

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

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In the Matter of:)	
Los Brothers, Inc.)	License No. 60398
t/a La Molienda Restaurant)	Case No. 11477-06/120P
Retailer Class CR License)	Order No. 2008-170
Application for an)	
Entertainment Endorsement at)	
3568 14 th Street, N.W.)	
Washington, D.C.)	
_____)	

BEFORE: Peter B. Feather, Chairperson
Mital M. Gandhi, Member
Donald C. Brooks, Member

ALSO PRESENT: Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

Jennifer L. Johnson, Esquire, Assistant Attorney General
Alcoholic Beverage Regulation Administration

Dimitri P. Mallios, Esquire, and Michael Fonseca, Esquire, on behalf of
the Applicant

Carolyn Denease Anderson, on behalf of a Group of Five or More
Individuals, Protestants

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

The Application for Entertainment Endorsement, filed by Los Brothers, Inc. t/a La Molienda Restaurant (Applicant), Retailer Class "CR" License at premises 3568 14th Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on September 27, 2006. A timely protest was filed pursuant to D.C. Official Code § 25-601 (2008 Supp.) by Carolyn Denease Anderson, on behalf of a Group of Five or More Individuals (hereinafter, the Protestants). The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2008 Supp.), are whether the issuance of an Entertainment Endorsement would adversely impact the peace, order, and quiet of the neighborhood. The

Protestants also expressed concern that the issuance of the Entertainment Endorsement would adversely impact residential parking needs, vehicular and pedestrian safety, and real property values.

The case came before the Board for a Protest Hearing on June 20, 2007. At the conclusion of the Protest Hearing, the Board took the matter under advisement. The Board, having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Applicant's establishment is located at 3568 14th Street, N.W. (ABRA Application File No. 11477.) The establishment is located in a C-2-A zone, which is defined as a low density development, including office, retail, and residential uses to a maximum lot occupancy of 60% for residential use. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 13.) The establishment is bounded by 14th Street, N.W. to the North, Parkwood Place, N.W. to the East, and Perry Place, N.W. to the West. (ABRA Protest Report No. 9465.) The establishment currently operates as a restaurant and has applied for an Entertainment Endorsement to offer entertainment in the form of karaoke and a disc jockey. (ABRA Application File No. 11477.) The Applicant's requested hours for entertainment are Sunday through Thursday, 9:30 p.m. to 1:30 a.m., and Friday and Saturday, 9:30 p.m. to 2:00 a.m. (ABRA Application File No. 11477; Tr. 6/20/07 at 14.)
2. ABRA Investigator Amanda Sheehan and other ABRA investigators visited the Applicant's establishment on: (1) Wednesday, June 6, 2007, from 11:55 a.m. to 12:20 p.m.; (2) Thursday, June 7, 2007, from 2:15 p.m. to 2:55 p.m.; (3) Friday, June 8, 2007, from 10:50 p.m. to 11:10 p.m.; (4) Saturday, June 9, 2007, from 9:10 p.m. to 10:10 p.m.; (5) Wednesday, June 13, 2007, from 1:30 p.m. to 1:45 p.m.; (6) Wednesday, June 13, 2007, from 10:30 p.m. to 11:00 p.m.; (7) Thursday, June 14, 2007, from 1:35 p.m. to 1:38 p.m.; (8) Thursday, June 14, 2007, from 9:20 p.m. to 9:45 p.m.; (9) Friday, June 15, 2007, from 10:15 p.m. to 10:35 p.m.; (10) Saturday, June 16, 2007, from 9:25 p.m. to 9:50 p.m.; and (11) Monday, June 18, 2007, from 10:55 a.m. to 11:20 a.m. (ABRA Protest Report No. 9465.)
3. Investigator Sheehan noted that there are six Alcoholic Beverage Control (ABC) licensed establishments located in close proximity to the Applicant's establishment. (Tr. 6/20/07 at 13.) These six establishments are: (1) Cavalier Wine & Liquor, holders of a Class "A" License at 3515 14th Street, N.W.; (2) Cattis's Restaurant, holders of a Class "CR01" License at 3521 14th Street, N.W.; (3) El Salvadoreno, holders of a Class "CR01" License at 3548 14th Street, N.W.; (4) Restaurant Tropical, holders of a Class "CR01" License at 3566 14th Street, N.W.; (5) El Amigo Restaurant, holders of a Class "CR01" License at 3612 14th Street, N.W.; and (6) New Dodge Market, holders of a Class "B" License at 3620 14th Street, N.W. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 13.)
4. There are no schools, daycare centers, or recreational centers located within 400 feet of the Applicant's establishment. (ABRA Protest Report No. 9465.) Growing Seeds Childcare Center, located at 3800 14th Street, N.W., and Bancroft Elementary School, located at 1755

Newton Street, N.W., are several blocks from the Applicant's establishment. (ABRA Protest Report No. 9465.)

5. With regard to parking, Investigator Sheehan indicated that there is parking available within close proximity to the Applicant's establishment. (ABRA Protest Report No. 9465.) Specifically, three hour meter parking is available from 9:00 a.m. until 6:30 p.m. on both sides of 14th Street, N.W.; two hour parking is available on Parkwood Place, N.W. from 7:00 a.m. until 6:30 p.m.; and two hour parking is available on Perry Place, N.W. from 7:00 a.m. until 8:30 p.m. (ABRA Protest Report No. 9465.) Investigator Sheehan noted that parking was primarily available on 14th Street, N.W. (Tr. 6/20/07 at 15, 27.)

6. With regard to the issue of peace, order, and quiet, Investigator Sheehan and other ABRA investigators monitored the establishment on 11 separate occasions from June 6, 2007 through June 18, 2007. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 15.) During the majority of their visits, none of the protest issues raised by the Protestants was observed. (Tr. 6/20/07 at 15.) Specifically, ABRA investigators did not hear loud music, local vehicles appeared to be safe, and parking appeared to be available. (Tr. 6/20/07 at 15.) ABRA investigators did not witness loitering or an overflow of trash. (Tr. 6/20/07 at 23.)

7. During the monitoring period, two incidents were observed by ABRA investigators. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 16.) On Friday, June 8, 2007, at approximately 10:50 p.m., karaoke was playing loudly on the second floor of the establishment, and on Monday, June 18, 2007, at 10:50 a.m., the establishment was open before the approved hours listed on the ABC license. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 16.) There was an "open" sign on the establishment's window and the owner was inside. (Tr. 6/20/07 at 16.) He told ABRA investigators that he normally opens at 11:00 a.m. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 16.) The Application for the Entertainment Endorsement states 11:30 a.m. as the opening time. (ABRA Protest Report No. 9465; Tr. 6/20/07 at 15-16.)

8. The Applicant, Teofillo Ayala, owns the building where the establishment is located. (Tr. 6/20/07 at 30.) The establishment operates on two floors. (Tr. 6/20/07 at 30.) Mr. Ayala owned another restaurant for 20 years, during which there were no ABC violations. (Tr. 6/20/07 at 31.) Mr. Ayala made the decision to offer karaoke at his current establishment to generate revenue because business has been slow and he has difficulty paying his expenses. (Tr. 6/20/07 at 32, 48.)

9. One of the Protestants, Carolyn Denease Anderson, lives behind the establishment across an alleyway that is approximately three and a half feet wide. (Tr. 6/20/07 at 32-33.) Mr. Ayala spoke to Ms. Anderson about the issues of noise and music. (Tr. 6/20/07 at 33.) To address her concerns, Mr. Ayala installed sound-proof windows consisting of three quarter inch windows with glass in the middle. (Tr. 6/20/07 at 35-39.) Additionally, on the side of the his building that faces Ms. Anderson's house, he installed two layers of five-eighths inches of glass, as well as insulation and two inches of styrofoam for the side and back. (Tr. 6/20/07 at 34.) The glass was installed by a professional company. (Tr. 6/20/07 at 46.)

10. Mr. Ayala also installed three layers of insulation and two inches of styrofoam on the side of the building. (Tr. 6/20/07 at 37- 39; ABRA Protest Report No. 9465.) In the back of his establishment, he installed sound proof sheet rock. (Tr. 6/20/07 at 37- 39; ABRA Protest Report No. 9465.) Because he believed that the sound from his building may have been emanating from the roof, he insulated the roof as well. (Tr. 6/20/07 at 34.) Mr. Ayala discovered that after making these sound-proofing changes, the sound stopped emanating from the back of the establishment. (Tr. 6/20/07 at 34.) Ms. Anderson told him however, that she was in fact still hearing noise from his establishment. (Tr. 6/20/07 at 35.)

11. District of Columbia Inspector Mendoza informed Mr. Ayala that he had been to the establishment and did not find any noise violations. (Tr. 6/20/07 at 35.) Mr. Ayala also hired a professional sound engineer who concluded that there were no noise violations. (Tr. 6/20/07 at 36.)

12. Mr. Ayala indicated that there is a walkway between his establishment and Ms. Anderson's property. (Tr. 6/20/07 at 41-42.) The establishment does not have windows on the side of the second floor or the first floor that face her property. (Tr. 6/20/07 at 41-42.) The second floor of the establishment consists of a frame construction with brick on the side walls. (Tr. 6/20/07 at 43.) The back the building that faces Ms. Anderson's property consists of wood framing, insulation, double dry wall, weather paneling, and aluminum siding. (Tr. 6/20/07 at 43.)

13. Mr. Ayala expects that on a good night he will have approximately 20 to 25 people on the second floor and upwards of 30 people when it is even busier. (Tr. 6/20/07 at 44-45.) The size of the two speakers on the floor is 16 by 21 inches. (Tr. 6/20/07 at 44.) He acknowledged that he could use smaller speakers. (Tr. 6/20/07 at 44.) Mr. Ayala had never been to Ms. Anderson's bedroom to hear the noise coming from the establishment, but he did go over to her porch every 15 to 20 minutes to ascertain if he heard something (Tr. 6/20/07 at 50.) He did not. (Tr. 6/20/07 at 50.)

14. Martin J. Beam conducts sound control tests as an acoustical engineer for Miller, Beam and Paganelli. (Tr. 6/20/07 at 52.) He has been an acoustician for 17 years. (Tr. 6/20/07 at 59.) Mr. Beam's job requires him to make recommendations on how to make sound quieter. (Tr. 6/20/07 at 52.) He was asked by the Applicant's counsel to conduct a sound check at the establishment. (Tr. 6/20/07 at 52.) He went to the establishment between 11:00 a.m. and 12:00 p.m., and asked the establishment to run the karaoke system at normal levels so that he could test the sound levels inside and outside the establishment. (Tr. 6/20/07 at 52-53.) He measured the inside sound levels at 85 decibels in the seating area in front of the speakers and at 79 decibels behind the speakers which were located in an alcove at the top of the stairs. (Tr. 6/20/07 at 53.) The speakers are pointed in a direction facing away from Ms. Anderson's house. (Tr. 6/20/07 at 53.) That area was 79 decibels away from the speakers. (Tr. 6/20/07 at 53.)

15. Mr. Beam testified that there are two different parts of the noise code which are applicable. (Tr. 6/20/07 at 53.) The statutes prohibit noise in excess of 55 decibels from crossing a residential property line, and noise in excess of 60 decibels at a distance of one meter outside any business in a commercially zoned area. (Tr. 6/20/07 at 54, 65.) Mr. Beam tested both of these code requirements and at the nearest property line, Ms. Anderson's, the noise level was 53

decibels and at one meter from the establishment's windows, it was 56 decibels. (Tr. 6/20/07 at 54.)

16. In addition to checking the noise level, Mr. Beam checked the sound-proofing work undertaken by Mr. Ayala. (Tr. 6/20/07 at 54.) He noted that the Mr. Ayala's work was substantial and that there is nothing more that he would have recommended. (Tr. 6/20/07 at 54-55.) He was referring to Mr. Ayala's installation of a three-quarter inch laminated glass storm windows in existing double-hung windows and the construction of masonry walls. (Tr. 6/20/07 at 54-55.) The masonry blocks noise that might escape through the window. (Tr. 6/20/07 at 55.) He found that glass is normally where there are the most problems and that the work was done well. (Tr. 6/20/07 at 56.) The kitchen is located on the first floor and the proposed bar and karaoke area are located on the second floor. (Tr. 6/20/07 at 55.)

17. Mr. Ayala removed the drywall from the inside of the wall, replaced it with three layers of drywall, added insulation in the cavity, styrofoam on the exterior, and siding on the back exterior of the building. (Tr. 6/20/07 at 55.) Mr. Beam testified that heavy drywall is important even though it is not soundproof. (Tr. 6/20/07 at 56.) Drywall is normally what is recommended for soundproofing and multiple layers provide the mass necessary to prevent sound from escaping. (Tr. 6/20/07 at 56.) Mr. Beam did not make any recommendations because he was only hired to ascertain if Mr. Ayala was in compliance with the law. (Tr. 6/20/07 at 56.)

18. Mr. Beam measured the noise level from Ms. Anderson's property line and not from her porch. (Tr. 6/20/07 at 60.) Mr. Beam could hear the sound from Ms. Anderson's porch but it was below the level allowed under the noise code. (Tr. 6/20/07 at 57.) Mr. Beam testified that although noise emanates from doors opening and closing, Mr. Ayala has a vestibule which helps to reduce noise from escaping. (Tr. 6/20/07 at 61-62.)

19. At the time Mr. Beam went to the establishment to measure the noise level, the karaoke machine was playing music but there was no one singing. (Tr. 6/20/07 at 62.) If someone were singing in the microphone, it is possible that the noise level could be louder. (Tr. 6/20/07 at 63.) Mr. Beam testified that there are ways to reduce sound depending on how much money one wants to spend. (Tr. 6/20/07 at 63.) He would have recommended half inch windows and multiple layers of drywall for the insulation. (Tr. 6/20/07 at 63, 64.) Mr. Ayala installed three quarter inch window and multiple layers of drywall. (Tr. 6/20/07 at 55.)

20. Mr. Beam noted that people generally complain that the bass level has the most impact where noise disturbance is concerned. (Tr. 6/20/07 at 68.) The bass sound can travel miles from a source that is not really very loud. (Tr. 6/20/07 at 68.) At the reading of 53 decibels he could discern the tune, but could not remember if he could discern the melody. (Tr. 6/20/07 at 69.)

21. Mr. Beam testified that a limiter, an electronic device that acts dynamically, could be placed on the microphones so that if someone sings over a certain level, the sound is cut off. (Tr. 6/20/07 at 70.) Limiters can also be placed on the sound system's volume controls. Alternatively, volume can be blocked above a certain level. (Tr. 6/20/07 at 70.) He also noted that speakers can be set at a certain level and locked. (Tr. 6/20/07 at 70.) Mr. Beam could assist

the Applicant in locking the speakers. (Tr. 6/20/07 at 70.) There are different steps that can be taken to minimize sound in a small space. (Tr. 6/20/07 at 70.) The amplification necessary to get a sizable amount of music in the establishment should not be that great. (Tr. 6/20/07 at 71.)

22. Counsel for the Applicant, Dimitri Mallios, called three witnesses who live near the establishment to identify themselves, and to indicate that they do not hear noise coming from the establishment. (Tr. 6/20/07 at 71.) These witnesses included: Ramona Velasquez, 1403 Perry Place, N.W.; Vladimir Amaya, 1408 Perry Place, N.W.; and Saul Romero, 3603 14th Street, N.W. (Tr. 6/20/07 at 72-73.) Mr. Mallios indicated that all of these witnesses live in close proximity to the establishment, but not as closely as Ms. Anderson. (Tr. 6/20/07 at 74.) Ms. Anderson stated that Ms. Velasquez does not hear noise because it is blocked by the sound of a radio sitting in her window. (Tr. 6/20/07 at 75.)

23. Bernard Anderson is Ms. Anderson's brother. (Tr. 6/20/07 at 77.) He rents a basement apartment from her and he has had complaints in the past about noise and people urinating in public. (Tr. 6/20/07 at 77.) His window faces the back of the establishment. (Tr. 6/20/07 at 77.) There are constant problems on 14th Street, N.W., such as violence and people "hanging out." (Tr. 6/20/07 at 78.) Mr. Anderson works at the George Washington University Hospital and he returns home around 9:00 p.m. every night. (Tr. 6/20/07 at 78.)

24. With regard to the noise, Mr. Anderson hears noise coming from the establishment when he comes in at night, around 10:00 p.m. or 11:00 p.m. (Tr. 6/20/07 at 80.) The music is amplified and heard more on Friday and Saturday evenings. (Tr. 6/20/07 at 90.) Vibrations can be heard when his windows are closed. (Tr. 6/20/07 at 91.) Mr. Anderson has never been inside the Applicant's establishment, but he has walked by and noticed that the door has been open, and heard music coming from the first floor. (Tr. 6/20/07 at 86, 91-92.) Mr. Anderson recommended that Mr. Ayala attend community meetings. (Tr. 6/20/07 at 87-88.)

25. With regard to parking, Mr. Anderson testified that there is no parking available on Perry Place, which is a major concern to him. (Tr. 6/20/07 at 80.) Although parking is legal on this street, a space can not be found after 8:30 p.m. (Tr. 6/20/07 at 82.) He therefore parks on 14th Street. (Tr. 6/20/07 at 80.) Mr. Anderson believes that because customers are intoxicated, they tend to park on a side street instead of a main street to avoid the police. (Tr. 6/20/07 at 80.) He further testified that although he does not come home during the day, parking is not a problem during the day, only at night when the clubs are open. (Tr. 6/20/07 at 81.) Mr. Anderson's testimony regarding parking limitations does not refer to the alleyway between the establishment and Ms. Anderson's house. (Tr. 6/20/07 at 83.) Members of the public do not travel through the alleyway. (Tr. 6/20/07 at 83.)

26. Sometimes when Mr. Anderson returns home from work, there are intoxicated people sitting on his sister's porch. (Tr. 6/20/07 at 84.) They do not appear to be aggressive and he allows them to sleep on the porch. (Tr. 6/20/07 at 83.) He has observed some of these men urinating from the porch. (Tr. 6/20/07 at 85.) He has not observed people urinating in the alley. (Tr. 6/20/07 at 84-85.) Mr. Anderson has a young child and thus, he is concerned about this bad behavior. (Tr. 6/20/07 at 86.)

27. Mr. Anderson testified that he has at times seen people coming out of the restaurant and sitting on the stoop with open containers of beer. (Tr. 6/20/07 at 89.) He also sees them drinking in public when they exit the establishment. (Tr. 6/20/07 at 94.) Mr. Anderson characterized the establishment as a club, because it has more of a club type setting rather than a restaurant setting. (Tr. 6/20/07 at 94.) He has also seen people who appear to be intoxicated come out of the establishment and go to their cars. (Tr. 6/20/07 at 98.)

28. Mr. Anderson noted that it might be possible that people he has observed walking on 14th Street or Perry Place are from establishments other than the Applicant's. (Tr. 6/20/07 at 97.) Although 14th Street is being cleaned up, Mr. Anderson stated that more bars are opening and there are a lot of people who cannot handle alcohol. (Tr. 6/20/07 at 99.)

29. In her closing argument, Ms. Carolyn Denease Anderson stated that she realizes that the Applicant has done a lot of work to improve the sound coming out of the building, but she lives less than four feet away from the establishment and the music sounds as though it is inside her house. (Tr. 6/20/07 at 101.) The loud music keeps her up at night. (Tr. 6/20/07 at 102.) She is familiar with karaoke and that as a professional karaoke singer, she understands that hearing is impaired when people drink and thus the singing is louder. (Tr. 6/20/07 at 102.) When people are drinking alcoholic beverages, the volume is up 200 percent because no one is sober enough to realize that it is loud. (Tr. 6/20/07 at 103.) She is wondering who within the establishment is going to control the volume. (Tr. 6/20/07 at 103.)

30. Despite Mr. Ayala's helpful sound-proofing efforts, Ms. Anderson can still hear the noise and she knows what time the music starts every night because she can hear the ba-boom, ba-boom all night long. (Tr. 6/20/07 at 103.) She can even hear the music in her bedroom. (Tr. 6/20/07 at 103.) She wants to sell her house now because she can not sleep, but she realizes that no one is going to want to purchase it when that kind of noise is coming from next door. (Tr. 6/20/07 at 104.)

31. Ms. Anderson used to call the Metropolitan Police Department (MPD) every night but after MPD spoke to Mr. Ayala and left the scene, the music would be turned up again. (Tr. 6/20/07 at 104.) MPD would tell her that there was nothing they could do except to direct the establishment to turn down the volume. (Tr. 6/20/07 at 104.) Ms. Anderson claims that there is no one at the establishment to monitor the music and she hears it every night, seven days a week. (Tr. 6/20/07 at 105.) Ms. Anderson works in Gaithersburg, Maryland and she gets up at 5:00 a.m. in the morning to go to work. (Tr. 6/20/07 at 104-105.) If she does not fall asleep until after the establishment closes, then she is not sleeping at all. (Tr. 6/20/07 at 105.) She has been a nervous wreck for months and feels as though her life has stopped because she cannot function without sleep. (Tr. 6/20/07 at 105.)

32. Ms. Anderson introduced a letter dated September 25, 2007, from ANC 1A01 Commissioner, Jackie Agrillas. (Tr. 6/20/07 at 106.) The letter by Ms. Agrillas was sent in her capacity as a Single Member District Commissioner. (Tr. 6/20/07 at 107.) Given that the ANC is not a protestant in this protest matter, the letter is not entitled to great weight by the Board. (Tr. 6/20/07 at 107.) Ms. Anderson also submitted four photographs of her property and that of the Applicant's establishment as exhibits. (Tr. 6/20/07 at 108; Protestant's Exhibit 1.)

33. Ms. Anderson is afraid that with karaoke and live entertainment, the noise will get worse. (Tr. 6/20/07 at 109.) She still hears the juke box and she believes that a stereo and karaoke are going to be even louder. (Tr. 6/20/07 at 109.)

34. In response to Mr. Anderson's testimony, Mr. Mallios indicated that Mr. Ayala, if called back as a witness, would refute Mr. Anderson's testimony. (Tr. 6/20/07 at 109.) Specifically, that the front door is never left open and there has never been a problem with people walking out with alcohol. (Tr. 6/20/07 at 109.) The Board accepts the fact that Mr. Ayala would refute Mr. Anderson's charges. (Tr. 6/20/07 at 110.)

CONCLUSIONS OF LAW

35. Pursuant to Title 23 of the District of Columbia Municipal Regulations ("23 DCMR") § 1001.3, an application for a new or amended Entertainment Endorsement filed by a licensee under a Retailer's Class C or D License, shall be considered by the Board pursuant to the substantial change procedures set forth in D.C. Official Code § 25-404 (2008 Supp.). Pursuant to D.C. Official Code § 25-404 (2008 Supp.), before making a substantial change in the nature of the operation of a licensed establishment, an Applicant shall file with the Board an amendment to its original application. Under D.C. Official Code § 25-404 (b) (1) (B) (2008 Supp.), the Applicant requesting approval of a substantial change shall demonstrate appropriateness as set forth in D.C. Official Code §§ 25- 313 and 314 (2008 Supp.). Under § 25-313 (a) (2008 Supp.), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a substantial change is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the Protest Hearing, the Board concludes that the Applicant has demonstrated that the issuance of an Entertainment Endorsement, with the conditions imposed by the Board as listed below, would be appropriate for the delineated area in which the establishment is located.

36. Pursuant to D.C. Official Code § 25-313 (b) (2) (2008 Supp.) and 23 DCMR § 400.1 (a) (2004), the Board must determine whether the issuance of a new Retailer's Class CR License will have an adverse effect on the peace, order, and quiet of the neighborhood. With respect to the issue of noise, Investigator Sheehan, testified that during the 11 visits to the Applicant's establishment, only two visits raised a concern. On one of those occasions, there was an alleged violation of D.C. Official Code § 25-762, which requires Board approval of a substantial change in operation, and 23 DCMR § 1000.1, which requires an Entertainment Endorsement for a restaurant to provide entertainment. Specifically on one of those visits, ABRA investigators observed live karaoke being played loudly on the second floor of the establishment. During another visit, investigators observed the Applicant's establishment was open for business before the Board approved hours listed on the ABC license. However, the issue of noise and noise levels was not a concern during this visit. The Board takes note that Mr. Ayala spoke to Ms. Anderson about the noise issues and that as a direct result of her concerns, he installed sound proof windows, insulation, sound proof sheetrock and insulation in the roof.

37. The Board also recognizes Mr. Ayala's efforts when he hired a professional sound engineer to determine if the sound emanating from his establishment was in violation of D.C. law. The sound engineer, Mr. Beam visited the Applicant's establishment to conduct a sound check between the hours of 11:00 p.m. and 12:00 p.m. He measured the noise against the two applicable sections of the noise code which prohibit noise in excess of 55 decibels from crossing a residential property line, and noise in excess of 60 decibels at a distance of one meter outside of a business in a commercially zoned area. He tested both of these areas at Ms. Anderson's property line, measuring the noise level at 53 decibels from the property line, and one meter from the windows of the business, at 56 decibels. The Board notes that Mr. Beam turned on the karaoke machine so there was music, but they also note that there was no one singing into the microphone. Mr. Beam acknowledges that with singing added to the measurement, the decibel level could be louder. Both measurements clearly fell within the noise code limits. The establishment's vestibule also helps to reduce sound escaping from inside.

38. The Board finds that Mr. Ayala's improvements have been significant. They also found credible Mr. Beam's assessment that nothing more could be done to reduce the sound. The Board does believe, however, that the audible singing concern cannot be ignored. The Board is requiring Mr. Ayala place a limiter on the microphones and on the volume control, so that when a patron sings over a certain level, the limiter blocks the sound. Additionally, the Board is requiring that speakers be locked and set at a level where sound does not escape from the establishment. The Board agrees with Mr. Beam that the amplification needed for a sizeable amount of music in the establishment's limited space is not that great.

39. The Board also considered the concerns expressed by Bernard Anderson regarding the loud music he hears on the weekends and when he comes home from work at night. Mr. Anderson recommended that Mr. Ayala attend community and ANC meetings so that concerns between the establishment and the neighborhood could be addressed in a timely manner. The Board is in agreement with this suggestion as it would facilitate communication with the community and the quick resolution of issues that might arise in the future.

40. The Board is also mindful of concerns expressed by Ms. Anderson, whose home is less than four feet from the establishment. She stated that the music sounds as though it is inside her house. Ms. Anderson questioned who would control the volume of the entertainment when people are drinking. Again, the Board believes that by installing a limiter on the microphone and a lock on the speakers will greatly assist in controlling the sound. Additionally, the Board found compelling the testimony of the professional sound engineer and the District of Columbia noise inspector who both stated that the noise level reading were within the legal limits of the law.

41. With regard to the issue of residential parking and vehicular and pedestrian safety, the Board found credible the testimony from Investigator Sheehan that parking is primarily available on 14th Street. During the majority of the 11 visits by ABRA investigators, parking appeared to be available. As for vehicular safety, the Board notes that Investigator Sheehan did not notice any vehicles being struck. Although it appears from Mr. Anderson's testimony that parking is an issue, pursuant to D.C. Official Code § 25-313(b)(3) (2008 Supp.), the Board finds when looking at the evidence as a whole, that this individual establishment will not have an adverse effect on the residential parking needs and vehicular and pedestrian traffic.

42. With regard to the issue of loitering and criminal activity, the testimony of Investigator Sheehan revealed that during the visits conducted by the ABRA investigators, they did not observe any loitering or the overflow of trash. The Board took into consideration Mr. Anderson's concerns that when he arrives home from work, there have been intoxicated people sitting on his porch. Mr. Anderson has also seen some of the men urinating from his sister's porch. The Board does not take these concerns lightly. To address this issue, the Board is requiring Mr. Ayala to post signs encouraging patrons to be considerate of neighboring residents and to refrain from resting on private property and urinating in the neighborhood.

43. The Board understands Mr. Ayala's need to offer karaoke to stimulate more business. However, the Board finds it necessary to require certain measures that he must take to lessen the noise levels heard by Ms. Anderson. Mr. Ayala conceded in his testimony that he could use smaller speakers so the Board will require that he do so. Mr. Beam also stated that there are solutions to reduce noise levels. The Board addressed these solutions above by requiring a limiter on the microphone and on the volume control, as well as a lock on the volume for the speakers.

44. The Board also believes that an additional solution is to reduce the level of the bass so that it is not heard by persons located outside of the establishment. This is particularly important as Mr. Beam indicated that most people complain that the bass level has the most impact as it relates to noise disturbance. The Board also found significant Mr. Beam's testimony that the amplification needed to get a sizeable amount of music in the second floor space is not that great. Thus the Board is adopting these recommendations and it does not believe that by doing so, the quality of entertainment provided by the establishment will not be significantly impacted or impaired.

45. Pursuant to D.C. Official Code § 25-313(b)(2) (2008 Supp.), the Board finds no evidence from the record as a whole that the establishment will have an adverse affect on real property values, despite Ms. Anderson's testimony that she would have a difficult time selling her property because of the noise levels.

ORDER

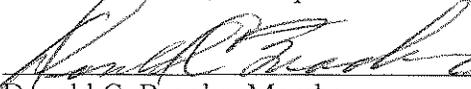
Therefore, it is hereby **ORDERED** on this 19th day of November 2008, that the Entertainment Endorsement application, filed by Los Brothers, Inc. ("Applicant"), t/a La Molienda Restaurant, Retailer Class "CR" License at premises 3568 14th Street, N.W., Washington, D.C. be and the same is hereby **GRANTED**.

It is **FURTHER ORDERED** that the following conditions are hereby imposed on the Applicant and shall become a term of the Entertainment Endorsement:

1. The Applicant shall place a limiter on its sound system for volume control;
2. The speakers should be locked and set at a level where sound does not escape at a high level;
3. The Applicant is to attend ANC meetings on a regular basis;
4. The Applicant shall reduce the size of the speakers so that the bass is not as prominent;
5. The Applicant shall post signage encouraging its patrons to be considerate of neighboring residents and to refrain from resting on private property such as porches and urinating in the neighborhood; and
6. The establishment's hours of entertainment shall be limited to Sunday through Thursday, 9:30 p.m. to 1:30 a.m., and Friday and Saturday, 9:30 p.m. to 2:00 a.m.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson


Donald C. Brooks, Member


Mital M. Gandhi, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).