

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

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In the Matter of:	)		
	)	Case No.:	14-PRO-00095
Spo-dee-o-dee, LLC	)	License No:	ABRA-89186
t/a The Showtime	)	Order No:	2015-447
	)		
Application for a Substantial Change to	)		
Retailer's Class CT License	)		
(Sidewalk Café with Six Seats)	)		
	)		
at premises	)		
113 Rhode Island Avenue, NW	)		
Washington, D.C. 20001	)		

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member<sup>1</sup>  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Andrew Kline, Esq., on behalf of Spo-dee-o-dee, LLC t/a The Showtime,  
Applicant

Dr. Paul Collins, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER DENYING IN PART AND GRANTING IN PART THE  
APPLICANT'S MOTION FOR RECONSIDERATION OF  
THE ORDER AMENDING BOARD ORDER NO. 2015-273**

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**INTRODUCTION**

On July 20, 2015, the Applicant, Spo-dee-o-dee, LLC t/a The Showtime (The Showtime), filed a Motion for Reconsideration of the Alcoholic Beverage Control Board's (Board) Order

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<sup>1</sup> Board Member Alberti was not present at the Protest Hearing. He has read the transcripts and other documents comprising the Board's official record and has participated in the Board's deliberation of this matter.

Amending Board Order No. 2015-273. For the reasons set forth below, the Board denies in part and grants in part the Applicant's Motion for Reconsideration.

### ***Procedural Background***

On May 20, 2015, the Board issued Board Order No. 2015-273 in which the Board approved The Showtime's application for a substantial change to its Retailer's Class CT License. Specifically, the Board approved The Showtime for the use of a sidewalk café containing six seats. *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273 (D.C.A.B.C.B. May 20, 2015). In order to ensure that this substantial change would not disrupt the peace, order and quiet of the neighborhood, the Board set forth specific conditions of operation. More specifically, the Board ordered that "there shall be no smoking within twenty-five feet of the entrance of the establishment." *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273, (D.C.A.B.C.B. May 20, 2015). This decision was primarily based upon demonstrated evidence in the record that without prohibition of smoking, the constant smoking activity in an around the establishment could cause great disturbance to the peace, order and quiet of the neighborhood. As one example, it is uncontested that the establishment owner allows patrons to go outside and smoke. *Transcript (Tr.)*, 3/11/15 at 33. Moreover, while monitoring the establishment, Inv. Townsend observed five or six patrons on the sidewalk café, two of whom were smoking. *Tr.*, at 26. He further testified that if patrons were to smoke in the back of the establishment, it would have greater impact because there are several residences there. *Id.* at 42. The Board also relied on the testimony of Dr. Collins who wants his clients to be able to enjoy the use of his property without having to be concerned about the multiple negative effects of second-hand smoke. *Id.* at 130-31; 145.

Upon a request from The Showtime for clarification, the Board amended its previous Order on July 1, 2015 modifying condition (3) to provide that: "there shall be no smoking within twenty-five (25) feet of the entrance of the establishment, including no smoking within the sidewalk café of the establishment." *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-300, (D.C.A.B.C.B. July 1, 2015).

On July 20, 2015, The Showtime filed a Motion for Reconsideration of the Order Amending Board Order No. 2015-273. *ABRA Protest File 15-PRO-00095, Applicant's Motion for Reconsideration of the Order Amending Board Order No. 2015-273*, dated July 20, 2015 [*App. Mot.*] The Showtime makes two arguments in support of its Motion for Reconsideration: 1) the "25 feet" smoking restriction is unenforceable; and 2) smoking does not impact 'peace, order, and quiet' and therefore the smoking restriction is inappropriate. *Id.*

### ***Discussion***

The Board has reviewed the record and addresses The Showtime's arguments below.

First, The Showtime contends that the "25 feet" smoking restriction that the Board imposed in its original Order is unenforceable. The Board is persuaded by The Showtime's argument that restrictions placed on licenses that are outside the control of that licensee are impractical and beyond the scope of the Board's authority. Therefore, the Board strikes any

reference to the “25 feet” requirement in its previous Order and imposes the smoking restriction to the confines of the sidewalk café only.

Second, The Showtime contends that smoking does not impact peace, order, and quiet, thus qualifying as an appropriateness standard for examination by the Board. Therefore, The Showtime argues, because smoking does not affect peace, order and quiet, the Board cannot impose conditions on the license that restrict smoking. The Board disagrees.

The record and testimony is clear that the patrons’ smoking on the sidewalk café does indeed affect the peace, order and quiet of the neighborhood, and more specifically the Protestant’s enjoyment of the peace, order and quiet. The Board purposely imposed smoking restrictions to ensure that The Showtime’s operations of a sidewalk cafe would not disturb the peace, order and quiet of the neighborhood.

The prohibition on smoking is made necessary due to the close proximity of the Protestant’s abutting property to The Showtime. Specifically, in Board Order No. 2015-273, the Board reasoned that based on the proximity of residences and professional offices” it was necessary to impose conditions that would be in the best interest of the locality of the District where the establishment is located. *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273, 6 ¶ 17 (D.C.A.B.C.B. May 20, 2015).

The Board dismisses any argument raised by The Showtime that smoking is a public health concern and thus out of the purview of the Board’s authority. The Protestant’s use and enjoyment of his property free of smoke goes to the very heart of “peace, order and quiet.” Similar to the issue of noise, the record bears out that the smoking interfered with the Protestant ability to enjoy the property. The Board finds no other means to limit the smoke from The Showtime’s property from disturbing the abutting neighbor other than by prohibiting smoking on the sidewalk café. Thus the smoking prohibition imposed in the Board’s original Order stands.

## **ORDER**

For all of the foregoing reasons, the Board, on this 30th day of September 2015, **GRANTS IN PART** and **DENIES IN PART** The Showtime’s Motion for Reconsideration.

**IT IS ORDERED** that Board Order No. 2015-273 is amended as follows:

1. The condition that: (3) there shall be no smoking within twenty-five (25) feet of the entrance of the establishment is stricken and shall be replaced with (3) there shall be no smoking within the sidewalk café of the establishment.

All other terms and conditions of Board Order No. 2015-273 shall remain in full force and effect.

The ABRA shall deliver a copy of this order to The Showtime and the Abutting Property Owner.

District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



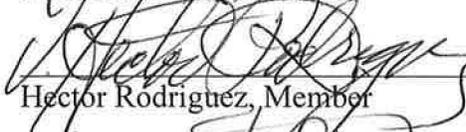
Donald Brooks, Member



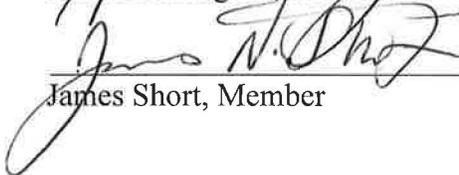
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 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, 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; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 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).

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

In the Matter of:	)	
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Spo-dee-o-dee, LLC	)	Case No.: 14-PRO-00095
t/a The Showtime	)	License No: ABRA-89186
	)	Order No: 2015-300
	)	
Application for a Substantial Change to	)	
Retailer's Class CT License	)	
(Sidewalk Café with Six Seats)	)	
	)	
at premises	)	
113 Rhode Island Avenue, NW	)	
Washington, D.C. 20001	)	
	)	

**BEFORE:** Ruthanne Miller, Chairperson  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Andre Barlow, Esq., on behalf of Spo-dee-o-dee, LLC t/a The Showtime,  
Applicant

Dr. Paul Collins, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**ORDER AMENDING BOARD ORDER NO. 2015-273**

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**INTRODUCTION**

This Order amends one of the conditions set forth in Board Order No. 2015-273, issued on May 20, 2015 in Case No. 14-PRO-00095, that resulted from the Protest Hearing conducted for the Substantial Change Application filed by the Retailer Class CT license held by Spo-dee-o-dee, LLC t/a The Showtime.

The Alcoholic Beverage Control Board (Board) imposed among other things, the following condition on the Applicant, "there shall be no smoking within twenty-five feet of the

entrance of the establishment.” The Board having been asked to clarify this specific condition, takes the opportunity not only to review the Applicant’s Petition for Clarification, but also to review the entirety of the record.

As a result, the Board has decided to amend this condition as set forth in the original Order. More specifically, this condition shall be amended as follows: “there shall be no smoking within twenty-five (25) feet of the entrance of the establishment nor within the sidewalk café of the establishment.” The Board explains its reasoning for this amendment to its previous Order below.

### ***Procedural Background***

On May 20, 2015, the Board issued Board Order No. 2015-273 in which the Board granted The Showtime (Applicant) a substantial change to its Retailer’s Class CT License by granting its Application for a sidewalk café with six seats. *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273 (D.C.A.B.C.B. May 20, 2015).

In order to ensure that this substantial change would not disrupt the peace, order and quiet of the neighborhood, the Board set forth specific conditions of operation. More specifically, the Board ordered that “there shall be no smoking within twenty-five feet of the entrance of the establishment.” *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273, (D.C.A.B.C.B. May 20, 2015).

On June 2, 2015, the Applicant filed a Petition for Clarification of Board Order 2015-273. *App. Pet.*, 1. In its Petition, the Applicant requested that the Board clarify whether the establishment is permitted to allow its patrons to smoke within the boundaries of the sidewalk café, which permits six seats. *Id.*

### ***Discussion***

After careful review of the Applicant’s Petition as well as the record, the Board finds that its previous Order did not clearly set forth the conditions that were designed to ensure that the Applicant would operate in a manner that would not disturb the peace, order and quiet of the neighborhood.

In Board Order No. 2015-273, the Board reasoned that based on the proximity of residences and professional offices” it was necessary to impose conditions that would be in the best interest of the locality of the District where the establishment is located. *In re Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 14-PRO-00095, Board Order No. 2015-273, 6 ¶ 17 (D.C.A.B.C.B. May 20, 2015). Accordingly, the Board has decided, in order to achieve the ultimate goal of having an outdoor public space that will not disturb the neighboring residents, this should include the prohibition of smoking in the sidewalk café.

## ORDER

Therefore, the Board, on this 1st day of July 2015, hereby **AMENDS** Board Order No. 2015-273 as follows:

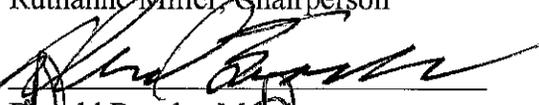
- 1) The condition number (3) that there shall be no smoking within twenty-five (25) feet of the entrance of the establishment is stricken and shall be replaced with (3) there shall be no smoking within twenty-five (25) feet of the entrance of the establishment, including no smoking within the sidewalk café of the establishment.
- 2) The Findings of Fact will include Dr. Paul Collins' complaints regarding second-hand smoke from patrons on the establishment's patio. *Transcript, 3/11/15* at 21, 130-31.

**IT IS FURTHER ORDERED** that all other terms and conditions of Board Order No. 2015-273 shall remain in full force and effect.

The ABRA shall deliver a copy of this order to the Applicant and the Abutting Property Owner.

District of Columbia  
Alcoholic Beverage Control Board

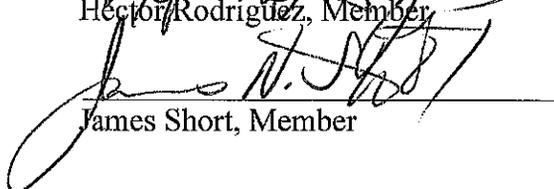
  
Ruthanne Miller, Chairperson

  
Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Pursuant to 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, 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; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 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).

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

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In the Matter of:	)	
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Spo-dee-o-dee, LLC	)	Case No.: 14-PRO-00095
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Application for a Substantial Change to	)	
Retailer's Class CT License	)	
(Sidewalk Café with Six Seats)	)	
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at premises	)	
113 Rhode Island Avenue, NW	)	
Washington, D.C. 20001	)	

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Spo-dee-o-dee, LLC t/a The Showtime, Applicant  
  
Rosemarie Salguero, Esq., on behalf of the Applicant  
  
Dr. Paul Collins, Abutting Property Owner, Protestant  
  
Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

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**INTRODUCTION**

The Alcoholic Beverage Control Board (Board) finds that the Application for a Substantial Change to a Retailer's Class CT (Sidewalk Café with Six Seats) License filed by Spo-dee-o-dee, LLC t/a The Showtime, (hereinafter "Applicant" or "Showtime") is appropriate for the neighborhood, so long as the establishment abides by the following conditions: (1) the

establishment's entrance shall not block egress and ingress; (2) there shall be a fixed barrier to define the boundaries of the sidewalk café; and (3) there shall be no smoking within twenty-five (25) feet of the entrance of the establishment.

### ***Procedural Background***

The Notice of Public Hearing advertising The Showtime's Application was posted on October 10, 2014, and informed the public that objections to the Application could be filed on or before November 24, 2014. *ABRA Protest File No. 14-PRO-00095*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received a timely filed protest letter from the Dr. Paul Collins, Abutting Property Owner (hereinafter "Protestant"). *ABRA Protest File No. 14-PRO-00095*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on December 8, 2014, where the above-mentioned objector was granted standing to protest the Application. On February 4, 2015, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on March 11, 2015.

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 Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2015). However, the Board notes that it has not received a written recommendation from the ANC in this matter.

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 an adverse impact on the peace, order, and quiet; pedestrian safety; and real property values 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. 2015).

### **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. The Applicant and the Protestant previously entered a Settlement Agreement dated August 6, 2012 and approved by the Board on October 10, 2012. *Spo-dee-o-dee, LLC t/a The Showtime*, Case No. 12-PRO-00040, Board Order No. 2012-381 (D.C.A.B.C.B. Oct. 10, 2012). The Settlement Agreement is silent as to the operations of a sidewalk café. *Settlement Agreement*, 1-4.
2. The Applicant has applied for a sidewalk café endorsement with an occupancy load of six (6) seats. *Protest Report*, at 6; *see also Notice of Public Hearing*. The Applicant's proposed

hours of the sidewalk café are as follows: 2:00 p.m. to 11:00 p.m., Sunday through Thursday; and 2:00 p.m. to 12:00 a.m., Friday and Saturday. *Protest Report*, at 6; *See also* Notice of Public Hearing.

3. The Board takes administrative notice of three nearby licensed establishments that have Sidewalk Café endorsements. El Camino, ABRA License No. 094426, located at 108 Rhode Island Ave. N.W., has the following Sidewalk Cafe Hours of Operation and Sales: 11:00 a.m. to 1:00 a.m., Sunday through Thursday; and 11:00 a.m. to 2:00 a.m. Friday and Saturday. *ABRA Licensing File No. 094426*. Boundary Stone Public House, ABRA License No. 083980, located at 116 Rhode Island Ave. N.W., has the following Sidewalk Café Hours of Operation and Sales: 9:00 a.m. to 2:00 a.m., Sunday through Thursday, and 9:00 a.m. to 3:00 a.m. Friday and Saturday. *ABRA Licensing File No. 083980*. Rustik Tavern, ABRA License No. 085617 located at 84 T Street, N.W., has the following Sidewalk Café Hours of Operation and Sales: 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m. on Friday and Saturday. *ABRA Licensing File No. 085617*.

## II. Testimony of ABRA Investigator Shawn Townsend

4. ABRA Investigator Shawn Townsend investigated the Application and prepared the Protest Report submitted to the Board. *Transcript [Tr.] 3/11/15* at 19; *ABRA Protest File No. 14-PRO-00095, Protest Report [Protest Report]*. The protest was filed on the basis of peace, order and quiet; pedestrian safety; and real property values. *Tr.*, at 19-20.

5. The establishment has been approved for a public space permit from the District Department of Transportation (DDOT) for six seats and two tables in the sidewalk café area outside of the establishment. *Id.* at 21. The Applicant intends to use this space to provide his patrons with an area for smoking and drinking. *Id.*

6. ABRA personnel monitored Showtime on six separate occasions from February 19, 2015 to March 6, 2015. *Tr.*, at 22. During the course of monitoring, Investigator Townsend did not observe any pedestrian or noise issues related to the establishment. *Id.* On March 6, 2015, Investigator Townsend found the Applicant to be in violation of ABRA regulations when it operated a sidewalk café with no sidewalk café endorsement. *Id.*; *see also* D.C. Official Code § 25-113 (a)(b). Also, Investigator Townsend determined that the establishment was over its permitted capacity. *Id.*; *see also* D.C. Official Code § 25-762 (b)(1). The establishment has a Certificate of Occupancy that states that the occupant load is at twenty-five (25). *Tr.*, at 22. However, Investigator Townsend observed approximately eighty patrons inside of the establishment. *Id.* Investigator Townsend further observed that there was no window lettering visible to patrons in violation of D.C. Official Code § 25-711 (b). *Id.*; *see also* D.C. Official Code § 25-711(b).

7. During the monitoring period, ABRA investigators observed light pedestrian and vehicular traffic in the evenings. *Protest Report*, 7. Furthermore, ABRA investigators did not observe the walkway in front of the establishment impeded by patrons. *Id.*

### III. Testimony of Robert Lynch

8. Mr. Lynch is a resident who resides directly over the Applicant's establishment. *Id.* at 61. He has resided there for eighteen years. *Id.* Since Showtime has moved into Mr. Lynch's building, he has not found his quality of life to be affected by excessive noise or disruption of peace. *Id.* at 64-65. Accordingly, he supports the Application. *Id.* at 67.

### IV. Dr. Paul Collins

9. Dr. Paul Collins has owned the property at 111 Rhode Island Avenue since 1993. *Id.* at 97. It is composed of two three-bedroom apartments, his professional office and a nonprofit organization. *Id.*

10. Dr. Collins has had a negative experience with the establishment's patrons who have blocked the entrance to his apartment building on occasion. *Id.* at 100. The building property management has been called numerous times about cleaning up in front of the nearby church and the apartment building. *Id.* Patrons have gotten sick and vomited at the doorway to the church and at the adjoining Metro bus stop. *Id.* at 100-01. Overall, however, Dr. Collins has found the Applicant to be a good operator. *Id.* at 111.

## CONCLUSIONS OF LAW

11. The Board may approve an Application for a Substantial Change to a Retailer's Class CT License when the proposed substantial change 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. 2015). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; pedestrian safety; and real property values 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. 2015).

### **I. THE ADDITION OF A SIDEWALK CAFÉ WITH SIX SEATS WOULD NOT ADVERSELY AFFECT THE PEACE, ORDER, AND QUIET, PEDESTRIAN SAFETY, NOR REAL ESTATE PROPERTY VALUES OF THE NEIGHBORHOOD.**

12. The Board finds that the Application is appropriate for the neighborhood, so long as the establishment abides by the following conditions: (1) the establishment's entrance shall not block egress and ingress; (2) there shall be a fixed barrier to define the boundaries of the sidewalk café; and (3) there shall be no smoking within twenty-five feet of the entrance of the establishment.

13. 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 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. 2015).

14. The appropriateness test has never been limited to mere compliance with the law. 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.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,<sup>1</sup> the “character of the neighborhood,”<sup>2</sup> the character of the establishment,<sup>3</sup> and the license holder’s future plans.<sup>4</sup> Thus, the appropriateness test seeks to determine whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. 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).

#### **A. Peace, Order and Quiet**

15. The law emphasizes that the Board should focus on “[t]he effect of the establishment on peace, order, and quiet. . .” D.C. Official Code § 25-313(b)(2). Among other considerations, the Board is instructed to consider “. . .noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2015).

16. In similar cases, the Board has found it necessary to impose conditions to maintain the peace, order and quiet, of the neighborhoods of licensed establishment seeking to have a sidewalk café. For instance, in *Romeo & Juliet*, the Board granted the establishment’s Application for a sidewalk café, but limited the hours of the sidewalk café to 11:00 p.m., Sunday through Thursday and 12:00 a.m. (midnight) on Friday and Saturday based on valid concerns regarding noise. *In re 301 Romeo, LLC t/a Romeo & Juliet*, Case No. 13-PRO-00136, Board Order No. 2014-045 (D.C.A.B.C.B. Jan. 29, 2014). As another example, in *Barcode*, the Board limited the establishment’s outdoor seating area to forty-five (45) patrons at all times of its hours of operation due to the proximity of the establishment to neighborhood residences. *In re*

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<sup>1</sup> *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).

<sup>2</sup> *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

<sup>3</sup> *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, 801 (D.C. 1970).

<sup>4</sup> *Sophia's Inc.*, 268 A.2d at 800.

*Barcode Corporation t/a Barcode*, Case Number 13-PRO-00169, Board Order No. 2015-001, (D.C.A.B.C.B. Feb. 4, 2015).

17. The Board finds that the addition of six seats to the sidewalk café will not adversely affect the peace, order, and quiet of the neighborhood so long as the establishment abides by certain operating conditions. Under D.C. Code § 25-104(e), the Board, in issuing licenses, “may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located.” D.C. Official Code § 25-104(e). Here, based on the proximity of residences and professional offices to the establishment as well as the original settlement agreement entered into by the parties in 2012, it is clear that certain conditions must be put in place to ensure that this addition to the establishment’s operation will not adversely affect the surrounding neighborhood. *Supra*, at ¶ 6, 7, 9, 10. Further, based upon the Applicant’s previously unauthorized operation of the sidewalk café that disturbed its neighbor, it is evident that conditions of the sidewalk café’s use must be put into effect. *Supra*, at ¶ 6.

18. As a result, the Board finds it necessary that it imposes the following conditions : (1) the establishment’s entrance shall not block egress and ingress; (2) there shall be a fixed barrier to define the boundaries of the sidewalk café; and (3) there shall be no smoking within twenty-five (25) feet of the entrance of the establishment.

19. The Board first takes administrative notice of the Applicant’s Investigative History which reveals that this operator does not have history of violations that relate to noise or disruption of the neighborhood. *Licensing File No. ABRA-89196, Investigative History*. The Board notes that residents live in close proximity to the establishment. *Supra*, at ¶ 8. For instance, Mr. Lynch lives directly over the establishment in the same property building. *Supra*, at ¶ 7. Also, Showtime is located primarily in a residential district with residences directly beside the establishment. *Protest Report*, 5. Based on the Board’s precedent relating to sidewalk cafes, the close proximity of residents to an unenclosed sidewalk café justifies limiting the establishment’s sidewalk café privileges. *Supra*, at ¶ 16. Therefore, in order to protect neighbors from disturbances by potential crowds, the Board orders the Applicant to prohibit or disallow smoking within twenty-five feet of the establishment’s sidewalk café. In addition, the Applicant must keep its entrance and exit clear of patrons. Finally, a fixed barrier must outline the boundaries of the sidewalk to prevent the overflow of its patrons onto Dr. Collins’ property as well as onto the public space.

### **B. Pedestrian Safety**

20. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on . . . pedestrian safety.” D.C. Official Code § 25-313(b)(3). The Board finds nothing in the operation of the establishment that threatens the safety of patrons or pedestrians while traveling to and from or near the establishment. *Supra*, at ¶ 7. Accordingly, the Board finds the Application will not adversely affect pedestrian safety.

### C. Real Estate Values

21. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on . . . real property values.” D.C. Official 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). Here, there is nothing in the record to support that the operation of a sidewalk café would blight the surrounding neighborhood to the extent that the real estate property values would be negatively affected. *See Exhibit 15-17*. Therefore, the Board finds that the Application will not adversely affect real estate property values.

### II. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

22. 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. 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 20th day of May 2015, hereby **APPROVES** the Application for a Substantial Change to Retailers’ Class CT License at 113 Rhode Island Avenue, NW filed by Spo-dee-o-dee, LLC t/a The Showtime.

The Board hereby imposes the following conditions:

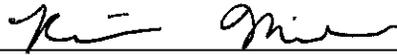
- (1) The establishment’s entrance shall not block egress and ingress;
- (2) There shall be a fixed barrier to define the boundaries of the sidewalk café;  
and
- (3) There shall be no smoking within twenty-five feet (25) of the establishment.

**IT IS FURTHER ORDERED** that the sidewalk café hours shall be from 2:00 p.m. to 12:00 a.m., Sunday through Thursday, and 2:00 p.m. to 12:00 a.m. (midnight) on Friday through Saturday.

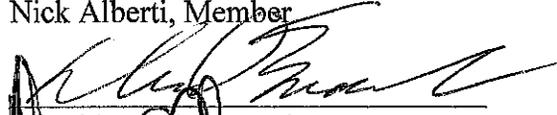
**IT IS FURTHER ORDERED** that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Applicant and the Abutting Property Owner.

District of Columbia  
Alcoholic Beverage Control Board

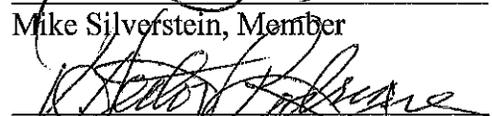
  
Ruthanne Miller, Chairperson

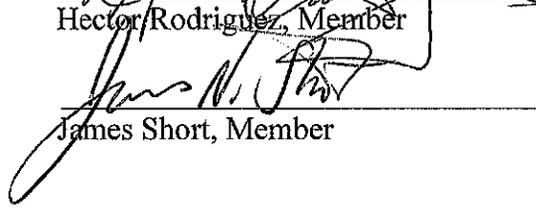
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Pursuant to 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, 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; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 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).

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

<b>In the Matter of:</b>	)	
	)	
Spo-dee-o-dee, LLC	)	
t/a The Showtime	)	
	)	
Applicant for a New	)	Case No. 12-PRO-00040
Retailer's Class CT License	)	License No. ABRA-089186
	)	Order No. 2012-381
at premises	)	
113 Rhode Island Avenue, N.W.	)	
Washington, D.C. 20002	)	
	)	

Spo-dee-o-dee, LLC, t/a The Showtime (Applicant)

Dr. Paul L. Collins, abutting property owner

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Calvin Nophlin, Member  
Mike Silverstein, Member

**ORDER ON VOLUNTARY AGREEMENT AND  
WITHDRAWAL OF PROTEST OF DR. PAUL COLLINS**

The Application filed by Spo-dee-o-dee, LLC, t/a The Showtime, for a new Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on May 29, 2012, in accordance with D.C. Official Code § 25-601 (2001).

The Applicant and Dr. Paul L. Collins, abutting property owner, have entered into a Voluntary Agreement, dated August 6, 2012, setting forth the terms and conditions that govern the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Mr. Collins are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by Mr. Collins.

**Spo-dee-o-dee, LLC**  
**t/a The Showtime**  
**Case No. 12-PRO-00040**  
**License No. ABRA-089186**  
**Page 2**

Accordingly, it is this 10<sup>th</sup> day of October, 2012, **ORDERED** that:

1. The Application filed by Spo-dee-o-dee, LLC, t/a The Showtime, for a new Retailer's Class CT License, located at 113 Rhode Island Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of Dr. Paul L. Collins in this matter is hereby **WITHDRAWN**;
3. The above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

Section 5 shall be removed.

The parties have agreed to this modification.

4. Copies of this Order shall be sent to the Applicant and Dr. Collins.

**Spo-dee-o-dee, LLC**  
**t/a The Showtime**  
**Case No. 12-PRO-00040**  
**License No. ABRA-089186**  
**Page 3**

District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



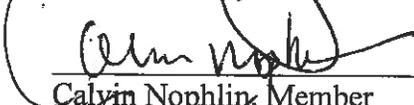
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.

## VOLUNTARY AGREEMENT

### Between

Dr. Paul L. Collins ("Dr. Collins" or "property owner")  
111 Rhode Island Avenue, NW  
Washington, DC 20001

and

Spo-dee-o-dee LLC ("licensee")  
t/a, The Showtime  
113 Rhode Island Avenue, NW  
Washington, DC 20001

WHEREAS, Spo-dee-o-dee LLC (licensee) has applied for a retailer's license Class "C" Tavern for premises located at 113 Rhode Island Avenue, NW, Washington, DC, 20001, trade name the Showtime.

WHEREAS, the licensee and the Dr. Collins, abutting property owner, have discussed the concerns of the community; and licensee and Dr. Collins have reached an understanding relating to the operation of the establishment cooperation between the licensee and Dr. Collins.

WHEREAS, as the abutting property owner at 111 Rhode Island Ave. NW, it is Dr. Collins's belief that the issuance of such a license, under the terms of DC Official Code § 25-313, would have an adverse effect on:

1. Peace order and quiet
2. Real property values and
3. Residential parking needs and
4. Littering and increase of rodent population

NOW, THEREFORE, in consideration of the agreement by licensee as set forth herein, the licensee agrees to:

#### 1. Comply with the Law

Licensee shall comply with all laws and regulations governing the operation of the Class C Retail license to which this agreement applies.

#### 2. Conduct of Business Operations

**A. Cleanliness of Premises and Business Environment** Licensee shall take all reasonable measures to assure that the immediate environs of the establishment are kept free of litter and debris. "Immediate environs" is defined in D.C.M.R. Section- 720.2 as

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including "all property on which the premises are located; all property used by the licensee to conduct its business, whether part of the premises or not, including parking lots and the portion of alleys, sidewalks, or other public property immediately adjacent to the premises or adjacent to the property used by the licensee to conduct its business." Licensee shall clean the sidewalk in front of its premises up to and including the curb, and remove trash from the front and alley behind the premises, by 10:00 am and once again within one hour before closing on days the establishment is open.

Licensee shall maintain trash, garbage and recycling material storage facilities in which all containers have lids which are kept securely closed at all times, which containers shall be sufficient to contain all trash, garbage and recycle materials generated by the establishment, and to assure that trash, garbage, and recycle materials are removed regularly.

**B.** The parties recognize that loitering in and around the establishment has been a significant problem in the past, and that the peace, order and quiet of the neighborhood will continue to be unreasonably affected if it is not reasonably controlled in the future. Licensee shall take all reasonable measures to discourage loitering within, in front and the immediate environs of the establishment. If the activities identified herein (or other action taken by licensee) fail to reasonably prevent loitering on its premises, licensee may be required to hire a licensed security guard to prevent such illegal conduct.

**C. Alcohol Abuse Prevention.** Licensee shall not, directly or indirectly, knowingly sell or deliver alcoholic beverages to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated, and will cooperate with the Metropolitan Police and health and social service agencies to identify such persons. A person of intemperate habits shall be defined as any person arrested or cited for alcohol-related offenses by the Metropolitan Police for any alcohol-related crime three times or more in any one year and who has been so identified to licensee by the Metropolitan Police Department by giving a photo and name to licensee. Licensee shall not sell or deliver alcoholic beverages to anyone accompanying a person who has been denied service if there is an apparent attempt to deliver the alcoholic beverage to the person who has been denied service. "Licensee shall not sell or deliver alcoholic beverages to any person or persons under the age of 21, and will prominently display the fact that such sales are prohibited and that patrons are subject to being asked to produce valid proof of age. These specific sale restrictions shall be posted on signs in the establishment.

**D. Renovation and Signage at Premises-** Licensee shall not install signs on the front window so as to obstruct visibility into the establishment. Licensee shall not advertise alcoholic beverages on the exterior walls of the establishment. Licensee shall generally maintain the property in commercially reasonable condition and maintain a closed door policy during the hours of operation.

**3. Cooperation with Community-** Licensee shall reasonably cooperate with the community in efforts to alleviate alcohol abuse problems; illegal drug activity and

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loitering by, among other things, participating in community meetings and programs as the circumstances may warrant. Licensee shall reasonably cooperate with the community to improve the overall environment in and immediately around the establishment to make it a more pleasant, safe area for residents, customers and businesses.

4. Restrictions of hours on Alcoholic Beverages Sales. Licensee shall sell alcoholic beverages only as allowed by law with the exception of Sundays when as agreed by the establishment will Open for business at 3pm.

5. Licensee agrees to abide by all ABC regulations regarding the ownership and transfer of the license including, without limitation, providing at least (45) days legal notice of any proposed transfer or substantial change in operations to the ANC 5C and adjacent owners.

6. Binding effect- This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of licensee.

7. Notices In the event of a violation of the provisions of this Voluntary Agreement, licensee shall be notified in writing by Dr. Collins alleging such violation and given an opportunity to cure such violation ' Within thirty (30) days thereafter before action against licensee on the basis of such violation may be undertaken. A material violation of this licensee or its ABC license by licensee, which has not been corrected after such thirty (30) days' notice, shall constitute cause for seeking a Show Cause Order from the ABC Board. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid; or hand-delivered, to the other parties to this Agreement notice is deemed to be received upon mailing. Notice is to be given as follows:

(a) If to Licensee:

Mr. Paul Vivari  
The Showtime  
113 Rhode Island Avenue, NW  
Washington, DC 20001

(b) If to Dr Paul L. Collins:

Dr. Paul L. Collins  
Nazarene Outpost Ministries  
111 Island Avenue, NW  
Washington, DC 20001

Licensee may change the notice address listed above by written notice to the signatories hereto at the addresses listed below their signatures. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board.

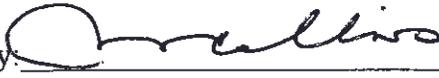
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The provisions of this Voluntary Agreement shall become part of the conditions of the ABRA license and shall remain in force upon renewal or transfer of the liquor license. Violations of the Voluntary Agreement by the Licensee, or the Licensee failure to implement the measures called for in this Voluntary Agreement, shall be just cause by the ABC Board to immediately suspend or revoke the liquor license of the establishment.

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 6<sup>th</sup> day of August 2012.

Dr. Paul L. Collins

Spo-dee-o-dee, LLC

By: 

By: 

Print Name: PAUL L. COLLINS

Print Name: PAUL VIVIANI

DOYLE, BARLOW & MAZARD PLLC

1350 I STREET, N.W.  
SUITE 850  
WASHINGTON, D.C. 20005-3314

August 9, 2012

ATTORNEYS AT LAW  
DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE  
REGULATORY ADMINISTRATION

2012 AUG -9 P 12: 22

REC'D BY Beatrice A

202-589-1834  
FAX 202-589-1819  
www.dbmlawgroup.com

***VIA Hand Delivery***

District of Columbia  
Alcoholic Beverage Control Board  
2000 14th Street, NW, Suite 400S  
Washington, D.C. 20009

Re: Signed Voluntary Agreement between Spo-dee-o-dee LLC and Dr. Paul L. Collins

Dear Chairperson Miller and Members of the Board:

Enclosed herewith is the signed original of the Voluntary Agreement between Spo-dee-o-dee LLC, t/a The Showtime and Dr. Paul L. Collins, the abutting property owner and the single Protestant. The document was executed on August 6, 2012 by the parties.

If you need additional information, please contact the undersigned. Thank you.

Sincerely,



Andre P. Barlow

for DOYLE, BARLOW & MAZARD PLLC

Enclosures