

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

In the Matter of:)	
)	
Allure Lounge, LLC)	Case No.: 19-PRO-00131
t/a Allure Lounge)	License No.: ABRA-108303
)	Order No.: 2021-115
Application to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
711 H Street, N.E.)	
Washington, D.C. 20002)	

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Jeni Hansen, Member
Edward S. Grandis, Member

ALSO PRESENT: Allure Lounge, LLC, t/a Allure Lounge, Applicant

Caroline Quat, Designated Representative, Advisory Neighborhood Commission (ANC) 6C, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class CT License filed by Allure Lounge, LLC, t/a Allure Lounge, (hereinafter "Applicant" or "Allure") subject to conditions. In light of evidence that the creation of noise by the establishment and its patrons are disturbing residents in their homes, the Board reduces the licensed hours of operation to 1:00 a.m., Sunday through Thursday, and 2:00 a.m. on Friday and Saturday. The Board further prohibits smoking and hookah at the establishment until the

appropriate authorization from the D.C. Department of Health is obtained and submitted to the Board.

Procedural Background

The Notice of Public Hearing advertising Allure's Application was posted on October 11, 2019, and informed the public that objections to the Application could be filed on or before November 25, 2019. *ABRA Protest File No. 19-PRO-00131*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that Advisory Neighborhood Commission (ANC) 6C has filed a protest against the Application. *ABRA Protest File No. 19-PRO-00131*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on December 9, 2019, where the above-mentioned objector was granted standing to protest the Application. The Protest Hearing in this matter occurred on February 4, 2021.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC['s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a properly adopted written recommendation from ANC 6C, which indicated that its protest is based on concerns regarding Allure's impact on peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values. The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law below.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021).

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. Allure has submitted an Application to Renew a Retailer's Class CT License at 711 H Street, N.E., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Kevin Puente investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 19-PRO-00131, Protest Report* (Jan. 2021) [*Protest Report*].

3. The proposed establishment is located in a NC-16 zone, which is known as the “H Street Northeast Neighborhood Commercial Overlay District.” *Protest Report*, at 2. Eighteen licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools or public libraries located within 400 feet of the establishment, while a daycare is located approximately 300 feet from the establishment. *Id.* at 3. The establishment’s hours of operation, alcohol sales, and entertainment are as follows: 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 4-5.

4. The records of ABRA’s Noise Task Force indicate that between October 2019 and January 5, 2020, there were 5 unsubstantiated noise complaints. *Id.* at 5.

5. ABRA investigators visited the establishment on two separate occasions between January 15, 2021, and January 16, 2021. *Id.* at 5. Allure’s investigative history indicates that an occupancy violation occurred on March 31, 2019, which is classified as a primary tier violation for which the establishment paid a \$1,250 fine. *Id.* at 6.

6. Allure Lounge occupies two levels of a medium sized building. *Transcript (Tr.)*, February 4, 2021 at 18. The rear of the establishment faces an alley. *Id.* Investigator Puente did not observe any soundproofing when he visited the establishment. *Id.* He further noted that Allure only uses the second floor for storage. *Id.*

7. Investigator Puente described the public transportation and parking available near the establishment. *Id.* He observed that there is a bus stop near the premises, and that the X1 and X2 routes run by the establishment. *Id.* He further observed that there is a streetcar stop by the establishment that services the H Street corridor. *Id.* at 19. Finally, the establishment has no dedicated parking and there are no parking garages near the establishment, but there is metered street parking available. *Id.*

8. Investigator Puente noted that under District law, hookah or cigar smoking is only permitted if the license holder obtains an exemption from the D.C. Department of Health. *Id.* at 26. Furthermore, while public emergency and public health emergency orders related to the COVID 19 pandemic have been in effect, hookah smoking in licensed establishments is banned. *Id.* at 26. He also noted that Allure Lounge has not obtained an exemption to permit hookah smoking. *Id.* at 27-28. Therefore, hookah smoking is not permitted at the establishment. *Id.* at 28.

9. Investigator Puente further observed that the establishment has not been operating regularly while the public emergency and public health emergency orders have been in effect. *Id.* at 19, 24.

II. Zerihun Amente

10. Zerihun Amente owns Allure Lounge. *Id.* at 15, 49. Mr. Amente believes that the complaints regarding his establishment stem from people unrelated to the establishment. *Id.* at

43. He admitted that hookah smoking has been permitted inside the establishment. *Id.* at 49-50. He further indicated that he has applied for the exemption. *Id.* at 52.

III. Caroline Quat

11. Caroline Quat presented ANC 6C's request that the Board reduce the establishment's hours to midnight during the week and 2:00 a.m. on weekends; prohibit hookah smoking; and prohibit the creation of outdoor seating without approval from the ANC. *Id.* at 56.

12. The ANC believes that Allure's customers are engaging in disorderly conduct, creating noise, and depositing trash in the nearby alley. *Id.* at 56. The ANC has also received complaints that noise from the establishment can be heard in homes from 10:00 p.m. until the early morning, which prevents residents from sleeping. *Id.* at 57.

13. The ANC noted that Allure operates later than other establishments, such as Felicity Lounge, which operates until 2:00 a.m. during the weekend and 1:00 a.m. during the week. *Id.* at 56-57. Thus, many of the late-night complaints must be tied to Allure because it is the only establishment on its block that is open when certain complaints occur. *Id.* at 57, 63, 80.

14. The ANC presented the noise complaint history from May 2019 to December 2019. *Protestant Exhibit No. 6.* The report indicated that 9 noise complaints have been filed against the establishment during the review period. *Id.*

CONCLUSIONS OF LAW

15. The Board may approve an Application to Renew a Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021).

I. The Establishment is Appropriate for the Neighborhood Subject to Conditions to Alleviate Late Night Noise and Illegal Hookah Smoking.

16. Under the appropriateness test, "the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located . . ." D.C. 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. 2021). The substantial evidence standard requires the Board to rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

17. In determining appropriateness, the Board must consider whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); see *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board’s consideration to the types of noises described in § 25-725.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant’s efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder’s future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee’s “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant’s efforts to “alleviate” operational concerns); *Citizens Ass’n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1196 (D.C. 1985); *Sophia’s Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

a. The ANC established a negative impact on peace, order, and quiet based on late-noise disturbing residents in their home and unlicensed hookah activity.

18. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); see also D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2021).

19. As noted in *Panutat*, the Board may consider the creation of noises that do not merit the initiation of an enforcement action. *Panutat, LLC*, 433 A.2d 1093. Here, the ANC has shown that residents in the immediate area are disturbed by patrons and noise from the establishment during the early morning hours. *Supra*, at ¶¶ 12-13. There is also no evidence of sufficient soundproofing at the establishment. *Supra*, at ¶ 6. Moreover, such disturbances can be tied to the establishment where it is the only one open on its block during certain hours. *Supra*, at ¶ 13. Furthermore, the establishment has permitted patrons to smoke hookah without an appropriate authorization. *Supra*, at ¶¶ 8, 10; see also *In re E and K, Inc., t/a Champion Kitchen*, Case No. 19-PRO-00051, ¶ 34 (D.C.A.B.C.B. Dec. 11, 2019) (barring the use of hookah pending the submission of authorization for the use of tobacco and hookah on the premises by DOH).

20. In light of these violations, the Board will condition renewal on a reduction of hours and prohibiting smoking at the establishment until the appropriate exemption is obtained.

b. There is no indication that the establishment is having a negative impact on residential parking or vehicular and pedestrian safety.

21. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents” 23 DCMR § 400.1(b), (c) (West Supp. 2021). In this case, there is ample public transportation in the vicinity and insufficient evidence that the establishment or its patrons are monopolizing parking. *Supra*, at ¶ 7. Therefore, the Board finds in favor of the Applicant on this issue.

c. There is no indication that the establishment is having a negative impact on real property values.

22. In determining whether an establishment is appropriate, the Board must examine whether the establishment is having a negative effect on real property values. D.C. 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). In this case, there is no indication that the property on which Allure is located is blighted. Furthermore, the evidence and reasoning provided by the ANC on real property values is too speculative to credit in this case. Therefore, the Board finds in favor of the Applicant on this issue.

II. The Establishment’s Record of Compliance Merits Renewal.

23. Under § 25-315, “[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Code § 25-315(b)(1). While Allure has one violation in its investigative history, this violation is not sufficient to merit nonrenewal of the license.

III. The Board Imposes Conditions on the License.

24. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying “[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license”). Under § 25-104(e), the Board is granted the

authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood]” D.C. Code § 25-104(e).

25. Based on the Board’s findings regarding appropriateness, Allure’s hours of operation are reduced to 1:00 a.m. Sunday through Thursday, and 2:00 a.m. on Friday and Saturday. Moreover, Allure is prohibited from permitting smoking inside the establishment until it obtains the required exemption from the D.C. Department of Health. *See* D.C. Code § 25-311(c) (requiring the establishment to obtain “all other licenses and permits required by law or regulation for its business.”).

26. The Board notes that it considered the ANC’s request that outdoor seating be prohibited until the ANC was notified and agreed to the change. *Supra*, at ¶ 11. Nevertheless, the ANC is only entitled to notice of a licensee’s planned changes in accordance with Title 25 of the D.C. Official Code. Moreover, such a condition is not appropriate or ripe for consideration in this case when Allure has not filed for additional outdoor seating privileges.

27. The Board also considered the ANC’s request to reduce the establishment’s hours further than the Board has done in this Order. *Id.* Nevertheless, the hours selected by the Board are appropriate for an establishment located in a commercial corridor such as H Street. *Supra*, at ¶ 3.

IV. The Application Satisfies All Remaining Requirements Imposed by Title 25.

28. 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. 2021). 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 17th day of May 2021, hereby **APPROVES** the Application to Renew a Retailer’s Class CT License filed by Allure subject to the following **CONDITIONS**:

- (1) The hours of operation shall be modified so that the establishment closes at 1:00 a.m., Sunday through Thursday, and 2:00 a.m. on Friday and Saturday; and
- (2) The establishment shall not permit smoking or the use of hookah on the premises until it obtains the required exemption from the D.C. Department of Health. Once obtained, Allure shall file a copy of the exemption with the Board before permitting hookah or smoking at the establishment.

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 Parties.

District of Columbia
Alcoholic Beverage Control Board

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Donovan Anderson, Chairperson

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Edward S. Grandis, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).