

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

In the Matter of:	)	
	)	
Chaplin Restaurant DC, LLC	)	Cases No.: 15-PRO-00119
t/a Chaplin	)	16-PRO-00005
	)	License No: 87903
	)	Order No: 2016-382
Application for a Substantial Change to a	)	
Retailer's Class CR License	)	
	)	
at premises	)	
15019 <sup>th</sup> Street, N.W	)	
Washington, D.C. 20001	)	
	)	

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

**ALSO PRESENT:** Chaplin Restaurant DC, LLC, t/a Chaplin, Applicant

Alexander Padro, Vice Chair, on behalf of Advisory Neighborhood Commission (ANC) 6E, Protestants

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) hereby approves the Applications for a Substantial Change to a Retailer's Class CR License filed by Chaplin Restaurant DC LLC, t/a Chaplin, (hereinafter "Applicant" or "Chaplin") for the purpose of changing its hours of operation and alcoholic sales, service, and consumption (collectively referred to as "hours") and adding an entertainment endorsement to the license. The Board conditions approval of the entertainment endorsement on the following conditions in order to minimize potential

disturbances: (1) the establishment's entertainment hours shall end at 1:00 a.m., daily; (2) no entertainment is permitted on the sidewalk café; (3) no entertainment or amplified music is permitted on the first floor of the establishment; (4) disc jockeys (DJs) are not authorized; (5) the establishment's doors and windows must be closed whenever entertainment is provided; except the doors may be opened for normal ingress and egress; and (6) no amplified music shall be heard from outside of the establishment.

### ***Procedural Background***

The Notice of Public Hearing advertising Chaplin's Substantial Change Application to add an Entertainment Endorsement, including live music, a DJ, and Karaoke music, was posted on October 30, 2015, and informed the public that objections to the application could be filed on or before December 14, 2015. *ABRA Protest File No. 15-PRO-00119, Notice of Public Hearing [Notice of Public Hearing (EE)]* (posted Oct. 30, 2015). The Notice of Public Hearing advertising Chaplin's Substantial Change Application to change its hours was posted on November 27, 2015, and informed the public that objections to the application could be filed on or before January 11, 2016. *ABRA Protest File No. 15-PRO-00119, Notice of Public Hearing [Notice of Public Hearing (Hours)]* (posted Nov. 27, 2015). The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 6E protesting both substantial change applications. *ABRA Protest File Nos. 15-PRO-00119*.

The parties came before the Board's Agent for a Roll Call Hearing on December 28, 2015,<sup>1</sup> and February 8, 2016,<sup>2</sup> where all of the above-mentioned objectors were granted standing to protest the substantial change applications. On March 2, 2016, the Board issued an Order consolidating the two protest cases for purposes of conducting one Protest Hearing. *In the Matter of Chaplin Restaurant DC, LLC, t/a Chaplin, Board Order No. 2016-100*, March 2, 2016. On April 20, 2016, the parties came before the Board for a Protest Hearing.

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 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).

### **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:

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<sup>1</sup> The Roll Call Hearing for the Substantial Change Application to add the Entertainment Endorsement took place on December 28, 2015. *ABRA Protest File No. 15-PRO-00119, Roll Call Hearing Results*.

<sup>2</sup> The Roll Call Hearing for the Substantial Change Application for the Change of Hours took place on February 8, 2016. *ABRA Protest File No. 16-PRO-00005, Roll Call Hearing Results*.

## I. Background

1. Chaplin submitted two substantial change applications in respects to its Retailer's Class CR License at 1501 9<sup>th</sup> Street, N.W., Washington, D.C. *Notice of Public Hearing (EE); Notice of Public Hearing (Hours)*. Chaplin requested an Entertainment Endorsement with proposed hours of 6:30 p.m. to 1:00 a.m., Sunday through Thursday, and 6:30 p.m. to 1:30 a.m., Friday and Saturday, and a change in hours to 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *Notice of Public Hearing (EE); Notice of Public Hearing (Hours)*.
2. ABRA Investigator Earl Jones investigated the applications and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 15-PRO-00119, Protest Report* (Apr. 2015) [*Protest Report*].
3. Chaplin's current hours of operation allow the establishment to operate between 11:00 a.m. and 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday. *Id.* at 2. Chaplin's current hours of sale, service, and consumption are 11:00 a.m. to 1:30 a.m., Sunday through Thursday, and 11:00 a.m. to 2:30 a.m., on Friday and Saturday. *Id.* The proposed hours of operation are 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *Id.* at 3. The proposed hours of sale, service, and consumption are 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *Id.* The proposed hours of entertainment are 6:30 p.m. to 1:00 a.m., Sunday through Thursday, and 6:30 p.m. to 1:30 a.m., Friday and Saturday. *Id.*
4. The establishment is located in a C-2-A zone. *Protest Report* at 7; *Investigator's Exhibits* 11 and 12 [*Inv. Ex.*]. The neighborhood contains a mixture of commercial, retail, and residential properties. *Protest Report* at 8. Twenty licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4-5. Four of those establishments have entertainment endorsements: Vita Restaurant and Lounge/Penthouse Nine, Uptown Ethiopian Fusion and Cuisine (Uptown), Ivy and Coney, and Queen of Sheba. *Id.* at 8; *Transcript* at 32 [*Tran.*]. Queen of Sheba, in particular, is located next door to Chaplin and provides entertainment from 9:00 a.m. to 2:00 a.m., Sunday through Thursday, and from 9:00 a.m. to 3:00 a.m., Friday and Saturday. *Protest Report* at 8; *Tran.* at 29-30. There are no recreation centers or public libraries within 400 feet of the establishment. *Protest Report* at 8. Seaton Elementary School is located within 400 feet of the establishment, and Shiloh Day Nursery is located within 33 feet. *Id.*
5. Chaplin is located at the corner of P Street, N.W., and 9<sup>th</sup> Street, N.W. *Id.*; *Inv. Ex.* 6 [*Inv. Ex.*]. The front entrance is located on 9<sup>th</sup> Street, N.W., and the rear exit leads out to an alley that also serves as a thoroughfare for the residents in the area. *Protest Report* at 9; *Inv. Ex.* 7. Located across the alleyway is an assisted living facility and across the street is Shiloh Baptist Church. *Tran.* at 35. Chaplin also has a sidewalk café located on the side of the building which is located on P Street, N.W. and a patio behind the building *Tran.* at 92; *Protest Report* at 9; *Inv. 's Ex.* 6, 19, and 20.
6. The building where the establishment is located is a four-story building which also includes a rooftop deck. *Id.* at 9. Chaplin occupies the basement and the first and second floors

of the building. *Id.* The building's landlord, Aung Myint resides on the third and fourth floors, and the rooftop deck. *Id.* at 9; *Tran.* at 28.

7. Chaplin's main floor consists of a dining area, bar, restrooms, and an elevator to the second floor. *Protest Report* at 9. From the main floor, one can also access the rear exit, sidewalk café, and the kitchen which is located in the basement. *Id.* The second floor of the establishment consists of a dining area, bar, emergency exit, and elevator. *Id.* The second floor mezzanine level overlooks the first floor and can hold 30-40 patrons. *Id.*

8. ABRA investigators monitored Chaplin on nine separate occasions between March 18, 2016, and April 11, 2016, and did not observe any ABRA violations. *Id.* at 10; *Tran.* at 29. Investigator Jones observed moderate pedestrian traffic during his observations, but noted that it increased significantly during weekend evenings due to the Cambria Hotel and Suites and other licensed establishments located north and south of the establishment. *Id.* at 11. Investigator Jones also monitored the alleyway but did not notice any excessive noise concerns. *Id.*

9. A records search revealed that Chaplin did not have any noise complaints submitted against it with the Noise Task Force between March 2015 and March 2016. *Id.* at 12. Investigator Jones also was not aware of any complaints from the community concerning licensed establishments near Chaplin which provide entertainment. *Tran.* at 32. Investigator Jones, however, was aware of noise complaints concerning licensed establishments a few blocks south of Chaplin. *Id.* at 32 and 33.

## **II. Adrian Williams**

10. Adrian Williams is the Managing Member of Chaplin. *Protest Report*, at 4. The restaurant has been in business for two years, and during that time, it has only received one noise complaint due to noise on its sidewalk café. *Tran.* at 70 and 78-79.

11. Queen of Sheba, which has an entertainment endorsement, is located next door to Chaplin and they are open until 2:00 a.m., Sunday through Thursday, and until 3:00 a.m. on Fridays and Saturdays. *Id.* at 70-71.

12. Chaplin is a Japanese restaurant that specializes in ramen. *Id.* at 71. Currently, the establishment's hours of operation end at 2:00 a.m., Sunday through Thursday, and 3:00 a.m. on Friday and Saturday. *Protest Report*, at 2. The hours of sale, service, and consumption, however, ends a half hour earlier. *Id.* Mr. Williams seeks a change in hours to allow the establishment to continue to sell alcoholic beverages until the establishment closes; at 2:00 a.m., Sunday through Thursday, and 3:00 a.m., Friday and Saturday. *Id.*

13. Mr. Williams applied for an entertainment endorsement for purposes of offering karaoke and hosting occasional events. *Id.* at 72. The establishment's entertainment will take place on the second floor in the dining area facing 9<sup>th</sup> Street, N.W. *Id.* at 73, 105, and 111. The establishment will not stream music from the second floor to the first floor. *Id.* at 111. In addition, Chaplin will neither offer entertainment on the sidewalk café nor will it have speakers amplifying music from inside the restaurant to the outdoors. *Id.* at 72, 83, and 103.

14. Chaplin talked to customers and residents about its plans to add entertainment and extend its hours, and asked persons to sign a petition if they supported the restaurant's plans. *Id.* at 121 and 133-134; *Applicant's Exhibit 1*. Chaplin collected over 50 signatures in support of its change in operations. *Applicant's Exhibit 1*.

15. The establishment's windows, which are double pane, do not open, so it does not expect noise to escape through the windows. *Id.* at 84 and 113. Chaplin's doors are opened occasionally as patrons enter and exit the restaurant. *Id.* Mr. Williams explored enclosing the doors at the entrance of the sidewalk café or adding an interior or exterior vestibule, but determined that there was not enough space inside the restaurant for an interior vestibule and he is prohibited from constructing a permanent structure on the sidewalk café – a public space. *Id.* at 87-88, and 104. Mr. Williams is also looking into enclosing a portion of the sidewalk café, but a final decision has not been made. *Id.* at 89-90.

### **III. Advisory Neighborhood Commissioner Kevin Chapple**

16. Kevin Chapple, an ANC Commissioner with ANC 6E, testified on behalf of the Protestant. *Id.* at 137 and 138. Mr. Chapple resides at 438 S. Street, N.W. *Id.* at 137. *Id.* at 137.

17. Mr. Chapple testified that in addition to the existing residents in the neighborhood, a new apartment building with 200 units is being built across the street from the establishment on P Street, N.W. *Id.* at 139-141.

18. Mr. Chapple is concerned that if Chaplin is granted an entertainment endorsement, it will result in excessive noise coupled with the noise stemming from persons dining in the establishment's outdoor seating areas. *Id.* at 141. Based on his experience, establishments with amplified music pose noise problems for the surrounding community. *Id.* at 148 and 162.

19. Mr. Chapple acknowledged that Chaplin is only planning on having entertainment inside of the restaurant; yet, he is still concerned. Mr. Chapple, in his capacity as an ANC Commissioner, participated in a meeting with the community and a licensed establishment, Shaw Tavern, whose karaoke events created noise problems for the community. *Id.* at 147. The noise concerns were addressed by Shaw Tavern when it agreed to implement noise abatement measures which would prevent noise from emanating from inside of the building. *Id.*

20. In another instance, the community had concerns about Ivy and Coney, which has an entertainment endorsement. *Id.* at 163. As was the case with Shaw Tavern, the community met with Ivy and Coney to discuss their concerns. *Id.* at 164. Ivy and Coney, in response, erected a wall on the border of the rooftop patio to provide nearby residents with additional privacy and noise abatement. *Id.*

### **IV. Jackie Hart**

21. Jackie Hart testified on behalf of the Protestant and she resides at 1548 8<sup>th</sup> Street, N.W. *Id.* at 172. Presently, Ms. Hart is staying with her mother who resides at the assistant living

facility across the street from Chaplin, at 801 P Street, N.W. *Id.*; *Protestant's Exhibits 3 and 4 [Prot. Ex.]*. Sixteen seniors, ranging in age from 70 to 95, reside at the assistant living facility and they all have some sort of health ailment. *Tran.* at 173. The residents, on average, go to bed at 10:00 p.m. *Id.* at 175.

22. Ms. Hart has lived in the neighborhood since 1989. *Id.* at 175. During her time in there, she has seen the neighborhood develop from having drug dealers on the corner to experiencing commercial growth. *Id.* at 188. Throughout that time, she has seen a great amount of commercial and residential development. Presently, a new nine-unit condominium complex is being built two blocks north of Chaplin on 8<sup>th</sup> Street, N.W. *Id.* at 196.

23. Ms. Hart is concerned about the additional noise that would originate from Chaplin, which is 10 feet from the assistant living facility, if it were granted an entertainment endorsement. *Id.* at 174. She is concerned that if Chaplin is granted an entertainment endorsement, it would add more noise in the neighborhood. *Id.* at 176. Although formal complaints have not been filed, some of the residents at 801 P Street have complained about the noise stemming from Queen of Sheba. *Id.* at 176 and 192-194. Ms. Hart has also experienced noise stemming from Queen of Sheba when she has had her mother's windows opened. *Id.* at 199 and 204.

24. On a recent occasion, Ms. Hart observed moderate noise coming from Chaplin when she stood on the outdoor steps. *Id.* at 174. Noise from Chaplin can be heard even more distinctly by residents who reside in the basement or on the first or second floors of the living assistance facility if the windows are open. *Id.*

25. Ms. Hart recommends that Chaplin employ noise abatement measures, such as erecting an acoustic barrier which would dampen the noise stemming from the establishment. *Id.* at 189.

#### **V. Brian Peters**

26. Brian Peters testified on behalf of the Protestant and he resides at 1609 8<sup>th</sup> Street, N.W. *Id.* at 208. Mr. Peters currently serves as the president of the Central Shaw Neighborhood Association (CSNA) and he serves as a volunteer member of the ANC 6E ABC Licensing Committee. *Id.* at 211 and 215. In his capacity as president of the CSNA, he has received numerous complaints from residents concerning licensed establishments and entertainment endorsements. *Id.*

27. Several licensed establishments are near Mr. Peters' residence, including Dacha and Uptown. *Id.* Mr. Peters has heard music from Uptown, which is less than 10 feet away from his residence across an alley, penetrating his residence despite having his windows closed. *Id.* at 209.

28. In Mr. Peters' experience, noise stemming from Uptown, despite having their doors and windows closed, coupled with the noise from patrons dining outside at Dacha has created a greater nuisance to the neighborhood. *Id.* at 210. As such, he surmises the same would be the

case with Chaplin if it were granted an entertainment endorsement in light of the other licensed establishments in the surrounding area. *Id.* at 211.

29. Mr. Peters recommends that if the Board were to grant Chaplin’s entertainment endorsement, it should be a “limited endorsement” in which the type and number of events the restaurant is permitted to host are limited, as well as the entertainment hours. *Id.* at 212-215, and 231. A few licensed establishments with “limited endorsements” include Ivy and Coney, The Passenger, Beau Thai, and Osteria. *Id.* at 235-236.

## **VI. Pleasant Mann**

30. Pleasant Mann testified on behalf of the Protestant and he resides at 1519 8<sup>th</sup> Street, N.W. *Id.* at 239.

31. Prior to the hearing, Mr. Mann reviewed Applicant’s Exhibit 1 and compared it to the list of registered voters maintained by the D.C. Board of Elections. *Id.* at 240-241. Based on his review, most of the persons who signed the petition did not reside in the neighborhood. *Id.*

## **CONCLUSIONS OF LAW**

32. The Board may approve an Application for a New Retailer's Class CR License if the establishment is appropriate for the locality, section or portion of the District in which it is located. D.C. Official Code §§ 25-104 and 25-313(a); 23 DCMR §§ 1607.2; 1607.7(b). Similarly, the Board may approve an Application for a Substantial Change in Operations if the establishment will not have an adverse on the community. D.C. Official Code § 25-313(a).

33. The primary issue in this case is noise. Thus, the question before the Board is whether the substantial change applications will have a negative impact on the peace, order, and quiet of the community. D.C. Official Code § 25-313(b)(2); 23 DCMR § 400.1. Under the Appropriateness Test, the applicant bears the burden of presenting evidence and argument to the Board, which would lead a reasonable person to conclude that the establishment will not have an adverse impact on peace, order, and quiet. D.C. Official Code §§ 25-311(a), 25-4041(B); 23 DCMR § 400.1. 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).

34. 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).

### I. THE CHANGE IN HOURS IS APPROPRIATE FOR THE NEIGHBORHOOD

35. In review of the evidence presented, the Board concludes that Chaplin's requested change in hours is appropriate for the neighborhood.

36. Chaplin's current hours of operation are 11:00 a.m. to 2:00 a.m., Sunday through Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday. *Notice of Public Hearing (Hours)*. The establishment's hours of sale, service, and consumption are 11:00 1:30 a.m., Sunday through Thursday, and 11:00 a.m. to 2:30 a.m., Friday and Saturday. *Id.* The establishment is seeking to change its hours of operation to 10:00 a.m. to 2:00 a.m., Sunday to Thursday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *Id.* Similarly, Chaplin is seeking to change its hours of sale, service, and consumption to 10:00 a.m. to 2:00 a.m., Sunday through Saturday, and 10:00 a.m. to 3:00 a.m., Friday and Saturday. *Id.*

37. The Board finds that Chaplin is located in a mixed use area that consists of commercial, retail, and residential property. *Infra* at ¶ 4. There are twenty licensed establishments within 1,200 feet of Chaplin. *Id.* Of those, seven have hours until 2:00 a.m. and 3:00 a.m. *Protest Report* at 8.

38. The Protestants are concerned that granting the establishment's extended hours request would adversely impact the neighborhood because it will result in additional noise. The Board finds that the record, however, does not support the Protestant's assertion.

39. Chaplin has been operating for two years and during that time it has only received one noise complaint. *Infra* at ¶ 10. During the ABRA Investigators' monitoring of the establishment on nine occasions, they did not observe excessive noise emanating from the establishment. *Id.* at 8. Investigator Jones monitored the alley behind Chaplin for excessive noise, but did not observe anything. *Id.* Between March 2015 and March 2016, no noise complaints have been filed against the establishment. *Id.* at ¶ 9.

40. The Board, however, does agree with the Protestant that the establishment's extended hours coupled with an entertainment endorsement may have an adverse impact on the community. As is explained in greater detail in Section II below, the Board believes those noise

concerns can be sufficiently addressed by the imposing conditions on the entertainment endorsement.

## II. THE ENTERTAINMENT ENDORSEMENT IS APPROPRIATE SUBJECT TO CONDITIONS

41. In this case, the Board finds that Chaplin does not intend to operate as a nightclub or tavern, and will offer karaoke and host occasional events. *Id.* at ¶ 13. The establishment intends on offering entertainment only on the second floor, and will neither have entertainment on the sidewalk café nor will stream music outdoors. *Id.* Under these circumstances, limited entertainment will not have an adverse effect on the neighborhood, so long as the establishment complies with appropriate conditions that mitigate any potential negative impact. As such, the Board grants the Application subject to the conditions that (1) the establishment's entertainment hours shall end at 1:00 a.m., daily; (2) there is not a DJ; (3) the establishment's doors and windows when there is entertainment, except doors may be opened for normal ingress and egress; (4) entertainment is limited to the second floor of the establishment; (5) no entertainment on the sidewalk café or first floor; and (6) no amplified music on the first floor and amplified music shall not be audible outside of the establishment.

42. In *Climax Restaurant & Lounge*, the Board indicated that it may consider whether a licensee is "generating little or no sound." *In re Solomon Enterprises, LLC, t/a Climax Restaurant & Lounge*, Case No. 13-PRO-00152, Board Order No. 2014-474, ¶ 32 (D.C.A.B.C.B. Nov. 19, 2014). In making this determination, the Board considers the "reasonable expectations of residents" and the government's interest in protecting residents inside their home and their ability to engage in "basic nighttime activities such as sleep." *Id.* at ¶¶ 32-33 *citing* 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); *In re T.L.*, 996 A.2d 805, 812-3 (D.C. 2010). The Board also noted that it may consider any existing or potential "soundproofing features" that could alleviate potential noise concerns. *Id.* at ¶ 36.

43. Although Chaplin has only been the subject of one noise complaint during its two years in operation, the Board is persuaded by the Protestant's evidence which shows that there is a potential for increased noise in light of the other licensed establishments in the area which provide entertainment. Queen of Sheba, which is located next door to Chaplin, also provides entertainment. *Protest Report* at 8. Residents in the assisted living facility across the alley from Chaplin have complained about hearing music from Queen of Sheba whether or not their windows are closed. *Infra* at 23. In addition to Queen of Sheba, there are three other licensed establishments near Chaplin which offer entertainment. Given the close proximity of Chaplin and Queen of Sheba, the Board finds it reasonable that noise emanating from Chaplin would be heard by the residents in the neighborhood.

44. Chaplin has explored the possibility of implementing soundproofing measures in an effort to reduce noise to the neighborhood. *Id.* at ¶ 15. The Board acknowledges that the establishment ruled out the possibility of constructing an interior or exterior vestibule for practical reasons, and is still considering adding a partial enclosure on the sidewalk café which

may further reduce the amount of noise emanating to the street. *Id.* Nonetheless, the Board must consider present conditions, and presently, Chaplin has not implemented any soundproofing measures to address the community's noise concerns.

### **III. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 6C'S ISSUES AND CONCERNS.**

45. ANC 6E's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Chaplin's impact on peace, order, and quiet. *Letter from Alex Padro, Vice Chair, ANC 6E, to ABC Board Chairman Donovan Anderson* (Dec. 11, 2015). The Board notes that it specifically addressed these concerns in the Board's Conclusions of Law, above.

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

46. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in its 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. Accordingly, based on the Board's review of the substantial change applications 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 15<sup>th</sup> day of June 2016, hereby **APPROVES** the Applications for a Substantial Change to a Retailer's Class CR License, which requests an entertainment endorsement and change of hours, at premises 1501 9<sup>th</sup> St., N.W., filed by Chaplin Restaurant DC, LLC, t/a Chaplin.

**IT IS FURTHER ORDERED**, under D.C. Official Code § 25-104(e), that the approval is subject to the following conditions:

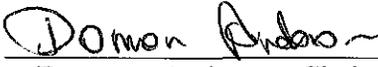
- (1) the establishment's entertainment hours shall end at 1:00 a.m., daily;
- (2) the establishment shall not have a DJ;
- (3) entertainment is limited to the second floor of the establishment;
- (4) the establishment shall not have entertainment on the sidewalk café or have amplified music which can be heard outside of the restaurant;
- (5) the establishment shall not have entertainment or amplified music on the first floor; and

- (6) doors and windows shall be closed whenever entertainment is provided; except doors may be opened for normal ingress and egress;

**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 ANC 6E.

District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Donovan Anderson, Chairperson

  
\_\_\_\_\_  
Nick Alberti, Member

  
\_\_\_\_\_  
Mike Silverstein, Member

\_\_\_\_\_  
Ruthanne Miller, Member

  
\_\_\_\_\_  
James Short, Member

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

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). 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).