, proven the
charge in the notice to show cause, that the
establishment emanated music audible in a
The District recommends that the Board apply a penalty consistent with D.C. Code Section 25-830.

Thank you.

CHAIRPERSON ANDERSON: Thank you, Mr. Jordan.

I need to ask you this, Mr. Bianco, so you can, do you want to make a closing statement or not?

MR. BIANCO: Yes, I will. I'll make a brief one --

CHAIRPERSON ANDERSON: All right.

MR. BIANCO: -- just to give the Board some guidance as to where we're going.

Our argument in this case is that an Arts 2 zone is commercial. The government cannot, and has not shown that it isn't. And, the basis for this statement is two-fold. One, Arts 2 allows for commercial uses. There was a comprehensive overhaul of the zoning code in 2016. And, in that overhaul the Zoning Commission created dozens of zones substantially all of them, every single one, allows some type of residential use with the
exception of some special waterfront zones and
manufacturing zones.

But the opposite is not true. A
count of residential zones are exclusively zoned
for residential, and no commercial uses. Those
are the zones that this law was intended to
protect.

Second, the legislative history of 25-725 supports our position. As I mentioned, the
zoning code was overhauled in 2016, and in that
redrafting, the zones C1 through C5, CM and M,
were completely eliminated.

The uses are still there, they just
changed the names. So as it stands today as we
sit here, zero zones in the District of Columbia
are called or named commercial. None.

Under the old code, the property at
issue here where the residents, as well as the
establishment is located, was labeled Arts C2.

Following the 2016 amendment given the
change of the zoning nomenclature, the zone was
renamed to simply Arts 2, as the C2 designation
was eliminated.

The boundaries have not changed, the
uses have not changed.
Now under the prior version of 25-725
that was in effect under the old zoning pre-2016,
C1 through C4, CM and M, were specifically
exempted. And, this property lied, lied within a
C2.

The revisions to 25-725 as the
committee report will demonstrate, was a
technical and clarifying amendment. It was not a
substantive amendment changing the law, or its
interpretation.

However, notwithstanding the change in
both the zoning law and 25-725, the agency is not
interpreting the law properly. They are still
interpreting the law using the old code, that no
longer exists.

The government can't even present a
straight-face argument that this is somehow
consistent.

The government can't make its burden
in this case based on the evidence presented,
that this property does not lie within a
commercial zone.

We look forward to hashing this out
more clearly in our proposed findings of fact and
conclusions of law, for the Board's
consideration.

And, as a practical matter, I think it's important to note here, that this isn't for us about a $350.00 secondary tier violation.

This case is the third case based on the same complainant, and it is going to keep happening, and happening, and happening, unless we have a ruling with respect to this zoning issue. Which is why it is incredibly important to my client.

We have this situation here that we run into repeatedly on 9th Street, because people moving to a place that they consider to have nuisance uses, and then subsequently complaints about it repeatedly.

And, we think in this particular case it is very, very clear that 25-725 does not apply. And, we hope the Board comes to that conclusion.

(Pause.)

CHAIRPERSON ANDERSON: Thank you, Mr. Bianco.

The record is now closed and as stated by counsel, it's the applicant, I'm sorry, the licensee's position that they are going to file
proposed findings of fact and conclusion of law.

Is that correct, Mr. Bianco?

MR. BIANCO: Yes, sir, that is correct.

CHAIRPERSON ANDERSON: And, Mr. Jordan?

MR. JORDAN: Yes, Mr. Chairperson.

CHAIRPERSON ANDERSON: Ninety days from

the receipt of the proposed findings of facts and

conclusion of law, the Board will issue a
decision.

The proposed findings and conclusion

of law, are due to the Board 30 days after

receipt of the transcript.

The transcript will be emailed to the

parties within the, within the next three weeks.

If they change their mind about the

filing, they should inform the opposing party,

and the Board.

All right, so hold on for a minute.

Give me a minute, please.

(Pause.)

CHAIRPERSON ANDERSON: As Chairperson

of the Alcoholic Beverage Control Board for the

District of Columbia, and in accordance with D.C.

Official Code Section 2-575 of the Open Meetings

Act, I move that ABC Board hold a closed meeting
for the purpose of seeking, for the purpose of seeking legal advice from our counsel.

On Case No. 21-CMP-00062, Empire Lounge, pursuant to D.C. Official Code Section 2-575(b)(4)(a), of the Open Meetings Act, and deliberating on Case No. 21-CMP-00062, Empire Lounge, for the reasons cited in D.C. Official Code, Section 2-575(b)(13) of the Open Meetings Act.

Is there a second?

DDD: Ms. Crockett seconds.

CHAIRPERSON ANDERSON: Ms. Crockett has seconded the motion. I will now take a roll call vote on the motion on the floor now that it has been second.

Mr. Short?

MEMBER SHORT: Mr. Short, I agree.

CHAIRPERSON ANDERSON: Mr. Cato?

MEMBER CATO: Bobby Cato, I agree.

CHAIRPERSON ANDERSON: Ms. Crockett?

MEMBER CROCKETT: Rafi Crockett, I agree.

CHAIRPERSON ANDERSON: Mr. Hansen?

MEMBER HANSEN: Jeni Hansen, I agree.

CHAIRPERSON ANDERSON: Mr. Grandis?
MEMBER GRANDIS: Edward Grandis, I agree.

CHAIRPERSON ANDERSON: And, Mr. Anderson, I agree.

As it appears that the motion has passed 6:0:0, I hereby give notice that ABC Board will recess these proceedings to hold a closed meeting, pursuant to Section 2-575 of the Open Meetings Act.

Again, I would like to thank the parties for their presentation today, and we are adjourned as far as this case is concerned.

Thank you very much and have a great day.

MR. BIANCO: Thank you, Mr. Chair.

MR. JORDAN: Thank you, Mr. Chair.

CHAIRPERSON ANDERSON: You're welcome, you're welcome.

(Whereupon, the above-entitled matter went off the record at 4:10 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Empire Lounge

Before: DC ABRA

Date: 03-30-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

___________________________
Court Reporter

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